

COUNCIL AGENDA STATEMENT



Meeting Date: December 10, 2019

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director

Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-115**, Consideration Of A Request By Tender Loving Care Garden Supply, Inc. For A Conditional Use Permit Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits", Seeking The Authorization For Eight Residential Units (4 Duplexes) On A Mixed Use Lot On Property Located At 7537 Overseas Highway, Which Is Legally Described As Section 12, Township 66, Range 32; Tract A in the Paraiso Estates Subdivision in Key Vaca, Marathon, Florida; Having Real Estate Number 003435000-000000. Nearest Mile Marker 51.

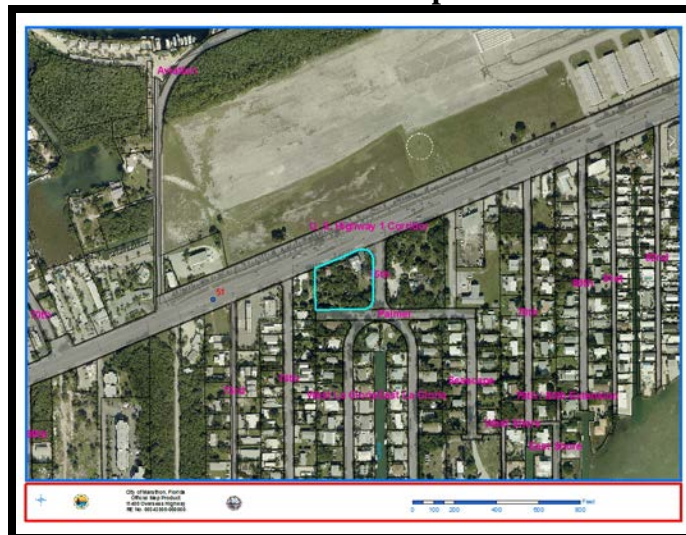
APPLICANT/OWNER: Mr. Claude Halioua

AGENT: L. Steven Hurley / DDAI

LOCATION: The subject property is located on 7537 Overseas Highway, nearest Mile Marker 51 and is legally described as Tract A, Paraiso Estates, Key Vaca, Marathon, Monroe County, Florida, Having Real Estate Number 00343500-000000

ADDRESS: 7537 Overseas Highway

Location Map

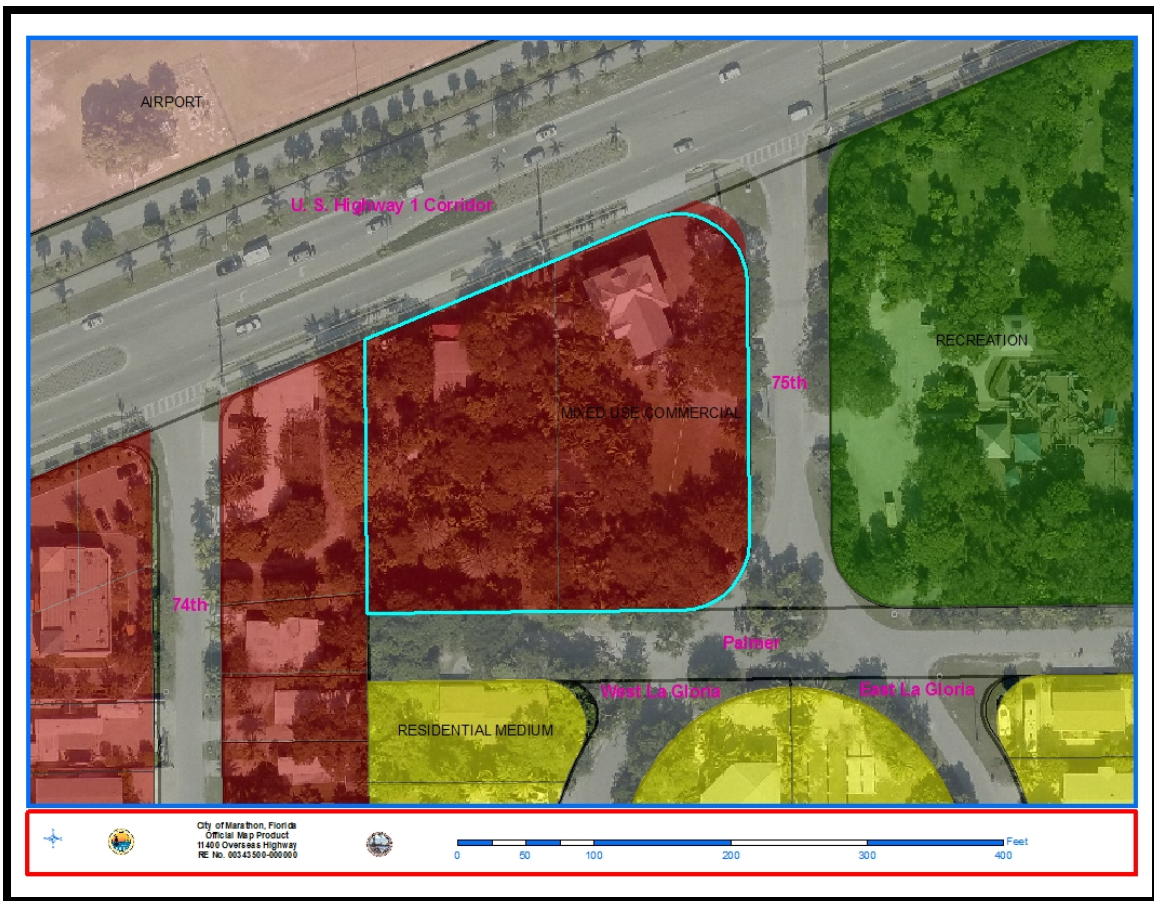


REQUEST: A Conditional Use Permit seeking authorization to develop eight (8) residential units in four duplex structures on the subject property having real estate number 00343500-000000.

LOT AREA: The aggregated size of the parcels is approximately 1.61 (70,233 sq./ft.)

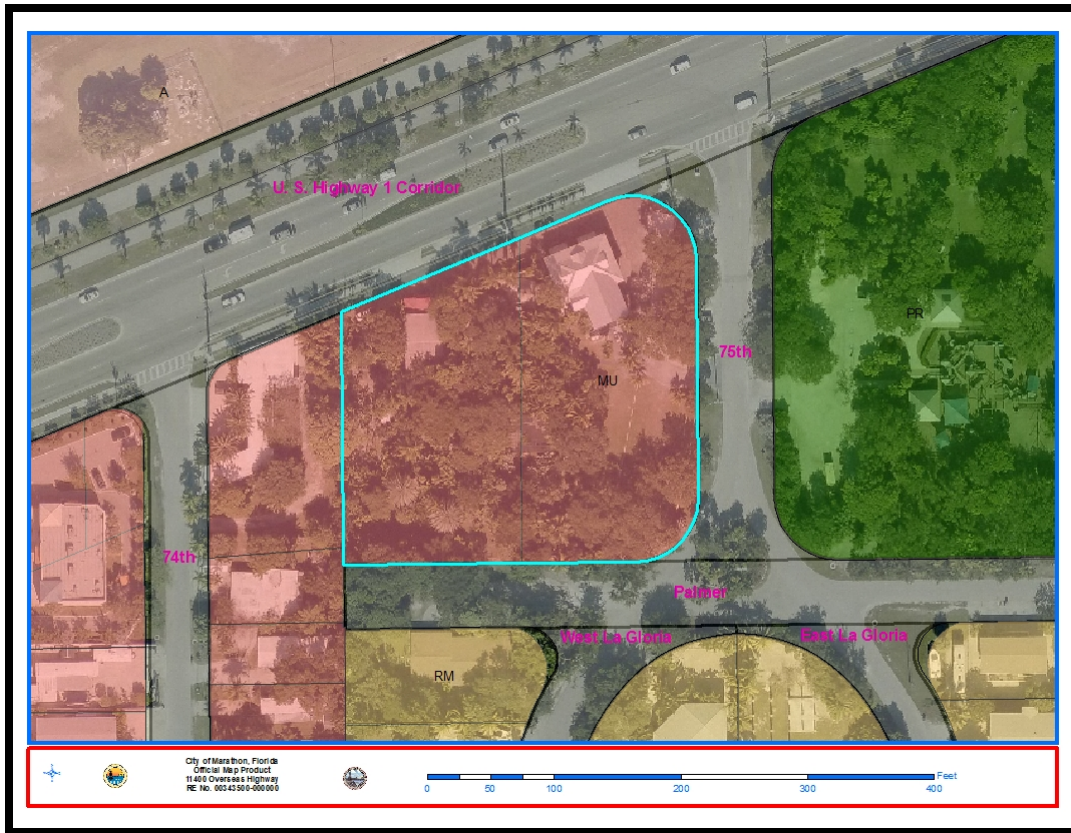
FUTURE LAND USE MAP DESIGNATION: Mixed Use Commercial (MU-C). See Figure 2.

Figure 2
Future Land Use Map



ZONING MAP DESIGNATION:
Mixed Use (MU). See Figure 3.

Figure 3
Zoning Map



LOT SIZE:
Total acreage 1.61 acres or 70,233 square feet.

SURROUNDING ZONING AND USES:

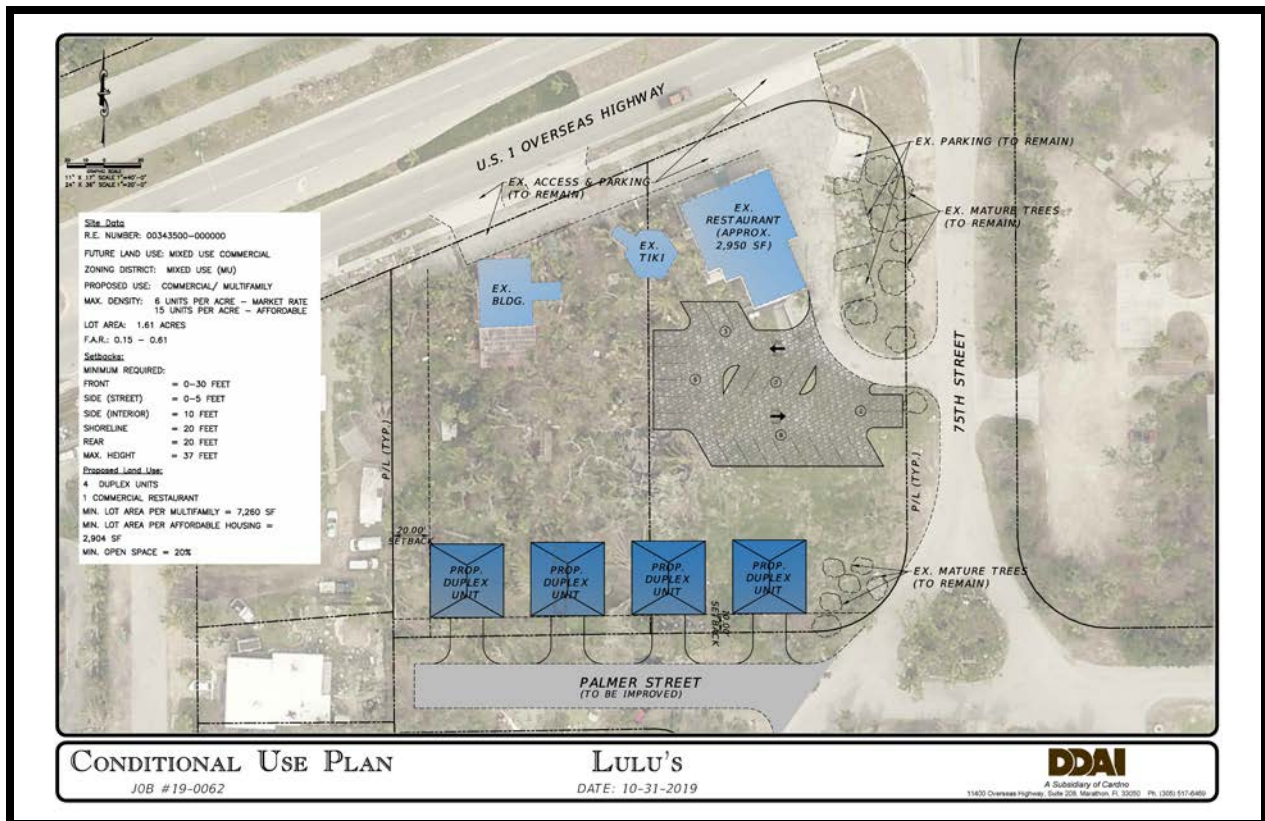
	<u><i>Zoning</i></u>	<u><i>Use</i></u>
North	U.S. 1 Corridor / Airport	Marathon (MTH) Airport
East	Public Recreation, Mixed Use Residential Medium	Rotary Park, Mile Marker Party Rental & Atlantic Shores Subdivision
South	Residential Medium	Seascape Villas & Paraiso Estates Subdivisions
West	Mixed Use Residential High & RM-H	Fiesta Motel & Vaca Service Station LLC Tropicana & Reimanns Fields Subdivisions

EXISTING CONDITIONS:

The project site has two (2) existing commercial structures with associated infrastructure, two workforce apartments, and two residential entitlements. The proposed future development includes the addition of eight (8) Market Rate residential units (4 duplexes) on vacant portion of lot.

Residential Units: 8 Market Rate Residential Units (4 duplexes). See Figure 4 for Site Plan layout.

Figure 4
Proposed Redevelopment Site Plan



BACKGROUND:

The site currently has two (2) existing commercial structures, which will remain. The residential apartments will be turned into storage and the associated entitlements, with two other entitlements on the property, will be used as part of developing the eight proposed residences. The proposed development will consist of eight (8) residential units (4 duplexes) (Market Rate) and the existing commercial structures with associated infrastructure utilizing an existing commercial (Mixed Use) lot. This report addresses the Conditional Use application associated with the Conditional Use Permit.

