

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Jordan Mannix-Lachner, Planner II

Meeting Date: November 16, 2023

Application: **Major Modification to a Major Development Plan and Conditional Use Approval – 2407 N. Roosevelt Boulevard (RE# 00002280-000100)** – A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Request: The applicant is requesting to modify the conditions of City Commission Resolution 2014-326, to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard

Applicant: Richard McChesney of Spottswood, Spottswood, Spottswood & Sterling, PLLC

Property Owner: 2407 N. Roosevelt, LLC

Location: 2407 N. Roosevelt Boulevard (RE# 00002280-000100)

Zoning: Conservation zoning district

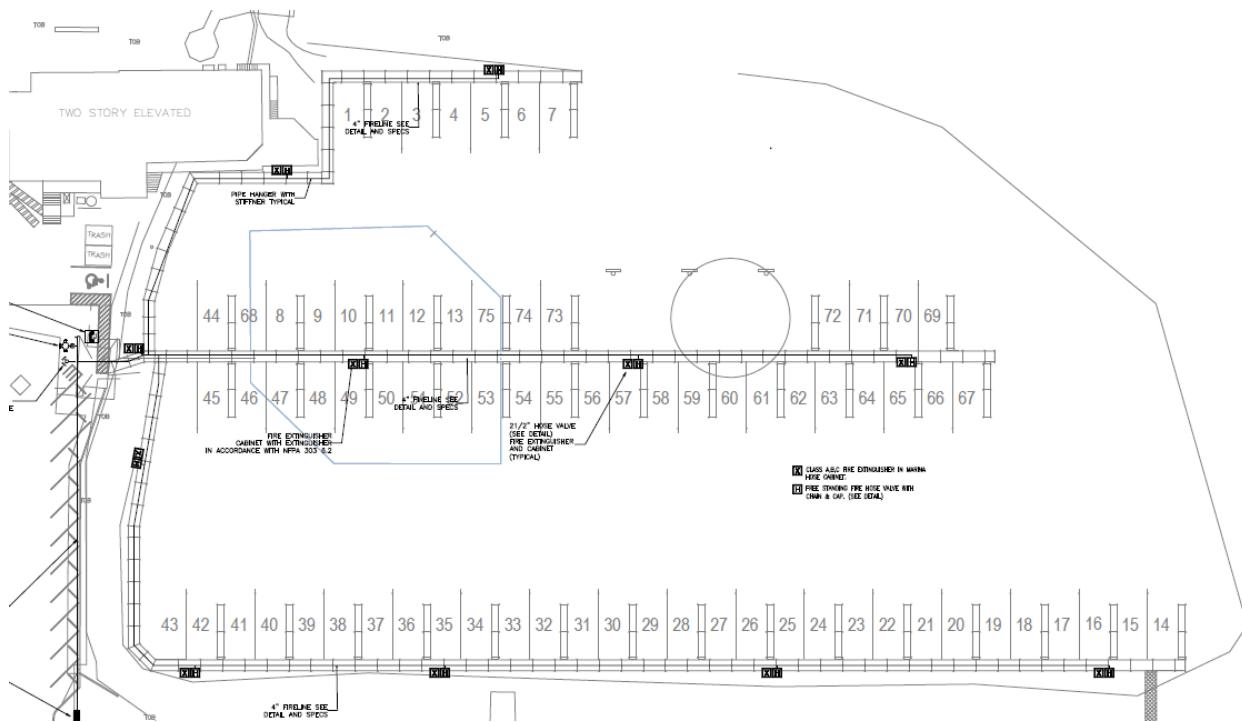


***NOTE:** This report has been updated to correct an error, and to include additional comments received from development review staff and neighboring property owners. The previously published staff report referenced several times that the applicant is requesting approval for vessels up to 35 feet in length. That is incorrect; the applicant is requesting approval for vessels up to 40 feet in length.*

Background:

City Commission Resolution 14-316 approved a Major Development Plan and Conditional Use to allow for the construction of a dockage with 79-berths in a tidal water basin at property located at 2407 N. Roosevelt Blvd (RE# 00002280-000100.) The property is located in the Conservation zoning district. The basin consists of Outstanding Waters of the State.

The parcel includes approximately four acres of tidal waters fringed by mangroves, and approximately 27,000 square-feet of upland area. A 10,000 square-foot mixed-use structure sits on the upland, adjacent to the mangrove fringe. When the development plan was approved in 2014, the upland building was occupied by various medical and professional offices and two dwelling units. The basin contained a one-story structure over water on pilings. The structure sat on a separately owned parcel (RE# 00002280-000101) which was not included in the development plan or conditional use approval. The building housed professional offices.



Dock Layout.

A building permit for the dock was obtained in 2017. Construction of the docks stalled for several years. New owners purchased the property in 2022, as well as the parcel containing the over-water building. Construction of the docks re-commenced with a modified layout, and the over-water building was demolished. The upland building was vacated. A final inspection for the dock permit was completed in September 7, 2023. The building demolition and dock reconfiguration was reflected in a minor modification application that was reported to the Planning Board at the October 19, 2023 meeting. The applicant has also

submitted a building permit for the installation of 68 hydraulic boat lifts on dock slips.

