

RESOLUTION 20-25

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING A VARIANCE PETITION FOR MCDONALD'S CORPORATION, A DELAWARE CORPORATION, LOCATED AT 899 NORTH COLLIER BOULEVARD, MARCO ISLAND; MAKING FINDINGS; PROVIDING DEFINITIONS; APPROVING THE VARIANCE TO EXISTING LANDSCAPE BUFFER WIDTHS; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO OBTAIN OTHER DEVELOPMENT PERMITS; PROVIDING FOR FAILURE TO COMPLY WITH APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article IX, Variance Procedures, Sections 30-65, of the Marco Island Land Development Code provides standards and regulations for the review and approval of variance petitions; and

WHEREAS, the Owner/Developer submitted a Site Development Plan for the Development of restaurant and drive-thru lane at 899 North Collier Boulevard, Marco Island, Florida, on the Subject Property; and

WHEREAS, the City of Marco Island staff has reviewed and recommended approval of VP-20-000140; and

WHEREAS, pursuant to Section 30-65(g)(3)(a) of the LDC, the Planning Board has determined that there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved; and

WHEREAS, pursuant to Section 30-65(g)(3)(b) of the LDC, the Planning Board has determined that there are special conditions and circumstances which do not result from the action of the applicant, such as pre-existing conditions relative to the property; and

WHEREAS, pursuant to Section 30-65(g)(3)(c) of the LDC, the Planning Board has determined that a literal interpretation of the provisions of the LDC works an unnecessary and undue hardship on the applicant or creates a practical difficulty on the applicant; and

WHEREAS, pursuant to Section 30-65(g)(3)(d) of the LDC, the Planning Board has determined that the variance, if granted, will be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare; and

WHEREAS, pursuant to Section 30-65(g)(3)(e) of the LDC, the Planning Board has determined that granting the variance requested will not confer on the petitioner any special privilege that is denied by the LDC to other lands, buildings, or structures in the same zoning district; and

WHEREAS, pursuant to Section 30-65(g)(3)(f) of the LDC, the Planning Board has determined that granting the variance will be in harmony with the intent and purpose of this zoning code and not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

WHEREAS, pursuant to Section 30-65(g)(3)(g) of the LDC, the Planning Board has determined that there are natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulations such as natural preserves, lakes, golf course, or similar circumstances; and

WHEREAS, pursuant to Section 30-65(g)(3)(h) of the LDC, the Planning Board has determined that the granting of the variance will be consistent with the Comprehensive Plan; and

WHEREAS, the City's Planning Board has reviewed and recommended approval of the variance petition as being in compliance with applicable LDC regulations on July 10, 2020, *accord Broward County v. G.B.V. International, Ltd., 787 So.2d 838 (Fla. 2001)*; and

WHEREAS, the City Council hereby adopts the findings of the Planning Board; and

WHEREAS, the City Council does hereby approve the variance petition VP-20-000140, subject to the conditions of approval 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) That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

(b) That as used herein, unless the context hereof, 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) "Development Permit" is defined as set forth in Section 163.3164, Florida Statutes.

(4) "Land Development Code" or "LDC" means the Land Development Code which consists of Chapter 30, Code of Ordinances of the City of Marco Island.

(5) "Owner/Developer" means McDonald's Corporation, a Delaware Corporation, Albert Lopez, and CPH, Inc., a Florida Corporation, and their respective successors and assigns, as owners or developers of the Subject Property.

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

Lots 2 and 3, Block 797, a Replat of Tract "A" Marco Beach Unit 6, according to the plat thereof, as recorded in Plat Book 12, Page 53-54, Public Records of Collier County, Florida.

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

SECTION 2. Adoption. The Owner/Developer's variance petition for the Subject Property is hereby approved. The variance petition is approved subject to the following conditions of approval set forth in Section 3. of this Resolution.

SECTION 3. Conditions of Approval. The Site Development Plan is approved subject to the following condition of approval:

- (1) Variance 20-000140 plan is consistent with SDP.
- (2) Expand the west buffer area to include the striped area which is propose for asphalt. This is unusable space that can be converted to landscape.
- (3) Revise the north buffer area hedge along Collier Blvd. to be maintained at a height of 6 feet (or 5' above the curb) instead of 3 feet, double row. Due to the elevation of the site in relation to the road, this hedge has little impact on blocking parked vehicles or the stack-up drive thru vehicles.
- (4) Revise the south buffer area duplicating the revised north buffer along Collier Blvd.

(5) Replace the concrete islands with pavers, providing aesthetic.

SECTION 4. Failure to Obtain Other Permits. 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 requisite 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 on the Subject Property. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

SECTION 5. Failure to Adhere to Resolution. That failure to adhere to the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code, including but not limited to the revocation of any of the approval(s) granted in this Resolution and any other approvals conditioned on this approval. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

SECTION 6. Effective Date. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 17th day of August 2020.

ATTEST:



Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By 

Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney