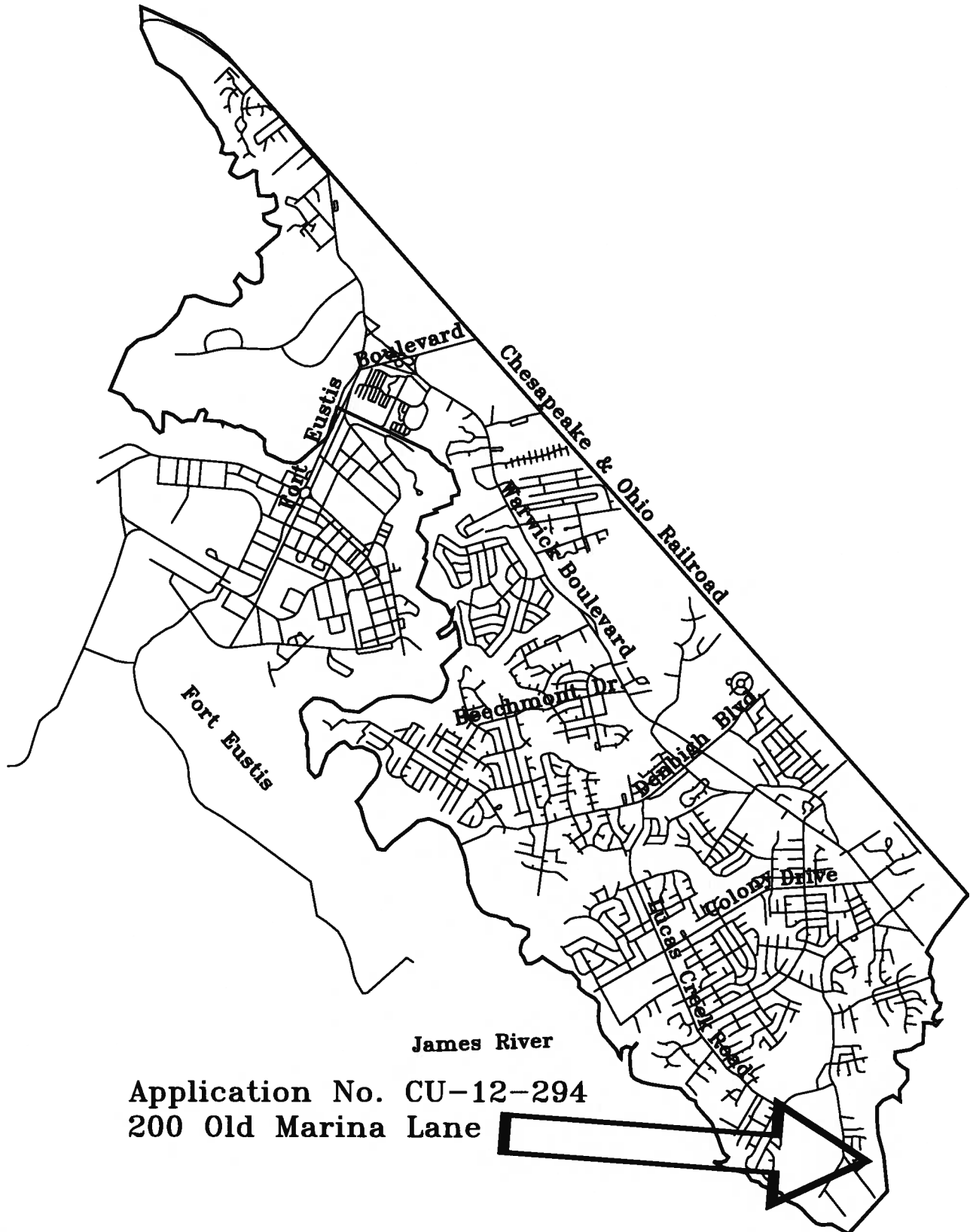


CITY OF NEWPORT NEWS  
PLANNING COMMISSION  
MARCH 7, 2012

CONDITIONAL USE PERMIT  
APPLICATION NO. CU-12-294  
HARBORVIEW ASSOCIATES LLP



Application No. CU-12-294  
200 Old Marina Lane

PLANNING DISTRICT III  
NEWPORT NEWS CITY PLANNING COMMISSION



**CONDITIONAL USE PERMIT NO. CU-12-294, HARBORVIEW ASSOCIATES LLP.**

**BACKGROUND**

On February 1, 2012, the City Planning Commission deferred action on this request to give the applicant and the abutting residents an opportunity to resolve some of the issues that had been raised. Residents of the abutting Marina Bluff condominiums expressed their dissatisfaction with noises associated with events at the facility, particularly those noises related to guests leaving and clean up beyond the proposed curfew as stated in the original rental agreement "House Rules." The abutting residents were seeking some assurances that no one would remain on the premises including the parking lot after 10:00 PM., which required amendments to the "House Rules" that are part of the rental agreement. (See Appendix A-6.)

Since the Planning Commission meeting, the applicant has had the opportunity to meet with the neighbors and has revised the rental agreement's "House Rules" in a manner that is acceptable to both parties. (See Appendix A-5.) Staff has subsequently revised the conditions and recommends approval of conditional use permit CU-12-294 to allow for the operation of a banquet/function hall with the conditions as stipulated under the Staff Recommendation.

**APPLICANT/OWNER**

Harborview Associates LLP. is the applicant and owner.

**SITE DESCRIPTION**

**Location**

200 Old Marina Lane

**Acreage**

The property contains 1.84 acres.

**Existing Zoning**

The existing zoning is M1 Light Industrial. (See Appendix A-1.)

***Framework for the Future 2030***

Community Commercial (See Appendix A-4.)

**Present Use**

Marina with an accessory structure

**Request**

The applicant is requesting a conditional use permit to allow for the operation of a banquet/function hall.



## **ANALYSIS**

### **Vicinity**

West, abutting the property, are the Marina Bluff condominiums zoned R8 High Density Multiple-Family Dwelling.

North, abutting the property, is a single family home zoned R4 Single-Family Dwelling.

South and east, abutting the property is Deep Creek. (See Appendix A-1.)

### **Zoning History**

The property has been zoned M1 Light Industrial since 1969. It remained M1 Light Industrial during the 1997 citywide comprehensive rezoning.

On June 28, 1988, City Council approved a request to conditionally rezone 8.08 acres of property abutting the marina property to the west from M1 Light Industrial to R2-C Multiple-Family Residential. As a condition of approval the overall development was required to get design approval of a PRD from City Council. The zoning of the property was subsequently changed to R8 High Density Multiple-Family Dwelling during the 1997 citywide comprehensive rezoning.

On August 11, 1998, City Council approved a Planned Residential Development (PRD) on the adjacent 8.08 acres zoned R-8 High Density Multiple-Family Dwelling. The PRD, known today as Marina Bluff, contains 55 dwelling units, 52 attached single family dwelling condominium units and three single family detached units. The PRD's conceptual plan shows the adjoining marina including the building used for Keffer Hall.

### **Regulatory Review**

On June 28, 2011, City Council amended the Zoning Ordinance to add a definition for *banquet/function hall*, to include the use in the "matrix" of listed permitted uses and

establish parking requirements for the use. Banquet/function halls are permitted in the M1 Light Industrial district with the approval of a conditional use permit.

The Zoning Ordinance requires one parking space per 100 square feet of total floor area for the banquet/function hall and not less than one parking space for every two boat slips for a marina. The facility will share a parking lot with the existing marina. The marina has 70 boat slips requiring 35 parking spaces. The banquet/function hall contains 930 square feet requiring 10 parking spaces. The conceptual site plan shows a total of 48 parking spaces, which exceeds the parking requirements by three spaces. (See Appendix A-2.)

The departments of Codes Compliance, Engineering, Public Works, Public Utilities, Fire, Police, Parks, Recreation and Tourism and Development have no objection to the request.

## **Comprehensive Plan Review**

### **Land Use**

The *Framework for the Future 2030* comprehensive plan land use map designates community commercial uses for the property. The request and marina are consistent with that designation. (See Appendix A-4.)

### **Compatibility**

A working marina and boat repair operation at this location predates the abutting condominiums. In the late 1990's the marina uses were scaled down providing only limited services for the private boats housed at the marina. The change from an active marina with boat repair facilities to a more exclusive limited operation brought the construction of an office building, as well as Keffer Hall that besides providing space for meetings and events, also houses restrooms that are accessible for the marina's patrons.

Keffer Hall, as the facility is known, was built in 2000 as an accessory building to the marina. Given its fantastic views, the facility grew in popularity among the marina's patrons and guests. In order to expand its use to the general public the use had to be defined in the Zoning Ordinance. The banquet/function hall has since been defined and the request for the conditional use permit will allow the facility to be leased to the general public.

As Keffer Hall became a more popular venue, issues with noise and parking surfaced. In anticipation of the application for the conditional use permit and in order to address the parking and noise concerns, changes were made limiting some aspects of the use of the hall. The "House Rules" that are part of the rental agreement specify that no outdoor music is permitted as well as limiting the music or loud noise within the building to no later than 10 PM. (See Appendix A-5.)

### **Residential Compatibility**

The Marina Bluff condominiums abut the property. The condominium units were built in the early 2000's and co-existed with Keffer Hall from the beginning. Keffer Hall is used as a meeting space by the Marina Bluff homeowners association; in fact many consider the Hall to be the condominiums' clubhouse. The relationship between the condominiums and the marina was the main contributor to the change of character from the working marina. There are no changes proposed to the property and the rental agreement sets the rules for a continuation of the relationship that has existed.

### **CONCLUSION**

The conditions of the conditional use permit will ensure that the hall continues to be used in an appropriate way limiting any potential negative impacts on surrounding properties. The proposed banquet/function hall is consistent with the *Framework for the Future 2030* comprehensive plan and is compatible to the surrounding uses within the immediate vicinity.

### **STAFF RECOMMENDATION**

It is recommended that the City Planning Commission recommend to City Council approval of conditional use permit CU-12-294 to allow the operation of a banquet/function hall for a 1.84 acre property located at 200 Old Marina Lane with the following conditions:

1. All events shall be governed by the "House Rules" which are a part of the applicant's rental agreement for the Property, and are attached hereto and made a part hereof. (Appendix A-5.)
2. Outside speakers or other outside sound amplification devices are prohibited on the Property.
3. Music or loud noise emanating from the Property is prohibited after 9:45 PM.
4. Outside events other than ceremonies performed in and around the gazebo shall be prohibited on the Property.
5. No food or drink, including alcoholic beverages, shall be served outside of Keffer Hall.
6. Banquets and functions shall be prohibited on the Property after 10:00 PM. and all guests shall vacate the Property and parking areas no later than 10:30 PM.
7. Security shall be provided for events on the Property.
8. Parking shall be limited to the parking lot and public streets. The administrator for the Property shall ensure that no parking occurs on private streets.

9. The applicant shall cause a plan (“the Plan”) to be prepared for the installation and operation of video equipment (the “Equipment”) with recording devices and capability sufficient to include date and time that recording is made. The Equipment shall provide surveillance coverage encompassing both the front, side and rear exteriors of the business. The Plan shall be submitted for review and approval by the Police Department. The Plan shall include an operational period for the Equipment, which shall include all operating hours of the business and one hour or more after the close of business. Once the Plan is approved, the applicant shall install the Equipment in accord with the provisions of the Plan; and operate, record, and maintain the Equipment to provide for the required surveillance coverage. The Equipment and recordings made thereby shall be subject to periodic inspection by the Police Department at reasonable times. Commencement of the use authorized by this conditional use permit shall constitute acceptance of the conditions of this permit, including consent for such inspections. Surveillance tapes or recorded data must be maintained in a condition permitting review of the information recorded or stored therein or thereon for a period of time no less than thirty days.
10. Violation of any of the above conditions and safeguards attached thereto shall be deemed a violation of the Zoning Ordinance, and, in addition, shall serve as grounds for revocation of the conditional use permit by the City Council.
11. A Certificate of Use and Occupancy shall be obtained prior to the operation of any business use on the property. If applicable, the use approved by this conditional use permit shall not begin until a site plan is approved and fully implemented. If applicable, any landscaping component of the site plan shall be maintained in a healthy condition for the duration of the use authorized by this permit.
12. The applicant, as well as successors, assigns, and agents, shall comply with all codes, ordinances and regulations of federal, state and local government.
13. The applicant, as well as his successors, assigns, and agents, shall obtain all necessary licenses, approvals, or conditional approvals, and permits prior to commencing any use, which is authorized by this conditional use permit or law. The applicant, as well as successors, assigns, and agents shall maintain all necessary licenses, approvals, and permits for the entire period of time during which the real property, whether improved or otherwise is put to a use which is authorized by this conditional use permit.
14. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; therefore, the conditions contained in this conditional use permit are not severable; in the event that any condition contained herein, of part thereof, is found by a court of competent jurisdiction to be invalid,

