Planning & Zoning Board
Monday, July 1, 2024 at 5:30 PM

City Commission Chambers
214 Sams Avenue, New Smyrna Beach, Florida 32168

1. CALL TO ORDER

A. Roll Call

2. APPROVAL OF MINUTES

2.A Consider the Approval of the Planning and Zoning Board May 6, 2024 and June 3, 2024 Regular Meeting Minutes.

3. PUBLIC PARTICIPATION

4. OLD BUSINESS

5. NEW BUSINESS

5.A V-9-24 2545 Paige Avenue, a variance request to allow a pool deck to encroach into a wetland buffer.

5.B Z-1-24: Review a request and provide a recommendation to the City Commission, for a rezoning to B-4, Ocean Commercial on a vacant property located at the southwest corner of East 7th Avenue and South Atlantic Avenue.

5.C ZT-3-24: Request for a Land Development Regulation text amendment to

remove the homestead requirement for Wedding Venues in the A-2, Agriculture Zoning District

5.D V-4-24 518 N. Riverside Drive, a variance of 4'-6" to allow a shed to remain 6" from the rear property line.

6. COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

7. REPORTS AND COMMUNICATION BY THE STAFF

7.A July 2024 Development Activity Report

7.B Land Development Regulations Section 604.04 Landscaping Requirements amendments

8. ADJOURNMENT

Pursuant to Florida Statutes 286.0105, if an individual decides to appeal any decision made by the board, agency or commission of the City of New Smyrna Beach 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 City Clerk's office in person or by mail at 210 Sams Avenue, New Smyrna Beach, Florida 32168, (386) 410-2630, prior to the meeting.

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

CONSIDER THE APPROVAL OF THE PLANNING AND ZONING BOARD MAY 6, 2024 AND JUNE 3, 2024 REGULAR MEETING MINUTES.

July 1, 2024

Background:
Florida Statutes require that minutes be prepared and approved for all meetings of the Planning and Zoning Board.

Findings:
Staff recommends the Planning and Zoning Board approve the minutes of the regular Planning and Zoning Board meeting held on May 6, 2024 and June 3, 2024 Regular Meeting Minutes.

Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

Attachments:

May 6 2024 FULL MEETING MINUTES.pdf
June 3 2024 FULL MEETING MINUTES.pdf

Planning and Zoning Regular Meeting
Monday, May 6, 2024, at 5:30 PM
MINUTES

1. CALL TO ORDER

Having been duly advertised as required by law, the regular meeting of the Planning and Zoning Board of the City of New Smyrna Beach, Florida, was held on Monday, May 6, 2024, at the City Commission Chambers, 214 Sams Avenue, New Smyrna Beach, Florida 32168.

Larry Wheatcraft called the meeting to order at 5:30 PM.

Roll Call

Attendee Name	Title	Status	Arrived
Thomas Bien	Member	Present	5:30 PM
Jon Hall	Member	Present	5:30 PM
John Frankhouser	Member	Present	5:30 PM
Stephen Yates	Member	Absent	----------
Larry Wheatcraft	Member	Present	5:30 PM
Curtis Hodges	Member	Present	5:30 PM
Kip Hulvershorn	Member	Present	5:30 PM

Also present were Shane Corbin, Development Services Director, Stephanie Doster, Planning Manager, Robert Mathen and Jake Baker, Senior Planners, Assistant City Attorney Shey McCurdy, and Board Secretary Stephanie Ferrara.

Chair Wheatcraft asked City Staff if there were any changes to the agenda. Stephanie Doster requested to change the order of the agenda. The board had no objections.

2. APPROVAL OF MINUTES

2.A Approval of the Planning and Zoning Board December 4, 2023, March 18, 2024, and April 1, 2024, Regular Meeting Minutes.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

DRAFT

Member Bien requested a correction of December 4, 2023, regular meeting minutes agenda number 4.A vote from Unanimous to 3-4 Denied.

Motion:
Member Hulvershorn moved to approve March 18, 2024, and April 1, 2024, Regular Meeting Minutes, as submitted and correct December 4, 2023, regular meeting minutes agenda number 4.A vote from Unanimous to 3-4 Denied. Member Hodges seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Hulvershorn
SECONDER:	Hodges
AYES:	Bien, Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn

3. PUBLIC PARTICIPATION

Janet Hall, 106 Portofino Boulevard, will make comments during the Deering Park Innovation Public Participation.

4. OLD BUSINESS

4.A. None.

5. NEW BUSINESS

5.A A-6-24: 2565 Pioneer Trail

Robert Mathen, Senior Planner, outlined the Applicant's request to Voluntary annex, *Comprehensive Plan* amendment, and rezoning from, Volusia County Future Land Use (FLU) designation of Urban Low Intensity, and Volusia County zoning designation of A-3, Transitional Agriculture with an "A" attached for Airport Height Notification Zone. To City FLU designation of Low Density Residential and City zoning designation of A-3, Transitional Agriculture with an "A" attached for Airport Height Notification Zone.

Chair Wheatcraft asked if the Applicant would like to speak. The Applicant did not wish to speak.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:
Member Bien motion to recommend approval to City Commission for A-6-24: 2565 Pioneer Trail, as submitted. Member Hulvershorn seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Bien
SECONDER:	Hulvershorn
AYES:	Bien, Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn

5.B A-7-24: 644 Dolores Street

Robert Mathen, Senior Planner, outlined the Applicant's request to Voluntary annex, *Comprehensive Plan* amendment, and rezoning from, Volusia County Future Land Use (FLU) designation of Urban Medium Intensity, and Volusia County zoning designation of R-4, Urban Single Family with an "A" attached for Airport Height Notification Zone, to City FLU designation of Medium Density Residential and City zoning designation of R-2, Single Family Residential with an "A" attached for Airport Height Notification Zone.

Chair Wheatcraft asked if the Applicant would like to speak. The Applicant did not wish to speak.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:

Vice Chair Hodges motion to recommend approval to City Commission for A-7-24: 644 Dolores Street, as submitted. Member Hulvershorn seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Hodges
SECONDER:	Hulvershorn
AYES:	Bien, Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn

5.C CPA-2-24: Establish Deering Park Innovation Center by amending language in the Future Land Use Element of the Comprehensive Plan

Shane Corbin, Senior Planner, outlined the Applicant's request to Establish Deering Park Innovation Center by Amending Language in the Future Land Use Element of the Comprehensive Plan

Chair Wheatcraft asked if the Applicant would like to speak.

Glen Storch, Storch Law Firm 420 South Nova Road, representative for the Applicant, presented a Power-Point presentation regarding the Applicant's request to Establish Deering Park Innovation Center by Amending Language in the Future Land Use Element of the Comprehensive Plan

Chair Wheatcraft opened Public Participation.

Steve Gunter, 140 Temple Street, commented on the proposed development and flooding.

Janet Hall, 106 Portofino Boulevard, commented on the impact of the proposed development will have on Venetian Bay.

James Hall, 106 Portofino Boulevard, commented in opposition of the proposed development. He was concerned about flooding and traffic.

Joe Dlubak, 3587 Casalta Circle, commented that the City was not equipped to handle large-scale development.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Chair Wheatcraft requested to add the word low density residential as an allowable use. The Applicant did not have any objections to this request.

Motion:
Vice Chair Hodges motion to recommend approval to City Commission for CPA-2-24: Establish Deering Park Innovation Center by Amending Language in the Future Land Use Element of the Comprehensive Plan with the condition to add the word low density residential as an allowable use, and as submitted. Member Hall seconded the motion, and the motion passed with a 4-2 vote. Members Frankhouser and Hulvershorn voting no.

RESULT:	**PASSED [4-2 VOTE]**
MOVER:	Hodges
SECONDER:	Hall
AYES:	Bien, Hall, Wheatcraft, Hodges
NAYS:	Frankhouser and Hulvershorn

5.D CPA-1-24: Changing the Future Land Use from Agriculture, Forestry Resource and Conservation to industrial Mixed-Use for Deering Park Innovation Center

Shane Corbin, Director of Development Services, outlined the Applicant's request to Change the Future Land Use from Agriculture, Forestry Resource and Conservation to industrial Mixed-Use for Deering Park Innovation Center.

Chair Wheatcraft asked if the Applicant would like to speak.

Glen Storch, Storch Law Firm 420 South Nova Road, representative for the Applicant, presented a Power-Point presentation regarding the Applicant's request to Change the Future Land from Agriculture, Forestry Resource and Conservation to industrial Mixed-Use for Deering Park Innovation Center

Chair Wheatcraft opened Public Participation.

Steve Gunter, 140 Temple Street, commented that the City was a Costal Community not Industrial. He opposed the proposed Comprehensive Plan amendment.

