



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 6627, **Version:** 1

Subject:

Request for Public Interest Determination (PID) for the Marker 99 restaurant, formerly known as Captain Katana's, Inc., to allow an approximately 122 square foot deck expansion, exceedance of 30 percent impervious areas within the surface water protection buffer (Buffer), and an exception to the Natural Resources Management (NRM) stormwater management requirement. (District 4)

Fiscal Impact:

None.

Dept/Office:

Natural Resources Management Department

Requested Action:

Staff requests the Board of County Commissioners consider options for a PID as requested by Monroe Engineering, Inc. (Applicant), on behalf of IR Tiki 2, LLC, for Marker 99 restaurant and tiki bar at 4263 N Highway 1, Melbourne (Tax Account Numbers: 2611662 and 2611664).

Summary Explanation and Background:

The Applicant's submittal (attached) presents the request for a PID in accordance with Chapter 62, Article X, Division 3, Section 62-3668(3) for the Board's consideration to allow a deck expansion, further exceedance of 30 percent impervious areas within the Buffer, and an exception to the NRM stormwater management requirement for the first inch of runoff from the back lot to the Buffer.

The site is situated on the Indian River Lagoon (IRL), a Class III water in this location with a 25-foot Buffer per Section 62-3668(2). The site was originally developed in 1978. Between the mid-1990s and 2020, the restaurant operated as Captain Katana's, with a dock and boat slips for customers. About one-quarter of the restaurant building, about half of a tiki hut, and most of the east wood decking are situated within the Buffer, making it nearly all impervious. Section 62-3668(3) limits impervious areas to a maximum of 30 percent of the required buffer area.

The current owners purchased the property (with its non-conforming structures) in May 2020 and renamed the business to Marker 99, to revive the defunct commercial working waterfront. The property owners conducted work without permits, including the construction of a 330 square-foot (sq. ft.) tiki hut over existing deck, and approximately 122 sq. ft. of new decking that squared off the northeast corner of the existing deck.

The eastern portion of the deck extends over the IRL into Waters of the State and is thus regulated by the Florida Department of Environmental Protection (FDEP). The Applicant is working with the State and a surveyor to determine how much of the deck is within jurisdictional waters. The Applicant may be required to

update their State Submerged Land Lease. However, this does not affect the Applicant's PID request.

Section 62-3668(3) allows alteration or construction of accessory structures within the surface water protection buffer if stormwater management is provided in accordance with Section 62-3666(3), and impervious areas do not exceed 30 percent of the required buffer area. Stormwater management capable of preventing the first inch of runoff from a 25-year, 24-hour storm, from all impervious surfaces that drain to the property's shoreline from entering surface waters was not provided. Additionally, the new decking increased the already non-conforming impervious area within the Buffer.

The Applicant has since submitted to Brevard County for Site Plan (Plan) approval (22AD00016 - attached). The Plan includes the tiki hut, new sidewalks, and a new parking lot with concrete and pervious concrete that will retain 100% of the of the stormwater from approximately mid-U.S. Highway 1 to the middle of the restaurant building for treatment and attenuation. The Applicant has already completed a septic to municipal sewer conversion.

The Applicant states that the stormwater retention within the Buffer cannot be provided due to existing developed conditions and the coquina shoreline - that there is no reasonable physical way to either re-route or capture this back lot flow. Therefore, the first one inch of stormwater runoff from the mid-building roof and most of the wood decking (~250 cubic feet) will still directly discharge into the IRL. However, the Applicant submits that the proposed stormwater management system will capture the worst of the site's stormwater runoff, in both quantity (27,723 cubic feet) and quality, from U.S. Highway 1 through the existing unpaved parking lot and prevent it from directly discharging into the IRL.

Section 62-3668(3) states:

Alteration or construction other than that which is allowed under this division shall be prohibited, unless it is shown to be in the public interest and does not adversely impact water quality and natural habitat."

Section 62-3661 defines Public Interest as:

"...demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action..."

The Applicant requests that the Board consider the following factors in determining public interest (excerpts from Applicant's submittal):

Environmental Benefit:

- Sewer: (septic to municipal sewer)
 - Since 1978, the original site has been on septic tanks & drain fields (+/-42 years).
 - The Save Our Indian River Lagoon (SOIRL) program is working to reduce septic pollution affecting the lagoon. This has become a high priority with Brevard County.
 - In 2020, the new owners abandon the existing septic system and installed a new lift station &

force main. This connected the existing restaurant to municipal sewer.

- >> This was a win for water quality in the Indian River Lagoon.
- Stormwater: (no stormwater treatment to providing stormwater treatment exceeding code required)
 - Since 1978, the existing parking lot has direct drained to the Indian river (100%). This includes a tributary area from the middle of Highway 1 to the middle of the existing restaurant building. No stormwater treatment for water quality was provided.
 - The Indian River has been designed an Outstanding Florida Water and an Estuary of National Significance. Improving water quality has been a priority with Brevard County, Florida Department of Environmental Protection and the St. Johns River Water Management District.
 - Currently, the new owners have a site plan in for review and are proposing a new pervious concrete parking lot. This will retain 100% of the stormwater runoff from the tributary area and provide approximately (5) times the treatment volume required by current stormwater requirements. This means there is a significant surplus of treatment volume above what is required for that area. Stormwater from the parking lot will no longer direct drain and discharge to the Indian River. This is a major improvement for water quality.
 - Brevard County Code section 62-3666(3)(f) states the director may consider alternative stormwater management systems that utilize established low impact development best management practices.
 - >> This was a win for water quality in the Indian River Lagoon.

Social Benefit:

- Provides public access to marine & coastal waters of the Indian River Lagoon while dining. This is a commercial working waterfront with water enhanced use along the Indiana River Lagoon. It provides indirect access to the Indian River while protecting the shoreline.

Staff Note:

Comprehensive Plan, Coastal Element, Objective 5 states that its purpose is to protect and promote Brevard County as a recreational and commercial working waterfront community; protect and improve public access to the shorelines and waters of Brevard County; preserve and protect the cultural heritage and physical character of the area as a working waterfront community; and enhance the aesthetic character of the area by directing development in a manner that maintains the working waterfront identity of the County. Objective 13, states: "To establish a comprehensive program to promote and protect public access to the marine and coastal waters of the County, and to ensure the economic viability of recreational and commercial working waterfronts."

Economic Benefit:

- When the owners purchased the existing restaurant, it was closed and there were no employees.
- The restaurant is now open & known as Marker 99 Restaurant & Lounge. The restaurant provides job creation & economic benefit to the local community. The restaurant currently employs over 30 employees.

The Applicant requests the Board's consideration to determine the proposed project is in the Public Interest, and allow the following:

- An approximately 122 sq. ft. deck expansion that squares off the northeast corner of the existing deck, resulting in further exceedance of the allowable 30 percent impervious areas within the Buffer, and
- An exception to the NRM stormwater management requirement for capture of the first inch of stormwater runoff from the back lot to the Buffer.

Should the Board approve the PID, the Applicant shall be required to comply with all other applicable land development regulations at the time of Brevard County permitting.

Option 1: Approve PID as presented, including all mitigating site plan provisions.

Option 2: Deny PID.

Option 3: Provide other direction.

Clerk to the Board Instructions:

None.