

RESOLUTION 20-27

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, DENYING A VARIANCE FOR A FLAGPOLE OVER TWENTY-FIVE (25) FEET; MAKING FINDINGS; DENYING THE VARIANCE FOR THE SUBJECT PROPERTY, LOCATED AT 1390 JAMAICA ROAD, MARCO ISLAND, FLORIDA; PROVIDING FINDINGS OF FACT; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Owner submitted Variance Petition 20-000129 for the Subject Property located at 1390 Jamaica Road, Marco Island, Florida 34145 on the Subject Property; and

WHEREAS, the City of Marco Island staff has reviewed and recommend denial of VP 20-000129; and

WHEREAS, the Owner seeks a height variance of five (5) feet to allow the erection of a thirty (30) foot high above grade flagpole; and

WHEREAS, pursuant to Section 30-1024(1)a. of the Code of Ordinances of the City of Marco Island, no flagpole in any zoning district may be erected in excess of twenty-five (25) feet in height above grade; and

WHEREAS, a photo array of existing site conditions was submitted by the Owner, is entered into evidence, and was considered by both the City Council and the Planning Board in deciding this issues; and

WHEREAS, based on Section 30-65(g)(3)a. of the LDC, the Planning Board finds that there are no special conditions or circumstances which are peculiar to the location, size and characteristics of the land, structure, or building involved, given that any sloping condition of the land is minor in degree and that a twenty-five (25) foot code compliant flagpole could be seen over any adjacent landscaping and notwithstanding any slope of the land; and

WHEREAS, the Owner has already purchased a thirty (30) foot high flagpole which could be argued to be a pre-existing special condition or circumstance arising from actions of the Owner;

WHEREAS, a pre-existing (the variance application) purchase of a non-conforming flagpole is not only a self-created hardship, but it is also an economic hardship, but under Florida law, neither self-created hardships, Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3d DCA 1959), *cert. denied*, 116 So.2d 773 (Fla. 1959), nor do

47 economic hardships constitute a basis for the issuance of a variance. See Burger King
48 Corp. v. Metropolitan Dade County, 349 So.2d 210 (Fla. 3d DCA 1977), *dismissed*, 365
49 So.2d 512 (Fla. 1978); and

50
51 **WHEREAS**, based on the foregoing findings, the Planning Board finds that Section
52 30-65(g)(3)b. of the LDC is not satisfied; and

53
54 **WHEREAS**, whether a flagpole of a size above the code prescribed height can
55 or cannot be erected on the Subject Property, a single-family residential dwelling does
56 not create an unnecessary and undue hardship or a practical difficulty; and

57
58 **WHEREAS**, an “unnecessary hardship” has generally been defined as a non-self-
59 created characteristic of the property in question which renders it virtually impossible to
60 use the land for the purpose or in the manner for which it is zoned.” Miami-Dade County
61 v. Brennan, 802 So.2d 1154, 1155 (Fla. 2d DCA 2001)(Fletcher, J., concurring);
62 Thompson v. Planning Commission of City of Jacksonville, 464 So.2d 1231 (Fla. 1st DCA
63 1985); and

64
65 **WHEREAS**, based on Section 30-65(g)(3)c. of the LDC, the Planning Board finds
66 that a literal interpretation of the provisions of this LDC requirement does not work an
67 unnecessary and undue hardship or created a practical difficulty on the Owner;

68
69 **WHEREAS**, based on Section 30-65(g)(3)d. of the LDC, the Planning Board finds
70 that the variance is not needed to make a reasonable use of the land, because a house
71 already exists on the Subject Property; and

72
73 **WHEREAS**, flagpoles exceeding the height limitations of the LDC are not
74 routinely found in the RSF-4 zoning district, and as a result approval of this variance
75 would grant the Owner a special privilege not otherwise enjoyed by other RSF-4
76 residents; and

77
78 **WHEREAS**, based on Section 30-65(g)(3)e. of the LDC, the Planning Board finds
79 that granting the variance requested would grant the Owner a special privilege that is
80 denied by the LDC to other lands, buildings, or structures in the same zoning district;
81 and

82
83 **WHEREAS**, based on Section 30-65(g)(3)f. of the LDC, the Planning Board finds
84 that based on the analysis of City staff, the granting the variance requested would be
85 in harmony with the intent and purpose of the LDC and would not be injurious to the
86 neighborhood, or otherwise detrimental to the public welfare; and

87
88 **WHEREAS**, based on Section 30-65(g)(3)g. of the LDC, the Planning Board finds
89 that there are no natural conditions or physically induced conditions that ameliorate
90 the goals and objectives of the regulation such as natural preserves, lakes, golf
91 course, or similar circumstances; and

92 **WHEREAS**, based on the professional opinion of planning staff, as required by
93 Section 30-65(g)(3)h. of the LDC, the Planning Board finds that the granting of the
94 variance is not specifically provided for in the Comprehensive Plan, thereby lacking
95 consistency; and

96
97 **WHEREAS**, the report, findings, and analysis of city staff (memorandum of July
98 1, 2020) is hereby adopted; and

99
100 **WHEREAS**, the City's Planning Board has reviewed and recommended denial of
101 the Variance Petition, VP 20-000129; and

102
103 **WHEREAS**, the City Council hereby adopts the findings and recommendations of
104 the Planning Board and City staff and denies approval of the requested variance;

105
106 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY**
107 **OF MARCO ISLAND, FLORIDA:**

108
109 **SECTION 1. Recitals; Definitions.**

110
111 (a) That the foregoing "WHEREAS" clauses are ratified and confirmed
112 as being true and correct and are made a specific part of this Resolution.

113
114 (b) That as used herein, unless the context or City Code of Ordinances
115 requires to the contrary, the following terms will be defined as set forth below:

116
117 (1) "City" means the City of Marco Island, a Florida Municipal
118 Corporation.

119
120 (2) "Development" is defined as set forth in Section 163.3164,
121 Florida Statutes.

122
123 (3) "Development Permit" is defined as set forth in Section
124 163.3164, Florida Statutes.

125
126 (4) "LDC" means the City's Land Development Code as set forth
127 in Chapter 30, Code of Ordinances of the City of Marco Island, Florida.

128
129 (5) "Owner" means John B. Pelling, Jr., as Trustee, or his
130 successors in interest under the John B. Pelling, Jr., Revocable Trust dated June 12,
131 2003.

132
133 (6) "Subject Property" means the following described parcel of
134 land, lying, situate and being in the State of Florida, County of Collier, City of Marco
135 Island, to-wit:

Lot 5, Block 6, Marco Beach Unit 1, according to the plat thereof, as recorded in Plat Book 6, Pages 9-16, Public Records of Collier County, Florida.

SECTION 2. Denial. That Variance Petition 20-000129 for a variance of five (5) in height to permit a thirty (30) foot high above grade flagpole is hereby denied for the Owner on the Subject Property

SECTION 3. Development Permit Does Not Create a Vested right For Other Development Permits. That issuance of this approval by the City does not in any way create any right on the part of the Owner 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 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 4. Effective Date. This Resolution shall be effective immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 17th day of August 2020.

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