

Sherry Hoyo

From: Zach Lombardo <zlombardo@wpl-legal.com>
Sent: Tuesday, March 19, 2019 2:18 PM
To: Daniel Smith; Mary Holden
Cc: Craig Woodward; Alan Gabriel; David Harden
Subject: RE: Judd - SEAW - 17-01509

Dan,

Thank you for your email.

I am not sure we are discussing the same thing. Our clients are interested in amending the land development code. It is my understanding this process is governed by section 30-62, City of Marco Island Code of Ordinances. Can you please point me in the direction of the code section that requires land development code amendment applications regarding cut-ins to be made in conjunction with an application for a nautical garage? I am unaware of such a section. Can you also let me know what you are referring to when you say an application for a nautical garage? Do you mean a building permit?

It may be easier to discuss this over the phone or in person. Do you have any availability this week to do that?

I appreciate any guidance you can provide.

From: Daniel Smith <dsmith@cityofmarcoisland.com>
Sent: Tuesday, March 19, 2019 12:38 PM
To: Zach Lombardo <zlombardo@wpl-legal.com>; Mary Holden <mholden@cityofmarcoisland.com>
Cc: Craig Woodward <cwoodward@wpl-legal.com>; Alan Gabriel <agabriel@wsh-law.com>; David Harden <dharden@cityofmarcoisland.com>
Subject: RE: Judd - SEAW - 17-01509

Mr. Lombardo,

After meeting with the City Manager, David Harden, and with his review of the LDC, cut-ins are only allowed in conjunction with an application for a Nautical Garage. I believe Ms. Holden has communicated to you that the appropriate process would be a variance application with applicable fees. I have discussed this with the City Manager and he concurs.

Dan

Daniel James Smith, AICP
Director of Community Affairs
City of Marco Island
50 Bald Eagle Drive, Marco Island, Florida 34145
(239) 389-5021 dsmith@cityofmarcoisland.com

From: Zach Lombardo <zlombardo@wpl-legal.com>
Sent: Tuesday, March 19, 2019 11:23 AM
To: Mary Holden <mholden@cityofmarcoisland.com>; Daniel Smith <dsmith@cityofmarcoisland.com>; David Harden <dharden@cityofmarcoisland.com>; Guillermo Polanco <gpolanco@cityofmarcoisland.com>

Cc: Craig Woodward <cwoodward@wpl-legal.com>

Subject: FW: Judd - SEAW - 17-01509

Mary,

This email is in response to your email of March 11, 2019. Please see below where Mr. Daniel Smith waived the fees in regard to this application. Accordingly, is there anything else that is outstanding, other than fees, that renders our clients' application incomplete?

From: Daniel Smith <dsmith@cityofmarcoisland.com>

Sent: Wednesday, June 27, 2018 5:18 PM

To: Craig Woodward <cwoodward@wpl-legal.com>

Cc: Guillermo Polanco <gpolanco@cityofmarcoisland.com>; Sherry Hoyo <shoyo@cityofmarcoisland.com>; Lina Upham <LUpham@cityofmarcoisland.com>

Subject: RE: READ ASAP - Judd - SEAW - 17-01509

My understanding is that you were going to apply for a change to the LDC to allow for these Cut-ins and we were to waive the application fees.

Have you applied?

Dan

Daniel James Smith, AICP

Director of Community Affairs

City of Marco Island

50 Bald Eagle Drive, Marco Island, Florida 34145

(239) 389-5021 dsmith@cityofmarcoisland.com

From: Craig Woodward <cwoodward@wpl-legal.com>

Sent: Wednesday, June 27, 2018 4:27 PM

To: Daniel Smith <dsmith@cityofmarcoisland.com>

Subject: READ ASAP - Judd - SEAW - 17-01509

Importance: High

Dan – I met at City Hall on April 5, with the contractor Roy Lansdown, Gil, Jason, Lina and you regarding my client who has a DEP/Corps permit open and previously had a City permit (see number above) to build a seawall with a cut in. I have posted prior emails below for your reference. Later that day, after the meeting, I sent this email to my client to recap what was said:

“ Roy and I met with Gil Polanco, acting City Manager, Dan Smith, Planning Director and Jason Smalley and Lina Upham in Zoning. We discussed your seawall situation. They agreed, at the city's expense, to amend their code to allow cut-in slips into lots such as yours (they have the list of those I provided) that have such restricted waterfrontage and boat mooring areas. I will need to supply to them some help to define these types of lots and some language on what is allowed (the cut-ins have to meet side setbacks so they don't

interfere with neighbors, etc.) Dan said he could start this in May after working on a project he is now involved in and have it going by June/July."

