

**RESOLUTION 16-76**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING A SITE IMPROVEMENT PLAN AND OFF-SITE PARKING FOR A RESTAURANT LOCATED AT 591 SOUTH COLLIER BLVD. AND 988 WINTERBERRY DRIVE, MARCO ISLAND, FLORIDA; MAKING FINDINGS; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO COMPLY; PROVIDING THAT CERTAIN VESTED RIGHTS ARE NOT CREATED; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Owner/Developer has submitted a Site Improvement Plan for approval; and

**WHEREAS**, the Site Improvement Plan is for a restaurant on the Subject Property with part of its required parking on the Parking Parcel; and

**WHEREAS**, the Parking Parcel is for required off-site parking of motor vehicles; and

**WHEREAS**, off-site required parking is permitted pursuant to Section 30-484, Code of Ordinances of Marco Island, Florida (Locational requirements for off-street parking); and

**WHEREAS**, the City of Marco Island's Planning Board has recommended approval of the Site Improvement Plan and Off-Site Parking, subject to the conditions of approval as set forth in this Resolution; and

**WHEREAS**, the Owner/Developer voluntarily approved this Resolution and the conditions herein; and

**WHEREAS**, the City Council does hereby find that the approval of this Resolution is in the best interest of the City.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of Marco Island, Florida that:

**SECTION 1.**        Recitals; Definitions.

(a) Each and all of the foregoing recitals are hereby declared to be true and correct and are incorporated herein by this reference.

(b) As used herein, the following terms are defined as set forth below, unless the context of usage in this Resolution affirmatively demonstrates differently.

(1) "City" means the City of Marco Island, a Florida Municipal Corporation.

(2) "Development" shall be defined as set forth in Section 163.3164, Florida Statutes.

(3) "Owner/Developer" means Frontgate Florida Properties, Ltd., a Florida Limited Partnership, Pinchers of Florida, LLC, a Florida Limited Liability Company.

(4) "Parking Parcel Owner/Developer" means Paul Janssens and Anne-Marie Janssens, husband and wife; Frontgate Florida Properties, Ltd., a Florida Limited Partnership; Pinchers of Florida, LLC, a Florida Limited Liability Company.

(5) "Parking Parcel" means Lot 1, Block 222, Marco Beach Unit Seven, a Subdivision, according to the plat thereof, as recorded in Plat Book 6, Pages 55-62, Public Records of Collier County, Florida (988 Winterberry Drive; Property Appraiser's Parcel No. 57682520003).

(6) "Site Improvement Plan" means the four (4) page Site Improvement Plan entitled Pinchers Crab Shack, prepared by American Engineering Consultants of Marco Island, Inc., dated July 2016, consisting of a Cover Sheet, Sheet C1, C2, and C3, all with no date of revision.

(7) "Subject Property" means a parcel of land, lying and situated in the State of Florida, County of Collier, City of Marco, to-wit:

Being a portion of Tract "B" of Marco Beach Unit Seven, a Subdivision, in Sections 16, 17, and 18, Township 52 South, Range 26 East, Collier County, Florida, as recorded in Plat Book 6, Pages 55 through 62, inclusive, of the Public Records for said Collier County and which portion is more particularly described as follows:

Commencing at the Northwest corner of the above-mentioned Tract "B"; thence South 10°47'18" East, a distance of 311.72 feet to the Point of Beginning; thence South 85°23'29" East, a distance of 173.44 feet; thence South 04°25'51" West, a distance of 129.77 feet; thence South 79°12'42" West, a distance of 108.15 feet to the point of curvature of a tangent curve concave to the Northeast, having a radius of 25.00 feet, and a central angle of 90°00'00"; thence Northwesterly along said curve a distance of 39.27 to the point of tangency; thence North 10°47'18" West, a distance of 146.27 feet to the Point of Beginning.

The bearings used for this description are based upon an assumed bearing South 79°12'42" West for the centerline of Winterberry Drive, as shown on the above-mentioned plat. (591 South Collier Blvd.; Property Appraiser's Parcel No. 57640100009).

(The Legal Description has neither been examined or approved by Alan L. Gabriel, Esq., Paul Gougelman, Esq., Weiss Serota Helfman Cole & Bierman, P.L., or the City of Marco Island, Florida, but is as set forth in the Warranty Deed recorded in Official Records Book 4866, Page 2949, Public Records of Collier County, Florida.)

**SECTION 2.**        Approval of Site Improvement Plan. The Site Improvement Plan for the Subject Property and the Parking Parcel submitted by the Owner/Developer under Application No. 16-001001 be and the same are hereby approved.