Janet Hall, 106 Portofino Boulevard, commented on "Work, Play, Live", stated by the Applicant. She stated that the development will cause more traffic.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:
Member Bien motion to recommend approval to City Commission for CPA-1-24: Change the Future Land from Agriculture, Forestry Resource and Conservation to industrial Mixed-Use for Deering Park Innovation Center, as submitted. Vice-Chair Hodges seconded the motion, and the motion passed with a 4-2 vote. Members Frankhouser and Hulvershorn voting no.

RESULT:	**PASSED [4-2 VOTE]**
MOVER:	Bien
SECONDER:	Hodges
AYES:	Bien, Hall, Wheatcraft, Hodges
NAYES:	Frankhouser and Hulvershorn

5.E PUD-7-24: Deering Park Innovation Center

Shane Corbin outlined the Applicant's request to rezone to Planned Unit Development from the current classification of (A-1) Prime Agriculture, Forestry Resource (FR) and Conservation (C). The proposed PUD Master Development Agreement (MDA) will include the following uses: Mixed Use/Commercial, Innovation Park, Residential Rental Village, Residential, Regional Park/Sports Complex and Police Facilities site.

Chair Wheatcraft asked if the Applicant would like to speak.

Glen Storch, Storch Law Firm 420 South Nova Road, representative for the Applicant, presented a Power-Point presentation regarding the Applicant's request to rezone to Planned Unit Development from the current classification of (A-1) Prime Agriculture, Forestry Resource (FR) and Conservation (C). The proposed PUD Master Development Agreement (MDA) will include the following uses: Mixed Use/Commercial, Innovation Park, Residential Rental Village, Residential, Regional Park/Sports Complex and Police Facilities site.

Matthew West, LTG, Inc., outlined the traffic impact analysis that was conducted.

The Board Member voiced their concerns regarding the proposed PUD.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

The Board requested to table the item for one month to make the following amendments to the PUD document:

1. State in the document that after jurisdictional wetlands are established, the developer shall dedicate only useable land to the city for the agreed upon municipal purposes.
2. The current acreages shown in the concept areas (innovation park and residential) will remain the same and locations may shift based on jurisdictional wetlands.
3. Self-storage and boat/RV storage shall be by conditional use (confer with staff on setbacks and landscaping, etc.) with a maximum of no more than 5% of development site within the PUD.
4. Define pad ready. Per Glen, stormwater and fill material in place to encourage businesses to come.
5. Increase % of square footage of commercial build out prior to residential construction.
6. Phasing requirements modified, commercial must begin prior to residential. Establish minimum sqft of commercial prior to residential construction begins.
7. Residential restrictions in section 3.d. language change to "shall" for the types of residential proposed (townhomes, cottages, etc.)
8. Clarify stormwater and compensatory storage ratios to comply with city regulations. "No more offsite than current".

Motion:
Member Vice Chair Hodges motion to table the agenda item for one month. Member Houser seconded the motion, and the motion carried unanimously.

RESULT:	**CONTINUED**
MOVER:	Hodges
SECONDER:	Frankhouser
AYES:	Bien, Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn

5.F ZT-1-23: Floor Area Ratio Commercial Definition

Jake Baker, Senior Planner, outlined the Applicant's request to amend section 201.00 of the City's Land Development Regulation (LDR), to provide a definition of Floor Area Ratio (FAR) Commercial.

Chair Wheatcraft asked if the Applicant would like to speak.

Pete Thompson, Esq., Attorney for the Applicant, stated that the applicant agrees with Staff's recommendations for the FAR. Member Bien asked why the Applicant agrees with Staff's recommendations. Mr. Thompson stated that the proposed text amendment would fill in the gap within the code.

Chair Wheatcraft opened Public Participation.

Bob Ziegenfuss, P.E., 1201 E. Robinson Street, representative for the applicant, commented about the proposed text amendment for Floor Area Ratio (FAR) Commercial.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Member Bien commented about FAR and parking. He stated that he had a problem with the exemption part of the proposed text.

Motion:

Member Frankhouser motion to recommend approval to City Commission for ZT-2-23: Floor Area Ratio Commercial Definition, as submitted. Member Hall seconded the motion, and the motion passed with a 5-1 vote. Member Bien voted no.

RESULT:	**PASSED [5-1 VOTE]**
MOVER:	Frankhouser
SECONDER:	Hall
AYES:	Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn
NAYES:	Bien

5.G PUD-2-23: 1300 S. Atlantic Avenue Mixed-Use Building Planned Unit Development and Master Development Agreement

Jake Baker, Senior Planner, outlined the Applicant's request to rezone to Planned Unit Development (PUD) to allow a restaurant and retail establishment, with an attached parking garage.

Chair Wheatcraft asked if the Applicant would like to speak.

Pete Thompson, Esq., Attorney for the Applicant, stated that the applicant agrees with Staff's recommendations for the proposed PUD.

Bob Ziegenfuss, P.E., 1201 E. Robinson Street, representative for the applicant, outlined his request to rezone to Planned Unit Development (PUD) to allow a restaurant and retail establishment, with an attached parking garage.

Chair Wheatcraft opened Public Participation.

Gaila Leslie, 1306 Hill Street, commented on the increase in traffic and noise from the construction.

Rick Flanigan, 1414 S. Atlantic Ave., commented in support of the proposed project.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

The Board Members requested the following conditions:

1. Create restrooms accessible to patrons of the parking garage.
2. Improvements to the improve beach accessibility in the E. 3rd Avenue Right-of-Way.

The Applicant did not have any objections to this request.

Member Bien voiced his concerns regarding the size of the building.

Motion:
Member Frankhouser motion to recommend approval to City Commission for PUD-2-23: 1300 S. Atlantic Avenue Mixed-Use Building Planned Unit Development and Master Development Agreement, with the following conditions:

1. Create restrooms accessible to patrons of the parking garage.
2. Improvements to the improve beach accessibility in the E. 3rd Avenue Right-of-Way.

Vice-Chair Hodges seconded the motion, and the motion passed with a 5-1 vote. Member Bien voted no.

RESULT:	**PASSED [5-1 VOTE]**
MOVER:	Frankhouser
SECONDER:	Hodges
AYES:	Hall, Frankhouser, Wheatcraft, Hodges, Hulvershorn
NAYES:	Bien

6. COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

Stephanie Doster stated that changes to the Landscaping code will be on next agenda item for discussion.

7. REPORTS AND COMMUNICATIONS BY THE STAFF

7.A May 2024 Development Activity Report.

8. ADJOURNMENT

As there was no other business to discuss, Chair Wheatcraft declared the meeting adjourned at 9:27 P.M.

Planning and Zoning Regular Meeting
Monday, June 3, 2024, at 5:30 PM
MINUTES

1. CALL TO ORDER

Having been duly advertised as required by law, the regular meeting of the Planning and Zoning Board of the City of New Smyrna Beach, Florida, was held on Monday, June 3, 2024, at the City Commission Chambers, 214 Sams Avenue, New Smyrna Beach, Florida 32168.

Larry Wheatcraft called the meeting to order at 5:30 PM.

Roll Call

Attendee Name	Title	Status	Arrived
Thomas Bien	Member	Present	5:30 PM
Jon Hall	Member	Present	5:30 PM
John Frankhouser	Member	Present	5:30 PM
Stephen Yates	Member	Present	5:30 PM
Larry Wheatcraft	Member	Present	5:30 PM
Curtis Hodges	Member	Present	5:30 PM
Kip Hulvershorn	Member	Present	5:30 PM

Also present were Shane Corbin, Director of Development Services, Stephanie Doster, Planning Manager, Robert Mathen, Senior Planner, Jake Baker Senior Planner, City Attorney Carrie Avallone, and Board Secretary Stephanie Ferrara.

Chair Wheatcraft asked City Staff if there were any changes to the agenda. Stephanie Doster stated that there were no changes to the agenda.

2. APPROVAL OF MINUTES

2.A Approval of the Planning and Zoning Regular Meeting Minutes.

None.

DRAFT

3. PUBLIC PARTICIPATION

David Reed, 4391 South Sea Mist Drive, shared concerns about the property located at 4393 South Sea Mist Drive regarding the parcel split. Mr. Reed requested that the city put a moratorium for the neighborhood.

Ernest Jackson, 3431 Tesoro Cir., provided his professional background and commented on drainage ditches along Pioneer and Airport Road.

4. OLD BUSINESS

4.A. PUD-7-24: Deering Park Innovation Center

Shane Corbin, Director of Development Services, outlined that Applicant's request to rezone the current zoning classification of A-1 Prime Agriculture, Forestry Resource (FR) and Conservation (C) to Planned Unit Development (PUD).

Chair Wheatcraft asked if the Applicant would like to speak.

Glen Storch, Storch Law Firm 420 South Nova Road, representative for the applicant. He presented a Power-Point presentation regarding the Applicant's request to rezone to Planned Unit Development from the current classification of (A-1) Prime Agriculture, Forestry Resource (FR) and Conservation (C). The proposed PUD Master Development Agreement (MDA) will include the following uses: Mixed Use/Commercial, Innovation Park, Residential Rental Village, Residential, Regional Park/Sports Complex and Police Facilities site.