The Planning Commission met on November 18, 2019, reviewing the project and all proposed conditions, taking public input, and considering the provisions of the City's Comprehensive Plan and Land Development Regulations and unanimously (3/0, 1 absent and 1 absent position) recommends conditional approval of the eight (8) [four (4) duplexes] unit project known as part of Tender Loving Care Garden Supply, Inc. to the City Council. The proposed conditions of approval are listed below.

All condition of the Conditional Use approval will have to be met before any building permit will be approved.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

A. The proposed use is consistent with the Comprehensive Plan and LDRs;

The proposed development project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to "accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor, in an effort to recognize the role of US 1 as the City of Marathon's "Main Street". Specifically, this district provides for land uses that have a strong pedestrian-oriented character, with a mixture and concentration of specialty shopping, transient lodging, retail, personal service, restaurant, cultural, fishing industry, affordable housing and entertainment uses in the Old Town area. The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large. The (MU) district is designated within the Mixed-use Commercial (MUC) future land use category on the Future Land Use Map (FLUM)."

The proposed project consists of the development of existing Commercial lot within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, "Uses By Zoning District," establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Market Rate residential units are allowed at a maximum of 6 units per acre and at numbers greater than three (3) are only approved through the Conditional Use Permit process. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to nine (9) residential units. Table 103.15.3 further qualifies the allowed

range of intensities based on the intensity of retail use.

Development Type	Proposed	Maximum Allowed
Residential Units		
Market Rate	8	8
Affordable	0	0
Commercial	6,750 square feet	7,291 square feet (.60 FAR)

The project as proposed meets the basic definition of development in the MU zoning district.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

The proposed project is located within the Mixed Use Commercial (MU-C) Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor, in an effort to recognize the role of US 1 as the City of Marathon's "Main Street". Specifically, this district provides for land uses that have a strong pedestrian-oriented character, with a mixture and concentration of specialty shopping, transient lodging, retail, personal service, restaurant, cultural, fishing industry, affordable housing and entertainment uses in the Old Town area. The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large. The (MU) district is designated within the Mixed-use Commercial (MUC) future land use category on the Future Land Use Map (FLUM).”

The proposed project includes expansion of an existing Mixed Use development, with both existing commercial and residential structures, eliminating two (2) residential structures and adding four (4) duplex residences, which is consistent with the Mixed Use classification. The existing land use pattern in the project vicinity consists of recreational, mixed use and residential uses to the east; residential uses to the south; mixed and residential uses to the west; and airport use directly north.

Otherwise, the development of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is *in compliance* with the requirements of these sections.

C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

The proposed conditional use does not adversely affect the health, and welfare of the public. The impacts on surrounding properties as a result of the proposed development should be positive.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

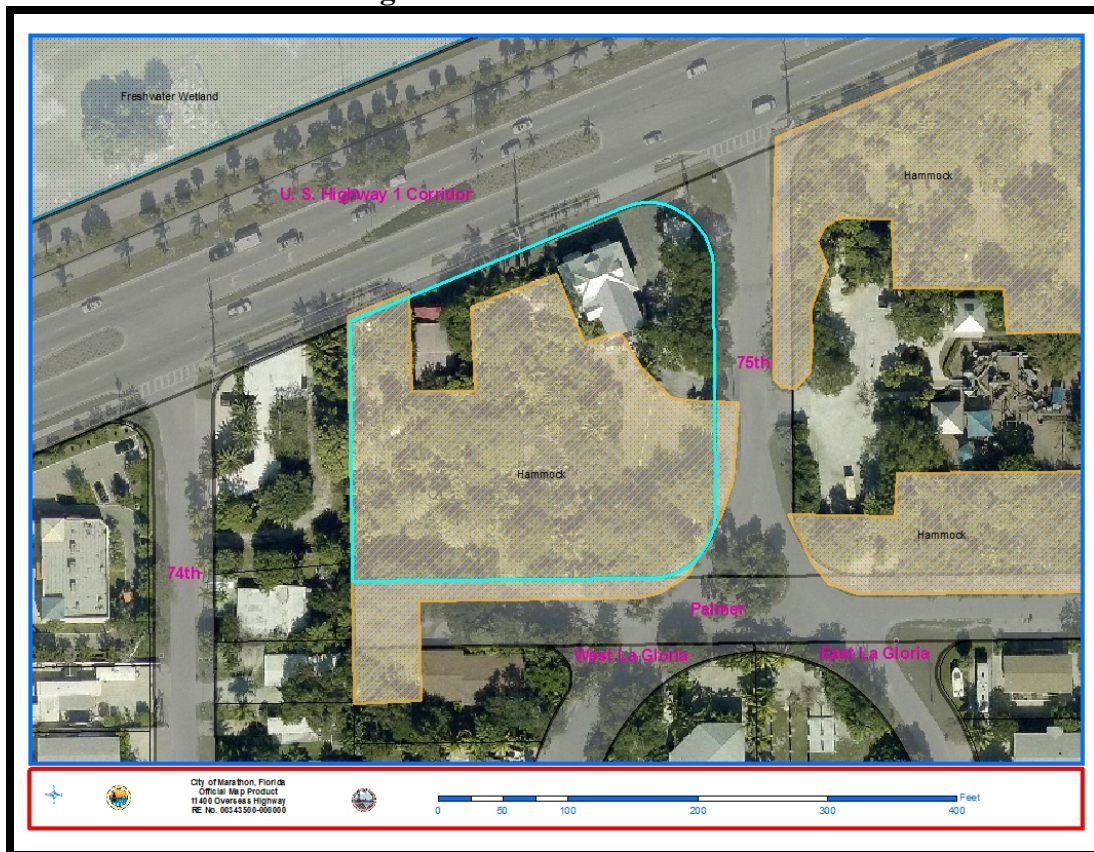
Therefore, the request is ***in compliance*** with the requirements of these sections.

D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:

The existing conditions maps indicate the subject area is designated as Developed Land. The property is recognized as having Hammocks. See Figure 5.

In addition, though found within a ‘Species Focus Area’ as defined in the settlement for FEMA-FWS lawsuit, “developed land” falls out of the consideration in the species assessment guides thus having “no impact” on the species concern, the Eastern Indigo Snake.

Figure 5 - Focus Area Habitat



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Therefore, it is staff's opinion that the request is **in compliance** with the requirements of these sections so long as the development is conditioned on provision of final landscaping and mitigation plans subject to approval of the City Biologist and final stormwater plans subject to City approval.

- If the development is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- Native vegetation shall remain intact or be transplanted on site.

E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;

The applicant has provided a breakdown of the proposed occupancy of eight (8) residential units (4 duplexes). A traffic study was submitted and found that based on the expected traffic to be generated at peak hours of 5 AM (7-9 AM) and 8 PM (4-6 PM) trips, the proposed development will not have an adverse impact on the operating characteristic of U.S. 1. A Level 1 traffic study was provided. The Level of Service for 75th ST Ocean is a Level of Service A. Any change in traffic generation, positive or negative would not impact the overall LOS for US 1 and 75th ST. Ocean in the project area. It has been determined that there will be no (de minimus) impact to traffic on U.S. Highway 1.

Access to the property will be via existing Right of Way (ROW) on US 1 and exiting driveways along 75th ST. Access to the new residences will be from Palmer Street which enters onto 75th Street.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Clear sight triangles must be shown on the site plan at time of building permit issuance.

- Applicant must submit plans showing unobstructed passage of fire and other emergency equipment to necessary areas on public or public property or waterways.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

2. Off-street parking and loading areas where required, with particular attention to item 1 above;

Parking requirements are outlined in Section 107.46 (Parking Schedule). The following table shows the parking requirement for the existing commercial and proposed residential uses on the parcel:

Use	Code Citation	Requirement	Spaces Required
Single and Two-Family, attached and detached	107.46.1	2 per dwelling unit	16
Commercial Space @ 60 % OSR	107.46.1	1 per 3 Seats + 1 per 2 Employees	40
Total Required			56
Total Provided			56

The developer proposes provisions and arrangements for off-street parking and loading areas, with particular attention to ingress and egress, automobile, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe. Each dwelling unit will have private access to their parking and visitors will be able to park within each driveway area.

Therefore, with the conditions noted above, the request is *in compliance* with the requirements of these sections.

3. The noise, glare or odor effects of the conditional use on surrounding properties;

The proposed project consists of development of four (4) duplexes or eight (8) single family dwellings planned for future development. Lighting will be necessary for this project. The applicant has not provided detailed lighting plans which conform to the letter with the City of Marathon LDR's. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with conditions, the request is *in compliance* with the requirements of this section.

- A detailed lighting plan must be submitted before the project is permitted.

4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The proposed development will utilize individual refuse containers.

Therefore, the request is **in compliance** with the requirements of this section.

- The development shall comply with refuse pick-up schedule.

5. Utilities, with reference to location and availability;

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- **Wastewater:** The applicant must coordinate with wastewater Utilities department for connection requirements. This project will constitute a major expansion, resulting in a de minimus impact.
- **Water:** The Florida Keys Aqueduct Authority will provide potable water for the facility.
- **Solid Waste:** Marathon Garbage Service will provide solid waste disposal.
- **Surface Water:** The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- **Recreation and Open Space:** This development will have a de minimus impact on recreation and open space.
- **Roadways:** The applicant is developing the site with a higher intensity than was contained within the undeveloped vacant land; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- **Educational Facilities:** This redevelopment will have a de minimus impact on educational facilities since existing uses are replaced in kind.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- A stormwater plan is required that provides the calculations for the retention of the 25 year/72 hour storm. Calculations require a routing analysis to insure the system can handle the runoff during the peak of the event.
- Detail grading plan depicting existing and proposed elevations. All runoff is required to be diverted to the stormwater system with no off-site discharge
- City must assess existing capacity and provide approval of the connection to the City Wastewater Utility will be required.

6. Screening and buffering with reference to type, dimensions and character;

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The only portion that is not bordered by a road is bordered by the same zoning. Therefore there is no

applicable buffer to apply.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment along U. S. 1. According to the Code, landscape treatment area shall be planted within a ten-foot wide buffer predominantly with shrubs and native canopy of at least two (2) inches caliper at breast height, approximately 50 feet on center. A minimum of four (4) understory trees per 240 feet of frontage, or fraction thereof, planted at access points. In addition, smaller accents trees shall be planted every 120 feet and staggered midway between large canopy trees.

Furthermore, a Type 3 Streetscape Treatment for Mixed Use zoning districts on parcels along all other (75th ST) City streets. The proposed landscape plan meets the minimum requirements. According to the Code, multi-family developments require two (2) canopy trees and two (2) understory trees per 100 linear feet of property frontage, located within a ten-foot wide landscape buffer.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0-30'; side yards 0-10'; interior side min 10'; and, rear yard 20'.

This plan shows a 10' setback on the front yard, 5' setback on the northern and southern side yards, 20' setback on shoreline, and 10' rear yard setback from accessory structure.

Section 107.36 A. 1. states that for parcels in the RH district the required interior yard setback may be reduced through the conditional use process. The existing use has an interior setback of 10', therefore so long as the proposed development meets all other setback requirements, the interior side setback is allowed at the proposed 10'.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	Streetscape 1	>30	Y
East (side)	20	Streetscape 2	>10	Y
West Side	0-10	N/A	20	Y
South	20	Streetscape 2	10	Y

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- The final landscape plans must be approved by the City Biologist.
- Applicant shall meet the minimum width and planting requirements per Table 107.70.2.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs, particularly for the non-residential portion of the project.

The applicant does not propose a sign at this time. However, if one is proposed in the future,

applicant will comply to the minimum standards to comply with Chapter 107 of the LDRs. Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

Therefore, the request is *in compliance* with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The parcel is considered developed; therefore, a twenty percent open space requirement applies.

To the greatest extent possible, the Applicant will be required to protect Regulated Trees, pursuant to Chapter 106, Article 2 of the LDRs. According to calculations provided by MCPA, 70,233 square feet of total area. The site will provide 50,441 square feet or 72 % as green space (impervious area). This exceeds the open space requirement.

OSR CALCULATION:

Existing structures:	10,161
Existing asphalt:	3,231
Proposed duplexes:	6,400 (1,600 each unit)
Total:	19,792

Total land area: 70,233

$19,792 / 70,233 = 28\%$ impervious, 72% pervious (OSR)

Therefore, the request is *in compliance* with the requirements of these sections.

9. General compatibility with surrounding properties; and

The project is a development of long standing existing uses in an area of the City which is relatively dense and intense. Adjacent uses include mixed and residential uses of similar and same use. A development of residential dwellings is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to remain compatible with surrounding properties.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings are below 37'.

Therefore, the request is *in compliance* with the requirements of these sections.

10. Any special requirements set forth in the LDRs for the particular use involved.

Section 104.48 Residential Dwelling Units contains special requirements.

The following criteria are applicable to this redevelopment:

- Plans must show 10' interior setback between residential units.
- The Applicant must obtain and transfer four (4) market rate residential allocations in excess of the four (4) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.**

Therefore, with the conditions note above, the request is ***in compliance*** with the requirements of this section.

CONCLUSION:

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community.

The proposed development consists of the replacement and enhancement of a long standing existing commercial and residential use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

RECOMMENDATION:

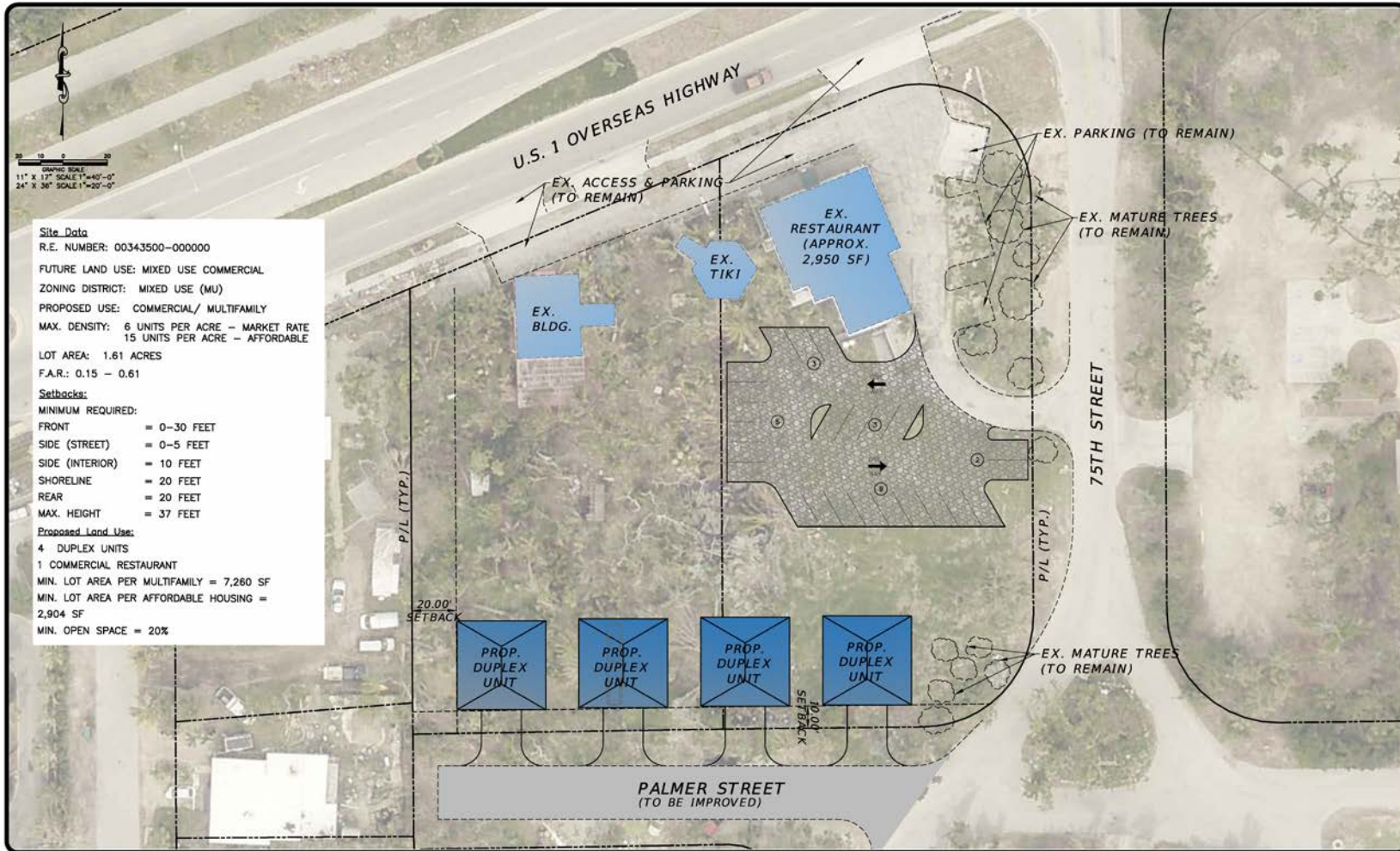
The Planning Commission voted unanimously (4/0, 1 absent position) to recommend conditional approval of the eight (8) [four (4) duplexes] unit project known as part of Tender Loving Care Garden Supply, Inc. to the City Council. The proposed conditions of approval are listed below.

Conditions of Approval

1. If the development is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.

2. Native vegetation shall remain intact or be transplanted on site.
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. Applicant must submit plans showing unobstructed passage of fire and other emergency equipment to necessary areas on public or public property or waterways.
5. A detailed lighting plan must be submitted before the project is permitted.
6. The development shall comply with refuse pick-up schedule.
7. City approval is required for the stormwater management system prior to Building Permit Approval.
8. A stormwater plan is required that provides the calculations for the retention of the 25 year/72 hour storm. Calculations require a routing analysis to insure the system can handle the runoff during the peak of the event.
9. Detail grading plan depicting existing and proposed elevations. All runoff is required to be diverted to the stormwater system with no off-site discharge
10. City must assess existing capacity and provide approval of the connection to the City Wastewater Utility will be required.
11. Applicant shall meet the minimum width and planting requirements per Table 107.70.2.
12. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
13. Plans must show 10' interior setback between residential units.
14. All conditions of the Fire Marshal must be met, including but not limited to; Palmer Drive needs to be improved with a hammerhead turnaround at the end of the street, a hydrant must be installed at the corner of Palmer Drive.
15. Applicant has agreed to make improvements to Palmer Drive to accommodate the new development.
16. The Applicant must obtain and transfer four (4) market rate residential allocations in excess of the four (4) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
17. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

Attachment: Proposed Site Plan A



Site Data
 R.E. NUMBER: 00343500-000000
 FUTURE LAND USE: MIXED USE COMMERCIAL
 ZONING DISTRICT: MIXED USE (MU)
 PROPOSED USE: COMMERCIAL/ MULTIFAMILY
 MAX. DENSITY: 6 UNITS PER ACRE – MARKET RATE
 15 UNITS PER ACRE – AFFORDABLE
 LOT AREA: 1.61 ACRES
 F.A.R.: 0.15 – 0.61

Setbacks:
 MINIMUM REQUIRED:
 FRONT = 0-30 FEET
 SIDE (STREET) = 0-5 FEET
 SIDE (INTERIOR) = 10 FEET
 SHORELINE = 20 FEET
 REAR = 20 FEET
 MAX. HEIGHT = 37 FEET

Proposed Land Use:
 4 DUPLEX UNITS
 1 COMMERCIAL RESTAURANT
 MIN. LOT AREA PER MULTIFAMILY = 7,260 SF
 MIN. LOT AREA PER AFFORDABLE HOUSING = 2,904 SF
 MIN. OPEN SPACE = 20%

<p>CONDITIONAL USE PLAN</p>	<p>LULU'S</p>	<p>DDAI</p>
<p>JOB #19-0062</p>	<p>DATE: 10-31-2019</p>	<p>A Subsidiary of Cardno 11400 Overseas Highway, Suite 208, Marathon, FL 33950 Ph. (305) 517-8409</p>

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-115**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY TENDER LOVING CARE GARDEN SUPPLY, INC., FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF A EIGHT MARKET RATE RESIDENTIAL SUBDIVISION ON DEVELOPED LOT, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 7537 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SECTION 12, TOWNSHIP 66, RANGE 32, TRACT A OF THE PARAISO SUBDIVISION IN KEY VACA, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00343500-000000.

WHEREAS, Tender Loving Care Garden Supply, Inc. (The “Applicant”) filed an application on August 1st, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed development of eight (8) market rate residential dwelling units on developed land; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 18th day of November, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 10th day of December, 2019, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to

encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2019-14, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Tender Loving Care Nursery, subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10TH DAY OF DECEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Steven Cook, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

David Migut, City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2019-14**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY TENDER LOVING CARE GARDEN SUPPLY, INC., FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF A EIGHT MARKET RATE RESIDENTIAL SUBDIVISION ON DEVELOPED LOT, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 7537 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS SECTION 12, TOWNSHIP 66, RANGE 32, TRACT A OF THE PARAISO SUBDIVISION IN KEY VACA, MARATHON, FLORIDA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00343500-000000.

WHEREAS, Tender Loving Care Garden Supply, Inc. (The “Applicant”), filed an Application on August 1, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed development of eight (8) market rate residential dwelling units on a developed lot; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 13th day of November, 2019, the City of Marathon Technical Review Committee (the “TRC”) held a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 18th day of November, 2019 and the 10th day of December, 2019, the Planning Commission (the “PC”) and City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the Council has duly considered the recommendation of the Planning Commission and the information and documentary evidence submitted by Tender Loving Care Garden Supply, Inc., and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The Applicant has proposed the additional development of eight (8) (four duplex buildings) market rate dwelling units on property with existing commercial development.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

1. If the development is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
2. Native vegetation shall remain intact.
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. Applicant must submit plans showing unobstructed passage of fire and other emergency equipment to necessary areas on public or public property or waterways.
5. A detailed lighting plan must be submitted before the project is permitted.
6. The development shall comply with refuse pick-up schedule.
7. City approval is required for the stormwater management system prior to Building Permit Approval.
8. A stormwater plan is required that provides the calculations for the retention of the 25 year/72 hour storm. Calculations require a routing analysis to insure the system can handle the runoff during the peak of the event.
9. Detail grading plan depicting existing and proposed elevations. All runoff is required to be diverted to the stormwater system with no off-site discharge
10. City must assess existing capacity and provide approval of the connection to the City Wastewater Utility will be required.
11. Applicant shall meet the minimum width and planting requirements per Table 107.70.2.
12. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
13. Plans must show 10' interior setback between residential units.
14. All conditions of the Fire Marshal must be met, including but not limited to; Palmer Drive needs to be improved with a hammerhead turnaround at the end of the street, a hydrant must be installed at the corner of Palmer Drive.
15. Applicant has agreed to make improvements to Palmer Drive to accommodate the new development.
16. The Applicant must obtain and transfer four (4) market rate residential allocations in excess of the four (4) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.**
17. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use permit is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

Date

George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this ____ day of _____, 2019.

Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Economic Opportunity waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Steve Hurley, Agent at 11400 Overseas Hwy #208, Marathon, FL 33050, this _____ day of _____, 2019.

Diane Clavier, City Clerk