

LPA / PLANNING AND ZONING BOARD  
MINUTES  
FEBRUARY 25, 2016

The Local Planning Agency / Planning and Zoning Board held a regular meeting on Thursday, February 25, 2016 in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida. Chairperson Steven Casserly called the meeting to order at 6:30p.m.

ROLL CALL

The following members were present:

Steven Casserly  
Ian Ratliff  
Travous Dever  
Kelly Azzinaro  
Jamie Calkins  
Pat Arvidson

Stephen Sather was absent. Also present were Planning and Zoning Manager Amye King; Chief Planner Jeff Gove; Planner Robert Mathen; Planner Steve Bapp; Assistant City Attorney Greg McDole; Board Secretary Tammy Dickerson and members of the public.

**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 South 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).

Mr. Gove reviewed staffs' findings and stated that staff recommends the Board recommend to the City Commission to approve the PUD 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.

Joey Posey, 420 South Nova Road, of Storch and Associates, stated his name then addressed the Board. He handed to the Board conditions that the applicant was willing to do to in order to work with the residents request in the neighborhood. The applicant is willing to add the following conditions to the approval:

1. The applicant will construct a buffer and fence along the south property line in the manner shown on the attached revised plan, including all plant materials;
2. Site access onto Walker Drive shall be restricted to left turn only out of the project. Right turns will not be permitted;
3. Applicant will request the County to allow the placement of a traffic calming raised area (i.e. speed bump) for Walker Drive a location to be selected by the neighborhood. The applicant agrees to pay for the construction of said traffic calming raised area; and
4. The septic tank and drain field shall be constructed pursuant to 2016 State of Florida Department of Health Standards.

Jary Hustead, 166 South Walker Street, stated his name then addressed the Board. He stated that this property is adjacent to his back yard and he is concerned about the runoff water on this property coming on to his property. He stated that he is on a septic tank and we already have problems with stormwater now.

Shaun Swivel, 336 South Walker Drive, stated his name then addressed the Board. He stated that he was concerned about the traffic and not being able to get on to SR44 from Walker Street. He stated that there are a lot other places this development could go on SR44.

Robbie Hollister, 244 South Walker Drive, stated his name then addressed the Board. He stated that he was concerned about this development bringing down the property values in the neighborhood. He is concerned about the stormwater drainage in the area. He stated that there are plenty of areas where this can be developed.

Randy Herman, 108 Esther Street, was sworn in to testify then addressed the Board. He asked why there was a special meeting for this case.

Mr. Gove stated that due to errors in the calendar for submittal dates there wasn't enough time to send out public notices so therefore staff decided to include this case with the special meeting already scheduled due to the city's error on the calendar.

Nancy Hout, 265 South Walker Drive, stated her name then addressed the Board. She stated that she is concerned about how this area will look after Auto Zone comes in and also concerned that this area will start looking like US1 with businesses closing up. She wanted to know if she will be able to still go east and west on SR44 from Walker Drive.

Linda Stagman, 2126 SR44, stated her name then addressed the Board. She stated that her son owned the property at this address. She stated that she was concerned about how the delivery trucks will be accessing the property.

David Hout, 265 South Walker Drive, stated his name then addressed the Board. He stated that the more dirt that is piled in the worse the flooding will get this is the wrong place for this development.

Dennis Muller, 244 South Walker Drive, stated his name then addressed the Board. He stated that there is a creek across the street from this development and with the tides

the water table goes up and down. He asked if anyone had done any studies on the movement of the water during the tide changes. He stated that with them being on a septic tank that will affect the neighbors in the area. He asked what's going to happen if Auto Zone floods out the neighbors. He asked if the lighting will be buffered from the neighbors and what hours will they be operating.

Mr. Husted stated that water is an issue and if we didn't tell you this you wouldn't know about it.

Heather Smith-Knuth, 235 South Walker Drive, stated her name then addressed the Board. She stated that she had to replace her septic drain field a few years ago and to bring it up to code the drain field had to be elevated but it created issues for the neighbors across the street because she is higher now than her neighbors. She stated that the same thing will happen with this project when this is built up higher than the residents in the neighborhood.

Joe Teehan, 2072 Burma Road, stated his name then addressed the Board. He stated that after it rains he has standing water for 2-3 days on his property.

Glenda Snell, 2025 Burma Road, stated her name then addressed the Board. She stated that she has problems with flooding, the traffic issues coming out of Walker Drive on to SR44 already and we all have the same problems in this area.

Steve and Wendy Payne, 144 South Walker, stated her name then addressed the Board. Mr. Payne stated that they are adjacent to this project and they are worried about water coming off the property on to their property. He stated that the attorney for the project told them they were going to build a swale but he didn't know if that would be enough to keep the water off their property. Ms. Payne asked if the property had to sit vacant for a while before it turns commercial that the house has been occupied for a while now and still is occupied.

Mr. Dever stated that if it is zoned commercial it can be changed at any time.

Mr. Hollister stated that zoning is supposed to protect you how many auto part stores do you need in an area.

Chairman Casserly stated that this isn't a zoning case the commercial zoning is already in place on this property. He stated that the resident's issues can be worked out before the project is built.

Mr. Dever stated that this is a highway zoned commercial property and this is inevitable but the Board has to do the best they can do with the proposal that has been brought before them. He stated that the project has to be built at this level it's not a requirement of Auto Zone it's the requirements of other agencies. He stated that he has to trust that St Johns Water Management District (SJWMD) and the city engineer will make sure the water is contained on this property.

Mr. Hout stated that they have to contain their water runoff but they aren't containing the creek water. He asked if they had to put up a retaining wall on the property.

Kyle Ratchford, 2000 Burma Road, stated his name then addressed the Board. He stated that he deals with SJWMD all the time with his job and they don't always get it right. He stated that he is concerned about the property being raised and his property being flooded.

Mr. Posey stated that they are trying to work out any issues with the neighbors that they can. He stated that Mr. Storch has met with several of the neighbors to address their issues. He stated that this is a PUD zoned property and there will be a commercial property there and we are trying to put the best commercial use on the property that can be there. He stated that some of the other issues will need to be addressed by the project engineer. He stated that he will be here after the meeting for any concerns the residents have and want to ask him.

John Nevin, 1916 Crossing Court St Augustine, stated his name then addressed the Board. He stated that we did meet with the public and then modified the plan to include a nice 8-foot tall vinyl fence with lattice on top where we would grow jasmine and bamboo on the one side for the adjacent owner and on the other side would be the required landscaping. He stated that there will be two stormwater systems on the property. He stated that one will be contain the properties run off in the front of the property and the other in the rear of the property which will be for anything we fill on the site and will be dredged to the rear of the property so there won't be a net loss of the flood plain and that is a state law. He stated that we can't fill to the 100 flood plain without compensating on the property it can't flood any worse than it already did but we are not going to fix the flooding issues in the area.

Mr. Ratliff asked at what elevation is the compensating storage on the back of the property now.

Mr. Nevin stated that it is well above the flood plain.

Mr. Ratliff asked if the actual site of the storage is below the flood plain.

Mr. Nevin stated that some of it is above flood plain and some of it is above ground water. He stated that it is going to drain down the swale and in to a bulk head and we are going to create a more defined bulk head so it doesn't drain on to the adjacent property and that is going to connect to our flood plain compensation area so when the creek rises it will collect there.

Mr. Ratliff asked where the swale goes to.

Mr. Nevin stated that it goes to the creek across the street. He stated that Mr. Storch agreed to look in to getting the creek cleaned out due to the garbage and trees that are in it.

Mr. Posey stated that Mr. Storch is going to look in that situation. He stated that we are going to continue to take input and improve the project during the process of site plan approval also.

Mr. Ratliff asked if the land development regulations (LDR) allows an 8 foot fence.

Mr. Gove stated that it does not 6 foot is maximum.

Mr. Posey stated that we will do what the LDR requires.

Mr. Ratliff asked what the status was on the traffic study.

Mr. Gove stated that he thought it was completed, but would need to check on that.

Mr. Ratliff asked if it met all the requirements.

Mr. Gove stated that as far as he knew, it did, but again would need to check with the City's consultant on that.

Ms. Arvidson stated that they said the semi-trucks would be accessing the property from SR44 and then exiting on South Walker and wanted to know if the road was wide enough on South Walker Drive to handle that.

Mr. Gove stated that they have showed by auto turn that it can accommodate a semi-truck leaving the property.

Mr. Nevin stated that we are widening the area up to 24 foot so there will be room for a semi-truck to exit the property.

Ms. Arvidson stated that she had a problem with semi-trucks exiting on a residential road.

**Motion by Mr. Dever, seconded by Ms. Azzinaro, to recommend the City Commission approve the requested Planned Unit Development 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 and the following conditions recommended by the applicant as long as they are able to receive approval from Volusia County and the City of New Smyrna Beach:**

- 1. The applicant will construct a buffer and fence along the south property line in the manner shown on the attached revised plan, including all plant materials;**
- 2. Site access onto Walker Drive shall be restricted to left turn only out of the project. Right turns will not be permitted;**
- 3. Applicant will request the County to allow the placement of a traffic calming raised area (i.e. speed bump) for Walker Drive a location to be**

- selected by the neighborhood. The applicant agrees to pay for the construction of said traffic calming raised area; and
4. The septic tank and drain field shall be constructed pursuant to 2016 State of Florida Department of Health Standards.

Motion passed unanimously on a roll call vote, 6-0.

**WORKSHOP SESSION IMMEDIATELY FOLLOWING SPECIAL MEETING ITEM ABOVE**

DISCUSSION AS REQUESTED BY BOARD MEMBERS, concerning:

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

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

Ms. King stated that staff had some background material for the Board but didn't have plans to do a full presentation because the City Commission would like to have a joint meeting with the Board on these topics.

The Board agreed they would come up with their recommendation and then share it at the joint meeting with the City Commission.

Mr. Bapp discussed background information on the topics.

Ms. King stated that staff prepared 10 years of requested variances for the Board to view the previous requests that were submitted for approval. She then discussed the workshop that the Board had in 2012 that staff had requested changes at that time where no changes were done after the workshop.

Mr. Bapp stated that we did change the build to line after that workshop. He stated that we need to continue with the landscaping buffer, limit the cuts on to SR44 and lot sizes are always a concern also.

Mr. Dever stated that what concerns him is the lack of the ability for the city to work with the developer. He stated that this is what creates the variance requests. He asked how do we create some flexibility for staff and the City Commission to work with a developer so we aren't seeing endless variances up and down SR44. He stated that he thinks that SR44 is over regulated just like it is on US1 and we will continue to have dilapidated buildings just like on US1. He stated that 3<sup>rd</sup> Avenue is over regulated also.

Mr. Ratliff stated that the Board has only had 9-10 variances over the last 10 years.

Mr. Dever stated that SR44 is just now starting to be developed.

Mr. Calkins asked why can't we rely on staff to make these decisions instead of having the variance requests come before the Board.

Mr. Ratliff asked if it was the same problem every time or are they all different.

Ms. Arvidson stated that her problem is that these developers want to build what they want to build not what the land allows. She stated that she doesn't think that the city is over regulated she thinks that the developer has in their minds they want to build what they want to build and then apply for variances to get it.

Mr. Calkins stated that he isn't saying there shouldn't be any regulations he is saying there should be ranges on the regulations because sometimes it makes sense to deviate from what is required. He stated that each development is unique in its own way. He stated that the Board is more lenient with the criteria than they should be sometimes. He stated that maybe the PUD should be a little bit more lax than it should be rather than go through a variance process every time. He stated that he would like to see less variances request especially the ones that make sense.

Chairman Casserly stated that the COZ was placed in there to have bigger developments on SR44 and there are going to have to be variances for those properties being joined together.

Mr. Dever stated that there have only been a handful of developments on SR44 and they have all needed a variance and there will be more. He stated that we need to look at this so the requests aren't needed every time.

Mr. Calkins stated that the area is changing and when it does regulations need to change.

Chairman Casserly asked what kind of change Mr. Calkins is suggesting.

Mr. Calkins stated that he thought setbacks and more landscaping requirements.

Mr. Ratliff stated that the intent of the COZ is traffic management and to create an attractive entrance in to the city and if those are the goals it has been a miserable failure.

Mr. Dever asked where the failure was at.

Mr. Ratliff stated that we do have a traffic problem on SR44.

Mr. Calkins stated that the traffic problem is created by the people coming from out of town to visit the beach.

Mr. Dever stated that the developments aren't causing the traffic problems.

Mr. Ratliff stated that if something is built it will create more traffic on the road and loosening the regulations isn't going to make it better.

Mr. Dever stated that the only things that looks good on SR44 are these new developments.

Mr. Calkins stated that we have these abandoned buildings on SR44 with no landscaping compared to new developments with landscaping that look good.

Mr. Ratliff stated that some people don't see buildings instead of trees looking better.

Mr. Calkins stated that these people have property rights and it isn't just going to stay green out there.

Mr. Ratliff stated that he agrees with that but we need to be smart about the development that is going there when loosening up the regulations.

Mr. Calkins stated that he didn't believe it should be loosened up just that staff could negotiate some things without a need for a variance.

Ms. Arvidson stated that she was in Port Orange with the landscaping in front of the developments and we have failed miserably with these developments.

Mr. Ratliff stated that our corridor doesn't look good it looks like all the rest of them if we are going to make changes we need to do it intelligently. He stated that we have all these small parcels left and what do you do with those sites.

Mr. Dever stated that we need to give staff the ability to make intelligent decisions instead of the variances requests that are coming before this Board.

Mr. Ratliff stated that we would need to look at it parcel by parcel to see what has the FLU category on it.

Mr. Dever stated that we can't go parcel by parcel there needs to be a PUD which gives staff and the City Commission the flexibility they need to make those decisions.

Mr. Ratliff stated that it needs to be for the smaller parcels that the city is willing to give on this if we can get a real nice landscaping buffer in the COZ and it could be different for the larger parcels.

