



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, February 28, 2019

Time: 5:30 PM

Type of Meeting: Regular

Location: Council Chambers
City Hall, 1000 City Center Circle

A. CALL TO ORDER

1. Pledge of Allegiance
2. Silent Invocation
3. Roll Call

B. DISCUSSION/ACTION

4. Consideration of Minutes
5. CASE NO. 19-90000001
VARIANCE/4832 HALIFAX DRIVE

A request by the Applicant for variances from the LDC to: 1) reduce the minimum lot width to 20-feet in lieu of the required +/- 82 feet for property zoned Neighborhood Preservation (NP); and 2) allow for a dock side setback to be 5-feet in lieu of the required 10-feet from a side property line.

Staff Contact: Briana Conlan King (386) 506-5676/brking@port-orange.org

6. CASE NO. 19-40000001
FIRST AMENDMENT TO THE CATFISH COMMONS PLANNED COMMERCIAL
DEVELOPMENT MASTER DEVELOPMENT AGREEMENT AND CONCEPTUAL
DEVELOPMENT PLAN
4085 Ridgewood Avenue and 4108 Halifax Drive

A request by the applicant to amend the Catfish Commons Planned Commercial Development (PCD) Commercial Development Master Development Agreement (MDA) and Conceptual Development Plan (CDP) to allow: 1) a mobile retail unit to be positioned at 4085 Ridgewood Avenue; 2) allow a residential unit above the entry feature at 4108 Halifax Drive to serve as a residence for any business owner/manager of a business within the PCD; and 3) to waive fees associated with future amendments to the MDA or CDP for the PCD property.

Staff Contact: Gwen Perney (386) 506-5673/gperney@port-orange.org

7. CASE NO. 19-40000002
FIFTH AMENDMENT TO THE WESTPORT STORAGE AND OFFICE BUILDING
PLANNED COMMERCIAL DEVELOPMENT MASTER DEVELOPMENT
AGREEMENT
East side of S. Williamson Blvd., south of Taylor Road

A request by the Applicant for the Fifth Amendment to the Westport Storage and Office Park Planned Commercial Development (PCD) Master Development Agreement to amend the list of the permitted uses allowed in the PCD.

Staff Contact: Penelope Cruz (386) 506-5671/pcruz@port-orange.org

8. CASE NO. 19-25000001
LDC TEXT AMENDMENT/CHAPTER 9

An amendment to Chapter 9 of the Land Development Code to update the tree survey and mitigation requirements based on recommendations by the Environmental Advisory Board.

Staff Contact: Briana Conlan King (386) 506-5676/brking@port-orange.org

C. OTHER BUSINESS

9. Commissioner Comments
10. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE **PLANNING COMMISSION** WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED. NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771. UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JANUARY 24, 2019

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman White at 5:30pm.

Pledge of Allegiance

Silent Invocation

Roll Call

Present: John Junco
Newton White
Thomas Jordan
Lance Green
Maria Mills-Benat
Darrel "Bo" Bofamy

Absent: Joseph Fazzie (excused)

Also Present: Shannon Balmer, Assistant City Attorney
Shelby Field, Assistant City Clerk

ELECTION OF OFFICERS

Vice Chairman Thomas Jordan was offered the Chair position and accepted.

Motion was made by Commissioner White to nominate Commissioner Mills-Benat for Vice Chairman, Seconded by Commissioner Bofamy. Commissioner Mills-Benat accepted the nomination. Motion carried unanimously by voice vote.

DISCUSSION/ACTION

5. Consideration of Minutes

Motion to approve the meeting minutes from December 12, 2018 was made by Vice Chairman Mills-Benat and Seconded by Commissioner White. Motion carried unanimously by roll call vote.

6. Case No. 18-20000007
SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE (FLU)
AMENDMENT/WOODHAVEN PUD
North of Pioneer Tr., between Williamson Blvd. and I-95

A request by the applicant to change the Future Land Use (FLU) designation for ±6.3-acres within Woodhaven Planned Unit Development (PUD) from *Conservation* to *Mixed-Use Center*.

Staff Contact: Penelope Cruz (386) 506-5671 pcruz@port-orange.org

Penelope Cruz, Planning Manager, discussed the details of the plan and answered questions from the Commissioners.

Commissioners indicated that if they vote to approve the request they would like to see the ±6.3 acres in conservation moved somewhere else to preserve land.

David Haus, applicant, discussed the details of the plan and responded to the Commissioners concerns.

Mike Dennis, environmental consultant, believes ICI would be willing to preserve conservation acres.

Motion to approve was made by Commissioner Junco and seconded by Vice Chairman Mills-Benat. Motion carried unanimously by roll call vote.

7. Case No. 18-40000003
SECOND AMENDMENT TO THE WOODHAVEN PLANNED UNIT DEVELOPMENT
MASTER DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT
PLAN
North of Pioneer Tr., between Williamson Blvd. and I-95

A request by the applicant for the Second Amendment to the Woodhaven Planned Unit Development (PUD) Master Development Agreement (MDA) and Conceptual Development Plan (CDP) to modify the landscape planting requirement for the landscape buffer along Williamson Boulevard for Phase 1, allow for either an 8-foot tall opaque PVC fence or a landscape buffer adjacent to I-95, reduce the buffer width along Pioneer Trail between Williamson Boulevard and I-95 from 400-feet to 200-feet, and add language referencing the Land Development Code (LDC) Subdivision Variance process for future requests to modify the Williamson Blvd. landscape buffer.

Staff Contact: Penelope Cruz (386) 506-5671 pcruz@port-orange.org

Mrs. Cruz discussed the details of the plan and answered questions from the Commissioners.

Commissioners expressed distain over the 8-foot tall opaque fence, stating they would prefer a landscape fence and believe citizens would feel the same.

Mr. Haus assured Commissioners he would be willing to work with the City to provide a more suitable buffer along Williamson Blvd.

Motion to divide motion into separate votes was made by Vice Chairman Mills-Benat and seconded by Commissioner Green. Motion passed 4-1 by roll call vote with Commissioner Bofamy voting no.

Motion was made to modify the landscape planting requirements in the 50-foot wide landscape buffer along Williamson Blvd. for Phase 1 by Commissioner Green and seconded by Commissioner Junco. Motion carried unanimously by roll call vote.

Motion to allow for either an 8-foot tall opaque PVC fence or a landscape buffer along I-95 was made by Commissioner Green and seconded by Commissioner White. Motion carried 4-1 by roll call vote with Commissioner Jordan voting no.

Motion to modify the buffer width along Pioneer Trail from 400-feet to 200-feet on the condition the City will regain the 6 acres in future phases was made by Commissioner Green and seconded by Commissioner Junco. Motion carried unanimously by roll call vote.

Motion to add language referencing the Subdivision Variance process from the Land Development Code for future requests to modify the Williamson Blvd. landscape buffer was made by Commissioner Green and seconded by Commissioner Bofamy. Motion carried 4-1 by roll call vote with Vice Chairman Mills-Benat voting no.

8. Commissioner Comments

Commissioner Green expressed concerns over property maintenance from long term businesses. Tim Burman, Community Development Director, explained Code Enforcement handles such issues and he would pass the concerns along. Commissioner Green inquired about Acorn Storage on South Williamson Blvd. and the traffic resulting from it. Mr. Burman responded that the property meets all the access requirements through the City's Land Development Code and all access onto the property is through Volusia County, who approved it.

Commissioner White questioned Mr. Burman about the tree growing out of the former church building on the Northeast corner of Madeline Ave. and Williamson Blvd. Mr. Burman explained that the issue needs to be addressed by the property owner by May 30, 2019 either by demolishing the building or getting permits and site plans by said date or the City may take action. Commissioner White asked about the status of the Riverwalk condos. Mr. Burman responded that nothing has changed so far.

9. Staff Comments – there were none.

PUBLIC COMMENTS- there were none.

ADJOURNMENT- 7:03 pm

Chairman Thomas Jordan



STAFF REPORT

Variances from LDC Chapter 17, Section 15(d)(1)(a); Chapter 9, Article III, Section 27(b)(9)(b)
CASE NO. 19-90000001

REQUEST: Variances from the LDC to: 1) reduce the minimum lot width to 20-feet in lieu of the required +/- 82 feet for property zoned Neighborhood Preservation (NP); and 2) allow for a dock side setback to be 5-feet in lieu of the required 10-feet from a side property line.

LOCATION: 4832 Halifax Drive (Figure 1 – Location Map)

OWNER/APPLICANT: Christina Wyatt Vaeth

STAFF RECOMMENDATION: Denial

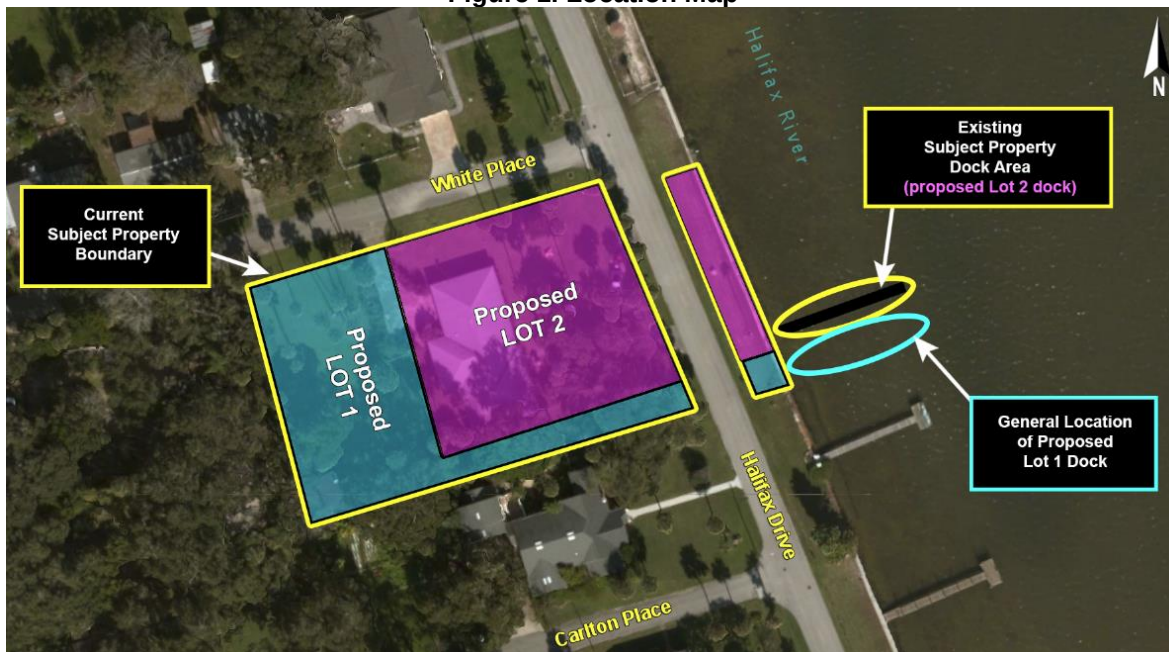
STAFF CONTACT: Briana Conlan-King, Senior Planner (386) 506-5676

PLANNING COMMISSION DATE: February 28, 2019

BACKGROUND

The subject property is located at the southwest corner of White Place and Halifax Drive, west of the Halifax River. The property owner/applicant, Christine Wyatt Vaeth, is proposing to subdivide the subject property into two single-family residential lots with both lots having frontage along the Halifax River, and to establish a 5-foot side setback for an existing dock (Figure 1).

