MAJOR CONDITIONAL USE MJ-12-01

RESOLUTION NO. 13-12-91

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE REQUEST BY EQUITY DEVELOPMENT GROUP LLC FOR MAJOR CONDITIONAL USE APPROVAL FOR THE DEVELOPMENT OF A 27,956 SQUARE FOOT SUPERMARKET ON PROPERTY LOCATED NEAR MILE MARKER 83.2 BAYSIDE AT THE CORNER OF OVERSEAS HIGHWAY AND RUSSELL STREET ON UPPER MATECUMBE KEY WITH REAL ESTATE NUMBERS 00094940-000000, 00094950-000000, 00094920-000000, 00094930-000000 AND 00094960-000000, AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE HIGHWAY COMMERCIAL (HC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Carla Bahn, Debora Heald and Kulisky Broadcasting, Inc (the “Owners”) are the owners of property located at approximately Mile Marker 83.2 bayside at the corner of Overseas Highway and Russell Street on Upper Matecumbe Key with Real Estate numbers 00094940-000000, 00094950-000000, 00094920-000000, 00094930-000000 and 00094960-000000, and as legally described in Exhibit “A” (the “Property”); and

WHEREAS, Equity Development Group, LLC, as the contract purchaser of the Property (the “Applicant), has applied to the Village for Major Conditional Use approval for the development of a supermarket and accessory uses and structures on the Property; and

WHEREAS, pursuant to Section 30-696(d)(1) of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”), any permitted use greater than 5,000 square feet except restaurants within the Highway Commercial (HC) Zoning District shall be
reviewed as a Major Conditional Use; and

**WHEREAS,** pursuant to Code Chapter 30, Article IV, Division 2, the Applicant has applied for Major Conditional Use Approval (MJ-12-01) for the development of a 27,956-square-foot supermarket and accessory uses and structures (the “Request”); and

**WHEREAS,** the Village Development Review Committee (the “DRC”) reviewed the Request during a meeting held on September 20, 2013 and recommended approval of the Request with conditions to the Director of Planning and Development Services (the “Director”); and

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

**WHEREAS,** the Village Council has considered the Request, the relevant support materials, the DRC’s and the Director's recommendations, public testimony and evidence given at a properly advertised public hearing held on December 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, public testimony and evidence given at the hearing, does hereby find and determine:

1. The Applicant submitted the Request on July 5, 2012.
2. The Request consists of a Site Plan attached as Exhibit “B” depicting the Request’s configuration, layout and level of impacts.

3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.

4. The Property is located within the Highway Commercial (HC) 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 Village Comprehensive Plan and 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) Accorded procedural due process;
   
   (b) Observed the essential requirements of the law; and
   
   (c) Supported its decision by competent substantial evidence of record.

3. The Request is hereby APPROVED, subject to the conditions imposed below.

**Section 4. Conditions Imposed.** Granting of the Request is subject to the following conditions:
1. The quantities of vegetation as shown on L-1 is required and cannot be reduced. Species shall only be substituted with prior approval of the Village Biologist.

2. Pursuant to Code Section 30-215(d)(20)(n), the Applicant shall install be responsible for installing improvements to the Florida Keys Overseas Heritage Trail multi-use path directly in front of the Property including installation of standard "Share the Road" or "Bike Route" signage, pavement markings, striping, colored asphalt and widening to a minimum standard width where sufficient right-of-way and clearance exists, at their expense. All improvements shall be completed prior to issuance of any certificate of occupancy associated with the Request.

3. The Applicant shall obtain all FDOT permits necessary to construct the required Overseas Highway improvements, which include the modification of existing curb cuts to provide one point of ingress and egress to the site and the closure of the access point to the Fish Bowl property, a dedicated southbound one way right turn deceleration lane providing access to the site entrance; and new northbound and southbound bus stop pull outs, as depicted on the site plan, prior to issuance of any building permit. All improvements shall be completed by the Applicant at its sole expense. All improvements shall be accepted by FDOT prior to the issuance of a certificate of occupancy.