The applicant obtained a Temporary Certificate of Occupancy for the dock on October 4, 2023. Pursuant to Conditions 3 and 5 of Resolution 14-316, the applicant must obtain a Public Art Plan approval from the Art in Public Places Board and have the art installed and inspected prior to issuance of a Certificate of Occupancy. The applicant should coordinate with the Art in Public Places program to ensure these requirements are met prior to issuance of a final Certificate of Occupancy.

Proposed Modifications

The applicant is requesting to modify conditions 14, 20, and 23 of City Commission Resolution 14-316, as described below:

Existing Conditions per Res. 14-316	Conditions Proposed by Applicant
Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.	Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted. Accessory uses to the marina shall be permitted.
Condition 20: There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.	Condition 20: The marina shall have no more than six (6) charter vessels at a maximum of six (6) passengers for active or passive docking.
Condition 23: No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.	Condition 23: No vessel longer than forty (40) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Resolution 14-316 authorized a major development plan, conditional use, and landscape waiver. Major development plans are required for the addition of 5,000+ square feet of active recreation space or commercial activity. The conditional use is required to allow for a dockage. The proposed modifications relate to the *use* of the dockage. Therefore, this application is being reviewed with regard to both the major development plan and conditional use approvals.

Zoning

The subject property is located in the Conservation zoning district. Code Section 122-128 states that "All development within the conservation district shall be by conditional use due to the environmental sensitivity of lands within the conservation district."

Section 122-129 provides conditional use criteria for the Conservation zoning district. It states (emphasis added):

"applicants for a conditional use **must** demonstrate that the proposed uses and facilities identified in this section are compliant with all applicable criteria and relevant mitigative measures for conditional use approval, including but not limited to wetland preservation, coastal resource impact analysis and shoreline protection, protection of marine life and fisheries, protection of flora and fauna, and

floodplain protection. The design of proposed conditional use facilities **shall** be required to apply mitigative measures to prevent and/or minimize adverse impacts on natural systems, including but not limit to habitats, water quality, and the physical and biological functions of wetlands. The size and scale of such development **shall** be restricted. The proposed uses and facilities that **shall** be compliant with all applicable criteria and relevant mitigative measures for conditional use approval are as follows:"

Section 122-129 provides for conditional uses based on whether the proposed use is above or below the mean high water line. The subject proposal relates to the use of facilities below the mean high water line.

Below mean high water, conditional uses include the following water-dependent facilities:

- a. Fishing piers, docks and related boardwalks not exceeding a width of five feet; and
- b. Watercraft

Above mean high water, conditional uses include boardwalks, hiking trails, picnic areas, observation towers, and low-density residential development.

In reviewing the proposed modifications, Planning staff has considered the Conservation zoning district regulations described above, in addition to other relevant Code sections.

Analysis of Proposed Modification to Condition 14

The existing Condition 14 restricts the expansion of commercial use associated with the dockage. It also specifies that the development plan and conditional use approval does not authorize the change of existing legally nonconforming use. The effect of Condition 14 is that the commercial uses associated with the dockage are not expanded to the point that the facility operates as a marina, which is a prohibited use in the subject district. Additionally, the Code provides that legally nonconforming uses may be changed to another nonconforming use, with Planning Board approval. By prohibiting the change of legally nonconforming uses to any other commercial use, the resolution restricted the ability to change the nonconforming office uses to nonconforming marina uses.

The applicant's proposed modification to Condition 14 removes these restrictions and allows for accessory "marina" uses throughout the site.

Section 122-1181 states: "Accessory uses or structures shall be permitted by right in a subject district if the principal use is a permitted use; however, the accessory use or structure shall be a conditional use if the principal use is a conditional use."

Given that marinas are not a conditional use in the subject district, the Code cannot permit accessory uses to a marina; the uses must be accessory to a "dockage," and they must be approved through the conditional use process.

Section 122-62 states that "a conditional use shall be permitted upon a finding by the Planning Board that the proposed use ... [complies] with the criteria specified in this section." It further requires that conditional use applications clearly describe specific characteristics of the proposed use, which shall be reviewed to ensure that the proposed use does not result in adverse impacts. There are additional conditional use criteria for land uses within a conservation area.

The subject application does not propose or specify a specific accessory use, therefore it is not possible to review the characteristics of the proposed use and determine whether it complies with the review criteria set

forth in the Code. Therefore, staff cannot support a modification to Condition 14 that includes the sentence “Accessory uses to the marina shall be permitted.”

According to licensing records, the legally nonconforming uses in the upland building that have not been abandoned as of October 2023 include a massage studio and a medical office.

In an email dated October 31, 2023, the applicant stated that the property owner is contemplating an upland dock office, with storage space for lessees of the dockage. In accordance with Section 122-30, the applicant may continue the legally nonconforming office use of the upland structure, so long as the use has not been abandoned. Staff’s position is that the office may contain storage space for use by the property owner and guests, but the commercial rental of storage space to customers exceeds the scope of the existing nonconforming office uses.

Analysis of Proposed Modification to Condition 20

Condition 20 of Resolution 14-316 prohibits the docking of charter vessels. The applicant is requesting a modification to the conditions of approval to allow for the dockage of up to six charter vessels, each with a capacity of up to six passengers.

The existing prohibition on charter vessels reflects the provision in Code Section 122-1186, which stipulates that charter boats are only permitted to be regularly moored at duly licensed marinas. Section 89-6 defines a marina as “a commercial establishment providing for the docking, storage, and servicing of watercraft, including dispensing of motor fuel.”

Marinas are neither a permitted nor conditional use in the Conservation zoning district. Resolution 14-316 authorized a “dockage” which is consistent with the Conservation zoning district’s conditional use regulations and Section 1212-130, which states that “All uses not specifically or provisionally provided for in this division are prohibited in the conservation district.” Section 110-186 of Chapter 110: Resource Protection also provides that no new marinas shall be allowed in or adjacent to outstanding Florida waters, marine sanctuaries, or areas of essential manatee habitat, all of which are within or adjacent to the subject property.

Therefore, the applicant’s request to allow for the dockage of six charter vessels is prohibited under Code, as marinas are prohibited at the subject property.

In an email to the City Attorney sent on November 28, 2023, the applicant stated that the project was approved as a marina, and that the conditions of Resolution 14-316 include references to a marina.

If a marina was in fact a legally nonconforming use on the property, the applicant’s request would be prohibited under Section 122-32, which states that a nonconforming use shall not be extended, expanded, enlarged, or increased in intensity in intensity. The addition of charter boats would constitute an unlawful increase in intensity and expansion of a nonconforming use.

However, Planning staff maintains that a marina is not a legally nonconforming use on the site, and that the use of the word “marina” in the conditions was erroneous. Marinas are prohibited in the subject district, which is consistent with the resolution’s approval of a “dockage.” Furthermore, when the word “marina” is used in Resolution 14-316, it is not used to explicitly or implicitly authorize a marina. On the contrary, it deliberately restricts the more intense uses that are consistent with a marina.

The title of Resolution 14-316 states (emphasis added): “A resolution of the City Commission of Key West, Florida granting Major Development Plan, Conditional Use, and Landscape Waivers... to construct a **dockage**

with 79 berths." The resolution further states "Whereas, the applicant proposed construction of a **dock system** with 79 berths..." Finally, the resolution states "Now therefore be it resolved... that the City Commission grants approval of the application for Major Development Plan, Conditional Use, and Landscape Waiver for the construction of **79 berths** on property located at 2407 N. Roosevelt Boulevard..."

The word "marina" is included in Conditions 14, 20, and 23, which restrict charter use, vessel size, and the change/expansion of commercial use on the site:

- Condition 14 prohibits the change of existing nonconforming uses, which ensures that the change of nonconforming use provisions in Section 122-32 would not be used to allow for the addition of services and facilities that would result in the creation of a marina.
- Condition 20 specifically prohibits charter vessels, which are allowed in licensed marinas, but not in the subject district.
- Conditions 23 restricts the size of vessels, which mitigates adverse impacts to marine life and coastal resources in conformance with Conservation district regulations which provide that conditional use facilities shall be required to apply mitigative measures to prevent and/or minimize adverse impacts on natural systems.

Because charter vessels are only permitted in duly-licensed marinas and marinas are prohibited at the subject property, the Planning Department cannot recommend approval of the proposed modification to Condition 20. The Planning Department advises that approval of the proposed modification is prohibited under the Code.

Analysis of Proposed Modification to Condition 23

Condition 23 restricts the maximum vessel length to 30 feet. The applicant proposes a maximum vessel length of 40'. Vessels of this length are authorized under the project's Florida Department of Environmental Protection and Army Corps of Engineer permits.

Upon initial review, Planning staff did not object to the request to increase the maximum vessel length. Subsequently, the Planning Department received a public comment from the Gulf Pointe Homeowners Association. Gulfview Pointe is located is a townhome development located directly to the east of the subject property. In addition to other concerns, the Gulfview Pointe HOA objected to the increase in vessel length due to the increased potential for adverse impacts to water quality, marine habitat, and shoreline erosion.



Planning staff conducted additional analysis in response to this concern and found that larger vessels (and associated increase in the strength and number of engines on a vessel) may indeed increase the potential for adverse impacts to adjacent shorelines as well as living marine resources and water quality.

The Land Development Regulations require that applicants for development along coastal shorelines shall be required to demonstrate how the development protects against adverse impacts to environmental resources including shoreline stabilization. Furthermore, Conservation district regulations provide in Section 122-126 that applicants for development "shall bear the burden of proof" in showing that the development appropriately mitigates and minimizes adverse impacts to environmental and coastal resources.

