

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-02**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY HOLIDAY DIVER, INC. FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE OPERATION OF A RETAIL SCUBA DIVING STORE AT THE PROPERTY LOCATED AT 5271 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2, SECTION 11, TOWNSHIP 66, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103730-000000.

WHEREAS, on the 19th day of November, 2007, the City of Marathon (the “City”) Planning Commission (the “Commission”) and on the 11th day of December, 2007, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by Holiday Diver, Inc. (the “Applicant”), for a conditional use permit pursuant to Chapter 102, Article 13 of the City Code (the “Code”); and

WHEREAS, the purpose of the conditional use permit is to allow the Applicant to operate a retail SCUBA diving store (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:

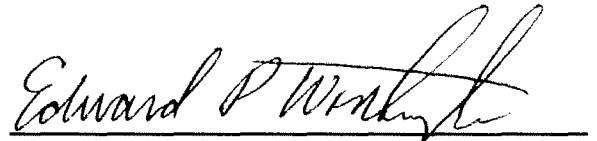
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2008-01, a copy of which is attached hereto as Exhibit “A”, granting a conditional use to Holiday Diver, Inc. 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 8th day of January, 2008.


THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

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

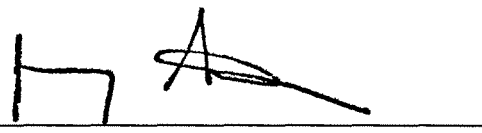
ATTEST:



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
CONDITIONAL USE
DEVELOPMENT ORDER # 2008-01**

A DEVELOPMENT ORDER APPROVING THE CONDITIONAL USE APPLICATION SUBMITTED BY HOLIDAY DIVER, INC., FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE OPERATION OF A RETAIL SCUBA DIVING STORE AT THE PROPERTY LOCATED AT 5271 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2, SECTION 11, TOWNSHIP 66, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103730-000000 (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, Holiday Diver, Inc. is the lessee of the Property and applied for a Conditional Use approval to operate a retail SCUBA diving store 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 101.02 and 102.75 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on November 19, 2007; 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, in accordance with the provisions of Sections 101.01 and 102.76 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on December 11, 2007; and

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

FINDINGS OF FACT:

1. The applicant is proposing to utilize the existing building on site to operate a 9909 square foot retail SCUBA diving store on the property.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and
 10. Any special requirements set forth in the LDRs for the particular use involved.

CONDITIONS IMPOSED:

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

1. The applicant will provide required drainage calculations for a 25-year 72-hour storm event and stormwater calculations for the retention area for review prior to Building Permit issuance.
2. The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39.
3. The applicant will obtain approval of final landscaping and lighting plans in coordination with the City Biologist prior to Development Order issuance.
4. The Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers and alarms will be installed as required by City Code.
5. The existing wastewater treatment system must be properly transferred and approved by the Department of Health. If a new wastewater treatment system is to be constructed, it must meet 2010 wastewater standards and additional design details, including facility capacity assessment, transmission systems, and other technical details will be required prior to Building Permit issuance.
6. The applicant will obtain sign permits for any signs erected on the property, as required under the Code.

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 Resolution 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:

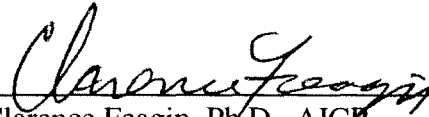
1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the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

herein.

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 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.

01.17.08
Date


Clarence Feagin, Ph.D., AICP
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 17 day of January, 2008.


Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) 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 business license has been issued for the use or 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 one (1) year from the date of conditional use approval, 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 Holiday Diver, Inc. 180 Gulfstream Way, this 17 day of January 2008. Dania Beach, FL 33004

Diane Clavier

Diane Clavier City Clerk