As you can see from below it was my understanding that Ben at LaRue was going to be handling this matter. I talked to him yesterday and he said that he had not received from you anything on this matter. I told him I could shoot off a package via email to him with the details on it. First I said I would contact you to be sure that he is to still handle this matter or if there is a change to your doing it in house. Ben said he could review it next week if I sent it to him. As you can see from my notes of our meeting, the agreement was that it was to be "going by June/July" – and now it is almost July.

Please advise that I can proceed by sending to Ben the information he needs to move forward on this. Thanks, Craig

From: Craig Woodward
Sent: Monday, May 21, 2018 3:21 PM
To: Ben@larueplanning.com
Subject: FW: Zoning Applications & Processing specific matters
Importance: High

Ben – good talking to you just now. See my email from last month to Dan Smith below. He replied to me and said that all of the matters in this email, except the first one (CPUD and text amendment for ALF/ILF) is being handled by your firm. I have highlighted in red info that may help you find the files. Please advise which ones you have and don't have and I can send you info to keep things moving. The most time critical file right now is #2 listed below - Maxime Club. Thanks, Craig

Craig R. Woodward, Esquire
Board Certified Real Estate Attorney

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From: Craig Woodward
Sent: Friday, April 27, 2018 3:42 PM
To: Daniel Smith <dsmith@cityofmarcoisland.com>; Guillermo Polanco <gpolanco@cityofmarcoisland.com>
Subject: Zoning Applications & Processing specific matters
Importance: High

Dan & Gil, thank you both for taking my calls yesterday and today. I am glad that you see the need to retain outside help to try to get things caught up. I don't know Jim LaRue but have heard good things about him. As I mentioned to you I have some time pressing matters that would be good to assign to him namely:

- the CPUD for Marco Island Hospital and Barrett Square Holdings, as well as our text amendment change, also submitted, on group housing allowing ALF/ ILF uses. That is to be scheduled for the 6/1 planning board meeting. (according to Dan this is being retained by him and his office for processing)
- The zoning code change allowing variances from riparian lines for docks (drafted by the City Attorney) and needed by Maxime Club for their rebuild of their docks. Turrell, Hall & Associates are also involved in this application.
- The zoning code change allowing certain shoulder lots that don't own submerged water rights to be able to put in a cut-in slip. This is pursuant to the meeting that I and the builder recently had with both of you. The client's name is Judd. The City was supposed to initiate this procedure as it impacts many lots on Marco and they issued a permit to Mr. Judd for his seawall construction and fill removal from his property after he also obtained a DEP permit allowing it.
- The zoning code change, that I worked on with Bob Mulhere, regarding smaller strip centers and parking, which came up regarding Joe the Barber. (Joe Mirabilio) Again, the city is to initiate the change using the draft ordinance language supplied by Bob Mulhere and myself.

If you are alright with the above being handled by Jim, please arrange for him to call me and I can arrange a meeting for him with me and any other consultants (i.e. land planners) involved so he is quickly brought up to speed. Thanks and have a good weekend. Craig

Craig R. Woodward, Esquire
Board Certified Real Estate Attorney

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From: Craig Woodward

Sent: Tuesday, April 03, 2018 4:35 PM

To: Guillermo Polanco <gpolanco@cityofmarcoisland.com>; Daniel Smith <dsmith@cityofmarcoisland.com>; 'Jason Smalley' <JSmalley@cityofmarcoisland.com>

Subject: Our Thursday 2 pm meeting at City Hall on Judd

Gil & Dan & Jason – we have a meeting set from 2 - 3 pm on Thursday at City Hall to discuss the seawall problem on Judd (see my email to you of 3/29/18 at 5:21 pm). I talked to Jason yesterday and suggested that since we are all together I discuss a problem with the parking in the center where the Sand Bar is located. I think that the Judd meeting should last 30 or less minutes and we have time to discuss this second problem during the same meeting. See below and attached for the details on that as well. I look forward to seeing you on Thursday. Thanks, Craig

From: Craig Woodward
Sent: Thursday, March 29, 2018 5:21 PM
To: Guillermo Polanco <gpolanco@cityofmarcoisland.com>; Daniel Smith <dsmith@cityofmarcoisland.com>; Jason Smalley <JSmalley@cityofmarcoisland.com>
Cc: Carol <ccienkus@comcast.net>; panoramahomeservices@gmail.com
Subject: READ ASAP - Judd - Lot 1, Block 361 Marco - 672 Crescent Street

Gil, Dan & Jason - I would like to set up a meeting to discuss the current status regarding my clients (Judd/Cienkus) and review their desire to be able to soon replace their seawall so that they can finally start construction.

Similar to others, my clients had all permits in hand (city and state), and paid for and had seawall slabs poured so that they could replace their seawall before building a new home on the island. The city stopped their job, and Code Enforcement later issued a citation since the slabs were still on the lot with the city refusing to release their existing seawall permit or grant an extension of time to allow for the slabs to remain there, so the clients had their slabs removed from the lot and are storing them off-site. Frankly a lot of money was spent in reliance of City permits.

I have had communication with Jason (see my email of 2/13 below which further outlines the history) and in my last conversation with him he said that he could not find any prohibition in the Marco code against creating a "cut-in" slip and absence that, it seems to me my clients should be able to proceed with their permit. I had a law clerk spend the time to view an island map to locate all similar lots on Marco, which are similar to my client's lot: meaning a shoulder lot (a lot with one side partially on water and partially abutting an adjacent residential lot), and also lots not containing any submerged portion of the canal (the platted line is not in the canal). While there are numerous shoulder lots at the end of most canals most include 10' of water as part of the lot, we could find only 126 shoulder lots with no ownership of water. My clients' lot is one of those.

A lot, at the end of a canal without submerged portion of a canal owned has significant problems in being able to moor a boat due to the tight riparian setbacks. I have attached a listing of the 126 lots found, of those a large number used the cut-in slip approach to solve their problem. In fact 57 have slips, or a little over 45% of these lots have them. This represents almost all of the cut-in slips on the island, which cut-ins were added to solve the problems these specific lots have. There is no logical reason to prohibit them as it is not adverse to anyone and a property owner should have the right to determine how he wants to use his private property. Marco is a waterfront community.

I would like to have a meeting with the three of you ASAP to move this matter forward. I am available pretty much anytime next week (5/2 – 5/6). Gil, can you have your office set this up? Tell me what works for you and I will be there. Thanks, Craig

From: Craig Woodward
Sent: Tuesday, February 13, 2018 3:36 PM
To: 'Jason Smalley' <JSmalley@cityofmarcoisland.com>
Subject: Judd - Lot 1, Block 361 Marco - 672 Crescent Street

Jason – when we talked on 1/31/18 you said you would look into this file and see what code sections apply. Just to outline the facts:

1. This is a shoulder lot with like 52 feet on the water with side setback of 7.5' on each side and unlike most shoulder lots does not have the property line 10' out in the water so the protrusion amount significantly limits the length of the boat.
2. In order to get a regular sized boat into the property the Judds had the engineering done and applications prepared and the FDEP issued a permit to remove soil and allow a cut in a boat slip into the property – Permit 0350072-001 was issued by the DEP dated 2/27/17 and expires 2/17/22. That was supplied to the City of Marco.
3. The City issued Permit SEAW-17-010509 to replace the seawall that said “Remove Replace Seawall with Dredging” signed by Raul Perez on March 30, 2017. Based on this permit the slabs for the seawall and for the cut-in were poured on the lot and allowed to cure.
4. Before installation of the seawall the City issued a Stop Work order – saying verbally that the “proper people at the city did not sign off and a cut-in is not allowed.”
5. Code Enforcement issued a Notice of Code Violation 18-0041 stating that a new temporary use permit had to be obtained or the material from the site removed.
6. My clients chose to remove the seawall slabs as I believe that their contractor indicated that they would not be able to obtain an extension of time for the seawall construction to be done, with the city refusing to honor the permit previously issued nor issuing a new one for the seawall design they wanted.

Bottom line is that my clients dealt with the City of Marco in good faith and want to get their seawall replaced and usable before they start to build a house on the lot.

So I appreciate your assistance. You indicated that you could research this further to find out: 1) what the prohibition is on a cut-out they desire so that they have usable waterfrontage, 2) if there is a prohibition on cut-outs, what does my client need to do with the City get his lot treated like all other shoulder lots on Marco and create the cut-out? 3) Any other suggestions to remedy the situation?

I look forward to hearing from you on this. Thanks, Craig

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