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RESOLUTION 18-94

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA APPROVING A VARIANCE TO ALLOW FOR AN ADDITIONAL SIX (6) FEET IN BUILDING HEIGHT FOR MARCO ISLAND ACADEMY CLASSROOM PORTION OF THE BUILDING LOCATED AT 2255 SAN MARCO ROAD, MARCO ISLAND, FLORIDA; PROVIDING FOR FINDINGS AND CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO COMPLY WITH THIS DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

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

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16 **WHEREAS**, the Owner submitted Variance Petition 18-004312 for the Subject
17 Property located at 2255 San Marco Road., Marco Island, Florida 34145; and

18
19 **WHEREAS**, the City of Marco Island staff has reviewed and recommend approval
20 of VP 18-004312; and

21
22 **WHEREAS**, based on Section 30-65(g)(3)c. of the LDC, the Planning Board finds
23 the literal interpretation of the LDC could pose an unnecessary hardship and practical
24 difficulty since the construction and footprint of the proposed building has been located to
25 accommodate the existing modular classrooms; and

26
27 **WHEREAS**, based on Section 30-65(g)(3)d. of the LDC, the Planning Board finds
28 the proposed additional six (6) feet is minimal and will accomplish the goals and needs
29 of Marco Island Academy and the City of Marco Island; and

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31 **WHEREAS**, based on Section 30-65(g)(3)e. of the LDC, the Planning Board finds
32 granting of the variance will not confer any special privilege on this applicant since this
33 same provision allows for an assisted living facility to build to a height of fifty (50) feet
34 with an approved conditional use; and

35
36 **WHEREAS**, based on Section 30-65(g)(3)f. of the LDC, the Planning Board finds
37 the granting of the variance will be in harmony with the intent and purpose of the LDC
38 and not be injurious to the neighborhood since it is only a portion of the building that is
39 proposed to be six (6) feet over the maximum height; and

40
41 **WHEREAS**, based on Section 30-65(g)(3)h. of the LDC, the Planning Board finds
42 that the granting of the variance will be consistent with the comprehensive plan; and .

43
44 **WHEREAS**, the City's Planning Board has reviewed and recommended approval
45 of the Variance Petition, VP 18-004312;
46

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

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

53
54 **SECTION 1. Recitals; Definitions.**

55
56 (a) That the foregoing “WHEREAS” clauses are ratified and confirmed
57 as being true and correct and are made a specific part of this Resolution.

58
59 (b) That as used herein, unless the context or City Code of Ordinances
60 requires to the contrary, the following terms will be defined as set forth below:

61
62 (1) “City” means the City of Marco Island, a Florida Municipal
63 Corporation.

64
65 (2) “Development” is defined as set forth in Section 163.3164,
66 Florida Statutes.

67
68 (3) “Development Permit” is defined as set forth in Section
69 163.3164, Florida Statutes.

70
71 (4) “LDC” means the City’s Land Development Code as set forth
72 in Chapter 30, Code of Ordinances of the City of Marco Island, Florida.

73
74 (5) “Owner/Developer” means Marco Island Academy – A Private
75 Charter High School, Inc., a Florida Not-for-Profit Corporation, its successors and
76 assigns.

77
78 (6) “Subject Property” means the following described parcel of
79 land, lying, situate and being in the State of Florida, County of Collier, City of Marco
80 Island, to-wit:

81
82 Lot 9 and 10, Block 427, a Replat of a portion of Marco Beach Unit 15,
83 according to the plat thereof, as recorded in Plat Book 8, Page 45, Public
84 Records of Collier County, Florida.

85
86 (Said Legal Description has neither been reviewed nor examined by the
87 City, Weiss Serota Helfman Cole & Bierman, P.L., Alan Gabriel, Esq., or
88 Paul R. Gougelman, Esq.)

89
90 (7) “Site Development Plan” means the 5-page document,
91 entitled Marco Island Academy prepared by LIS Engineering Land Surveying of Alva, FL,
92 without a job or project number dated October 16, 2018, with last date of revision being

93 October 16, 2018, including the Sheets C1 (Site Dimension Plan); C2 (Paving, Grading
94 & Drainage Plan); C3 (Master Utility Plan); C4 (Paving, Grading & Drainage Details); and
95 C5 (Cross-Sections). The foregoing approved documents are on file in the City's
96 Department of Growth Management.

97
98 **SECTION 2. Adoption and Approval.** The Variance Petition 18-001776 granting
99 a height variance to allow construction of a classroom building up to 36 feet on the Subject
100 Property as shown on the Site Development Plan is hereby approved. This approval is
101 specific as to the Subject Property
102

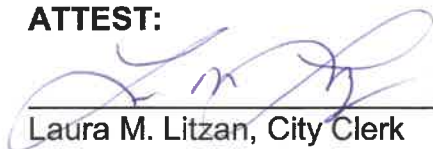
103 **SECTION 3. Development Permit Does Not Create a Vested right For Other**
104 **Development Permits.** That issuance of this approval by the City does not in any way
105 create any right on the part of the Owner/Developer to obtain a permit from a state or
106 federal agency and does not create any liability on the part of the City for issuance of the
107 approval if the Owner/Developer fails to obtain the requisite approvals or fulfill the
108 obligations imposed by a state or federal agency or undertakes actions that result in the
109 violation of state or federal law. All applicable state and federal permits must be obtained
110 before commencement of the Development. This condition is included pursuant to
111 Section 166.033, Florida Statutes, as amended.
112

113 **SECTION 4. Failure to Comply With Resolution.** That failure to adhere to the
114 Variance approval and the approval terms and conditions contained in this Resolution
115 shall be considered a violation of this Resolution and the City Code, and persons found
116 violating this Resolution shall be subject to the penalties prescribed by the City Code.
117 The Owner/Developer understands and acknowledges that it must comply with all other
118 applicable requirements of the City Code before they may commence construction or
119 operation, and that the foregoing approval in this Resolution may be revoked by the City
120 at any time upon a determination that the Owner/Developer is in non-compliance with the
121 City Code.
122

123 **SECTION 5. Effective Date.** This Resolution shall be effective immediately
124 upon adoption.
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126 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 10th
127 day of December 2018.
128

129 **ATTEST:**

130
131 
132 _____
133 Laura M. Litzan, City Clerk
134

CITY OF MARCO ISLAND, FLORIDA

135 By: 
136 _____
137 Erik Brechnitz, Chairman
138

135 Approved as to form and legal sufficiency:

136 
137 _____
138 Alan L. Gabriel, City Attorney