unconstitutional or otherwise unenforceable, then the use permitted by this conditional use permit shall be void and the use permitted by this conditional use permit shall be invalid. If this conditional use permit becomes void as a result of a condition or a part thereof, or conditions there in, being ruled invalid, unconstitutional or otherwise unenforceable, the property owner shall be afforded the right to reapply for a conditional use permit.

15. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition contained herein; as such, in the event of an amendment to the zoning of the property is produced by a comprehensive implementation of a new or substantially revised Zoning Ordinance, the conditions imposed by the conditional use permit shall continue in effect.

## **APPENDIX**

**A-1 VICINITY/ZONING MAP**

**A-2 SITE PLAN**

**A-3 AERIAL MAP**

**A-4 *FRAMEWORK FOR THE FUTURE 2030* LAND USE MAP**

**A-5 KEFFER HALL RENTAL AGREEMENT**

**A-6 EXCERPTS FROM THE CITY PLANNING COMMISSION MINUTES OF  
FEBRUARY 1, 2012**



**C1**

**M1**

SINGLE FAMILY

BLUFF TER

MARINA BLUFF CONDOMINIUMS

OLD MARINA LA

MARINA BLUFF CONDOMINIUMS

HILLSIDE TER

**R3**

SINGLE FAMILY

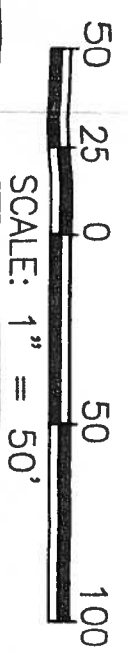
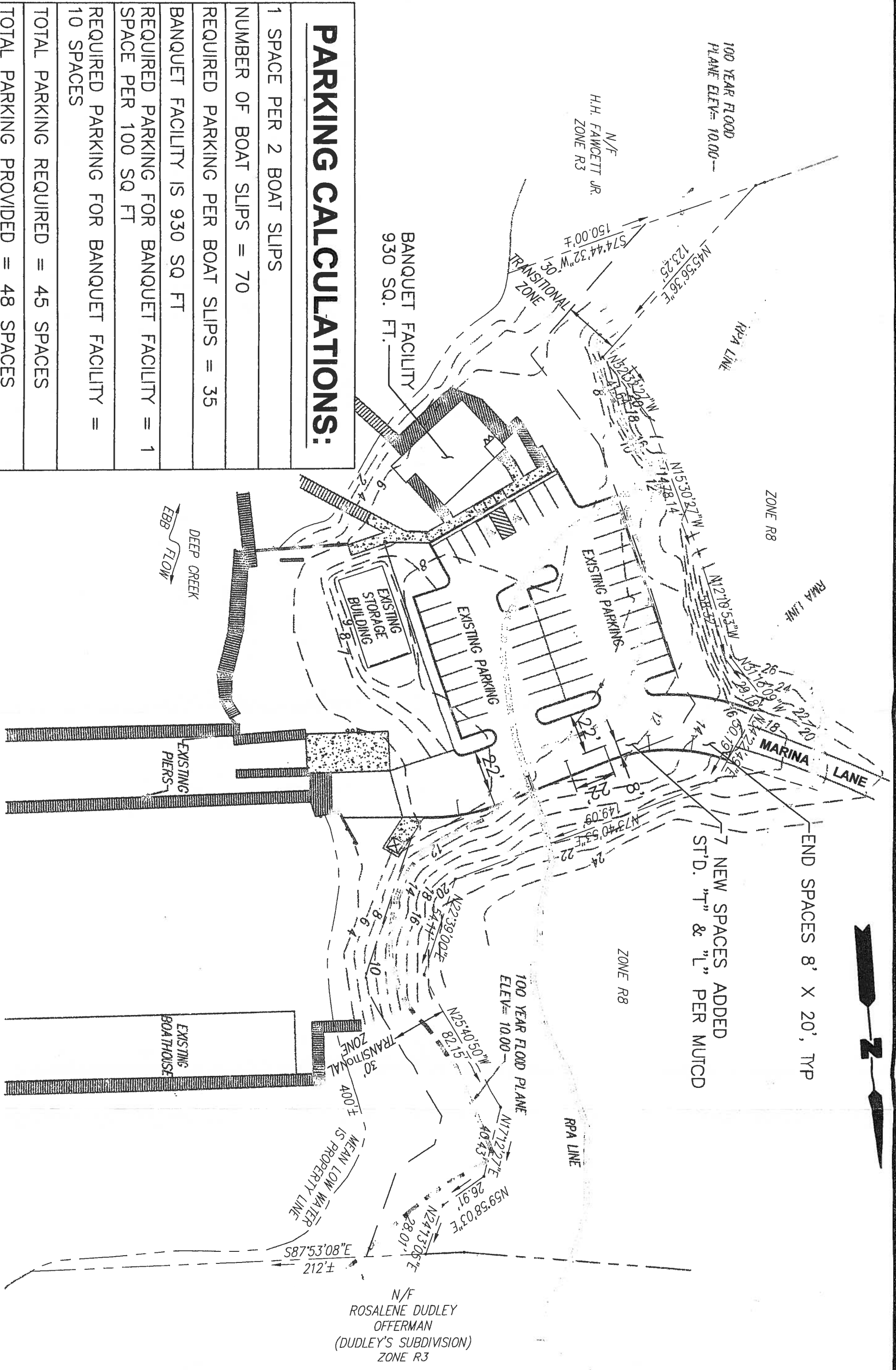
**R8**