Ms. King stated that when it comes to non-safety issues there is a small administrative variance that could be written in to the LDR that allows the Planning Manager or City Manager to make the change. She stated that landscaping could be adjusted by 15% and other less significant variances could come through staff for approval. She stated that they would still come before the Planning and Zoning Board but that would get staff a point of negotiation on some issues. She stated that would give the Board more time to deal with the bigger issues. She stated that if the Board agrees staff could look at this and give the Board the percentages that they would recommend.

Chairman Casserly asked if she meant to re-write the LDR.

Ms. King stated that it would reduce the number of variances. She stated that maybe reduce the lot minimum from 2 acres also.

Jack Holcomb, US1, stated his name then addressed the Board. He stated that with the regulations on US1 we couldn't build there so now we migrated to SR44 and his Chevy business has increased by 30%. He stated that there were people wanting to build on US1 but the city was too strict for someone to build there. He stated that he is now moving his Chrysler dealership to SR44 and he will lose 25% on the property due to the restrictions on US1. He stated that the problem is that the city was unwilling to work with developers. He stated that we have an imbalance tax base of what we have with residential and commercial. He stated that it needs to be flexible and we need to hire good people to make it flexible.

Glenn Storch, 420 South Nova Road, stated his name then addressed the Board. He stated that the decision needs to be made on what the city is trying to accomplish and then back away from all the additional things that create an impossibility to get a reasonable use from a property. He stated that we need to look at what the landscaping looks like on SR44 and no one sees the landscaping on the back of the property so it doesn't matter. He stated that we need look at how to create the boulevard for SR44. He stated that is what we should be concentrating on the gateway to our city. He stated that we should be working on creating a landscaping buffer on SR44. He stated that Utilities Commission has created this problem not the developers by making developers take all the landscaping out and then they won't let them replant in those areas on SR44. He stated that we need to look at what accomplishes our goal of the gateway to the City of New Smyrna Beach. He stated that every project on SR44 has needed variances and it doesn't make sense.

James Stowers, Geosam Capital, stated his name then addressed the Board. He stated that the commitment to start these projects financially on top of owner's restrictions it's a challenge. He stated that there are things that occur where you need the flexibility on a piece of property. He stated that you either meet the PUD requirements or you apply for a variance. He stated that there needs to be more flexibility with landscaping and open space because you can't predict what the needs will be for each development. He stated that there definitely is a need with flexibility with the PUD process.

Mr. Herman stated that he agrees that Mr. Holcomb has a commitment to the community but he doesn't have that same faith in all developers and it worries him when the Board talks about loosening up the PUD regulations. He stated that not all the developers coming in to the city are going to have the same commitment to a beautiful SR44. He stated that these developers coming from out of state won't have that commitment. He asked who makes sure the PUD's stick to the commitments they have agreed to. He asked if we are prepared to loosen up the PUD regulations and not have the management to manage that.

Mr. Dever stated that we have really good people on how to control what is being built. He stated that we can give the staff and the City Commission the flexibility to be able to make some changes to see what they want to see on SR44. He stated that he believes the items that are put in to the PUD agreement are enforceable.

Ms. King stated that they are enforceable by the Code Enforcement Department.

Mr. Calkins stated that maybe we should look at being flexible with the build to lines and the landscaping buffers for corridor and transitional zonings and stricter for the zonings that abut different zonings.

Mr. Dever stated that staff needs to be able to have flexibility with the variance request and create percentages for the different zonings and also the non-safety issues.

Mr. Ratliff stated that we need a clear picture of what SR44 needs to look like.

Mr. Mathen stated that the build to line has already changed are we looking for more flexibility there.

Mr. Calkins stated that he forgot that had already been changed.

Mr. Dever stated that all these small parcels don't need to be pushed up on to residential it doesn't have to flow up and down the street.

Mr. Mathen asked if the Board is wanting to reduce the build to line on SR44.

Mr. Dever stated that on some parcels staff needs that flexibility.

Mr. Storch stated that the bigger picture needs to be looked at and why do you need the build to line. He stated that we can do things to encourage consistent landscaping along SR44. He stated that open space needs to be phased out and concentrate on intense landscaping.

Ms. King stated that staff is recommending that we go back to those regulations that were recommended in 2012 and take a look at administrative variances. She stated that we will then look at what is being regulated that isn't for the sake of esthetics, safety, quality of life, character or the charm of New Smyrna Beach. She stated that we can prepare an outline of these regulations and bring them back to the Board at the meeting in April before the joint City Commission and Planning and Zoning workshop in May.

The Board agreed that would work for them.

## ADJOURNMENT

With there being no further business, the meeting was adjourned at 8:46pm.