MAJOR CONDITIONAL USE MJ-14-03

RESOLUTION NO. 14-11-85

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY INTERSTATE COMMERCE OF FLORIDA, LLC. FOR MAJOR CONDITIONAL USE APPROVAL FOR THE DEVELOPMENT OF A 13,478 SQUARE FOOT RESTAURANT ON PROPERTY LOCATED AT 83413 OVERSEAS HIGHWAY OCEANSIDE ON UPPER MATECUMBE KEY WITH REAL ESTATE NUMBER 00403980-000100, AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE TOURIST COMMERCIAL (TC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Interstate Commerce of Florida, Inc. (the “Owner”) is the owner of property located at 83413 Overseas Highway on Upper Matecumbe Key with Real Estate number 00403980-000100 and as legally described in Exhibit “A” (the “Property”); and

WHEREAS, Island Construction Management, Inc., as the Agent (the “Applicant) for the Owners has applied to the Village for Major Conditional Use approval for the development of a restaurant on the Property; and

WHEREAS, pursuant to Code Chapter 30, Article IV, Division 2, the Applicant has applied for Major Conditional Use Approval (MJ-14-03) for the development of a 13,478 square foot restaurant (the “Request”); and

WHEREAS, during a meeting held on September 24, 2014, the Village 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, pursuant to the applicable provisions of the Code, the Director in her Council Communication dated November 6, 2014, has recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, at a properly advertised public hearing held on November 6, 2014 (the “hearing”), the Village Council has considered the Request, the relevant support materials, the DRC’s and the Director's recommendations, public testimony and evidence presented at 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 August 11, 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 Tourist Commercial (TC) 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 Applicant shall install a Class ‘G’ Bufferyard along the shoreline pursuant to Section 30-815. Appropriate signage shall be installed clearly distinguishing “Compact Car Only” spaces, as approved by the Director of Planning and the Fire Chief.

2. The Applicant shall satisfy all of the conditions imposed by the Islamorada Fire Chief prior to issuance of a Certificate of Occupancy.

3. The Applicant shall submit a Water Quality Monitoring Program that is approved by the Village and the State of Florida Department of Economic Opportunity. The Applicant
shall bear the expense of the Water Quality Monitoring Program. The elevated walkway shall be guttered.

4. Pursuant to Code Section 30-215(d)(20)(n), the Applicant shall install improvements to the Florida Keys Overseas Heritage Trail multi-use path directly in front of the Property consisting of including installation of standard "Share the Road" or "Bike Route" signage, pavement markings, striping, colored asphalt and widening to at least the 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. The Applicant shall be responsible for installing one-time improvements to the Florida Keys Overseas Heritage Trail multi-use path.

5. 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 two points of ingress, as depicted on the site plan. A Letter of Intent from FDOT shall be required 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.

6. Pursuant to Section 166.033, Florida Statutes, any 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 provisions shall apply.

Section 6. Violation of Conditions. The Owners/Applicant understand and acknowledge that they must comply with all of the terms and conditions herein, and with all other applicable requirements of the Village or other governmental agencies before commencing 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
Village Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Village Code and persons found violating the conditions shall be subject to the penalties prescribed by the Village 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 Councilman Dave Purdo, who moved for its adoption. This motion was seconded by Vice Mayor Deb Gillis, 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  YES
Councilman Dave Purdo  YES

PASSED AND ADOPTED THIS 6TH DAY OF NOVEMBER, 2014.


TED BLACKBURN, MAYOR

ATTEST:

KELLY TOTH, 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 7TH day of November, 2014.

Kelly Toth, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Agent for the Property Owners, via U.S. certified mail, return receipt requested, addressed to Don Horton, Island Construction Management, Inc. as Agent for Interstate Commerce of Florida, LLC, 144 Apache Street, Tavernier, FL 33070, this 7 day of Nov, 2014.

[Signature]
Kelly Toth, Village Clerk
Parcel 1

A Parcel, being a portion of TRACT 1, of the "Russell Estates, according to the Plat thereof as recorded in Plat Book 2, Page 14 and 15 of the Public Records of MONROE COUNTY, FLORIDA; and portions of those certain parcels as described T.I.I.F. Deed No. 21079 and No. 21919, Recorded in Official Records Book 298, Page 48 thru 50, of the Public Records of MONROE COUNTY, FLORIDA; all lying in Section 27, Township 63 South, Range 37 East; Upper Matecumbe Key, MONROE COUNTY, FLORIDA; and being more particularly described as follows:

