MINOR CONDITIONAL USE MN-13-05

RESOLUTION NO. 14-03-22

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY WEBSTER RICHARD C ESTATE FOR MINOR CONDITIONAL USE APPROVAL FOR THE CONSTRUCTION OF A PUMP STATION AND ACCESSORY STRUCTURES ON PROPERTY LOCATED AT 74060 OVERSEAS HIGHWAY WITH REAL ESTATE NUMBERS 00392150-000000 AND 00392160-000000 ON LOWER MATECUMBE KEY WITHIN THE COMMERCIAL FISHING (CF) ZONING DISTRICT; AS LEGALLY DESCRIBED AS BLOCK A, LOTS 1, 2 AND 2A OF WHITE MARLIN BEACH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Richard C Webster Estate (the “Applicant”) is the owner of property located at 74060 Overseas Highway with Real Estate Numbers 00392150-000000 and 00392160-000000 Lower Matecumbe Key, and as legally described as Block A, Lots 1, 2 and 2A of White Marlin Beach, (the “Property”) within Islamorada, Village of Islands, Florida (the “Village”); and

WHEREAS, pursuant to Chapter 30, Article IV, Division 2 of the Village’s Code of Ordinances (the “Code”), the Applicant has applied for Minor Conditional Use Approval (MN-13-05) for the development of a pump station and accessory structures (the “Request”); and

WHEREAS, the Village intends to purchase the Property for the development of a pump station and accessory structures thereupon; and

WHEREAS, pursuant to Section 30-217 of the Village Code, applications for Minor Conditional Use must be considered by the Village Council for approval, approval with conditions or denial based on the standards set forth in Village’s Land Development Regulations (LDRs); and
WHEREAS, pursuant to Section 30-694(c)(7) of the Village Code, any infrastructure and municipal utility facilities within the Commercial Fishing (CF) Zoning District shall be reviewed as a Minor Conditional Use; and

WHEREAS, on March 10, 2014, the Village’s Development Review Committee (the “DRC”) reviewed the Request and recommended approval of the Request with conditions to the Director of Planning and Development Services (the “Director”); and

WHEREAS, on March 5, 2014, the Director issued a Notice of Public Hearing for Minor Conditional Use MN-13-05; and

WHEREAS, the Director in her Council Communication dated March 20, 2014 has recommended to the Village Council that the Request be approved with conditions pursuant to the applicable provisions of the Code; 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 March 20, 2014 (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 Applicant submitted the Request on February 13, 2014.

2. The Request consists of a Site Plan attached as Exhibit “A” 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 Commercial Fishing (CF) Zoning District.

5. The Request complies with the standards of Code Section 30-217(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) 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 Landscape Plan as shown on Sheets L-1 and L-4 shall be modified and approved by the Village Biologist to incorporate the transplantation and mitigation plan for all vegetation removed during development and to include the following information: 

Page 3 of 8
a. Required bufferyards as shown on Sheet C-4;
   i. The 25-foot-wide double-density Class D bufferyard required along the western property line shall consist of 32 canopy trees, 16 understory and 130 shrubs.
   ii. The 25-foot-wide Class D bufferyard required along Overseas Highway shall consist of 4 canopy trees, 2 understory trees and 19 shrubs.
   iii. The 5-foot-wide Class A bufferyard required along the northern property line shall be fulfilled by utilizing the existing mangrove fringe located on Lot 2A a provided a restrictive covenant running with the land is filed containing a conservation easement for the width of the fringe [Ref. Code Section 30-816(c)].
   iv. The 5-foot-wide Class B zoning district boundary bufferyard required along the eastern property line shall consist of 8 canopy trees, 3 understory trees and 26 shrubs.

b. Tree Replacement table;

c. Detailed plant material list; and

d. Foundation Landscaping.

2. All outdoor lighting fixtures shall be fully shielded in a way to direct all light towards the earth’s surface and away from reflective surfaces. Light fixture must be placed in such a manner that no light-emitting surface is visible from any residential area or public/private roadway, walkway, trail or other public way when viewed at ground level.” Lighting shall comply with sea turtle nesting provisions.

3. A final stormwater management plan shall be submitted to the Director and approved by the Village’s Stormwater Engineer prior to the issuance of any building permit.
4. The size of the parcel and associated calculations titled “Site Data” on Sheet C-7 shall be revised to include the abandoned right-of-way between Lots 2 and 2A, prior to building permit issuance.

5. 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 that 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 Section 30-224 of the Village Code, this approval may be revoked by the Village Council upon a determination that the Owner/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.
WHEREAS, pursuant to Section 30-694(c)(7) of the Village Code, any infrastructure
and municipal utility facilities within the Commercial Fishing (CF) Zoning District shall be
reviewed as a Minor Conditional Use; and

WHEREAS, on March 10, 2014, the Village’s Development Review Committee (the
“DRC”) reviewed the Request and recommended approval of the Request with conditions to the
Director of Planning and Development Services (the “Director”); and

WHEREAS, on March 5, 2014, the Director issued a Notice of Public Hearing for Minor
Conditional Use MN-13-05; and

WHEREAS, the Director in her Council Communication dated March 20, 2014 has
recommended to the Village Council that the Request be approved with conditions pursuant to
the applicable provisions of the Code; 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 March 20, 2014 (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 Applicant submitted the Request on February 13, 2014.

2. The Request consists of a Site Plan attached as Exhibit “A” depicting the
Request’s configuration, layout and level of impacts.
Section 7. Effective Date. This Resolution shall not take effect until after 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.

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 Councilman Ken Philipson, who moved for its adoption. This motion was seconded by Councilman Mike Forster, and upon being put to a vote, the vote was as follows:

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

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

PASSED AND ADOPTED THIS 20TH DAY OF MARCH, 2014.

ATTEST:

TED BLACKBURN, MAYOR

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

ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 21st day of March, 2014.

Synthia Lankford, 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 Richard C. Webster Estate, C/O Nutter, McClennen & Fish, LLP, 155 Seaport Blvd., Attn: Gordon Stevenson, Jr., Boston, MA 02210, as agent for the Owner, this 24th day of March, 2014.

[Signature]

Synthia Lankford, Village Clerk