**R3**

**R3**

**HARBORVIEW ASSOCIATES LLP**  
**CU-12-294**

<b>PARKING CALCULATIONS:</b>
1 SPACE PER 2 BOAT SLIPS
NUMBER OF BOAT SLIPS = 70
REQUIRED PARKING PER BOAT SLIPS = 35
BANQUET FACILITY IS 930 SQ FT
REQUIRED PARKING FOR BANQUET FACILITY = 1 SPACE PER 100 SQ FT
REQUIRED PARKING FOR BANQUET FACILITY = 10 SPACES
TOTAL PARKING REQUIRED = 45 SPACES
TOTAL PARKING PROVIDED = 48 SPACES
HANDICAPPED SPACES REQUIRED = 2 SPACES
HANDICAPPED SPACES PROVIDED = 2 SPACES



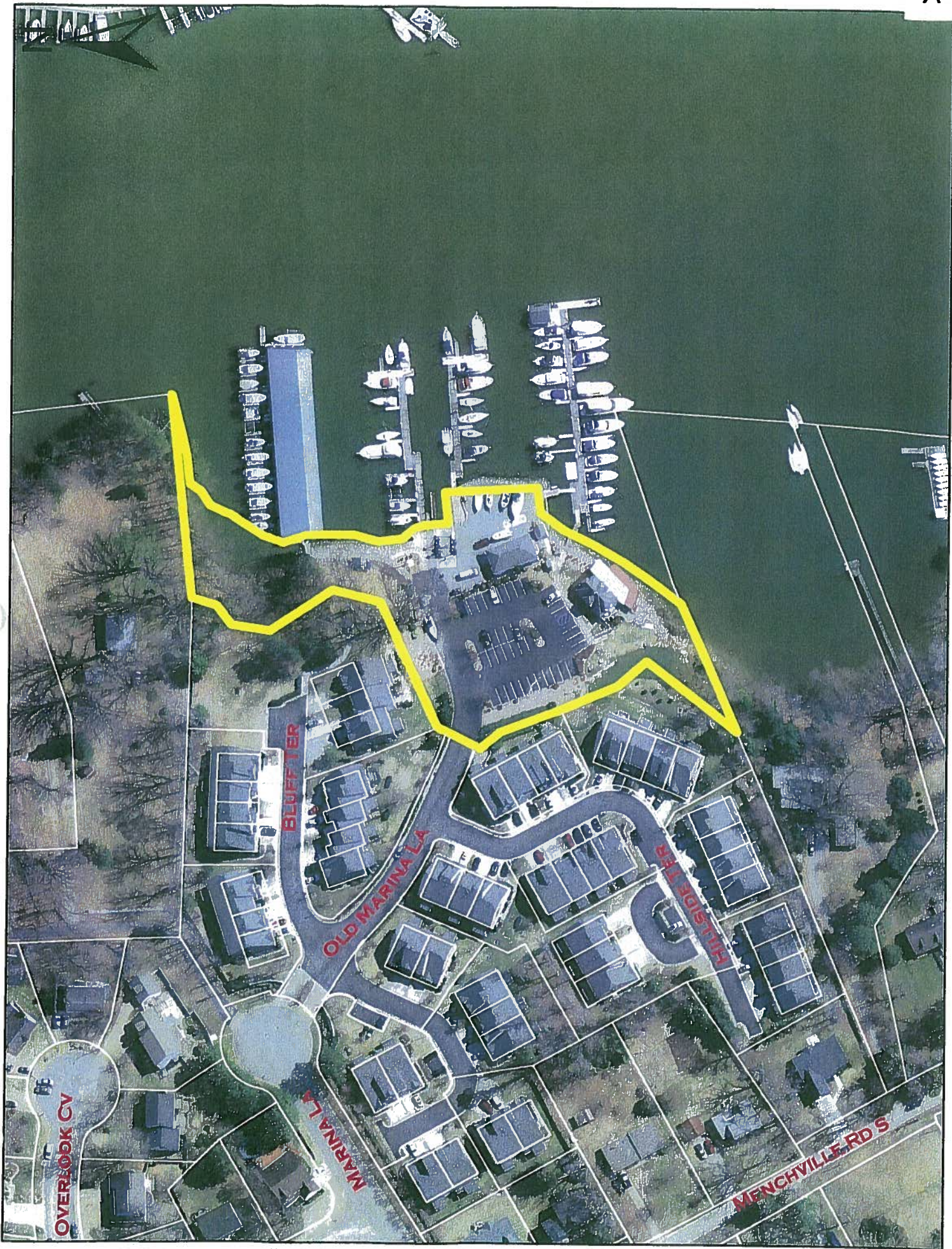
**HARBOR VIEW MARINA**  
CONCEPTUAL SITE PLAN

