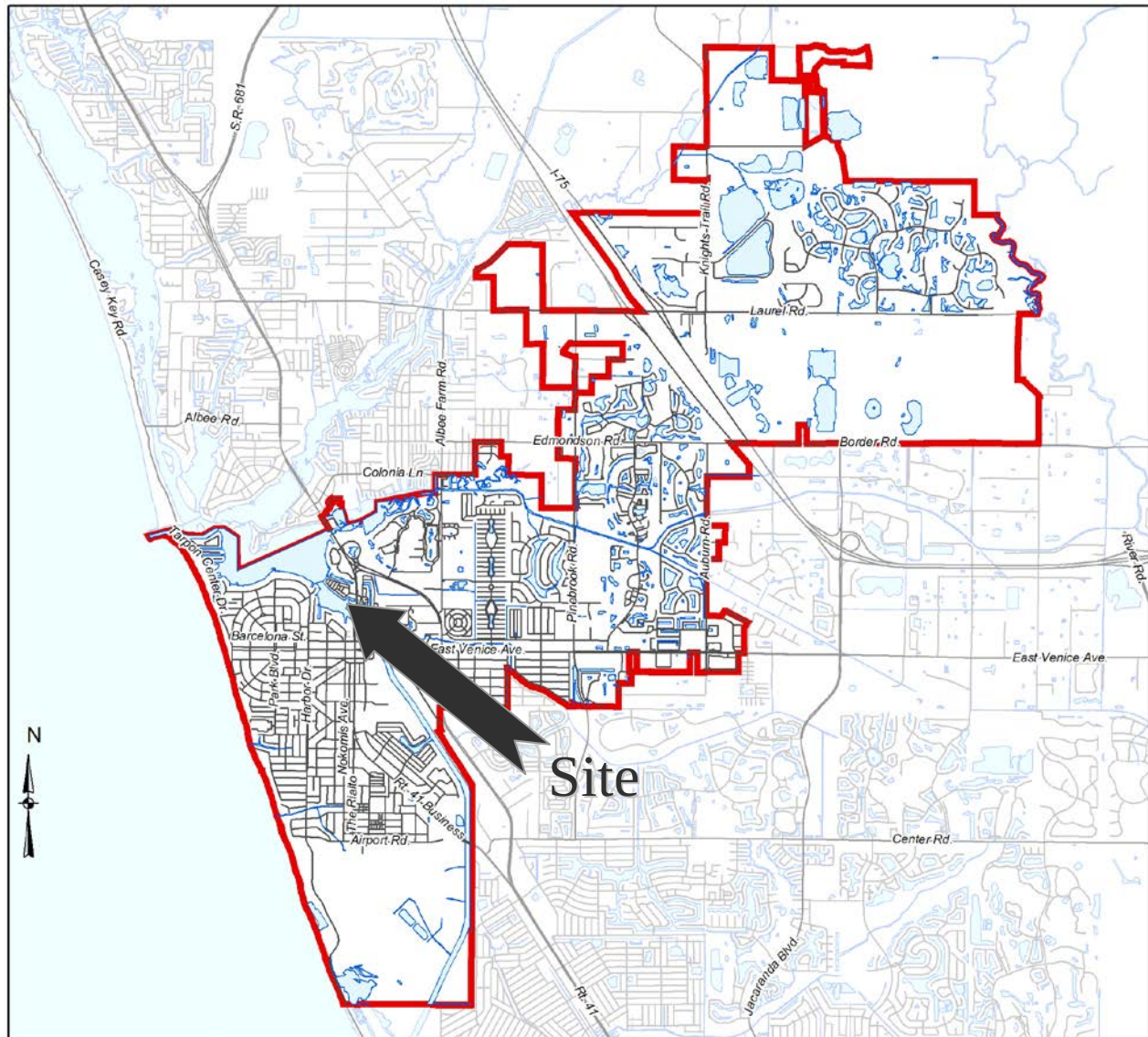

City of Venice Planning Commission Information Packet

MAJOR STRUCTURE OVER WATER PERMIT (No. 13-3MI) Fisherman's Wharf



Prepared by the Planning and Zoning Department
City of Venice, Florida

Request: The applicant is requesting a major structure over water permit to seek approval of the existing floating dock structure located adjacent to the Intracoastal Waterway. Upland improvements required to support the dock are also subject to the permit request.