Commence at the most Westerly corner of said Tract I, hence N48°08'30"E along the Northwesterly boundary line of said Tract I, also being the Southeasterly Right-of-Way line of State Road No. 5 (116.00 feet Southeasterly of, as measured at right angles from the centerline of the former F.E.C. Railway Right-of-Way) for 368.00 feet to the POINT OF BEGINNING of the following described parcel; hence S41°51'30"E for 437.60 feet more or less to an intersection with the Southeasterly boundary line of the parcel described in said T.I.I.F. Deed No. 21919; hence N36°04'30"E along said Southeasterly boundary line for 454.00 feet; hence N41°51'30"W along the Northeasterly boundary line of the parcel described in said T.I.I.F. Deed No. 21919 for 258.66 feet to the Southeasterly Right-of-Way line of State Road No. 5 (200.00 feet - 260.00 feet - Deed) Southeasterly of, as measured at right angles from the centerline of the former F.E.C Railway Right-of-Way; thence S48°08'30"W along the Northwesterly boundary line of the parcel described in said T.I.I.F. Deed No. 21919 for 182.00 feet more or less to an intersection with the former Mean High Tide Line of the ATLANTIC OCEAN as shown on said Plat of the "Russell Estates", thence meander Northerly along said former Mean High Tide line for 150.00 feet more or less, to said Northwesterly boundary line of said Tract I, thence S48°08'30"W along Northwesterly line of said Tract I for 368.00 feet more or less to the POINT OF BEGINNING; together with all improvements located thereof and personal property located thereon.

TOGETHER WITH

Parcel 2

A Parcel of filled submerged land lying in State Road No. 5 Right-of-Way, being a portion of the Northwest quarter (NW1/4) of Section 27, Township 63 South, Range 37 East on Upper Matecumbe Key, MONROE COUNTY, FLORIDA, and being more particularly described by "Metes and Bounds" as follows:

Commence at the intersection of the West line of said Section 27 and the Southeasterly Right-of-Way being 116.00 feet Southeasterly of, as
measured at right angles and parallel to the centerline of the former FLORIDA EAST COAST (F.E.C.) Railway Right-of-Way; thence N48°08′30″E along said Southeasterly Right-of-Way line and along the Northeasterly prolongation thereof for 2363.35 feet to the POINT OF BEGINNING of the following described Parcel No. 2; thence S41°51′30″E for 84.00 feet to an intersection with the Southeasterly Right-of-Way line of State Road No. 5, said Southeasterly Right-of-Way line being 200.00 feet Southeasterly of, as measured at right angles and parallel to said centerline of the former F.E.C. Railway Right-of-Way, said intersection being also the most Northwesterly corner of that certain Parcel of submerged land previously conveyed by Trustees of the Internal Improvement Trust Fund Deed No. 21919; thence S48°08′30″W along said Southeasterly Right-of-Way line for 182.00 feet more or less to an intersection with the former Mean High Tide Line as depicted on drawing prepared by G.A. Crashaw, Florida Registered Land Surveyor, Certificate of Registration No. 198, dated August 25th, 1960; thence Northeasterly along said former Mean High Tide Line for 135.00 feet more or less to an intersection with the aforementioned Southeasterly Right-of-Way line of the OVERSEAS HIGHWAY, said Southeasterly Right-of-Way line being 116.00 feet Southeasterly of as measured at right angles and parallel to said centerline of the former F.E.C. Railway Right-of-Way; thence N48°08′30″E along the Northeasterly prolongation of said Southeasterly Right-of-Way line for 76.00 feet more or less to the POINT OF BEGINNING.

AND

Parcel 3

A Parcel of filled submerged land lying in the STATE ROAD No. 5 Right-of-Way being a portion of the Northwest Quarter (NW1/4) of Section 27, Township 63 South, Range 37 East on Upper Matecumbe Key, MONROE COUNTY, FLORIDA and being more particularly described by "Metes and Bounds" as follows: Commence at the intersection of the West line of said Section 27 and the Southeasterly Right-of-Way line of the OVERSEAS HIGHWAY, said Southeasterly Right-of-Way line being 116.00 feet Southeasterly of as measured at right angles and parallel to the centerline of the former FLORIDA EAST COAST (F.E.C.) Railway Right-of-Way line, thence N48°08′30″E along said Southeasterly Right-of-Way line, and along the Northeasterly prolongation thereof for 2363.35 feet to the POINT OF BEGINNING of the following described Parcel No. 3, thence S41°51′30″E for 84.00 feet to an intersection with the Southeasterly Right-of-Way line of said STATE ROAD No. 5, said Southeasterly Right-of-Way line being 200.00 feet Southeasterly of, as measured at right angles and parallel to said centerline of the former F.E.C. Railway Right-of-Way, said intersection being also the most
Northwesterly corner of that certain Parcel of submerged land previously conveyed by Trustee of the Internal Improvement Trust Fund Deed No. 21919; thence N48°08'30"E along said Southeasterly Right-of-Way line for 20.00 feet more or less to an intersection with the Northerly face of an existing concrete seawall; thence Northwesterly along said Northerly face for 45.00 feet more or less to an intersection with the existing boulder rip-rap shoreline; thence Northwesterly along said shoreline for 70.00 feet more or less; thence Northeasternly along said boulder rip-rap and face of shoreline escarpment 115.00 feet more or less to an intersection with the aforementioned Northeasternly prolongation of the Southeasterly Right-of-Way line of said OVERSEAS HIGHWAY, said Northeasternly prolongation being 116.00 feet Southeasterly of, as measured at right angles and parallel to said centerline of the former F.E.C. Railway; thence S48°08'30"W along said parallel line for 190.00 feet more or less to the POINT OF BEGINNING.

MONMOUTH COUNTY
OFFICIAL RECORDS