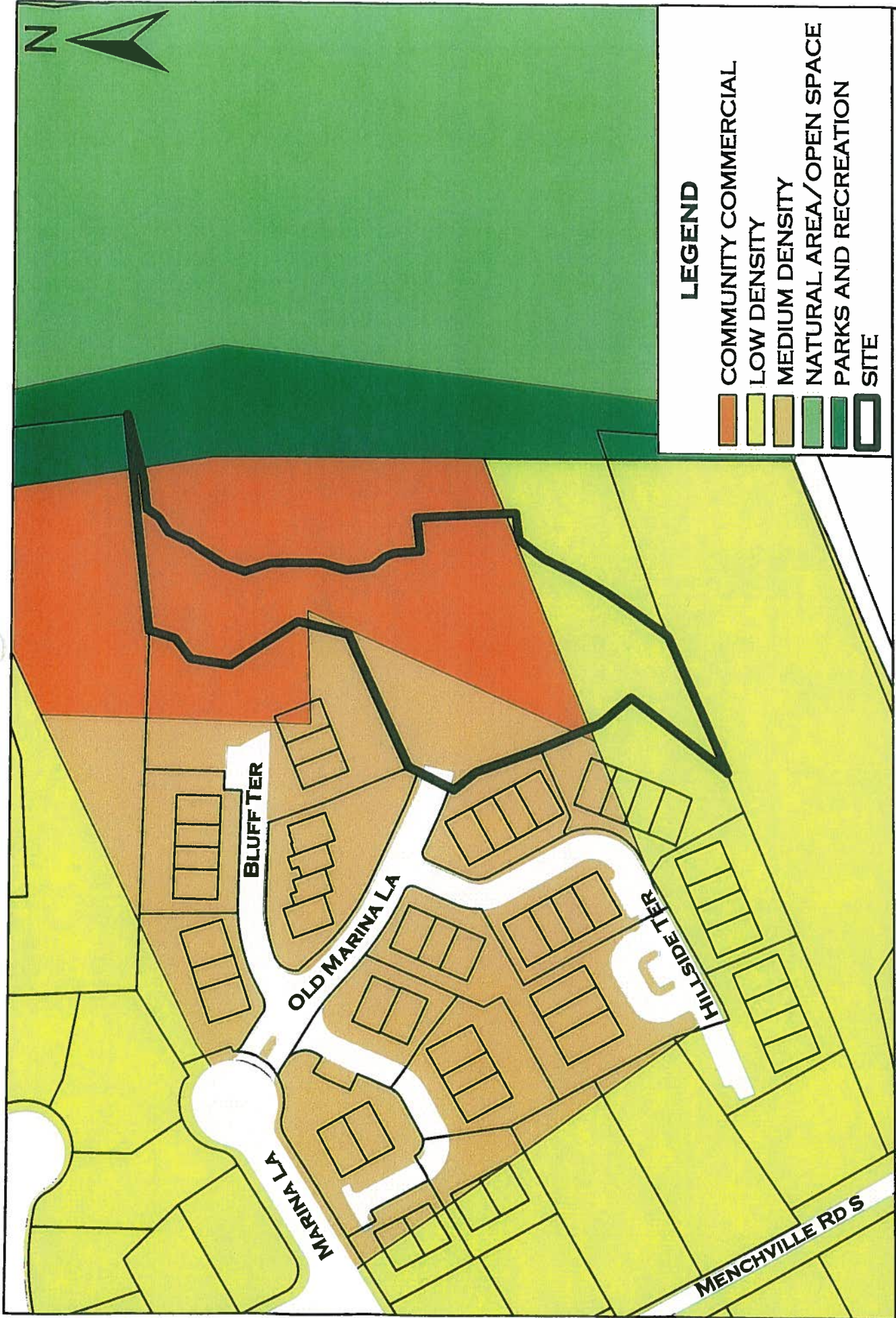
FILE NO. 100025458  
DATE: 12/09/11  
SCALE: 1" = 50'

**ATKINS**

11818 ROCK LANDING DR., SUITE 100  
NEWPORT NEWS, VIRGINIA 23606  
TELEPHONE: (757) 596-8287  
FAX: (757) 596-8680

NO.	REVISIONS:	ORIGINAL	DATE	BY





**HARBORVIEW  
ASSOCIATES LLP**

**FRAMEWORK FOR  
THE FUTURE 2030**



**Keffer Hall  
Rental Agreement**

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Harborview Associates LLP/trading as Deep Creek Landing, herein after referred to as the Lessor, and \_\_\_\_\_, herein after referred to as the Lessee.

**SECTION I: LESSEE INFORMATION**

NAME: \_\_\_\_\_ SSN/DL # \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

HOME #: \_\_\_\_\_ WORK#: \_\_\_\_\_ OTHER#: \_\_\_\_\_

**SECTION II: RENTAL OF FACILITY:**

Lessor hereby rents to the Lessee the use of the Banquet Facility, located in Newport News, VA, for use by the Lessee for a \_\_\_\_\_ (Function) on \_\_\_\_\_, 20\_\_\_\_, commencing at \_\_\_\_\_ and ending at \_\_\_\_\_. This function is for \_\_\_\_\_ people. Facility described includes the banquet room, kitchen, restrooms, deck area, and adjoining yard.

**SECTION III: RENTAL AND SECURITY DEPOSIT:**

Lessee shall pay Lessor \_\_\_\_\_ dollars (\$\_\_\_\_\_) for rent of the facility described in Section II. Rental fee shall be payable in two installments: fifty percent (50%) payable at the signing of this agreement, and the balance payable on or before \_\_\_\_\_, 20\_\_\_\_. The initial fifty percent (50%) payment is nonrefundable unless Lessor, in its sole discretion, re-lets the facility for the function date.

A security deposit of \$200.00 in addition to the rental fee will be held by Lessor to cover clean up and any damages, which may occur. Lessor upon satisfactory inspection of the facility after the event, will refund the security deposit within two weeks of the Function Date.

Clean up of the facility must be completed by 8:00 AM the day following the Function. Excess expenses for damages to the facility above the amount paid for the security deposit will be billed to the lessee.

**SECTION IV: MAINTENANCE**

Lessee shall keep and return the premises in a clean and sanitary condition and in good repair. If Lessee fails to return the premises in a clean and sanitary condition and in good repair, Lessor shall have the premises cleaned or repaired, as the case may be, and the cost of such cleaning or repairs, or both, shall be deducted from the security deposit provided for in Section II. Excess expenses for cleaning or repairs shall be billed to the Lessee.

**SECTION V: COMPLIANCE**

By executing this agreement, Lessee hereby confirms that he/she has read, fully understands, and will comply with all rules and restrictions set forth in Exhibit A (House Rules) here attached. In WITNESS WHEREOF, this contract will be considered executed only when signed by both the Lessor and Lessee and only when Lessor has received the first rental installment.

**LESSEE:**  
\_\_\_\_\_

**LESSOR: Harborview Associates LLP/  
trading as Deep Creek Landing**  
By: \_\_\_\_\_

Fuel Dock/Gas

Ship Store/  
ABC OFF/Bait/Ice

Banquet Facility

Complete Marine Maintenance/  
Certified Mechanics

Hauling & Painting

Wet and Dry Slips/  
Covered & Open

Showers/  
Clean Restrooms

Washers & Dryers

## House Rules

- 1) All uses of the facility require prior approval of Harborview Associates LLP.
- 2) Alcoholic Beverage Permit is required, if applicable. The Lessee must obtain this permit for the date of the function. Alcohol consumption is limited to the facility area only, as described in the Rental Agreement, Section II.
- 3) Delivery of caterer's equipment and rentals may be made the day of the function, and must be arranged and scheduled with the Lessor. Pick up of these items must be cleared out after the function. Rental items thru Keffer Hall will be handled by rental staff.
- 4) Rental equipment and additional items (such as alcoholic beverages, food/beverage wares, and personal articles) handled directly by the client may be delivered the day of the function, and must be arranged and scheduled with the Lessor.
- 5) Use of the kitchen area of the facility is permitted.
- 6) NO SMOKING is allowed inside the facility or on the enclosed area of the deck.
- 7) No function shall be allowed to continue later than 10:00 PM and all guests shall vacate the property and parking areas by 10:30 PM.
- 8) In consideration of nearby residents any deejay equipment must be set up inside the facility and no speakers are allowed to be set up on the outside of the facility. Music or loud noise emanating from the Property is prohibited after 9:45 PM. Deep Creek Landing staff will assist in determining acceptable noise levels for any function that includes amplified music.
- 9) No water related activities of any kind are permitted.
- 10) Use of tents, chairs, tables, or any related items are permitted in designated areas only. Designated areas for items are to be determined by Deep Creek Landing staff.
- 11) No food or drink will be allowed to be served outside the banquet facility.
- 12) Outside events other than ceremonies performed in and around the gazebo shall be prohibited on the Property.
- 13) Parking shall be limited to the parking lot and public streets. The administrator for the Property shall ensure that no parking occurs on private streets.

**EXCERPTS FROM PLANNING COMMISSION MINUTES**

**February 1, 2012**

**CU-12-294, Harborview Associates L L P.** Requests a conditional use permit to allow for the operation of a banquet/function hall located at 200 Old Marina Lane and zoned M1 Light Industrial. The Parcel No. is 190.00-02-78.

Saul Gleiser, Senior Planner, presented the staff report (copy attached to record minutes).

Mr. Long asked what the relationship is between the Marina Bluff's homeowner's association and Harborview Associates. Mr. Gleiser stated there is no relationship other than they coexist next to each other. Mr. Long clarified that the homeowner's association has no control over the banquet facility.

Ms. Austin asked for clarification regarding which streets were public and which streets were private. Mr. Gleiser stated that the only public street on the map is Marina Lane, and all others are private streets.

Ms. Austin stated she had driven by the marina and noticed there were a number of boats on trailers parked in the parking lot and each boat with its trailer took up two parking spaces. She asked if boats were regularly stored in the parking lot. Mr. Gleiser stated that in the last month, on the two occasions he visited the property to take photographs, he did not see boats on trailers parked in the parking lot. Ms. Fox stated she was out there Friday and there were at least eight boats parked in those parking spaces and she was concerned about the overflow parking.

Ms. Fox asked, in regard to Condition No. 4, which prohibits outside events, how would they have a wedding in the gazebo on the property if you prohibit an outside event.

Mr. Gleiser stated that when that condition was recommended, they were trying to be consistent with the other conditions that would not allow any amplification speakers or noise outside. Ms. Fox stated those were prohibited as well. Mr. Gleiser stated that the applicants thought you could have a ceremony outside where you would not have any speakers. He stated the applicants would be agreeable to a condition that was more lenient for ceremonies to be limited to the gazebo and surrounding area.

Ms. Austin stated that the banquet facility has a wrap around deck. She asked if, by Condition No. 4, that people who are attending an event inside the banquet hall would not be able to use the deck. Mr. Gleiser stated that the deck is considered an interior space as an extension of the banquet facility building, which also was considered in the calculations for the parking requirements.

Ms. Austin asked if the banquet facility could have speakers outside on the deck. She stated the windows on the facility did not appear to be windows that open. Mr. Gleiser

stated no, to prevent amplification speakers need to be contained within the building. Ms. Fox stated that Condition No. 2 prohibits any outside amplification. Ms. Austin stated that a participant in an event on the deck is not considered to be outside. Mr. Gleiser stated that is correct, because the participant would need to go through the building to get to the deck. Ms. Fox asked where sound amplification devices could be located. Mr. Gleiser stated inside the building.

Ms. Smith asked about "outside activities" under House Rule No. 10 and the use of tents. If they were not going to be outside, should they be allowing the use of tents, because it conflicts with Condition No. 4. Mr. Gleiser stated they were trying to avoid that because once you have the tents out there and you are serving food, you have people sitting out there and you are moving the banquet function outside. Mr. Albea asked if there is a conflict between Condition No. 1 and Condition No. 4 based on House Rule No. 10. Ms. McAllister stated that it depends on what is done with Condition No. 4; there is no conflict because it is more restrictive than the House Rules. Mr. Albea clarified that Condition No. 4 would supersede any House Rules if accepted.

Mr. Albea opened the public hearing.

Mr. Raymond Suttle, Jr. with Jones, Blechman, Woltz, and Kelly, is the representative for the applicant. He stated that Harborview Associates initially owned all of the real estate and sold the property to the developer for the adjacent residential development. He stated the property coexists with the marina. Mr. Suttle stated the boat trailers parked in the parking lot is a temporary situation, but if there was a function that needed the parking, boat owners would be advised to move their boats so there would be no parking on the private streets. He stated they do not have a problem with any of the conditions except for Condition No. 4 because there is some limited activity that they would like to be able to have on the property. Mr. Suttle stated there are two gazebos, one on the condominium property and one by the water with a small grass area that fits approximately 50 people with chairs for a wedding ceremony. He stated there are limited outdoor events and activities because of space and confinement limitations, which is why the House Rules were developed to allow for a tent. He asked that Condition No. 4 be deleted in its entirety because the real issue they are trying to protect against is loud noise and he felt that the other conditions accomplish that. He stated they already have limitations on hours and functions and if Condition No. 4 cannot be deleted, he asked that it be revised to state outside events shall be prohibited on the property except outside ceremonies may be permitted in the gazebo and surrounding grass area. Mr. Suttle recognized that enforcement of the conditions would be an issue for the city.

Ms. Fox asked how often events are held at the facility. Mr. Suttle deferred to Mr. Abbitt.

Mr. Randy Abbitt, applicant, stated outdoor events average approximately 35 a year. Mr. Abbitt gave the Planning Commission some background on his marina, stating he owned the marina and the surrounding properties until he sold the properties adjacent

to the marina to a developer with the stipulation they would tear down and rebuild the marina in an effort to have the marina and the surrounding residential development look as if they were still one. He stated the banquet facility has been in operation since 1999 and he was not aware of a zoning issue until the last couple of years when complaints were made. Mr. Abbitt stated he started meeting with the President of the Homeowner's Association and attending the association's meetings, which have been held in his building. He stated the two big issues that were brought up were noise and security. He stated they removed the outside speakers to take care of the noise. Because after a function some people hang around the parking lot and talk and get loud, he hired a security company to come an hour before an event, and they do not leave until the function is over. Mr. Abbitt stated the marina is not part of the banquet facility. He stated the banquet facility hosts weddings, wedding receptions, retirement parties, award ceremonies, and school systems come in and use it as work station, and functions range from 15 to 90 people. Mr. Abbitt stated that during the winter time, the marina is dead, and they would have boats in the parking lot at that time. He stated there is also a large gravel area where people are allowed to park their boats and have them serviced, which is a whole separate business from the marina and the banquet facility.

Ms. Fox asked if people at the marina can take their boats out and play music during the day. Mr. Abbitt stated yes, and there are House Rules for the tenant boat owners, which were put together when they started working with the residential developer.

Mr. Abbitt stated that October through March his marina is dead, and there is only a four month window where the marina is active.

Mr. Long asked if the condominiums were built at the same time as the marina facility. Mr. Abbitt stated they have always been there. Ms. Fox asked if the Harborview neighborhood pre-dates the marina and the condominiums by at least 10 to 15 years. Mr. Abbitt stated yes.

Mr. Maxwell asked the number of boat slips. Mr. Abbitt stated they have 70 slips.

Mr. Phil Salasky, 312 Hillside Terrace, spoke in opposition of the application. He stated he has been a condominium owner since 2001, and his condominium is the closest one to the marina, 50 to 70 feet away. Mr. Salasky stated the marina was always there and when you bought a condominium you accepted the marina. He stated that for a few years it was fine, and then all of a sudden, there was a wedding every weekend and all kinds of parties going on all of the time when the weather is good, and they are all outdoors and it got to the point the noise became a problem. Mr. Salasky stated he contacted Mr. Abbitt and he was very nice about trying to cut down on the noise. He stated there have been times when he could not go to bed at 10:00 P.M. and the police have been called many times. Mr. Salasky stated that Mr. Abbitt hired a security company, but they are still having a problem with people congregating in the parking lot after hours, and it is hard to put up with that because what goes on down there affects his life. He stated the parking has been a problem as well, regardless of the fact that

Mr. Abbitt has really tried to fix the issues, noting that the parking issues is not just limited to participants, but catering trucks, etc. as well. Mr. Salasky stated people will not stay contained inside the banquet facility. He does not want to come off as a mean person, but he is elderly and entitled to peace and quiet. Mr. Salasky understands that it is only five to six months out the year that this is a problem, but that does not help him. He stated the biggest problem he has is the property values because there are a few vacant homes now and he feels it is hard to sell them with the problems with the marina.

Ms. Fox asked if he has seen any improvements since the House Rules have been in place. Mr. Salasky stated he has definitely seen improvements, but a couple of months ago people spilled out everywhere, and he had to speak to a security officer about the matter. He stated there continues to be a problem when it gets dark outside.

Ms. Austin asked Mr. Salasky if it would be helpful if the time noted for functions to cease in House Rule No. 7 from 10:00 to 11:00 P.M. was adjusted to 9:00 to 10:00 P.M. Mr. Salasky stated yes, because nobody knows what the time requirements are; however, the time is not enforced, and you cannot tell people to leave because they paid to rent the banquet facility. Mr. Albea stated that Mr. Abbitt indicated that his hired security would be enforcing the hours of operation.

Mr. Jones asked if parking was an issue for Mr. Salasky. Mr. Salasky stated the parking issues have been somewhat corrected.

Ms. Katie Weimer, 314 Hillside Terrace, spoke in opposition of the application. She stated she just moved in six months ago and has been living there full-time since October 2011. Ms. Weimer stated it feels like there is a wedding every weekend, up until Christmas this year. She stated she does not want to prohibit anyone's livelihood because it is not part of the condominium property. However, in balancing a business with a marina and neighborhood and the proximity, noise and traffic is a concern. Ms. Weimer stated limiting the sound to the inside of the banquet facility sounds good on paper, but in mentioning the outside area, it is open space and if it is part of the banquet facility, the noise will bounce off the water and carry back. She stated she can hear talking and laughing and everything people are saying in her house because it is that loud. Ms. Weimer stated there has to be strict rules about noise and enforcement of when parties have to end, noting that it takes an hour for things to wind down after a party.

Mr. Jones asked if a 10:00 P.M. curfew was acceptable. Ms. Weimer stated 10:00 P.M. is reasonable but she has doubts that it would be enforced because she does not feel that it has been enforced thus far. She stated that in the beginning of January there was a function where people were still hanging out after 11:00 P.M. She would prefer the functions to cease operation at 9:00 P.M. because, realistically, it would take an hour or two to get everyone to leave. Ms. Weimer stated that the boats are far enough away from the houses that the noise from the boats has not been an issue, but the back half of the banquet facility that faces the residences has been a problem.