The applicant has not provided a coastal impact assessment that demonstrates that the increase in vessel length would not result in adverse impacts to environmentally sensitive resources and shoreline erosion.

However, scientific literature indicates that boat wake energy is influenced by vessel length, water depth, and boat speed¹. In turn, boat wakes are known to erode shorelines, scour the seafloor, and increase turbidity that harms marine life. NOAA Nautical Charts show that the mean low water depth is three feet in the waters adjacent to the subject property. Vessels with drafts up to three feet are permitted to utilize the dock. Relatively shallow depth requires larger vessels to get "on plane" quickly, which requires higher speeds. When viewed together, this suggests that the applicant's request would increase boat wake energy, thus increasing the risk of shoreline erosion, turbidity, and harm to water quality and marine life.

Planning staff provided the applicant with the HOA's objection letter and inquired as to whether the applicant would provide a response to the objections related to boat wake impacts. The Planning Department has not received a response from the applicant.

Therefore, staff finds that the applicant has not met the burden of proof in determining that the proposed

¹ Glamore, W. C. (2008, February). A decision support tool for assessing the impact of boat wake waves on inland waterways. In International Conference on Coastal and Port Engineering in Developing Countries (No. 1, p. 20).

modifications appropriately mitigate adverse impacts. As a result, staff cannot recommend approval of the proposed modification to Condition 23.

Utilities Comments

The Utilities Department provided the following comments regarding the application:

1. Utilities would like to confirm sanitary sewer facilities will be available for the proposed all vessels leasing a slip, including the charter boats. Please request that the applicant provide a sanitary sewer plan that shows the sanitary sewer pump out connection(s) for the marina.
2. Please request that the applicant provide a site plan that shows the location for solid waste storage, i.e., dumpster(s). Solid waste storage shall be screened from public ways, pursuant to Sec. 108-279.

The applicant was responsive to the request for information from Utilities. No further information was requested.

Urban Forestry Comments

The Urban Forester provided the following comments regarding Condition 23: While newer, faster boats have longer beams with a shallow draft, the engines on these types of boat may result in increased noise impacts to adjacent areas and on the force pressure of the engines on the benthic environment. Many of these larger boat with shallow draft have 3-4 engines on them.

Public Comments

As mentioned previously, the property owner's association for Gulf View Point has submitted a letter in response to the proposed modification. The association opposes the proposed modification, and is particularly concerned about the environmental impact, and the impact of wave action on shoreline stability and erosion. The full letter is attached to the Planning Board agenda.

A letter of objection was also submitted by Barton Smith of Smith Hawks Law Firm on behalf of a neighboring property owner, Banana, LLC. The substantive objection is that the modification would eliminate underlying conditions and reliance upon which the existing development plan was granted. The full letter is attached to the agenda.

Parking Analysis

The required parking for the dockage and two residential units consists of 32 vehicle spaces and eight bicycle spaces. The development meets the vehicle parking requirements with 12 on-site parking spaces and 20 off-site parking spaces. The off-site spaces are located in the parking lot of the Capitana and are subject to an exclusive easement. The easement A 60-foot-wide parcel owned by the Lion's Club sits between the subject property and the off-site parking. The applicant does not hold an access easement to allow customers to traverse the property. This requires customers parked in the off-site space to traverse the sidewalk on North Roosevelt to enter the property. Staff noted on a site visit that a "desire path" has formed in the vegetated/landscaped buffer between the Capitana parking lot and the Lion's Club property.

The bicycle parking requirement is eight spaces. The site plan associated with the building permit BLD2023-1299 reflects three bicycle parking spaces. In an email on November 15, 2023, the applicant agreed to provide eight bicycle parking spaces.

The proposed parking is sufficient to accommodate the parking requirements of the marina slips and the residential units. Any changes in commercial use resulting from the proposed modification to Condition 14 may trigger additional parking requirements. If additional parking is needed but cannot be accommodated onsite or through a linkage agreement, a variance would be required.



Parking Table		
Use	Code Required	Proposed
Dockage – 69 Recreational Slips <i>1 space per 4 slips</i>	18 vehicle spaces 5 bicycle spaces	18 vehicle spaces
Dockage – 6 Commercial Slips <i>1 space for every 3 passengers (based on vessel capacity)</i>	12 vehicle spaces 3 bicycle spaces	12 vehicle spaces
Residential Units – 2 Units <i>1 space per unit</i>	2 vehicle spaces	2 vehicle spaces
Proposed Accessory Uses to Dockage	Unknown	Unknown
Total	32 vehicle spaces 8 bicycle spaces	32 vehicle spaces 3 bicycle spaces

Surrounding Zoning and Uses:

North. Conservation – Outstanding Waters

Uses: Conservation/None (open waters)

