

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-26**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY ARGOS PROPERTIES FOR A MODIFICATION TO A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE REDEVELOPMENT OF A MIXED USE PROJECT AT PROPERTY LOCATED AT 59073 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS LOTS 11, 12, AND 13 OF SAN SOUCI SUBDIVISION, GRASSY KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00375960-000000.

WHEREAS, on January 11, 2007, the City of Marathon Planning Commission and on February 13, 2007, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by Argos Properties (the “Applicant”), for approval of a Modification to a Major Conditional Use permit pursuant to Sections 9.5-69 of the City Code (the “Code”); and

WHEREAS, the purpose of the modification to the Major Conditional Use Permit is to allow the Applicant to redevelop a mixed-use project with up to six affordable housing units and 18,204 square feet of commercial space (the “Proposed Use”) at the Property under the City’s Suburban Commercial land use district.

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 2007-02, a copy of which is attached hereto as Exhibit “A”, granting a Modification to a Major Conditional Use Permit 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 March 2007.

THE CITY OF MARATHON, FLORIDA


Marilyn Tempest, Acting Mayor

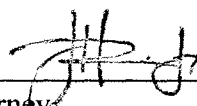
AYES: Cinque, Worthington, Vasil, Tempest
NOES: None
ABSENT: Bull
ABSTAIN: None

ATTEST:


Diane Clavier
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
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2007-02**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY ARGOS PROPERTIES FOR A MODIFICATION TO A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE REDEVELOPMENT OF A MIXED USE PROJECT AT PROPERTY LOCATED AT 59073 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS LOTS 11, 12, AND 13 OF SAN SOUCI SUBDIVISION, GRASSY KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00375960-000000 (THE "PROPERTY"); PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Argos Properties (the "Applicant") owns the Property and applied for a Modification to a Major Conditional Use approval to redevelop a mixed use project consisting of up to six affordable residential units and 18,204 square feet of commercial space on property which is located in the Suburban Commercial land use district (the "Application"); and

WHEREAS, the City of Marathon Planning Commission (the "Commission"), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations (the "LDR's"), met to review the Application to determine its compliance with the applicable regulations on January 11, 2007; and

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

WHEREAS, the Council, in accordance with the provisions of Sections 9.5-21 and 9.5-69 of the LDR's, met to review the Application to determine its compliance with the applicable regulations on February 13, 2007; and

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

FINDINGS OF FACT:

1. Currently the site includes 21,612 square feet of commercial floor area and three (3) residential units. The Applicants are proposing to redevelop the Property into various commercial uses totaling 18,204 square feet and up to six (6) affordable/workforce dwelling units per the site plan revision dated January 2, 2007. 3,408 square feet of non-residential space are credited to the site.
2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicants 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;
 - b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development;
 - c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties;
 - d. The Proposed Use will not have an adverse effect on the value of surrounding properties;
 - 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 must submit an application for a building permit within one year of the date of approval of this conditional use and buildings shall be fully constructed within two years of the date of approval of this conditional use. Failure to meet these deadlines will result in the reversion of the affordable ROGO units to the City.
2. A credit for 3,408 square feet of unused, exempt non-residential rate of growth (NROGO) commercial square footage will be provided in the Development Order.
3. Two (2) 120% affordable ROGO units have been allocated to the project by the City, three (3) are ROGO Exempt and one (1) will need an Affordable Allocation. All six units on this site will be affordable units for employees. All six units shall be employee housing for rental or sale and the applicant shall record a restrictive covenant prior to the issuance of any building permits for the units. The restrictive covenant shall be for a minimum of fifty (50) years and shall be renewable for two (2) fifty (50) year periods. The developer will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable housing. This agreement shall be in place and approved by the City prior to the issuance of a CO for the units.
4. Prior to issuance of a building permit the applicant must submit stormwater management plans demonstrating the redeveloped property will comply with applicable regulations.
5. The applicant will be required to install four fire hydrants, a dry standpipe system along the docks, and sprinkler systems, and otherwise comply with the Fire Marshall

- requirements.
6. The applicant must provide a wastewater treatment plant to 2010 standards.
 7. The project meets FEMA requirements.
 8. The applicant will be required to provide public access to the marina and boat ramp on reasonable terms and conditions.
 9. The applicant will secure FDOT access permits.

VIOLATION OF CONDITIONS:

The Applicants understand and acknowledge 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 Applicants 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 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;
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; and
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a modification to a major conditional use is hereby GRANTED subject to the conditions contained herein.

RECORDING:

The Applicants shall at their sole cost and expense, record a certified copy of this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City. The Applicants 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 major 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.

4/10/07
Date

[Signature]
Fred Gross
Planning Director

This Development Order was filed in the Office of the City Clerk of this 10 day of April, 2007.

[Signature]
Diane Clavier, 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 for site preparation and building construction with revised plans as required herein is obtained from the City of Marathon Building Official within one (1) year 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 two (2) years of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal.

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 Argos Properties, 1401 Brickell Ave. suite 320, this 10 day of April, 2007. Miami, FL 33131

Diane Clavier
Diane Clavier, City Clerk