**SECTION 3.**        Conditions of Approval. The approval of the Site Improvement Plan in Section 2, of this Resolution is subject to the following conditions of approval:

(a) The total number of parking spaces required on the Parking Parcel is 27 as shown on the Site Improvement Plan.

(b) Leasing, sub-leasing, or sub-subleasing of parking spaces on the Subject Property, the Parking Parcel, or in the garage, to other than the Owner/Developer or Parking Parcel Owner/Developer, is prohibited.

(c) The City-approved parking lease agreement and sub-lease agreement, or a City-approved Memorandum of Lease, shall be recorded in the Public Records of Collier County, Florida, prior to this Resolution becoming effective. The Owner/Developer shall accomplish this at its expense, promptly furnishing to the City the Official Records Book and Page numbers of the documents in the Public Records of Collier County, Florida.

(d) All required handicap accessible parking must be located on the Subject Property at 591 South Collier Blvd.

(e) The principal building location on the Subject Property (591 South Collier Blvd.) must provide at a minimum three (3) signs identifying additional parking located at corner of Landmark Street and Winterberry Drive. The signs must be conspicuously located with clear bold print legible to motor vehicle operators entering the Subject Property.

(f) Installation of any type of Barrier Gates is prohibited without written approval from the City's Growth Management Department.

(g) The parking lot must be accessible to customers of the Owner/Developer during restaurant business hours.

(h) On the Subject Property, the Owner/Developer and on the Parking Parcel, the Parking Parcel Owner/Developer are responsible for any enforcement of abandon and or unwanted vehicles.

(i) Approval of this Resolution and the form of parking agreement is for those documents only. The Owner/Developer must submit required documentation through the City's Building Services Department for the restaurant fit out. At this time, the City will verify the final seat count is in compliance with the requirements listed below.

1. Seat count is in compliance with occupancy load and Life Safety Code requirements.
2. Seating location and restaurant are in compliance with Land Development Code, Florida Building Code, and National Fire Protection Association requirements.
3. Seat count is in compliance with utility impact fees, and all impact fees due have been paid.
4. All required grease traps meet all applicable State of Florida and City regulations.
5. Seat count is in compliance with approved parking requirements / parking matrix.
6. Seat count / occupancy load is in compliance with Plumbing fixture count section 403.1 of the Plumbing Code.
7. Seat count / occupancy load is in compliance with Americans with Disabilities Act requirements and as set forth in section 30-490 of the Code of Ordinances of the City of Marco Island, and the proper number of handicapped parking spaces have been made available and are located in appropriate locations on the Subject Property.

(j) The restaurant on the Subject Property is required to obtain a Zoning Certificate from the City prior to opening for business.

(k) Staff strongly recommends all parties (the Owner/Developer, the Parking Parcel Owner/Developer, and the City) enter into a binding lot agreement that will ensure that all parties are notified should the terms of the leasing and sub-leasing agreements and binding the parcels together during the terms of the lease and sub-lease.

(l) The Owner/Developer is responsible for any and all fees of the City Attorney related to the preparation and processing of this Resolution. The Owner/Developer agrees that in reviewing and revising this Resolution, the City Attorney is representing the City and not the Owner/Developer, Parking Parcel Owner/Developer, or other persons or legal entities. Cost recovery fees are outlined in Resolution No. 16-24.

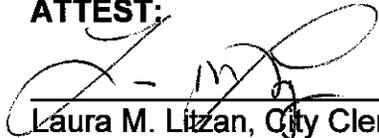
**SECTION 4.** Vested Rights Not Created. That issuance of this approval by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval, if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

**SECTION 5.** Failure to Comply. That failure to adhere to the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code, including but not limited to the revocation of any of the approval(s) granted in this Resolution and any other approvals conditioned on this approval. The Owner/Developer and Parking Parcel Owner/Developer understand and acknowledge that they must comply with all other applicable requirements of the City Code before any of them may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer or Parking Parcel Owner/Developer is in non-compliance with the City Code.

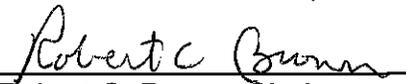
**SECTION 6.** Effective Date. This Resolution shall become effective upon adoption, or upon satisfaction of condition (c) in Section 3, of the Resolution, whichever event occurs second in time.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 6<sup>th</sup> day of September 2016.

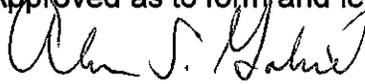
**ATTEST:**

  
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Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Robert C. Brown, Chairman

Approved as to form and legal sufficiency:

  
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Alan L. Gabriel, City Attorney

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