

ORDINANCE NO. 09-19

AN ORDINANCE AMENDING THE LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE II, SECTION 204.00, NEW SMYRNA BEACH TREE PROTECTION REGULATIONS DEFINITIONS; AMENDING ARTICLE VI, SECTION 604.051, TREE PRESERVATION; AMENDING SECTION 604.052, TREES ON SINGLE-FAMILY PROPERTIES; PROVIDING FOR PUBLIC HEARING; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida requests supplemental administrative text amendments to expand preservation of historic and specimen trees within the City of New Smyrna Beach; and

WHEREAS, the Planning and Zoning Board at a regular meeting held on February 4, 2019, voted 5-0, to recommend the City Commission approve the requested text amendments; and

WHEREAS, the City Commission deems it is in the best interests of the citizens of the City of New Smyrna Beach to amend the Land Development Regulations as more particularly set forth hereinafter.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA:

SECTION 1: That Article II., Section 204.00 of the New Smyrna Beach Land Development Regulations is hereby amended as follows: (Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)

ARTICLE II. - DEFINITIONS

204.00. - New Smyrna Beach tree protection regulations definitions.

For the purposes of [sub]section 604.05A. of this LDR, the following definitions shall apply:

City horticulturist. The person responsible for administering and enforcing the provisions contained herein or a person designated by the city horticulturist.

Attachment: ORD 09-19 LDR Text Amendment Historical Tree Removal 2.19.19 [Revision 1] (Ordinance No. 09-19: Historic Tree Removal

44 *Drip line.* A vertical line running through the outermost portion of the tree crown extending to the
45 ground.

46 *Historic tree.* Any ~~live oak (quercus virginiana) or bald cypress (taxodium distichum)~~ tree, exclusive of
47 those found on the Florida Exotic Pest Plan Council list, 36 inches DBH or greater or tree in the city selected
48 and duly designated a Florida State Champion, United States Champion or a World Champion by the
49 American Forestry Association shall likewise be considered an historic tree.

50 *Lot, developed.* A parcel of land occupied by one main building and its accessory buildings with such
51 open and parking space as required and having its principal frontage upon a street.

52 *Lot, unimproved.* An undeveloped parcel of land.

53 *Person, applicant, subdivider/developer.* Shall include an individual, partnership, corporation,
54 association, group, company, firm, society or other legal entity of human beings, whether natural or artificial,
55 including the city, and all other municipal state and federal governments, and shall include the plural as well
56 as the singular.

57 *Remove or removal.* Remove or removal shall include actual removal and effective removal through
58 killing, damaging or destroying.

59 *Specimen tree.* The following species of trees with the minimum specified diameter at breast height
60 (DBH) are determined to be specimen trees. When a Specimen tree reaches 36 inches DBH, it shall be
61 considered a Historic tree for purposes of removal under Section 604.051(f) of these LDRs.

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Common Name	Botanical Name	DBH
Turkey Oak	Quercus leavis	12 inches and larger
Other Oak Species	Quercus spp.	18 inches and larger
Maple	Acer spp.	18 inches and larger
Sweet Gum	Liquidambar styraciflua	18 inches and larger
Hickory	Carya spp.	18 inches and larger
Elm	Ulmus spp.	18 inches and larger
Lobloly Bay	Gordonia lasianthus	12 inches and larger
Sweet Bay	Magnolia virginiana	12 inches and larger
Real Bay	Persea borbonia	12 inches and larger
Swamp Bay	Persea borbonia	12 inches and larger

Sycamore	Platanus occidentalis	18 inches and larger
Magnolia	Magnolia grandiflora	12 inches and larger
Bald Cypress	Taxodium distichum	18 inches and larger
Red Cedar	Juniperup silicicola	12 inches and larger

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Tree. Any self-supporting woody plant which normally grows to an overall height of a minimum of 15 feet, with one main trunk, and which at the time of application, measures no less than six inches in diameter measured four feet above ground level.

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SECTION 2: That Article VI., Section 604.051(F) of the New Smyrna Beach Land Development Regulations is hereby amended as follows: (Note: Omissions from text are indicated by [...], deletions from text are indicated by ~~strikeout~~, and additions to text are indicated by underline.)

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ARTICLE VI. - DEVELOPMENT DESIGN AND IMPROVEMENT STANDARDS

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604.051. *Tree preservation.*

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F. *Permitting.* The tree removal application shall be made in the following manner:

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- (1) Sites requiring plan review committee (class II or class III site plans) approval shall be required to provide a survey of the property prepared by a surveyor registered with the State of Florida showing existing features of the property including elevations, buildings, structures, trees over six inches in trunk diameter at four feet above ground level, all specimen and historic trees, streets, utility easement rights-of-way, and land use. For properties east of the Indian River the survey must show trees over four inches in diameter at four feet above ground level. In lieu of a tree survey an applicant may submit any generally accepted method of calculating the number of trees.

