



City of New Smyrna Beach

February 19, 2016

MEMBERS OF THE LOCAL PLANNING AGENCY
PLANNING AND ZONING BOARD
New Smyrna Beach, Florida

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of a Special Meeting of the LOCAL PLANNING AGENCY AND THE PLANNING AND ZONING BOARD on THURSDAY, February 25, 2016 at 6:30 P.M., in the **CITY COMMISSION CHAMBERS, 210 SAMS AVENUE**, New Smyrna Beach, FL, for consideration of the following:

ROLL CALL

NEW BUSINESS

A. PUD-11-15: AUTOZONE PUD / SR 44 & WALKER DRIVE

Glenn D. Storch, 420 South Nova Road, Daytona Beach, FL 32114, applicant on behalf of Auto Zone LLC (Contract Purchaser) and property owners Mary K. Whitehouse, 2248 Grand Ave, Deland FL 32720 and Doyle Kennedy, 2642 Sunset Dr. New Smyrna Beach, FL 32168, requests approval of a PUD Master Development Agreement to accompany an existing site zoning of PUD, Planned Unit Development. The subject property is in the SR 44 Corridor Overlay Zone (COZ), contains approximately 2.12 acres, and is generally located at the southwest corner of State Road (SR) 44 and So. Walker Drive, with an existing residence on the property addressed as 124 South Walker Drive. (VCPA # 7343-06-00-0521 and 7343-06-00-0511/portion thereof).

WORKSHOP SESSION IMMEDIATELY FOLLOWING SPECIAL MEETING ITEM ABOVE

DISCUSSION AS REQUESTED BY BOARD MEMBERS, concerning:

- o PUD (Planned Unit Development zoning),
- o COZ (Corridor Overlay Zone regulations), and
- o Variances

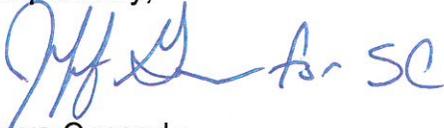
(LDR sections re above, etc. are provided as separate attachments)

OTHER COMMENTS OR STATEMENTS BY BOARD MEMBERS

REPORTS AND COMMUNICATIONS BY STAFF

ADJOURNMENT

Respectfully,

A handwritten signature in blue ink, appearing to read "Steve Casserly".

Steve Casserly
Chairperson

cc: Mayor and City Commissioners
City Manager
City Clerk
City Attorney
Planning Manager
Planners
Members of the Press

Pursuant to Florida Statutes 286.01015, if an individual decides to appeal any decision made by the Planning & Zoning Board with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings.

In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the Board Secretary listed below prior to the meeting:

Ursula Moccia, Planning and Zoning Secretary
City of New Smyrna Beach
2650 N. Dixie Freeway
New Smyrna Beach, FL 32168
(386) 410-2830

CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES
PUD-11-15: AUTOZONE / SR 44 & WALKER DR.
MASTER DEVELOPMENT AGREEMENT (MDA)
FEBRUARY 25, 2016

I. Background

- A. **Applicant and authorized representative:** Glenn D. Storch, 420 South Nova Road, Daytona Beach, FL 32114, applicant on behalf of Auto Zone LLC (Contract Purchaser)
- B. **Property Owners:** Mary K. Whitehouse, 2248 Grand Ave, Deland FL 32720; and Doyle Kennedy, 2642 Sunset Dr. New Smyrna Beach, FL 32168
- C. **Request:** Approval of the AutoZone PUD Master Development Agreement (MDA) and Conceptual Development Plan (CDP) to accompany an existing site zoning of PUD, Planned Unit Development.
- D. **Site Data:** The subject property is zoned PUD and is in the SR 44 Corridor Overlay Zone (COZ), contains approximately 2.12 acres, and is generally located South of SR-44 and West of South Walker Drive. One of the parcels within (owned by Whitehouse) the property is addressed as 124 South Walker Drive. A location map is attached as **Exhibit A** and an aerial photo is attached as **Exhibit B**.
- E. **TAX ID #:** 7343-06-00-0521 and 7343-06-00-0511 (east portion only).

II. Findings

- A. The subject property is an approximately 2.12 acre site with an existing development within, and an existing City zoning of Planned Unit Development (PUD). However, there is no existing Master Development Agreement (MDA) in place for the subject property associated with this existing PUD zoning. This application seeks to resolve that deficiency by providing a MDA for review, approval, and ultimately recording, as a guideline and regulatory framework for future development within the subject property.
- B. A copy of the proposed MDA and Conceptual Development Plan (CDP) is attached as **Exhibit C**. That Exhibit includes various other internal exhibits within the proposed MDA, including the CDP, required development criteria, and details of proposed conceptual building and sign plans. The applicant is proposing to develop the site for a new 7,391 sq. ft. commercial building (Auto Zone) with associated parking, retention, and other required site improvements, with the proposed conceptual site plan for those improvements shown within that **Exhibit C** as its internal Exhibit B.
- C. The proposed MDA and CDP were reviewed by the Plan Review Committee

- D. (PRC) on December 4, 2015. The applicant then resubmitted a revised MDA and CDP on January 8, 2016, which are included within Exhibit C of this staff report. At the time of this report being prepared, not all departments have signed on the revised MDA and CDP.
- E. In addition, the proposed CDP plan would require City subdivision approval due to one of the proposed areas comprising this application being part of a larger parent parcel (Volusia County PID # 7343-06-00-0511, the eastern portion only). This would occur when the two parcels comprising the subject property would change from its current dual owner status to become a single parcel under one ownership. The required City subdivision process would depend on the number of future lots proposed, but at this time would appear to require Minor Subdivision approval only.
- F. Along with this pending application, a variance application was previously submitted and approved for the subject property by the Planning and Zoning Board (as V-4-16, heard and approved January 4, 2016) to allow the front yard setback from Walker Drive to be 100' -135'. That approved variance request and dimensions are now included within the proposed MDA.
- G. The applicant and owners are proposing to develop in accordance with the proposed CDP (MDA Exhibit B) and all other submitted provisions of the MDA. The proposed CDP shows one separate stand-alone retail building, to be developed in a single phase, with driveway and parking areas and stormwater management facilities. The applicant understands, and the MDA acknowledges, that this proposed development will be subject to future site plan application and review prior to construction, along with required permitting through Volusia County and/or FDOT for construction affecting their respective rights-of-way.
- H. The MDA includes the understanding that the minimum tree preservation requirements of both the City LDR and the Volusia County Minimum Environmental Standards must be met, unless a specific variance to those regulations is obtained, with the current MDA text now specifying that.

Recommendation

Staff recommends that the Planning and Zoning Board **approve** a recommendation to the City Commission for the requested Planned Unit Development Master Development Agreement and Conceptual Development Plan, with the condition that all outstanding staff comments be addressed and those remaining Plan Review Committee member signatures be obtained, with **this to be completed prior to City Commission review and approval.**

EXHIBIT A



EXHIBIT B



EXHIBIT C

PUD Document Prepared By:
Glenn D. Storch, Esquire
GLENN D. STORCH, P.A.
420 South Nova Road
Daytona Beach, FL 32114

Return recorded document to:
City of New Smyrna Beach Records Clerk
210 Sams Avenue
New Smyrna Beach, FL 32168

**MASTER DEVELOPMENT AGREEMENT FOR
S.R. 44 AUTOZONE**

The **CITY OF NEW SMYRNA BEACH, FLORIDA**, a chartered municipal corporation located in Volusia County, Florida (the "City"), **AUTOZONE STORES LLC**, a Nevada corporation, ("Developer"), and **DOYLE KENNEDY, MARY K. WHITEHOUSE, and KEVIN S. COLE REVOCABLE TRUST DATED FEBRUARY 22, 1995 AS AMENDED AND RESTATED ON JULY 8, 1997**, the current property owners, hereby agree and covenant, and bind their heirs, successors and assigns, as follows:

1. OWNERSHIP OF THE PROPERTY

The property that is subject to this Agreement consists of approximately 2.12 +/- acres of real property (hereinafter "the Property") and is described in Exhibit "A" attached hereto and by reference made a part hereof. The Property includes Parcel 7343-06-00-0521 and a portion of Parcel 7343-06-00-0511, which are under separate ownership. The Developer intends to subject the Property to the conditions and restrictions of this Agreement and the City intends to permit development of the Property in accordance with the terms of this Agreement. The Property is under the sole ownership of Doyle Kennedy, Mary K. Whitehouse, and Kevin S. Cole Revocable Trust Dated February 22, 1995 as amended and restated on July 8, 1997, who have entered into separate contracts to sell the Property to AutoZone Stores, LLC.

2. DEVELOPMENT PLAN

A. Development of the Property shall be controlled by the terms of this Agreement and, to the extent not in conflict with this Agreement, the New Smyrna Beach Land

Development Regulations, including the regulations contained therein. The Developer has designated the Property as “S.R. 44 AUTOZONE”.

- B.** The Property shall be developed as an automobile parts store as shown on the Conceptual Development Plan which is attached hereto and incorporated herein as Exhibit “B”. The City and the Developer acknowledge the importance of developing the property as part of a significant commercial corridor along S.R. 44. The Property shall generally be developed as depicted on the Conceptual Development Plan. In case of conflict between any textual provision of this Agreement and the Conceptual Development Plan, the textual provision shall govern. If this Agreement or the Conceptual Development Plan fails to address a particular subject or requirement, the requirements of the applicable City ordinance(s) in effect at the time of development plan approval shall control. Failure of either to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirement, condition, term or restriction. The Conceptual Development Plan is conceptual only and the plan may be adjusted by the Developer, in cooperation with Staff, as the parties proceed through final Site Plan approval. Site data will be provided in the Conceptual Development Plan, provided the same complies with the below site data:

Minimum Open Space:	50%
Maximum Building Height:	35 ft.
Maximum Impervious Lot Coverage:	50%
Maximum Building Coverage:	35%

Project Landscape Buffers:

Front (North) (SR 44):	35 ft.
Front (East) (Walker Drive):	40 ft.
Side (West) (Parcel Adjacent to SR 44):	25 ft.
Side (West) (Remaining Parcels):	25 ft.
Rear (South) (Residential):	25 ft.

Minimum Building Setbacks:

Rear yard: 25 ft.
Side yard (West): 25 ft.