East. Conservation – Mangroves & Medium Density Residential

Uses: Conservation, Multi-family residential

South. General Commercial

Uses: Commercial retail, storage facility, vehicle rentals

West. General Commercial

Uses: Civic activities, transient lodging

Process:

Planning Board:	November 16, 2023
City Commission:	TBD
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

Staff Analysis – Evaluation for Compliance with the Land Development Regulations: Major Development:

Section 108-91(C)(3) states that development plan modifications that exceed the scope of minor and administrative modifications shall be treated in the same manner as the original approval. Section 108-91(C)(4) provides that changes to specific conditions of approval shall require approval by the body that originally approved the development plan. Section 108-91(D)(1-2) states that for development not fitting within the minor and major development plan and development plan modification categories outlined in 108-91, “the city planner shall determine the appropriate review process after considering similarity, complexity of the development, impacts on the demand for city services, and the potential for adverse impact(s) upon neighboring areas... In applying the criteria set forth herein, all phases of the total project or development shall be considered. In determining the appropriate level of review, the city planner may aggregate previous development completed within two years of a new application.”

Based on the provisions described above, along with conversations with the applicant and City Attorney, the City Planner has prescribed a review process for this application. The review process shall begin with review by development review staff, followed by a recommendation from the Planning Board, and final approval by City Commission.

Code Criteria

Section 108-233: Concurrency Facilities and Other Utilities or Services

Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, roadway level of service and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development.

1. Potable water supply

The proposal to allow for accessory uses to the marina on the upland, along with changes in nonconforming uses on the site, may increase demands on potable water supply. The applicant has not provided an analysis of the proposal's impact on potable water supply. Staff cannot anticipate the impact of other unknown accessory uses or other commercial uses on-site. There is no anticipated significant change in the potable water supply demands as a result of the proposal to allow charter vessels and vessels up to 40' in length.

2. Wastewater management

The proposed inclusion of commercial charter vessels may increase demand on wastewater needs accommodated by the sewer pump-out for vessels. The applicant stated that the pump-out has a capacity of 50 gallons per minute, which is sufficient to accommodate the typical 15-gallon capacity

of waste tanks on vessels under 40'.

3. Water quality

The marina is located in the Conservation zoning district. The applicant has not provided an analysis of how the proposed changes will impact water quality.

However, the addition of charter vessels and larger vessels with more powerful engine systems will increase turbidity in the waters within and adjacent to the subject property. Increased turbidity reduces water quality and adversely impacts marine life in several ways.

Section 122-129 states that the design of conditional uses within the Conservation district shall mitigate adverse impacts on natural systems including habitat and water quality. The limitation on the length of vessels and the restriction against charter vessels is a mitigative measure to reduce these adverse impacts. Eliminating those restrictions would be inconsistent with Conservation zoning district regulations and Chapter 110: Environmental Resources.

4. Stormwater Management/Drainage

No impacts to stormwater management and drainage plans are anticipated. Staff has observed standing water associated with high tides on a significant portion of the subject property during October 2023. Staff recommends that any drainage modifications be submitted to the City to ensure compliance with state and federal laws.

5. Solid waste

The applicant shall coordinate with Waste Management for the disposal of solid waste.

6. Roadways

No change is anticipated.

7. Recreation

No change is anticipated.

8. Fire Protection

No change is anticipated.

9. Reclaimed water system

No change is anticipated.

10. Other public facilities

No change is anticipated.

Section 108-232: Intergovernmental coordination

The applicant has obtained FDEP and Army Corps permits allow for the proposed changes to vessel length and the addition of charter boats.

Section 108-234: Appearance, design and compatibility:

The development plan modification must satisfy criteria established in Chapter 102; Articles III, IV and V of Chapter 108; Section 108-956; and Article II of Chapter 110 of the Key West City Code in the following manner:

- **Chapter 102- Historic Preservation:** The subject property is not located within the Historic District.
- **Articles III, IV and V of Chapter 108** – No site plan changes are proposed as part of this modification.
- **Section 108-956 – Potable water and wastewater:** – The applicant shall coordinate with FKAA to ensure access to potable water and a wastewater disposal system.
- **Chapter 110 – Resource Protection:** The applicant has obtained all necessary FDEP and Army Corps approvals for the proposal. The applicant shall comply with the provisions of the FDEP Clean Marina program.

No site alterations are proposed. However, the applicant proposes an increase in intensity of commercial use on the property which is located in the Conservation zoning district and contains and is adjacent to environmentally sensitive lands.

Section 110-186 requires that marina development plans include an environmental impact component. The original development plan did not anticipate the impact of the proposed modifications, and no environmental impact analysis has been provided in this application.

Staff cannot fully anticipate the effect of the proposed modifications on environmental, coastal, soil, and water resources. However, the modifications are likely to increase rather than mitigate any adverse impacts of boat activity on environmental and coastal resources.