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Class I site plans may submit a sketch in place of a tree survey.

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No permit to clear or grade shall be issued until either the required survey or sketch is filed.

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- (2) The location of all trees on the site, designating the trees to be retained, removed, relocated or replaced. Groups of trees in close proximity may be designated as "clumps" of trees with

Attachment: ORD 09-19 LDR Text Amendment Historical Tree Removal 2.19.19 [Revision 1] (Ordinance No. 09-19: Historic Tree Removal

94 the estimated number shown. Historic trees, specimen trees, and those trees to be removed,
95 relocated or replanted must be named (botanical) on the site plan.

- 96 (3) In the case of partial development, show only those areas and items affected.
- 97 (4) Upon receipt of the application and fee for tree removal permit, the city manager or his
98 designee shall review the plans and may inspect the site.
- 99 (5) If the work described is not begun within six months from the date of issuance of the permit
100 for tree removal, said permit shall be void. The city manager or his designee reserves the
101 right to extend or rescind the tree removal permit if conditions warrant.
- 102 (6) Historic trees shall be removed only upon a tree removal permit granted by the city
103 commission at a quasi-judicial public hearing, after a finding that the evidence presented is
104 more compelling for the removal of the historic tree than for it to remain.

- 105 a. Petitioners wishing to obtain a permit must show:
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- 107 i. The tree is currently damaging or is posing an imminent danger
108 to an existing structure; or
- 109 ii. The tree is damaging and/or interfering with the installation,
110 operation, and/or maintenance of existing or proposed public
111 infrastructure; or
- 112 iii. The tree is dead, diseased, structurally unsound, or severely
113 injured such that the tree is likely to die within two years; or
- 114 iv. Other extraordinary circumstance or hardship where the
115 applicant has demonstrated that no other feasible option
116 exists to preserve the tree.
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119 b. Applications for historic tree removals shall be accompanied by a written tree
120 evaluation report prepared by an ISA certified arborist which identifies the tree's location,
121 size, species, condition, and basis for meeting one or more of the listed removal conditions.

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123 (7) Specimen trees 24-inches DBH or greater shall be removed only upon a tree removal permit
124 approved by the Development Services Director, based on the proposed tree removal
125 meeting one of the four conditions listed in Section 604.052(F)(6)(b). Appeals of the
126 Director's decision may be made to the City Commission as a quasi-judicial matter.

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129 **SECTION 3:** That Article VI., Section 604.052 of the New Smyrna
130 Beach Land Development Regulations Article II. is hereby amended
131 as follows: (Note: Omissions from text are indicated by [...],
132 deletions from text are indicated by ~~strikeout~~, and additions to
133 text are indicated by underline.)

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135 ~~604.052. Trees on single-family properties.~~

136 ~~Any tree that could fall on a residential structure is exempt from all city tree preservation~~
137 ~~requirements and may be removed at any time with the permission of the owner. To qualify for this~~
138 ~~exemption, the residential structure subject to being hit by the tree must be located on a lot zoned and used~~

139 ~~for single family dwellings. The removal of a tree under this provision requires the tree owner's written~~
140 ~~authorization and a tree removal permit issued by the city. Trees removed under this provision are exempt~~
141 ~~from all tree replacement requirements.~~

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144 **SECTION 4: Public Hearing.** That a public hearing considering the
145 adoption of this ordinance was held March 12, 2019, in the City
146 Commission Chambers at City Hall, 210 Sams Avenue (south entrance
147 on Julia Street), New Smyrna Beach, Florida, after notice is found
148 to comply with §166.041(3)(c), F.S.

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150 **SECTION 5: Conflicting Ordinances.** That all ordinances or parts
151 thereof that are in conflict with this ordinance shall be and the
152 same are hereby rescinded and repealed.

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154 **SECTION 6: Severability.** That if any section, sentence, clause or
155 phrase of this ordinance is held invalid or unconstitutional by
156 any court of competent jurisdiction, then said holding shall in no
157 way affect the validity of the remaining portions of this
158 ordinance.

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160 **SECTION 7: Effective Date.** That this ordinance shall take effect
161 immediately upon its final adoption.

