

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2023-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA OF A REQUEST BY DAVID CRUM FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF A RESTAURANT/BAR, MARINA/BOAT RENTALS, RETAIL SHOP/CONVENIENCE STORE AND AFFORDABLE HOUSING UNITS AT THE PROPERTY LOCATED AT VACANT LAND OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS 11 66 32 KEY VACCAS PART GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO PART LOT 2, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103770-000000. NEAREST MILE MARKER 50.**

**WHEREAS**, David Crum (The “Applicant”) filed an Application on October 5<sup>th</sup>, 2022, 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 requested a development approval of a restaurant/bar, marina/boat rentals, retail shop/convenience store and affordable housing units; and

**WHEREAS**, the 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 19<sup>th</sup> day December 2022, the City of Marathon Planning Commission (the “Commission”) 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**, on the 10<sup>th</sup> day January 2023, the City of Marathon 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 decided 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:**

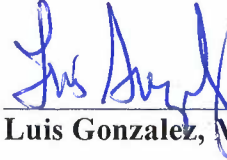
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby approves Development Order 23-01, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to David Crum 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 execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10<sup>th</sup> DAY OF JANUARY 2023.**

**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_  
**Luis Gonzalez, Mayor**

AYES: Smith, Matlock, Landry, Still, Gonzalez  
NOES: None  
ABSENT: None  
ABSTAIN: None

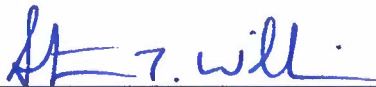
**ATTEST:**



\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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



\_\_\_\_\_  
Steven Williams, City Attorney

**EXHIBIT "A"**  
**CITY OF MARATHON, FLORIDA**  
**CONDITIONAL USE**  
**DEVELOPMENT ORDER 23-01**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY DAVID CRUM FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ("THE CODE") ENTITLED "CONDITIONAL USE PERMITS", AUTHORIZING THE DEVELOPMENT OF A RESTAURANT/BAR, MARINA/BOAT RENTALS, RETAIL SHOP/CONVENIENCE STORE AND AFFORDABLE HOUSING UNITS AT THE PROPERTY LOCATED AT VACANT LAND OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS 11 66 32 KEY VACCAS PART GOVERNMENT LOT 2 AND BAY BOTTOM NORTH OF AND ADJACENT TO PART LOT 2, MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00103770-000000. NEAREST MILE MARKER 50.**

**WHEREAS**, David Crum (The "Applicant") filed an Application on October 5<sup>th</sup>, 2022, 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 requested a development approval of a restaurant/bar, marina/boat rentals, retail shop/convenience store and affordable housing units; and

**WHEREAS**, the 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 19<sup>th</sup> day December 2022, the City of Marathon Planning Commission (the "Commission") 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**, on the 10<sup>th</sup> day January 202, the City of Marathon 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 decided 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

**FINDINGS OF FACT:**

1. The Applicant has proposed for the development of a restaurant/bar, marina/boat rentals, retail shop/convenience store and affordable housing units, and;
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) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal.
- 2) The final site plan must show the required parking spaces with prior to permit issuance.
- 3) The final site plan must show the bicycle racks on site prior to permit issuance.
- 4) The applicant will meet all floodplain related requirements as part of the Building Permit process;

- 5) The applicant will provide engineering drawings to support force main connection along US 1.
- 6) Permit site plan must meet 25yr-72hr storm event per storm water code Section 107.88.
- 7) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- 9) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 10) Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, Stock Island Tree Snail and Keys Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 11) A final Landscape/mitigation plan must be submitted prior to permit issuance.
- 12) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 13) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 14) Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- 15) Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration and/or mitigation. Conditions may also be applied in order to assure consistency with the Comprehensive Plan.
- 16) It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.
- 17) The applicant must obtain Allocations for affordable units.
- 18) Dwelling units shall contain less than or equal to 1,800 square feet of habitable space.
- 19) Occupancy of affordable housing units is limited to those meeting the following income requirements:
  - Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
  - Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
  - Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
  - Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
  - Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
- 20) For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban

Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;

- 21) The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
- 22) The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
- 23) If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06(c-f) shall also apply.
- 24) Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
- 25) A Final Site Plan must show an eight-foot-tall masonry wall or eight-foot tall opaque fence, such as vinyl or wood.
- 26) Twenty percent (20%) affordable units shall be set aside as directed by Council as very low and low income based upon the income levels noted in condition 19.
- 27) Applicant shall seek DOT approval for a deceleration land or right turn only signage.

### **VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all 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 five (5) 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.

1/18/23  
Date

[Signature]  
Brian Shea  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 18 day of January, 2023.

[Signature]  
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 this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During those 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 Catherine this 19 day of Jan, 2022.

25 Ships way  
Felton  
Big Pine Key, FL 33043

[Signature]  
Diane Clavier, City Clerk