Ernie Cox, Family Lands Remembered, representative for the Applicant, spoke about drainage and stormwater management design for the project.

Matthew West, LTG 1450 W. Granada Blvd., Suite 2, representative for the Applicant, spoke about traffic impact analysis for this project.

Sans Lassiter, LTG 1450 W. Granada Blvd., Suite 2, representative for the Applicant, spoke about road networks and internal roadways within the project.

Josh Long, Vice President of Planning and Entitlements for Kolter Land, representative for the Applicant, spoke about site plans approval and process

for this project.

The Planning and Zoning Board members ensued in back-and-forth conversations with the Applicant's representatives regarding the project.

Chair Wheatcraft opened Public Participation.

Richard Polo, 138 Portofino Blvd., stated that he was retired from the Army Corps of Engineers. He commented on water and drainage. He also commented on traffic flow for this project.

Roger Hall, 106 Portofino Blvd., commented on the time he moved to the City of New Smyrna 7 years ago. He was concerned about the traffic and crime that the project will bring. He stated that he was afraid that the City will turn into Orlando.

Joe Dlubak, 3587 Casalta Circle, commented on timing and schedule of the project. He stated that the City was not equipped to handle large-scale development.

Carmel Vaden, 110 Portofino Blvd, stated that she was concerned about developers not meeting the City's expectations.

Dave Vaden, 110 Portofino Blvd, commented on the impacts of the development regarding stormwater and the building of Williamson Blvd.

Tony Otte, 3530 Grand Tuscany Way, commented in support of the project.

Bob Williams, 767 Pine Shores Cir., commented in support of the project.

Diana Puhl, 3551 Grand Tuscany Way, commented in support of the project.

James Hall, 106 Portofino Boulevard, commented in opposition of the project. Voiced his concerns about the flooding from this project.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Discussions ensued with the Planning Board Members, Staff, and the Applicant regarding changes to the proposed PUD.

Member Bien stated his concerns regarding the project and feels that there are not enough details within the PUD for this project.

Motion:
Member Yates motion to recommend approval to City Commission for PUD-7-24: Deering Park Innovation Center, with the following conditions:

1. 500,000 sq ft of non-residential shall be constructed and an additional 500,000 sq ft of non- residential shall have site plan approval prior to approval of any residential development subdivision plat.

2. 85% of the land dedicated to the City of New Smyrna Beach, for municipal purposes, shall be determined to be buildable uplands.

3. Conditional Use conditions need to be added, and the language "Conditional Uses as defined in the LDR" removed.

4. Energy and water conservation standards shall be added to the PUD.

5. PUD language in Section 3.d shall be modified as follows. *The 2,150 total units ~~would~~ shall be comprised of a mix of 925 sf detached, 600 MF apartments, 250 build to rent, and 375 townhomes.*

6. The P&Z board recommended the developer have a discussion regarding a stormwater bond with the property owner.

7. Ensure the text and associated maps of the PUD match in all areas referring to acreage.

8. And any other verbally agreed upon items.

Member Frankshouser seconded the motion, and the motion carried passed with a 6-1 vote. Member Bien voted no.

RESULT:	**PASSED [6-1 VOTE]**
MOVER:	Yates
SECONDER:	Frankhouser
AYES:	Hall, Frankhouser, Yates Wheatcraft, Hodges, Hulvershorn
NAYS:	Bien

5. NEW BUSINESS

5.A Ordinance No. 35-24: Temporary Moratorium on Issuance of Certain building permits for section of Venetian Bay Phase II.

Shane Corbin, Director of Development Services, outlined City request to consider the extension of the temporary moratorium, adopted by Ordinance No. 17-24, on issuance of certain building permits for a section of Venetian Bay Phase II.

Chair Wheatcraft opened Public Participation.

Dave Vaden, 110 Portofino Boulevard, commented in support of Ordinance No. 35-24. He commented on the water coming under the road on Airport Road and State Road 44.

Richard Polo, 138 Portofino Blvd., commented in support of Ordinance No. 35-24.

Kay Snyder, 144 Portofino Blvd., commented on her flooding experience and supported Ordinance No. 35-24.

Joe Dlubak, 3587 Casalta Circle, commented in support of Ordinance No. 35-24. He requested a status updated from St. Johns Water management with respect to stormwater.

James Hall, 106 Portofino Boulevard, commented in support of Ordinance No. 35-24. Commented about the upcoming Hurricane Season.

Carmel Vaden, 110 Portofino Blvd, commented on her time moving to the City

of New Smyrna Beach. She was concerned about the Flooding. She commented in support of Ordinance No. 35-24.

Janet Hall, 106 Portofino Boulevard, commented in support of Ordinance No. 35-24. She commented on the upcoming Hurricane Season. She suggested that the City expand the area of the moratorium.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:
Vice-Chair Hodges motion to recommend approval to City Commission for Ordinance No. 35-24 to extend the temporary moratorium, as submitted. Member Hulvershorn seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Hodges
SECONDER:	Hulvershorn
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.B V-6-24: 255 Erena Drive

Robert Mathen, Senior Planner, outlined the Applicant's request to reduce a required side yard building setback to construct an accessary structure.

Chair Wheatcraft asked if the Applicant would like to speak.

Member Frankhouser asked if the footprint of the building could be changed.

Crayton Crain, 255 Erena Drive, Applicant and Owner, stated that he could not find a footprint that could meet current setbacks.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Chair Wheatcraft suggest a condition of saving the tree.

Motion:
Member Frankhouser motion to approve V-6-24: 2555 Erena Drive, with the condition of saving the tree and as submitted. Member Yates seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Frankhouser
SECONDER:	Yates
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.C V-7-24: 111 North Causeway

Robert Mathen, Senior Planner, outlined the Applicant's request to amend a previous approved variance condition which would remove the hours of tasting operations.

Chair Wheatcraft asked if the Applicant would like to speak.

Kenny Patel, 6716 Calistoga Circle, Applicant and Owner, spoke about his variance request.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:
Member Yates motion to approve V-7-24: 111 N. Causeway, as submitted. Member Frankhouser seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Yates
SECONDER:	Frankhouser
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.D V-3-24: 313 Cedar Avenue

Jake Baker, Senior Planner, outlined the City's request to allow a driveway to exceed the maximum allowed width, a second driveway on a lot less than 75' in width, and pavers to be located within 3' of the property line.

Chair Wheatcraft asked if the Applicant would like to speak.

Edward Merkle, Applicant and Owner outlined his variance request to the Planning Board.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion to allow two driveways on a lot less than 75' wide:

Member Yates motion to approve V-3-24: 313 Cedar Avenue to allow two driveways on a lot less than 75' wide, as submitted. Member Bien seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Yates
SECONDER:	Frankhouser
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

Motion to allow pavers up to the property line:

Member Bien motion to approve V-3-24: 313 Cedar Avenue to allow pavers up to the property line, as submitted. Member Hall seconded the motion, and the motion failed unanimously.

RESULT:	**DENIED [UNANIMOUS]**
MOVER:	Bien
SECONDER:	Hall
NAYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

Motion to allow the driveway width to exceed 40% or 24'feet:
Member Yates motion to approve V-3-24: 313 Cedar Avenue to allow the driveway width to exceed 40% or 24'feet, as submitted. Member Hall seconded the motion, and the motion failed unanimously.

RESULT:	**DENIED [UNANIMOUS]**
MOVER:	Yates
SECONDER:	Hall
NAYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.E ZT-2-24: Pain Management Clinics to the B-3 Highway Service Business District as a Special Exception

Jake Baker, Senior Planner, outlined the Applicant's request to the Amend the LDR to add Pain management Clinics to the B-3 Highway Service Business District as a Special Exception.

Carrie Avallone, City Attorney, request that Staff Strike #G as a condition for Pain Management Clinics.

Chair Wheatcraft asked if the Applicant would like to speak.

Dr. Bakshi, PRC and Associates, outlined his request to amend the LDR to add Pain Management Clinics to the B-3 Highway Service Business.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:

Member Frankhouser motion to recommend approval to City Commission for ZT-2-24: Pain management Clinics to the B-3 Highway Service Business District as a Special Exception and to Strike #G as a condition for Pain Management Clinics and as submitted. Member Bien seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Frankhouser
SECONDER:	Bien
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.F ZT-4-24: Remove the use of church and replace with house of worship and add a new definition and replace the use of drug store with pharmacy and add a new definition.

Robert Mathen, Senior Planner, outlined the City's request to amend the LDR to remove the use of Church and replace with house of worship and add a new definition. To amend the LDR to replace the use of drug store with pharmacy and add a new definition.