Front yard build-to line (SR 44): 45 ft. – 150 ft.
Front yard build-to line (Walker Drive): 100 ft. – 135 ft.*

* The 100 ft. – 135 ft. Walker Drive build-to line is an approved variance in lieu of the 25 ft. required by the LDR.

Natural Vegetation Requirement: 30%
Minimum Interior Landscaping: 20%

- C. The parties acknowledge that compliance with the New Smyrna Beach Land Development Regulations may necessitate modification of the Conceptual Development Plan. Any minor modifications to the Conceptual Development Plan which are not in conflict with the textual provisions of this Agreement and do not increase the size, density or intensity of the use by more than 10% of the building's square footage in the Conceptual Development Plan, and do not conflict with any City ordinances not superseded by this Agreement, shall be deemed "minor" and may be approved without formal amendment of this Agreement. Minor amendments may include revisions to the Conceptual Development Plan that may reconfigure the Property, phase and/or building layout so long as the modified Conceptual Development Plan does not exceed, by more than 10%, the building coverage depicted on the Conceptual Development Plan. Such modifications shall require the City Administrative Official's written approval; however, this does not permit a complete redrawing of the Conceptual Development Plan that substantially reconfigures the entire layout of the development, which shall not be deemed a "minor" amendment and shall require formal amendment of this Agreement. If the Developer is not satisfied with resolution of any problem or decision by the City Administrative Official regarding such modification, the Developer may appeal the

decision to the City Manager. Upon completion of construction on the Property and approval of said construction by City staff, Developer shall provide the City with “as-built” drawings of the development on the Property, which shall include all improvements thereon and shall be considered the final Conceptual Development Plan.

D. Developer shall provide any appropriate performance and maintenance guarantees.

3. CONFORMANCE WITH COMPREHENSIVE PLAN

The City has determined that the Property is suitable in size, location and character for the uses proposed, that the uses proposed meet the needs of the City and that the uses proposed are consistent with the City of New Smyrna Beach’s Comprehensive Plan.

4. PERMITTED USES

Automobile Parts Sales

The total acreage of the Property shall be devoted to Automobile Parts Sales uses. However, said Automobile Parts Sales use shall not permit an Automobile Repair use as defined by the City Land Development Regulations.

5. PUD INFRASTRUCTURE/TRANSPORTATION

A. Access easements and utility easements for utilities within the Development shall be owned by the Developer, its successors and assigns, subject to dedications of easement and rights of ingress and egress in favor of the City and/or Utilities Commission for the purpose of owning and maintaining utilities located within the Property. The access easements shall be constructed to City and/or Utilities Commission standards. The Developer acknowledges for itself, its successors and assigns, that the access easements are private and shall be a private responsibility without recourse to the City and/or Utilities Commission. The exception to this limitation shall be when the City and/or Utilities Commission, through its agents, designees or assigns, shall damage facilities, including pavement, within the Property in the course of repairing, replacing or enlarging City and/or Utilities Commission owned or dedicated utility lines. In that event, the City and/or Utilities Commission shall repair the area in a workmanlike fashion.

- B.** The Developer will build or provide for the construction of stormwater and electric infrastructure, as well as water, sewer and reuse waterlines to City and/or Utilities Commission specifications, and upon acceptance by the City and/or Utilities Commission, the electric, water, sewer and reuse lines shall be dedicated to the City and/or Utilities Commission together with all easements and licenses necessary for the City and/or Utilities Commission to maintain and operate the utility systems located on the Property, all pursuant to the Development Agreement with the Utilities Commission of New Smyrna Beach. The water, sewer and reuse waterlines (if reuse service is available) shall be located and built as provided on the attached Conceptual Development Plan. The Developer shall connect the development to said central sewer service within one (1) year after it becomes available to the Property.
- C.** Stormwater drainage will be constructed for the development within the Property. The stormwater retention and drainage facilities will be maintained by the Developer at a level consistent with the standards and permit conditions of the St. Johns River Water Management District (SJRWMD). Collection and transmission facilities on the Property shall be located pursuant to site development plan approval for the Property and structures located thereon. Developer agrees to pay any non-ad valorem stormwater assessments.
- D.** The Developer agrees to participate in any proportionate fair share program and the development will be subject to transportation impact fees.
- E.** The Developer shall bring Walker Drive into compliance with the Volusia County Code of Ordinances alongside the portion of the Property adjacent to Walker Drive. The specific improvements and widening contemplated for Walker Drive are noted on the Conceptual Development Plan.

6. ARCHITECTURAL/DESIGN STANDARDS

The following guidelines shall apply to the development of the Property except where they are superseded or conflict with the Conceptual Development Plan, Exterior Elevations, Exterior Materials, or other sections of this Agreement:

- A.** **Applicability.** These design standards shall apply to all uses provided herein.

- B. **Site Plan Design Standards.** Site layout, including building orientation, location and parking area layout, shall be as shown in the Conceptual Development Plan.
- C. **Architectural Design Standards.** All buildings structures shall be developed in compliance with the Exterior Elevations, which are attached hereto and incorporated herein as Exhibit “C”. All building structure colors shall be selected from Exterior Materials, which is attached hereto and incorporated herein as Exhibit “C”.
- D. **Site Circulation and Access.** Site circulation and pedestrian access shall be consistent with the Conceptual Development Plan. The Developer shall construct a five-foot wide sidewalk along its frontage on Walker Drive. Appropriate stop signs shall be provided as depicted on the Conceptual Development Plan.
- E. **Landscaping and Buffer Requirements.**
 - 1) Landscaping and landscape buffers shall be as provided on the Conceptual Development Plan.
 - 2) Landscaping shall provide a suitable setting for the development architecture and also shall serve to create a unified urban look, to define outdoor spaces, to buffer from sound and weather, to screen from view and to accentuate building elements.
 - 3) Landscaping and grading shall be designed to enhance the presence of the building.
 - 4) Whenever possible, utility easements shall be located away from historic trees, which must be saved as provided in Section 7B herein below.
 - 5) Landscaping is required to soften the visual appearance of the pond edges.
 - 6) Additional screening will be provided along Walker Drive and the south property line to mitigate and adverse impact to the neighbors.
- F. **Architectural Consistency.**
 - 1) All structures within the development shall complement one another and shall convey a sense of quality.
 - 2) No vending machines shall be permitted on the outside walkways or other outdoor pedestrian areas of the Property.
 - 3) No newspaper stands shall be permitted except in areas designed by the Developer and approved by the City.

- 4) Function, layout and architectural design and size of buildings within the development shall be coordinated to receive site development plan approval. For purposes herein, function and layout includes, but is not limited to, building placement, landscaping layout/design, parking lot layout/design and access drive layout/design. Architectural design refers to building style and appearance.
- 5) All parking lot lighting fixtures shall be consistent with respect to their physical attributes, design and appearance. The mounting height for pole lights shall be limited to a maximum of 24 feet, and all lights will be shielded, non-glare fixtures. The specific design shall be established by the type of parking lot lighting fixture to receive site development plan approval. Light shall be contained within the project and deflected from abutting residential areas.

G. Parking Standards. Parking will be as provided on the Conceptual Development Plan.

7. NATURAL VEGETATION PRESERVATION

- A.** Natural vegetation preservation shall be as provided in the Conceptual Development Plan. Said amount shall comply with the intent of the Corridor Overlay Zone regulations. All natural areas and vegetation shall be cleaned by hand or brush cutter including the removal of dead trees, limbs and any vines. No removal of small trees, palmetto bushes or other under brushing, except for removal of invasive species, will be done. Buffers shall also be as provided in the Conceptual Development Plan and shall be used to meet the required natural vegetation preservation requirements. Prior to beginning of land clearing, all areas to be preserved shall be marked by the Developer and inspected by City.
- B.** Tree preservation shall be provided for in the Conceptual Development Plan, which identifies those areas where trees shall be cleared for development and the areas dedicated to conservation where trees will be preserved. All tree mitigation required for the Property shall comply with the City Land Development Regulations.

8. ENVIRONMENTAL CONSIDERATION

- A.** Both during and after construction, the Developer will use reasonable efforts to preserve trees and natural vegetation within the Property consistent with the Conceptual

Development Plan and maximize protection of natural drainage pathways. The Developer shall comply with all rules, statutes, laws and regulations pertaining to protected wildlife species, including, but not limited to, the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises. An endangered species survey will be done for the site and submitted to staff with the site plan. .

9. SIGNAGE

Signage shall be provided as depicted on the Signage Plans which is attached hereto and incorporated herein as Exhibit "D". The Developer shall be permitted one (1) monument sign and wall signage complying with the provisions and requirements of the City Land Development Regulations, including the regulations for properties within the Corridor Overlay Zone. Said permitted signage shall not include the use of an electric reader board sign.

10. PROJECT DEVELOPMENT CRITERIA

The terms of this Agreement shall be superior to the terms of the New Smyrna Beach Land Development Regulations, and conflicting zoning or overlay regulations, unless otherwise specifically provided herein. In the event a subject is not addressed in this Agreement, the Land Development Regulations shall control.

11. COSTS

No costs of development of the Property, hereunder, shall be borne by the City unless the City specifically agrees in writing to assume such cost.

12. EFFECTIVE DATE AND EXPIRATION

A. This Agreement shall be effective upon approval by the City Commission. The Developer will be required to record this Agreement in the Public Records of Volusia County, Florida and provide a copy to the City Clerk and Planning and Engineering Division. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or

eliminates such restrictions in the course of the City's actions as zoning authority or until this Agreement Expires.

- B.** The duration of this Agreement shall not exceed ten (10) years from the date of its execution. This Agreement may be extended for an additional 5-year term by mutual consent of the Developer and the City, subject to a public hearing.
- C.** The term "development" shall mean that the Developer, his successors or assigns, shall actively be in pursuit of installation of improvements, permits for installation of improvements, or installation of improvements over a portion or all of the Property.
- D.** If the City does not approve this Agreement, it shall be null, void and without further effect. In addition, if the Developer is a contract purchaser of the PUD Property and fails to acquire title to the PUD Property within 90 days of approval, then the City or the Developer shall each have the option to terminate this Agreement, exercised by providing written notice to the other parties hereto, after which this Agreement shall be null, void and without further effect. Neither the City nor the Developer shall acquire any enforceable rights or claims against each other with respect hereto in the event this Agreement becomes null and void under this paragraph.