Figure 1. Location Map



The applicant is requesting the following variances:

- 1) Reduce the minimum lot width to 20-feet in lieu of the required +/- 82 feet for property zoned Neighborhood Preservation (NP) [Chapter 17, Section 15(d)(1)(a)]; and
- 2) Reduce the side setback for a residential dock to 5-feet in lieu of the required 10-feet from a side property line [Chapter 9, Article III, Section 27(b)(9)(b)].

The subject property is approximately 1-acre in size and consists of two previously platted lots of record (lot 5 and 6 of the Flemings Port Orange Subdivision – recorded 1913). The subject property has 156-feet of roadway and river frontage along Halifax Drive and 264-feet of roadway frontage along White Place. There is currently a single-family home, detached garage, and a dock on the subject property. If the variance requests are approved, the applicant intends to submit an application to subdivide the property through the minor subdivision process and keep the existing dock. The proposed lot configuration consists of a through lot (Lot 1) that fronts White Place and Halifax Drive, and a lot (Lot 2) located at the corner of White Place and Halifax Drive. The existing single-family home and dock would remain and be located on proposed Lot 2 and Lot 1 would be an undeveloped residential lot.

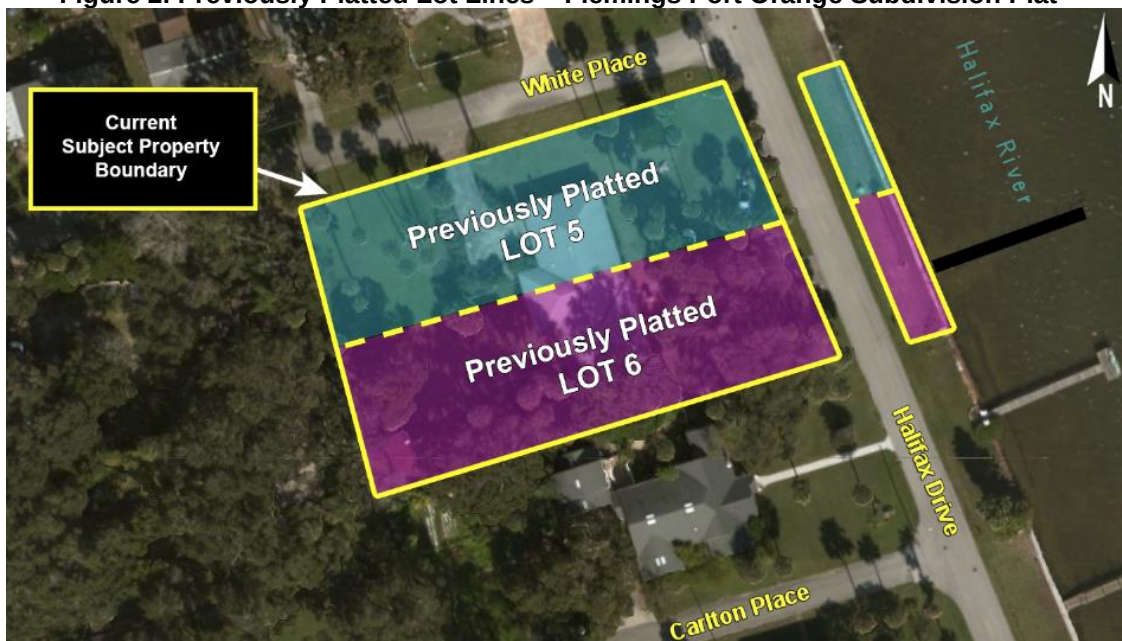
MINIMUM LOT WIDTH VARIANCE

The subject property is located in the Neighborhood Preservation (NP) zoning district. The intent of the NP zoning district is to preserve the character and housing density of existing older mixed-use neighborhoods. According to the Land Development Code (LDC), the subdivision of land in the NP zoning district is to comply with the prevailing development pattern and dimensions within a 200-foot radius of the land to be subdivided. As required by the LDC, a 200-foot radius was drawn around the subject property and staff obtained the dimensions of the nearby lots from the Volusia County Property Appraiser's website. Based on the lot dimensional data, the required lot width and lot area for the subject property, according to the NP zoning district regulations, is +/- 82 feet.

The applicant is requesting to reduce the required minimum lot width for Lot 1 to 20-feet. According to the applicant, this would allow the proposed lot to have frontage onto Halifax Drive and the Halifax River, and the ability for the current owner or future owner of proposed Lot 1 to construct a dock. The proposed Lot 2 would exceed the lot width dimensional requirements and the existing dock would remain.

Currently, the subject property consists of two platted buildable lots (Figure 2). The two existing buildable lots are both 79-feet in width and have frontage onto the Halifax River. However, in the past, these lots were combined, and the existing single-family home was constructed on both lots. The LDC allows for previously platted lots to be re-established along the previously existing lot lines. In order for the applicant to re-establish the two riverfront buildable lots, the existing single-family home would need to be demolished. The applicant has indicated that it is preferred to keep the existing single-family home and create another residential lot around it that includes river frontage.

Figure 2. Previously Platted Lot Lines – Flemings Port Orange Subdivision Plat



If the lot width variance is approved, the applicant would be required to apply for a minor subdivision, which is reviewed at the staff level, to assure the proposed lots and remaining structures meet all of the requirements (e.g. tree preservation, setbacks, lot area and width, and connection to City water and sewer service) of the LDC. Once subdivided, to build a single-family home and dock on the proposed Lot 1, the property owner would be required to submit building permit applications for a new single-family home and dock. Any new improvements on either lot will be required to meet all of the minimum development requirements, building setbacks, open space, building coverage, stormwater, utilities connections, and landscaping standards set forth in the LDC. The proposed property frontage for Lot 1 along Halifax Drive would be +/- 20-feet wide and any future dock on this proposed lot would be required to be centered between the side lot lines. The LDC allows for a maximum width of residential dock of 4-feet, so a future dock on the proposed Lot would be setback 8-feet from the proposed side property lines.

DOCK SIDE SETBACK VARIANCE

If the minimum lot width variance request is approved than a variance is needed to keep the existing dock. Based on the applicant's proposed lot configuration, the existing single-family home and dock would remain on the proposed Lot 2, with the existing dock being setback approximately 5-feet from the proposed side property line (Figure 1). The LDC requires a residential dock to be setback 10-feet from a side property line for all properties along the Halifax River with a shoreline length of 65 feet or more. The intent of the 10-foot dock setback requirement is to protect the shoreline from increased erosion, minimize impacts to marine life, minimize the impacts on adjoining properties, provide sufficient room for maneuvering a boat, and provide room for maintenance and necessary repairs to the dock or boat. If the variance is approved, the existing dock would remain 5-feet from the new proposed side lot line.

REVIEW OF VARIANCE CRITERIA

Chapter 19, Section 1, LDC, lists the review criteria that shall be used to determine whether a variance request should be granted.

- a) *Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structure or buildings in the same zoning district.*

The subject property is already developed with a single-family home and accessory structures. This criterion typically refers to conditions or circumstance such as steep slope, presence of historic tree, odd lot shape, etc. that might make subdividing the property within the lot width and lot area requirements or meeting building and dock setbacks impractical.

The subject property could be subdivided in accordance with the LDC; however, these other options would require the home to be demolished or for only one lot to have waterfront access. The proposed dock setback variance request is a result of the proposed subdivision configuration. If the minimum lot width variance is approved and the subject property is subdivided as proposed, the existing dock would then only be setback 5-feet from the new proposed lot line rather than the required 10-feet.

According to the applicant (see attached letter), the area of the subject property is a special condition, since it about an acre in size and the other adjacent lots are less than ½ an acre. The variance would allow for the subject property to be subdivided and create two lots similar in area to the surrounding lots and maintain the existing home and dock.

- b) *The special conditions and circumstances are not result of actions of the applicant.*

There are no special circumstances associated with the subject property. As for the lot width, there are subdivision options that comply with the LDC to create two lots similar with the prevailing development of the surrounding area that do require a variance.

The proposed dock setback variance is necessary due to the applicant's proposed lot configuration. If the lot width variance is not approved, then the dock setback variance is not required.

According to the applicant, the existing structure was built across the previously platted lot lines by a past owner and not the current owner of the property. As for the dock, the applicant rebuilt it in 2017, and does not want to remove it, if possible.

- c) *Literal interpretation and enforcement of the land development code regulation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under terms of the development code, and would work unnecessary and undue hardship on the applicant.*

When a property is subdivided, it must comply with current development requirements of the LDC. The intent of the lot width requirement in the NP zoning district is to preserve the character, housing mix and density of existing older mixed-use neighborhoods by providing for compatible infill development and redevelopment, where enforcement of the dimensional requirements of other conventional zoning districts would not be possible.

Although not the applicant's preference, there are options to subdivide the subject property and meet the lot width requirement in the LDC. The first option is to demolish the single-family home and re-establish the two previously platted lots of record. If this is done, a single-family home and a dock could be constructed on each of the previously platted lots (Figure 3). The second option is to create a second lot behind the existing single-family home with sole access to White Place. If this is done, the existing single-family home would remain, and a new single-family home could be built on the White Place lot, but it would not have river frontage to construct a dock (Figure 4).

