

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-86**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY TROPICAL GETAWAYS, INC. FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE DEVELOPMENT OF A PROPERTY WITH FOUR AFFORDABLE HOUSING UNITS; WITH PROPOSED DENSITIES OF APPROXIMATELY 25 AFFORDABLE HOUSING UNITS PER ACRE; LOCATED BETWEEN 735 & 741 41ST STREET; WHICH IS LEGALLY DESCRIBED AS BLOCK 5 LOT 3 MARATHON BEACH SUBDIVISION, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00337250-000000, NEAREST MILE MARKER 49.

WHEREAS, Request By Tropical Getaways, Inc. (The “Applicant”) filed an Application on July 29, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop two (2) duplex structures for a total of four (4) deed restricted affordable residential units square feet of commercial space and to enter into a Development Agreement in lieu of the payment of market rate residential TBR transfer fees associated with the project; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 19th day of September, 2016, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 27th day of September, 2016 and the 11th day of October, 2016 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant's request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning 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 2016-07, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Request By Tropical Getaways, Inc. subject to the Conditions imposed. 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 by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 11th day of October, 2016.

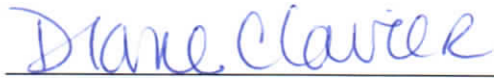
THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Zieg, Bartus, Coldiron, Kelly, Senmartin
NOES: None
ABSENT: None
ABSTAIN: None

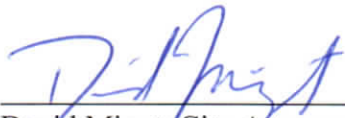
ATTEST:



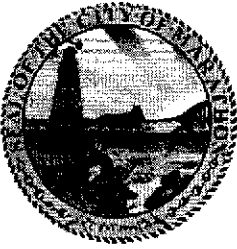
Diane Clavier
City Clerk

(City Seal)

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



David Migut, City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2016-09**

A DEVELOPMENT ORDER APPROVING A REQUEST BY TROPICAL GETAWAYS, INC. FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE DEVELOPMENT OF A PROPERTY WITH FOUR AFFORDABLE HOUSING UNITS; WITH PROPOSED DENSITIES OF APPROXIMATELY 25 AFFORDABLE HOUSING UNITS PER ACRE; LOCATED BETWEEN 735 & 741 41ST STREET; WHICH IS LEGALLY DESCRIBED AS BLOCK 5 LOT 3 MARATHON BEACH SUBDIVISION, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00337250-000000, NEAREST MILE MARKER 49.

WHEREAS, Request By Tropical Getaways, Inc. (The “Applicant”) filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop two (2) duplex structures for a total of four (4) deed restricted affordable residential units square feet of commercial space and to enter into a Development Agreement in lieu of the payment of market rate residential TBR transfer fees associated with the project; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 19th day of September, 2016, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 27th day of September, 2016 and the 11th day of October, 2016 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the

public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

FINDINGS OF FACT:

1. The applicant will develop two (2) duplex structures for a total of four (4) deed restricted affordable residential units with the following determinations:
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;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location;
 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

CONDITIONS IMPOSED:

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

Conditions of Approval

- 1) The applicant will obtain approval of final landscaping and mitigation plans (as needed) and lighting plans in coordination with the City Biologist prior to building permit issuance;
- 2) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 3) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 4) The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
- 5) The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
- 6) The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- 7) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 8) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 9) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 10) The affordable units must be deed restricted prior to issuance of certificate of occupancy each for a term of ninety-nine (99) years.
- 11) Two (2) side yards are required for stacked duplexes.
- 12) Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
- 13) The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
- 14) The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
- 15) Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
- 16) The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
- 17) Must enter into a Development Agreement with the City of Marathon concerning escrow and in lieu payment of transfer fees associated with the transfer of market rate development rights. The essence of the Development Agreement and in lieu payment of transfer fees will be an agreement between the Applicant and the City to construct deed restricted affordable residential units in lieu of payment of the TBR transfer fees otherwise required under the LDRs.

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.

Date 11/16/2016

George Garrett
George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 16 day of Nov, 2016.

Diane Clavier
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 Economic Opportunity 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 8695 College Parkway, suite 1193
this 17th day of NOV., 2016. Fort Myers, FL 33919-5824

Diane Clavier

Diane Clavier City Clerk