

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-67**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY H & R MARATHON LLC 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 TEN (10) RESIDENT GROUP HOME INCLUDING FOUR (4) AFFORDABLE HOUSING UNITS, DINING HALL, FITNESS CENTER, STORAGE AND COMMERCIAL KITCHEN; WHICH IS LEGALLY DESCRIBED AS SECTION 5 TOWNSHIP 66 RANGE 33 FAT DEER KEY PART LOT 3 AND PART GOVERNMENT LOT 3 (AKA PART OF STATE ROAD NO 5 (US 1)) AND SECTION 5 TOWNSHIP 66 RANGE 33 FAT DEER KEY PART LOT 3 (PART OLD STATE ROAD), MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100540-000000 AND 00100640-000000. NEAREST MILE MARKER 53.

WHEREAS; H & R Marathon, LLC (The “Applicant”) filed an Application on May 31, 2023 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed to the development of a ten (10) resident group home including four (4) affordable housing units, dining hall, fitness center, storage and commercial kitchen; and

WHEREAS; the Applicant must obtain four (4) affordable and two (2) market rate 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 DOES 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.

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 17th day of July 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 8th day of August, 2023 the City Council (the “Council”) 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; 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 redevelopment in 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:

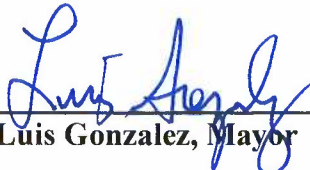
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2023-08, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to H & R Marathon, LLC 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 approval by the State Department of Economic Opportunity.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF AUGUST 2023.

THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

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

ATTEST:

for Helay Palmer
Diane Clavler
City Clerk
Deputy Clerk

(City Seal)

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

St. Williams
Steve Williams, City Attorney

**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2023-08**

CONSIDERATION OF A REQUEST BY H & R MARATHON LLC 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 TEN (10) RESIDENT GROUP HOME INCLUDING FOUR (4) AFFORDABLE HOUSING UNITS, DINING HALL, FITNESS CENTER, STORAGE AND COMMERCIAL KITCHEN; WHICH IS LEGALLY DESCRIBED AS SECTION 5 TOWNSHIP 66 RANGE 33 FAT DEER KEY PART LOT 3 AND PART GOVERNMENT LOT 3 (AKA PART OF STATE ROAD NO 5 (US 1)) AND SECTION 5 TOWNSHIP 66 RANGE 33 FAT DEER KEY PART LOT 3 (PART OLD STATE ROAD), MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100540-000000 AND 00100640-000000. NEAREST MILE MARKER 53.

WHEREAS; H & R Marathon, LLC (The “Applicant”) filed an Application on May 31, 2023 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed the development of a ten (10) resident group home including four (4) affordable housing units, dining hall, fitness center, storage and commercial kitchen; and

WHEREAS; the Applicant must obtain six (4) affordable and (2) market rate 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 DOES 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

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 17th day of July 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 8th day of August, 2023 the City Council (the “Council”) 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; 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 redevelopment in 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 redevelop the project site as set out in the project site plan allowing the Applicant to develop a ten (10) resident group home including four (4) affordable housing units, dining hall, fitness center, storage and commercial kitchen (See Approved Site Plan – Exhibit A” and all Plans otherwise provided and approved, or approved as revised, as part of the Applicant’s submittal):
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. 1) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
2. As part of the permit application, all conditions of the Fire Marshal must be met prior to permit issuance, and hydrants must be operational prior to buildings going vertical.
3. City approval is required for the stormwater management system prior to Building Permit Approval.
4. Applicants must obtain all outside agency approvals prior permit issuance and prior to project initiation.
5. 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.
6. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
7. A sewer flow estimate from an engineer will be required to reassess any additional impact.
8. City approval of the connection to the City Wastewater Utility will be required. *However, the Utilities Department has stated that the existing vacuum main that services that property has no more capacity and is maxed out. They are therefore unwilling to add any more load on this line until the Fairfield Hotel lift station is completed and on-line. Based on existing contracts this should occur within one year. Until this work is complete no permit can be issued.*
9. The project exceeds 1 acre of development, and as such an FDEP general permit for NPEDS will be required.
10. An FDOT access permit and drainage permit/exemption is required for this project.
11. The existing topographic information is insufficient to determine impacts to adjacent properties. Additional information will be required, along the property lines and off-site.
12. The drainage calculations shown are preliminary but are not adequate for the issuance of a permit. The EOR is encouraged to contact the city prior to submittal of construction plans.
13. Any native vegetation removed must be mitigated per Section 106.10.
14. A unity of title for parcels will be required.

15. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
16. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
17. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
18. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
19. Dwelling units shall contain less than or equal to 1,800 square feet of habitable space.
20. Occupancy of affordable housing units is limited to those meeting the following income requirements:
 - A. 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;
 - B. 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;
 - C. 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;
 - D. 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;
 - E. 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;
 - F. 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;
 - G. 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;
 - H. 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
 - I. If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06(c) shall also apply.

- J. 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.
21. 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.
 22. The Applicant must obtain and transfer two (2) market rate housing units, additional commercial square footage and four (4) affordable housing units, 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 AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
 23. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.
 24. All construction of required streets and utilities shall be completed pursuant to this Section. Construction Guarantees shall be required pursuant to Sections 102.50 and 102.51 and shall provide that if the construction of the required improvements is not completed within two (2) years after approval of the final plat, the City may deem the applicant to be in default pursuant to Section 102.52 D.
 25. A community residential group home may be allowed pursuant to Table 103.15.1, subject to the following standards:
 - A. The home shall not be located within a radius of 1,000 feet of another existing small community residential group home unless otherwise approved as part of a conditional use permit.
 - B. Such a home shall only be occupied by persons meeting the definition for a resident in Fla. Stat. 419.001 and are clients of the governmental agencies enumerated in Fla. Stat. 419.001 and not by persons found by a court to have committed a delinquent act.
 - C. The establishment must conform to setback and height regulations for the zoning district.
 - D. The home shall be located to assure the safe care and supervision of all clients.
 - E. Pursuant to Fla. Stat. 419.001, homes with six (6) or fewer residents shall be deemed a single-family dwelling unit for the purposes of zoning and shall be allowed as a permitted use within all residential zoning districts. New residential dwelling units shall be subject to the requirements established in Article 1 "Building Permit Allocation System", of Chapter 107.
 - F. Homes with seven (7) to 14 residents shall require conditional use approval.
 26. Approximately 36 hours in advance of tropical storm winds, a mandatory evacuation of the group home residents from the Keys shall be initiated.
 27. Group Home compliance certification must be provided annually to ensure compliance with condition 25.

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:

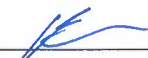
Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

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.

8/9/23
Date



Brian Shea
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 10 day of Aug, 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 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, 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 H & R Marathon LLC, 13117 NW 107th Ave, Hialeah Gardens, FL, 33018, this 10 day of Aug, 2023.