**Figure 3. Previously Platted Lot Lines/
Demolish House**



Figure 4. Frontage along White Place



According to the applicant, the variance is necessary for the proposed subdivision to create two lots with river access. The applicant states the proposed lot width of +/-20 feet for Lot 1 along Halifax Drive is due to the location of the existing single-family home on the previously platted lots. The intent of the proposed subdivision is to create two riverfront lots and allow

the existing single-family home to remain. The applicant also states that since the subject property consists of two previously platted lots, the proposed subdivision is not creating additional lots in this area just reconfiguring the two lots and the applicant does not anticipate it would impact the character of the "NP" district, neither it would provide a compatible infill development.

When a property is subdivided all existing structures must meet or exceed the dimensional requirements of the LDC. The existing dock currently meets the required 10-foot setback. However, the applicant's proposed lot configuration would create the need for a reduced setback for the dock to meet the LDC regulations.

- d) *The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.*

The property is already developed with a single-family home and accessory structures. The variances requested are only necessary to accommodate the applicant's proposed subdivision of the property. As previously stated, there are two alternative options to subdivide the property, but one option would require removal of the single-family home and the other option would only create one waterfront lot.

The dock variance request is a result of the applicant's proposed minor subdivision configuration. According to the applicant, the variances are necessary in order to subdivide the subject property into two waterfront lots and allow the existing dock rebuilt in 2017 to remain. The applicant states, the lot cannot be subdivided along the previously platted lot lines due to the location of the existing residence and that the dock is structurally sound.

- e) *Granting of the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.*

Prior to any type of development in the NP zoning district, staff verifies if the proposed development (new single-family home, detached garage, addition, pool, driveway, lot split, etc.) is generally consistent with the surrounding development pattern, which includes, lot width, lot area, and setbacks. This requirement is specific to the NP zoning district and the intent is to preserve the character, housing mix and density of existing older mixed-use neighborhoods by providing for compatible infill development and redevelopment. All properties developed or redeveloped within the City are required to meet the development requirements of the LDC or secure variances from said requirements.

According to the applicant, allowing a lot to have a minimum lot width less than 82-feet would not confer special privilege because there are other residential properties within a 200-foot radius with lot widths less than 82-feet. The other properties located within the 200-foot radius have lot widths ranging between +/- 45 feet and +/-100 feet.

The applicant states, the lot cannot be subdivided along the previously platted lot lines due to the location of the existing residence. The applicant's preference is to subdivide the property to create the two waterfront lots that allow the existing home and dock to remain in their current location and create an additional single-family lot with the potential for another boat dock.

The applicant also states that granting the variance would not be a special privilege because the subject property consisted of two previously platted waterfront lots. However, the prior lot configuration met the LDC minimum lot width requirements.

- f) *The granting of the variances will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The LDC is intended to implement the requirements, to protect the health, safety and general welfare of the citizens of the City, and to enhance the appearance, function and livability of the City, to the end of improving the overall quality of life within the community.

The lot width requirement is intended to provide sufficient separation between buildings, to minimize the visual appearance and impact of the structure from adjoining properties, ensure adequate separation between structures for air movement and light, provide room for accessory structures (pools, garages, patios, etc.). The lot width variance would not be consistent with the intent of the LDC of the NP zoning district. The intent of the NP zoning district is to preserve the character of the area through compatible infill development and redevelopment. While there is one through-lot within the area of the subject property, the prevailing development pattern generally follows the platted lot lines and does not consist of lots having access to the river through small slivers of land between residential lots. The proposed lot configuration is not consistent with the lot layout of the neighborhood.

The dock setback requirement is intended to minimize the impacts on adjoining properties, provide sufficient room for maneuvering a boat, and provide room on the subject property for maintenance and necessary repairs to the dock or boat.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

This variance request is not based upon a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION

Based upon the findings of this staff report, Staff recommends denial of the requested variances.

ATTACHMENTS

1. Applicants Letter
2. Neighbor's Letter of Opposition

EXHIBIT 1

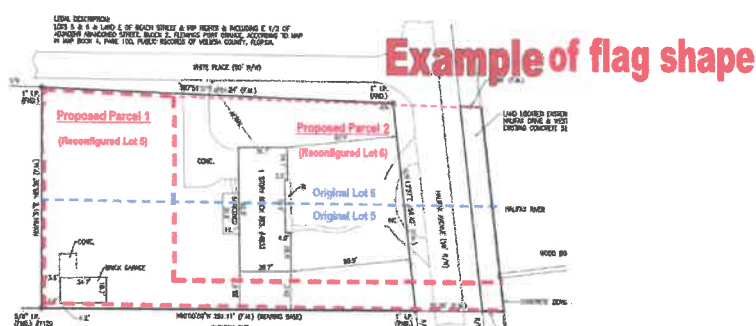
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Dear Planning Board,

The application before the Planning Board is a request for minor subdivision approval with variance relief for property known and designated as **Block 2, Lots 5 and 6 and land E of Beach Street, Flemings Port Orange, according to Map in Map Book 1, page 100, Public Records of Volusia County Florida**, which premises are commonly known as **4832 Halifax Drive, Port Orange, FL**. The subject site is located in the NP Zone district.



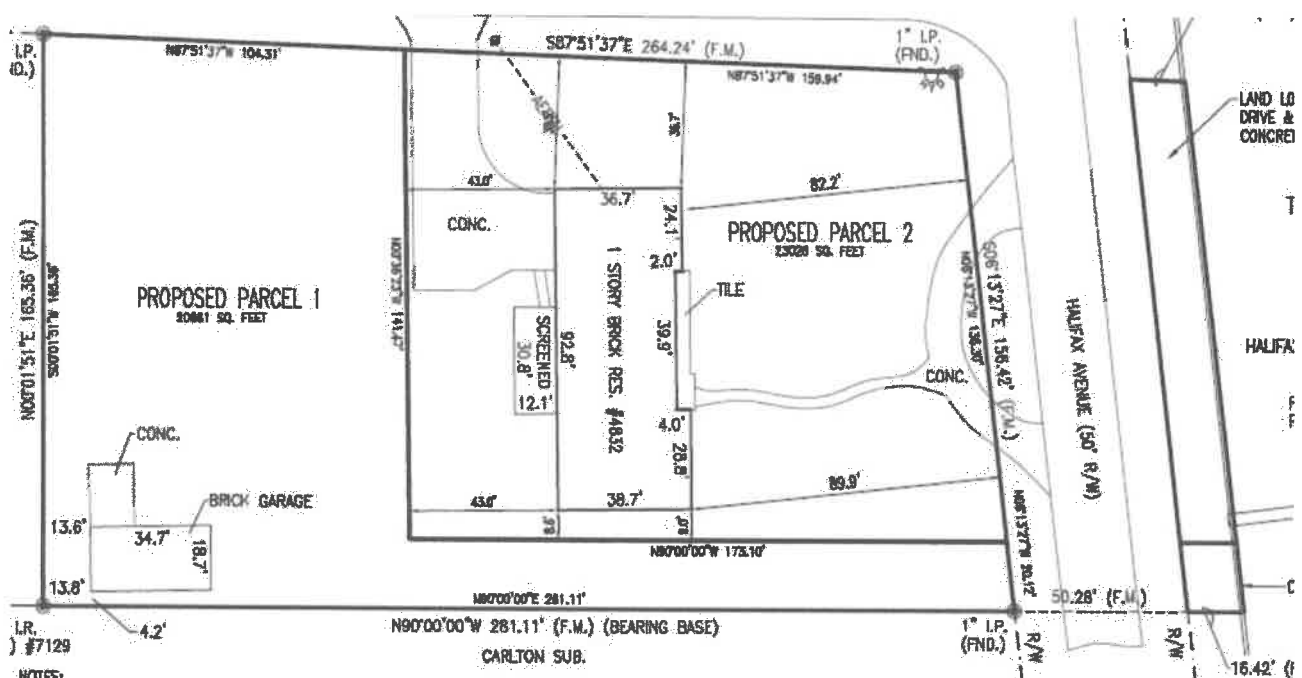
I am seeking to subdivide the existing parcel, comprised of two previously platted waterfront lots (Lot 5 and Lot 6), back into two water accessible parcels, reconfiguring the previously platted lot lines of Lot 5 and Lot 6 around the existing residence. The existing residence on the Parcel prevents the previous side by side subdivision configuration (with water access to both properties), therefore a through lot or “flag lot” configuration is being sought. The through lot configuration now creates two fronts for Proposed Parcel 1, one on White Place and one on Halifax Drive. The variance being requested is for the lot width for the proposed through lot adjacent to Halifax Drive (in Proposed Parcel 1) be less than 82’.



The variance would allow the existing residence to remain on Proposed Parcel 2 (previously

1/16/19

plotted Lot 6) and would essentially reconfigure previously plotted Lots 5 and 6 in Proposed Parcel 1 to accommodate the existing residence, resulting in a flag shaped lot to be platted with the "pole" running the full length of the South border, including the land "E of Beach Street." Proposed Parcel 2 would remain a corner lot fronting Halifax Drive and White Place facing Halifax Drive. Proposed Parcel 1 would be a through lot that would front both White Place and Halifax Drive (but face White Place).



Proposed Parcel 2 (containing previously platted Lot 6) will have an area of approx +21,000 square feet, have approximate lot dimensions of 136 ft x 159, and will retain the existing one-story residence with the required 7.5ft side yard setback. It will be a corner lot and continue to front Halifax Drive and White Place. Proposed Parcel 1 will be a through lot with a lot area of approx +16,000 square feet (not including the approx 20 x 173 ft "pole"). The "flag" portion of the parcel will have approximate lot dimensions of 104ft x 165ft and the "pole" portion of the parcel will be approximately 20ft x 173 ft. The "flag" will front White Place and the "pole" will have a second front on Halifax Drive. Other than Proposed Parcel 1's additional front on Halifax Drive, both Proposed Parcels meet the minimum dimensional requirements set by the Code.

The purpose of the application is to subdivide the existing parcel (containing waterfront Lot 5 and waterfront Lot 6) in a way that maintains water accessible status for both lots and allows the existing residence to remain. The variance will NOT give this property special privileges – there are two previously plotted waterfront lots and the variance would allow two

1/16/19

water accessible lots, no more than what was previously plotted. It is not practical to alter or move the existing house. The proposed lot lines would allow the property to be split into two water accessible parcels by creating a driveway area platted along the south border of the previously platted Lot 5, including the property "E of Beach Street." The the 20-foot flag pole driveway bordering the existing residence would be solely for access, and no structures would be permitted in this area.

