

ORDINANCE NO. 2021-01

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA, PERTAINING TO REZONING; AMENDING THE TOWN OF WINDERMERE'S ZONING MAP FOR 2.17 ACRES MORE OR LESS OF REAL PROPERTY LOCATED WITHIN THE TOWN CENTER DISTRICT OVERLAY AT THE NORTHEAST CORNER OF MAIN STREET AND EAST 6TH AVENUE, AS MORE SPECIFICALLY DESCRIBED HEREIN, FROM COMMERCIAL AND RESIDENTIAL ZONING TO PLANNED UNIT DEVELOPMENT; PROVIDING FOR APPLICABILITY; SEVERABILITY; CONFLICTS; CODIFICATION; AND AN EFFECTIVE DATE.

Whereas, the Town Council of the Town of Windermere, Florida, recognizes the need to plan for orderly growth and development.

Whereas, Windermere Downtown Property, LLC, the fee simple owner, (the "Owner") is requesting a zoning map amendment for 2.17 acres of property located in the Town Center District Overlay area at the northeast corner of Main Street and E 6th Avenue, as more particularly described in **Attachment A** (the "Property"), from Commercial and Residential zoning to Planned Unit Development ("PUD").

Whereas, the Town Council is committed to the goal of enacting and implementing sound growth management practices within the Town and finds that this Ordinance is consistent with the goals, objectives, and policies of the Town's comprehensive plan and that it is in the best interests of the Town of Windermere.

Whereas, by enactment of its Ordinance 2003-10, the Town Council amended the future land use element of its comprehensive plan in 2003 to designate a portion of the Town's downtown area as a "Town Center District" in which the Property is located.

Whereas, the Owner intends to develop the real property with mixed commercial, restaurant, and office uses, with the project to be known as Windermere Downtown Property (the "Project").

Whereas, Ordinance 2003-10 requires all development activities that occur in the Town Center District to obtain PUD zoning consistent with the Town Center District.

Whereas, under Florida law and the Town's comprehensive plan, PUD zoning approved for land within the Town Center District must be consistent with both the comprehensive plan amendment set forth in Ordinance 2003-10 and all other applicable provisions of the comprehensive plan and shall be subject to such conditions, requirements, and restrictions as the Town deems necessary to protect the health, welfare, and safety of the residents of the Town.

Whereas, the Development Review Board ("DRB") and the Town Council have reviewed the Project as proposed by the Owner and, after duly advertising and appropriate public participation, have determined the conditions, restrictions, and requirements that are needed or useful to ensure that the Project (i) is appropriate to the Town and its history, character, and

nature and (ii) does not result in adverse impacts to its residents and taxpayers.

Whereas, the Town now desires to set forth the entitlements, terms, conditions, requirements, and restrictions as part of the PUD zoning for the Property and the Project.

BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:

Section 1. Amendment to the Zoning Map. The Town of Windermere's official Zoning Map for the 2.17 acres of property described in **Attachment A** is hereby rezoned to PUD zoning within the Town Center District.

Section 2. Conditions of Approval. The Town Council has determined that the requested zoning change is consistent with the public interest, encourages the appropriate use of land, is consistent with and further the goals and objectives of the Town of Windermere's comprehensive plan, and is in compliance with the Town of Windermere's land development code zoning designation of PUD within the Town Center District, with the conditions set forth in **Attachment B**.

Section 3. Severability. If a provision of this ordinance is held invalid or unconstitutional in judicial proceedings, the holding shall not affect other provisions that can be given effect. To that end, this ordinance is declared to be severable.

Section 4. Conflicts. In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance shall control and supersede.

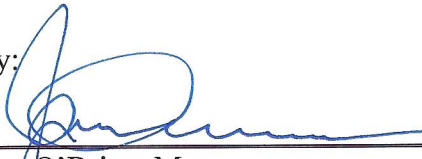
Section 5. Codification. The amendments to the official Zoning Map in Section 1 of this Ordinance shall be codified and made part of the official land development code for the Town of Windermere.

Section 6. Effective Date. This Ordinance shall become effective after its passage as a non-emergency ordinance at two regular meetings of the Town Council.

