

1 CITY OF MARCO ISLAND

2
3 RESOLUTION NO. 20-xx

4
5 A RESOLUTION OF THE CITY OF MARCO ISLAND,
6 FLORIDA, DENYING A VARIANCE TO ALLOW FOR AN A
7 FOUR FOOT BY 89 FOOT ENCROACHMENT INTO A
8 LANDSCAPE BUFFER AT LOT 1, BLOCK 17, HIDEAWEAY
9 BEACH, PLAT BOOK 12, PAGE 84, PUBLIC RECORDS OF
10 COLLIER COUNTY, FLORIDA; PROVIDNG FOR
11 FINDINGS; AND PROVIDING AN EFFECTIVE DATE.
12

13 WHEREAS, Section 30-6(g)(3), of the Land Development Code, provides
14 standards and considerations for the grant of a variance; and
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16 WHEREAS, the Owner/Developer submitted Variance Petition VP 19-001040
17 seeking a 4-foot deep by 89-foot long variance, as depicted on the Site Plan, to encroach
18 into the conservation landscape buffer on the rear of the Subject Property located on
19 Hideaway Circle South., Marco Island, Florida 34145; and
20

21 WHEREAS, the City of Marco Island professional planning and zoning staff has
22 reviewed and recommended denial of VP 19-001040; and
23

24 WHEREAS, pursuant to Section 30-65(g)(3)a. of the LDC, the staff found that
25 “[t]here are no special conditions or circumstances that exist on this property or the
26 proposed building, pool and deck. The structures in question have not been built. The
27 lot on which the encroachment is proposed is substantially similar to the other lots upon
28 which the landscape buffer is located. Granting this variance would essentially be re-
29 writing the PUD requirements” of the Hideaway Beach PUD; and
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31 WHEREAS, pursuant to Section 30-65(g)(3)b. of the LDC, the staff found that
32 “[t]There are no special pre-existing conditions or circumstances on the site. The need
33 for the variance is based on the design of the home and results from the applicant’s
34 action. Essentially, the need for the variance is self-created. In 1957, the Florida
35 Supreme Court in Josephson v. Autrey, 96 So.2d 784 (Fla. 1957), ruled that self-created
36 hardships do not form a basis for demonstrating an unnecessary hardship; and
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38 WHEREAS, pursuant to Section 30-65(g)(3)c. of the LDC, the staff found that
39 “[t]he need for the variance to encroach into the landscape buffer is not based on an
40 unnecessary or undue hardship or a practical difficulties on the applicant. The structure,
41 pool and deck have not been built and can be accommodated within the building
42 setbacks; and
43

44 WHEREAS, pursuant to Section 30-65(g)(3)d. of the LDC, the staff found that
45 “[d]enial of the variance will not prevent the reasonable use of the land. A single-family
46 home, pool and decking can be built without the variance”; and

47 **WHEREAS**, pursuant to Section 30-65(g)(3)e. of the LDC, the staff found that
48 “[g]ranting the variance *will* confer a special privilege by allowing the encroachment into
49 the thirty-foot landscape buffer within the Hideaway PUD development”; and
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51 **WHEREAS**, pursuant to Section 30-65(g)(3)f. of the LDC, the professional City
52 planning and zoning staff found that “[g]ranting the variance to encroach into the thirty-
53 foot landscape buffer would not be in harmony with the intent and purpose of the buffer.
54 In addition, the buffer was put into placed for the benefit of both the residential PUD lots,
55 *and* the abutting neighbors along Colonial Avenue”; and
56

57 **WHEREAS**, pursuant to Section 30-65(g)(3)g. of the LDC, the professional City
58 planning and zoning staff found that “[t]here are no natural or physical conditions that
59 ameliorate the goals and objections of the regulations:’ and
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61 **WHEREAS**, pursuant to Section 30-65(g)(3)h. of the LDC, based on the findings
62 of professional planning and zoning staff, the grant of the variance would not be consistent
63 with the City’s Comprehensive Plan, and in particular Policy 1.7.1 of the Future Land Use
64 Element, which states:
65

66 The City will continue to enforce adopted architectural and
67 site design regulations in the adopted Land Development
68 Code (LDC).
69

70 The staff found that “PUD’s are regulated by the LDC. As such, the PUD site design
71 regulations should be consistent with the Comprehensive plan and enforced
72 accordingly.”; and
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74 **WHEREAS**, the Planning Board has recommended denial of the variance based
75 upon the findings and recommendations of the City’s professional planning and zoning
76 staff; and
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78 **WHEREAS**, the City Council adopts the findings and determinations of the City’s
79 professional planning and zoning staff and the City’s Planning Board.
80

81 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY**
82 **OF MARCO ISLAND, FLORIDA:**
83

84 **SECTION 1. Recitals; Definitions.**
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86 (a) That the foregoing “WHEREAS” clauses are ratified and confirmed
87 as being true and correct and are made a specific part of this Resolution.
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89 (b) That as used herein, unless the context or City Code of Ordinances
90 requires to the contrary, the following terms will be defined as set forth below:
91

(1) "City" means the City of Marco Island, a Florida Municipal Corporation.

(2) "Development" is defined as set forth in Section 163.3164, Florida Statutes.

(3) "Development Permit" is defined as set forth in Section 163.3164, Florida Statutes.

(4) "LDC" means the City's Land Development Code as set forth in Chapter 30, Code of Ordinances of the City of Marco Island, Florida.

(5) "Owner/Developer" means Raymond A. Jean, as trustee or his successor in trust of the Raymond A. Jean Revocable Living Trust dated June 16, 1975, and as amended February 21, 2003, his successors and assigns, as owners or developers of the Subject Property.

(6) "Site Plan" means the one page Site Plan entitled Jean Hideaway Beach Residence, prepared by Herscoe Hajjar Architects, LLC, of Naples, FL, without a project number dated 10/21/19, without revision.

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

Lot 1, Block 17, Hideaway Beach, according to the plat thereof, as recorded in Plat Book 12, Pages 80-85, inclusive, Public Records of Collier County, Florida..

SECTION 2. Adoption and Denial. The Variance Petition VP 19-001040 seeking a 4-foot deep by 89-foot long variance, as depicted on the Site Plan, to encroach into the conservation landscape buffer on the rear of the Subject Property is hereby denied. Consistent with Section 166.033(3), Florida Statutes, the reason for the denial of the requested development permit is the failure to comply with the standards set forth in Section 30-65(g)(3)a., b. c., d., e., f., and g., Code of Ordinance of the City of Marco Island, Florida. This order is specific as to the Subject Property

SECTION 3. Development Permit Does Not Create a Vested right For Other Development Permits. That issuance of this final order by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance or denial of the variance, if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable local, state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033(5), Florida Statutes, as amended.

SECTION 4. Effective Date. This Resolution shall be effective immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this ____ day of _____, 2020.

CITY OF MARCO ISLAND, FLORIDA

By: _____
Erik Brechnitz, Chairman

ATTEST:

By: _____
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

By: _____
Alan L Gabriel, City Attorney