The variance should be granted because Proposed Parcel 1 and 2 conform to the size requirements of the Code, is consistent with the character of the neighborhood, and does not negatively impact the surrounding property owners or the spirit of the zoning regulations. The benefits substantially outweigh any detriment and the variance will not give the property owner any special privileges.

1. Other than Proposed Parcel 1's additional driveway, both Proposed Parcel 1 and Proposed Parcel 2 conform to the size requirements of the Code.

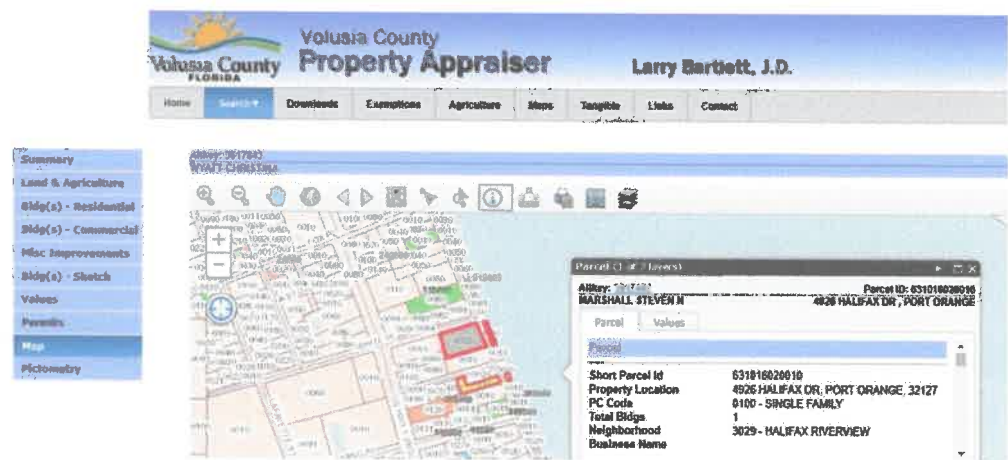
The subject property is zoned Neighborhood Preservation (NP) and per the Land Development Code, subdivision of land for single-family detached use shall comply with the prevailing development pattern and dimensions for such use within a 200-foot radius of the land to be subdivided. Based on the lot size and width within the 200' radius of 4832 Halifax Drive, the minimum lot size is +/- 13,400 SF and minimum lot width is +/- 82' [Ch 17, Sec 15(d)(1)(a), LDC]. In addition the code requires the lot width for a corner lot to be 15% greater than the required lot width [Ch 5, Sec 6(c)(8), LDC]. Therefore, per the LDC, the frontage along Halifax Drive and White Place for the corner lot (Proposed Parcel 2) must be 94' and the lot width for Proposed Parcel 1 (containing the through lot along Halifax Drive) must be 82'.

The existing area of the subject parcel is approx. +43,000 square feet. Proposed Parcel 2 will have a lot area of approx +21,000 square feet and will retain the existing one-story residence. This far exceeds the square footage minimums set by the Code. It will be a corner lot and will have approximate dimensions of 136' x 159, which way exceed the minimum lot width of 94' along both Halifax Drive and White Place. Proposed Parcel 1 will have a lot area of approx +16,000 square feet (not including the approx 20 x 180 ft "pole"), which exceeds the minimum square footage requirements set by the Code without adding in the "pole" dimensions. Proposed Parcel 1 will have an approximate 104' width frontage along White Place, which exceeds the 82' minimum set by the Code. The driveway width on Proposed Parcel 1 would be 20ft wide, permitting a 7.5 setback from the existing residence on Proposed Parcel 2. Both Proposed Parcels far exceed the minimum square footage requirements set by the Code.

2. The reconfiguration of previously platted Lot 5 and Lot 6 into Proposed Parcel 1 and Proposed Parcel 2 are consistent with the character of the neighborhood.

1/16/19

There are other parcels in the surrounding area in the same zone district that have been developed with similar tandem configurations (either as flag lots or with driveway easements). One such parcel is only 2 properties away (or just one parcel away) at 4926 Halifax Drive:



A search on the Volusia County Property Appraiser's website using the Map, reveals that there are numerous other flag shaped lots (ex: 5216 Riverside Dr. and 5226 Riverside Dr.) and other unusually shaped lots of record.

The proposed lots will be rectangular and the access driveway will be the minimum width and length required. The Proposed Parcels are not unusually configured and they are consistent with the existing patterns of development. They also exceed the size of other parcels in the surrounding vicinity.

3. The Variance does not negatively impact the surrounding property owners.

The variance would not adversely impact the adjacent property owners to the north, east or west, and the properties to the south of the subject lot would benefit from the variance and the subsequent subdivision proposal through gaining a further setback to their lot (driveway area) where no development can occur. In fact, the creation of the flag lot and the 20-foot flag pole ensures that no structure could be built within the 20 foot flag pole driveway because of Code restrictions. The flag pole driveway creates a larger no build buffer to the property to the south. . If the current residence did not exist, I would be permitted to subdivide the property along the previously platted lot lines without a variance, and the property owner to the south would have a structure right next to them.

Again, the variance will NOT give my property special privileges above the neighboring properties. This property is platted for 2 waterfront lots with 2 docks on the river – I am not asking for more, only what was planned. The variance will have a positive impact on the surrounding property owners by increasing the value. Also, a person purchasing a water accessible property will likely build a more aesthetically appealing house to increase the value of the property. The increase of property taxes once a house is built will benefit the whole community and the surrounding property owners.

1/16/19

4. The Variance upholds the spirit of the Zoning Code.

The spirit of the ordinance is achieved as there would still be appropriate spacing between principle structures on the existing and adjacent lots. If the variance is granted, the subdivision could occur, and the square footage requirements of each new parcel would not just comply with, but would exceed with, the Zoning Ordinance. Any building of a new single family home would have to conform to the NP district setbacks, which would ensure the home does not encroach closer to the adjacent properties than any other adjacent properties may encroach. Future development on the project site will be subject to review and approval by the Commission to ensure substantial conformance with the Code to ensure compatibility with surrounding development.

The variance would further uphold the spirit of the Zoning Ordinance and achieve justice by allowing the property owner to better utilize a large unused portion of the property through subdivision of the property. The Proposed Parcels will be rectangular and the access driveway will be the minimum width and length required. The Proposed Parcels are not unusually configured and they are consistent with the existing patterns of development.

In conclusion, the Variance should be granted because the benefits of the Variance and subsequent Minor Subdivision would substantially outweigh any detriment, and the variance is consistent with the intent and purpose of the zone plan and zoning ordinance.

Sincerely,

Christina Wyatt Vaeth
Property Owner
130 N. Coconut Palm Blvd
Tavernier, FL 33070
305-766-2866

I think I have addressed all the criteria in the letter, but here's a short recap:

Review criteria, all other variances. The following criteria shall apply in all variance cases other than those relating to building and fire codes:

(a)

Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.

A special condition peculiar to the land involved is that this is an unusually large parcel of land, over 43,000 sqft. Other lands in the area are less than ½ of that.

(b)

The special conditions and circumstances are not the result of actions of the applicant.

There is an existing residence on the property that prevents a side by side split. The residence was there and not as a result of the applicant.

(c)

1/16/19

Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the development code, and would work unnecessary and undue hardship on the applicant.

Literal interpretation of the code would deprive me of having a water accessible lot. There are 2 lots previously platted with waterfront. I am entitled to 2 waterfront accessible lots, but the existing residence prevents an 82' width along Halifax Drive for one of the lots. Literal interpretation would deprive me of 1 waterfront lot. If the residence did not exist, no variance would be required, but demolishing the almost 3,000sqft residence would put undue hardship on me.

(d)

The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.

Granting the variance is the minimum variance necessary. It is the ONLY variance available to divide the parcel containing 2 waterfront lots back into 2 waterfront parcels.

(e)

Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.

Again, the variance will NOT give my property special privileges above the neighboring properties. This property is platted for 2 waterfront lots with 2 docks on the river – I am not asking for more, only what was planned.

(f)

The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.

I discussed above. It would be in harmony as there are many other properties shaped like my request. Two residences with 2 docks was anticipated because that's how it was originally plotted. Any new residence would have to meet code requirements. Both lots, after subdivision would be larger than most lots in the surrounding area. Not injurious to any property owners. Even the south neighbor gains a benefit with the additional buffer – no structures within 29ft of that property (20 ft driveway plus 7.5ft setback). Public benefits with the improvement of the property, aesthetically and monetary.

(g)

The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.

EXHIBIT 2

February 21, 2019

Ms. Penelope Cruz, AICP
Planning Manager
City of Port Orange
1000 City Center Circe
Port Orange, FL 32129

RE: Case No. 19-90000001-Variance for 4832 Halifax Drive

Dear Ms. Cruz,

I received notice of the above case which requests a variance to subdivide property at 4832 Halifax Drive, Port Orange. A public hearing in the matter is set for February 28, 2019. Unfortunately I will be out of town on that date and unable to attend the hearing, which is why I am sending this letter. As an adjacent property owner, I wish to register my strong objection to this variance request. I would appreciate my comments being made part of the official record and brought to the attention of the Planning Commission.

First, the normal minimum setback for the Neighborhood Preservation (NP) area is +/- 82 feet. Ms. Wyatt Vaeth requests a variance for a thru-lot that is approximately 20-feet wide. Ms. Wyatt Vaeth's variance request is not for a *de minimus* amount (e.g., 2, 3, 5 feet). Rather, a grant of this variance will result in a lot that would be an **extreme outlier** in the NP property classification -- **a lot that is 75% less than the normal minimum setback**. As I understand it, a thru-drive of approximately 9-14 feet wide at the edge of my property to the rear of the parcel is likely. With an average vehicle width of approximately 6 feet, it is easy to envision the safety issue posed should a driver misjudge the thru-drive width (e.g., driving onto my yard, taking down a fence that currently exists at my property line, injury/damage to the vehicle/driver).

Ms. Wyatt Vaeth is requesting a second variance for a dock that would be on a shoreline length less than the established 65-feet along the Halifax River. Similarly, Ms. Wyatt Vaeth requests a third variance for a dock setback less than 10-feet from the side property lines. Both of these variances are contrary to established standards within this classification and without significant reason or benefit for the NP area. Additionally, I believe the request for a dock less than 10-feet from the property line poses a safety concern to my dock/property.