13. AMENDMENTS

- A.** Amendments to this Agreement, other than minor modifications to the Conceptual Development Plan, shall not be effective unless in writing and signed by the City and all record title property owners of the land for which the amendment is to be applied.
- B.** Before amending this Agreement, the City shall conduct two or more public hearings. At the City's option, one of these public hearings may be held by the Planning and Zoning Board.
 - 1) Notice of intent to consider an amendment to this Agreement shall be published by the City, at the property owner's cost, in a newspaper of general circulation and readership in Volusia County, Florida.
 - 2) If applicable, notice of intent to consider an amendment shall comply with the requirements of Section 166.041(3)(c), Florida Statutes (2012), as amended from time to time.

- 3) The day, time and place at which the second public hearing, if any, will be held shall be announced at the first public hearing.
- 4) The notices required above shall specify the location of the Property, the location of that portion of the Property subject to the proposed amendment, the nature of the proposed amendment, and the following information to the extent applicable:
 - a. Changes in permitted and/or conditional uses;
 - b. Changes in building intensities and/or height proposed.
- 5) All notices shall specify a place where a copy of the proposed amendment can be obtained prior to the public hearing.

14. PUBLIC RECORD

The parties agree this Agreement shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The provision of this Agreement shall constitute covenants running with the land applicable to the entire subject Property described herein or any portion thereof. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of the City's actions as zoning authority.

15. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

16. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

17. COMPLETE AGREEMENT

This Agreement represents the complete understanding by and between the parties with respect to the development and continued use of the subject Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement. Any amendment to this Agreement shall be in writing and signed by the City and the property owner.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered
in the presence of:

**CITY OF NEW SMYRNA BEACH,
a Florida Municipal Corporation**

Witness 1

By: _____
James Hathaway, Mayor

Print Name of Witness 1

Attest:

Witness 2

By: _____
Johnny Bledsoe, City Clerk

Print Name of Witness 2

Dated: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 20 ____, by JAMES HATHAWAY and JOHNNY BLEDSOE, Mayor and City Clerk, respectively, of the City of New Smyrna Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

(Seal)

Notary Public

APPROVED AS TO FORM AND CORRECTNESS

As Attested to

By: _____
City Attorney, Frank B. Gummey, III

Dated: _____

Signed, sealed and delivered
in the presence of:

DEVELOPER – AUTOZONE STORES LLC,
a Nevada corporation

Witness 1

By: _____

Print Name of Witness 1

Print Name: _____

Witness 2

As: _____

Print Name of Witness 2

Dated: _____

Witness 1

By: _____

Print Name of Witness 1

Print Name: _____

Witness 2

As: _____

Print Name of Witness 2

Dated: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ and _____, Vice President and Senior Vice President of Operations, respectively, of AUTOZONE STORES LLC, a Nevada corporation, who are personally known to me or have produced _____ as identification.

(Seal)

Notary Public

Signed, sealed and delivered
in the presence of:

OWNER(S) – DOYLE KENNEDY

Witness 1

By: _____

Print Name of Witness 1

Dated: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
Doyle Kennedy, who is personally known to me or has produced _____ as
identification.

(Seal)

Notary Public

Signed, sealed and delivered
in the presence of:

OWNER(S) – MARY K. WHITEHOUSE

Witness 1

By: _____

Print Name of Witness 1

Dated: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
Mary K. Whitehouse, who is personally known to me or has produced _____ as
identification.

(Seal)

Notary Public

Signed, sealed and delivered
in the presence of:

**OWNER(S) – KEVIN S. COLE
REVOCABLE TRUST DATED
FEBRUARY 22, 1995 AS AMENDED AND
RESTATED ON JULY 8, 1997**

Witness 1

By: _____
Trustee

Print Name of Witness 1

Dated: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
KEVIN S. COLE, as Trustee of KEVIN S. COLE REVOCABLE TRUST DATED FEBRUARY 22,
1995 AS AMENDED AND RESTATED ON JULY 8, 1997 who is personally known to me or has
produced _____ as identification.

(Seal)

Notary Public

Exhibit "A"

A PORTION OF LOTS 52, 57 & 58, BLOCK 19, OF DOUGHERTY'S SUBDIVISION AS SHOWN ON PLAT RECORDED IN DEED BOOK "M", PAGE 688, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LYING SOUTH OF STATE ROAD #44 AND WEST OF WALKER DRIVE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT AN EXISTING 2" IRON PIPE (NO IDENTIFICATION) MARKING THE SOUTHWEST CORNER OF LOT 52, BLOCK 19, OF DOUGHERTY'S SUBDIVISION RECORDED IN DEED BOOK "M", PAGE 688, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE NORTH 29°53'02" WEST ALONG THE WEST LINE OF SAID LOT 52 FOR A DISTANCE OF 100.94 FEET TO THE SOUTH RIGHT OF WAY LINE OF STATE ROAD #44 (110' RIGHT OF WAY); THENCE NORTH 88°34'13" EAST ALONG SAID SOUTH RIGHT OF WAY LINE 225.37 FEET TO THE INTERSECTION OF SAID SOUTH RIGHT OF WAY LINE WITH THE WESTERLY RIGHT OF WAY LINE OF WALKER ROAD (50' RIGHT OF WAY); THENCE SOUTH 15°23'47" EAST ALONG SAID WESTERLY RIGHT OF WAY LINE 199.06 FEET; THENCE DEPARTING SAID WESTERLY RIGHT OF WAY LINE SOUTH 58°44'50" WEST, 148.39 FEET TO THE EAST LINE OF LOT 58 OF SAID DOUGHERTY'S SUBDIVISION; THENCE SOUTH 29°53'02" EAST ALONG SAID EAST LINE 121.85 FEET TO AN EXISTING 4" X 4" CONCRETE MONUMENT (NO IDENTIFICATION); THENCE DEPARTING SAID EAST LINE SOUTH 58°51'15" WEST, 172.95 FEET; THENCE NORTH 21°15'14" WEST, 332.13 FEET TO THE NORTH LINE OF SAID LOT 58; THENCE NORTH 60°06'58" EAST ALONG SAID NORTH LINE 123.07 FEET TO THE POINT OF BEGINNING. CONTAINING 92,556 SQUARE FEET OR 2.12 ACRES, MORE OR LESS.

Exhibit "B"

Exhibit "C"

Autozone STORE DEVELOPMENT
 Prepared For: STATE ROAD 44, NEW SMYRNA BEACH, FL 32168
 Store No. 6327
 AUTOZONE STORES, LLC
 123 South Front Street, 3rd Floor
 Memphis, Tennessee 38103
 TEL: (901) 495-8709 FAX: (901) 495-8969

REVISIONS	DATE	PROTOTYPE SIZE
1	09/21/15	7x2

SCALE: 1/8" = 1'-0"

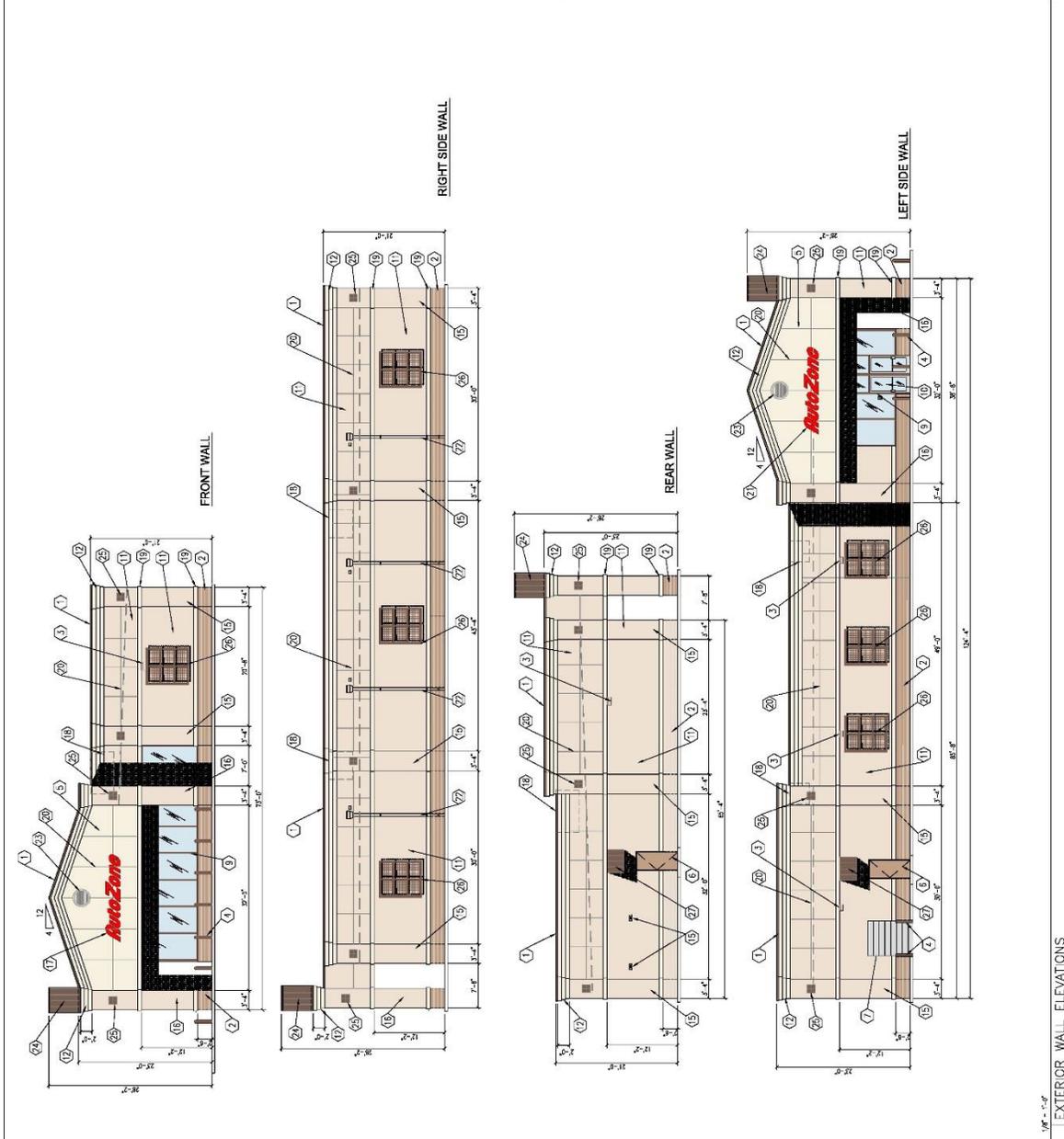
2 EXTERIOR WALL COLOR SCHEME

GENERAL NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. PANT RESTROOM WALL VENTS TO MATCH THE ADJACENT WALL COLOR.
 3. SEALANT AT EXPANSION JOINTS TO MATCH ADJACENT WALL COLOR.
 4. ALL MASONRY JOINTS TO BE CONCRE TOOLED.