Chair Wheatcraft opened Public Participation. As no citizens wished to speak, Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:

Member Frankhouser motion to recommend approval to City Commission for ZT-4-24: remove the use of Church and replace with house of worship and add a new definition. To amend the LDR to replace the use of drug store with pharmacy and add a new definition, as submitted. Member Hulvershorn seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Frankhouser
SECONDER:	Hulvershorn
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hodges, Hulvershorn

5.G HBOD-1-24: Rezoning Request for property located at 403 Magnolia Street

Robert Mathen, Senior Planner, outlined the Applicant's request to add the Historic Building Overlay District to property located at 403 Magnolia Street.

Vice Chair Hodges recused himself from the agenda item. He submitted form 8B to Stephanie Ferrara, Board Secretary.

Chair Wheatcraft asked if the Applicant would like to speak.

Curtis Hodges, 620 S. Riverside Drive, commented on preserving the building and keeping the use as a venue.

Chair Wheatcraft opened Public Participation.

Aneline Barretta Herman, 108 Esther Street, commented in support of the Applicant's request to add Historic Building Overlay District to property located at 403 Magnolia Street.

Chair Wheatcraft closed Public Participation.

Chair Wheatcraft asked the Board if they had any additional questions or comments.

Motion:
Member Frankhouser motion to recommend approval to City Commission HBOD-1-24: 403 Magnolia Street, as submitted. Member Yates seconded the motion, and the motion carried unanimously.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Frankhouser
SECONDER:	Yates
AYES:	Bien, Hall, Frankhouser, Yates, Wheatcraft, Hulvershorn

6. COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

None.

7. REPORTS AND COMMUNICATIONS BY THE STAFF

7.A June 2024 Development Activity Report

7.B Amendment to the LDR Section 604.04 Landscape Requirements

Stephanie Doster briefly touched on changes to section 604.04 landscape requirement. The Board agreed to email staff of any questions or comments to the proposed amendment.

8. ADJOURNMENT

As there was no other business to discuss, Chair Wheatcraft declared the meeting adjourned at 9:54 P.M.

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

V-9-24 2545 PAIGE AVENUE, A VARIANCE REQUEST TO ALLOW A POOL DECK TO ENCROACH INTO A WETLAND BUFFER.

July 1, 2024

Background:

A. Applicant and Property Owner: Hope and Brandon Hazelwood, 2545 Paige Avenue, New Smyrna Beach, FL 32128

B. Request: A variance from Land Development Regulations Section 701.11.A., which requires a buffer of not less than 25' adjacent to and surrounding all wetlands, to allow a pool deck to be located 15' from wetlands, a variance of 10'.

C. Site Information: The subject property is located on north side of Paige Avenue, between S. Glencoe Road and Timberlane Drive, and contains 1.01 acres. The zoning is R-3CO Urban Single Family Residential district.

D. Tax I.D. Number:-7326-00-00-007F

Exhibits used in this report:

Exhibit A: Location Map

Exhibit B: Aerial Map

Exhibit C: Site Plan

Findings:

A. The subject parcel is in the R-3CO, Urban Single-Family Residential zoning district. Lots must be at least 85' wide and have over 10,000 square feet of area. The setbacks are 30' from the front property line, 20' from the rear property line, and 20' total from the sides, with no side closer than 8' from a side property line. The lot is approximately 140 deep,

however, at its closest point, the rear of the house is 33.2' from wetlands, and the city requires a 25' buffer between any construction and wetlands. On the south side of the house (from the street, to the left) The wetlands taper to the rear property line.

B. The applicant proposes to add a pool with a screen enclosure. While this meets the setbacks, the pool actually encroaches into the required 25' setback for wetlands. Please see **Exhibit C** for a depiction of the proposed pool. As can be seen, the pool actually encroaches into the wetland buffer for a relatively small area, as the wetlands taper away from the pool deck. Thus, the actual wetlands are not impacted as the screen enclosure is in the buffer.

C. The LDR requires variance requests to meet all of the following criteria. The applicant's responses are *italicized,* Staff's responses are in **bold,** following each criterion.

a. Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings in the same district or vicinity.

Special circumstances that DO exist as related to the subject property is *that the lot is narrow and oddly shaped. The house has to meet a minimum requirement from the road and the wetlands. The lot also has septic tank requirements and many large oak trees.*

The applicant could cut down a number of trees and shift the pool deck further from the wetlands, but given the layout of the house, and the benefits of tree preservation, staff agrees the there are special circumstances associated with the land. This criterion has been met.

b. Strict application of the provisions of the Land Development Regulations would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district *or* may preclude a benefit to the community in general.

Strict application of the provisions of Land Development Regulations WOULD deprive the

subject property owner the ability to build a reasonably sized family pool on the property. The 25' setback requirement would greatly affect the ability to build the pool as it has already been reduced in size and moved as far to the left as possible while remaining within view of the home to keep the safety of children swimming/falling into the pool a priority.

This is lot is slightly over an acre in size, which, without wetlands, would easily be large enough to accommodate a pool with a deck. The property owner has shifted the proposed improvements away from the wetlands as much as possible, minimizing the impacts to the wetland buffer. Given this situation, strict application would deprive the owner of a pool with a deck, which is common in this area. This criterion has been met.

c. The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner(s) created, to any degree, the hardship that is the subject of the variance request.

The special circumstances and conditions that exist DO NOT result from the direct or indirect action of the present or past property owner(s). The shape of the lot was not influenced by the present or past property owner(s).

This house is relatively new and built by the current owners. The house could have been designed with the intent of adding a future pool and pool deck, but evidently it was not. That being said, the wetlands themselves are not impacted, and placing the deck where proposed will avoid large trees where the pool could be placed to avoid the buffer area.

d. That granting of the variance(s) will not cause substantial detriment to the public welfare or impair the purposes and intent of the Land Development Regulations.

The granting of the variance WILL NOT cause substantial detriment to the public welfare or impair the purposes and intent of Land Development Regulations. The pool will be 15 feet from the wetlands, with the granted variance the setback would ensure the pool will

not impede on the wetlands. Granting of the variance will allow for the construction of an aesthetically pleasing pool that will only improve the value of the home and the surrounding homes.

Given the layout of the house, the number of trees, septic tank field, and location of the wetlands, the lot is restricted in options to fit a pool deck on the back of the house. It should be noted that the current location is actually shifted significantly away from the originally proposed location, further from the wetlands. This criterion has been met.

e. That granting of the variance will not constitute a grant of special privilege that is denied by the Land Development Regulations to other lands, structures or buildings in the same district.

The granting of the variance WILL NOT constitute a grant of special privilege that is *denied by the Land Development Regulations to other lands, structures or buildings in the same district. Due to the lot size and additional setback requirements, building a pool would pose a problem for any property owner to build a reasonable pool on the property.*

Given the relatively small impact to the wetland buffer area, and not the wetland itself, the actual impact to the wetlands is avoided, staff agrees that granting the variance would not be a special privilege. This criterion has been met.

Recommendation:

Technically, the applicant does not meet all five of the criteria, as the property was developed by the current owner, and thus created the situation at hand. That being said, the proposed location of the pool avoids the need to remove a number of large trees and has a relatively small footprint within the wetland buffer, thus **if the Planning and Zoning Board chooses to approve the variance request, it does so with the condition that silt fencing be placed around the pool deck area to ensure no impacts to the wetlands**

occur when the pool is being constructed.

