

RESOLUTION NO. 22-10-115
(File No: PLAV20220062)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST OF MAREK KIYASHKA (RUSSELL A. YAGEL, ESQ., , AGENT) FOR AN ADMINISTRATIVE DOCK LENGTH VARIANCE IN ACCORDANCE WITH SECTION 30-1550(G) OF THE CODE OF ORDINANCES TO ALLOW A DOCK CONSISTING OF A 115-FOOT LONG WALKWAY WITH A 12.5-FOOT BY 12-FOOT (150 SQUARE FOOT) TERMINAL PLATFORM FOR A TOTAL LENGTH OF 127 FEET AS MEASURED FROM THE MEAN HIGH WATER LINE (MHWL), THEREBY EXCEEDING BY 27 FEET THE MAXIMUM LENGTH ALLOWED FOR DOCKS. THE SUBJECT PROPERTY IS LOCATED AT 81486 OVERSEAS HIGHWAY ON UPPER MATECUMBE KEY IN THE NATIVE RESIDENTIAL (NR) ZONING DISTRICT WITH PARCEL ID# IS 00404590-000000.

WHEREAS, Marek Kiyashka (Russell A. Yagel, Agent) has submitted an application for a Dock Length Variance pursuant to Section 30-1550(g) of the Code of Ordinances (the "Code") of Islamorada, Village of Islands, Florida (the "Village") to construct a docking facility, which would extend 127 feet beyond the Mean High Water Line (MHWL) (115 feet to terminus plus 12.5-foot X 12-foot terminal platform) on property located at 81846 Overseas Highway, Islamorada, Florida 33036 (the "Property") as legally described herein; and

WHEREAS, the Property is located within the Native Residential (NR) Zoning District; and

WHEREAS, the overall length of the proposed dock is 127 feet which exceeds the overall maximum length allowed for docks by 27 feet; and

WHEREAS, the Director issued a Notice of Intent to DENY the Request on July 20, 2022; and

WHEREAS, the Director posted a sign on the subject property on August 5, 2022; and

WHEREAS, on October 25, 2022, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the decision of the Planning and Development Services Director to DENY the proposed dock length variance.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Findings of Fact.

The Village Council, having considered the testimony and evidence presented by all parties, including Village Staff, does hereby find and determine:

(1) The Application for a Dock Length Variance DOES NOT meet the requirements set forth in Code Sections 30-1547 (Docking facility general standards), Sec. 30-1550 (Standards applicable to pier type docks), Sec. 30-221 (Variances in general), and Sec. 30-281 (Administrative Appeals) and HAS NOT demonstrated through competent substantial evidence that the criteria for granting the Request have been met; and

(2) Specifically, the applicant has failed to establish the following:

a. That there exists at least four feet of water depth at mean low water at the terminal end of the docking facility pursuant to Sec. 1547 (1), and

b. that there exists at least five (5) feet of water depth at the terminal end of the docking facility over submerged lands with seagrasses pursuant to Sec. 30-1547

(2), and

- c. that the proposed docking facility maintains at least of four (4) feet of water depth such that the centerline of an average vessel will rest in water of adequate depth of four (4) feet at mean low water pursuant to Sec. 30-1547 (3), and
- d. that the proposed docking facility will be consistent with the community character of the surrounding area pursuant to Sec. 30-1550 (1), and
- e. that the proposed docking facility will not be detrimental to marine resources pursuant to Sec. 1550 (3), and
- f. that the proposed dock length variance meets the variance criteria contained in Sec. 30-221 of the Village Code, and
- g. that the application meets the Administrative Appeal standards contained within Village Code Sec. 30-281, and

(3) The Village Council DENIES the Request submitted by the Applicant for the property located at 81486 Overseas Highway, legally described as follows:

TRACTS 2, 3 and 6, SUBDIVISION OF LOTS 3 & 4, according to the Plat thereof, as recorded in Plat Book 2, at Page 59 of the Public Records of Monroe County, Florida.

TOGETHER WITH A parcel of submerged land in Section 32, Township 63 South, Range 37 East, Upper Matecumbe Key, Monroe County, Florida, more particularly described as follows:

A parcel of submerged land in the Bay of Florida in said Section 32, fronting Tracts 2, 3 and 6, according to Plat Book 2, Page 59, Public Records of Monroe County, Florida, and described herein. From the most Easterly corner of said Tract 2 at the Northwesterly right of way line of State Road No. 5, run North 42 degrees 02 minutes 30 seconds West along the Northeasterly boundary line of said Tract 2, a distance of 272 feet, more or less, to the mean high water line on the shore of the Bay of Florida at the most Southerly corner of a parcel of submerged land previously conveyed to Taylor by Trustees I.I.F. Deed No. 23294 and the point of beginning of Parcel #1; thence North 41 degrees 13 minutes 30 seconds West along the Southwesterly side of said Taylor parcel, a distance of 217.8 feet; thence South 55 degrees 47 minutes West, a distance of 494.0 feet to the most Northerly corner of a parcel of submerged land previously conveyed by Trustees I.I.F. Deed No. 23077; thence South 34 degrees 51 minutes 50 seconds East along said parcel, a distance of 182.5 feet to the said mean high water line at the dividing line between Tracts 6 & 7, said PB 2, P 59; thence Northeasterly meandering said mean high water line, a distance of 520 feet; more or less, to the Point of Beginning.

Section 3. Conclusions of Law.

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

(1) The Request has been processed in accordance with the Village Comprehensive Plan and the Code; and

(2) In rendering its decision, as reflected in this Resolution, the Village Council has:

(a) Accorded procedural due process; and

(b) Observed the essential requirements of the law; and

(c) Supported its decision by competent substantial evidence contained within the record.

Section 4. Effective Date.

This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this resolution shall not be effective or acted upon by the Applicant until forty-five (45) days following the rendition to the Department of Economic Opportunity (DEO), pursuant to Chapter 9J-1 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this Resolution until the appeal is resolved by agreement or order.

Motion to adopt by Councilman Webb, second by Councilman Gregg.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:

Mayor Peter Bacheler	<u>Yes</u>
Vice Mayor Henry Rosenthal	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilman Joseph B. Pinder III	<u>Yes</u>
Councilman David Webb	<u>Yes</u>

PASSED AND ADOPTED this 25th day of October 2022.



PETER BACHELER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE
USE AND BENEFIT OF ISLAMORADA, VILLAGE OF
ISLANDS ONLY



JOHN QUICK, INTERIM VILLAGE ATTORNEY