3 GENERAL NOTES

STORAGE NOTES:
 1. GENERAL CONTRACTOR SHALL RECEIVE AND INSTALL OWNER FINISHED WALL MOUNTED SIGN IN THE LOCATIONS INDICATED ON THE DRAWINGS.
 2. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED PERMITS.
 3. INSTALL SIGN AND ANCHORAGE IN ACCORDANCE WITH ATTACHED SIGN MANUFACTURER'S DRAWINGS. SET SH-1
 4. SET SHEET E3 FOR LOCATIONS OF J-BOLTS TERMINATING EACH WALL SIGN CRUIST.

4 SIGNAGE NOTES - BUILDING



1/8" = 1'-0" EXTERIOR WALL ELEVATIONS

Exhibit "D"

Job Number
XXXX

QTY: (1)

JONES SIGN
 Your Vision, Accomplished.

Quality Control:
 2. Check Backs
 1-50 AMP CIRCUIT

App. Draw:
 1.3A
 1/20/15

Project Manager:
 Mickey Walker

Revision Date:
 01/23/14

Sheet No.:
 1

JOB NAME: CITY, STATE

AUTO ZONE - STORE #

30" AZ CHANNEL LETTERS - NS

www.jonesign.com
 DE. PH: 414-511-5115
 IL. PH: 815-298-5133
 TX. PH: 817-298-5133
 TN. PH: 615-298-5133
 FL. PH: 407-298-5133
 MO. PH: 816-298-5133
 CO. PH: 303-298-5133
 AZ. PH: 480-298-5133
 WA. PH: 206-298-5133
 OR. PH: 503-298-5133
 CA. PH: 916-298-5133
 NV. PH: 702-298-5133
 UT. PH: 801-298-5133
 WY. PH: 307-298-5133
 NE. PH: 402-298-5133
 KS. PH: 913-298-5133
 OK. PH: 405-298-5133
 AR. PH: 501-298-5133
 LA. PH: 504-298-5133
 MS. PH: 662-298-5133
 AL. PH: 205-298-5133
 GA. PH: 770-298-5133
 SC. PH: 803-298-5133
 NC. PH: 704-298-5133
 VA. PH: 703-298-5133
 MD. PH: 410-298-5133
 DE. PH: 302-298-5133
 PA. PH: 610-298-5133
 NY. PH: 516-298-5133
 NJ. PH: 908-298-5133
 CT. PH: 860-298-5133
 RI. PH: 401-298-5133
 MA. PH: 508-298-5133
 NH. PH: 603-298-5133
 VT. PH: 802-298-5133
 ME. PH: 603-298-5133
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 ND. PH: 701-298-5133
 SD. PH: 605-298-5133
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 NH. PH: 603-298-5133
 VT. PH: 802-298-5133
 ME. PH: 603-298-5133
 HI. PH: 808-298-5133
 AK. PH: 907-298-5133

CALL OUTS:

- 3/16" THK PIGMENTED PLEXIGLAS RED 2662 AUTOZONE LETTERS.
- AUTOZONE LETTERS INTERNALLY ILLUMINATED w/ 6E TETRA MAX RED LED.
- PRE-FINISHED .040 BLACK/WHITE ALUMINUM RETURNS LETTER LOCKED/STAPLED TO BACK/AND CAULAGED. (INSIDE OF LETTERS STRIPES TO BE WHITE)
- 1" GLOSS BLACK JEWELITE TRIM FASTENED TO LETTERS STRIPES w/ MINIMUM #6 SHEET METAL SCREWS PAINTED GLOSS BLACK P-1. SCREWS SHALL NOT EXCEED 16" NO FEWER THEN FOUR (4) SCREWS PER FACE.
- PRE-FINISHED .040 BLACK/WHITE ALUMINUM BACK LETTER LOCKED/STAPLED TO RETURN/AND CAULAGED. (INSIDE OF LETTERS STRIPES TO BE WHITE)
- WHITE ALUMINUM TAB w/ RED @ VINYL APPLIED FIRST SURFACE V-1.
- REFER TO ENGINEERING FOR MOUNTING REQUIREMENTS.
- 1/2" FLEXIBLE CONDUIT (GREEN FIELD).
- 1/2" WEEP HOLES.
- 120V, 20 AMP PRIMARY ELECTRICAL CONNECTIONS, TO BE MADE BY LICENSED ELECTRICAL CONTRACTORS.
- UL APPROVED ELECTRICAL SHUT OFF SWITCH.
- TETRA POWER SUPPLY MOUNTED TO BOTTOM OF RACEWAY COVER.
- 8" x 10 1/4" x .083 ALUMINUM FOUR SIDED INTERIOR RACEWAY w/ REMOVABLE FACE P-1, P-3 (REQUIRED FOR ALL SIGNS).

NOTES:

- ALL VISIBLE SCREWHEADS & POP RIVETS PAINTED GLOSS BLACK.
- RACEWAY SHIPPED IN 8 PIECES (2-BACKS, 1-FRONT, 2-ENDS) & ASSEMBLED IN FIELD.

FINISHES:

- P-1 GLOSS BLACK
- P-2 RUSTO ELM 20-9108 WHITE PRIMER
- P-3 SHERWIN WILLIAMS RELIABLE WHITE
- V-1 SIGN TECH (ARLON) 2509-2662 RED CAST FLEX VINYL

SECTION DETAIL SCALE 1/8"

2" GAP IN BACK PANEL TO ALLOW ACCESS TO ELECTRICAL WHIPS

BUILDING FACIA

MATERIAL LIST

ITEM	DESCRIPTION	QTY	UNIT
A	LED Module	89	Mod
U	Power Supply	1	ea
T	Shipping Container	1	ea
Z	Support Structure	1	ea
D	Channel Raceway	1	ea
N	End Cap	1	ea
E	End Cap	1	ea

FRONT VIEW SCALE 1/4" = 1'-0"

FRONT VIEW SCALE 1/4" = 1'-0"

30" x 15'-7 1/4"

LED LAYOUT SCALE 1/8"

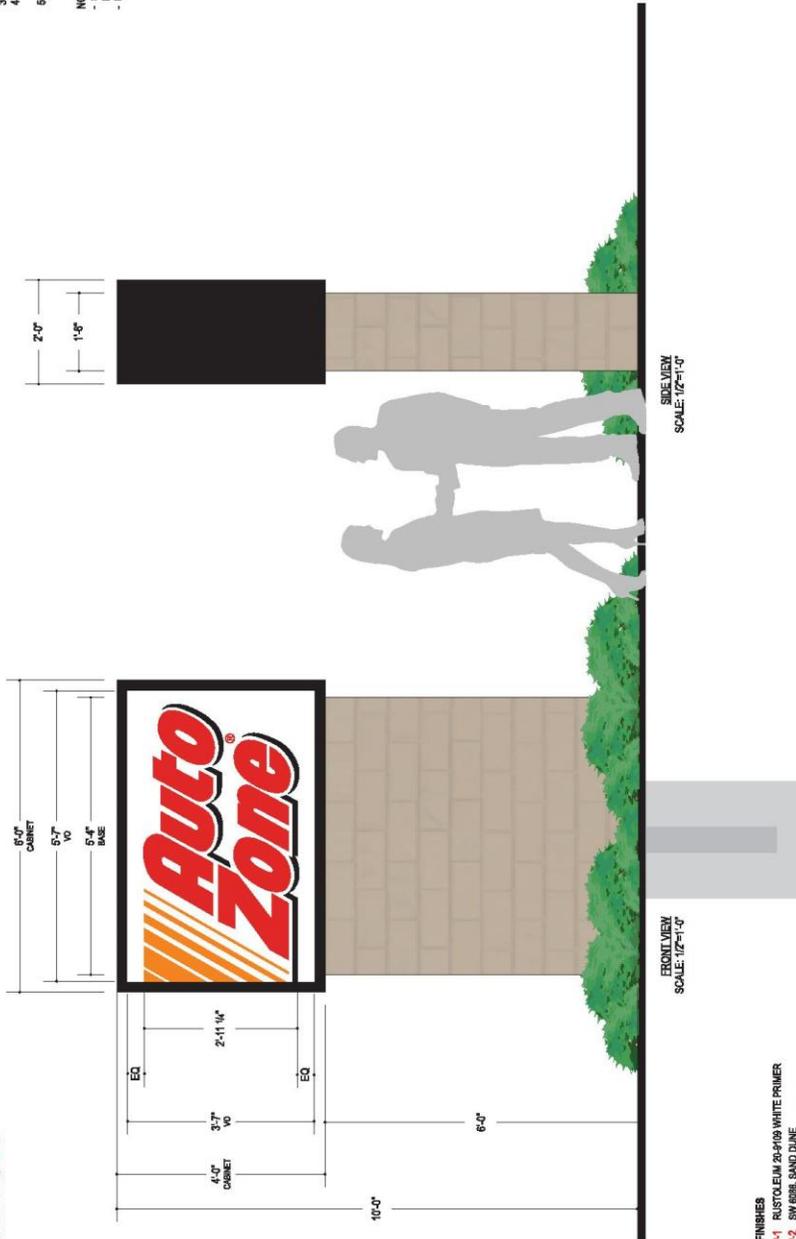
LED LAYOUT SCALE 1/8"

D/F INTERNALLY LIT MONUMENT (Qty 1)

