

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-173**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING DEVELOPMENT ORDER 2009-05 WHICH APPROVES A MAJOR AMENDMENT TO DEVELOPMENT ORDER 2006-05 AND RESOLUTION 2006-073, PURSUANT TO A REQUEST BY CHAPPY'S OF MARATHON TO ELIMINATE CONDITIONS 1 AND 2 OF THEIR CONDITIONAL USE APPROVAL DEFINING LANDSCAPING AND FENCING REQUIREMENTS, REVIEWED PURSUANT TO CHAPTER 102, ARTICLE 13, SPECIFICALLY SECTION 102.79, OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS AT PROPERTY LEGALLY DESCRIBED AS PART OF LOT S 1, 2, AND 3, BLOCK 1, KNIGHT'S KEY VILLAGE, KNIGHT'S KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00319520-000000, 00319530-000000, AND 00319540-000000 (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, on the 21st day of September, 2009, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 13th day of October, 2009, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by Chappy's of Marathon, Inc., (the "Applicant") for a major amendment to its major conditional use permit pursuant to Section 102.79 of the City Code (the "Code"); and

WHEREAS, the amendment removes certain conditions of the conditional use permit granted by the City by Resolution 2006-073 and Development Order 2006-05,

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 the Applicant's request for a Major Amendment to its Conditional Use as specifically described in Exhibit "A" attached hereto.

Section 2. 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 December, 2009.


THE CITY OF MARATHON, FLORIDA



Mayor Ginger Snead

AYES: Cinque, Keating, Ramsay, Worthington, Snead
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:



John Herrin, City Attorney



**CITY OF MARATHON, FLORIDA
MAJOR AMENDMENT TO AN APPROVED
CONDITIONAL USE
DEVELOPMENT ORDER NO. 2009-05**

APPROVAL OF A MAJOR AMENDMENT TO DEVELOPMENT ORDER 2006-05 AND RESOLUTION 2006-073, PURSUANT TO A REQUEST BY CHAPPY'S OF MARATHON TO ELIMINATE CONDITIONS 1 AND 2 OF THEIR CONDITIONAL USE APPROVAL DEFINING LANDSCAPING AND FENCING REQUIREMENTS, REVIEWED PURSUANT TO CHAPTER 102, ARTICLE 13, SPECIFICALLY SECTION 102.79, OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS AT PROPERTY LEGALLY DESCRIBED AS PART OF LOT S 1, 2, AND 3, BLOCK 1, KNIGHT'S KEY VILLAGE, KNIGHT'S KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00319520-000000, 00319530-000000, AND 00319540-000000 (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, James Chaplin, LLC is the owner of the Property and applied for a Major Conditional Use approval to develop a 238 seat restaurant, one swimming pool, deck and patio area and parking lot on property located in the Mixed Use (MU) land use district (the "Application"); and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on April 17, 2006; 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 9.5-21 and 9.5-69 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on May 9, 2006; and

WHEREAS, the Council approved the Conditional Use application for Chappy's Of Marathon on May 23rd, 2006 having duly considered the recommendation of the Commission and the information and documentary evidence submitted by James Chaplin, LLC; and

WHEREAS, in April of 2009 Chappy's of Marathon substantially completed construction of the project defined in its Conditional Use Approval and received a temporary Certificate of Occupancy (CO); and

WHEREAS, a temporary CO was issued for the project as two conditions of the project Conditional Use approval, as shown below, concerning landscaping were not met:

“1. The landscape plan shall be revised to include a three (3) foot opaque fence along Kyle Way West and the southern property line. The fence shall be set back from the property line a sufficient distance to plant the required landscaping between the fence and the property line.

2. The landscape plan shall be revised in the following manner:

a. The US 1 major street buffer shall meet the minimum requirements of the Code.

b. The district boundary buffer along the eastern property line shall be modified to increase the number of shrubs to 130, which shall be planted on center to provide a thick hedge. The number of canopy trees shall be increased to 32.

c. The district boundary buffer along the southern property line shall be modified to increase the number of shrubs to 130, which shall be planted on center to provide a thick hedge. The number of canopy trees shall be increased to 32;” and

WHEREAS, Chappy’s of Marathon requested time to obtain a modification to their Conditional Use approval to eliminate the conditions noted above; and

WHEREAS, Chappy’s of Marathon was approved under the City’s previous Land Development Regulations (LDRs) and is deemed under Section 102.72 to have a Conditional Use under the present LDR’s; and

WHEREAS, Chappy’s of Marathon requested a major amendment to a Conditional Use approval under the provisions of Section 102.79, “Minor and Major Amendments to Existing Conditional Use Permits,”

WHEREAS, the requested amendment to a Conditional Use approval was reviewed by the Planning Commission on September 21, 2009 resulting in a unanimous recommendation to the City Council to remove condition Nos. 1 and 2 as shown above and as set out in Resolution 2006-073 / DO No. 21006-05.

FINDINGS OF FACT:

1. Based on the submitted requested for a Major Amendment to a Conditional Use approval, the applicant has requested to remove Condition Nos. 1 and 2 from their Conditional Use approval as set out in Resolution 2006-073 / DO No. 21006-05.

2. In accordance with Section 102.77 of the LDRs, the Commission and Council considered and determined that 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 Subsection 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 Subsections 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 condition:

1. Condition Nos. 1 and 2 as promulgated in Resolution 2006-073 and Development Order No. 2006-05 are hereby removed from the list of conditions under the Conditional Use approval.

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:

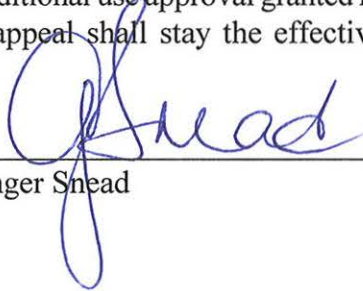
Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

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 major 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 amendment to a 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.

12-11-09
Date



Mayor Ginger Snead

This Amendment to a Conditional Use approval was filed in the Office of the City Clerk of this 11 day of Dec., 2009.



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 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 of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal. Upon request and submittal of an sufficient application, Administrative Time Extensions are provided for under Section 102.79 D.

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 James & Bettye Chaplin, 400 Corte del, this 15 day of Dec., 2009. Brisas, Marathon, FL 33050



Diane Clavier, City Clerk