The current development approval restricts any changes in use on the upland portion of the property, including accessory uses like boat maintenance. The proposed modifications would eliminate that restriction. In accordance with Section 110-186, boat maintenance activities in new or expanded marina facilities shall be located as far as possible from open waterbodies in order to reduce contamination of waterbodies, and runoff from boat maintenance must be collected and treated prior to discharge. Staff would like to clarify that approval of the proposed modification to Condition 14 would not relieve the property owner of the requirement to comply with any applicable land development regulations that regulate particular uses. For example, if the property owner seeks to provide boat maintenance activities, they may be required to obtain additional permits and approvals from the City or other agencies prior to engaging in those uses.

Section 108-235: Site location and character of use

The proposed modifications are not anticipated to adversely affect neighboring commercial uses. However, the site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. Therefore, the proposed modifications to Conditions 14 and 20 do not comply with the criteria identified in Section 108-325.

Additionally, the addition of charter vessels would likely result in increased intensity, trip generation, and impacts on water quality because charter vessels generally operate on a daily basis, often with multiple trips per day. In contrast, recreational vessels are generally used less frequently and result in lower intensity impacts.

Section 108-236: Appearance of site and structures

No site alterations are proposed as part of this application.

Section 108-237: Site plan

No site alterations are proposed as part of this application. Any site alterations necessary to pursue proposed accessory uses must be approved pursuant to the land development regulations.

Section 108-238: Architectural drawings

No physical alterations are proposed as part of this application. The applicant has stated that demolition and reconstruction of the upland structure will be proposed in the near future.

Section 108-239: Site amenities

No specific site amenities are identified in this application.

Section 108-240: Site survey

The applicant provided an updated site survey.

Section 108-241: Soil survey

No soil survey was provided.

Section 108-242: Environmentally sensitive areas

The project is located in an environmentally sensitive area and includes wetlands and open water. The site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. The applicant has not provided an analysis of the environmental impact of the proposed modifications. The applicant has obtained necessary permits from federal and state agencies to allow for charter vessels and vessels 40' in length.

Section 108-243: Land clearing, excavation and fill, tree protection, landscaping and irrigation plan.

No site alterations are proposed as part of this application.

Section 108-244: On-site and off-site parking and vehicular, bicycle, and pedestrian circulation

The applicant proposes to comply with parking requirements using on-site parking, as well as an exclusive easement agreement for 20 parking spaces at 2401 N. Roosevelt Boulevard. There is no pedestrian pathway from the off-site parking to the docks, except via an exit to the North Roosevelt Boulevard sidewalk. Staff strongly recommends an easement and walkway to be pursued and constructed.

Section 108-245: Housing

The site contains two recognized residential dwelling units in the upland structure. No changes are proposed as part of this application.

Section 108-246: Economic resources

The proposed project does not anticipate a yield to ad valorem taxes.

Section 108-247: Special Considerations

- a)** The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The marina basin includes seagrass beds and marine life which are sensitive to increased turbidity and other forms of pollution and water runoff. Comprehensive Plan Policy 5-1.1.4 provides that these impacts shall be regulated through effective water quality management criteria, including coordination with state agencies having jurisdiction. The applicant has obtained necessary approvals from state agencies. The increase in vessel length and the addition of charter boats may increase adverse impacts on marine life and shoreline stability.
- b)** The project is located within the Coastal High-Hazard Area as defined by Policy 5-1.5.2:

Definition of the City of Key West Coastal High-Hazard Area.

- c) No unincorporated portions of the county would be impacted by the proposed development.
- d) The project fronts a shoreline. No shoreline alterations are proposed that would impact shoreline access.
- e) No special facilities are proposed to accommodate bus ridership.
- f) Passive recreation space is not identified in the application.
- g) Coordination with applicable agencies has occurred as evidenced by approved FDEP and Army Corps permits.
- h) Necessary permits have been obtained from FDEP and the Army Corps.

Section 108-248: Construction management plan and inspection schedule

No construction is proposed.

Site plan (City Code Chapter 108, Article III)

The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276.

Section 108-279: Location and screening of mechanical equipment, utility hardware and waste storage areas

No change to the approved site plan is proposed as part of this application. Utilities staff have noted City requirements to screen waste areas and receptacles.

Section 108-280: Front-end loaded refuse container location requirements

No change to the approved site plan is proposed as part of this application.

Roll-off compactor container location requirements (City Code Section 108-281)

No change to the approved site plan is proposed as part of this application.

Utility lines (City Code Section 108-282)

No change to the approved site plan is proposed as part of this application.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283)

None proposed.

Exterior lighting (City Code Section 108-284)

In accordance with Resolution 14-316, all lighting must be directional and/or shielded from the surrounding streets in accordance with a "dark sky" program.

Section 108-285: Signs

No changes are proposed.

Section 108-286: Pedestrian sidewalks

No change to the approved site plan is proposed as part of this application.

Section 108-287: Loading docks

No change to the approved site plan is proposed as part of this application.