SQUARE FOOTAGE: 24
 FIELD SURVEY REQUIRED

- SPECIFICATIONS**
1. 1/2" WHITE LEAN FACES w/ AN TRANSLUCENT VINTL. COLOURS V1, V3, V3
 2. ALUMINUM FRAMED CABINET PAINTED P-1 SHEETED w/ PRE-FINISHED BLACK/WHITE ALUMINUM FITNERS
 3. INTERNALLY LIT w/ WHITE ORRAN BACK PLUS DS LEDS
 4. STEEL POLE SUPPORT / PORTION INSIDE CABINET PAINTED P-1
 5. POLE SUPPORT AND FOOTING SIZE TBD PER ENGINEERING
 6. CANO SPLITFACE BLOCK BASE (BY OTHERS) PAINTED P-2 w/ STUCCO FINISH

- NOTES**
- STANDARD CABINET DEPTH IS 24". CABINET DEPTH TO BE ADJUSTED IF POLE DEPTH IS GREATER THAN CABINET DEPTH = POLE DIA. - 10"
 - BASE TO BE 8" WIDER THAN CABINET



- COLORS/FINISHES**
- P-1 RUSTOLEUM 20-9109 WHITE PRIMER
 - P-2 SW 6098 SAND DUNE
 - V-1 3M 3530-44 ORANGE TRANSLUCENT VINTL
 - V-2 3M 3530-22 BLACK OPAQUE VINTL
 - V-3 3M 3530-163 POPPY RED TRANSLUCENT VINTL

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JOB #: 208532-R0
 DATE: 11.17.2015
 DESIGNER: Amanda Otto
 SALES REP: XXX
 PROJ MGR: Jamie Da Vos

REV.	DATE	BY	DESCRIPTION
1	11/17/2015	AO	XXXX
2	11/17/2015	AO	XXXX
3	11/17/2015	AO	XXXX
4	11/17/2015	AO	XXXX
5	11/17/2015	AO	XXXX
6	11/17/2015	AO	XXXX
7	11/17/2015	AO	XXXX
8	11/17/2015	AO	XXXX
9	11/17/2015	AO	XXXX
10	11/17/2015	AO	XXXX

CLIENT APPROVAL

LANDLORD APPROVAL

QC APPROVED
Professional Seal of a Qualified Designer

AutoZone

Site #6327
 Smyrna Beach, FL
 DESIGN PHASE: CONCEPTUAL

SHEET NUMBER
1.0

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Interoffice Memorandum

City of New Smyrna Beach

To: New Smyrna Beach Planning and Zoning Board Members

From: Jeff Gove, AICP, Chief Planner

Subject: **WORKSHOP REGARDING ZONING REGULATIONS FOR PUD, COZ, & VARIANCES – FEBRUARY 25, 2016**

Date: February 19, 2016

Planning and Zoning Board members, as part of their quarterly workshops, have requested that one be scheduled for February 25, 2016, for the Board's review and discussion of zoning regulations for PUD and COZ areas, and recent variance requests associated with those regulations.

The Board should be aware that the City Commission has requested a joint meeting of the Commission and Planning & Zoning Board be held in the near future, with a tentative date of late April 2016, to discuss the very same topics.

Consequently staff believes that it may be premature for the Board to unilaterally recommend revisions to these zoning designations, but instead use this workshop to concentrate on those topics and issues the Board may wish to bring to the Commission for discussion at that imminent joint meeting.

Staff has provided the following information for review by the Board for this February workshop meeting:

- PUD regulations, from City LDR,
- COZ regulations, from City LDR, and
- A January 14, 2016 memo from Assistant City Attorney Greg McDole to the Board re Variances

The Board should be also be aware of this LDR definition in regard to the PUD regulations, as was discussed and requested to be explained at recent Board meetings:

Traditional City Area: The area located approximately east of the Turnbull Bay / Turnbull Creek waterway north of State Road 44 and approximately east of Mission Road south of State Road 44.

PLANNED UNIT DEVELOPMENT (PUD)

Purpose and Intent

The purpose of the PUD zoning classification is to provide for the flexible development of integrated retail, office, and / or residential developments that provide high-quality development for the City and that would otherwise not be permitted by this code. Notwithstanding the specific criteria identified herein, proposals should accomplish the following purposes to the greatest extent possible:

- (1) Provide a variety of housing types with a broad range of housing costs allowing for the integration of differing age groups and socioeconomic classes;
- (2) Promote innovative site and building design, including traditional neighborhood developments;
- (3) Provide efficient location and utilization of infrastructure through orderly and economical development, including a fully integrated network of streets and pedestrian/bicycle facilities;
- (4) Establish open areas set aside for the preservation of natural resources, significant natural features and vistas, and listed species habitats;
- (5) Create usable and suitably located civic spaces, recreational facilities, open spaces and scenic areas;
- (6) Provide for a coherent and visually attractive physical environment through the creation of focal points and vistas, as well as coordination and consistency of architectural styles, landscaping designs and other elements of the built environment;
- (7) Provide for other limitations, restrictions and requirements as deemed necessary by the city to ensure compatibility with adjacent neighborhoods and effectively reduce potential adverse impacts;
- (8) Provide for mixed use residential, commercial, office and/or industrial development such as commercial nodes, town centers, office parks, and industrial parks; and
- (9) Promote innovative site and building design. **Ord. #62-08**

Permitted Principal Uses and Structures

The following land uses and their customary accessory uses and structures shall be allowed in the PUD zoning districts except in the Corridor Overlay Zone.

Art, Dance, Modeling, Music, Etiquette, or any other personal enrichment schools or studios having scheduling or costs associated which are not typically found in a public or private elementary or high school curriculum

Auction Parlors, indoor

Automobile Service Station, Type A, B, or

[Revised 7-5-00]

Bars and Liquor Stores

Beauty Shops, Barber

Shops Bowling Alleys

Cafeterias

Exercise and Health Spas
Financial Institutions
Funeral Homes
General Offices
Hospitals, Nursing Homes, Adult Congregate Living Facilities, Assisted Living Facilities

Ord. #62-08

Houses of Worship
Laundry and Dry Cleaning Establishments (no coin operation)
Medical and Dental Clinics
Multiple-Family Standard Dwellings, provided the following requirements are met:
(1) sixty (60) percent of the commercial development must be completed prior to the start of residential construction, unless an alternate phasing plan is approved; and
(2) the maximum permitted density will be eighteen (18) units per acre. **Ord. #74-92**

Pharmacies
Public Uses
Restaurants (Class "A")
Retail Printing Shops
Retail Specialty Shops
Schools, Parochial and Private

Ord. #67-92, [Revised 7-5-00]

Single-Family Residences
Tailor Shops
Taxicab Stands
Theaters (No Drive-Ins)
Transient lodging:
Maximum size 1200 s/f of interior living space.

Travel Agencies
Two-Family Residences **Ord. #67-92**
Other Uses and Structures of a nature similar to those listed, after determination by the City Commission at the time of overall development plan approval that such uses and structures are compatible with the PUD development and the surrounding area.

Permitted Principal Uses and Structures within the Activity Center and West of Interstate 95

Permitted uses of land and their customary accessory uses and structures shall be as allowed in the written development agreement approved by the City Commission. **Ord. #62-08**

Permitted Accessory Uses **Ord. #58-91**

On-Site Temporary Sales and Brokerage Offices and Display Models for residential dwelling units that are newly constructed, that have never been occupied for residential purposes, and have never been sold.
On-Site Temporary Sales and Brokerage Structures to be used as a sales office for dwelling units planned to be constructed or under construction.

The following limitations and regulations shall be placed on the aforescribed On-Site Sales and Brokerage Offices and Temporary Sales and Brokerage Structures:

- (1) Said Sales and Brokerage Offices shall only be used to promote the sales of newly constructed dwelling units (to wit: units that have never previously been occupied for residential purposes or never sold by the developer) and part of an approved site plan located on the same site as the office; and
- (2) said Sales and Brokerage Offices shall only be used to sell residential dwelling units located on the same site as the sales office; and
- (3) said Sales and Brokerage Offices may only have ONE sign not to exceed TEN (10) square feet in area in addition to the allowable signs indicated in Section 604.14 of this LDR; and
- (4) said Sales and Brokerage Offices shall be allowed within a development upon issuance of a Certificate of Occupancy for the offices by the Development Division Director or his/her designee and said sales office must be removed from the site upon the issuance of a Certificate of Occupancy for the last building to be constructed within a development; and
- (5) the following additional limitations and regulations shall be placed on the aforescribed On-site Temporary Sales and Brokerage Structures:
 - (a) said Sales and Brokerage Structures shall have a minimum floor area of THREE HUNDRED (300) square feet and shall not have been formerly a travel trailer, camper, recreational vehicle or tractor trailer trailer; and
 - (b) the perimeter of the area between the ground and floor level of the Sales and Brokerage Structures shall be enclosed with ornamental skirting; and
 - (c) said Sales and Brokerage Structures must be located on the site such that it meets the minimum setback requirements; and
 - [Revised 11/10/92]**
 - (d) a minimum of THREE (3) parking spaces must be provided for the Sales and Brokerage Structures or the minimum number of parking spaces required for an office, whichever is greater. Said parking spaces and access aisle must meet the requirements of Section 604.10 within this LDR except an alternate surfacing agent, such as shell or mulch, may be used; and
 - (e) a minimum TEN foot (10') wide and SIX foot (6') high natural vegetative buffer shall be maintained along the front, side and rear of the Sales and Brokerage Structure, parking area and any accessory structures. Should no buffer exist, a TEN foot (10') wide buffer, meeting the requirements of Section 604.05 E. (1) must be planted along the front, sides and rear of the Sales and Brokerage Structure, parking area and accessory structures. Buffer areas are not required to be irrigated with an underground automatic system but must be regularly irrigated to maintain the vegetation; and
 - (f) no Sales and Brokerage Structure shall be allowed on a site until

all permits as required by all Federal, State, and County agencies have been secured; and the site plan for the proposed permanent use has been approved; and a Class I Site Plan has been approved for the use of a temporary sales and brokerage structure; and

Ord. #74-91

- (g) said Sales and Brokerage Structures shall not remain on a site longer than ONE (1) year from the date a Certificate of Occupancy is issued for said sales office or until a Certificate of Occupancy is issued for the first building within the development, whichever comes first. Upon removal of the Sales and Brokerage Structure, the developer may maintain an On-Site Temporary Sales and Brokerage Office within the dwelling unit(s).

Conditional Uses

Farmers Markets, subject to the following conditions:

- (1) The Development Services Director determines that adequate parking is available.
- (2) The Farmers Market is located in the business portion of the PUD.
- (3) There is adequate space on-site to accommodate all vendors without utilizing public rights-of-way unless City Commission approval has been received to utilize the public rights-of-way.
- (4) Vendors shall not block pedestrian ways.
- (5) Products offered for sale shall be limited to the following:
 - a. Fresh fruits and vegetables.
 - b. Herbs and spices
 - c. Farmstead products including but not limited to cheese, meats, fish/seafood, poultry, eggs, baked goods, canned goods, honey, maple syrup and preserves.
 - d. Bedding plants, hanging and potted plants, and cut flowers.
 - e. Dried flowers or plants.
 - f. A maximum of 50% of the total area used for the market shall be allowed for handicrafts.
 - g. Prepared food and beverages.
 - h. Flea market and yard sale items are prohibited.
- (6) The farmers market organization must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (7) Each vendor operating within the farmers market must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (8) Informational booths for 501(c)3 non-profit organizations shall be permitted.

Approval of a conditional use:

At the time the applicant applies for a business tax receipt with the City, the applicant shall also submit a conceptual plan to the Development Services Department. The conceptual plan shall show the general location of the vendor stalls on the site. Based upon the criteria listed above, the

Development Services Director, or his/her designee, shall approve or deny the application for a conditional use.

Transfer or abandonment of a conditional use:

Conditional uses are approved for a specific location and are assigned to the property. If the location of the use is changed, new conditional use approval must be obtained.

Violation of conditional use terms or conditions:

It is a violation of this code for any person to violate or to refuse or fail to comply with any term or condition of a conditional use. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances. **Ord. #69-08**

Special Exceptions

Pain management clinics, subject to the following conditions:

- (a) Have a reception and waiting area.
- (b) Have an administrative area, including room for storage of medical records, supplies and equipment.
- (c) Have private patient examination rooms.
- (d) Have treatment rooms, if treatment is being provided to the patients.
- (e) Provide documentation that the business is registered with the Florida Department of Health or documentation that the business is exempt from registering with the Florida Department of Health.

Ord. #01-12

Dimensional Requirements

Minimum PUD Parcel Size:

Traditional City Area (excluding properties within the Corridor Overlay Zone): 0.75 acres. At the discretion of the City Commission, the size of the parcel may be reduced if the project involves work force housing or preservation of a historic building(s).

Minimum PUD Parcel Size:

All Other Areas: (including properties within the Corridor Overlay Zone):

Residential	5.0 acres
Non-Residential	2.0 acres

A PUD shall be considered residential if 50% or more of developed land or 50% or more of the proposed building square footage is designated for residential uses.

Residential uses include, but are not limited to single-family, duplex, multi-family (including townhomes, apartments, condominiums), and live-work units.

The Traditional City Area shall be as defined in Article II of this LDR.

Ord. #62-08

Minimum Lot Size

If all or a portion of the PUD is subdivided, the minimum lot size shall be described in the proposed development agreement. **[Revised 7/5/00]**

Minimum Yard Size

Minimum yard size shall be described in the proposed development agreement. In determining yard size, the City Commission shall consider whether or not the proposed PUD will have adverse effects upon adjoining properties.

Off-Street Parking and Loading Requirements

Off-street parking and loading spaces shall be required as indicated in Section 604.10 of this LDR, except that parking may be reduced by up to 25% of the minimum required parking spaces to preserve trees, to encourage uses that share parking or that are designed to encourage pedestrian activity, or in cases where the applicant provides documentation that a reduced parking ratio is appropriate. In addition, all parking shall meet the following:

Off-street parking and loading areas shall not be permitted in any required landscaped buffer area. All parking areas shall contain interior landscaping excluding any required landscaped buffer areas at a percentage of the parking area to be determined in the written development agreement.

Landscape Buffer Requirements - Traditional City Area

Requirements presented in Section 604.05 shall apply except that more stringent requirements described for landscape buffering shall supercede.

A minimum 5-foot wide landscaping buffer is required around the perimeter of all parking areas. Only driveways may be located within this buffer.

Except for access driveways, it is intended that development shall be designed to prevent

the need for fill material or such other treatment which would remove or harm existing trees within required yards or buffers.

Existing trees shall remain in low areas and may be included in stormwater retention areas because they are accustomed to an environment where their root system is periodically inundated.

Existing trees with a minimum height of 9 feet and diameter of 2 inches when measured 4 feet above ground level shall remain in landscaped buffer areas. If a tree is dead, dying, or is diseased to the extent it cannot be saved, it may be removed if any one of these conditions is verified by a horticulturist with credentials approved by the Development Services Director or his/her designee.

Required buffers that contain dense vegetation with existing trees shall be left natural and shall not be required to be irrigated if undisturbed.

Required landscape buffers shall contain the following number of plantings for every 100 linear feet of the buffer:

<u>Canopy Trees</u>	<u>Understory Trees</u>	<u>Shrubs</u>
2	2	20

When natural vegetation is disturbed, the buffer shall be irrigated as required in Section 604.5 of this LDR. **Ord. #62-08**

Transportation Impact Analysis

The contents of the Transportation Impact Analysis shall meet the requirements of [sub]section 402.02. **Ord. #21-09**

Density

The maximum residential density allowed in a PUD is 18 units per acre on the Mainland and 12 units per acre on Beachside. The maximum transient lodging density allowed is:

Hospitality future land use designation: 75 units per acre.

Activity Center future land use designation: 40 units per acre.

Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:

- (1) A minimum of 20% of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
- (2) The public use area shall comprise at least 40% of the total linear footage

of shoreline available to the property.

All other future land use designations permitting transient lodging units: Twenty-four (24) units per acre. **Ord. #10-11**

Landscape Buffer Requirements – All Other Areas

Requirements presented in section 604.05 shall apply except that more stringent requirements described for landscape buffering herein shall supercede.

A minimum of 20-foot wide landscaping buffer is required around the perimeter of the project site except where a larger landscaped buffer is required within this LDR. Only driveways, sidewalks and bike paths may be located within this buffer. **Ord. #62-08**

Properties required to provide a 25-foot utility easement per Section 604.03 of this LDR shall overlap the landscape buffer with the utility easement by 10-feet, with the utility easement being adjacent to the right-of-way and the landscape buffer being interior to the utility easement. All required buffer plantings shall be placed outside the easement, with the exception that those species of trees that will not exceed 20-feet in height at maturity may be placed within the 10-foot overlap area. Permitted trees in the overlap area are listed in Section 604.04. Properties must comply with the minimum 20-foot landscape buffer requirements as provided in this paragraph, but may negotiate less of the buffer overlapping the utilities easement, thus providing a greater amount of buffer outside of the utilities easement area. **Ord. #37-08**

A minimum of 30 percent of the area of the site shall be covered by existing dense vegetation with trees or by additional shrubs and trees as referenced herein (for buffers) to create dense vegetative growth.

Except for access driveways, it is intended that development shall be designed to prevent the need for fill material or such other treatment which would remove or harm existing trees within required front and corner yards.

Existing trees shall remain in low areas and may be included in stormwater retention areas because they are accustomed to an environment where their root system is periodically inundated.

Existing trees with a minimum height of 9 feet and diameter of 2 inches when measured 4 feet above ground level, shall remain in landscaped buffer areas. If a tree is dead, dying, or is diseased to the extent it cannot be saved, it may be removed if any one of these conditions is verified by a horticulturist with credentials approved by the Development Services Director or his / her designee.

Required buffers that contain dense vegetation with existing trees shall be left natural and shall not be required to be irrigated if undisturbed.

If the buffer area has sparse vegetative growth, or is devoid of significant vegetation and trees, additional shrubs and trees shall be planted as noted thereafter.

Shrubs

Plants shall be placed no more than 3 feet apart measured from center to center and a minimum of 2 feet in height, immediately after planting.

Trees

One (1) tree shall be provided for each one hundred (100) square feet thereof. Tree species shall be a minimum of 9 feet in height and have a minimum diameter of 2 inches when measured 4 feet above ground level. Also, trees planted within 12 feet of publicly maintained streets or other improvements shall be selected from the New Smyrna Beach Tree List that can be obtained from the City Horticulturist. **Ord. #62-08**

When natural vegetation is disturbed, the buffer shall be irrigated as required in Section 604.05.

Supplementary Regulations

The following regulations apply to all PUD zoning classifications unless a specific classification is referenced:

(1) Unified Ownership

All land within the PUD shall be under the ownership of one person, either by deed, agreement for deed, or contract for purchase. PUD applicants shall present either an opinion of title by an attorney licensed in Florida, or a certification by an abstractor or a title company, authorized to do business in Florida, that, at the time of application, unified ownership of the entire area within the proposed PUD is in the applicant, or contract seller. Unified ownership shall thereafter be maintained until after the recording of the Overall Development Plan or Final Plat.

(2) Retail Uses within a PUD with more than one use

When retail uses or structures are approved as part of a PUD containing more than one type of use, the retail operation shall not begin until certificates of occupancy have been issued for all residential, industrial and / or office units in the total project, unless otherwise provided in the development agreement.

Ord. #24-00, Ord.#62-08

(3) Utility System

All utilities within a PUD shall be located underground. However, appurtenances requiring above ground installations may be exempted by a majority vote of the City Commission if the location and approximate size of the appurtenances requiring an above ground location is specified on sketch plans.

(4) Open Space Requirements

- a. Property designated on the City's comprehensive plan future land use map as Activity Center shall have a minimum open space requirement of forty percent for a residential PUD project and thirty percent for a non-residential or mixed-use PUD project;
- b. Property in the Traditional City Area (east of the Turnbull Bay/ Turnbull Creek waterway, north of State Road 44 and east of Mission Road, south of State Road 44 and excluding properties in the Corridor Overlay Zone) shall have a minimum open space requirement of thirty percent for a residential PUD project and twenty percent for a non-residential or mixed-use PUD project;
- c. Property located west of Interstate 95, within the West New Smyrna Beach Urban Overlay Zone, shall have a minimum open space requirement of fifty percent for all PUD's; and
- d. Property east of Interstate 95 and west of the Traditional City Area (east of the Turnbull Bay / Turnbull Creek waterway north of State Road 44 and east of Mission Road south of State Road 44) and within the City's Corridor Overlay Zone (COZ), but excluding property located in the Activity Center, shall have a minimum open space requirement of sixty percent for a residential PUD project and fifty percent of a non-residential or mixed-use PUD project.