As a final note, I have inquired about prior variances and/or precedent, since either may inform your decision. Available information indicates no requests for a similar variance, nor does other precedent exist. Therefore, the historical perspective shows no favor to Ms. Wyatt Vaeth's request. Finally, even should there have been a historical basis for consideration of a variance of this type previously, I believe today's city codes and standards show a clear preference for the NP parameters as stated above.

I urge the Planning Commission to DENY this variance. Please feel free to contact me if you need additional information or comment.

Sincerely,



Marilyn C. Ford



STAFF REPORT

FIRST AMENDMENT TO THE CATFISH COMMONS PCD MASTER DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT PLAN CASE NO. 19-40000001

REQUEST:	Amend the Catfish Commons Planned Commercial Development (PCD) Master Development Agreement (MDA) and Conceptual Development Plan (CDP)
LOCATION:	4085 Ridgewood Ave. & 4108 Halifax Dr. (Location Map - Figure 1)
OWNERS/APPLICANTS:	Brendan and Shannon Galbreath
STAFF RECOMMENDATION:	Approval, subject to direction on the policy issue to waive PCD application fees
STAFF CONTACT:	Gwen Perney, Planner (386) 506-5673
PLANNING COMMISSION DATE:	February 28, 2019

DISCUSSION

The proposed First Amendment to the Catfish Commons Planned Commercial Development (PCD) Master Development Agreement (MDA) and Conceptual Development Plan (CDP) is to allow a mobile retail unit to be positioned at 4085 Ridgewood Avenue, a residential unit above the entry feature at 4108 Halifax Drive to serve as a residence for any business owner/manager of a business within the PCD, and to waive fees associated with future amendments to the MDA or CDP for the PCD property (MDA and CDP – Exhibit 1).

Figure 1. Location of Catfish Commons PCD



The Catfish Commons PCD was approved in 2012 to provide the framework that would allow for a multi-use commercial project that provides an opportunity for a commercial development with associated site improvements along with non-motorized watercraft activities, farmers market, and an outdoor entertainment and staging area for special events.

The PCD consists of two lots: 4108 Halifax Drive (Halifax property) and 4085 Ridgewood Avenue (Ridgewood property) and is located in the Port Orange Town Center Community Redevelopment Area (CRA). The Ridgewood Avenue property is a commercial site (currently La Cantina Cocina restaurant) and also serves as an off-site parking lot for Aunt Catfish's restaurant (4009 Halifax Drive). The Halifax Drive property is developed with a single-family dwelling currently being used as a private residence and a one-way access drive connecting Halifax Drive to the off-site parking lot and Ridgewood Avenue.

According to the applicants, the proposed first amendment is to allow a mobile retail unit to be positioned at 4085 Ridgewood Avenue, a residential unit above the entry feature at 4108 Halifax Drive to serve as a residence for any business owner/manager of a business within the PCD, and to waive fees associated with future amendments to the MDA or CDP for the PCD property. The following is an analysis of the applicants' requests proposed in the first amendment.

Mobile Retail Unit:

If approved, the first amendment would establish "mobile retail unit" as a permitted use in the PCD (Example of a mobile retail unit – Figure 2). This use would be restricted to the property at 4085 Ridgewood Avenue and with this proposed amendment, only one space is designated for one unit on the CDP. According to the applicant, the mobile retail unit or "fashion truck" concept started about five years ago in larger cities and is spreading across the country. Typically, a mobile retail unit or "fashion truck" sells merchandise such as trendy clothing, women's and men's accessories, children's toys, crafts made locally, dog accessories, etc. which are displayed and sold from the mobile unit. If this use is successful, the applicant would need to amend the MDA and CDP to allow for additional units to be located within the PCD.

Figure 2. Example of a Mobile Retail Unit



The applicants have designated an area at 4085 Ridgewood Avenue where one mobile retail unit can be parked for an unlimited amount of time and sell merchandise. The applicants have stated that mobile retailers rely heavily on social media to let customers know where the mobile unit will be set up and does not need road frontage. The applicants also anticipate that this use will bring people down to the area who may visit other businesses in the area. In addition, a mobile retail unit at this location would also serve customers visiting Aunt Catfish's and La Cantina Cocina, since it would be parked near the parking lot shared by these restaurants.

The list of permitted uses currently allowed at 4085 Ridgewood Avenue are the same list of permitted uses for the Ridgewood Development zoning district in the LDC, which includes retail sales and services. Mobile Retail Unit is considered a separate use from Retail Sales and Services because it is not located in a permanent structure. The mobile retail unit can leave the site if the business owner has an event in another location. Additionally, should the current intended business owner of the mobile retail unit vacate the PCD permanently, a new mobile retail unit could be established at the location designated on the CDP.

Second Dwelling Unit for a business owner/manager of a business in the PCD

If approved, the proposed amendment would allow two dwelling units to be located at 4108 Halifax Drive. The applicants intend to renovate the entrance feature to include a second-floor dwelling unit that could only be rented to a business owner or manager of a business located in the PCD, including the mobile retail unit business (Picture of the existing entrance feature – Figure 3).

Currently there is a single-family house at 4108 Halifax Drive that is being used as a private residence. The use of the existing residence as a business owner/manager unit was established as a permitted use in the original Catfish Commons PCD MDA. The business owner/manager occupancy provision is currently allowed by the Land Development Code for all properties zoned Ridgewood Development (RD). If approved, a building permit that complies with all other requirements of the LDC and adopted building and fire codes will be required to renovate the entry feature and construct the second dwelling unit.

Figure 3. Existing entrance feature structure



Development Application Fee Waiver

The applicant is requesting to add an application fee waiver section to the MDA. If approved, the fee waiver would apply to application and resubmittal review fees for future PCD rezonings to add contiguous property into the Catfish Commons PCD, and future MDA and CDP amendments. The waiver **would not** include any required legal advertising fees, site plan or subdivision application fees, building permit fees, or impact fees.

In 2001, the City Council approved an ordinance that provided fee waivers to all businesses that had frontage along Ridgewood Avenue, including properties zoned Ridgewood Development and PCD, in order to encourage redevelopment and investment in projects along the corridor. In 2006, the City Council at that time declined to extend the fee waivers beyond the 2006 sunset date. The 3-story Clark Office Building and Tavern In The Garden property is an example of a project that was completed during that time. In addition, the Ridgewood Corridor Plan (adopted by City Council in 2013) indicates that waving development fees in the Ridgewood Corridor could be used as a way to encourage reinvestment in the corridor. However, at this time an ordinance to waive development fees in the corridor has not been adopted.

According to the applicant, the fee waiver request is intended to be an incentive to continue to invest in properties within the PCD and potentially include additional adjacent properties into the PCD in the future. The waiver is only intended to be for the initial cost of determining if expanding the boundaries and uses within the PCD area are feasible. *The waiving of development review fees is a policy issue that is required to be reviewed and approved by the City Council.*

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is designated *Commercial* on the City's Future Land Use (FLU) Map. The original PCD zoning district and MDA was found to be consistent with the City's Comprehensive Plan when it was approved in 2012. The proposed Amendment does not change the FLU designation for the PCD property and is consistent with the general intent of the Future Land Use designation and redevelopment goals of the Comprehensive Plan.

RECOMMENDATION

Staff recommends **approval** of the First Amendment to the Catfish Commons PCD Master Development Agreement and Conceptual Development Plan with City Council's direction on the policy issue of the Development Review Application Fee Waiver.

ATTACHMENTS

Exhibit "1" – First Amendment to the Catfish Commons PCD Master Development Agreement and Conceptual Development Plan; subject to direction on the policy issue to waive application fees for PCD amendments

**FIRST AMENDMENT TO THE
MASTER DEVELOPMENT AGREEMENT FOR
CATFISH COMMONS
PLANNED COMMERCIAL DEVELOPMENT (PCD)**

This Agreement, entered into by and between the CITY OF PORT ORANGE, a Florida municipal corporation whose address is 1000 City Center Circle, Port Orange, Florida 32129 (hereinafter referred to as the “City”); and Brendan and Shannon Galbreath (husband and wife), having a mailing address of 4190 Halifax Drive, Port Orange, Florida 32127; (collectively referred to as “Property Owners”), constitutes the First Amendment to the Master Development Agreement for the Catfish Commons Planned Commercial Development (hereinafter referred to as the “First Amendment”).

WHEREAS, the Property Owners are the owners of the property described in **Exhibit “A”**; and

WHEREAS, The City and the Property Owners previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled "Master Development Agreement Catfish Commons Planned Commercial Development" (hereinafter referred to as the “MDA”), recorded in Official Records Book 6784, Page 970, Public Records of Volusia County, Florida, which included the Property, and

WHEREAS, the City and the Property Owners have opted to amend the operation and effect of the MDA as applied to the Property by creating and agreeing to a “First Amendment to the Master Development Agreement Catfish Commons Planned Commercial Development,” (hereinafter referred to as “First Amendment”), and

NOW, THEREFORE, the City and the Property Owners hereby agree as follows:

1. The premises stated above are true, correct and form a material part of the First Amendment.
2. Paragraph 3. of the MDA incorporates the Conceptual Development Plan (“CDP”) as **Exhibit “B”** which shall be replaced with **Exhibit “B”** of this First Amendment attached hereto and incorporated herein by reference.
3. Paragraph 5, “PERMITTED USES”, Section A of the MDA is hereby amended to read as follows:
 - A. 4085 Ridgewood Avenue:
Uses allowed within the Ridgewood Development (“RD”) zoning district shall be permitted. Farmers Market, outdoor movies, bike and run race staging (Special Events would need to be approved per the Code of Ordinances), Mobile Retail and

volleyball shall be permitted accessory uses to the principle use. Farmers Market must close by 12:00 pm each day. Sports/activities shall be held within the limits of the Event Lawn as shown on the CDP. Uses shall be in compliance with the Riverwalk Overlay District (Ch. 17 of the LDC)

4. Paragraph 5, “PERMITTED USES”, is hereby amended to add a new subparagraph:

- C. 4106 Halifax Drive (above existing Entry Feature):
One residential rental unit with no minimum or maximum rental time period to be occupied only by the business owner or manager of a business located within the PCD.

5. Paragraph 6, “DIMENSIONAL REQUIREMENTS”, of the MDA is hereby amended to read as follows:

Building Setbacks for 4085 Ridgewood Ave. and 4108 Halifax Dr.

Maximum Building Coverage: 35%

Minimum Open Space: 30%

Min Building Setbacks

Ridgewood Avenue – 10’

West side of Halifax Drive – 40’*

Side – 5’ **

Rear - 10’**

* Setback may be reduced to 10’ once all the properties located on Halifax Drive, between Dunlawton Avenue and Meeker Place have been rezoned to a commercial or mixed-use zoning district.

**Commercial building setbacks adjoining residential zoning shall be equal to or greater than the building height

Building Setbacks for 4106 Halifax Dr.

West of Halifax Drive – 40’

North side – 5’

South - 20’

Rear – 8’

Maximum Height - 35’

6. Paragraph 9, “ARCHITECTECTUAL/DESIGN STANDARDS”, of the MDA is hereby amended to add a new subparagraph:

- C. The architectural design requirement for 4106 Halifax Drive shall defer back to Chapter 14 of the LDC.

7. Paragraph 10, “PARKING AND ACCESS DRIVES”, Sections C and D of the MDA is

hereby amended to read as follows:

- C. Per Case No., (11-70000002), the Property provides ~~3529~~ “off-site” parking spaces for 4009 Halifax Drive.
 - D. The one-way drive shown on the CDP shall be a minimum of 10-feet wide and is for circulation of traffic from Halifax Drive to the parking lot and then onto Ridgewood Avenue. Vehicles are not permitted to exit onto Halifax Drive.
8. Paragraph 10, “PARKING AND ACCESS DRIVES”, of the MDA is hereby amended to add the following subparagraph:
- G. The residential rental unit on 4106 Halifax Drive shall have a parking ratio of 1 space for 1 unit.
 - H. Mobile retail parking ratio shall be 3 spaces for 1 unit.
9. Paragraph 15, “PHASING”, of the MDA is hereby amended to read as follows:
- The PCD Property may be re-developed in multi-phases or as a single phase as shown on the CDP. The phases may be developed in any order.
- Event lawn
 - 4108 Halifax Drive conversion to commercial
 - Development of single residential rental unit above the existing entry feature
 - Floating dock
 - Mobile retail
10. Paragraph 17 “EFFECTIVE DATE AND EXPIRATION”, Section B is hereby amended to read as follows:
- B. Development of the Catfish Commons shall be complete within ten (10) years from the date of execution of this First Amendment unless it is extended by mutual agreement of the parties. Failure to comply with the established schedule shall cause the Agreement to lapse. The term “Development” is defined by the LDC.
11. The MDA is hereby further amended to add a new paragraph, “Section 23”:
23. WAIVER OF FUTURE CITY SUBMITTAL FEES
All city development review application and resubmittal fees for additional PCD Rezoning and MDA Amendments are hereby waived when Property Owners request to bring contiguous properties that are within, or are under contract to be within, their ownership into the Catfish Commons PCD.
12. This Agreement shall be effective upon recording by the City at the Developer’s expense in the Public Records of Volusia County, Florida.

13. This First Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense.
14. The MDA and CDP, as previously enacted, and shall remain in full force and effect except with respect to those matters specifically amended by this First Amendment.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, the parties have executed this First Amendment, by and through their duly authorized representatives, on the respective dates below.

WITNESSES:

**CITY OF PORT ORANGE, a Florida
municipal corporation**

Printed Name

Printed Name

By: _____
Donald O. Burnette, Mayor
1000 City Center Circle
Port Orange, FL 32129

Printed Name

Attest: _____
Robin Fenwick, City Clerk, CMC

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Donald O. Burnette, Mayor of the City of Port Orange, Florida, a Florida Municipal Corporation, on behalf of the City. He is personally known to me and did not take an oath.

Type, Print or Stamp Name
My commission expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Robin Fenwick, City Clerk, of the City of Port Orange, Florida, a

Florida Municipal Corporation, on behalf of the City. She is personally known to me and did not take an oath.

Type, Print or Stamp Name
My commission expires:

Witnesses:

Property Owners

Date: _____
Printed Name

By: Brendan Galbreath

Printed Name

By: Shannon Galbreath

Date: _____
Printed Name

Printed Name

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Brendan and Shannon Galbreath, Property Owners. They are personally known to me and did not take an oath.

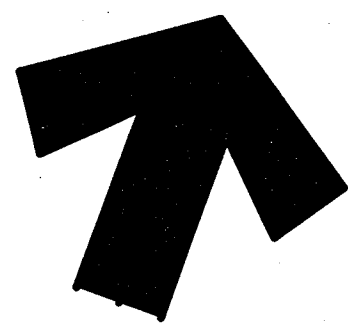
Type, Print or Stamp Name
My commission expires:

EXHIBIT A
Legal Description

LEGAL DESCRIPTION AS FURNISHED:

THE SOUTHERLY 145 FEET OF LOT 5B, EXCEPT THE NORTHERLY 75 FEET OF THE EASTERLY 190 FEET THEREOF, AND EXCEPT THE SOUTHERLY 70 FEET OF THE EASTERLY 210 FEET THEREOF, ASSESSOR'S SUBDIVISION OF THE ELIZABETH BUNCH GRANT IN PORT ORANGE, AS PER MAP RECORDED IN MAP BOOK 3, PAGE 128, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. EXCEPT THE WESTERLY 10 FEET DEEDED FOR ROAD RIGHT OF WAY. AND THE ESTERLY 150 FEET OF LOT 5A AND THE NORTHERLY 5 FEET OF THE WESTERLY 150 FEET OF LOT 5B, ASSESSORS SUBDIVISION OF ELIZABETH BUNCH GRANT, AS PER MAP IN MAP BOOK 3, PAGE 128, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPTING THEREFROM A TRIANGULAR PORTION IN THE SOUTHWEST CORNER THEREOF TAKEN FOR WIDENING OF U.S. HIGHWAY #1. LESS AND EXCEPT ANY PORTION OF THE ABOVE PROPERTIES THAT LIE WITHIN THE ROAD RIGHT OF WAY OF U.S. HIGHWAY #1 AS NOW LAID OUT AND IN USE. VOLUSIA COUNTY PROPERTY APPRAISERS PARCEL ID NO. 6341-O4-05-0020.

THE NORTHERLY 75 FEET OF THE EASTERLY 190 FEET MEASURED FROM THE SEAWALL BOUNDED ON THE HALIFAX RIVER, OF THE SOUTHERLY 145 FEET OF LOT 5-B, ASSESSOR'S SUBDIVISION OF THE ELIZABETH BUNCH GRANT, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 128, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.



7.20	EXISTING ELEVATIONS
	EXISTING ELEVATIONS
	DRAINAGE FLOW DIRECTION
	TRAFFIC FLOW DIRECTION
	EXISTING CONTOURS
	EXISTING CONTOURS
	EXISTING WALL MOUNTED EXTERIOR LIGHT
	EXISTING SILT FENCE
	4' HIGH PVC FENCE

PK

HALIFAX RIVER

TOTAL SITE AREA = 1.53 ACRES

11-27-18 2-8-13 1-28-13	city comments city comments	dj
Revised	Description of Revision	By

Daniel Johns, P.E.

Professional Engineers

3869 S. Nova Rd. - Suite 3 Port Orange, Florida 32127
 phone 386-756-8582 e-mail dan.johns@jenjones.com

EXHIBIT B - CONCEPTUAL DEVELOPMENT PLAN

CATFISH COMMONS

Port Orange, Volusia County, Florida

file: * date: 11-2012 scale: 1"=20' sheet 11 of 11

Stamp: PROFESSIONAL ENGINEER, No. 5413, STATE OF FLORIDA, DANIEL JOHN, P.E.



STAFF REPORT

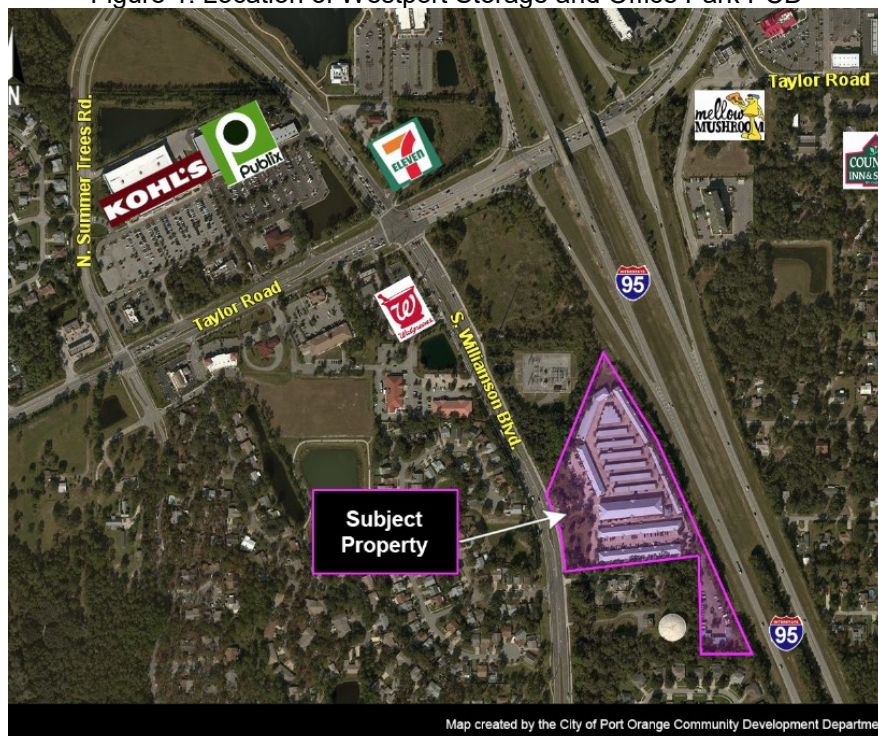
Fifth Amendment to the Westport Storage and Office Park PCD Master Development Agreement
CASE NO. 19-40000002

REQUEST:	Amend the Master Development Agreement (MDA) for the Westport Storage and Office Park Planned Commercial Development (PCD) to add additional uses
LOCATION:	1415 – 5889, 5895, and 5898 Williamson Boulevard
OWNER:	Westport Storage LTD
APPLICANT:	D. Andrew Clark
STAFF CONTACT:	Penelope Cruz, Planning Manager (386)506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION DATE:	February 28, 2019

INTRODUCTION

The proposed Fifth Amendment to the Westport Storage and Office Park Planned Commercial Development (PCD) Master Development Agreement (MDA) is to amend the list of permitted uses allowed in the PCD. The PCD property is located between Williamson Boulevard and I-95, south of Taylor Road (Figure 1). The PCD property is currently developed with a self-storage facility, multiple tenant buildings with commercial and office tenants, and an outside storage area, which has been open to the public for the last 20 years.