4. An approved and fully executed Affordable Housing Agreement, pursuant to Code Section 30-638(b)(7), shall be required prior to issuance of any building permits. The payment by the Applicant to the Village in the amount of a $16,080.08 in-lieu fee as the necessary and required mitigation prior to issuance of any building permit.

5. Prior to issuance of a Building Permit, the Applicant shall submit a fully-executed and effective Cross Access Agreement, or other similar or comparable legal instrument, to the Village providing for vehicular and pedestrian access and ingress and egress access over and
upon the Access Areas or portions of the Fish Bowl as depicted in Exhibit “____” of the Cross Access Agreement, including but not limited to entrances, exits, driveways, roadways, parking areas, walkways, and travel lanes, for vehicular and pedestrian access and ingress and egress between the Parcels, to and from the abutting public street or right-of-way (Overseas Highway), and shall be reviewed and approved in form by the Village Attorney.

6. The Applicant shall obtain 2,831 square feet of nonresidential floor area from the Building Permit Allocation System or transfer of development rights prior to issuance of any building permit.

7. 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.

8. Collection of the trash compacter shall occur no less than once every seven days.

9. A chainlink fence, constructed to the maximum height permissible by Code but not to exceed eight feet shall be installed between Block Lot 14 and Block Lot 13 of Coral View, Plat Book 3 Page 105, at the Applicant’s expense.

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 Owners/Applicant understand and acknowledge 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 Owners/Applicant 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.

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

Mayor Ted Blackburn  YES
Vice Mayor Deb Gillis  YES
Councilman Mike Forster  YES
Councilman Ken Philipson  NO
Councilman Dave Purdo  YES

PASSED AND ADOPTED THIS 12th DAY OF DECEMBER, 2013.

ATTEST:

TED BLACKBURN, MAYOR

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 13th day of December 2013.

Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Applicant, via U.S. certified mail, return receipt requested, addressed to Bernard Danzansky, Equity Development Group, LLC as Agent for Public Super Markets, Inc., 6420 Congress Avenue, #1800, Boca Raton, FL 33487, this 7th day of Dec., 2013.

__________________________
Villlage Clerk

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AND

Lot 3 on the Map of subdivision of a portion of Government Lot 1, Section 27, and a portion of Government Lot 2, Section 28, Township 63 South, Range 37 East, more particularly described as follows:

Lot 3, from a galvanized iron pipe at the Northeast corner of the Townsite of Islamorada, according to the Plat filed in Monroe County, Public Records, run Northeasterly on the Northwesterly right-of-way line of the Overseas Highway (Formerly the Florida East Coast Railway) a distance of 1580.5 feet to the Point of Beginning of the Tract of land hereinafter described; thence run Northwesterly at right angles to said Northwesterly right-of-way line of the Overseas Highway a distance of 200 feet; thence run Northeasterly parallel to said Northwesterly right-of-way line of the Overseas Highway a distance of 100 feet; thence run Southeasterly at right angles to the last described course a distance of 200 feet to the said Northwesterly right-of-way line; thence run Southwesterly along aforesaid right-of-way line a distance of 100 feet to the Point of Beginning.

AND

Lot 4: From a galvanized iron pipe at the Northeast corner of the Townsite of Islamorada according to the Plat filed in Monroe County, Public Records, run Northeasterly on the Northwesterly right-of-way line of the Overseas Highway, (Formerly the Florida East Coast Railway) a distance of 1680.5 feet to the Point of Beginning of the Tract of land hereinafter described; thence run Northwesterly at right angles to said Northwesterly right-of-way line of the Overseas Highway a distance of 200 feet; thence run Northeasterly parallel to said Northwesterly right-of-way line of the Overseas Highway a distance of 100 feet; thence run Southeasterly at right angles to the last described course a distance of 200 feet to the said Northwesterly right-of-way line; thence Southwesterly along aforesaid right-of-way line a distance of 100 feet to the Point of Beginning.

AND
PARCEL 1
Lot 6: From a galvanized pipe at the Northeast corner of the Townsite of Islamorada according to the plat filed in the Public Records of Monroe County, Florida, run Northwesterly on the Northwesterly right of way line of the Overseas Highway (formerly the Florida East Coast Railway) a distance of 1780.5 feet to the Point of Beginning of the tract hereinafter described; thence run Northwesterly at right angles to the said Northwesterly right of way line of the Overseas Highway a distance of 200 feet; thence run Northwesterly, parallel to said Northwesterly right of way line of the Overseas Highway, a distance of 100 feet; thence run Southwesterly at right angles to the last described course a distance of 200 feet to the said Northwesterly right of way line; thence Southwesterly along aforesaid right of way line a distance of 100 feet to the Point of Beginning.

PARCEL 2
A part of Government Lot 2, in Section 28, Township 63 South, Range 37 East, in Upper Matecumbe Key, Monroe County, Florida, more particularly described as follows: From a concrete monument on the Northwesterly right of way line of the Overseas Highway, and at the Northeast corner of the Townsite of Islamorada as per plat recorded in Plat Book 1, Page 48 public records of Monroe County, Florida, run Northwesterly on said Northwesterly right of way line, a distance of 1780.5 feet; thence Northwesterly at right angles to the said Northwesterly right of way line a distance of 200.0 feet to the Point of Beginning of the tract hereinafter described; thence continue Northwesterly on the last described course, a distance of 112.6 feet plus to the North line of Government Lot 2; thence East on said North line of Government Lot 2, a distance of 138.1 feet; thence Southwesterly with a deflection angle of 47 degrees 44 minutes to the right, a distance of 21.8 feet; thence Southwesterly parallel with said Northwesterly right of way line, a distance of 100.0 feet to the Point of Beginning.

PARCEL 3
Lot 6: From a galvanized pipe at the Northeast corner of the Townsite of Islamorada, according to the plat filed in Monroe County public records, run Northwesterly on the Northwesterly right of way line of the Overseas Highway (formerly the Florida East Coast Railway) a distance of 1860.6 feet to the Point of Beginning of the tract hereinafter described; thence run Northwesterly at right angles to the said Northwesterly right of way line of the Overseas Highway a distance of 200 feet; thence run Northwesterly, parallel to said Northwesterly right of way line of the Overseas Highway a distance of 110 feet; thence run Southwesterly at right angles to the last described course a distance of 200 feet to the said Northwesterly right of way line; thence Southwesterly along aforesaid right of way line a distance of 110 feet to the Point of Beginning.

PARCEL 4
Description of parcel Northwesterly of Earl L. Knowles property, a part of Government Lot 1, Section 27, and Government Lot 2 in Section 28, all in Township 63 South, Range 37 East on Upper Matecumbe Key, Monroe County, Florida more particularly described as follows:
From a concrete monument on the Northwesterly right of way line of the Overseas Highway, and at the Northeast corner of the Townsite of Islamorada as per plat recorded in Plat Book 2, Page 59 public records of Monroe County, Florida, run Northwesterly on said Northwesterly right of way line, a distance of 1860.5 feet; thence Northwesterly at right angles to the said Northwesterly right of way line a distance of 200 feet to the Point of Beginning of the tract hereinafter described; thence continue Northwesterly on last described course, a distance of 21.8 feet to the North line of Government Lot 2, a distance of 30.5 feet to the Northeast corner of Government Lot 2 in Section 28-37; thence North on the West line of Government Lot 1 in Section 27-37 a distance of 127.9 feet; thence Southwesterly at right angles to the said Northwesterly right of way line of the Overseas Highway a distance of 98.9 feet; thence Southwesterly parallel with said Northwesterly right of way line, a distance of 110.0 feet to the Point of Beginning.