

RESOLUTION 20-04

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING A VARIANCE TO ALLOW FOR A FOUR FOOT DEEP ENCROACHMENT INTO A LANDSCAPE BUFFER AT LOT 1, BLOCK 17, HIDEAWAY BEACH, PLAT BOOK 12, PAGE 84, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; PROVIDING FOR FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Owner/Developer submitted 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 Landscape Buffer on the rear of the Subject Property located on Hideaway Circle South., Marco Island, Florida 34145; and

WHEREAS, the City of Marco Island professional planning and zoning staff and the Planning Board have reviewed VP 19-001040; and

WHEREAS, at the Planning Board public hearing, the Owner/Developer orally modified the VP 19-001040 to provide for a reduction in the length of the variance, to limit the height of the pool screen cage, and to provide for an opaque landscape hedge adjacent to the rear property line which will be at least 6-foot in height; and

WHEREAS, pursuant to Section 30-6(g)(4), of the Land Development Code, the

Conditions and safeguards. In recommending approval of any variance, the planning board may recommend appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC; and

WHEREAS, the Planning Board recommended approval of the variance consistent with the oral modification made by the Owner/Developer and with the conditions set forth in this Resolution; and

WHEREAS, Section 30-65(g)(3), of the Land Development Code, provides standards and considerations for the grant of a variance; and

WHEREAS, pursuant to Section 30-65(g)(3)a. of the LDC, the City Council finds “[t]hat there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved” based on the shape of the proposed home, the shape of the lot, and the existence of the Landscape Buffer; and

WHEREAS, pursuant to Section 30-65(g)(3)b. of the LDC, the City Council finds “[t]hat there are special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request” based on the lot shape and the existence of a 30-foot deep Landscape Buffer along the entire rear portion of the lot; and

WHEREAS, pursuant to Section 30-65(g)(3)c. of the LDC, the City Council finds that based on the existence of the Landscape Buffer, “[t]hat a literal interpretation of the provisions of this LDC creates a practical difficulty on the” Owner/Developer; and

WHEREAS, pursuant to Section 30-65(g)(3)d. of the LDC, the City Council finds that based on the Owner/Developer’s oral modification of the variance application and reduction in the length of the cantilevered portion of the proposed single-family dwelling “[t]hat the variance, if granted, will be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare”; and

WHEREAS, pursuant to Section 30-65(g)(3)e. of the LDC, the City Council finds “[t]hat granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC to other lands, buildings, or structures in the same zoning district”; and

WHEREAS, pursuant to Section 30-65(g)(3)f. of the LDC, the City Council finds “[t]hat granting the variance will be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare” given the Landscape Buffer plantings within the Landscape Buffer will be planted and the buffer improved by the Owner/Developer, and that the overwhelming portion of the Landscape Buffer will be preserved by the Owner/Developer; and

WHEREAS, pursuant to Section 30-65(g)(3)g. of the LDC, the City Council finds that “[t]here are natural or physical conditions that ameliorate the goals and objections of the regulations”, given the existence of the Landscape Buffer, its size, and its proximity to the proposed single-family dwelling; and

WHEREAS, pursuant to Section 30-65(g)(3)h. of the LDC, the Planning Board and City Council have found that the grant of the variance is consistent with the City’s Comprehensive Plan; and

WHEREAS, the City Council hereby approves this Resolution finding it in the best interests of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Recitals; Definitions.

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

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

(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) "Landscape Buffer" means the buffer described in the approved Planned Unit Development (PUD) for Hideaway Beach and the 30-foot wide "Landscape Buffer easement" on the rear of the Subject Property, as shown on the plat recorded in Plat Book 12, Page 84, Public Records of Collier County, Florida.

(6) "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.

(7) "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.

(8) "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 Approval. The Variance Petition VP 19-001040 as orally modified and agreed to by the Owner/Developer at the Planning Board meeting, and subject to the conditions set forth in Section 3. of this Resolution, seeking a 4-foot deep variance to encroach into the Landscape Buffer on the rear of the Subject Property

is hereby approved. The variance area prior to oral modification by the Owner/Developer at the Planning Board hearing and prior to application of the conditions in Section 3. of the Resolution is depicted on the Site Plan. This order is specific as to the Subject Property.

SECTION 3. Conditions of Approval. Variance Petition VP 19-001040 is approved subject to the following conditions of approval:

(a) The overall length of the four-foot wide cantilevered structural overhang (also shown as the variance area) along the rear of the proposed single-family dwelling as shown on the Site Plan shall be reduced by twenty feet (20') and will be approximately sixty-five to sixty-nine feet +/- in length;

(b) The proposed screened-in pool cage will be reduced from two-stories to one story in height; and

(c) An opaque landscape hedge (with or without trees) no less than six-feet (6') in height shall be planted and continuously maintained by the Owner/Developer adjacent to the rear property line for the entire length of the rear property line. To provide for ease of maintenance of the opaque barrier by the Owner/Developer the barrier need not be contiguous with the rear property of the Subject Property, but may be set back up to four feet (4') from the rear property line of the Subject Property.

SECTION 4. Development Permit does not grant a vested right. That issuance of this approval 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 of the approval 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 state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

SECTION 5. Failure to Comply With Resolution. That failure to adhere to the Variance approval and the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before they may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

SECTION 6. Effective Date. This Resolution shall be effective immediately upon adoption.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA

Laura M. Litzan, City Clerk

By: _____
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:

Alan L. Gabriel, City Attorney