

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-123**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DENYING THE APPEAL REQUESTED BY BRIAN AND PAMELA BAUER AND APPROVING THE REQUEST BY JUNIOR GEIGER, FOR A VARIANCE TO SECTION 9.5-289 OF CITY CODE WHICH ESTABLISHES MAXIMUM DOCK LENGTHS, AUTHORIZING A 4' X 220' ACCESS WALK WITH A 6' X 20' TERMINAL PLATFORM INCLUDING A BOAT LIFT ON EACH SIDE, AT PROPERTY LEGALLY DESCRIBED AS LOT 2B, BLOCK 21 COCO PLUM BEACH SUBDIVISION, MARATHON, FAT DEER KEY, MONROE COUNTY, FLORIDA.

WHEREAS, planning staff reviewed a request submitted by Junior Geiger (the "Applicant") for a variance pursuant to Section 9.5-289 of the City Code (the "Code"); and

WHEREAS, the purpose of the variance is to allow the Applicant to construct a long dock that would be 4' x 220' access walk with a 6' x 20' terminal platform and including 2 boat lifts (the "Proposed Use") at the property described in the application (the "Property"); and

WHEREAS, City staff reviewed the variance application and determined it met the applicable criteria to grant the variance; and

WHEREAS, Brian and Pamela Bauer filed an appeal requesting a public hearing pursuant to Section 9.5-521 of the Code challenging the granting of the variance; and

WHEREAS, on the 15th day of August, 2005, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 13th day of September, 2005, the City Council (the "Council"), conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Appellant.

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 denies the appeal of Brian and Pamela Bauer and approves Development Order Number 2005-12, a copy of which is attached hereto as Exhibit "A", granting the variance, with conditions to the Applicant 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 27th day of September, 2005.

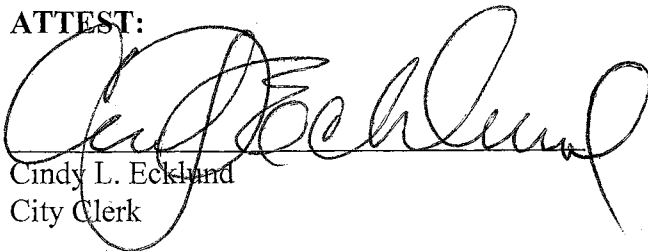
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

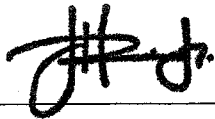
ATTEST:



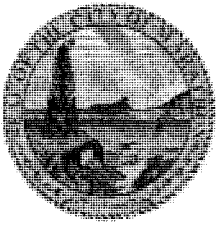
Cindy L. Ecklund
City Clerk

(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
LONG DOCK VARIANCE
DEVELOPMENT ORDER # 2005-12**

A DEVELOPMENT ORDER APPROVING THE REQUEST SUBMITTED BY JUNIOR GEIGER FOR AN ADMINISTRATIVE LONG DOCK VARIANCE FROM THE PROVISIONS OF SECTION 9.5-289 OF THE LAND DEVELOPMENT REGULATIONS REGULATING THE LENGTH RESTRICTIONS FOR A DOCK ON PROPERTY LOCATED AT 71 AVENUE C AND LEGALLY DESCRIBED AS PART OF LOT 2B, BLOCK 21, COCO PLUM BEACH SUBDIVISION, MONROE COUNTY, FLORIDA (THE "PROPERTY") WITH THE REAL ESTATE NUMBER 00366110-000000.

WHEREAS, Junior Geiger (the "Applicant") applied for an Administrative Long Dock Variance to construct a dock on property in the Urban Residential (UR) land use district (the "Application"); and

WHEREAS, pursuant to Section 9.5-289 of the City of Marathon Code (the "Code"), an Applicant can apply for an Administrative Long Dock Variance (the "Variance") to allow the minimum relaxation of the length restriction as is necessary to provide the upland owner with access to adequate water depths specified for docking facilities; and

WHEREAS, the City of Marathon, Director of Planning conducted a review of the Application and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the dock will consist of a 4' x 220' access walk, of which 35 feet is over upland, with a 6' x 20' terminal platform including a boat lift on each side.
2. In accordance with Section 9.5-289 of the Code, the Director of Planning considered and determined the Applicant met the following criteria:
 - a. The proposed dock will be consistent with the community character of the surrounding area; and
 - b. The proposed dock will not interfere with public recreational uses in or on adjacent waters; and
 - c. The proposed dock will pose no navigational or safety hazard.

CONDITIONS IMPOSED:

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

1. The Applicant shall design and construct the dock in questions so as to allow the general public access across the dock.

VIOLATION OF CONDITIONS:

The Applicant understands and acknowledges that they 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 their 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 Director of Planning 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 Development Order, the Director of Planning 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 the Variance use is hereby GRANTED subject to the conditions specified herein.

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:

The Director of Planning shall sign this development order, and it shall not take effect for thirty (30) days following the date it is rendered/filed with the City Clerk. During that time, the administrative long dock variance 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.

29 Sept 05
Date

Gail E. Kenson
Gail E. Kenson, AICP
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 28 day of September 2005.

Cindy L. Ecklund
Cindy L. Ecklund, City Clerk

NOTICE

Pursuant to Section 9.5-523 of the Code, upon expiration of any time period established by this chapter or development permit, or non-compliance with a condition of approval, no new development permits affecting the property shall be issued by the City, and no action which might tend to vest the development permit shall be permitted, until a determination is made by the Director of Planning on the status of the development permit. If the Director of Planning determines that any time period has expired or non-compliance with a condition of approval has occurred, the Director of Planning shall file with the Clerk of the Circuit Court a notice of such time expiration or non-compliance, which shall be placed with the records governing title to the affected property. The City Council shall then give consideration of action at a public hearing.

This Development Order shall become null and void, with no further notice required by the City of Marathon ("City"), unless a complete building permit application for site preparation and building construction with revised plans, as required herein, is submitted to the City Building Official within the timeframe specified herein. All required certificates of occupancy shall be procured within three (3) years of the date of this Resolution unless the Planning Manager grants an administrative time extension.

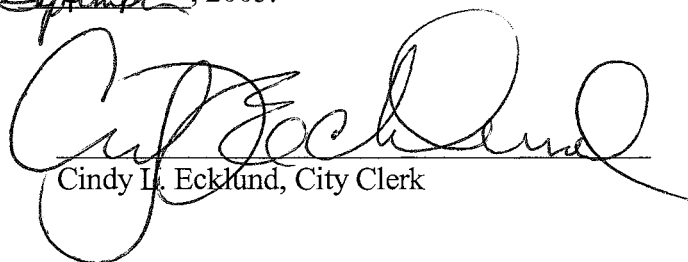
Pursuant to Section 9-5.523 of the Land Development Regulations a public hearing before the City Council on the administrative variance application may be requested in writing to the Planning Manager, within thirty (30) days of issuance of this notice by the applicant or an adjacent property owner.

This instrument shall not take effect for thirty (30) days following the date of memorialization thereof, and during that time, the permit shall be subject to appeal as provided in Section 9-5.523 of the Code. An appeal shall stay the effectiveness of this instrument until resolved.

In addition, please be advised that pursuant to Chapter 9J-1 of the Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the DCA. During those 45 days, the DCA 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, Glen Boe & Associates, Inc., 5800 Overseas Highway, #4, Marathon, Florida 33050 this 29 day of September, 2005.


Cindy L. Ecklund, City Clerk