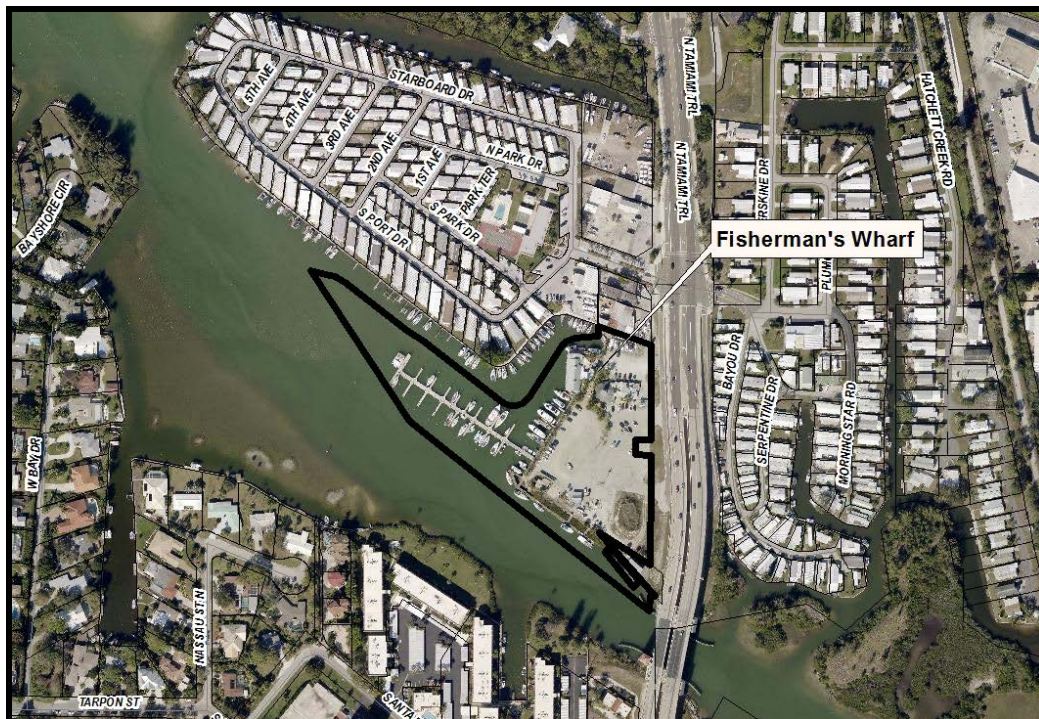
Background: Prior owners of the property obtained approval from the Sarasota County Board of County Commissioners sitting as the Water and Navigation Control Authority to construct the subject dock structure. The constructed dock structure exceeded the scope of the county approval and the prior owner did not achieve compliance with the county permit. In 2012, the City of Venice formally took jurisdiction of structure over water permitting. The current owners of the property are now seeking City of Venice approval of the existing dock structure that was originally permitted by Sarasota County.

Owners: Stephen Witzer, David Freund and Paecia Weinstein, Trustees

Agents: Peter Dailey, Dailey Design Group and William Dooley, Esquire

General Location: The property is located at 505 N. Tamiami Trail

Property Size: Upland - 3.0 ± acres; Submerged Land - 3.6 ± acres



II. LAND USE

A. Existing Land Uses: There are several uses on the property which include:

- 189 seat restaurant (currently under renovation),
- 4,500 square foot retail building (partially occupied),
- 1,600 square foot watercraft rental building,
- Docks along the existing seawall with 23 mooring slips,
- Two boat repair buildings with 4,000 square feet of total combined area,
- Off-street parking facility, and
- A 34-slip unoccupied floating dock structure which is the subject of the major structure over water permit application.

B. Future Land Use Map Designations: Upland – “Northern Gateway Planning Area” Submerged Land – “Waterways”.

C. Zoning Atlas Map Designation: Upland – “Commercial, Intensive (CI)” Submerged Land – “Marine Park (MP)”.

III. STAFF ANALYSIS

A. Staff Summary of Findings:

- Staff confirms that the major structure over water permit application, if approved with conditions, is in compliance with all applicable requirements of the City's land development regulations and consistent with City Comprehensive Plan.
- There are no outstanding technical issues that would prevent the Planning Commission from taking action on the petition.

B. Comprehensive Plan Policy Considerations:

The upland portion of the property is located within the Northern Gateway Planning Area. The intent of the Northern Gateway Planning Area is to encourage mixed-use development, including commercial uses. A marina is consistent with the comprehensive plan definition of a commercial use. As such, the proposed structure over water is consistent with land use planned in the Northern Gateway Planning Area.

The structure over water is proposed to be used in an area designated as “Waterway” on the Future Land Use Map. Policy 13.5, Public Space and Environmental Land Uses, contained in the Land Use & Development Chapter, Future Land Use & Design Element of the Comprehensive Plan provides the following policy for areas designated as waterway on the Future Land Use Map.

Waterways: Submerged lands comprising the City's marine waterways including the Intracoastal Waterway, Roberts Bay, and Dona Bay. Passive or active uses in such areas are discouraged and may only proceed after the environmental impacts are carefully evaluated. Any use that would negatively impact the area's natural ecosystems shall be prohibited.

The natural shoreline in the entire area has been hardened from past construction of seawalls. A condition of approval is recommended to require the applicant to preserve all existing native shoreline vegetation. Comprehensive Plan policies cited below provide the basis for recommended conditions related to manatee protection and the discharge of effluent from boats.

Environmental Chapter

Conservation & Open Space Element

Policy 3.9 Manatee Habitat Protection Zones

Coastal & Waterfront Management Element

Policy 1.2 Docks and Marinas
Policy 4.9 New Marine & Boating Facilities
Policy 4.10 Boat Discharge
Policy 5.4 Manatee Protection Plan

Based on the existing waterfront conditions and with the recommended conditions of approval, staff has determined that the proposed structure over water will not negatively impact the area's natural ecosystems.

C. Zoning District Standards:

The upland portion of the property is located in a Commercial, Intensive (CI) zoning district. A marina is a permitted use in the CI district. No development on the upland is proposed that would be subject to the CI district development standards.

The submerged land portion of the property is located in the Marine Park (MP) zoning district. Piers and docks accessory to marinas are a permitted use where a marina is a permitted use on the upland properties abutting an MP district. As discussed above, a marina is a permitted use in the abutting CI district, therefore, a marina is permitted on the portion of the property zoned MP. The development of the improvements in the MP district is subject to the standards contained in Division 14, Structures over water, shoreline protection devices and maintenance dredging, of the Land Development Code.

IV. ACTION REQUIRED BY THE PLANNING COMMISSION

A. Planning Commission Review and Action:

Per Section 86-537(e)(1), before taking action on any proposed major structure over water permit, City Council shall receive recommendation regarding the major permit from the Planning Commission. The Planning Commission shall consider the major permit in relation to the criteria listed in Section 86-540 and the comprehensive plan.

B. Major Permit Review Criteria:

Section 86-540 specifies that City Council, and the Planning Commission in its advisory role, shall consider, in their review of major permit applications, the following criteria. If any of the following questions are answered in the affirmative, the application shall be denied or modified to comply with the law:

1. *Would the proposed project have a detrimental effect on the use of jurisdictional areas for navigation, transportation, recreational or other public purposes and public conveniences?*
2. *Would the proposed project restrict the free use of jurisdictional areas?*
3. *Would the proposed project adversely alter the flow of water or tidal currents in jurisdictional areas?*
4. *Would the proposed project adversely affect long-term water quality, erosion control or increase erosion, shoaling of channels, or formation of stagnant pockets likely to collect debris?*
5. *Would the proposed project adversely affect the conservation of wildlife, marine life, and other natural resources?*
6. *Would the proposed project adversely affect the natural beauty or recreational opportunities upon jurisdictional areas?*
7. *Would the proposed project adversely affect the uplands surrounding or directly affected by the plan or development?*
8. *Would the proposed project adversely affect the public health, safety and welfare?; or*

9. *Would the proposed project exceed applicable siting criteria within the technical standards pursuant to Section 86-541? **Staff has confirmed compliance with applicable technical standards.***

The applicant has provided a written response to each of the above review criteria that is included in the agenda packet.