ENACTED by ordinance this 8th day of June 2021, at a meeting of the Town Council of the Town of Windermere, Florida.

TOWN OF WINDERMERE, FLORIDA

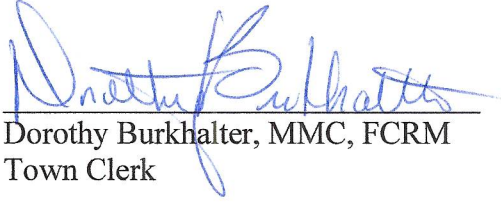
by: its Town Council

by: 

Jim O'Brien, Mayor



Attest:



Dorothy Burkhalter, MMC, FCRM
Town Clerk

First Reading: April 13, 2021

Second Reading/Public Hearing: June 8, 2021

**Attachment A
Town of Windermere
Ordinance No. 2021-01**

Legal Description of Property

**PLAT OF WINDERMERE G/36; LOTS 245, 246, 247, 248, 249, 250, 251, 252,
AND 244 LESS THE NORTH 24.5 FEET**

ATTACHMENT B

PLANNED UNIT DEVELOPMENT (PUD)
CONDITIONS OF APPROVAL
for
WINDERMERE DOWNTOWN PROPERTY

Condition 1. Development of the Property. The Owner is entitled to develop the Project on the Property. However, development of the Property must conform to and may be undertaken only in accordance with

- (i) the “Preliminary Development Plan” for Windermere Downtown Property, attached hereto as Exhibit A (the “PDP”), and
- (ii) these Conditions, and
- (iii) the Transportation Agreement required under Condition 2.1, and
- (iv) the Utilities Agreement required under Condition 2.2, and
- (v) the Final Development Plan required by the Town’s code and Condition 2.3.

All development of the Property must comply with all other applicable federal, state, county, and Town laws, ordinances, and regulations, which are incorporated herein by reference, except to the extent the applicable laws, ordinances, and regulations are expressly waived or modified by this Agreement, or by action expressly approved in the future by the Town Council, or by express action of the Town Council.

Condition 2. Development-Related Conditions of Approval. Development of the Project may be undertaken on the Property, but only in compliance with the following conditions, requirements, and restrictions:

2.1. *Transportation Agreement.*

- a) The Owner shall design and construct a right-turn access lane from E 6th Avenue into the Project. The right-turn access lane design shall be provided as part of the final development plan (FDP). The Owner shall pay the full cost of the design and construction of the right-turn access lane.

- b) As part of the FDP, as provided in Condition 2.3, a transportation mitigation agreement must be negotiated and entered into by the Owner and the Town (the “Transportation Agreement”). The Transportation Agreement shall include the requirement that the Owner contribute its proportionate share of the cost of improvements to the roundabout at E 6th Avenue and Main Street and pedestrian crossing improvements across Main Street at its intersection with E 6th Avenue and across E 6th Avenue at its intersection with Oakdale Street, with the allocation of the contributed funds between those two projects to be determined by the Town. The Transportation Agreement shall include such other requirements and provisions as the Owner and the Town may negotiate and set forth therein.

2.2. Utilities Agreement. As part of the FDP, as provided in Condition 2.3, an agreement addressing the construction and installation of water utility lines and other facilities for the Project must be negotiated and executed by the Owner and the Town (the “Utilities Agreement”). Along with such other provisions as the Owner and the Town may negotiate and set forth therein, the Utilities Agreement must include the following requirements:

- a) The Owner must obtain water utility service for the Project from Orange County;
- b) Design, constructing, and installing the water utility lines and other facilities necessary or useful for the water services for the Project must be done at no cost to the Town; and
- c) The construction plans and specifications for construction and installation of the necessary and useful water utility lines and facilities must be submitted to the Town for review and approval by its town engineer simultaneously with the Owner’s application for approval of its FDP under Condition 2.3.

The Utilities Agreement shall be in addition to such other agreement or agreements as the Town may elect to negotiate with the county in connection with the extension of the county's water services inside the Town's boundaries.