Ord. #62-08

A minimum of thirty-five percent of the open space shall be designated as common open space for a residential PUD. Common open space shall meet the following standards.

Ord. #24-00

- a. it shall be accessible to and usable by all residents of the PUD;
- b. its location, shape, size, character and use shall be illustrated on the Overall Development Plan; and
- c. maintenance guarantees shall be approved by the City Commission.

Ord. #121-06

Procedure for Rezoning to PUD

- (1) Pre-Application Stage: A pre-application meeting with the Development Services Director or his/her designee is required before a PUD rezoning application can be accepted. This meeting is intended to provide an opportunity for an informational exchange between the applicant and the planning staff. During this meeting the applicant shall provide a conceptual plan indicating the layout and land uses within the proposed PUD. No fee shall be charged for this meeting.
- (2) Application Stage: The applicant may submit an application package to the Development Services Department at any time. Applications for PUD rezonings will be reviewed in the order in which received. The application package shall consist of the following items:

- a. completed application form;
- b. application administration fee as approved by the City Commission; **[Revised 7-5-00]**
- c. two copies of a plat of survey indicating property boundaries, legal description, acreage, and limits of the jurisdictional wetlands;
- d. names and addresses of property owners within 150 feet of the affected property. This distance shall be measured in an airline at the closest points between two properties;
- e. certification from landowner of record that applicant has authorization to make application for the requested zoning action;
- f. two copies of the traffic impact analysis;
- g. boundary survey and legal description;
- h. opinion of title;
- i. eleven (11) paper copies and one (1) electronic version of the written development agreement; and
- j. eleven (11) paper sets and one (1) electronic version of the Conceptual Development Plans of the area to be rezoned at a scale no smaller than 1" = 200' indicating the following:
 - 1. adjoining land uses and zoning classifications;
 - 2. locations and dimensions of proposed land uses;
 - 3. location of proposed buildings and off-street parking lots;
 - 4. density of residential dwellings;
 - 5. total acreage and location of open space by type;
 - 6. total acreage and location of common open space by type;
 - 7. proposed right-of-way width and layout;
 - 8. proposed front, side, and rear setbacks;
 - 9. locations, dimensions, and contents of buffer areas;
 - 10. locations, dimensions, and types of existing easements;
 - 11. proposed phasing of the development;
 - 12. location of surrounding streets, driveway, rights-of-ways, walkways, water courses, and buildings on adjacent property within 75 feet perpendicular to subject property lines;
 - 13. proposed lot sizes and arrangement;

14. sites for schools;
 - 15.
 16. location, width, and approximate depth of waterways within the project site;
 17. proposed number of lots by size;
 18. existing character of the land (eg. wooded, marsh);
 19. title, date, north arrow, scale and legend;
 20. any other additional information requested by Development Services Department or other reviewing agencies deemed necessary to adequately review the proposal;
 21. general feasibility plans for potable water, sewage disposal, stormwater drainage, and solid waste management;
 22. general plans for stormwater drainage and solid waste management;
 23. general topography at two foot contours;
 24. general soil and vegetation types;
 25. natural drainage patterns; and
 26. list of threatened or endangered species.
- k. Such additional materials, maps, studies, or reports subsequently deemed necessary by any reviewing department or agency. **Ord. #62-08**

(3) Written Development Agreement :

A written development agreement shall be prepared by the developer or his / her authorized representative. The contents of the development agreement shall conform to the conditions of approval of the City Commission. The development agreement, along with the Conceptual Development Plan, shall govern the development of the PUD and shall regulate the future use of the land. However, site plan and / or platting of subdivided land shall also be required prior to developing any land. The development agreement shall include the following:

- a. evidence of unified ownership and control;
- b. statement agreeing to:
 1. proceed with the proposed development according to all regulations;

2. provide appropriate performance and maintenance guarantees; and
 3. follow all other provisions of this ordinance to the extent not expressly inconsistent with the written development agreement, and bind the applicant's successors in title to his commitments.
- c. the acreage and percentage of total land area devoted to each of the proposed land uses;
 - d. maximum density for each type of dwelling;
 - e. maximum building heights;
 - f. minimum building spacing and floor areas;
 - g. lot sizes, yard areas, percentage of interior landscaping in the parking lot and buffer areas, including perimeter buffers;
 - h. statement regarding the disposition of sewage and stormwater, and arrangements for potable water;
 - i. when the PUD is planned for phase development, a schedule of the phases;
 - j. the proposed language of any covenants, easements, or other restrictions;
 - k. any additional information or statements subsequently deemed necessary by any reviewing department or agency;
 - l. a copy of the
Ord. #62-08
Conceptual Development Plan as an appendix.

(4) Review Procedure

- a. Staff Review: The Plan Review Committee (PRC) members shall review the proposed rezoning to PUD upon receipt of a completed application package. The PRC members shall review the application at a regularly scheduled meeting. At the PRC meeting, the PRC members shall provide the applicant with written and verbal comments about the written development agreement and conceptual development plan, including any actions required to conform the plan to City code and any actions that might be taken to improve the quality of the proposed development.
- b. After receiving comments from the Plan Review Committee, the applicant shall then revise the proposed agreement and support documents and submit revised documents to the Development Services Department. The PRC members shall review the revised documents to ensure that all comments have been addressed. If all of the comments have not been addressed, staff shall submit a list of

remaining outstanding comments to the applicant. The applicant shall then revise agreement to address all staff comments.

If all comments have been addressed, the item shall be scheduled for the next available Planning and Zoning Board meeting. Development Services staff shall then prepare a written report and recommendation to the Planning and Zoning Board. Said recommendation shall be either denial, approval, or approval with conditions.

- c. Planning and Zoning Board Review: Upon receipt of the Development Services Department staff recommendation, the Planning and Zoning Board, at a regularly scheduled meeting, shall review and make a recommendation to the City Commission pertaining to the proposed zone change. Said recommendation shall be either denial, approval, or approval with conditions.
- d. City Commission Review: Upon receipt of the Planning and Zoning Board recommendation, the City Commission, at a regularly scheduled meeting, shall review and either deny, approve, or approve with conditions, the proposed zone change.

Should the City Commission deny the request, the developer shall not pursue developing the subject property in the proposed manner for a minimum of one calendar year. Should the City Commission approve the zone change, the official zoning map shall be changed to reflect the rezoning and the developer may proceed with subdivision or site plan review. Should the City Commission approve the zone change with conditions, the official zoning map change and subdivision or site plan review can commence once the conditions have been met.

All Planned Unit Developments shall be approved by the City Commission by Ordinance approving the PUD in the same manner as required for a rezoning and in accordance with the procedures set forth in this Section.

- e. Subdivision and/or Site Plan Review: No property zoned PUD shall be developed without site plan and/or subdivision review and approval with the exception of developing single family and two family dwellings on individual lots previously and properly subdivided. An applicant may request a PUD rezoning concurrently with subdivision and/or site plan review and approval. Should an applicant request concurrent PUD rezoning and subdivision and/or site plan review and approval, the site plan and/or subdivision, which obtains final approval by the Planning and Zoning Board, is automatically made contingent upon any conditions the City Commission makes. The applicant hereby assumes the risk of receiving concurrent PUD rezoning approval and subdivision and/or site plan approval. All site plans and subdivisions must be consistent with the approved PUD rezonings.
- f. Amendments to PUD Site Plans and Subdivision Proposals After PUD Rezoning Approval: No site plan or subdivision may deviate from the approved

PUD rezoning without another Development Services Department staff and Planning and Zoning Board review and recommendation and City Commission review and approval. An exception to the above is minor changes such as the location of buildings, drainage systems, and parking lots, and the lowering of densities, intensities and impacts of the development may be approved by the Planning and Zoning Board during subdivision or site plan review and approval.

Ord. #62-08

- g. Issuing Building Permits: Building permits shall be issued on any PUD zoned land with an approved site plan or subdivision and a certificate of zoning prior to the beginning of construction.

- COZ, CORRIDOR OVERLAY ZONE

Purpose and intent. The purpose of this section is to provide regulations to ensure safe ingress to and egress from proposed development along arterial transportation corridors by reducing the number of indiscriminate driveways, maintaining the integrity of the corridor by assuring that traffic generation is consistent with the corridor's designed capacity; lessening the possibility of hazardous traffic conditions and traffic congestion; establishing development requirements, including additional sign regulations that will create an attractive corridor entrance into the city. Commercial development typically expands along arterial transportation corridors as population and traffic volumes increase in the vicinity of and along the corridor. Eventually, conflicts result between the corridor's function and its ability to move high volumes of traffic through an area. This congestion is intensified where commercial growth is permitted to increase adjacent to the corridor disproportionate to the corridor's designed limitations. The increased commercial growth also changes the public's image of the transportation corridor. What was once considered an attractive tree-lined corridor gradually and often rapidly begins to exhibit characteristics of uncontrolled strip commercial development. Once this pattern has been established, it is difficult to establish alternative types of development (e.g. residential) along these corridors. Therefore, these regulations apply to arterial corridors which (1) move large volumes of through traffic in addition to significant volumes of everyday local traffic, and (2) do not contain significant amounts of strip commercial development. These arterial corridor regulations are intended to supplement all of the zoning classifications located within the arterial corridor overlay zone. The type of permitted uses or special exceptions allowed would be determined according to the existing zoning classification and the site design, signage, building location, and the dimensional requirements would be regulated by these arterial corridor regulations. Landscaping shall be evenly spaced in the area between the building and State Road 44.

Dimensional requirements.

Minimum lot width. No premise shall be divided for the purposes of development or sale such that the width of each, or any premise, is less than 300 feet measured along the right-of-way line, except as follows: If vehicle access to any premise is provided by means other than directly onto an arterial, then the minimum lot width requirement may be reduced to 150 feet, and direct vehicle access to a major arterial shall be prohibited.

Minimum yard size.