Fiscal Analysis:
N/A

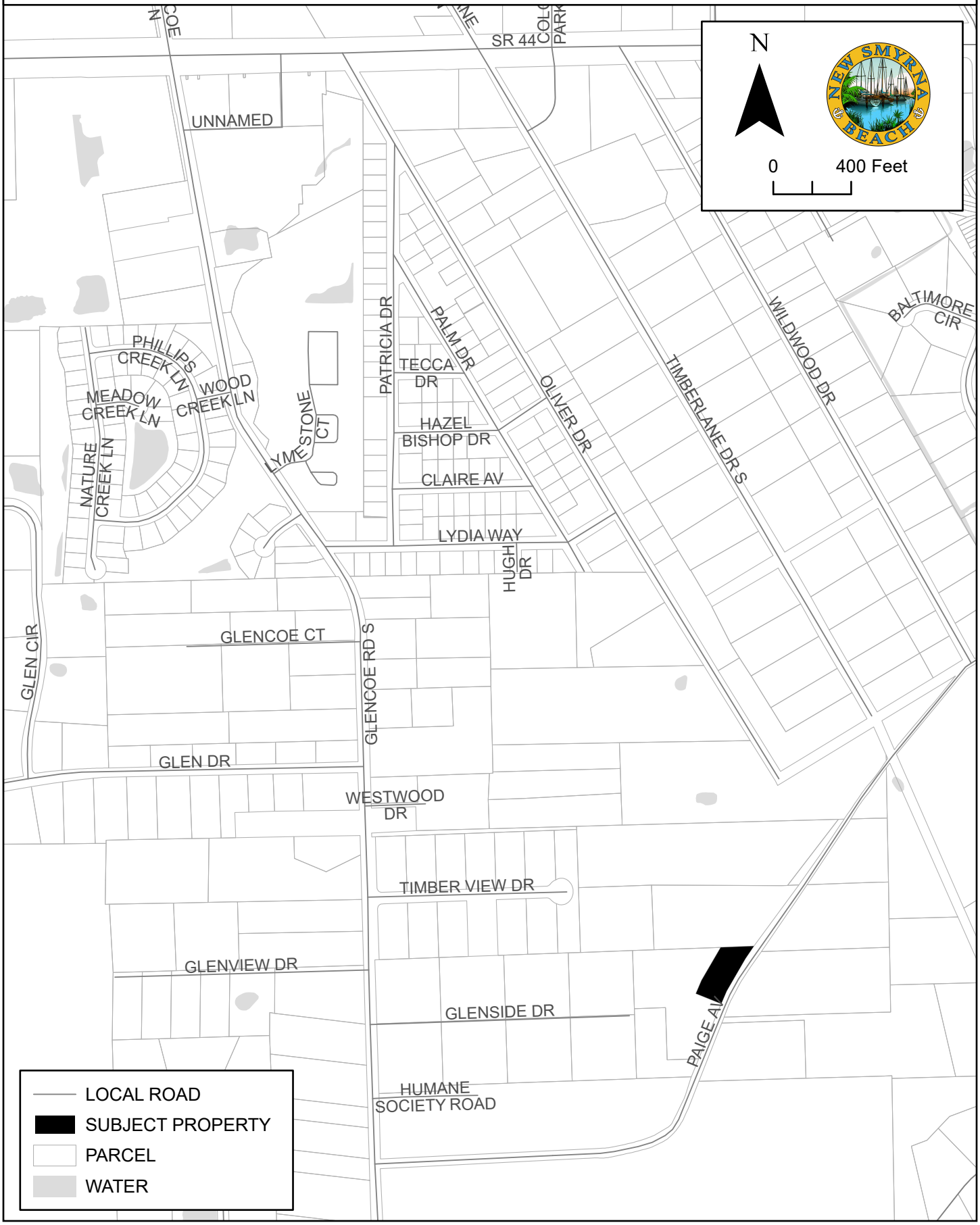
Strategic Plan Item:
No

Staff Report Created By: Jake Baker - Senior Planner

Attachments:

Exhibit A Location Map.pdf
Exhibit B Aerial Map.pdf
Exhibit C Site Plan.pdf

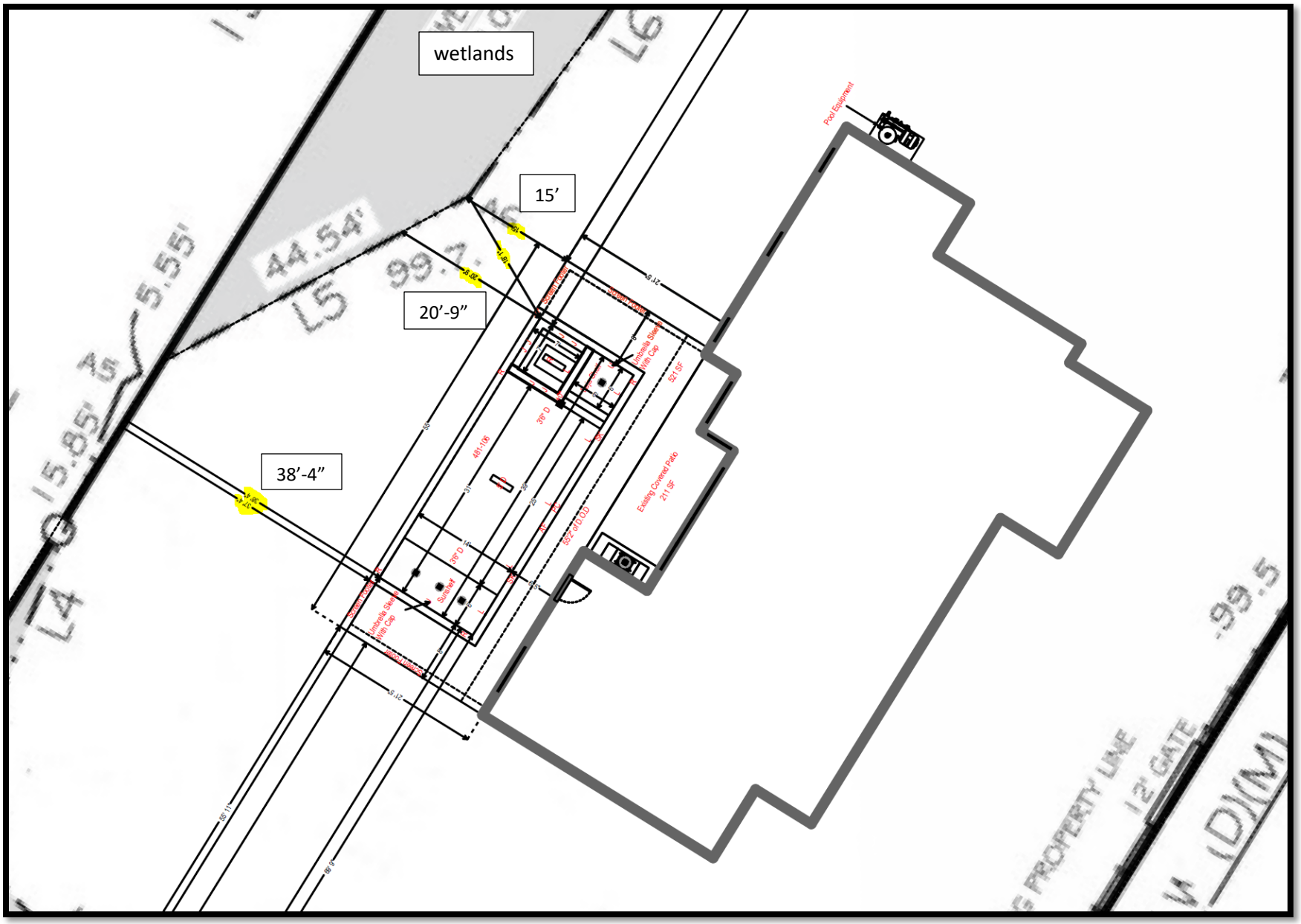
V-9-24: 2545 PAIGE AVENUE
PARCEL: 7326-00-00-007F LOCATION MAP