2.3. Final Development Plans. The final development plans ("FDP") for the Project shall be prepared for review and approval by the Town's DRB and Town Council, as required by the Town code, and, notwithstanding any part of the PDP to the contrary, shall be subject to the following conditions, requirements, and restrictions:

- a) The gross floor area for buildings in the Project shall not exceed, in the aggregate, 21,750 square feet. For purposes of calculating gross floor area, areas used for permanent outside dining shall be deemed to be part of the gross floor area.
- b) Buildings and appurtenances shall be no taller than 35 feet. Store widths and building modules shall be designed in no greater than 20-foot increments.
- c) The architectural features and details and the structural colors and materials shall be submitted as part of the FDP. Any changes to those architectural features and details and structural colors and materials approved in the FDP will be allowed only if approved by the DRB and Town Council as an amendment to the FDP.
- d) Windows and doors on the first floor must occupy no less than 70% of the total storefront, with doors being more than 50% clear glass.
- e) As required by the Town Center Design Guidelines (the "Guidelines"), the wall on the east boundary must be set back from the property line to allow landscaping outside the wall, within the boundaries of the Property, except that the wall may jog or be alternatively designed as reasonably necessary to avoid removal or damage of existing trees that are to be retained on site or with the right-of-way of Oakdale Street or E 6th Avenue. Landscaping and the required wall must be installed and maintained as depicted in the Guidelines or as required by Town Council.

- f) The parking lot must supply no fewer than four spaces per 1,000 square feet of gross building floor area, which must include outdoor dining areas. Each space must be no less than 9 feet wide and 18.5 feet long. However, the Town Council may allow for a reduction of the required number of parking spaces for the sole intended purpose to preserve and protect the existing trees on the Project property. In addition, the Owner may pay a fee to the Town in lieu of providing parking spaces on the Property. The fee in lieu would be determined by Town Council as part of the FDP.
- g) A sign plan must be submitted as part of the proposed FDP. Signage must follow the requirements in the Guidelines. No pole signs or billboards are allowed.
- h) Detailed stormwater plans and calculations must be submitted as part of the proposed FDP.
- i) Detailed potable water plans and calculations must be submitted as part of the proposed FDP. If the Owner submits its FDP, together with the detailed potable-water plans and calculations, without having obtained the approval of those plans and calculations by Orange County, the Owner will be proceeding at its own risk.
- j) Detailed on-site sewage disposal system plans and calculations must be submitted as part of the proposed FDP. If the Owner submits the FDP, together with the detailed on-site sewage disposal system plans and calculations, without having obtained the approval of those plans and calculations by the Orange County Health Department, the Owner will be proceeding at its own risk.
- k) Detailed plans for landscaping and tree retention/removal must be submitted as part of the proposed FDP. The Owner shall make all reasonable efforts to protect the existing tree canopy. Landscaping shall be installed and trees may be removed only as approved by Town Council. Further, in its tree retention/removal plan, the Owner shall comply with Sections 5.01.00 through 5.01.18, which includes specific requirements

for protection of trees during development based on American National Standards Institute (ANSI) A-300 series requirements, of the Town's Code of Ordinances related to tree protection and mitigation.

- l) The Owner shall engage and retain the services of a Professional Florida Certified Arborist during the development of the FDP and shall retain the Professional Florida Certified Arborist throughout the construction of the Project. The Professional Florida Certified Arborist shall assure that appropriate actions are taken by the Owner to properly protect and maintain the trees that are identified to be protected in the FDP and to assure the proper removal and mitigation for trees that are approved to be removed in the FDP.
- m) The Town may engage their own Professional Certified Arborist to also oversee the project and assure compliance with the requirements of the tree mitigation plan approved as part of the FDP. The Owner shall reimburse the Town for the cost of the services of the Town's Professional Certified Arborist.
- n) The Owner shall submit the tree mitigation plan and overall landscape and landscape buffer plans, which includes the required wall along Oakdale Street and a portion of E 6th Avenue, to the Towns' Tree Board. The Tree Board shall review and provide a recommendation to the Development Review Board and Town Council related to the tree mitigation plan and overall landscape plan and landscape buffer plan.
- o) The Owner shall utilize permeable pavement and other pervious materials to the greatest extent feasible to assist in the protection of trees and to minimize the impact of the Project on stormwater runoff.
- p) Light fixtures shall be shielded to prevent light and glare from radiating either skyward or beyond the boundaries of the Property.