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164 **APPROVED AS TO FORM AND CORRECTNESS:**

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166 Carrie Avallone

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CARRIE AVALLONE

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City Attorney

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171 **DATE:** 2/19/2019

**THE CITY OF NEW SMYRNA BEACH – PLANNING AND ZONING
ORDINANCE NO. 10-19: CONDUCT THE
SECOND READING AND PUBLIC HEARING OF
ORDINANCE NO. 10-19, WHICH IF ADOPTED,
WOULD APPROVE THE 1ST AMENDMENT TO
THE OCEAN WAY VILLAGE PUD MASTER
DEVELOPMENT AGREEMENT.
MARCH 12, 2019**

Background

- A. **Applicant:** Glenn D. Storch, 420 South Nova Road, Daytona Beach, Florida 32114
- B. **Property Owners:** Dal-Ter Properties, LLC, 1031 West Morse Boulevard, Unit 350, Winter Park, FL 32789; Ocean Way Village POA, Inc., same address; & Circle K Stores, Inc., 12911 N. Telecom Pkwy., Tampa, FL 33637
- C. **Request:** 1st Amendment to the existing recorded Ocean Way Village PUD Master Development Agreement (MDA) and Conceptual Development Plan (CDP), primarily to allow for new/proposed uses of Outdoor Storage and Mini-Warehouse and to remove the currently permitted theater use, along with other associated revisions as listed below.
- D. **Site Data:** The subject property consists of approximately 16 acres and is generally located southeast of the intersection of State Road 44 and South Glencoe Road. A Location Map is attached as **Exhibit A** and an aerial map is attached as **Exhibit B**.
- E. **Tax ID #s:** 7323-07-00-0020: Circle K Stores, Inc.
7323-07-00-0010, 7323-07-00-0030, & 7323-07-00-0050: Dal-Ter Properties LLC,
7323-07-00-0001 & 7323-07-00-0002: Ocean Way Village POA, Inc.
- F. **Exhibits Provided:**
- o **Exhibit A** - Location Map
 - o **Exhibit B** - Aerial Map
 - o **Exhibit C** - Existing recorded PUD MDA
 - o **Exhibit D** - Existing PUD CDP, as recorded (clean copy)
 - o **Exhibit E** - Existing Ocean Way Village subdivision plat, as recorded
 - o **Exhibit F** - Applicant request letter - October 5, 2018

- o **Exhibit G** - Applicant response letter -December 7, 2018
- o **Exhibit H** - Proposed MDA Amendment, including proposed exhibits
 - § CDP (Lot 5 site plan)
 - § Landscape Plan (Lot 5)
 - § Storage Building Elevations (Lot 5)

Findings

- A. The subject property is an approximately 16-acre site consisting of six separate parcels that were created by a previous PUD MDA application and subsequent subdivision plat, both of which were approved and recorded in 2015. A significant portion of the site has been previously cleared, when the property was originally developed as the “Buddy World” entertainment complex, which contained miniature golf, batting cages and go-karts. In 2006, all of those improvements were removed from the property and the 16 acre site has remained vacant since that time. Access to the site was previously provided from State Road (SR) 44, with secondary access being proposed to South Glencoe Road by this existing PUD.
- B. The existing recorded PUD MDA is attached as **Exhibit C**, along with an **Exhibit D**, which is more readable version of the same Conceptual Development Plan (CDP). Also attached is an **Exhibit E**, which shows the existing Ocean Way Village subdivision plat, with the six lots shown as recorded.
- C. Prior to approval of that PUD MDA, the applicant received approval from the Planning and Zoning Board at a December 2014 meeting for the following variance requests:
- 1) Increase the Corridor Overlay Zone (COZ) front build-to line along State Road 44 from 45-65 feet to 125-200 feet,
 - 2) Reduce the COZ natural vegetation requirement from 30% to 15%,
 - 3) Reduce the PUD minimum open space requirement from 50% to 44%,
 - 4) Reduce the PUD minimum required interior parking lot landscaping percentage from 20% to 10%, and
 - 5) Allow an additional 48 square foot monument sign at the entrance to the PUD, conditioned upon removal of the existing 60 square foot monument sign on the property.

The Board’s approval then included the following three conditions to be met as part of their action on those five variance requests:

- 1) A minimum of four inch caliper trees are used in order to provide the same area of plant coverage within the landscaped buffers.
- 2) The applicant revises the Master Development Agreement to include any new or amended language based on the approval or denial of these

variances and that such changes are submitted prior to the rezoning request being scheduled for first reading before City Commission.

- 3) Buffers along State Road 44 (north property line), Glencoe Road (west property line), and the buffer areas around the water retention ponds (south property line) must include the plant materials that would have been installed with the additional 10% interior parking lot landscaping.

