

RESOLUTION 20-31

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, DENYING A SPECIAL PERMIT FOR A TWELVE FOOT (12) FOOT EXTENSION, PROTRUSION OR ENCROACHMENT INTO THE RIPARIAN SETBACK ON THE SOUTH SIDE OF THE SUBJECT PROPERTY; MAKING FINDINGS; PROVIDING FOR RECITALS AND DEFINITIONS; DENYING THE SPECIAL PERMIT FOR PROPERTY DESCRIBED AS LOT 9, BLOCK 1, OLD MARCO VILLAGE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 3, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA (1152 EDINGTON PLACE, MARCO ISLAND); PROVIDING FOR FAILURE TO COMPLY WITH THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 54-115 of the Code of Ordinances of the City of Marco Island, Florida, provides standards and regulations for the review and approval of a special permit (similar to a variance) to encroach into the riparian side setback of waterfront properties; and

WHEREAS, the Owner/Developer has submitted a petition for approval to extend or protrude its dock twelve (12) into the riparian side yard setback by providing a zero-foot setback from the adjacent property's riparian rights to the South; and

WHEREAS, the Owner/Developer has submitted its request Petition 20-000103 for the Subject Property located at 1152 Edington Place, Marco Island, Florida 34145; and

WHEREAS, the Owner/Developer is requesting a special permit for a five foot extension or protrusion set forth by Sections 54-111(b)(1), City of Marco Island Code of Ordinances, all pursuant to Section 54-115(f)1.-10. of the City of Marco Island Code of Ordinances; and

WHEREAS, the Owner/Developer has failed to satisfy several of the applicable criteria set forth in Section 54-115(f) of the City of Marco Island Code of Ordinances for the granting of a special permit for an extension or encroachment of the docking facility into the riparian side yard setback; and

WHEREAS, there are no special conditions related to the Subject Property or the waterway, which justify the proposed dimensions and location of the proposed docking facility, as set forth in Section 54-115(f)(3) of the City of Marco Island Code of Ordinances; and

WHEREAS, based on the measurements of the slip, it would appear that the vessel exceeds 50% of the length of the water frontage of the Subject Property which is inconsistent with Section 54-115(7); and

WHEREAS, by providing a zero riparian side yard setback for the boat docking facility, normally this arrangement would be found to violated Section 54-115(8) of the Code since the location and design of the boat docking facility and moored vessel(s) in combination is such that it would infringe upon the use of the neighboring property to the North; and

WHEREAS, the City's Planning Board has reviewed and recommended denial of Boat Dock Extension or Encroachment 20-000103, the petition for the granting of the special permit for an extension or protrusion of a boat docking facility into the riparian side yard on the South side of the Subject Property; and

WHEREAS, City Council adopts the findings of the Planning Board and does hereby deny Boat Dock Extension or Encroachment Petition 20-000103, as set forth in this Resolution.

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 hereof, 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 Order" is defined as set forth in Section 163.3164, Florida Statutes.

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

(5) "Owner/Developer" is James Schmunk, as Trustee of the James Schmunk Trust dated March 23, 2016, as to an undivided ½ interest, and Kristen D. Schmunk, as Trustee of the Kristen D. Trust dated March 23, 2016, as to an undivided ½ interest.

(6) "Site Plan" means the 8-page set of drawings, including:

(a) The 7-page set of drawings prepared by Turrell, Hall & Associates, Inc., a Florida Corporation, of Naples, FL, bearing Job No. 19076 and dated June 12, 2019, for Sheets 1 (Location), 2 (Existing Conditions), 5 (AA Section), 6 (BB Section), and 7 (Submerged Resource Survey, all pages without revision; and Sheets 3 (Proposed Dock) and 4 (Proposed Dock Dimensions), all page with a final date of revision being July 30, 2020; and

(b) The one-page survey prepared by Marco Surveying & Mapping of Marco Island, FL, dated July, 2018 under Drawing No. 2-2271.

(6) "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:

The dock to the South end of and adjacent to the Subject Property's riparian rights, and the property legally described as Lot 9, Block 1, Old Marco Village, according to the plat thereof, as recorded in Plat Book 6 and Page 3, Public Records of Collier County, Florida.,

(Said Legal Description has neither been reviewed nor examined by the City, Weiss Serota Helfman Cole & Bierman, P.L., Alan Gabriel, Esq., or Paul R. Gougelman, Esq., but is derived from the Owner/Developer's Warranty Deed recorded on 5/23/2019, in Official Records Book 5633, Page 2564, Public Records of Collier County, Florida.)

SECTION 2. Denial. The following special permit as shown upon the Site Plan for the Subject Property and as described in this Resolution is hereby denied: A special permit as shown upon the Site Plan pursuant to Section 54-115(f), City of Marco Island Code of Ordinances, consisting of twelve (12) foot extension or encroachment into the riparian side yard setback on the South of the Subject Property.

SECTION 3. Failure to Obtain Other Permits. That issuance of this development 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 of this development order 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 on the Subject Property. 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 by the City Council.

ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this 7th day of August 2020.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA

Laura M. Litzan, City Clerk

By: _____
Claire Babrowski, Chair

Approved as to form and legal sufficiency:

Alan L. Gabriel, City Attorney