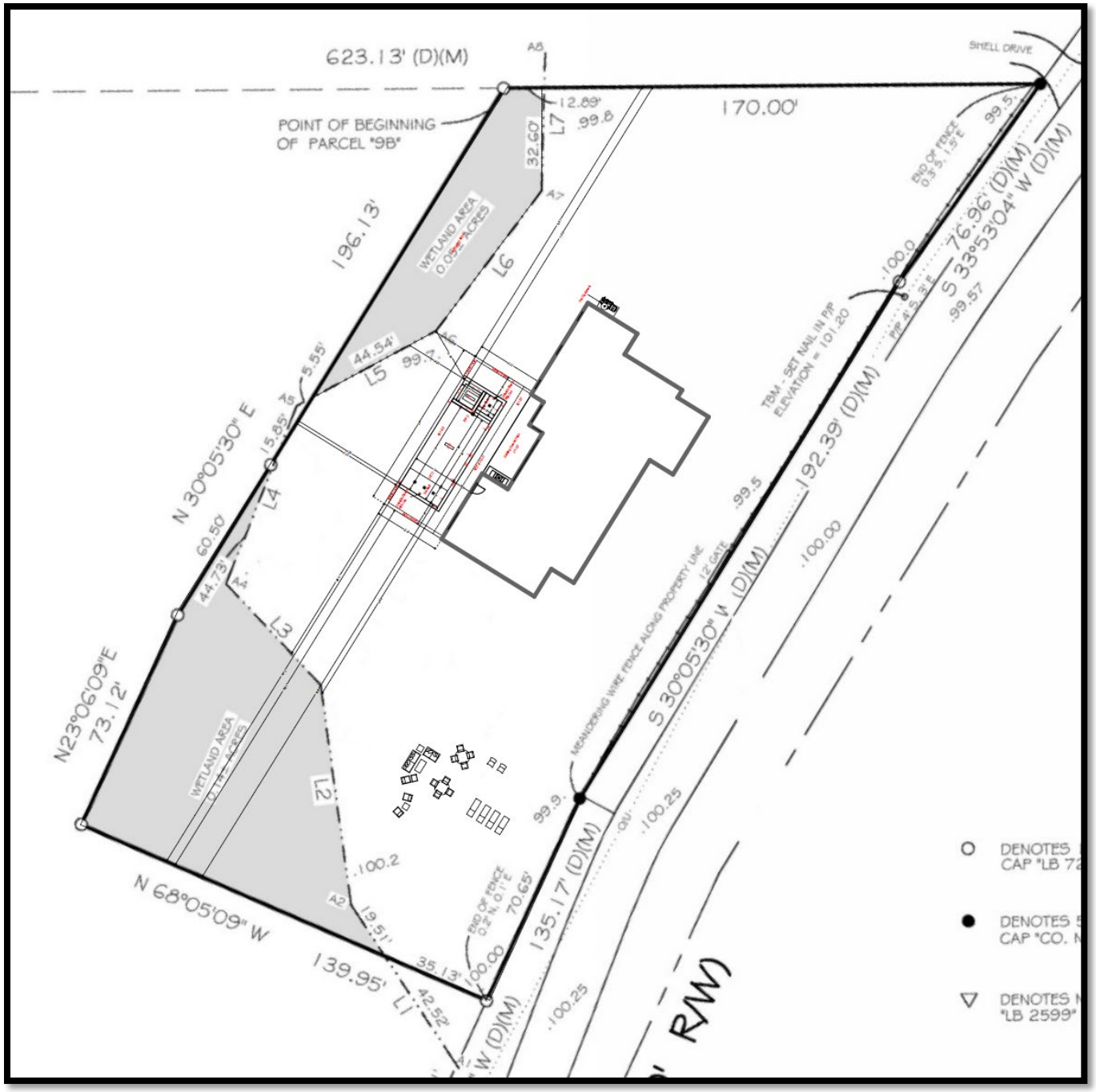


V-9-24: 2545 PAIGE AVENUE
PARCEL: 7326-00-00-007F AERIAL MAP



Exhibit C


wetlands
15’
20’-9”
38’-4”
Pool Equipment
Existing Covered Patio
211 SF
521 SF
Existing Home
Concrete Deck
Umbrella Sleeve With Cap
Sunbeat
Spool Fence
Existing Home
44.54’
15.85’
5.55’
L4
L5
L6
99.5
99.5
PROPERTY LINE
12’ GATE


623.13' (D)(M)
POINT OF BEGINNING OF PARCEL "9B"
170.00'
SHELL DRIVE
196.13'
WETLAND AREA 0.05± ACRES
32.60'
12.89'
99.8
L7
L6
L5
44.54'
99.7
5.55'
15.85'
N 30°05'30" E
60.50'
L4
44.73'
L3
N23°06'09"E
73.12'
WETLAND AREA 0.19± ACRES
L2
100.2
19.51'
35.13'
N 68°05'09" W
139.95'
L1
42.52'
100.00
70.65'
END OF FENCE 0.2± N, 0.1± E
135.17' (D)(M)
100.25
MEANDERING WIRE FENCE ALONG PROPERTY LINE
12' GATE
99.9
99.5
S 30°05'30" W (D)(M)
192.39' (D)(M)
100.00
TBM - SET NAIL IN PIP ELEVATION = 101.20
100.0
76.96' (D)(M)
S 33°53'04" W (D)(M)
99.57
END OF FENCE 0.3± S, 1.5± E
99.5
DENOTES CAP "LB 72
DENOTES CAP "CO. N
DENOTES "LB 2599"


5023478
6706912545 PAIGE AV
7682991
PAIGE AV

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

Z-1-24: REVIEW A REQUEST AND PROVIDE A RECOMMENDATION TO THE CITY COMMISSION, FOR A REZONING TO B-4, OCEAN COMMERCIAL ON A VACANT PROPERTY LOCATED AT THE SOUTHWEST CORNER OF EAST 7TH AVENUE AND SOUTH ATLANTIC AVENUE.

July 1, 2024

Background:

Applicant: Glenn D. Storch, 420 South Nova Road, Daytona Beach, Florida 32114

Property Owner: MRN Resources, LLC, 308 North Orange Street, New Smyrna Beach, Florida 32168

Request: Rezoning

- **From:** B-2, Neighborhood Business, with an "A" attached for the Airport Height Notification Zone.
- **To:** B-4(4), Ocean Commercial District, with an "A" attached for the Airport Height Notification Zone.

Site Information:

- **Size:** 0.34 acres
- **Location:** Generally located on the southwest corner of East 7th Avenue and South Atlantic Avenue. See **Exhibit A**

Exhibits used in this report:

Exhibit A: Location Map

Exhibit B: Aerial Map

Exhibit C: Existing Zoning Map

Exhibit D: B-2 Zoning Text

Exhibit E: Proposed Zoning Map

Exhibit F: B-4 Zoning Text

Exhibit G: Future Land Use Map

Exhibit H: Comprehensive Plan Zoning Matrix

Exhibit I: Survey

Exhibit J: Warranty Deed

Exhibit K: Legal Description

Findings:

The subject property is currently zoned B-2, Neighborhood Business. See existing zoning map attached as **Exhibit C** with the associated zoning district text attached as **Exhibit D**. This parcel contains two (2) platted lots with access to East 7th Avenue and South Atlantic Avenue.

The applicant is proposing to change the zoning from B-2, Neighborhood Business to B-4, Ocean Commercial District. A map showing the proposed zoning and associated zoning text is attached as **Exhibits E & F**. The applicant has indicated to the planning department that the property owner plans to divide the parcel into the two (2) platted lots and develop the two platted lots with single-family houses. The applicant will have to apply for a minor sub-division before any permits can be issued.

Section 305.01 of the City's *Land Development Regulations* requires the City planning department to review a rezoning request for consistency with the City *Comprehensive Plan* and *Land Development Regulations* and to prepare a written report recommending either approval or denial of the request. The Planning and Zoning Board is required to make a recommendation to the City Commission to either approve or deny the application.

The subject property has a Future Land Use (FLU) designation of Commercial. A map is attached showing the current Future Land Use of the subject property and surrounding properties as **Exhibit G**

The subject property has an existing Future Land Use designation of Commercial. According to the City of New Smyrna Beach *Comprehensive Plan,* this future land use designation is intended for the development of high-quality businesses activities, including retail, hotel, office, financial institutions, and high density residential. This Future Land Use should be limited to arterial and collector roads. The Commercial future land use category allows a density up to 12.0 dwelling units per acre. The proposed density, once the property is separated back to the two (2) platted 50 feet by 150 feet platted lots, would be 1.37 units per acre. Well below the maximum of 12 units per acre.

The *Comprehensive Plan* also provides a zoning matrix (**Exhibit H**) indicating which zoning designations are consistent with each underlying future land use designation. According to this matrix, the B-4 zoning district is consistent with the Commercial future land use classification.

Per Article V of the *Land Development Regulations*, the intent of the B-4, Ocean Commercial District is to provide oceanfront living accommodations and related uses for visitors and permanent residents. Single-Family Residential is a permitted use in the B-4 Ocean Commercial District. This use was added under Ordinance number 15-24 which was adopted by the City Commission on March 12, 2024.

As shown on **Exhibit C**, the subject property is located adjacent to existing B-4 zoning parcels to the south and on **Exhibit B**, existing single-family houses are located to the west. Since the parcel is located next to existing B-4 zoning and close to the Atlantic Ocean in the Central Beach Neighborhood, the proposed rezoning request would be consistent with the intent of the B-4 zoning regulations.

Because the applicant is not proposing to amend the underlying future land use designation for this property, the permitted overall density will remain the same. However, the dimensional requirements for the lots themselves will be different. Any new development that occurs on this site will be required to meet the building coverages, impervious coverages, and building setbacks of the B-4 zoning district.

The current B-2 zoning district list more intense commercial uses than the requested B-4 zoning district. Also, the B-2 zoning district does not allow for single-family houses which would be a less intense use than commercial uses. The B-2 zoning district also has large, required building setbacks and landscape buffers that may limit any future commercial development on this parcel. Since there is no increase in proposed density, the property owner will not need to apply to the Volusia County School District for a School Capacity Determination.

If the parcel was rezoned to B-4, Ocean Commercial, that proposed zoning would allow for short term rentals. The impact of a possible short term would be minimal since the property is located next to an existing motel use.

Recommendation

Since the requested zoning would allow for less intense use, and the density would be far less than the allowable 12 units per acre, the Planning Department recommends that the Planning and Zoning Board give a positive recommendation to the City Commission to **approve** the requested change of zoning to B-4, Ocean Commercial.

