

Appeal Date: August 30, 2013
Public Hearing Dates: December 12, 2013
Enactment date: January 14, 2014

**CITY OF MARATHON, FLORIDA
RESOLUTION 2014-02**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DENYING THE APPEAL FILED BY HENRY LEE MORGENSTERN ON BEHALF OF BEVERLY WELBER, JAMES PLATT III, JOAN BOREL AND DEBORAH CURLEE, OF THE DECISION OF THE PLANNING COMMISSION SET FORTH IN PLANNING COMMISSION RESOLUTION 2013-001, CONCERNING PROPERTY LOCATED AT 5550 OVERSEAS HIGHWAY, NEAREST MILE MARKER 50, HAVING REAL ESTATE NUMBER 00103760-000000; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is within the authority of the Planning Director to grant administrative variances concerning the City of Marathon Land Development Regulations (Chapter 102, Article 20, Section 102.126 - "Administrative Variance"); and

WHEREAS, on March 22, 2013, an Administrative Variance application was submitted by Mitchell Planning and Design Inc. on behalf of the Florida Keys Land and Seas Trust for property located at 5550 Overseas Highway, Marathon FL, otherwise known as Crane Point Museum and Nature Preserve; and

WHEREAS, the administrative variance requested was for a deviation from the maximum height limitations of Section 107.40, of the City of Marathon Land Development Regulations, allowing structures associated with a Conditional Use application to be constructed 25 percent higher than the maximum 37 feet permitted; and

WHEREAS, a Notice of Intent to Issue the Administrative Variance was included in a public notice mailed to all property owners within 300 feet of the subject property on March 29, 2013; and

WHEREAS, a Notice of Intent to Issue the Administrative Variance was included in posted notices posted on and around the subject property on March 29, 2013; and

WHEREAS, a second Notice of Intent to Issue the Administrative Variance was included in a public notice mailed to all property owners within 300 feet of the subject property on April 16, 2013; and

WHEREAS, a second Notice of Intent to Issue the Administrative Variance was included in posted notices posted on and around the subject property on April 18, 2013; and

WHEREAS, all notices related to the Administrative Variance sent out on March 29, 2013 and again on April 16, 2013 have been found to be compliant with all applicable City of Marathon Land Development Regulations and notice requirements therein; and

WHEREAS, on May 29, 2013 Henry Lee Morgenstern filed a Request For Appeal of the Administrative Height Variance noted above on behalf of Beverly Welber, James Platt III, Joan Borel and Deborah Curlee (the “Appeal”); and

WHEREAS, the City of Marathon Planning Commission is responsible under Chapter 102, Article 17 for hearing and taking final action concerning requested appeals of decisions made by administrative officials or the Technical Review Committee; and

WHEREAS, the City of Marathon Planning Commission held a public hearing on July 15, 2013 at which the Commission received and discussed testimony concerning the Appeal and voted to deny the appeal in a 4-1 decision; and

WHEREAS, the decision of the Planning Commission was reduced to writing in Planning Commission Resolution 2013-01; and

WHEREAS, due process was afforded the parties in the Appeal hearing before the Planning Commission, the essential requirements of law were adhered to and competent and substantial evidence was presented; and

WHEREAS, on August 30, 2013 Henry Lee Morgenstern filed a Request For Appeal, on behalf of Beverly Welber, James Platt III, Joan Borel and Deborah Curlee, of the Planning Commission decision concerning the Administrative Height Variance approved by the Planning Director (“Appeal II”); and

WHEREAS, the City of Council of the City of Marathon held a public hearing on December 12, 2013 at which the City Council received and discussed testimony concerning the Appeal II; and voted to deny the Appeal II in a 5-0 decision; and

WHEREAS, due process was afforded the parties, the essential requirements of law were adhered to and competent and substantial evidence was presented.

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. Based on the competent and substantial evidence presented to the City Council at its December 12, 2013 regular meeting, and made part of the record hereof, the City Council finds that:

- a. The Notices of Intent to Issue the Administrative Variance provided by the City as required in the City Code, Chapter 102, were properly made; and
- b. The Planning Director correctly applied the criteria for the review and approval of an Administrative Variance as provided under Chapter 102, Article 20, Section 102.126; and
- c. The Planning Commission afforded the Appellant due process during the Appeal hearing of July 15, 2013, the essential requirements of law were adhered to and competent and substantial evidence was presented; and

- d. The Planning Commission in reviewing the decision of the Planning Director concerning the Administrative Variance during the Appeal hearing of July 13, 2013 and in Planning Commission Resolution 2013-01 documenting their decision, made an appropriate interpretation of the facts presented by all parties and affirmed the decisions made by the Planning Director; and
- e. The Appellant failed to demonstrate an error on the part of the Planning Commission in its determination concerning the decision of the Planning Director in the matter of an Administrative Height Variance originally requested by Crane Point Hammock.

Section 3. The City Council denies the Appeal of the Appellant upholding the decision of the Planning Commission set forth in Planning Commission Resolution 2013-001 and by the Planning Director in his determination letter dated July 15, 2013.

Section 4. This resolution shall take effect immediately upon its adoption and shall be filed with the City Clerk.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF JANUARY 2014.

CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

AYES: Bull, Keating, Senmartin, Snead, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(Seal)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney