

**CITY OF MARATHON, FLORIDA
RESOLUTION 2017-30**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC., FOR A VARIANCE TO ALLOW FOR AN INCREASE IN FENCE HEIGHT FROM SIX (6) FEET TO EIGHT (8) FEET ALONG THE REAR PROPERTY LINE; PURSUANT TO CHAPTER 102, ARTICLE 20, SECTION 102.115, "REVIEW AND APPROVAL PROCEDURES"; LOCATED AT 935 73RD STREET OCEAN; WHICH IS LEGALLY DESCRIBED AS LOT 16 REIMANN'S SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00342160-000000, NEAREST MILE MARKER 51; 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 29th day of March, 2017, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 25th day of April, 2017, the City Council (the "Council"), conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by Habitat For Humanity of the Middle Keys Inc. (the "Applicant"), for a variance pursuant to Section 102.115 of the City Code (the "Code"); and

WHEREAS, the purpose of the variance is to allow the Applicant to construct a fence that would exceed the maximum six (6) foot height by two (2) feet (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 Number 2017-04, a copy of which is attached hereto as Exhibit "A", granting a variance to Habitat For Humanity of the Middle Keys 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 25TH DAY OF APRIL, 2017.

THE CITY OF MARATHON, FLORIDA



Dr. Daniel Zieg, Mayor

AYES: Senmartin, Bartus, Cook, Coldiron, Zieg
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
VARIANCE
DEVELOPMENT ORDER # 2017-04**

A DEVELOPMENT ORDER APPROVING THE VARIANCE APPLICATION SUBMITTED BY JOHN AND KAREN WOLFE, FOR A VARIANCE BY HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC., FOR A VARIANCE TO ALLOW FOR AN INCREASE IN FENCE HEIGHT FROM SIX (6) FEET TO EIGHT (8) FEET ALONG THE REAR PROPERTY LINE; PURSUANT TO CHAPTER 102, ARTICLE 20, SECTION 102.115, "REVIEW AND APPROVAL PROCEDURES"; LOCATED AT 935 73RD STREET OCEAN; WHICH IS LEGALLY DESCRIBED AS LOT 16 REIMANN'S SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00342160-000000, NEAREST MILE MARKER 51; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Habitat For Humanity of the Middle Keys Inc. are the owners of the Property and applied for a Variance to exceed the maximum fence height by two (2) feet on property located in the Residential High (RH) land use district (the "Application"); and

WHEREAS, the Planning Commission (the "Commission"), in accordance with the provisions of Section 102.115 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on April 29th, 2017; 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 (the "City"), in accordance with the provisions of Section 102.115 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on April 25th, 2017; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by Habitat For Humanity of the Middle Keys Inc. and members of the public does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The applicant is requesting the variance to allow the applicant to construct a fence that would exceed the maximum six (6) foot height by two (2) feet (the “Proposed Use”) at the property described in the application (the “Property”).
2. In accordance with Section 102.120 of the Code, the following variance criteria were applied by the Director, Commission, and Council in evaluating the Application:
 - A. Special Circumstances: Because of the exceptional narrowness, shallowness or shape of the specific piece of property;
 - B. Hardships: Other extraordinary and exceptional situation or condition of the property and/or location of surroundings, the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
 - C. No Detriment: The relief will not create a substantial detriment, as determined by the Director, to the public good, substantially impair affected natural resources, in the opinion of the biologist or impair the intent and purpose of the LDRs or applicable policies under which the variance is granted;
 - D. No Special Privileges: The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
 - E. Use Authorized: The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and
 - F. Relevant Factors: The PC or Director shall consider the following factors relevant when granting the variance:
 1. Physical Characteristics of the proposed construction.
 2. Whether the use of the property is dependent upon granting the variance.
 3. Whether granting the variance increases or decreases the danger to life and property.
 4. The importance to the community of the services to be provided if the variance is granted.
 5. The compatibility of the proposed variance to the surrounding properties.
 6. The ability to safely access the property by regular and emergency vehicles if the variance is not granted.
 7. The costs of provided governmental services if the variance is or not granted.

CONDITIONS IMPOSED:

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

1. All conditions of the Conditional Use shall remain in effect.

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 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, will not be detrimental to the community as a whole, and the applicant has demonstrated by competent substantial evidence that it meets the variance criteria set forth in Section 102.120 of the Code; 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 variance is hereby GRANTED with conditions.

RECORDING:

The applicant shall at its sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City. The applicant shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.

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 variance 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.

4/27/2017
Date

George Garrett
George Garrett, Planning Director

This Development Order was filed in the Office of the City Clerk of this 28 day of April, 2017.

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 Economic Opportunity 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 73C-44, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. 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 Christine Todd Young, Executive Director, this 1 day of May, 2017. 8055 Overseas Hwy. 0
Marathon, FL 33050

Diane Clavier
Diane Clavier City Clerk