C. Major Permit Approval, Approval with Restrictions, Stipulations and Safeguards, Expiration of Permit and Denial:

Sections 86-537(f) and (g) contain the following provisions related to the approval, approval with conditions and safeguards and denial of a major structure over water permit application as well as provisions concerning the expiration of a major permit.

(f) Approval of restrictions, stipulations and safeguards.

- (1) City council may grant or deny such major permit application and may make the granting conditional upon such restrictions, stipulations and safeguards as it may deem necessary to ensure compliance with the intent and purpose of the comprehensive plan.*
 - (2) Any major permit shall expire 12 months from the date of grant unless, upon request, an extension of time is granted by city council, to a date certain. Any major permit shall expire 12 months following city council approval if a building permit has not been issued and/or construction has not commenced.*
 - (3) In cases where stipulations, restrictions or safeguards are attached, all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All conditions, restrictions, stipulations and safeguards that are a condition to the granting of a major permit shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. The city shall be entitled to recover its costs, including reasonable attorney fees, in any action brought to enforce the provisions of this section.*
- (g) Denial. If city council shall deny a major permit, it shall state fully in its record its reasons for doing so. Such reasons shall take into account the standards stated herein, or such of them as may be applicable to the action of denial, and the particular regulations relating to the specific major permit requested, if any.*

D. Major Permit Stipulations and Conditions:

Section 86-544 specifies that every major permit shall include general conditions listed in the section. The first twenty-four (24) conditions listed below are those listed in Section 86-544 that apply to all structure over water permits. In addition, staff is recommending additional conditions to 1) achieve consistency with specific Comprehensive Plan policies identified earlier in this report and 2) to ensure that all life safety improvements to the dock are in place prior to the use of the dock facility.

1. By accepting the permit, the applicant(s) hereby accepts all conditions herein and agrees to abide by them.
2. The permit authorizes the named owner(s) to perform the proposed work. Should the property change ownership prior to commencement of construction, the new property owner(s) must submit an ownership transfer affidavit prior to commencing construction. The affidavit shall state that the new owner(s) shall abide by all permit conditions.
3. A copy of the permit (containing the approved stamped plans) shall be located on-site throughout the entire operation at a visible and readily accessible location to the shoreline area.
4. All work must be as shown on the approved plans and within the conditions of the permit.
5. All permits are conditioned upon the prohibition of propeller dredging. Propeller scour of the submerged bottom is a violation of federal and state law.
6. No commercial and/or revenue-generating activities are allowed within the mooring area(s) unless authorized by the state or the city.
7. The applicant(s) shall hold and save the city and its staff harmless from any and all damages, claims or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted structure.
8. This permit does not convey to the owner(s) or create for the owner(s) any property right or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the owner(s) or convey rights or privileges other than those specified in the permit and in accordance with chapter 86 of the Code.
9. If evidence of the existence of historical resources is discovered or observed at the development site(s) after final approval, but during site development activities, all work in the affected area shall cease immediately. The developer, owner(s), contractor, or agent thereof shall contact the state historic preservation office within two working days. Examples of evidence of historical resources include: Whole or fragmentary stone tools, shell tools, aboriginal pottery, historic glass bottles and building foundations, bone tools, shell mounds, shell middens, and sand mounds.
10. If any human-skeletal remains or associated burial artifacts are discovered at the development site or during development activity, all work in the area shall cease immediately and the owner(s) (or designee) shall contact the police department, the director of historical resources and, if applicable, the state historic preservation office. Pursuant to F.S. ch. 872, it is unlawful to disturb, vandalize, or damage a human burial site.

11. Trimming and alteration of mangroves shall be consistent with the Mangrove Trimming and Preservation Act, F.S. § 403.9321 through 403.9332. Any red (*Rhizophora mangle*), black (*Avicennia germinans*) and white (*Laguncularia racemosa*) mangrove trimming beyond that associated with this permit requires a permit from the Florida Department of Environmental Protection.
12. Impacts to animal species listed by state and/or federal agencies as endangered, threatened or of special concern, are not authorized by this permit. If evidence of a listed species is discovered or observed prior to or after the commencement of clearing of vegetation or earthmoving, that may not have been identified or observed prior to the issuance of this permit, all clearing and earthmoving onsite shall cease immediately. The permittee shall consult with the Florida Fish and Wildlife Conservation Commission and/or the U.S. Fish and Wildlife Service regarding necessary protection measures and provide written evidence of such consultation to the city prior to resuming work.
13. The issuance of city approvals does not relieve the owner(s) from any other permitting requirements of the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, the Southwest Florida Water Management District, or any other concerned local, state or federal agency, where applicable.
14. All permit conditions herein, related to post-construction activities (such as usage, maintenance, monitoring) shall remain in effect throughout the life of the subject structures.
15. Failure to comply with any condition of this permit shall constitute a violation of this Code and shall be punishable as provided in section 86-543
16. The permittee will instruct all personnel associated with the proposed work of the potential presence of manatees and the need to avoid collisions with manatees. Should manatee(s) be harmed, harassed or killed during the project construction due to disregard for permit conditions or negligent operations, the permittee and/or contractor will be held responsible.
17. Siltation barriers and turbidity curtains shall be required for in-water and near-water work. Barriers and curtains will be made of material in which manatees cannot become blocked or entangled and must be properly secured, and regularly monitored to avoid manatee entrapment.
18. All vessels associated with the project and located within 300 feet of the project shall operate at no wake/idle speeds at all times. All vessels will follow routes of deep water whenever possible.
19. If manatees are observed within 300 feet of the project area, all appropriate precautions shall be implemented to ensure manatee protection. If manatee(s) move closer than 50 feet to equipment, the equipment shall be immediately shut down.
20. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission.
21. Temporary manatee awareness signs shall be installed and maintained consistent with federal and state permitting requirements.

22. The contractor shall keep a log detailing manatee collisions, or injury to manatee(s) should they occur. Following project completion, a report summarizing incidents will be submitted to the Florida Department of Environmental Protection, Marine Mammal Section and the Florida Fish and Wildlife Service.
23. All construction activity associated with permits issued under the provisions of this section shall not cause shoreline erosion, unreasonable interference with navigation, or poor water quality.
24. Following completion of all authorized work, the permittee or contractor shall provide written certification and as-built plans to the LD Code official that the structures or other alterations have been completed in accordance with the authorized plans.
25. The permittee shall fully implement a Manatee Protection Plan, including a marina manatee educational program, prior to the use of the proposed major structure over water. All educational materials shall be made available at all times within a centralized display. Information shall be available prior to the use of the dock facility, be replaced in the event of fading or becoming damaged, and be on-going for the life of the permitted dock facility in a manner acceptable to the Planning and Zoning Department. The city shall partner with Sarasota County in the review of the permittee's proposed Manatee Protection Plan.
26. Within six (6) months of the issuance of a development order for the proposed major structure over water, the permittee shall receive and thereafter maintain a Florida Clean Marina designation from the Florida Department of Environmental Protection (FDEP). Written documentation of this designation shall be submitted to the Planning & Zoning Department before the 6-month period ends.
27. The spoil pile on the site shall be completely removed prior to the use of the proposed major structure over water.
28. A fire lane shall be provided on the upland portion of the property prior to the use of the major structure over water. The fire lane shall comply with turning radius, durable surface and all other applicable fire protection standards.
29. A fire line shall be extended to the dock facility and the fire line shall be connected to stand-pipes on the dock structure prior to the use of the major structure over water. The provision of these improvements shall be done in coordination with the City's Fire Department.
30. No expansion of the major structure over water shall be permitted by the City of Venice.
31. Sewage pump out facilities shall be permitted and inspected by applicable state and city agencies and the sewage pump out facilities shall be fully operational prior to the use of the major structure over water.
32. The permittee shall be responsible for obtaining FDEP and Army Corp of Engineers (ACOE) permits for the proposed major structure over water.
33. The permittee shall obtain a City of Venice building permit for the proposed dock facility and the permittee shall obtain approval of all final inspections prior to the use of the major structure over water.
34. The permittee shall obtain all required state and local permits and all final inspections shall be approved prior to the use of any fueling facility on the property.