Figure 1. Location of Westport Storage and Office Park PCD



DISCUSSION

The amendment consolidates the lists of permitted uses identified in the original MDA and past MDA amendments, along with the removal of square-footage limits for certain uses (health/exercise, clubs, adult education, and fleet-based services), by using the list of allowed uses in the Professional Office (PO) zoning district within the PCD.

The proposed MDA amendment maintains the self-storage and outside storage uses currently allowed, removes the square-footage limits for uses and adds uses allowed in the City's Professional Office (PO) zoning district, with the exception of the pain management clinic use which is identified as prohibited. All Special Exception uses listed in the PO zoning district will still require separate Planning Commission and City Council approval.

The subject property is designated *Office/Residential Transition* (ORT) on the City's Future Land Use (FLU) Map. The original PCD zoning district and MDA were found consistent with the City's Comprehensive Plan when it was approved in 2000. If approved, the proposed MDA amendment would not create any inconsistencies with the Comprehensive Plan.

At this time, the property owner does not plan to modify the existing site and new tenants would occupy the existing buildings on the PCD property. Similar to other properties zoned Professional Office, staff will review potential tenants for compliance with adequate screening, parking, and other LDC requirements.

A Public Notice sign was posted on the site on February 8, 2019.

RECOMMENDATION

Staff recommends approval of the Fifth Amendment to the Westport Storage and Office Park PCD Master Development Agreement.

ATTACHMENTS

- Exhibit 1 – Fifth Amendment to the Westport Storage and Office Park PCD Master Development Agreement
- Exhibit 2 – Professional Office (PO) Zoning District Uses

**FIFTH AMENDMENT TO THE
MASTER DEVELOPMENT AGREEMENT FOR
WESTPORT STORAGE AND OFFICE PARK
PLANNED COMMERCIAL DEVELOPMENT (PCD)**

This Agreement, entered into by and between Westport Storage, Ltd. (hereinafter the “Developer/Property Owner”) and the City of Port Orange, a Florida municipal (hereinafter referred to as the “City”), constitutes the Fifth Amendment to the Master Development Agreement for the Westport Storage and Office Park Planned Commercial Development (hereinafter referred to as the “Fifth Amendment”).

WHEREAS, the Developer/Property Owner is the owner of the property described in **Exhibit “A”**; and

WHEREAS, the Developer/Property Owner and the City previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled "Master Development Agreement Westport Storage and Office Park Planned Commercial Development" (hereinafter referred to as the “MDA”), recorded in Official Records Book 4415, Page 3871, Public Records of Volusia County, Florida, which included the Property; and

WHEREAS, the Developer/Property Owner and the City entered into the First Amendment to the MDA for the Westport Storage and Office Park, recorded in Official Records Book 4519, Page 1684, Public Records of Volusia County, Florida; (the “First Amendment”); and

WHEREAS, the Developer/Property Owner submitted a proposed Second Amendment to the MDA for the Westport Storage and Office Park but later withdrew the application from consideration; and

WHEREAS, the Developer/Property Owner and the City previously entered into the Third Amendment to the MDA for the Westport Storage and Office Park, recorded in Official Records Book 4675, Page 1986, Public Records of Volusia County, Florida (the “Third Amendment”); and

WHEREAS, the Developer/Property Owner and the City previously entered into the Fourth Amendment to the MDA for the Westport Storage and Office Park, recorded in Official Records Book 5240, Page 3504, Public Records of Volusia County, Florida (the “Third Amendment”); and

WHEREAS, the Developer/Property Owner and the City agree to further amend the Westport Storage and Office Park MDA by this Fifth Amendment to update the list of permitted uses.

NOW, THEREFORE, the Developer/Property Owner and the City hereby agree as follows:

1. The above recitals are true, correct and form a material part of the Fifth Amendment.

2. The MDA is hereby amended to identify the following permitted uses:

Permitted Uses, Permitted Uses with Special Development Requirements, and Special Exception Uses shall be those allowed in the City of Port Orange's Professional Office (PO) Zoning District, as may be amended from time to time, excluding the pain management clinic use.

3. This Agreement shall be effective upon recording by the City at the Developer's expense in the Public Records of Volusia County, Florida.

4. This Fifth Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense.

5. The MDA and CDP, as previously enacted, and shall remain in full force and effect except with respect to those matters specifically amended by this Fifth Amendment.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, the parties have executed this First Amendment, by and through their duly authorized representatives, on the respective dates below.

WITNESSES:

**CITY OF PORT ORANGE, a Florida
municipal corporation**

By: _____

Donald O. Burnette, Mayor
1000 City Center Circle
Port Orange, FL 32129

Printed Name

Printed Name

Attest: _____

Robin Fenwick, City Clerk, CMC

Printed Name

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Donald O. Burnette, Mayor of the City of Port Orange, Florida, a Florida Municipal Corporation, on behalf of the City. He is personally known to me and did not take an oath.

Type, Print or Stamp Name
My commission expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Robin Fenwick, City Clerk, of the City of Port Orange, Florida, a Florida Municipal Corporation, on behalf of the City. She is personally known to me and did not take an oath.

Developer/Property Owner:

WESTPORT STORAGE, LTD., Florida
Limited Partnership

By: CLARK STORAGE CORPORATION

By: _____
D. Andrew Clark, President

Witnesses:

Printed Name: _____

Printed Name: _____

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by D. Andrew Clark as President of Clark Storage Corporation, General Partner of Westport Storage, Ltd, on behalf of said corporation and partnership. They are personally known to me or have produced _____ as identification and did not take an oath.

Print or Stamp Name, Commission Seal and Term ExpirationDate

EXHIBIT A
Legal Description

Phase I Property

A PORTION OF THE NORTHEAST 1/4 OF SECTION 19, LYING BETWEEN THE WESTERLY LINE OF THE LIMITED ACCESS ON INTERSTATE #95, AND THE EASTERLY LINE OF THE TRAVELED UNPLATTED SAMSULA ROAD, IN TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A REFERENCE POINT, BEING THE NORTHEAST CORNER OF SAID SECTION 19; THENCE SOUTH 88 DEGREES 58 MINUTES 20 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 654.32 FEET TO ITS INTERSECTION WITH THE CENTER-LINE OF RIGHT-OF-WAY ON US. INTERSTATE #95 AS THE SAME IS NOW OCCUPIED AND ESTABLISHED; THENCE SOUTH 23 DEGREES 23 MINUTES 50 SECONDS EAST ALONG SAID CENTER-LINE, A DISTANCE OF 1678.25 FEET TO A POINT THEREIN; THENCE SOUTH 66 DEGREES 36 MINUTES 10 SECONDS WEST A DISTANCE OF 185 FEET TO A POINT IN THE WESTERLY LINE OF SAID INTERSTATE #95 A DISTANCE OF 407.45 FEET; THENCE SOUTH 83 DEGREES 14 MINUTES 14 SECONDS WEST A DISTANCE OF 629.32 FEET TO A POINT IN THE EAST RIGHT-OF-WAY LINE OF SPRUCE CREEK AIRPORT ROAD; THENCE NORTH 26 DEGREES 18 MINUTES 44 SECONDS WEST A DISTANCE OF 83.25 FEET; THENCE NORTH 19 DEGREES 15 MINUTES 6 SECONDS EAST A DISTANCE OF 785.05 FEET TO A POINT IN THE WEST RIGHT-OF-WAY LINE OF INTERSTATE #95; THENCE SOUTH 32 DEGREES 23 MINUTES 54 SECONDS EAST ALONG SAID WEST RIGHT-OF-WAY LINE OF INTERSTATE #95 A DISTANCE OF 439.03 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 6.486 ACRES (D).

AND ALONG WITH:

AN IRREGULAR SHAPED PARCEL OF LAND BEING A PORTION OF THE NORTHEAST 1/4 SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST; LYING SOUTHWESTERLY OF INTERSTATE 95, AS SHOWN ON, STATE OF FLORIDA, STATE ROAD DEPARTMENT, RIGHT OF WAY MAP, STATE ROAD NO. 9 (1-95), VOLUSIA COUNTY, SECTION 79002-2407; LYING NORTHWESTERLY OF PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1583, PAGE 441, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; LYING NORTHEASTERLY OF AIRPORT ROAD, AS NOW LAID OUT; LYING SOUTHEASTERLY OF PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 3477, PAGE 354, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; BEING FORMERLY KNOWN AS SAMSULA AIRPORT ROAD, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY, CORNER OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1583, PAGE 441, SAID POINT BEING ALSO THE INTERSECTION OF THE WESTERLY LINE OF SAID INTERSTATE 95 (STATE ROAD NO: 9) WITH THE SOUTHEASTERLY LINE OF SAID SAMSULA AIRPORT ROAD (FORMERLY HERBERT STREET NOW RELOCATED); THENCE N 32'25'17" W,

ALONG SAID WESTERLY LINE OF INTERSTATE 95 (STATE ROAD NO. 9), A DISTANCE OF 64.20' TO A POINT WHERE SAME INTERSECTS THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 3477, PAGE 354; THENCE S 23'09'28" W, ALONG SAID SOUTHEASTERLY LINE AND ALONG THE NORTHWESTERLY LINE OF SAID SAMSULA AIRPORT ROAD, A DISTANCE OF 104.05' TO A POINT THEREIN; THENCE S 19'33'42"W, ALONG SAID LINE, A DISTANCE OF 649.73' TO THE MOST SOUTHERLY POINT OF SAID PARCEL SAID POINT BEING ALSO IN THE EASTERLY LINE OF AIRPORT ROAD AS CURRENTLY MONUMENTED, ESTABLISHED AND OCCUPIED (1-27-97); THENCE S 21'12'14" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 93.96' TO A POINT IN THE AFOREMENTIONED NORTHWESTERLY LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1583, PAGE 441; THENCE N 19' 15'06" E, ALONG SAID LINE A DISTANCE OF 785.21' TO THE POINT OF BEGINNING. CONTAINING 1.039 ACRES MORE OR LESS.

