



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

JEB BUSH
 Governor

THADDEUS L. COHEN, AIA
 Secretary

Received

DEC 20 2004

City Clerk

December 1, 2004

City of Marathon
 ATTN: Cindy L. Ecklund, City Clerk
 10045-55 Overseas Highway
 Marathon Fl 33050

Re: Resolution 2004-139 (30 Attached Dwelling Units at Coco Plum - Seaview Commons)

Dear Ms. Ecklund:

The Department Field Office has received your request for a letter stating that the Department will not appeal the above permit. The Department will not appeal this building permit pursuant to Section 380.07, Florida Statutes. While the Department will not appeal this development order under its statutory authority, the development order is still subject to the local administrative appeal provisions.

This letter is not intended to constitute, and shall not be construed as constituting, a verification of compliance with the Comprehensive Plan and Land Development Regulations, and shall not be relied upon as a precedent or a waiver of rights regarding any other development order.

Sincerely,

Rebecca Jetton, Administrator
 Florida Keys Area of Critical State Concern

c: City of Marathon Building Department

2 5 5 5 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100

Phone: (850) 488-8466/Suncom 278-8466 FAX: (850) 921-0781/Suncom 291-0781

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CRITICAL STATE CONCERN FIELD OFFICE
 2796 Overseas Highway, Suite 212
 Marathon, FL 33050-2227
 (305) 289-2402

COMMUNITY PLANNING
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 488-2356

EMERGENCY MANAGEMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 488-7956

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-139**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY BRIAN SCHMITT, FOR A MINOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-68 OF THE CITY OF MARATHON, AUTHORIZING THE DEVELOPMENT OF THIRTY (30) ATTACHED DWELLING UNITS, AT PROPERTY LEGALLY DESCRIBED AS LOT 9, BLOCK 7 OF COCO PLUM BEACH SUBDIVISION

WHEREAS, on the 18th day of October, 2004, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 26th day of October, 2004, the City Council (the "Council"), conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by Brian Schmitt (the "Applicant"), for a minor conditional use permit pursuant to Sections 9.5-68 of the City Code (the "Code"); and

WHEREAS, the purpose of the minor conditional use permit is to allow the Applicant to develop thirty (30) attached dwelling units (the "Proposed Use") at the property described in the application (the "Property").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:


Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order Number 2004-08, a copy of which is attached hereto as Exhibit "A", granting a minor conditional use to Brian Schmitt for the Proposed Use. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 9th day of November, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

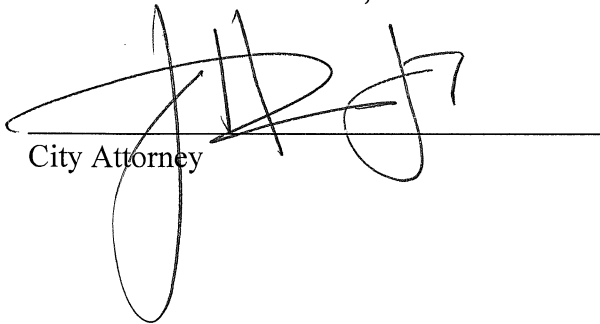
ATTEST:



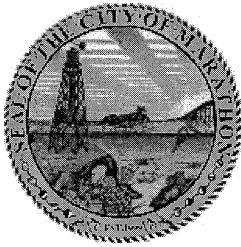
Cindy L. Ecklund
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



City Attorney



**CITY OF MARATHON, FLORIDA
MINOR CONDITIONAL USE
DEVELOPMENT ORDER # 2004-08**

A DEVELOPMENT ORDER APPROVING THE MINOR CONDITIONAL USE APPLICATION SUBMITTED BY BRIAN SCHMITT, FOR A MINOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-68 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF THIRTY (30) ATTACHED DWELLING UNITS, AT PROPERTY LEGALLY DESCRIBED AS LOT 9, BLOCK 7 OF COCO PLUM BEACH SUBDIVISION, MONROE COUNTY, FLORIDA (THE "PROPERTY") PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Brian Schmitt, the applicant, and the Schwitalla Corporation, the owner of the Property, have applied for a Minor Conditional Use approval to develop thirty (30) attached dwelling units on property located in the Urban Residential (UR) land use district (the "Application"); and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 9.5-22 and 9.5-68 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on October 18, 2004; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the "Council"), subject to conditions; and