Section 108-288: Storage areas

No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VI: Landscaping

No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VII: Off-street parking and loading

No change is proposed as part of this application. Any change in use pursued as a result of the proposed modification must meet off-street parking and loading requirements.

Chapter 108, Article VIII: Stormwater and surface water management

No change is proposed as part of this application. Any accessory uses pursued as a result of this proposed modification must meet stormwater and surface water management requirements of the land development regulations.

Utilities (Code Chapter 108, Article IX)

No change is proposed as part of this application.

Art in Public Places (City Code Section 2-487)

The applicant submitted a payment-in-lieu for the Art in Public Places program.

End of major development plan review.

Conditional Use Analysis:

Section 122-62: Specific Criteria for Approval

Findings: The Planning Board may find that the application meets the Code purpose of ensuring that "a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity."

The following criteria form the basis for a finding of compliance.

Characteristics of Use Described:

1. Scale and Intensity

a. Floor Area Ratio (FAR):

No change in Floor Area Ratio is proposed as part of this application.

b. Traffic Generation:

It is not expected that the proposed modification will result in trip generation that exceeds LOS standards.

c. Square Feet of Enclosed Building for Each Specific Use:

The applicant has not identified the characteristics or location of specific uses that would be permitted if the proposed modifications are approved.

d. Proposed Employment

This information was not provided.

e. Proposed Number of Service Vehicles:

This information was not provided.

f. Off-Street Parking:

The applicant will provide 32 off-street parking spaces.

2. On or Off-site Improvements Required and Not Listed in Subsection (b)(1)

1. Utilities:

No change is proposed as part of this application. Staff has requested the applicant confirm that required pump-out station has sufficient capacity to handle the additional demand that would result from the addition of six charter vessels.

2. Public facilities:

Staff does not anticipate the proposed modifications will result in additional demand on public facilities.

3. Roadway or Signal Improvements:

None proposed.

4. Accessory Structures or Facilities:

No accessory structures are proposed as part of this application.

5. Other Unique Facilities/Structures Proposed as Part of On-Site Improvements:

None proposed.

3. On-Site Amenities Proposed to Enhance the Site and Planned Improvements.

a. Open Space:

No change to the approved site plan is proposed as part of this application.

b. Setbacks from Adjacent Properties:

No change to the approved site plan is proposed as part of this application.

c. Screening and Buffers:

No change to the approved site plan is proposed as part of this application.

d. Landscaped Berms Proposed to Mitigate Against Adverse Impacts to Adjacent Sites:

No change to the approved site plan is proposed as part of this application.

e. Mitigative Techniques for Abating Smoke, Odor, Noise, and Other Noxious Impacts:

None proposed.

122-62(C): Criteria for Conditional Use Review and Approval: Applications For a Conditional Use Review Shall Clearly Demonstrate the Following:

1. Land Use Compatibility:

Docks are one of the only conditional uses for areas below the mean high-water line in the Conservation zoning district. Marinas, however, are not a permitted or conditional use in the

Conservation zoning district. There are no commercial uses that are either permitted-by-right or as a conditional use in the Conservation zoning district. Therefore, any changes that increase or expand commercial activity on the site are not compatible with the land use regulations for the subject district.

As indicated in public comments, the increased wave action caused by larger vessels and the more regular activity of charter vessels may be incompatible with surrounding residential uses.

2. Sufficient Site Size, Adequate Site Specifications and Infrastructure to Accommodate the Proposed Use:

The physical characteristics of the dock basin and minimum depth requirements of the LDRs and Comprehensive Plan restrict the draft of vessels to three feet. The application states that the marine industry has made technological advancements since the time of the development plan approval which allow for larger boats to decrease their potential draft, suggesting that the basin can accommodate larger boats while meeting the three-foot draft requirement.

Staff cannot confirm whether the site contains the utility infrastructure to accommodate charter vessels; further information about the capacity of the pump-out is required. Staff cannot anticipate whether the site is adequate to accommodate the accessory uses and other potential commercial uses on-site without a description of the uses.

3. Proper Use of Mitigative Techniques:

None are proposed as part of this application.

4. Hazardous Waste:

The application does not address the presence of hazardous waste. Staff recommends that the applicant develop a policy regarding the fueling and/or maintenance of vessels at the dockage to avoid spills and runoff that may result from customers topping off fuel and oil on their vessels.

The applicant shall ensure that any boat maintenance activities comply with land development regulations regarding the treatment and disposal of hazardous waste.

5. Compliance with Applicable Laws and Ordinances:

The applicant shall comply with applicable laws and ordinances.

6. Additional Criteria Applicable to Specific Land Uses. Applicants Shall Demonstrate the Proposed Conditional Use Satisfies the Following Criteria:

a. Land Uses Within a Conservation Area:

The applicant has obtained the necessary state and federal permits for the dock, including the accommodation of charter vessels and vessels 40 in length. Any future accessory uses, or any change in use on the site, must be evaluated based on the specific characteristics of the uses, so staff cannot confirm whether those uses satisfy the criteria for land uses within a conservation area.

