

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-61**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT FOR CAPTAIN PIPS HOLDINGS, LLC PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS” FOR THE DEVELOPMENT OF A PROPERTY INTO MULTIFAMILY HOUSING, OFFICE AND RESTAURANT, AND MARINA; LOCATED AT 1470 OVERSEAS; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO LOT 2 AND ADJACENT PORTION OF STATE ROAD 4-A, PART OF GOVERNMENT LOT 2 IN REAR OF HANLEY’S INC, AND BLOCK 3 PART OF LOT 3 AND GOVERNMENT LOT 2 W R THOMPSON SUBDIVISION, SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00320350-000000, 00102790-000000, & 00102760-003000, NEAREST MILE MARKER 48.**

**WHEREAS**, Captain Pips Holdings, LLC (The “Applicant”) filed an Application on February 4<sup>th</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, said Captain Pips Holdings, LLC property located at 1470 Overseas Highway (RE Nos. 00320350-000000, 00102790-000000, & 00102760-003000) consists of one residential four-plex and an old commercial structure, used most recently as a restaurant; and

**WHEREAS**, the Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal is 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 20<sup>th</sup> day May, 2019, the Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, on the 11<sup>th</sup> day June, 2019, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) 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, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**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 2019-10, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Captain Pips Holdings, LLC 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 execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF JUNE, 2019.**

**THE CITY OF MARATHON, FLORIDA**



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**John Bartus, Mayor**

AYES: Zieg, Gonzalez, Senmartin, Cook, Bartus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



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Diane Clavier, City Clerk

(City Seal)

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



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David Migut, City Attorney

**EXHIBIT "A"**  
**CITY OF MARATHON, FLORIDA**  
**CONDITIONAL USE**  
**DEVELOPMENT ORDER # 2019-10**

**A DEVELOPMENT ORDER APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT FOR CAPTAIN PIPS HOLDINGS, LLC PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "CONDITIONAL USE PERMITS" FOR THE DEVELOPMENT OF A PROPERTY INTO MULTIFAMILY HOUSING, OFFICE AND RESTAURANT, AND MARINA; LOCATED AT 1470 OVERSEAS; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO LOT 2 AND ADJACENT PORTION OF STATE ROAD 4-A, PART OF GOVERNMENT LOT 2 IN REAR OF HANLEY'S INC, AND BLOCK 3 PART OF LOT 3 AND GOVERNMENT LOT 2 W R THOMPSON SUBDIVISION, SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00320350-000000, 00102790-000000, & 00102760-003000, NEAREST MILE MARKER 48.**

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**WHEREAS**, the Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures; and

**WHEREAS**, the City staff reviewed the Applicant's request for a Conditional Use Permit determining that the Applicant's project proposal is 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 20<sup>th</sup> day May, 2019, the Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearing") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, on the 11<sup>th</sup> day June, 2019, the City Council (the "Council") conducted a properly advertised public hearing (the "Public Hearing") 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, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**FINDINGS OF FACT:**

1. The Applicant has proposed the redevelopment of three (3) existing properties, such that an existing residential four-plex will remain and will build (six (6) market rate residential units and one (1) affordable residential unit in one multi-plex and, in addition, construct 3,200 square feet of commercial and accessory commercial structures (Site Plan Attached as Attachment 1; and
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

**CONDITIONS IMPOSED:**

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

Conditions of Approval

1. A Final Site Plan must be submitted showing the existing (to be retained) and proposed buildings meeting the required setbacks, the specific setbacks for the old building footprint, parking locations, and access drives and all civil engineering features; and
2. City approval of the connection to the City Wastewater Utility is required, including:
  - a. engineering drawings as needed,
  - b. projected wastewater flows, and

- c. any easements, connections, and projected flows for Casa Cayo.
3. City approval is required for the stormwater management system prior to Building Permit Approval.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal (attached as Exhibit A)
5. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
6. The final site plan must show that the dumpsters are screened.
7. All signs shall be reviewed and approved for compliance with the City of Marathon LDR's.
8. If the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
9. All mangroves associated with the northern portion of the parcel, north of the access easement to Casa Cayo, shall remain intact and may not be removed per the City's protection provisions for Mangrove Habitats.
10. For the Affordable unit
  - a. Dwelling units shall contain less than or equal to 1,800 square feet of habitable space.
  - b. Occupancy of affordable housing units is limited to those meeting the following income requirements:
    - i. Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
    - ii. Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
    - iii. Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
    - iv. Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
    - v. Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
  - c. For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;
  - d. The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
  - e. The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
  - f. If the dwelling units utilize affordable housing BPAS allocations, the requirements of

Subsection 107.06(c) shall also apply.

- g. Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
  - h. Two (2) side yards are required for stacked duplexes.
  - i. Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
  - j. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
  - k. 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.
  - l. 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.
  - m. 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.
11. Outdoor storage shall be incidental and subordinate to the primary use located on the property.
  12. Storage areas shall be located to the side or rear of the principal building and completely screened from view.
  13. Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration and/or mitigation. Conditions may also be applied in order to assure consistency with the Comprehensive Plan.
  14. Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
  15. It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the Planning Director or City Council as appropriate.
  16. A unity of title must be recorded with the Clerk of Courts, prior to permit issuance.
  17. Affordable housing deed restrictions must be recorded with the Clerk of Courts, prior to permit issuance.
  18. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
  19. The Applicant must obtain or transfer seven (7) housing units, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

#### **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 permit 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.

6/18/19  
Date

George Garrett  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 18 day of June, 2019.

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 Captain Pip's Holdings LLC, 1410 Overseas Highway, Marathon, FL 33050 this 18 day of June, 2019.

  
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Diane Clavier, City Clerk



# Attachment 1 Approved Site Plan

