

## Solid as an Oak Tree, Dead as a Door Nail

Written by Terence Cantarella  
September 2009

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### **They're in the Design District, they're old and majestic, and they're about to be destroyed**



Miami art collectors Carlos and Rosa de la Cruz are well along in the construction of their expansive new Design District museum that will showcase their world-renowned collection of contemporary art. It is scheduled to open in time for Art Basel Miami Beach in December. And although their art may be new, across the street from their building, where they're planning a parking lot, they are dealing with something much, much older: oak trees.

Two 80-foot-tall Southern Live Oaks, estimated to be nearly 100 years old, rise from the soil like living monuments at the rear of the vacant lot at 28 NE 41st St., their wide evergreen canopies casting precious shadows over this corner of a sun-blasted city. Miami, in fact, is ranked among the worst in the nation for tree canopy. "Born" in the early part of the last century, the twin oaks have matured with the neighborhood as it went from agricultural seclusion to mid-century ritz to drug-ravaged slum and finally to its present incarnation as the Design District, one of Miami's most vibrant commercial areas.

Those two stately oaks, however, may soon fall to the chainsaw.

On August 26, Miami's Code Enforcement Department approved an application to remove and destroy the long-standing trees, thus making room for several more vehicles in the de la Cruzes' soon-to-be-built museum parking lot.

Before permission was granted, the de la Cruzes "mitigated" with the city -- mitigation being the process by which property owners make amends with Mother Nature by either paying money into Miami's Tree Trust Fund or by planting replacement trees on their land. And if replacement trees cannot reasonably be placed on the property, the owner must hire a landscaping contractor to have them planted on a public right-of-way or in a public park.

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The number of replacement trees required is determined by a formula based on the diameter of the trees being removed. In the case of the 41st Street oaks, the city provided the *BT* with conflicting information -- the formula was either 26 trees that are 12 feet tall, or 19 trees that are 14 feet tall. It is also unclear whether those "mitigation trees" have already been planted several miles away at Miami's Curtis Park. Either way, the cost to the de la Cruzes could easily exceed \$10,000.

Under the city's Master Tree Plan, an initiative that aims to restore Miami's denuded tree canopy, the expensive and burdensome mitigation process is meant to act as a deterrent to would-be tree-fellers, encouraging property owners to let thriving trees stand. But among developers for whom money is not an issue, mitigation is just a small obstacle to tree removal.



Bob Brennan, a well-known Miami tree expert and chief arborist at Fairchild Tropical Botanic Garden, thinks the 41st Street oak trees can and should be saved. "They're fantastic!" he says during a visit to the site. "They're part of Miami's history. "The size of them is just spectacular. You don't find them like this very often because they're being cut down so people can put houses in. We've lost hundreds of them over the past five years."

Brennan also believes it would be cheaper for the de la Cruzes to keep the trees and build their parking lot around them. "There are so many ways to accommodate the trees," he explains. "You can put in gravel, a layer of construction sand above that, and then a permeable membrane so water will go through. You want to disperse the weight of the vehicles as they go by. You just build up with aggregate stone and make sure you allow the trees to breath. You're losing maybe six to eight parking spots and you're protecting 100 years of history."

Jeff Shimonski, director of horticulture at Jungle Island and longtime "Your Garden" contributor to the *BT*, says that saving the oaks, and ensuring they thrive in the middle of a parking lot, will take some effort. "If the trees are saved, they'll have to be properly protected, and that's a difficult thing to do on any construction project," he says after inspecting the trees. "I *a*  
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for saving them, but not if it's a superficial attempt that ultimately condemns those beautiful trees to a slow, painful death."

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Ted Baker, a landscape architect with the City of Miami, explains in an e-mail to the *BT* that the Code Enforcement Department “is quite diligent in protecting the city’s tree canopy.” Indeed the city has the authority to deny tree-removal applications -- if, for example, the tree is not in the footprint of a planned new building, if it is not sick or dead, or if its removal would be detrimental to the “life, safety, or the welfare” of the city. Apparently the age or size of a tree is not a consideration. Fines for heavily trimming or removing a tree without a permit can be steep, sometimes reaching as high as \$15,000. But tree expert Brennan says he has “*never* seen the City of Miami deny a permit to take out a tree.”



Property owner Rosa de la Cruz, in an initial telephone interview, would not comment on the fate of the trees. Subsequent efforts to reach her, or to arrange a meeting with Brennan and her construction team, CDC Builders, were unsuccessful.

But George Perez, a local photographer and lover of trees, isn’t willing to wait around and watch the trees fall. Less than 48 hours after a public notice was posted on the de la Cruzes’ property, announcing approval of the tree-removal application, he began researching the process by which the city’s decision can be appealed. Because several city departments are involved (code enforcement, planning, parks, NET offices), and because no clear instructions were readily available, Perez called Miami’s historic preservation officer, Ellen Ugucioni. She told him to put his objections in writing and bring them to her office, along with a check for \$150, the hefty fee prescribed by the city. Perez was set to do that on Monday, August 31.

Eventually his appeal will be heard by the city’s Historic and Environmental Preservation Board, likely at its October meeting. In the meantime, the trees are supposed to be protected.

With some luck, the 41st Street oaks could live for another 200 years, surviving several more generations of intrusive humans. That thought inspires Perez. “Somebody’s got to do something,” he says, “otherwise they’re going to kill those two trees.”

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Staring up into the wide oak canopies during a recent visit to the site, he puzzles over the de la Cruzes' plans to destroy them. "I don't get it," he says. "They're building a museum. Do they love art and hate trees?"

*Objections to the removal of the 41st Street oak trees must be filed within ten calendar days of the posted notice, meaning no later than Saturday, September 5. For more information, contact Miami's historic preservation officer, Ellen Uguccione, at 305-416-1447 or [Euguccioni@miamigov.com](mailto:Euguccioni@miamigov.com).*

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