Section 110-186 provides that there shall be no new marinas in or immediately to outstanding Florida waters. The basin includes outstanding Florida waters. Therefore, the request for accessory uses to a marina does not comply with Section 110-186.

Section 110-183: *Living marine resources*, states that development within tidal waters shall avoid adverse impacts on benthic communities, including seagrass beds and live bottom communities which are sensitive to increased turbidity and runoff. Staff anticipates that increased intensity associated use of charter vessels would increase turbidity in the basin and may result in adverse impacts on living marine resources, and particularly seagrass beds, which are critical for carbon storage, erosion control, biodiversity, and flood protection.

Additionally, many larger vessels have two or more engines, including more powerful engines. Permitting vessels up to 40' in length may result in increased turbidity, noise, and other adverse impacts on benthic communities within the tidal basin.

The property owners association for Gulf View Pointe, which is adjacent to the subject property and adjoins the shoreline, have expressed concerns that larger vessels with larger engines may result in increased wave action which could impact shoreline stability and erosion on their properties.

Section 110-186 provides that all new or expanded marinas shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the state department of environmental protection.

b. Residential Development:

Residential development is not proposed as part of this application.

c. Commercial or Mixed-Use Development:

The applicant is requesting an expansion of commercial uses on a site within the Conservation zoning district, which conflicts with the provisions of the Conservation zoning district regulations. Any future expanded accessory or commercial uses must be reviewed in accordance with the requirements set forth in the LDRs.

d. Development Within or Adjacent to Historic Districts: Not applicable.

e. Public Facilities or Institutional Development: Not applicable.

f. Commercial Structures, Uses and Related Activities Within Tidal Waters: The criteria for commercial structures, uses and related activities within tidal waters are as provided in Section 122-1186.

Section 122-1186 provides that the regular mooring of watercraft as a commercial enterprise, including charter vessels, are not permitted unless within a duly permitted marina. Therefore, the request for a modification to Condition 20 may not be permitted.

g. Adult Entertainment Establishments: Not applicable.

CONCLUSION

The applicant has requested to modify the conditions of approval of City Commission Resolution 14-316 as indicated in the table below.

Existing Conditions	Requested Modification	Planning Analysis
Condition 14 Changes to nonconforming uses are not permitted, and no new commercial use may be developed on-site.	Allow for changes to nonconforming use, and allow for accessory uses to the marina.	The approved dockage is a conditional use; accessory uses to conditional uses shall also be conditional uses. Conditional uses approval shall be based upon a finding that the specific characteristics of use comply with review criteria. The proposed language in Condition 14 would circumvent conditional use review. Therefore, staff cannot recommend approval of the request to include the accessory use language in Condition 14; it is too broad.
Condition 20 Charter vessels are prohibited.	Permit up to six charter vessels with a maximum capacity of six passengers per vessel.	Commercial marinas are neither a permitted nor a conditional use in the Conservation zoning district. Section 122-1186 provides that commercial charter boats may only be regularly moored in duly permitted marina. Therefore, staff cannot recommend approval of the requested modification to Condition 20 because it is prohibited by the LDRs.
Condition 24 Vessels are restricted to 30' in length.	Permit vessels up to 40' in length.	Increased vessel size will increase the potential for adverse impacts to marine life and shoreline stabilization through increased boat wake/wave energy. No coastal impact analysis has been provided. The applicant has not met the burden of demonstrating that the proposed modification would not result in adverse impacts to environmental resources at this time. Therefore, staff cannot recommend approval of the proposed modification to Condition 20.

Staff also strongly recommend that the property owner negotiate an easement for pedestrian access from the off-site parking area that would allow guests to avoid entering the sidewalk on North Roosevelt Boulevard.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to modify the conditions of approval of City Commission Resolution 14-316 be **partially approved**, in the form and subject to the conditions listed below:

General Conditions

1. This resolution modifies Conditions 14 and 23 of City Commission Resolution 14-316. All of the other conditions of Resolution 14-316 shall remain in effect. Condition 14 shall be revised as follows:

*Coding: Added language underlined, deleted language is ~~struck~~ through.

Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted and approved in accordance with the Land Development Regulations.

2. The property owner may continue the legally nonconforming office use of the existing upland structure. The property owner shall seek conditional use approval to operate any additional or expanded accessory uses to the dockage, in accordance with the procedures outlined in the Land Development Regulations.

Conditions prior to issuance of a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1:

3. The property owner shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the Florida Department of Environmental Protection in accordance with Section 110-186.
4. The property owner shall provide evidence of compliance with the “dark skies” lighting program required as a condition of Resolution 14-316.
5. The business tax receipt associated with the subject conditional use approval shall be modified to reflect the conditions and restrictions of Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.

Conditions prior to issuance of a final Certificate of Occupancy:

6. The property owner shall obtain and maintain a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution. The Conditional Use Permit shall reflect the conditions of City Commission Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.