

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-115**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY TENDER LOVING CARE GARDEN SUPPLY, INC., FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF A EIGHT MARKET RATE RESIDENTIAL SUBDIVISION ON DEVELOPED LOT, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 7537 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SECTION 12, TOWNSHIP 66, RANGE 32, TRACT A OF THE PARAISO SUBDIVISION IN KEY VACA, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00343500-000000.

WHEREAS, Tender Loving Care Garden Supply, Inc. (The “Applicant”) filed an application on August 1st, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed development of eight (8) market rate residential dwelling units on developed land; 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 18th day of November, 2019, 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 10th day of December, 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 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 2019-14, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Tender Loving Care Nursery, 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.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10TH DAY OF DECEMBER, 2019.

THE CITY OF MARATHON, FLORIDA



Steven Cook, Mayor

AYES: Zieg, Gonzalez, Senmartin, Bartus, Cook
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 # 2019-14**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY TENDER LOVING CARE GARDEN SUPPLY, INC., FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF A EIGHT MARKET RATE RESIDENTIAL SUBDIVISION ON DEVELOPED LOT, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 7537 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SECTION 12, TOWNSHIP 66, RANGE 32, TRACT A OF THE PARAISO SUBDIVISION IN KEY VACA, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00343500-000000.

WHEREAS, Tender Loving Care Garden Supply, Inc. (The “Applicant”), filed an Application on August 1, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed development of eight (8) market rate residential dwelling units on a developed lot; 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 13th day of November, 2019, the City of Marathon Technical Review Committee (the “TRC”) held 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, on the 18th day of November, 2019 and the 10th day of December, 2019, the Planning Commission (the “PC”) and 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, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the Council has duly considered the recommendation of the Planning Commission and the information and documentary evidence submitted by Tender Loving Care Garden Supply, Inc., and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The Applicant has proposed the additional development of eight (8) (four duplex buildings) market rate dwelling units on property with existing commercial development.
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. If the development 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.
2. Native vegetation shall remain intact.
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. Applicant must submit plans showing unobstructed passage of fire and other emergency equipment to necessary areas on public or public property or waterways.
5. A detailed lighting plan must be submitted before the project is permitted.
6. The development shall comply with refuse pick-up schedule.
7. City approval is required for the stormwater management system prior to Building Permit Approval.
8. A stormwater plan is required that provides the calculations for the retention of the 25 year/72 hour storm. Calculations require a routing analysis to insure the system can handle the runoff during the peak of the event.
9. Detail grading plan depicting existing and proposed elevations. All runoff is required to be diverted to the stormwater system with no off-site discharge
10. City must assess existing capacity and provide approval of the connection to the City Wastewater Utility will be required.
11. Applicant shall meet the minimum width and planting requirements per Table 107.70.2.
12. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
13. Plans must show 10' interior setback between residential units.
14. All conditions of the Fire Marshal must be met, including but not limited to; Palmer Drive needs to be improved with a hammerhead turnaround at the end of the street, a hydrant must be installed at the corner of Palmer Drive.
15. Applicant has agreed to make improvements to Palmer Drive to accommodate the new development.
16. The Applicant must obtain and transfer four (4) market rate residential allocations in excess of the four (4) units that the City has recognized as legally established on the property, 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 AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
17. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

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.

12/20/2019
Date

George Garrett
George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 23 day of December 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 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 9J-1, 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 Steve Hurley, Agent at 11400 Overseas Hwy #208, Marathon, FL 33050, this 23 day of Dec., 2019.



Diane Clavier, City Clerk