MINOR CONDITIONAL USE MN-13-01

RESOLUTION NO. 13-09-68

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY GARY AND JEANNE ZARET FOR AN AMENDMENT TO MINOR CONDITIONAL USE APPROVAL (MN-10-03) TO MODIFY THE EXISTING CONDITION PROHIBITING LIVE-ABOARD VESSELS BY PERMITTING A MAXIMUM OF SEVEN (7) LIVE-ABOARD VESSELS ON THE PROPERTY SUBJECT TO COMPLIANCE WITH CODE SECTION 30-1343 FOR A LEGAL NONCONFORMING MARINA ON PROPERTY LOCATED AT 85970 OVERSEAS HIGHWAY ON PLANTATION KEY, AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Gary and Jeanne Zaret (the “Owner”) is the owner of property located at 85970 Overseas Highway on Plantation Key, with Real Estate Number 00405510-000000 and as legally described in Exhibit “A” (the “Property”) within Islamorada, Village of Islands, Florida (the “Village”); and

WHEREAS, in July 2009, the Owner applied for Minor Conditional Use permit, MN-10-03, which was approved by the Director of Planning and Development Services (the “Director”) with conditions, including that the length of any vessel moored at the docking facility shall not obstruct more than twenty-five percent (25%) of the navigable portion of the manmade canal, and that live-aboard vessels of any kind shall be prohibited (the “Conditions”); and

WHEREAS, pursuant to Code Chapter 30, Article IV, Division 2, the Owner applied for
an amendment to MN-10-03 on May 31, 2013 in order to modify the Conditions by permitting a maximum of seven (7) live-aboard vessels on the Property subject to compliance with Code Section 30-1343, and recognizing the Property as a legal nonconforming marina (the “Request”); and

WHEREAS, the Village Development Review Committee (the “DRC”) reviewed the Request during a meeting held on June 18, 2013 and recommended approval of the Request with conditions to the Director; and

WHEREAS, the Director issued a Notice of Approval: Amendment to Minor Conditional Use MN-10-03 on June 20, 2013; and

WHEREAS, following the required public notice of the Director’s intent to approve the Request with conditions, two adjacent property owners requested a public hearing pursuant to Code Section 30-217(c)(1); and

WHEREAS, pursuant to the applicable provisions of the Code, the Director in his Council Communication dated September 12, 2013 recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, the Village Council considered the Request, the relevant support materials, the DRC's and the Director's recommendations, and public testimony given at a properly advertised public hearing held on September 12, 2013 (the “Hearing”).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true, correct, and incorporated herein by this reference.
Section 2. Findings of Fact. The Village Council, having considered the Request, the relevant support materials, the DRC's and Director's recommendations, and public testimony given at the Hearing, does hereby find and determine:

1. The Owner submitted the Request on May 31, 2013.
2. The Request consists of amended conditions of approval, as incorporated into the Notice of Approval attached as Exhibit “B”.
3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.
4. The Property is located within the Neighborhood Commercial (NC) Zoning District.
5. The Request complies with the standards of Code Section 30-216(d) for considering conditional uses.
6. The Request complies with the Concurrency Management and other applicable requirements of Code Chapter 30, Land Development Regulations (the “LDRs”).
7. The Request is consistent with the purposes, goals, objectives and policies of the Village Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

Section 3. Conclusions of Law. Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

1. The Request has been processed in accordance with the applicable provisions of the LDRs, and will not be detrimental to the community as a whole.
2. In rendering its decision as reflected in this Resolution, the Village Council has:
   (a) Acceded procedural due process;
(b) Observed the essential requirements of the law; and

(c) Supported its decision by substantial competent evidence of record.

3. The Request is hereby APPROVED, subject to the conditions imposed in Exhibit “B”.

Section 4. Conditions Imposed. Granting of the Request is subject to the conditions in Exhibit “B”. Pursuant to Section 166.033, Florida Statutes, all applicable state and federal permits must be obtained before commencement of the development. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a federal or state agency or undertakes actions that result in a violation of state or federal law.

Section 5. Conflicting Provisions. In the event the conditions or time limitations contained herein, and any conditions or time limitations of any subsequent development approval granted by the Village, or the LDRs are in conflict, the more restrictive shall apply.

Section 6. Violation of Conditions. The Owner understands and acknowledges that he or she must comply with all of the terms and conditions herein, and all other applicable requirements of the Village or other governmental agencies before he or she may commence construction or operation of any use authorized herein. In accordance with Code Section 30-224, this approval may be revoked by the Village Council upon a determination that the Owner or its successor or designee is in non-compliance with this Resolution or the Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed by the Code.
Section 7. Effective Date. This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this Resolution shall not be effective or acted upon by the Owner until forty-five (45) days following the rendition to the Florida Department of Economic Opportunity (the “DEO”), pursuant to Chapter 73C-44.003 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this Resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

Section 8. Term. This Development Order shall become null and void, with no further notice required by the Village, unless a complete building permit application for site preparation and building construction is submitted to the Village Building Official within the time frame specified in the LDRs. Commencement of development shall occur within three (3) years of the date of this Development Order unless a time extension is granted by the Director or the Village Council, pursuant to Code Section 30-225. If the Development Order is appealed under the LDRs or by the DEO, the above time limits shall be tolled until the appeals are resolved.

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The foregoing Resolution was offered by Councilwoman Deb Gillis, who moved for its adoption. This motion was seconded by Councilman Dave Purdo and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Ken Philipson       YES
Vice Mayor Ted Blackburn   YES
Councilman Mike Forster    YES
Councilman Deb Gillis      YES
Councilman Dave Purdo      YES

PASSED AND ADOPTED on this 12th day of September, 2013.

KEN PHILIPSON, MAYOR

ATTEST:

________________________
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY:

________________________
VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this ____ day of September, 2013.

Ariana S. Lawson, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Owner, via U.S. certified mail, return receipt requested, addressed to Gary & Jeanne Zaret, PO Box 1525, Islamorada, Florida 33036-1525, as agent for the Owner, this ____ day of September, 2013.

__________________________________________
Ariana S. Lawson, Village Clerk