

Sponsor: Garrett
Planning Commission: January 23, 2023
City Council: February 14, 2023

CITY OF MARATHON, FLORIDA
RESOLUTION 2023-13

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA APPROVING OF A REQUEST FOR A CONDITIONAL USE PERMIT FOR A PRELIMINARY PLAT AND SITE PLAN APPROVAL AS SUBMITTED BY LA PALMA 101 INC FOR A PLAT PURSUANT TO CHAPTER 102, ARTICLE 10 AND ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "SUBDIVISION OF LAND/PLATS AND RE-PLATS," AND "CONDITIONAL USE PERMITS" RESPECTIVELY, PARTICULARLY, 400-800 101 AND 104TH STREET WHICH IS DESCRIBED AS PART OF GOVERNMENT LOT 2, AND ADJACENT BAY BOTTOM, SECTION 6, TOWNSHIP 66S, RANGE 33E, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104460-000100 AND 00104460-000000. NEAREST MILE MARKER 52.

WHEREAS, La Palma 101 Inc (Applicant) filed an Application on November 29, 2022, for a Conditional Use Permit for approval of eleven lots; including three lots for single family homes, six lots for three deed restricted affordable duplexes, one deed restricted conservation lot and one vacant lot to be combined parcel 00104460-000000 pursuant to Chapter 177, Florida Statutes and Chapter 102, Article 10, of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, City staff reviewed the Applicant's request for a Conditional Use Permit and determined 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, the Council duly considered the Applicant's request and made a determination that the 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district; and

WHEREAS, on the 23rd day of January 2023, 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 and Plat pursuant to Chapter 102, Articles 10 & 13 of the LDRs; and

WHEREAS, and on the 14th day of February 2023, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit and Plat pursuant to Chapter 102, Articles 10 & 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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 2023-03, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to La Palma 101 INC., 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 by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14TH DAY OF FEBRUARY 2023.

THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

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

ATTEST:

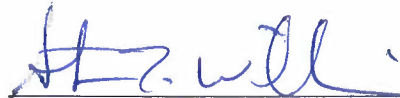


Diane Clavier

Diane Clavier, City Clerk

(City Seal)

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



Steve Williams

Steve Williams, City Attorney

ATTACHMENT "A"
CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2023-03

APPROVAL OF A REQUEST FOR A CONDITIONAL USE PERMIT FOR A PRELIMINARY PLAT AND SITE PLAN APPROVAL AS SUBMITTED BY LA PALMA 101 INC FOR A PLAT PURSUANT TO CHAPTER 102, ARTICLE 10 AND ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "SUBDIVISION OF LAND/PLATS AND RE-PLATS," AND "CONDITIONAL USE PERMITS" RESPECTIVELY, PARTICULARLY, 400-800 101 AND 104TH STREET WHICH IS DESCRIBED AS PART OF GOVERNMENT LOT 2, AND ADJACENT BAY BOTTOM, SECTION 6, TOWNSHIP 66S, RANGE 33E, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104460-000100 AND 00104460-000000. NEAREST MILE MARKER 52.

WHEREAS, La Palma Inc filed an Application on November 29, 2022 for a Conditional Use Permit and Plat pursuant to Chapter 102, Articles 10 and 13 of the Code of Ordinances for the City of Marathon ("City Code"); and

WHEREAS, City staff reviewed the Applicant's request for a Conditional Use Permit and determined 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, the Council duly considered the Applicant's request and made a determination that the 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district; 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 23rd day of January 2023, 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 14th day of February 2023, the 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

FINDINGS OF FACT:

1. The applicant will develop subdivide the parcel through the platting process into eleven lots with the following determinations:
2. In accordance with Section 102.77 of the City 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 Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
3. 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;
4. Off-street parking and loading areas where required, with particular attention to item 1 above;
5. The noise, glare or odor effects of the conditional use on surrounding properties;
6. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
7. Utilities, with reference to location and availability;

8. Screening and buffering with reference to type, dimensions and character;
9. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
10. Required yards and other open space;
11. 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 obtain approval of final landscaping, buffer yard, parking landscaping, and mitigation plans (as needed) and lighting plans in coordination with the City Biologist prior to building permit issuance;
2. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
3. Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Full and final review of floodplain compliance will occur as part of building permit issuance. The Applicant has been advised about the adoption of the new FEMA flood maps and the potential impacts of the changes in flood maps on their project.
4. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
5. The applicant will provide on-site plans for the collection and disposal of wastewater via a connection to the City's sewer system. All engineering and wastewater flow calculations must be approved by the City Utility Department prior to final permitting and all wastewater fees must be paid prior to the issuance of construction permits.
6. The applicant will obtain any required permits from SFWMD, FDOT, ACOE, and DEP prior to building permit issuance;
7. The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
8. The Applicant will provide an approximately 5' X 220' easement adjacent to the 101st Street Right-Of-Way (or the southernmost point of ingress/egress from the property) in order to assist in traffic flow in and out of the property on that street. The developer will be responsible for paving this area with engineering and design approvals from the City.
9. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
10. The Applicant will provide at a minimum 123 parking spaces, inclusive of commercial and residential uses. City approval is required for all general parking and ADA compliant parking spaces prior to Building Permit Approval.
11. Bike racks must be shown on the final site plan and approved prior to Building Permit Approval.
12. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Since additional buffering was required and agreed to by the applicant, this additional buffering must also be reviewed and approved by the City prior to final project approval.

13. A Transplantation/ Mitigation plan must be approved for any native trees destroyed as part of proposed construction. This Plan must be provided and approved prior to the initiation of site development.
14. Conservation easement for the site mangrove area, subject to City approval;
15. If the development is found to have any effect on the Eastern Indigo Snake, then the prescribed protection measures must be undertaken, and the information poster posted on site.
16. Affordable Housing Deed Restrictions must be filed prior to building permit issuance. Said deed restrictions shall be provided in a form acceptable to the City and shall be filed with the Monroe County Clerk of Court and shall run with the land for a period of ninety-nine (99) years.
17. The Applicant must obtain a minimum of three (3) market rate and six (6) affordable residential allocations 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 RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
18. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.
19. Affordable housing must comply with home ownership criteria.

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 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.

2/20/23
Date



Brian Shea
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 21 day of February, 2023.



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 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 Guillermo Torres, this 22 day of FEB., 2023.

12925 SW 132 Street #5A
Miami, FL 33186

Diane Clavier
Diane Clavier, City Clerk

EXHIBIT 1. APPROVED PRELIMINARY PLAT

LA PALMA 101

A PART OF GOVERNMENT LOT 3, SECTION 16, TOWNSHIP 6 SOUTH, RANGE 23 EAST
CITY OF MARIANNA, FAY COUNTY, FLORIDA, ADJACENT BAY BOTTOM

2023

SHEET 2 OF 2