Condition 3. Construction-Related Conditions of Approval. The Town Council intends the requirements of Conditions 3.1 through 3.9 to eliminate, as much as possible, the

nuisance to Town residents and visitors that might otherwise result from the sights, sounds, dust, and debris from the construction of the Project.

The following requirements and restrictions shall apply to construction activity on the Property:

3.1. Construction Staging and Screening – Construction staging (*e.g.*, construction trailers, vehicles, and equipment, material storage, construction-worker parking, construction dumpsters, temporary restrooms, etc.), shall be contained within the boundaries of the Property. During all construction activity, the Property shall be screened to obscure view of the construction site throughout all phases of construction. No signs, advertising, or other communications (other than signs pertaining specifically to construction safety) may be placed on the exterior of the screening.

3.2. Construction Staging and Screening – Subsequent Construction, Reconstruction, and Renovation. Staging areas for construction, reconstruction, or renovations occurring from time to time after completion of the Project shall be at such locations as may be approved in writing by the Town Manager. Under no circumstances may the staging occur within public rights-of-way or on Town property without the express approval of Town Council, which may be granted or withheld at the discretion of the Town Council. During all construction activity, the Property shall be screened along to obscure view of the construction-staging area site throughout all phases of construction. No signs, advertising, or other communications (other than signs pertaining specifically to the construction safety) may be placed on the exterior of the screening.

3.3. Dust and Debris. All debris shall be retained within the boundaries of the Property throughout all construction activities. The Owner shall not allow dust to escape in material amounts, as determined by the Town Manager, during construction.

3.4. Road Closures. No road closures may occur in connection with the construction, unless expressly approved in writing by the Town Manager.

3.6. Construction Hours and Deliveries. Construction activity may occur only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless

approved otherwise expressly and in writing by the Town Manager. Deliveries of construction materials and equipment may occur only during those same hours.

3.7. *Stormwater Retention and Erosion Control During Construction.* The Owner shall take such steps as are necessary or useful to ensure that, at all times during construction, all stormwater from rainfall, up to at least one inch per storm, is retained within the boundaries of the Property and not discharged offsite and appropriate mitigation is provided to maintain proper erosion control during construction. As part of the FDP, the Owner shall provide a stormwater and erosion control plan compliant with the requirements of the National Pollution Discharge Elimination System (NPDES). All stormwater and erosion control measures must be installed prior to the initiation of any demolition of construction activity on the Property.

3.8. *Construction-Site Security.* The Owner shall provide a reasonable level of security on the Property throughout the construction period to prevent trespass, theft, bodily injury, and other undesirable occurrences. If, after consultation with the Town's Chief of Police, the Town Manager determines that additional security is needed, the Owner will provide it.

3.9. *Enforcement.* Material violations of the requirements and restrictions of these conditions, as determined in the reasonable judgment of the Town Manager, may result in the issuance by the Town Manager of a stop-work order. Upon such issuance, the Owner shall halt all construction immediately and correct the violation. Construction may be resumed only upon notification to the Owner from the Town Manager that the violation has been corrected, and the Town Manager shall issue such notice immediately upon correction thereof. The Town shall have such other remedies (other than an action for damages) as allowed by law and equity to enforce the provisions of these conditions, including (but not limited to) withholding building permits and certificates of occupancy.

Condition 4. Land-Use Conditions of Approval. Upon completion of the, the Property may be used in accordance with the following:

- 4.1. *Permitted Uses.*** The uses of land in the Project are limited to:
- a) Business and professional office;

- b) Government offices and related ancillary uses;
- c) Bank and financial institutions;
- d) Churches and related ancillary uses;
- e) The following personal services: barber shops, beauty shops (but not tattoo or body-piercing shops), personal training, spa, salons, pottery shops, art-painting galleries or studios, and dance studios;
- f) Restaurants and bakeries (but drive-through-window services are prohibited);
- g) The following light-retail uses: bicycle shop, hardware store, home-décor shop, florist shop, clothing store, specialty-fashion store, jewelers, bookstore, household goods and services shops, antiques, and pharmacies (but drive-through-window services are prohibited); and
- h) Such other uses approved by Town Council from time to time.

