

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-116**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FIRST FLORIDA KEYS PROPERTIES, 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 WALGREENS DRUG STORE AT THE PROPERTIES LOCATED AT 5271 AND 5171 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2 AND AMENDED PLAT OF MARAMEADE SUBDIVISION PB3-185 ALL BLOCK A AND LOTS 1 THROUGH 7, PART OF LOT 8, PART OF LOT 48 AND ALL LOTS 49 THROUGH 51 BLOCK B AND THAT VACATED PORTION OF PALM PLACE, SECTION 11, TOWNSHIP 66, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103730-000000 AND 00324210-000000

WHEREAS, on the 21st day of July, 2008, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 12th day of August, 2008, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by First Florida Keys Properties, Inc. (the "Applicant"), for a conditional use permit pursuant to Chapter 102, Article 13 of the City Code (the "Code"); and

WHEREAS, the purpose of the conditional use permit is to allow the Applicant to develop a Walgreens Drug Store (the "Proposed Use") at the properties described in the application (the "Property").

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 2008-05, a copy of which is attached hereto as Exhibit "A", granting a conditional use to First Florida Keys Properties, Inc. for the Proposed Use. 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 26th day of August, 2008.

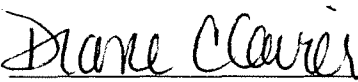
THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
NOES: None
ABSENT: None
ABSTAIN: None


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:



City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2008-05**

A DEVELOPMENT ORDER APPROVING THE CONDITIONAL USE APPLICATION SUBMITTED BY FIRST FLORIDA KEYS PROPERTIES, 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 WALGREENS DRUG STORE AT THE PROPERTIES LOCATED AT 5271 AND 5171 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2 AND AMENDED PLAT OF MARAMEADE SUBDIVISION PB3-185 ALL BLOCK A AND LOTS 1 THROUGH 7, PART OF LOT 8, PART OF LOT 48 AND ALL LOTS 49 THROUGH 51 BLOCK B AND THAT VACATED PORTION OF PALM PLACE, SECTION 11, TOWNSHIP 66, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103730-000000 AND 00324210-000000 (THE “PROPERTY”) PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, First Florida Keys Properties, Inc. is the owner of the Property and applied for a Conditional Use approval to develop a Walgreens Drug Store on property located in the Mixed Use (MU) land use district (the “Application”); and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 101.02 and 102.75 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on July 21, 2008; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the “Council”), subject to conditions; and

WHEREAS, the Council of the City of Marathon, Florida, in accordance with the provisions of Sections 101.01 and 102.76 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on August 12, 2008; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by First Florida Keys Properties, Inc. and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The applicant is proposing to develop a 14,500 square foot Walgreens Drug Store on the properties.
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
 10. Any special requirements set forth in the LDRs for the particular use involved.

APPROVED PLANNING CRITERIA WAIVERS:

- 1) Decreased width to the rear yard buffer and setback
- 2) Less open space than the 20% required by Code, but an improvement to the open space which currently exists
- 3) Parking in the front yard setback

CONDITIONS IMPOSED:

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

1. Must obtain CBPAS allocation of 4,642 square feet of commercial floor area.
2. The applicant must obtain a Unity of Title combining both parcels which must be approved by the City Attorney and recorded in the Official Records of the Monroe County Clerk of Courts prior to Building Permit issuance.
3. The applicant will provide required drainage calculations as outlined in the letter from Weiler Engineering dated May 30, 2008 prior to Building Permit issuance.
4. The applicant will obtain approval of final landscaping and lighting plans in coordination with the City Biologist prior to Building Permit issuance.
5. The Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers and alarms will be installed as required by City Code.
6. An Access Permit is required from the City in order to move the access point along 53rd Street to the southern border of the property.
7. The applicant will obtain sign permits for any signs erected on the property, as required under the Code. The site plan must include a clear sight triangle that is in compliance with Section 107.43 of the LDRs.
8. No liquor sales will be permitted.
9. Pharmacy window will be open only during normal business hours.

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 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.

27 August 2008
Date

George Garrett
George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 27 day of August 2008.

Diane Clavier
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 Community Affairs 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 Community Affairs. During that forty-five days, the Florida Department of Community Affairs 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 Barbara Mitchell, 610 White St.,
this 27 day of Aug., 2008. Key West, FL 33040

Diane Clavier
Diane Clavier City Clerk