Front yard: Build-to-line of 45—65 feet (along U.S.1) and 45-150 feet (along SR 44)

(All sites with building setbacks greater than 65 feet which contain vehicle access and parking areas between the building and SR 44 shall provide 30% of interior landscaping within those same paved vehicle areas, with the overall site interior landscaping total percentage to be 20%)

Rear yard: 25 feet

Side yard: 25 feet

Corner lots:

1) Parcels which front on two streets shall provide a ~~65-foot~~ the above Build-to line for the front yard on corridor frontage and a 25-foot front yard on the other street or as required per [sub]section 504.01M. of this LDR.

2) Parcels fronting on three streets shall provide a ~~65-~~ the above Build-to line for the front yard on corridor frontage and a 25-foot front yard on the remaining streets or as required per [sub]section 504.01M. of this LDR.

Maximum principal building height. Three stories, not to exceed 35 feet.

Maximum lot coverage. The total area covered with buildings on any lot shall not exceed 35 percent of the total lot area.

Arterial corridor depth. The arterial corridor requirements shall be applied to all premises that front onto or have access to the arterial road to a distance equal to the depth of the rear property line but not to exceed a depth of 660 feet as measured perpendicular from the centerline of the arterial road right-of-way.

Off-street parking and loading requirements. Off-street parking and loading space shall meet the requirements of this LDR and in addition, shall meet the following:

Off-street parking and loading areas shall not be permitted in any required landscaped buffer area. Buffer areas shall be landscaped in front and corner yards that are adjacent to the arterial. Dense vegetation with existing trees is preferred to be retained as a natural landscaped buffer. Other acceptable forms of landscaping are fences or walls as required in this LDR or earthen berms when landscaped as required herein for sparse vegetative growth in buffer areas.

Landscaping must be of sufficient height and opacity to generally obscure parked vehicles from view of the travelling public. Fences, walls, or certain berms (minimum top width for four feet, maximum slope 2:1), shall not exceed six feet in height above finished grade. All parking areas shall contain a minimum of 20 percent interior landscaping excluding any required landscaped buffer areas.

Landscaped buffer requirements.

Requirements presented in [sub]section 604.05 shall apply except that more stringent requirements described for landscape buffering herein shall supersede.

A minimum of 30 percent of the area of the site shall be covered by existing dense vegetation with trees, or by additional shrubs and trees, as referenced herein (for buffers) to create dense vegetative growth.

Except for access driveways, it is intended that development along the arterial corridor shall be designed to prevent the need for fill material or such other treatment which would remove or harm existing trees within required front and corner yards.

Existing trees shall remain in low areas and may be included in stormwater retention areas because they are accustomed to an environment where their root system is periodically inundated.

Existing trees with a minimum height of nine feet and diameter of two inches, when measured four feet above ground level, shall remain in landscaped buffer area. If a tree is dead, dying, or is diseased to the

extent it cannot be saved, it may be removed if any one of these conditions is verified by a horticulturist with credentials approved by the city manager.

A landscaped buffer shall be provided in all yards at the perimeter of any premise except that no buffer is required where contiguous side yards abut one another on commercially zoned premises. The minimum widths of required buffers are as follows: on the south side of State Road 44 west of Berma Road, and the north side of State Road 44 west of Eddie Road, the front buffer shall be 35 feet, measured from the arterial corridor right-of-way line. If the arterial right-of-way is less than 140 feet, then the buffer will start at a point 70 feet from the centerline of the arterial road. Rear, interior side, and corner buffers: 25 feet.

Properties required to provide a 25-foot utility easement, per [sub]section 604.03 of this LDR, shall have the following landscape buffer requirements:

a. Properties requiring 35-foot landscape buffers shall overlap the landscape buffer with the utility easement by 15 feet, with the utility easement being adjacent to the right-of-way and the landscape buffer being interior to the utility easement. All required buffer plantings shall be placed outside the easement, with the exception that shrubs and those species of trees that will not exceed 20 feet in height at maturity may be placed within the 15-foot overlap area. Permitted trees in the overlap area are listed in [sub]section 604.04.

b. Properties requiring 25-foot landscape buffers shall overlap the landscape buffer with the utility easement by ten feet, with the utility easement being adjacent to the right-of-way and the landscape buffer being interior to the utility easement. All required buffer plantings shall be placed outside the easement, with the exception that shrubs and those species of trees that will not exceed 20 feet in height at maturity may be placed within the ten-foot overlap area. Permitted trees in the overlap area are listed in [sub]section 604.04.

c. Properties requiring 20-foot landscape buffers shall overlap the landscape buffer with the utility easement by five feet, with the utility easement being adjacent to the right-of-way and the landscape buffer being interior to the utility easement. All required buffer plantings shall be placed outside the easement, with the exception that shrubs and those species of trees that will not exceed 20 feet in height at maturity may be placed within the five-foot overlap area. Permitted trees in the overlap area are listed in [sub]section 604.04.

d. Properties zoned PUD (Planned Unit Development) must comply with the minimum 20-foot landscape buffer requirements provided in item c. above, but may negotiate less of the buffer overlapping, providing a greater amount of buffer outside of the utility easement area.

Required buffers that contain dense vegetation with existing trees shall be left natural and shall not be required to be irrigated if undisturbed.

If the buffer area has sparse vegetative growth, or is devoid of significant vegetation and trees, additional shrubs and trees shall be planted as noted hereafter.

Shrubs. Plants shall be placed no more than three feet apart, measured from center to center, and a minimum of two feet in height, immediately after planting.

Trees. One tree shall be provided for each 100 square feet thereof. Tree species shall be a minimum of nine feet height and have a minimum diameter of two inches when measured four feet above ground level. Also, trees planted within 12 feet of publicly maintained streets or other improvements shall be selected from a "List of Trees" that can be obtained from the city horticulturist.

When natural vegetation is disturbed, the buffer shall be irrigated as required in section 718.00. The landscape buffer area shall not be disturbed for the purposes of using the area for stormwater management.

Site development plan requirements. In addition to meeting the site plan requirements in this LDR the following requirements shall be met: All site plans, reports, and general information, shall be submitted to the plan review committee to assure compliance and consistency for all development along the corridor.

Transportation impact analysis. The contents of the Transportation Impact Analysis shall meet the requirements of [sub]section 402.02.

Temporary access. No developer shall be denied a rezoning or building permit for the sole reason that the parcel for which it is sought cannot physically accommodate the requirements of this LDR because adjoining segments of public roadways are not yet constructed. In such an event, a temporary access permit will be issued which shall expire when the proposed access becomes available to the premises.

Arterial corridor overlay zone. An arterial corridor overlay zone is hereby established, and the regulations of the section, et seq., shall apply in said zone. Said zone shall apply to all zoning classifications established in article VI of this LDR and the official zoning map shall identify said overlay zone by adding the letter "C" as a suffix to the existing zoning classification that currently exists on said map. The arterial corridor regulations apply to the following: State Road 44 from Myrtle Avenue west to the New Smyrna Beach corporate boundary, excluding properties in the activity center, as shown on the city's comprehensive plan future land use map, and on U.S. #1 from Art Center Avenue to the northern city boundary line.

Visibility at intersections. Visibility at intersections shall be provided as required in [sub]section 804.01.

CITY OF NEW SMYRNA BEACH
OFFICE OF THE CITY ATTORNEY

MEMORANDUM

January 14, 2016

TO: Planning and Zoning Board Members
FROM: Greg McDole, Assistant City Attorney
RE: Variances

At the January 4, 2016 meeting you asked that I give some guidance on the law relating to variances.

Section 305.05 of the LDR contains City requirements and standards for variance applications and approvals. The criteria for granting a variance are found in s. 305.05(C)(1)a-e. Those criteria have been derived from case law in Florida and other states. A discussion of Florida case law follows, using cases most on point.

Maturo v. City of Coral Gables (3rd District Court of Appeal 1993).

Developer owned 7 lots, 5 in Coral Gables and 2 adjoining lots in Dade County. City granted him a variance for an 8-story building in Coral Gables when he promised that the 2 Dade County lots would remain undeveloped.

Developer's claimed hardship was being unable to use the two lots. Neighbors appealed. Court found there was no justification for the variance. All 7 lots were regularly shaped, ordinary lots, and not rendered unusable by the city land use regulations. They could be developed under existing regulations. Further, the agreement not to develop adjoining lots was self-imposed.

Fine v. Coral Gables (3rd District Court of Appeal 2007).

The Fines applied for a variance to put a metal roof on their single-family home. Variance was denied. On appeal, the court agreed, stating the Fines did not establish an "unnecessary hardship" which is an essential element when seeking a variance. It defined unnecessary hardship as:

"...a non-self-created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned."

"...a variance may be issued only when no reasonable use can be made of the property without the variance..."

Auerbach v. City of Miami (3rd District Court of Appeal 2006).

Developer applied for a setback variance for construction of a residential project. Developer admitted the project could go forward without the variance, but variance was granted. Neighbor appealed. Court found variance should not have been granted, stating:

Florida courts have held that a legal hardship will be found to exist only in those cases where the property is virtually unusable or incapable of yielding a reasonable return when used pursuant to applicable zoning regulations.

Section 305.05(D) further provides that financial disadvantages to the property owner shall not constitute conclusive proof of unnecessary hardship within the purpose of zoning. Thus, a variance should not be granted solely to maximize profits of a developer.

To summarize general law:

- 1) Special circumstances must exist which are unique to the applicant's land, structure or building. Example: odd-shaped lot. Personal hardships such as health, a large vehicle, or improving a view are not legal grounds for a variance;
- 2) Regulations as they currently exist must deprive the owner of reasonable rights commonly applicable to other properties in the same zoning district. In other words, nearby property owners with same zoning are already legally doing or are able to do what applicant is requesting; and

3) Special circumstances do not result from voluntary actions of current or former owners. In other words, an applicant cannot buy a property knowing its limitations and seek a variance, unless no reasonable use of the land can be made without the variance. This is especially true if the land is vacant and a smaller project can be built without a variance;

4) The regulations from which the applicant is seeking a variance are "unnecessary" as applied to the particular property, that is, granting of the variance will not cause substantial detriment to the public or impair the purposes and intent of the LDR.

In a nutshell, an applicant must show that his/her property is unique; that a variance is "necessary" for reasonable use of the land and not merely convenient for financial or personal reasons; and that the hardship is not self-imposed.

If you have any questions, please call me at extension 2289 or email me at gmcdole@cityofnsb.com.

GREG MCDOLE
Assistant City Attorney

GM:vmm