Phase II Property

A PORTION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST, LYING BETWEEN THE WESTERLY LINE OF THE LIMITED ACCESS ON INTERSTATE 95 AND THE EASTERLY LINE OF SAMSULA AIRPORT ROAD IN TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE, COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 19; THENCE NORTH ALONG THE EAST SECTION LINE OF SAID SECTION 19 FOR A DISTANCE OF 3102.07 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL; THENCE S 83 DEGREES 14'14" W, A DISTANCE OF 646.70 FEET TO A POINT IN THE EASTERLY R/W LINE OF SAMSULA AIRPORT ROAD (A 50 FOOT RM/ AS USED); THENCE N 00 DEGREES 32'14" W ALONG SAID EASTERLY R/W LINE OF SAMSULA AIRPORT ROAD, A DISTANCE OF 205.60 FEET TO A POINT; THENCE N 83 DEGREES 14'14" E, A DISTANCE OF 629.32 FEET TO A POINT IN THE WESTERLY R/W LINE OF A LIMITED ACCESS OF I-95; THENCE S 23 DEGREES 23'50" E ALONG SAID WESTERLY R/W LINE OF THE LIMITED ACCESS OF I-95, A DISTANCE OF 37.25 FEET TO A POINT WHERE SAID SECTION LINE 19 INTERSECTS SAID LIMITED ACCESS OF I-95; THENCE S 01 DEGREES 29'10" E ALONG SAID EAST SECTION LINE OF SAID SECTION 19, A DISTANCE OF 169.41 FEET TO THE POINT OF BEGINNING.

EXHIBIT A cont'd

Phase III Property

ALL OF LOT 48 AND A PORTION OF LOTS 15, 16, 17, 18, 19, 49 AND 50 ALONG WITH A PORTION OF A 25 FOOT ALLEY OR STREET AS SHOWN ON THE PLAT OR MAP OF MAC-JOHN SUBDIVISION, AS RECORDED IN MAP BOOK 27, PAGE 223, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE AND THE POINT OF BEGINNING COMMENCE AT THE SOUTHWEST CORNER OF LOT 48, MAC-JOHN SUBDIVISION, AS RECORDED IN MAP BOOK 27, PAGE 223, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; RUN THENCE NORTH 01 DEGREES 45 MINUTES 10 SECONDS WEST ALONG THE WEST LINE OF SAID SUBDIVISION FOR A DISTANCE OF 624.93 FEET TO THE WEST RIGHT-OF-WAY ON INTERSTATE 95; THENCE SOUTH 24 DEGREES 25 MINUTES 19 SECONDS EAST ALONG THE SAID WEST RIGHT-OF-WAY LINE FOR A DISTANCE OF 680.48 FEET TO THE SOUTH LINE OF SAID MAC-JOHN SUBDIVISION; THENCE SOUTH 88 DEGREES 33 MINUTES 30 SECONDS WEST ALONG THE SAID SOUTH LINE FOR A DISTANCE OF 265.92 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL CONTAINS 1.907 ACRES MORE OR LESS.

EXHIBIT 2

Land Development Code

Chapter 17

Section 19: - Professional office (PO) district.

(a) *Purpose and intent.* The professional office (PO) district is intended to provide areas for business, government, industry, medical, professional, or service offices.

(b) Permitted uses.

- (1) Business services.
- (2) Financial services.
- (3) Fleet-based services.
- (4) Funeral homes (freestanding uses only).
- (5) Medical office/clinics.
- (6) Offices.
- (7) Veterinary clinics.
- (8) Xerographic and offset printing.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

- (1) Assisted living facilities (subsection 1.5).
- (2) Banks (subsection 3).
- (3) Child care centers (subsection 4).
- (4) Health/exercise clubs (subsection 6).
- (5) Nursing homes (subsection 1.5).
- (6) Office supplies (subsection 11).
- (7) Office/warehouse facilities (subsection 12).
- (8) Pain management clinics.
- (9) Personal services.
- (10) Restaurants.
- (11) Community gardens.

(c) Special exception uses (chapter 18, section 3).

- (1) Houses of worship (subsection 9).
- (2) Private schools (subsection 16).



STAFF REPORT

CASE NO. 19-25000001

LDC Amendment/Chapter 9 – Tree Survey and Tree Mitigation

REQUEST: To amend the Land Development Code (LDC) Chapter 9, Article II to update the tree survey and tree mitigation payment requirements

APPLICANT: City of Port Orange

STAFF RECOMMENDATION: Approval

STAFF CONTACT: Briana Conlan-King, Senior Planner (386) 506-5676

PLANNING COMMISSION DATE: February 28, 2019

At the July 24 Environmental Advisory Board (EAB) meeting, the EAB discussed and recommended modifications to the City's Tree Protection and Landscape requirements in the Land Development Code (LDC). Then, at the October 23, 2018 City Council Workshop, staff presented a summary of the EAB's recommended modifications for discussion and Council direction. Based on the discussion at the workshop, staff was asked to move forward with implementing modifications to the LDC related to tree protection/preservation and landscaping requirements. The proposed LDC amendment is part two in a series of amendments that will be prepared over the next few months.

Tree Mitigation Requirements:

The proposed amendment adds new mitigation requirements for specimen trees located on a subject property and all trees 6" or greater at DBH (diameter breast height) located in a required right-of-way or property boundary landscape buffer that are being removed.

The proposed amendment would add language that any tree removed from a required property boundary or right-of-way buffer that is 6" or greater at DBH is required to be mitigated through a payment into the tree mitigation bank or replacement shade trees within the development property. The intent of the EAB's recommendation is to encourage developers or site designers to maintain the natural landscape buffers along the perimeter of a site and rights-of-way to provide better transition between new and existing developments or to screen new developments from adjacent rights-of-way. Currently, the LDC allows for the removal of trees within a required landscape buffer, provided there is a specific number of trees within the buffer (new or existing). If new shade trees are planted, eventually over time they will become established and fill in the buffer. However, if more existing vegetation can remain, it could help in providing a denser buffer immediately for a project. Typically, developers remove existing trees within a buffer to construct stormwater improvements, clear site lines for building signage, or plant a preferred type of tree. Requiring a mitigation payment to remove trees may result in developers or site designers to modify the location of improvements to keep more existing trees and avoid a mitigation payment.

The proposed amendment would also add language that a mitigation payment is required for the removal of any specimen tree as part of a development project (site or subdivision). The LDC currently allows for a percentage of specimen trees on a development site to be removed (e.g. 20% to 50%) depending on the number of specimen trees per acre for a specific development site. If approved, the proposed amendment does **NOT** change the requirements for the percentage of specimen trees that are to remain, it would only add a requirement that a mitigation payment or replacement trees be installed for any specimen tree removed. The intent of the EAB's recommendation is to encourage site designers and developers to consider alternative layouts to save more specimen trees or to be more selective when choosing which specimen trees to remove, keeping larger more mature specimen trees. The mitigation payment would be based on the size of the tree, therefore, larger specimen trees removed would cost more than smaller specimen trees. Requiring a mitigation payment to remove specimen trees may result in site designers and developers to modify their site or subdivision improvements to keep existing specimen trees to avoid a mitigation payment.

The following (Figure 1) is an example from a site development that removed trees within the required buffers and specimen trees from the overall site. The trees removed in this example were according to the Land Development Code; however, no mitigation was required. If the proposed amendment is approved, the developer would still be able to remove the trees needed to construct the project, but would be required to either pay \$3,045 into the mitigation bank or plant 9 replacement trees. These 9 replacement trees would be in addition to the other required shade trees for site or subdivision development.

Figure 1. Tree Mitigation Example

Mitigation Tabulation Charts						
Section A: Mitigation for All trees 6" or greater from Buffer						
Qty. for removal	Size	# Replacement Trees	Subtotal			
	2-8"	1				
2	9-16"	2	4	or	\$	1,357.56
	17-24"	3		or		
	25-32"	4		or		
	33-40"	5		or		
	41" +	6		or		
Total A replacement trees =			0			Section A tree bank contribution amount
Section B: Mitigation for healthy Specimen trees						
Qty. for removal	Size	# Replacement Trees	Subtotal			
1	12-16"	2	0	or	\$	678.78
1	17-24"	3	3	or	\$	1,018.17
	25-32"	4	0	or	\$	-
	33-40"	5	0	or	\$	-
	41" +	6	0	or	\$	-
Total B replacement trees =			0		\$	-
						Section B tree bank contribution amount
Total replacement trees =			9	or	\$	3,054.51
						Total tree bank contribution amount
Replacement trees shall be minimum four-inch caliper, 14 feet high						

There are no changes being proposed to how historic tree removal permits are processed or mitigation requirements for historic trees with these proposed amendments.

Tree Survey Requirements:

The proposed amendment would establish consistency in the tree survey requirements for both the subdivision and site development applications. Tree surveys include general location of trees, species of the tree based on scientific name, diameter, and sometimes health. Currently, the LDC requires one type of tree survey for a site development application and another type of tree survey for a final subdivision plat development application. The following is the current requirement in the LDC for a tree survey:

Site Development Application: Tree survey that locates and identifies all specimen trees having a caliper of six inches or greater at DBH and all other trees having a caliper of six inches or greater at DBH located in a required landscape buffers, along rights-of-way, and within required perimeter.

Final Subdivision Plat and Plan Application: Tree survey that locates all specimen and historic trees on the site.

If approved, there would be a uniform tree survey requirement in the LDC that would apply to either development application. The proposed amendment does not change the current tree survey code requirement for a site plan, but it does enhance the tree survey requirements and the information provided for a subdivision development application. The following is the proposed requirement in the LDC for a tree survey:

All Development Applications: Tree survey that locates and identifies all specimen trees having a caliper of six inches or greater at DBH and all other trees having a caliper of six inches or greater at DBH located in required landscape buffers, along rights-of-way, and within required perimeter.

The proposed amendment also includes language that if a developer is maintaining an area as a natural buffer and it will remain undistributed (buffer, conservation land, wetland), this area can be exempt from the tree survey. If the area is to be preserved, information on the trees is not needed since no construction will occur. The added incentive is that this will encourage preservation of larger tracks of land by not requiring these areas to be surveyed, and it will not require these areas to be disturbed when obtaining information and data required for the tree survey.

RECOMMENDATION

Approval of the amendments to Chapter 9, related to tree survey requirements and tree mitigation