35. Mooring shall only occur in the designated mooring areas as shown on the approved plans.
36. No mooring shall occur within the 100-foot Intracoastal Waterway setback as shown on the approved plans.
37. No moored vessels shall exceed the maximum length for individual mooring slips as shown on the approved plans.
38. Overboard discharges of trash, human or animal waste, or fuel shall not occur at any dock associated with the subject property.
39. Any fish cleaning stations and boat repair facilities shall be located on the adjacent uplands.
40. The painting, repair or maintenance of any vessel hull within a mooring area shall be prohibited. Upland maintenance shall be conducted in a manner to prevent contamination of surface water. The cleaning of hulls is permitted in mooring areas provided that no chemicals of any kind are used to clean hulls.
41. Boat maintenance or repair activities requiring the removal of a vessel from the water, or removal of major portions of the vessel, including the engine, for purposes of routine repair and maintenance on site, shall be prohibited for the life of the dock facility, except where removal or maintenance is necessitated by emergency conditions which have resulted in or can result in the sinking of a vessel. Specifically prohibited shall be hull cleaning, hull painting, and discharges or release of oils or grease associated with engine and hydraulic repairs, and related metal based bottom paints associated with hull scraping, cleaning and painting. Minor repairs and boat maintenance that will not cause or contribute to the release of water pollutants, and which are performed by owners or qualified marine mechanics shall be allowed.
42. In order to minimize any navigation impacts associated with the dock facility and to aid navigation, a minimum of 36 square inches of highly reflective orange tape, aluminum signage, or reflectors shall be permanently installed on all waterward mooring pilings. To further minimize any navigation impacts associated with the dock facility, adequate safety lighting shall be installed at the western end of the dock facility. It shall be the responsibility of the property owner to maintain safety lighting on the dock facility. The lighting shall be operated from dusk to dawn, 365 days of the year.
43. All permit stipulations and conditions herein shall remain in effect throughout the life of the subject major structure over water.

E. Planning Commission Action:

Upon review of the criteria contained in Section 86-540, staff analysis and public comment, the following alternative recommendations are available for the Planning Commission to consider:

1. Major permit approval.
2. Major permit approval with stipulations, conditions and safeguards.
3. Major permit denial.

V. LAND DEVELOPMENT REGULATIONS

A. Zoning District Standards:

Sec. 86-71. MP marine park district.

(a) Generally; intent. Water orientation is of major importance to the city and its citizens. The economy of the city depends in considerable measure upon the water, and it is intended that the MP district be used for the purpose of protecting and preserving water areas within the jurisdiction of the city. All designated waters, including but not limited to all boat basins, bays, bayous, canals, lakes, rivers, streams, waterways and waters of the Gulf of Mexico and all publicly and privately owned submerged lands thereunder extending from the mean high-water line or bulkhead line are included in this district.

(b) Permitted principal uses and structures. Structures are not permitted uses in the MP district except as specified in this subsection. Permitted uses shall include water-oriented recreational uses, such as boating, swimming, fishing, diving, water skiing, surfboarding, wading and similar uses. Permitted structures are as follows:

(1) Piers and docks, accessory to residential uses.

(2) Piers and docks accessory to marinas, boatyards or boat liveryes where such activities are permitted uses on upland properties abutting an MP district, and subject to the regulations of this chapter relating to extensions of such structures below the mean high-water line.

(c) Permitted accessory uses and structures. Permitted accessory uses and structures in the MP district are: Uses (no structures) which are customarily incidental and subordinate to permitted uses.

(d) Prohibited uses and structures. Prohibited uses and structures in the MP district are as follows:

(1) Pain management clinic.

(e) Special exceptions. The following special exceptions are permissible in the MP district after public notice and hearing by the planning commission:

(1) Structures and uses which relate directly and immediately to permitted uses in upland zoning classifications abutting an MP district.

(2) Covered boat slips and wet storage of boats.

(3) Marinas, boat liveries and boatyards where boats or other floating structures are used as dwelling units. Such marinas, boat liveries and boatyards shall provide minimum sanitary facilities on-shore to ensure compliance with all city, county and state requirements.

The uses permissible by special exception are subject to all regulations and permit procedures of all agencies having jurisdiction over city waters.

(f) Maximum residential density. Maximum number of dwelling units per acre in the MP district is: None.

(g) Minimum lot requirements (area and width). Minimum lot requirements in the MP district are: None.

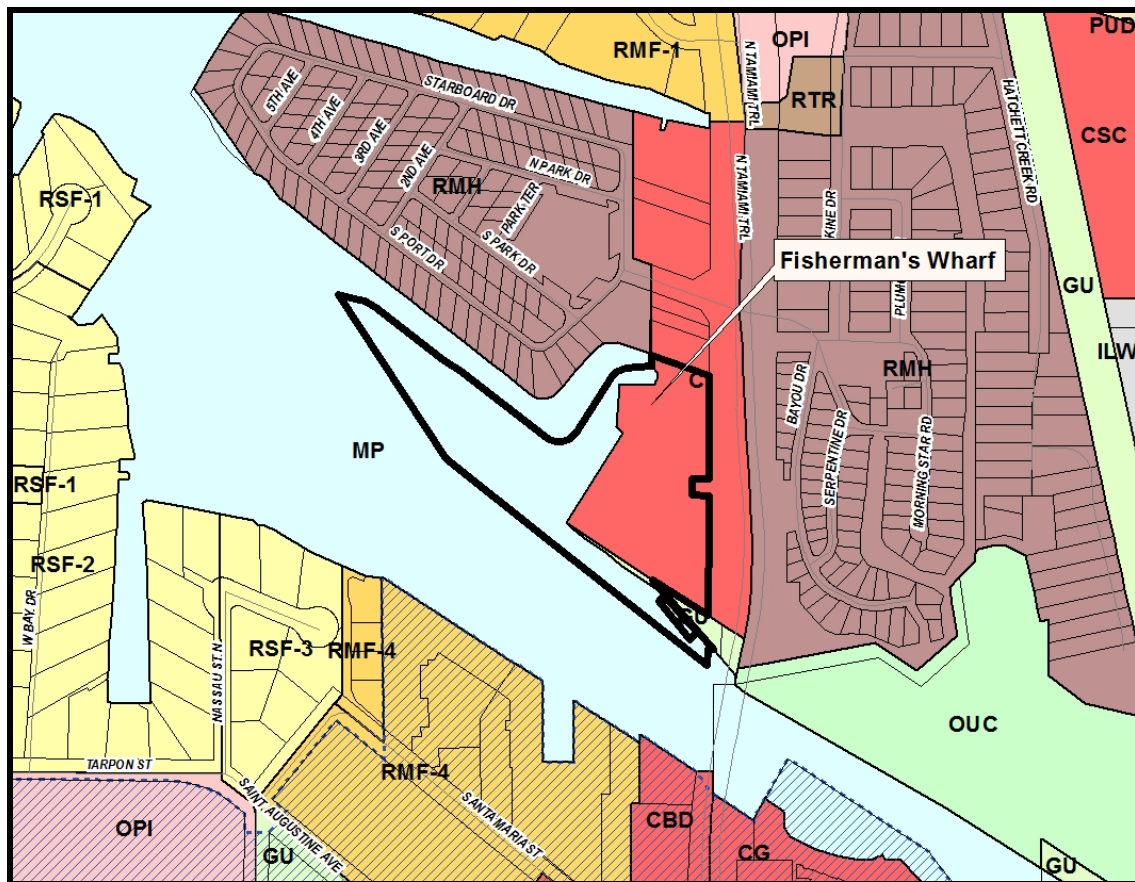
(h) Maximum lot coverage by all buildings. Maximum lot coverage in the MP district is: None.

(i) Minimum yard requirements. Minimum yard requirements in the MP district are: None.

(j) Maximum height of structures. Maximum height of structures in the MP district is: 35 feet.

(k) Limitations on signs. All signs are prohibited in the MP district except signs for navigation, warning, trespassing or caution and no single sign shall exceed eight square feet in area.

VII. ZONING MAP



Legend

OUC - Open Use, Conservation	PCD - Planned Commercial Development
MP - Marine Park	PID - Planned Industrial Development
GU - Government Use	ILW - Industrial, Light & Warehousing
PUD - Planned Unit Development	CN - Commercial, Neighborhood
RE - Residential, Estate	CG - Commercial, General
RSF - Residential, Single Family	CI - Commercial, Intensive
RMF - Residential, Multi-Family	CBD - Commercial, Business District
RMH - Residential, Manufactured Home	CSC - Commercial, Shopping Center
RTR - Residential, Tourist Resort	CHI - Commercial, Highway Interchange
OPI - Office, Professional & Institutional	Venetian Gateway Overlay District
OMI - Office, Medical & Institutional	Neighborhood Height Overlay
Venice City Boundary	Venetian Urban Design Overlay

VIII. CONSISTENCY WITH COMPREHENSIVE PLAN

A. Future Land Use Map:

The property is designated both “Waterways” and “Seaboard Planning Area” on the Future Land Use Map. The intent statement and development standards for these designations are found below.

Policy 13.5 Public Space and Environmental Land Uses – Waterway Designation

Submerged lands comprising the City's marine waterways including the Intracoastal Waterway, Roberts Bay, and Dona Bay. Passive or active uses in such areas are discouraged and may only proceed after the environmental impacts are carefully evaluated. Any use that would negatively impact the area's natural ecosystems shall be prohibited.

Policy 16.11 Northern Gateway Corridor.

Planning Intent: Redevelop the corridor into an integrated neo-traditional mixed use corridor. The concept is to integrate single and multi-family residential dwelling units with restaurants, shops, professional offices, schools, parks, and civic spaces. This mixed use planning strategy supports the City's efforts to redevelop areas located along the Intracoastal Waterway and provide a better linkage to the residential uses surrounding the area. For the detailed map sheet that depicts this planning area, see Map FLUM-7.

Policy 16.12 Northern Gateway Corridor Standards. Development in the Northern Gateway Corridor shall be built according to the following development scenario:

- A. The density range for the corridor shall be up to 18 dwelling units per acre.*
- B. The maximum residential density average in this corridor will not exceed 18 units per acre, calculated on a gross acreage basis.*
 - 1. Public lands in the Northern Gateway Corridor shall not be converted to private residential, commercial, office, or industrial uses.*
- C. Up to 80% of the acreage in this corridor will be allowable for commercial (retail and office space) uses. The total square footage of commercial uses allowed in this corridor shall not exceed a floor area ratio (FAR) of 2.0.*
 - 1. The residential, office, and commercial uses are intended to provide convenient access and bike/walkability for the area.*
 - 2. Residential, office, and retail use may be adjusted according to the needs of the community and demands of the development.*

3. *Conversion between residential and commercial land uses may be made on an equivalent dwelling unit basis of 1 dwelling unit per 4,000 square feet commercial space, gross acreage.*

D. Integrated transportation network:

1. *Provide transportation alternatives including transit, pedestrian access, and bikeways.*
2. *Expand established pedestrian linkages between the surrounding neighborhoods—both on and off the Island.*
3. *Connect the area to the Venetian Waterway Trail.*

E. Building envelope:

1. *Maximum height shall be limited to 4 stories, up to 45' including parking.*
2. *Mitigating techniques as described in Objective 8, Policy 8.2 of this Element shall be required to ensure compatibility with adjacent uses.*

F. Parking standards:

1. *Permitted as part of a mixed use building either above active first level uses or on the first floor.*
2. *Rear parking lots permitted in mixed use, multi-family, and commercial areas.*
3. *On-street parking allowed on all roads except for U.S. 41 Bypass and Tamiami Trail.*
4. *Front driveways and garage areas allowed in single-family areas.*
5. *Alternative parking standards that allow for reduced parking lot size and shared parking spaces shall be allowed throughout.*
6. *Parking areas adjacent to the Legacy Trail should complement the Trail through visual open space and provide pedestrian and bicycle linkages for the area's residents.*

G. Parks and public space shall address the following considerations:

- 1. Include a variety of community places and public spaces including but not limited to pocket parks, courtyards, plazas, open air sitting areas, urban trails, and playgrounds.*
- 2. Urban trails and sidewalks shall be utilized as connectors between commercial and residential areas.*

H. Architectural design style:

- 1. Northern Italian Renaissance architectural design standards are to be applied to new and redevelopment projects.*

IX. FUTURE LAND USE MAP