Diane Clavier City Clerk

EXHIBIT "A": Site Plan

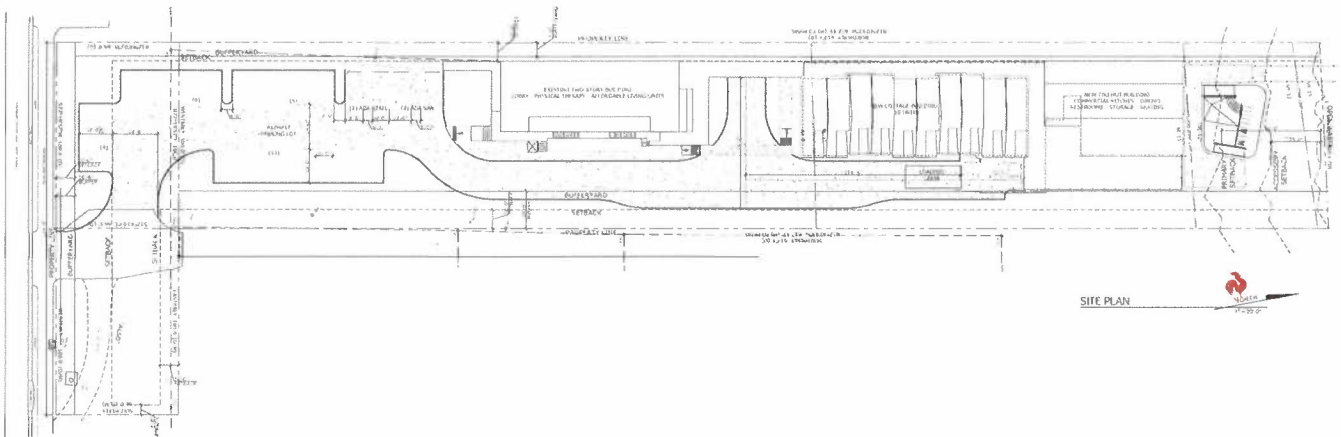
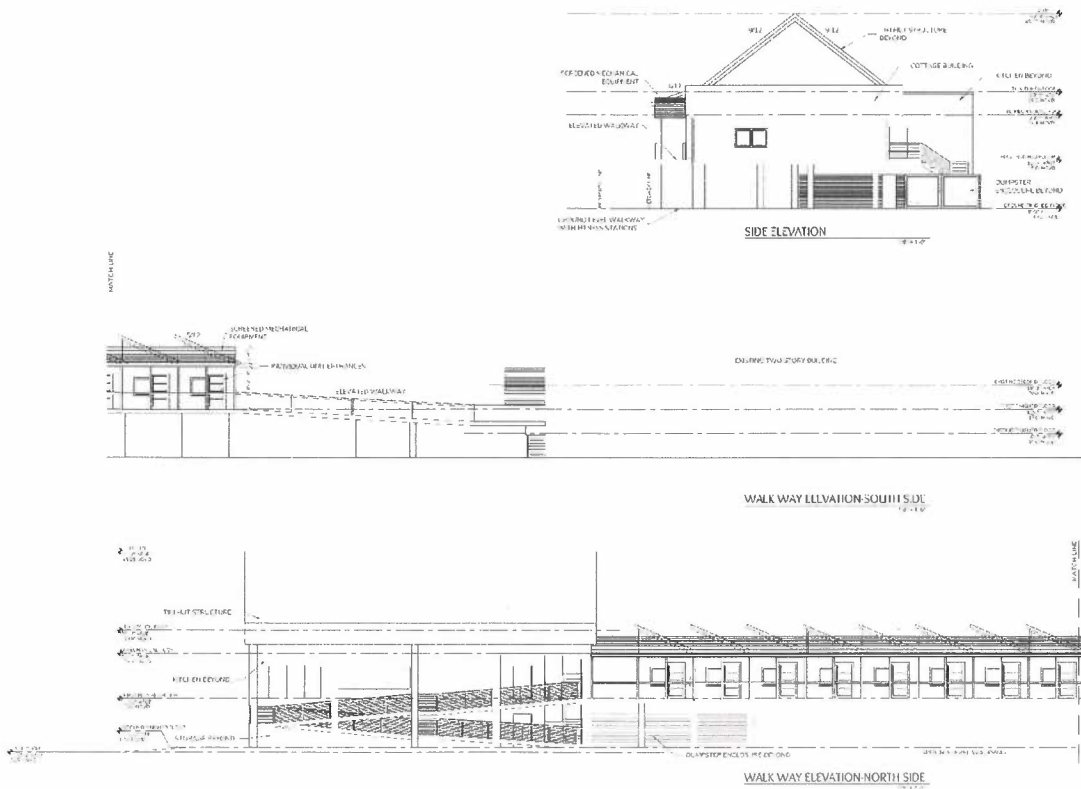


Exhibit "B": Elevation Plan



EXTERIOR ELEVATION BRAVO ZULU

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Your Vision • Our Passion
www.LittleRedRooster.com

A-3.00

H & R Marathon, LLC CUP

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