

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-143**

**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 REDEVELOPMENT OF A RESTAURANT BUILDING TO AN OFFICE BUILDING OF GREATER THAN 5,000 SQUARE FEET OF COMMERCIAL FLOOR AREA, AT PROPERTY LEGALLY DESCRIBED AS A PORTION OF LOTS 4 AND 5, KEY COLONY SUBDIVISION**

**WHEREAS**, on the 20<sup>th</sup> day of September, 2004, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 9<sup>th</sup> day of November, 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 redevelop a restaurant building to an office building of greater than 5,000 square feet (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 2004-09, 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 14<sup>th</sup> day of December, 2004.

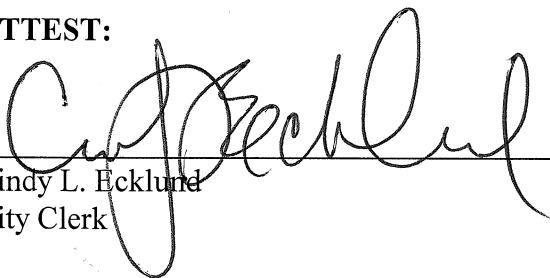
**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_  
**Jeffrey M. Pinkus, Mayor**

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

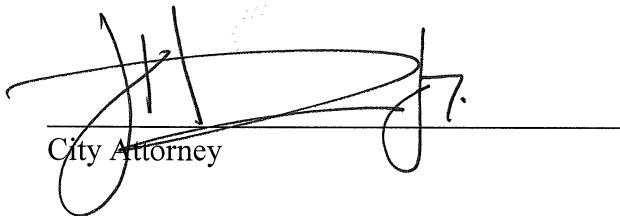
**ATTEST:**



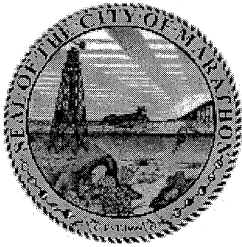
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

(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 # 2004-09**

**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 REDEVELOPMENT OF A RESTAURANT BUILDING TO AN OFFICE BUILDING OF GREATER THAN 5,000 SQUARE FEET OF COMMERCIAL FLOOR AREA, AT PROPERTY LEGALLY DESCRIBED AS A PORTION OF LOTS 4 AND 5, KEY COLONY 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.**

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**WHEREAS**, Brian Schmitt applied for a Minor Conditional Use approval to redevelop a restaurant building to an office building of greater than 5,000 square feet of commercial floor area on property located in the Urban Commercial (UC) 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 September 20, 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 November 9, 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 20,580 square feet (0.47 acres) parcel. The applicant is proposing to redevelop the existing restaurant building to an office building of 6,232 square feet of commercial floor area.

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 applicant shall coordinate with the City the location of any required standpipes or fire hydrants if required based upon building design.
2. The applicant shall install a sprinkler system approved by the City Fire Marshall.
3. The second floor of the building may not be used for any purpose until a NROGO allocation is obtained. In order to obtain a NROGO allocation the applicant must comply with all of the applicable provisions of the City's adopted NROGO allocation system.
4. The applicant shall submit a revised site plan showing the dimensions for all parking spaces, including an additional handicap parking space.

**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 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.

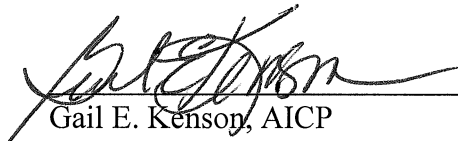
**RECORDING:**

The applicant shall at its sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City. The applicant shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph."

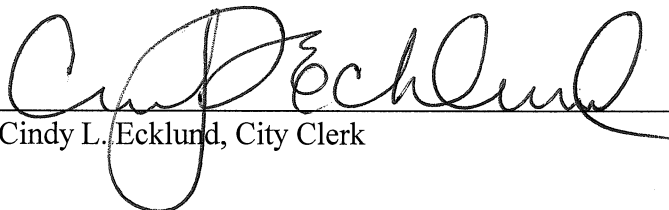
**EFFECTIVE DATE:**

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.

15 Dec 2004  
Date

  
\_\_\_\_\_  
Gail E. Kenson, AICP  
Planning Director

This Development Order was filed in the Office of the City Clerk of this 15 day of December 2004.

  
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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, 11100 Overseas Highway, Marathon, Florida, this 15 day of December 2004.



Cindy L. Ecklund, City Clerk