WHEREAS, the Council of the City of Marathon, Florida (the "City"), in accordance with the provisions of Sections 9.5-21 and 9.5-68 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on October 26, 2004; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by Brian Schmitt and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the site is a 76,864.308 square feet (1.765 acres) parcel. The applicant is proposing to construct thirty (30) attached dwellings on this site.
2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:

- a. The Proposed Use is consistent with goals, objectives and policies of the City Comprehensive Plan (the "Plan") and Chapter 9.5 of the Code; and
- b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development; and
- c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties; and
- d. The Proposed Use will not have an adverse effect on the value of surrounding properties; and
- e. The public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and medical services, hurricane shelter, drainage systems, refuse disposal, water and sewers, and schools are adequate; and
- f. The Proposed Use complies with all additional standards imposed on it by the particular provisions of Chapter 9.5 of the Code, authorizing such use and by all other applicable requirements of the Code.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

1. The required shoreline setback of twenty (20) feet from the MHWL or the landward edge of the mangroves must be shown on a revised site plan that must be submitted to the City prior to issuance of building permits.
2. The proposed location of the lift station shown in the front setback must be relocated outside of the setbacks and shown on a revised site plan that must be submitted to the City prior to issuance of building permits.
1. In accordance with FEMA regulation, the elevation of the top of the first finished floor must be no less than 7 feet above sea level for Units 1-26 and 8 feet above sea level for Units 27-30 which shall be shown on the submitted building plans.
4. A transplantation plan or mitigation plan shall be submitted and approved by the City Biologist prior to issuance of building permits.
5. The driveways into the development must have a 2% slope back into the property and away from City right-of-way. Additionally, the proposed bike path connections into the City right-of-way must be approved by the City Engineer.
6. The applicant shall coordinate with the City the location of a fire hydrant along Coco Plum Drive. Any structure over two stories (parking underneath is considered as one story) requires a sprinkler system to be installed.
7. The dock shown on the submitted site plan must obtain a separate permit and receive required approval from Army Corps of Engineers (ACOE) and Department of Environmental Protection

(DEP) prior to issuance of building permits for the dock. Also, standpipe for dock must meet requirements of the Fire Department.

8. Prior to issuance of a Certificate of Occupancy, the applicant must submit a recorded Affordable Housing Restrictive Covenant for the affordable housing units restricting the use of the units in accordance with all affordable housing requirements for at least fifty (50) years.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Development Order, previously approved Development Agreement, or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

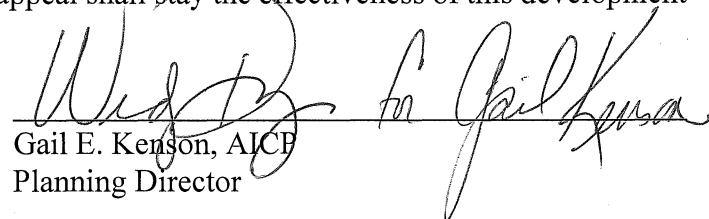
Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a minor conditional use is hereby GRANTED.

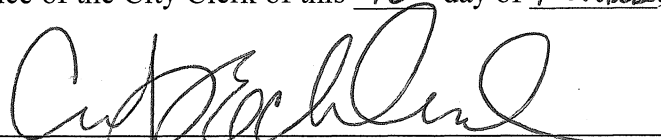
EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the minor conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

11/15/04
Date


Gail E. Kenson, AICP
Planning Director

This Development Order was filed in the Office of the City Clerk of this 10 day of November 2004.


Cindy L. Ecklund, City Clerk

NOTICE


Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within six (6) months of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Community Affairs may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Brian Schmitt 1100 Overseas Highway
this 16th day of Nov., 2004. Marathon, FL 33050


Cindy L. Ecklund, City Clerk