

**RESOLUTION 21-05**

**A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA APPROVING A SITE DEVELOPMENT PLAN AMENDMENT FOR BROWN NOLTEMEYER PHOENIX PLACE, LLC, ON ALL OF THE PLAT OF PARCEL NO. 3, PLAT BOOK 26, PAGES 53-54, PUBLIC RECORDS OF COLLIER COUNTY (103 SOUTH BARFIELD DRIVE, MARCO ISLAND), TOGETHER WITH AN EASEMENT FOR INGRESS/EGRESS AND PARKING; MAKING FINDINGS; PROVIDING DEFINITIONS; APPROVING THE SITE DEVELOPMENT PLAN AMENDMENT; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO COMPLY WITH APPROVAL; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article IX, Site Development and Site Development Plan Standards of the Marco Island Land Development Code provides standards and regulations for the review and approval of site improvement plans; and

**WHEREAS**, Brown Noltemeyer Phoenix Place, LLC, a Kentucky Limited Liability Company, submitted a Site Development Plan Amendment for the Development of a commercial structure on a lot with an area of approximately 0.42 acres at 103 South Barfield Drive, Marco Island, Florida 34145; and

**WHEREAS**, the City of Marco Island staff has reviewed and recommend approval of SDPA-20-000193; and

**WHEREAS**, the City's Planning Board reviewed and recommended approval of the Site Development Plan Amendment on December 4, 2020; and

**WHEREAS**, the City Council does hereby approve the Site Development Plan Amendment SDPA-20-000193, 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 Brown Noltemeyer Phoenix Place, LLC , a Kentucky Limited Liability company, its successors and assigns, as owners or developers of the Subject Property.

(6) "Site Development Plan Amendment" means: the 3-page document, including:

(a) Page A1.1 titled Entitlements Floor Plan, with a job number of 174020 and a Resubmission Date of 11-12-20 and the following two pages identifying the north, south, east, and west architectural elevations with a date of 11/12/20.

(7) "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:

All of Plat of Parcel No.3, according to the plat thereof, as recorded in Plat Book 26, Page 53, Public Records of Collier County, Florida. Said Plat is a replat of part of Tract A of the Plat of Marco Beach Unit Five, recorded in Plat Book 6, Pages 39 through 46, 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., Paul R. Gougelman, Esq., or David N. Tolces, but is extracted from the most recent deed of conveyance in Official Records Book 5709, Page 687, Public Records of Collier County, Florida.)

**SECTION 2. Adoption.** The Owner/Developer's Site Development Plan Amendment for the Subject Property is hereby approved. The Site Development Plan

Amendment is approved subject to the following condition of approval set forth in Section 3 of this Resolution.

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

- (a) A reduction in landscape plant material, reduction in areas of landscape or changes to the approved variances for landscape buffers is not part of any approval.
- (b) All other plans from the previous approval are not changed by this approval.
- (c) The awnings and the roof element over the drive through window shall be added back into the Site Development Plan Amendment.
- (d) All original conditions of approval are still in effect.

**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 4<sup>th</sup> day of January 2021.

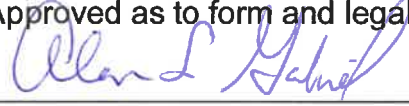
**ATTEST:**

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Jared Grifoni, Chairman

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Alan L. Gabriel, City Attorney