These conditions were incorporated into the text of the approved and recorded MDA, and will be applied to any site plan applications for the six lots proposed to be developed within this PUD.

- D. There has only been one site plan application made to date within this PUD and Ocean Way Village subdivision plat, which has been for the proposed development of Lot 2 as a Circle K convenience store in general accordance with the recorded PUD MDA CDP and building elevation exhibits. That site plan was approved in 2016, but never developed and no building permit for that plan or lot issued to date. Since that 2016 site plan approval, central sewer services have been provided to the site, in place of the temporary septic system then proposed as part of that plan.
- E. The applicant submitted this MDA Amendment request in October 2018 (per the attached **Exhibit F** letter), for the stated purpose of developing Lot 5, the southernmost and largest lot, which also does not front SR 44, for a proposed mini-warehouse and outdoor storage use instead of the currently permitted theatre use. Thus the MDA text revisions proposed would allow for mini-warehouse and storage as a Permitted Use in the MDA, along with revising the previous three development phases into two phases and other minor revisions. That application was reviewed at the November 2 TRS meeting and the applicant sent a following response letter (attached as **Exhibit G**) and the accompanying **Exhibit H**, with the revised proposed MDA 1st Amendment, and including its proposed exhibits, for a CDP (Lot 5 site plan), Landscape Plan, and Storage Building Elevations.
- F. The specific MDA revisions are as follows, using the Amendment Page numbers shown in Exhibit H:
 1. Page 2 of 9 -
 - a. Section B. - Change phasing from three to two phases and remove all references to temporary septic service and pending central sewer, now that central sewer is available to the site and required to be used
 - b. Section C. - Change schedule/requirement for TIA update, from the current Phase III now proposed to be eliminated (per above) to instead require those updates to be done with the site plan submitted for future development of each of the lots.
 - c. Section 5 - Permitted Uses proposed to add mini-warehouse and outdoor storage and remove Theatres

2. Page 3 of 9 -
 - a. Section 7C. - Remove requirement for public transit access due to change of Lot 5 proposed use from current theatre to proposed mini warehouse and storage; remove theatre bicycle parking requirement
 - b. Section 7D. - Remove prohibition on outdoor storage
 - c. Section 7E. - Revise timeline for south fence construction
 3. Exhibits - add three new MDA exhibits specific to proposed Lot 5 mini warehouse use only, for site plan, landscape plan, and storage building elevations.
- G. The Traffic Impact Analysis (TIA) provided with the original 2014 PUD application has been updated by the applicant to consider the proposed change in the Permitted Use for Lot 5, from the currently permitted and much more intense Theatre use to the proposed mini-warehouse and outdoor storage uses and in response to changes in other area conditions since that was prepared. This document update has been reviewed by the City's consulting traffic engineer and the proposed CDP since modified to indicate conceptual revisions for a right-turn lane into the site for northbound Glencoe Road traffic, a driveway entrance modification at that same Glencoe Road connection, and stacking space within the site for large vehicles and/or trailers. This TIA update and the specific roadway modifications will be further detailed in the required site plan application to follow, for Lot 5 and any other lots, per the proposed MDA text revision regarding TIA updates.
- H. Future development of the Lot 5 area detailed in this 1st Amendment, and all other lots, will require City Site Plan application review and approval, along with permitting through other agencies, with more detailed plans for roadway improvements, buildings, landscaping, stormwater management, etc.

At its regular scheduled meeting on February 4, 2019 the Planning and Zoning Board voted, 5-0, to recommend the City Commission to approve the requested 1st amendment to the Ocean Way Village Master Development Agreement. Members Herb Gardner and Steven Casserly were absent. The recommendation included white vinyl fencing to be used and outdoor storage for lot 5 only has been amended in the attached Master Development Agreement document.

Staff recommends the City Commission, to approve the requested 1st Amendment to the current Planned Unit Development Master Development Agreement.

The City Commission conducted the first reading of the proposed ordinance at its regular meeting held February 26, 2019.

Recommendation

Conduct the second reading and public hearing of Ordinance No. 10-19, which if adopted, would approve the 1st Amendment to the Ocean Way Village PUD Master Development Agreement.

ORDINANCE NO.

**ORDINANCE NO. 10-19: CONDUCT THE SECOND
READING AND PUBLIC HEARING OF ORDINANCE NO.
10-19, WHICH IF ADOPTED, WOULD APPROVE THE 1ST
AMENDMENT TO THE OCEAN WAY VILLAGE PUD
MASTER DEVELOPMENT AGREEMENT.**

APPROVED AS TO FORM AND CORRECTNESS: