

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

RESOLUTION 18-93

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA APPROVING A VARIANCE TO ALLOW FOR A 18.6 FOOT ENCROACHMENT INTO THE 50 FOOT FRONT YARD SETBACK, A 10 FOOT ENCROACHMENT INTO THE SIDEYARD SETBACK AND A 22-FOOT ENCROACHMENT INTO THE 50 FOOT REAR YARD FOR THE ROOKERY BAY GOODLAND FIELD STATION AT 2561 SAN MARCO ROAD, MARCO ISLAND, FLORIDA; PROVIDING FOR FINDINGS AND CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO OBTAIN OTHER PERMITS; PROVIDING FOR FAILURE TO COMPLY WITH THIS DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 30-65, of the Land Development Code, provides standards and considerations for the grant of a variance; and

WHEREAS, the Owner submitted Variance Petition 18-004268 for the Subject Property located at 2561 San Marco Road, Marco Island, Florida 34145; and

WHEREAS, the City of Marco Island staff has reviewed and recommend approval of VP 18-004268; and

WHEREAS, based on Section 30-65(g)(3)a. of the LDC, the Planning Board finds that special circumstances exist at this location related to the location, size and characteristics of the land which is the size of the site abutting a waterway that consists primarily of Red Mangroves; and

WHEREAS, the special circumstances which exist at this location is the size of the site abutting a waterway that consists primarily of Red Mangrove; and

WHEREAS, the Red Mangrove is native to this area and are naturally occurring; and

WHEREAS, based on Section 30-65(g)(3)b. of the LDC, the Planning Board finds Red Mangroves as a special condition to this site that are naturally occurring and not the result of the Owner/Developer; and

WHEREAS, based on Section 30-65(g)(3)c. of the LDC, the Planning Board finds the literal interpretation of the LDC would result in the removal of Red Mangrove and there will be substantial setbacks even with the approval of this request; and

45 **WHEREAS**, based on Section 30-65(g)(3)d. of the LDC, the Planning Board finds
46 granting of this variance request is the minimum variance needed to make use of the
47 land and more specifically, the existing cleared area on the site; and
48

49 **WHEREAS**, based on Section 30-65(g)(3)f. of the LDC, the Planning Board finds
50 granting of this variance will be in harmony with the intent and purpose of the LDC since
51 other provisions of the LDC require preservation of trees. In addition, granting the
52 variance will enhance adjacent properties and neighborhoods by preservation of the Red
53 Mangroves; and
54

55 **WHEREAS**, based on Section 30-65(g)(3)g. of the LDC, the Planning Board finds
56 this site contains a substantial stand of Red Mangroves and is a natural area to be
57 preserved; and
58

59 **WHEREAS**, based on Section 30-65(g)(3)h. of the LDC, the Planning Board finds
60 that the granting of the variance will be consistent with the comprehensive plan; and
61

62 **WHEREAS**, the City’s Planning Board has reviewed and recommended approval
63 of the Variance Petition, VP 18-004268;
64

65 **WHEREAS**, the City Council finds that the Variance Petition meets the
66 requirements of the City of Marco Island Code of Ordinances and should be approved,
67 subject to the conditions of approval set forth in this Resolution.
68

69 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY**
70 **OF MARCO ISLAND, FLORIDA:**
71

72 **SECTION 1. Recitals; Definitions.**
73

74 (a) That the foregoing “WHEREAS” clauses are ratified and confirmed
75 as being true and correct and are made a specific part of this Resolution.
76

77 (b) That as used herein, unless the context or City Code of Ordinances
78 requires to the contrary, the following terms will be defined as set forth below:
79

80 (1) “City” means the City of Marco Island, a Florida Municipal
81 Corporation.
82

83 (2) “Development” is defined as set forth in Section 163.3164,
84 Florida Statutes.
85

86 (3) “Development Permit” is defined as set forth in Section
87 163.3164, Florida Statutes.
88
89

90 (4) "LDC" means the City's Land Development Code as set forth
91 in Chapter 30, Code of Ordinances of the City of Marco Island, Florida.

92
93 (5) "Owner/Developer" means the Trustees of the Internal
94 Improvement Fund of the State of Florida, their successors and assigns, as owners or
95 developers of the Subject Property.

96
97 (6) "Subject Property" means the following described parcel of
98 land, lying, situate and being in the State of Florida, County of Collier, City of Marco
99 Island, to-wit:

100
101 All of Parcel 1, Marco Beach Unit 20, according to the plat
102 thereof, as recorded in Plat Book 6-A, Pages 16-A through 18-
103 A, inclusive, Public Records of Collier County, Florida, less
104 that portion of the Goodland Marina Development Area further
105 described in Official Records Book 1125, Page 1237, at 1266,
106 Public Records of Collier County, Florida.

107
108 **SECTION 2. Adoption and Approval.** The Variance Petition 18-004268 granting
109 a variance to permit a front yard setback of 31.4 feet, a side yard setback of 20 feet and
110 a 28 foot rear yard setback for the Subject Property is hereby approved, subject to the
111 conditions in Section 3. of this Resolution. This approval is specific as to the Subject
112 Property

113
114 **SECTION 3. Development Permit Does Not Create a Vested right For Other**
115 **Development Permits.** That issuance of this approval by the City does not in any way
116 create any right on the part of the Owner/Developer to obtain a permit from a state or
117 federal agency and does not create any liability on the part of the City for issuance of the
118 approval if the Owner/Developer fails to obtain the requisite approvals or fulfill the
119 obligations imposed by a state or federal agency or undertakes actions that result in the
120 violation of state or federal law. All applicable state and federal permits must be obtained
121 before commencement of the Development. This condition is included pursuant to
122 Section 166.033, Florida Statutes, as amended.

123
124 **SECTION 4. Failure to Comply With Resolution.** That failure to adhere to the
125 Variance approval and the approval terms and conditions contained in this Resolution
126 shall be considered a violation of this Resolution and the City Code, and persons found
127 violating this Resolution shall be subject to the penalties prescribed by the City Code.
128 The Owner/Developer understands and acknowledges that it must comply with all other
129 applicable requirements of the City Code before they may commence construction or
130 operation, and that the foregoing approval in this Resolution may be revoked by the City
131 at any time upon a determination that the Owner/Developer is in non-compliance with the
132 City Code.

133
134 **SECTION 5. Effective Date.** This Resolution shall be effective immediately
135 upon adoption.

136 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 10th day of
137 December 2018.

138

139 **ATTEST:**

140

141

142 

142 Laura M. Litzan, City Clerk

143

144

145 Approved as to form and legal sufficiency:

146

147

148 

148 Alan L. Gabriel, City Attorney

CITY OF MARCO ISLAND, FLORIDA

By: 

Erik Brechnitz, Chairman