Mr. Long asked if Ms. Weimer understood that the banquet facilities were used for outdoor events before she moved into her condominium. Ms. Weimer stated that the banquet facilities were not brought to her attention when she bought the condominium, however, she remembered seeing a wedding in progress when she visited the condominium.

Mr. Albea closed the public hearing.

Ms. Fox asked if the number of people allowed in the banquet facility is dictated by square footage in zoning. Mr. Gleiser stated no, it is imposed by the Fire Department.

Ms. Austin asked if the Planning Commission's options were to recommend the application "as is", recommend denial, or ask staff to re-work some of the issues discussed. Mr. Albea stated the Planning Commission could vote for deferral or amend the conditions. Ms. James-Webb stated you can amend and approve amended conditions at the public hearing, defer, or recommend that it be denied or approved "as is".

Ms. Austin made a motion to recommend deferring the request to the next Planning Commission meeting. The motion was seconded by Mr. Long.

Ms. Austin stated that with a deferral, she felt that the staff and applicant can continue to work on these conditions.

Mr. Long stated he would like to hear more representation from the Homeowner's Association. He stated that his main concern is that this facility has been there since the condominiums were being built so the homeowners had the opportunity to see it was there.

Mr. Jones stated he would like to see clarification of when parking lots will be cleared and a better definition of when the premises would be vacated.

Ms. Swanson stated that she would be prepared to move forward with a recommendation for City Council because she felt they had given the applicant enough input to make adjustments prior to City Council. She stated the issue had been discussed by the Regulations Committee when defining banquet halls and she was prepared to vote on the merits today.

Mr. Albea stated they have a motion and a second for deferral.

**Vote on Roll Call**

**For:** Long, Austin, Smith

**Against:** Swanson, Maxwell, Fox, Jones, Albea

**Abstention:** None

The Planning Commission voted 3:5 to recommend deferral of conditional use permit CU-12-294 to City Council. Motion failed.

Ms. Fox made a motion to recommend approval of the conditional use permit CU-12-294, as amended by the Planning Commission to include: Condition No. 4 revised to "Outside events shall be prohibited except for outside ceremonies, which will be permitted at the gazebo and outside grass areas"; and, Condition No. 5 revised to "Banquets and functions shall be prohibited after 10:00 P.M. The motion was seconded by Mr. Long.

Ms. McAllister suggested revising Condition No. 3 as well.

Ms. Fox then amended her motion to include revisions to Condition No. 3 to state "Music or loud noise emanating from the property is prohibited after 9:00 P.M." The motion was seconded by Ms. Austin.

Mr. Jones stated he had a problem with the amendment of Condition No. 5 because it does not address the concerns of the residents. He felt that after banquets end, the congregating in the parking lot would still be an issue.

Mr. Maxwell stated that it takes approximately an hour for the parking lot to clear out after a function so it would not be until 10:00 P.M. or 11:00 P.M. before they clear the area. Mr. Albea asked if his concern was that it would still take an hour for the property to be cleared. Ms. Swanson stated these are enforcement issues and the Commissioners needed to look at the definition of banquet hall and if it applied to this particular property. She stated that enforcement comes after the conditions have been approved and it goes to City Council. Ms. Swanson stated that she does not feel that they can micromanage enforcement at this stage. Mr. Albea stated that conditions were stated and they have those before them to vote upon.

Ms. James-Webb stated that Condition No. 1 says "All events shall be governed by the House Rules" that are attached, and those rules do not conform to the conditions with the changes in language that the Planning Commission wants to approve.

Ms. Fox amended her motion to also include revisions to Condition No. 1 to state "will be governed by the House Rules, which are a part of this rental agreement and are attached hereto and will be changed to conform to this conditional use permit." She stated the rest of her motion stands as she made it previously. Ms. Sugg stated she does not like specifying in the condition that certain rules that are going to be part of the condition need to be amended because it is messy in her opinion. She recommended that the Planning Commission defer the matter so the House Rules wording can be clarified. Ms. McAllister stated that, though the Planning Commission would like to take this forward, it is a lot easier to work on conditions outside of the public forum.

Mr. Long stated that earlier in the meeting, it was stated that what was written in the conditional use permit would over-rule the House Rules. Ms. Sugg stated that regarded conflict was tents versus outside events and she thought there was an ambiguity there as to whether there was a conflict simply because the tents did not specifically state that they would be outside, so there was not a literal conflict in the language, but interpreting

it, there was a conflict. She thinks it is best to clean the language up and not have any ambiguity.

Ms. McAllister stated that the reason why they would like to see the changes in the House Rules is because the conditional use permit usually is held and maintained by the owner of the property and the person leasing the property would only see the House Rules and may not be aware of the conditional use permit. She stated that this way, if the House Rules reflect the hours in the conditional use permit, someone leasing the property would be aware of it.

Mr. Albea stated that the motion to amend the Condition Nos. 1, 3, 4, and 5 has been discussed thoroughly and that motion is being put to a vote.

**Vote on Roll Call**

**For:** Maxwell

**Against:** Fox, Long, Smith, Jones, Swanson, Roberts, Albea

**Abstention:** None

The Planning Commission voted 1:7 to recommend approval of conditional use permit CU-12-294 to City Council as amended. Motion failed.

Mr. Long made a motion to recommend deferring the request to the next Planning Commission meeting. The motion was seconded by Ms. Fox.

Mr. Albea asked that the applicant and residents recognize the turmoil the Planning Commission is experiencing and asked that, as good neighbors, they diligently work together with staff to develop conditions for approval that are in the best interest of all involved.

**Vote on Roll Call**

**For:** Maxwell, Fox, Long, Austin, Smith, Jones, Swanson, Albea

**Against:** None

**Abstention:** None

The Planning Commission voted unanimously (8:0) to defer conditional use permit CU-12-294 to the Planning Commission meeting of March 7, 2012.