



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**STAFF COMMENTS  
 20Z00010  
 Marker 24 Marina, LLC**

**Conditional Use Permit (CUP) for Alcoholic Beverages (Full Liquor) for On-premises Consumption in Conjunction with a Private Club in a BU-2 zoning classification**

Tax Account Number: 3018251  
 Parcel I.D.: 25-37-06-CX-00-15.08  
 Location: 1360 South Banana River Drive, Merritt Island (District 2); East side of roadway  
 Acreage: 1.04 acres

Planning and Zoning Board: 01/11/2021  
 Board of County Commissioners: 02/04/2021

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2 with a CUP for a marina	BU-2 retaining CUP for Commercial/recreational and Commercial/industrial marina and adding a CUP for Alcoholic Beverage (full liquor) in conjunction with a private club
<b>Potential*</b>	9,600 square foot existing building	9,600 square foot existing building
<b>Can be Considered under the Future Land Use Map</b>	Yes** Residential 4	Yes** Residential 4

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*BU-2 zoning is an existing use pursuant to Section 62-1188 (9) of Brevard County Code and vested against the Comprehensive Plan.

**Background and Purpose of Request**

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverage (full liquor) in conjunction with a private club located on the east side of S. Banana River Drive. According to the applicant's proposal and depicted upon the CUP's concept plan, the request will allow the guests of

the marina to enjoy alcoholic beverages from within the areas designated as the private club (covered tiki deck) and deck.

Regarding the existing development, the Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted its first Zoning Code. At that time, the property east of S. Banana River Drive was zoned BU-2. The 1958 aerials identified the lot as Jaren Boat Works.

Zoning Resolution **20Z00009** adopted on August 6, 2020, relocated 17-slips of the approved 104-slip marina - approved under Zoning Resolution **19PZ00080** to that portion of the site lying east of S. Banana River Drive. Additionally, the applicant's intent of **20Z00009** as stated in the application identified the following uses to be performed from this location east of S. Banana River Drive. Those uses are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. The current concept plan submitted for this Alcoholic Beverage CUP review replaces the pool area with a deck.

### **Land Use**

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The Retail, warehousing and wholesale commercial, BU-2 zoning is non-conforming to the RES 4 FLU designation as this use predates the adoption of the 1988 Brevard County Comprehensive Plan. Previous zoning action **20Z00009** mitigated the nonconforming use of the marina.

### **Environmental Constraints**

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is S. Banana River Drive which lies to the south of Highway 520, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 20.16% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 20.16% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the proposed marina development does not create any residential development.

The subject property is served by potable water by the City of Cocoa. No sewer service has been extended to the portion lying east of S. Banana River Drive. The owner intends to remain on septic.

## Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

**Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.** The entire area is under the FLUM designation of Residential 4. To the south, this site is boarded by a developed single-family residential lot zoned Single-family residential (RU-1-11). To the west, lies an established marina with 87-slips. To the north, is an undeveloped commercial lot zoned BU-2.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the area is residential. The marina use, west-side of S. Banana River Drive established under Zoning Resolution **Z-2398**, was adopted February 27, 1969 and has possibly been in operation for over 50 years. The previous zoning actions since adoption of **20Z00009** were **19PZ00080** adopted on September 5, 2019 and **13PZ-00008** adopted on September 12, 2013. The marina (west side of S. Banana River Drive) encompassed an area of 8.88 +/- acres. The site had a prior SUP (Special Use Permit) approved under **Z-2398** that allowed a marina to include sales of gasoline, groceries, bait, tackle, and sundries provided that an approved fence was erected on the north line and on the west line south to Jaren Avenue.

## Surrounding Area

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the south and west. To the north, BU-2 (Retail, Warehousing, and Wholesale Commercial). The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet, and a 1,100 square-foot minimum house size.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. This area of Merritt Island is characterized by detached single-family residential uses and an existing commercial marina located east of South Banana River Drive.

Except for the recent zoning approval for the Marina CUP approved under **20Z00009** adopted on August 6, 2020, and **19PZ00080** adopted on September 5, 2019 and **13PZ-00008** adopted on September 12, 2013, there have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

## Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

*Staff analysis: The owner/applicant has provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request.*

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

*Staff analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building until depicted upon the CUP concept plan and reviewed as part of a site plan submittal. The proposed concept plan limits the alcohol consumption to the tiki deck and deck areas.*

## **General Standards of Review**

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant's Response: The proposed conditional use will not adversely impact neighboring properties.

*Staff analysis: The owner/applicant has not addressed the adverse impacts such as noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use nor has the number of patrons been identified nor has the traffic parameters been addressed.*

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant's Response: Compatible with marina operations.

*Staff analysis: This parcel is a developed commercial property that is bounded by S. Banana River Drive right-of-way to the west, a canal to the south and the river along its eastern edge. The northern boundary is adjacent to an unimproved lot. The proposed alcoholic beverage consumption will occur within the building envelope.*

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: Improvements to current marina operations will only help the value of abutting properties.

*Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.*

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other

means as required by the Board of County Commissioners.

Applicant's Response: Will be adequate and consistent with marina operations.

*Staff analysis: The property has both car and boat access points identified on the concept plan. The proposed use will not substantially increase parking and traffic needs for this site.*

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant's Response: Will not interfere.

*Staff analysis: This project must be compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters or a violation will be created.*

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant's Response: Will comply.

*Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Any proposed outside seating must comply with noise ordinance.*

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Applicant's Response: Current dumpster will be sufficient and will not exceed.

*Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.*

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant's Response: Existing potable water and wastewater system on site is sufficient and will not be exceeded.

*Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by utilities as part of the site plan review process.*

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant's Response: Additional landscaping will be installed.

*Staff analysis: As the project is buffered by right-of-way (roadway/canal), minimal screening or buffering has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request additional conditions for approval.*

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: Will not.

*Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.*

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant's Response: Will not be open past 10:00 pm.

*Staff analysis: Should the Board determine that additional measures become necessary, the Board may wish to request additional conditions for approval.*

Section 62-1901(c)(2)(i): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant's Response: Will not be greater than 35 feet.

*Staff analysis: The existing building appears to be constructed as a single-floored structure with a high bay work/storage area.*

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Note: for existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant's Response: Parking shown on CUP exhibit.

*Staff analysis: The CUP concept plan currently depicts 24 standard parking spaces (5-uncreditable due to being grassed) and 17 boat slips totaling 36 spaces. The existing 9,600 square foot building requires 32 parking spaces based upon current parking criteria.*

### **For Board Consideration**

The Board may wish to consider the compatibility of the proposed CUP with the surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as:

- Additional visual buffering and/or acoustically screen to adjacent residential lot.
- Limit the hours of operation for the alcoholic consumption.
- Prohibit or limit outdoor music or sound systems.
- Limit the number of patrons based on available parking (boats and cars).