

**RESOLUTION 18-65**

**A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, MAKING FINDINGS; APPROVING A VARIANCE TO INCREASE THE HEIGHT OF A PRIVACY WALL OR FENCE FROM SIX (6) FEET TO EIGHT (8) FEET AT LOT 17, BLOCK 177, MARCO BEACH UNIT 7, PLAT BOOK 6, PAGES 44-62, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA (320 WEST FLAMINGO CIRCLE, MARCO ISLAND, FLORIDA 34145; PROVIDING FOR CONDITIONS OF APPROVAL; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 30-65, of the Marco Island Land Development Code provides standards and regulations for the review and approval of variance procedures; and

**WHEREAS**, Beverly Moyer, as Trustee of The Two Socks Trust of 2013, (“Owner/Developer”), has submitted Variance Petition V18-0024439 for Subject Property located at 320 West Flamingo Circle, Marco Island, Florida 34145; and

**WHEREAS**, the Subject Property is described as Lot 17, Block 177, Marco Beach Unit Seven, according to the plat thereof, as recorded in Plat Book 6, Pages 55-62, of the Public Records of Collier County, Florida, commonly referred to as 320 West Flamingo Circle (“Subject Property”); and.

**WHEREAS**, the Owner/Developer is requesting a variance to Section 30-86(o)(1)a., of the Marco Island Land Development Code, the height for fences or privacy walls within the required yards for RSF 4 for the Subject Property; and

**WHEREAS**, Section 30-86(o)1.a. of the LDC provides:

**Sec. 30-86. - Supplemental standards and regulations.**

\* \* \*

(o) *Fences and walls.*

(1) *Height.*

a. Fences or privacy walls placed within required yards shall be limited to six feet in height except that no fence placed between the front building line and the front property line of lots or parcels less than 1.25 acres in size shall be greater than four feet in height; and

**WHEREAS**, while there may be other single-family districts abutting commercial, there appear to be few that abut such an intense commercial use; and

**WHEREAS**, there special conditions and circumstances which do not result from the action of the Owner/Developer in that the tennis court in this vicinity in 2015 was replaced with parking; and

**WHEREAS**, the granting of this variance will not violate the City's Comprehensive Plan; and

**WHEREAS**, the City of Marco Island ("City") staff having Section 30-65 of the LDC and the application recommend approval of Variance Petition V18-002439; and

**WHEREAS**, the City's Planning Board reviewed and recommended approval of Variance Petition V18-002439 on August 3, 2018; and

**WHEREAS**, City Council does hereby approve Variance Petition V18-002439, subject to the conditions of approval as set forth in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:**

**SECTION 1. Recitals; Definitions.**

(a) The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, correct and incorporated by this reference.

(b) As used herein, unless the context or City Code of Ordinances requires to the contrary, the following terms will be defined as set forth below:

(1) "City" means the City of Marco Island, a Florida Municipal Corporation.

(2) "Development" is defined as set forth in Section 163.3164, Florida Statutes.

(3) "LDC" means the Land Development Code of the City.

(4) "Owner/Developer" means Beverly L. Moyer, as Trustee of The Two Socks Trust of 2013, its successors and assigns, as owners in fee simple of the Subject Property.

(5) "Subject Property" is the real property situate and lying in the State of Florida, County of Collier, City of Marco Island, to wit:

Lot 17, Block 177, MARCO BEACH UNIT 7 according to the Plat thereof, as recorded in Plat Book 6, Pages 55-62 of the Public Records of Collier County, Florida.

**SECTION 2. Adoption and Approval.** The Owner/Developer seeks a variance from Section 30-86(o)1. of the LDC which requires that no fence or wall shall exceed six-feet in height above grade. The Owner/Developer seeks a variance permitting a fence or wall eight-feet in height above grade. Practical difficulties to the Owner/Developer and the Subject Property having been shown, and all other requirements for the granting of a variance as specified in Section 30-65 of the LDC having been satisfied, Variance Petition V18-002439 with respect to the Subject Property

located at 320 West Flamingo Circle, Marco Island, Florida 34145, is hereby approved, subject to the conditions set forth in Section 3. below.

**SECTION 3. Conditions of Approval.** This Resolution relating to Variance Petition V18-002439 is hereby approved subject to the following conditions of approval:

(a) The Owner/Developer is required to re-submit construction documents to the City's Building Department for review and approval prior to the commencement of Development.

(b) The Owner/Developer is responsible for compliance with any private deed restriction approvals with Marco Island Civic Association.

(c) That issuance of this approval by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval if the Owner/Developer fails to obtain the required approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

(d) Only a single-family home (Dwelling Unit as defined in Section 30-10, Code of Ordinances of the City of Marco Island) can be built on the Subject Property, for as long as this Variance shall apply to this Property.

(e) No portion of the single-family home or Dwelling Unit can be segmented off and used as a separate rental unit.

(f) This Variance is valid only for so as long as the Subject Property is used as a single-family home (Dwelling unit, as defined in Section 30-10, Code of Ordinances of the City of Marco Island). This Variance shall terminate if the Property is used for anything other than a single-family home ("Dwelling" unit as defined in Section 30-10, Code of Ordinances of the City of Marco Island). If the use of the Subject Property or structure ceases, or is discontinued, for any reason other than as a single-family home/dwelling unit for a period of more than 180 consecutive days, this Variance shall expire and be deemed to have automatically terminated.

(g) Other Permits. Prior to the commencement of any actual construction or repair work or Development as may be authorized or permitted by the City, the Owner/Developer must obtain any and all approvals from federal and state governmental agencies, including but not limited to the Department of Environmental Protection and Florida Fish and Wildlife Conservation Commission, if applicable.

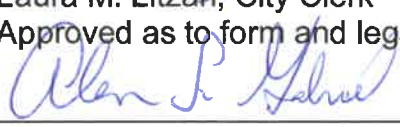
**SECTION 4. Effective Date.** This Resolution shall be effective immediately upon adoption by the City Council.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, on this 4<sup>th</sup> day of September 2018.

**ATTEST:**



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Laura M. Litzan, City Clerk  
Approved as to form and legal sufficiency:



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Alan L. Gabriel, City Attorney

**CITY OF MARCO ISLAND, FLORIDA**

By: 

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Jared Grifoni, Chairman