4.2 *Outdoor Storage and Display.* The outdoor storage of any inventory, equipment, or other items is prohibited. However, a permitted retail operation within the Project may utilize the private courtyard area of the Project for the outdoor display of merchandise subject to the limitations of the Town’s Land Development Code, which limit the outdoor display to only during Town sanctioned events.

4.2. *Hours of Operation.* Unless otherwise expressly authorized by Town Council, the offices, shops, restaurants, and other non-residential activities within the Project may be open for business only between the hours of 7:00 a.m. and 10:00 p.m. each day.

Condition 5. Other Requirements.

5.1. *Law-Enforcement Capital Contribution.* The Chief of Police and the Town Manager determined that the Town will not incur capital expense to provide law-enforcement services to the Project.

5.2 *Town Council Final Development Plan Workshops.* The Owner shall participate in at least three (3) Town Council workshops to present drafts of the FDP for preliminary

review and comment by Town Council. These workshops are intended to provide an opportunity for the Town Council to identify opportunities for improvements to the proposed FDP and to identify areas of concern. These workshops shall be noticed public workshops. The Owner shall coordinate with the Town on the scheduling of the Town Council workshops.

Condition 6. Miscellaneous.

6.1. Notice. Notices delivered with respect to this PUD shall be in writing and be deemed to be delivered (whether or not actually received) when (i) hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Windermere Downtown Property, LLC
9259 Point Cypress Drive
Orlando, Florida 32826

As to Town: Town of Windermere
Robert Smith, Town Manager
614 Main Street
Windermere, Florida 34786

With copy to: Dorothy Burkhalter, Town Clerk
Town of Windermere
614 Main Street
Windermere, Florida 34786

Thomas J. Wilkes, Town Attorney
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, Florida 32801

6.2. Covenants Running with the Land. These Conditions shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties and shall be a covenant running with the Property.

6.3. *Recordation of Conditions.* Ordinance 2021-01 and these Conditions shall be recorded in the Official Records of Orange County, Florida, at the expense of the Owner, within ten business days after the Effective Date of this Agreement (as defined in Subsection 6.8 below).

6.4. *Applicable Law.* This Agreement shall be construed and interpreted according to the laws of the State of Florida. Venue for a proceeding in connection with this Agreement shall be the Ninth Judicial Circuit of Florida, in Orange County, Florida.

6.5. *Further Documentation.* Following a request therefor by a party, the other party shall execute and deliver such documents and instruments, in form and substance reasonably requested, as may be necessary to confirm the obligations of the party and to evidence the consummation of the transactions contemplated hereby.

6.6. *Limitation on Remedies.* In judicial proceedings, the Town and the Owner shall have the right to enforce the terms and conditions of these Conditions only by an action for specific performance or injunctive relief. Each party expressly waives its right, if any, to seek damages of any type in actions arising from or connected to these Conditions and the Project. Notwithstanding the foregoing, the parties may use self-help remedies, such as withholding performance of obligations hereunder while the other party is in breach hereof, withholding permits and approvals (including certificates of occupancy), etc.

6.7. *Effective Date.* This Agreement shall be deemed to have taken effect as of the date the Town Council voted to approve the PUD zoning for the Property (the “Effective Date”). This Agreement shall remain in full force and effect for so long as the Property is zoned and used for the Project.

6.8. *Amendments and Waivers.* These Conditions may be amended only by express written instrument executed by both the Owner and the Town, and the execution by the Town shall be valid and binding against the Town only if expressly approved by its Town Council at a meeting thereof. Waivers of material requirements, restrictions, and conditions imposed hereunder shall be valid and binding against the Town likewise only if expressly approved by its Town Council at a meeting thereof.

EXHIBIT A

PRELIMINARY DEVELOPMENT PLAN
for
WINDERMERE DOWNTOWN PROPERTY