

After recording return to:
Planning and Development Services Dept.
Islamorada, Village of Islands
86800 Overseas Hwy
Islamorada Florida 33036

RESOLUTION NO. 18-11-117

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY PHIL SENA OF OCEAN GARDENS AND GIFTS, LLC. FOR MAJOR CONDITIONAL USE APPROVAL FOR THE DEVELOPMENT OF A 1,504 SQUARE FOOT STORAGE BUILDING AS AN ADDITION TO THE EXISTING 8,130 SQUARE FOOT RETAIL SPACE AT THE PROPERTY LOCATED WITHIN THE VILLAGE CENTER (VC) ZONING DISTRICT AT 82237 OVERSEAS HIGHWAY ON UPPER MATECUMBE KEY WITH REAL ESTATE NUMBER 00401010-000000, AS LEGALLY DESCRIBED IN ATTACHMENT "A;" PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Ocean Gardens and Gifts, LLC (the "Owner") is the owner of property located at 82237 Overseas Highway on Upper Matecumbe Key with Real Estate number 00401010-000000, and as legally described in Exhibit "A" (the "Property"); and

WHEREAS, David Osborn, as the Agent/Applicant for the Owner Property (the "Agent/Applicant"), has applied for Major Conditional Use approval for the development of a 1,504 square foot storage building at the Property; and

WHEREAS, pursuant to Section 30-692(d)(1) of the Code of Ordinances [Ref. Ord. 15-03] (the "Code") of Islamorada, Village of Islands, Florida (the "Village"), any permitted use of 5,001 to 10,000 square feet in the (VC) Zoning District shall be reviewed as a Major Conditional Use; and

WHEREAS, pursuant to Chapter 30, Article IV, Division 2 of the Village Code, the

Applicant has applied for Major Conditional Use Approval for the development of a 1,504 square foot storage building (the “Request”); and

WHEREAS, pursuant to the applicable provisions of the Code, the Director in his Council Communication dated November 29, 2018 recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, the Village Council has considered the Request, the relevant support materials, the DRC's and the Director's recommendations, public testimony and evidence given at a properly advertised public hearing held on November 29, 2018 (the “Hearing”).

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, correct, and incorporated herein by this reference.

Section 2. **Findings of Fact.** The Village Council, having considered the Request, the relevant support materials, the Director's recommendations, public testimony and evidence given at the hearing, does hereby find and determine:

1. The Applicant submitted the Request on March 14, 2017.
2. The Request consists of a Site Plan attached as Attachment “B” depicting the Request’s configuration, layout and level of impacts.
3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.
4. The Property is located within the Village Center (VC) Zoning District.
5. The Request **complies** with the standards of Code Section 30-216(d) for considering conditional uses.

6. The Request complies with the Concurrency Management and other applicable requirements of Code Chapter 30, *Land Development Regulations* (the “LDRs”).

7. The Request is consistent with the purposes, goals, objectives and policies of the Village Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

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 applicable provisions of the Village Comprehensive Plan and Land Development Regulations and **will not** be detrimental to the community as a whole.

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

- Accorded procedural due process;
- Observed the essential requirements of the law; and
- Supported its decision by competent substantial evidence of record.

3. The Request is hereby **APPROVED**, subject to the conditions imposed below.

Section 4. Conditions Imposed. Granting of the Request is subject to the following conditions:

1. The Applicant shall obtain letters of coordination from the Monroe County Health Department prior to issuance of a Certificate of Occupancy.
2. FDOT require that special conditions be met during construction which are set forth in an attachment to the permit under Special Provisions for Permit # 2016-D-692-8 (Attachment A).

3. Per FKEC's permit on September 25, 2018, before trenching begins for FKEC underground service, the Trenching Contractor must follow FKEC underground procedures and contact FKEC Engineering for approval. In addition, the Applicant must abandon the existing electric meter location and relocate the meter on the new building. Permit to temp for construction or permit for underground is required prior to construction.
4. All transplantation and restoration shall be completed prior to issuance of a Certificate of Occupancy (C.O.) for the site consistent with the mitigation and transplantation plan submitted by Julie Cheon dated January 2018 [Ref. Code Section 30-1615(b)(4)h].
5. The Applicant shall obtain 1,504 square feet of nonresidential floor area from the Building Permit Allocation System prior to issuance of any building permit.
6. A Building Permit for the Proposed Development shall not be issued until the Applicant pays an in-lieu fee of \$17,070.40 to the Village, pursuant to the Affordable Housing Agreement. A Certificate of Occupancy shall be issued as an acknowledgement that the Applicant has satisfied all requirements under the Affordable Housing Standards of the Village Code.
7. Issuance of a development permit by the Village does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Village for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

Section 5. Conflicting Provisions. In the event the conditions or time limitations contained herein, and any conditions or time limitations of any subsequent development approval granted by the Village, or the LDRs are in conflict, the more restrictive shall apply.

Section 6. Violation of Conditions. The Owner/Applicant understands and acknowledges that they must comply with all of the terms and conditions herein, and all other applicable requirements of the Village or other governmental agencies before commencing construction or operation of any use authorized herein. In accordance with Code Section 30-224, this approval may be revoked by the Village Council upon a determination that the Owner/Applicant or its successor or designee is in non-compliance with this Resolution or the 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 by the Code.

Section 7. 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 Owner until forty-five (45) days following the rendition to the Florida Department of Economic Opportunity (the “DEO”), pursuant to Chapter 73C-44.003 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 instrument until the appeal is resolved by agreement or order.

Section 8. Term. This Development Order shall become null and void, with no further notice required by the Village, unless a complete building permit application for site preparation and building construction is submitted to the Village Building Official within the time frame specified in the LDRs. Commencement of development shall occur within three (3) years of the date of this Development Order unless a time extension is granted by the Director or the Village Council, pursuant

to Code Section 30-225. If the Development Order is appealed under the LDRs or by the DEO, the above time limits shall be tolled until the appeals are resolved.

Motion to adopt by Vice Mayor Mike Forster, seconded by Councilman Ken Davis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

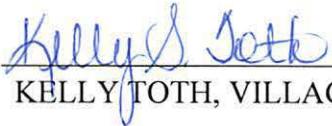
Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

PASSED AND ADOPTED THIS 29th DAY OF NOVEMBER, 2018.



DEB GILLIS, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk of this 4th day of December, 2018.

Kelly S. Toth
Kelly Toth, Village Clerk

Exhibit "A"

Legal Description

Ocean Gardens and Gifts, LLC, 82237 Overseas Highway, Upper Matecumbe Key:

Legally Described as:

Lots 2 and 3, Square 11, Strattons Subdivision, according to the Plat thereof, as recorded in Plat Book 2 at Page 38 of the Public Records of Monroe County, Florida.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Applicant, via U.S. certified mail, return receipt requested, addressed to David Osborn, 91700 Overseas Highway, Tavernier, FL, 33070 this 4th day of December, 2018.

Kelly S. Toth
Kelly Toth, Village Clerk