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**RESOLUTION 24-46**

**A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA  
CITY COUNCIL DENYING A FLOODPLAIN VARIANCE  
PETITION FOR KRISTEN EVANS LIVING TRUST, FOR  
PROPERTY LOCATED AT 230 POLYNESIA COURT, MARCO  
ISLAND; MAKING FINDINGS; PROVIDING DEFINITIONS;  
DENYING THE VARIANCE TO ALLOW THE MACHINERY  
SERVICING THE STRUCTURE TO REMAIN AT THE CURRENT  
ELEVATION OF 8.7', BELOW THE REQUIRED ELEVATION OF  
9' NAVD; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 26-37, of the City of Marco Island ("City") Code of Ordinances provides for the City Council to consider applications for variances from the strict application of the flood resistant construction requirements of the City's ordinance provisions contained in Chapter 26, "Floods," and provides standards and regulations for the review and approval of variance petitions; and

**WHEREAS**, Kevin Williams Construction, Inc. (CBC 1254223) on behalf of their client Kristen Evans Living Trust, the owner of the property located at 230 Polynesia Ct, Marco Island (the "Subject Property"), submitted a request for a variance for the finished floor elevation requirements contained in Chapter 26, Section 26-97(a)(5) of the City of Marco Island Code of Ordinances.

**WHEREAS**, the City of Marco Island staff has reviewed the variance request, and based upon the criteria contained in Section 26-97(a)(5), of the City's Code of Ordinances, recommends denial of the floodplain variance request to allow the machinery servicing the structure at the Subject Property to remain at the current elevation of 8.7 feet, below the required elevation of 9 feet NAVD.; and

**WHEREAS**, based on the testimony and evidence presented, pursuant to Section 26-97(a)(5) of the City's Code of Ordinances, the City Council finds that there are no special conditions and circumstances existing which are peculiar to the location, size, and characteristics of the land, structure or building involved in the variance request; and

**WHEREAS**, based on testimony and evidence presented, pursuant to Section 26-97(a)(5) of the City's Code of Ordinances, the City Council finds that the failure to grant the variance would not result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; and

**WHEREAS**, pursuant to Section 26-97(a)(5) of the City's Code of Ordinances, the City Council finds that the granting of the variance will not result in increased flood heights, the danger arises when the equipment becomes debris and inoperable and

**WHEREAS**, pursuant to Section 26-97(a)(5) of the City's Code of Ordinances, the City Council finds that the granting of the variance is not the minimum basis for protection; and

48       **WHEREAS**, the City Council has reviewed the application for the variance, and found the  
49 application is not the minimum necessary for safety.

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51       **WHEREAS**, the City Council, based on the findings contained herein, does hereby deny  
52 the Variance Petition to allow the machinery servicing the structure to remain at the current  
53 elevation of 8.7 feet, below the required elevation of 9 feet NAVD.

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55       **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**  
56 **MARCO ISLAND, FLORIDA AS FOLLOWS:**

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58       **SECTION 1. Recitals; Definitions**

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60       (a) That the foregoing “WHEREAS” clauses are ratified and confirmed as being true  
61 and correct and are made a specific part of this Resolution.

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63       (b) That as used herein, unless the context hereof, or City Code of Ordinances,  
64 requires to the contrary, the following terms will be defined as set forth below:

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66       (1) “City” means the City of Marco Island, a Florida municipal corporation.

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68       (2) “Owner” means Kristen Evans Living Trust, and their respective successors and  
69 assigns as owners of the Subject Property.

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71       (3) “Subject Property” means the following described parcel of land, lying, situate  
72 and being in the State of Florida, County of Collier, City of Marco Island, to-wit:

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74               Lot 31 Block 47 Marco Beach Unit 2, according to the plat thereof,  
75 as recorded in Plat Book 6 Page 25, Public Records, Collier County,  
76 Florida

77  
78               (Said Legal Description has neither been reviewed nor examined  
79 by the City, Weiss Serota Helfman Cole & Bierman, P.L., Alan  
80 Gabriel, Esq. or David N. Tolces, Esq.)

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82       **SECTION 2. Adoption.** The City Council considered all of the technical evaluations, all  
83 relevant factors, all applicable provisions of the Florida Building Code, as well as the factors  
84 included in Section 26-37(f) of the City’s Code of Ordinances, and the testimony and evidence  
85 presented at the August 19, 2024 public hearing. Based upon the evaluation of all the applicable  
86 factors, the City Council finds that the requested variance does not meet the requirements  
87 contained in Section 26-97(a)(5), of the City of Marco Island Code of Ordinances, hereby denies  
88 the Owner’s variance petition for the Subject Property.

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90       **SECTION 3. Findings.** The variance petition is denied, based upon the following  
91 findings:  
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1. That the contractor has not provided good and sufficient cause that the unique characteristics of the size, configuration or topography limits the ability of elevation.
2. That danger arises when the equipment becomes debris from the force of the flood waters.
3. That danger arises when the machinery servicing the structure becomes submerged in the flood waters making it inoperable. Inoperable machinery makes the house inhabitable.
4. Machinery that is below the required elevation has a greater chance of being submerged in flood water rendering it inoperable.
5. The Subject Property is residential property, and there are no public services provided.
6. There is an available alternative to the requested variance which would be to elevate the machinery.
7. Proposed (new) development would require the machinery to be located at no less than 10' NAVD.
8. The 100-year storm elevation at the time of construction was 7' NAVD. The design flood elevation for Marco Island, in this area is 9' NAVD. For comparison the flood risk increased from the 2012 maps to the 2024 from AE 7' NAVD to 10' NAVD.
9. The denial of the variance will not result in any adverse effects to public property.
10. The contractor has not provided good and sufficient cause that the unique characteristics of the size, configuration or topography limits the ability of elevation.
11. Failure to grant the variance would not result in exceptional hardship.
12. Machinery below the required elevation could create a nuisance and become debris. Machinery submerged in water can make the equipment not operable, having an adverse impact to the livability of structure.
13. Other contractors who perform work in the City of Marco Island have demonstrated the capability to elevate all necessary machinery servicing residential structures in similar situations.

**SECTION 4. Effective Date.** That this Resolution shall take effect immediately upon denial.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF MARCO ISLAND, FLORIDA**

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

**ATTEST:**

By: \_\_\_\_\_

142       Joan Taylor, City Clerk

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144   Reviewed for legal sufficiency:

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147   By: \_\_\_\_\_

148       Alan L Gabriel, City Attorney