Fiscal Analysis:
N/A

Strategic Plan Item:
No

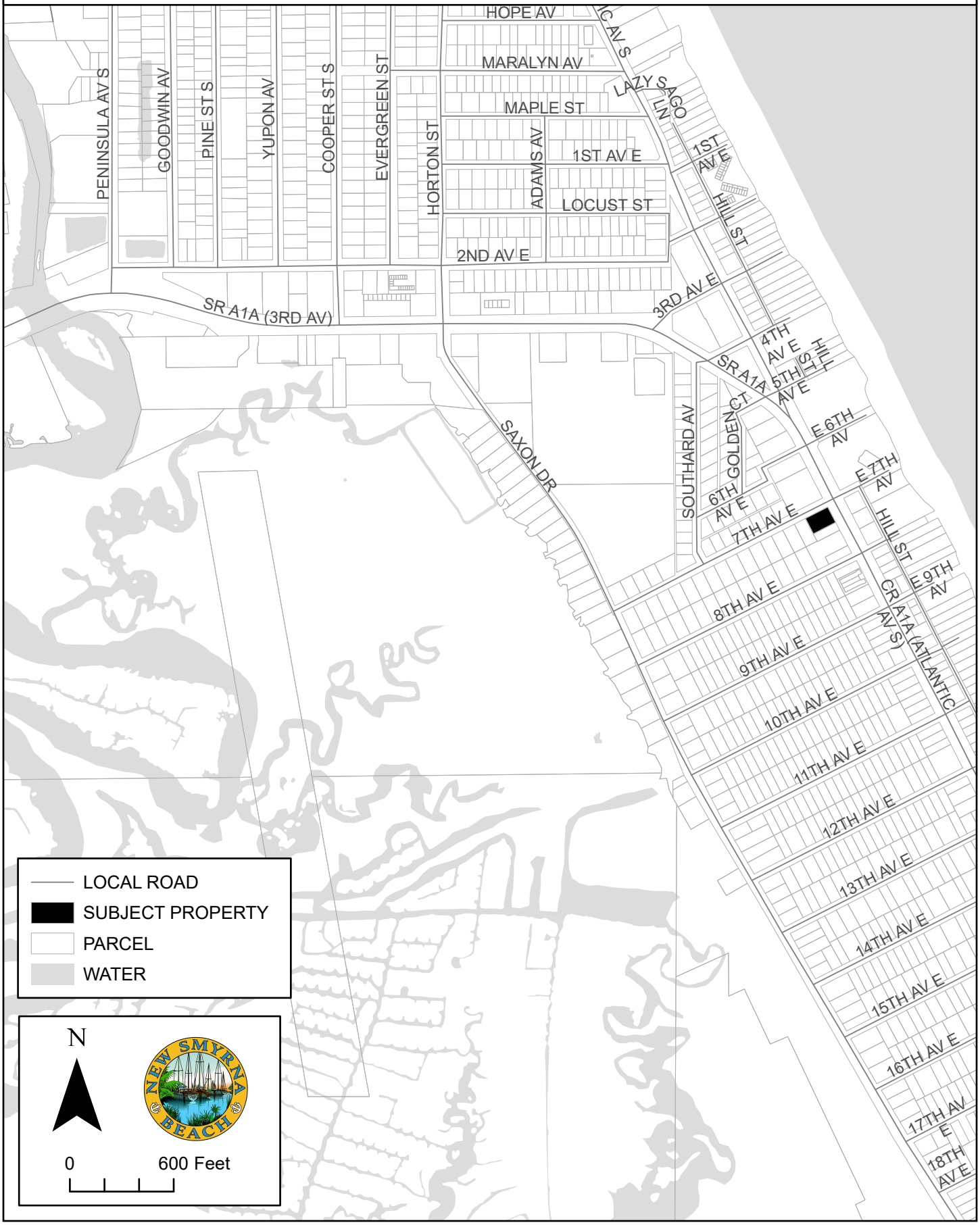
Staff Report Created By: Robert Mathen - Senior Planner

Attachments:

Exhibit A Location Map.pdf
Exhibit B Aerial Map.pdf
Exhibit C Existing Zoning Map.pdf
Exhibit D City B-2 Zoning Text.pdf
Exhibit E Proposed Zoning Map.pdf
Exhibit F City B-4 Zoning Text.pdf
Exhibit G Existing FLU Map.pdf
Exhibit H Comprehensive Plan Zoning Matrix.pdf
Exhibit I Survey.pdf

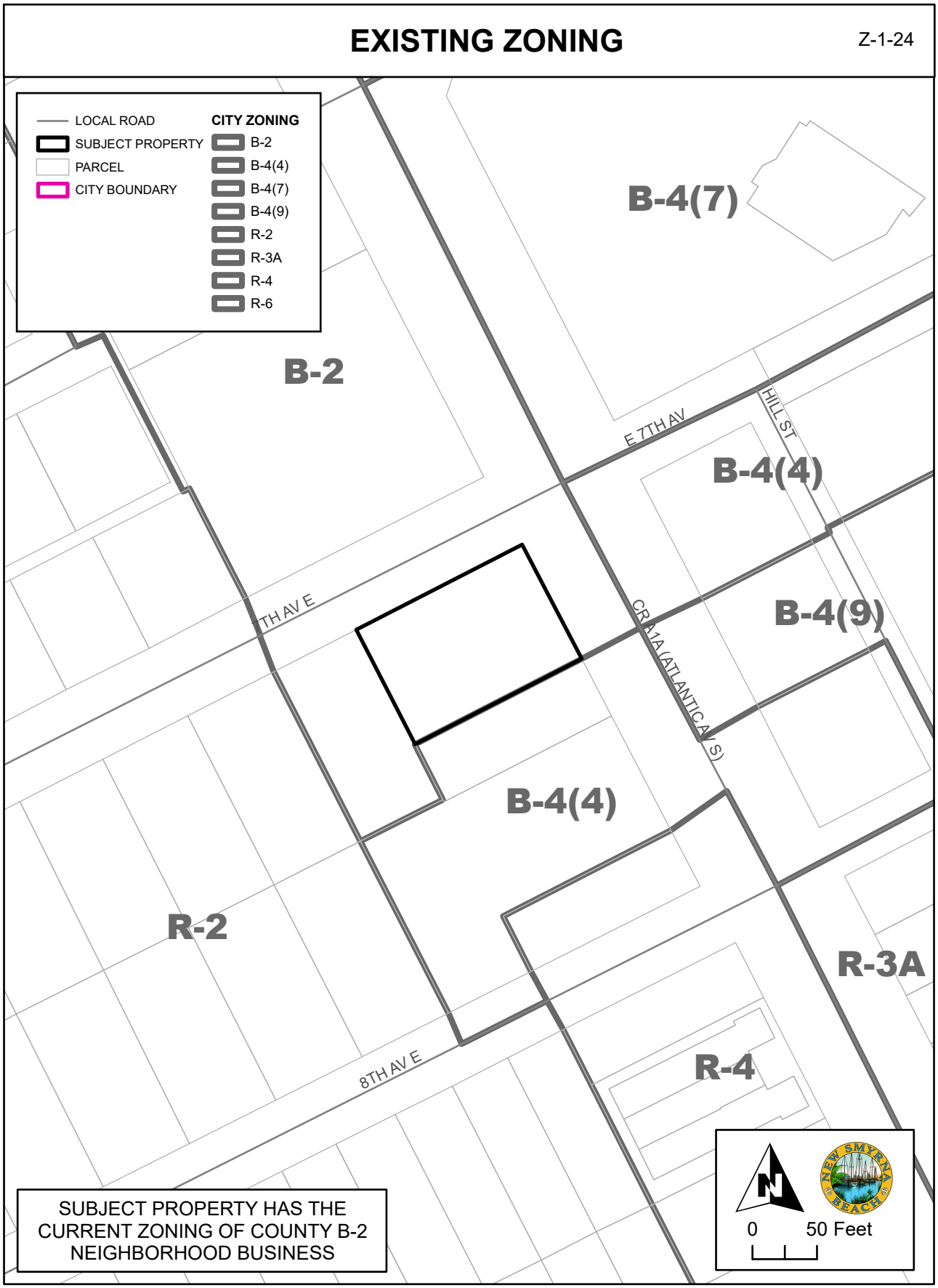
Exhibit J Warranty Deed.pdf
Exhibit K Legal Description.pdf

Z-1-24: 7TH AV E AND CR A1A
PARCEL: 7415-04-39-0010 LOCATION MAP



Z-1-24: 7TH AV E AND CR A1A
PARCEL: 7415-04-39-0010 AERIAL MAP




EXISTING ZONING
Z-1-24
LOCAL ROAD
SUBJECT PROPERTY
PARCEL
CITY BOUNDARY
CITY ZONING
B-2
B-4(4)
B-4(7)
B-4(9)
R-2
R-3A
R-4
R-6
B-4(7)
B-2
E 7TH AV
HILL ST
B-4(4)
7TH AV E
CR A1A (ATLANTIC AV S)
B-4(9)
B-4(4)
R-2
R-3A
R-4
8TH AV E
SUBJECT PROPERTY HAS THE CURRENT ZONING OF COUNTY B-2 NEIGHBORHOOD BUSINESS
N
0
50 Feet

B-2 NEIGHBORHOOD BUSINESS DISTRICT

Intent:

The Neighborhood Business District is intended to provide goods and services for the frequent needs of residents, and to assure that the operation of neighborhood businesses are not detrimental to adjoining residential uses.

Permitted Uses:

Animal Clinic, out-patient care only, and no overnight boarding
Appliance & Repair Shops
Attached Dwellings
Bakeries, non-manufacturing
Barber and Beauty Shops
Billiard Halls **Ord. #08-11**
Bowling Centers **Ord. #04-92**
Ceramic Shops
Clubs, semi-public
Communication Facilities: Buildings for Radio, Television, Telephone, and Telegraph
Convenience Market with Gas Pumps
Drug Stores and Pharmacies
Dry Cleaning Establishments
Florists
Funeral Homes
Gift Shops
Government Buildings and Offices
Grocery Stores
Hardware Stores
Hobby/Craft Shops
Income Tax Services
Jewelry Stores
Laundries, including self-service
Lending Agencies
Men's & Women's Figure Salons
Multi-Family Residential Developments **Ord. #18-97**
Newspaper Offices & Printing Shops
Night Clubs
Office & Household Equipment Sales
Parking Lots
Pet Grooming **Ord. #50-22**
Pet Shop **Ord. #50-22**
Professional Offices, including Accountants, Architects, Consultants, Dentists, Engineers, Financial, Insurance, Lawyers, Medical, and Stockbrokers **[Revised 2-17-11]**
Real Estate Brokers
Restaurants, Type "A", "B", "C" & "D"

Retail Sales and Services
Shoe Repair Shops
Taverns
Taxicab & Bus Stands & Terminals
Travel Agents
Video Tape Rental

Conditional uses: **Ord. #42-12**

Farmers markets, subject to the following conditions:

(1) The planning manager determines that adequate parking is available.

(2) 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 public rights-of-way.

(3) Vendors shall not block pedestrian ways.

(4) 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 percent of the total area used for the market shall be allowed for handicrafts.
g. All Farmers Market shall be limited to a maximum of three (3) mobile food trucks or trailers. **Ord. 10-20**
h. Flea market and yard sale items are prohibited
i. A Farmers Market shall be limited to a maximum of eight (8) vendors located in booths that may perform onsite food preparation, including cooking, heating, cooling, mixing, or any other form of food preparation needed to make food ready for immediate consumption. **Ord. 10-20**
j. There is no limitation on the sale of foods that are prepared offsite and require no onsite preparation prior to consumption. **Ord. 10-20**

(5) The farmers' market organization must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.

(6) Each vendor operating within the farmers market must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.

(7) 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 planning department. The conceptual plan shall show the general location of the vendor stalls on the site. Based upon the criteria listed above, the planning manager 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.

Permitted accessory uses. Any accessory use customarily incidental to a permitted principal use.

Special exceptions.

Beach concession vehicles parked at a business, beachside only. See [sub] section 801.10.

Beach concession vehicle parking lots

Carwashes

Child day care on church property, subject to the following additional conditions:

(1) The church property shall be located on and be accessible by an arterial or collector roadway.
(2) Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach six feet in height within two years that is planted a minimum of three feet on center.
(3) Play areas shall be located within all applicable setback dimensions.
(4) The church property shall have a vehicular drop off and pickup area with a minimum [of] 100 feet of drive lane outside of the public right-of-way, or sufficient parking area to provide enough space to fit the required parking and provided space for drop off and pick up.

Churches

Condominium garages

Miniature golf courses, subject to the following conditions:

1. Any miniature golf course abutting or facing a residential district or use shall provide a minimum landscaped buffer of 15 feet wide. This landscaped buffer shall not be used for stormwater management.
2. The city commission may require as a condition for granting the special exception that a fence or wall be constructed to provide additional buffering for residentially zoned or used property.
3. All miniature golf greens, including associated sidewalks, park benches, and other facilities, shall be set back from front property lines ten feet and seven feet from side or rear property lines. At ten feet, a structure can be a maximum of four feet high with the maximum allowable height increasing at a ratio of ten percent to a distance of 35 feet from the property line. All buildings shall comply with the B-2 setbacks.
4. The site shall be designed such that existing flora and topography are used as much as reasonably possible.
5. Miniature golf courses shall be accessed from a major arterial roadway of four or more lanes as shown on the comprehensive plan.
6. Site and automobile lighting from the miniature golf course shall not illuminate adjacent properties.
7. The minimum lot size for a miniature golf course is 65,000 square feet.

Outdoor displays, subject to the following conditions:

1. The display area shall not exceed 200 square feet.
2. No display shall be located in any required parking area, nor obstruct vehicular or pedestrian traffic flow.
3. No display shall be located on the public right-of-way. No display shall be located either in required buffer areas or on public rights-of-way.
4. All outdoor displays must be removed from the display area and brought inside at the close of business.
5. No sales or other commercial activity other than displaying the merchandise shall be allowed in the display area.
6. Items allowed to be displayed shall be limited to outdoor merchandise; holiday trees and plants; and decorative plants and trees. Examples of items allowed shall include lawn mowers, lawn furniture, basketball nets, volleyball equipment, Christmas trees, pumpkins at Halloween, etc. Examples of items not allowed shall include indoor furniture, stoves, ranges, bathroom fixtures, sod, tomato plants, and harvested fruits and vegetables.

7. The specific area in which the outdoor display is to be located shall be depicted on a scaled drawing showing the display's location and the location of all other structures on the lot and their relationship to the property lines.
8. Displays shall conform to the side and rear yard setback requirements. Displays may encroach upon the required front yards.
9. Displays shall not obstruct visibility triangles at intersections or at points of ingress to the business.
10. The city commission shall not grant a special exception permitting an outdoor display that is aesthetically incompatible with a neighborhood's or business district's development pattern.

Preschools, subject to the following conditions:

(1) A vehicular drop-off and pickup traffic lane is provided on-site that has a stacking lane capacity that is at least 100 feet long, or adequate off-street parking is provided so that pickup and drop-off will not be within a public right-of-way; and
(2) Adequate fencing of play areas is provided to prevent the children from running into traffic.

Service stations, types "A" and "B"

Theaters, provided:

(1) Off-street parking requirements of this LDR are met;
(2) There is a minimum seating capacity for 300 people; and
(3) The proposed theater will not be detrimental to property in the immediate vicinity or to the community as a whole.

Waterfront dining and entertainment establishments

Dimensional requirements.

Minimum lot size.

Area: None

Depth: None

Width: 50 feet

Minimum yard size.

Front yard: 35 feet or as required per [sub] section 504.01M. of this LDR

Side yard: Ten feet

Rear yard: Ten feet

Corner lots.

(1) Parcels which front on two streets shall provide a 35-foot front yard on one street and a 17.5-foot front yard on the other street. The 35-foot front yard shall be adjacent to the major or most traveled roadway.
(2) Parcels which front on three streets shall provide a 35-foot front yard on one street and a 17.5-foot front yard on the other two streets. The 35-foot front yard shall be adjacent to the major or most traveled roadway.

Maximum principal building height. 35 feet or three stories.

Maximum building coverage. On any lot, the total area covered with buildings when including accessory buildings, shall not exceed 35 percent of the total area of the lot.

Maximum impervious lot coverage. The total area of the lot that may be covered with impervious material is 75 percent.

Buffers.

Landscaped buffer area(s) as defined in this LDR shall be required at property lines of nonresidential developments as follows:

(1) All front property lines;
(2) Alongside or rear lot lines abutting residentially zoned lots except the buffer shall be 25 feet wide; and
(3) Alongside and rear lot lines not abutting residentially zoned lots, the buffer shall be seven feet wide.

Landscaped or natural vegetative buffers for multifamily development shall be provided as indicated in [sub] section 604.05 and as follows:

(1) Along front, rear, and side lot lines where off-street parking areas are located, the buffer shall be a minimum of seven feet wide; and
(2) Adjacent to or facing a single-family residential district or use, the buffer shall be a minimum of 20 feet wide from the property line.

Visibility at intersections. Visibility at intersections shall be provided as required in this LDR.

Maximum dwelling unit density. 12 dwelling units per acre beachside and 18 units per acre mainland. No less than 3,630 square feet of lot area for each beach side dwelling unit and 2,420 square feet of lot area for each mainland dwelling unit.

Landscaping. A landscaping plan is required as described in this LDR for class II and III site plans.

Off-street parking and loading. Off-street parking and loading space shall be provided as required in this LDR.

Building projections. There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than five feet to a property line; and those structures allowed in [sub] section 804.03.

Multifamily residential standards.

Minimum floor area.

450 square feet of livable area for a one-bedroom unit

550 square feet of livable area for a two-bedroom unit

700 square feet of livable area for a three-bedroom unit

Maximum building length and width. Building facades parallel to the street upon which the building fronts or parallel to a waterfront shall not exceed 150 feet. No building constructed after the effective date of the LDR shall have a dimension that exceeds 200 feet.

Minimum building separation. Where two or more multifamily dwellings, single-family dwellings attached or detached, duplexes, apartments, condominiums, or townhouses are built on one parcel, there shall be a separation of at least

20 feet between the buildings plus 1.5 additional feet for each five feet of building height over 20 feet. When buildings vary in height, said distance is to be based on the highest building. (For example: The distance between a 20-foot-tall building and a 25-foot-tall building shall be 21.5 feet.)

Minimum requirements for townhouses and townhouse lots.

All lots shall be adjacent to a public right-of-way or common area.

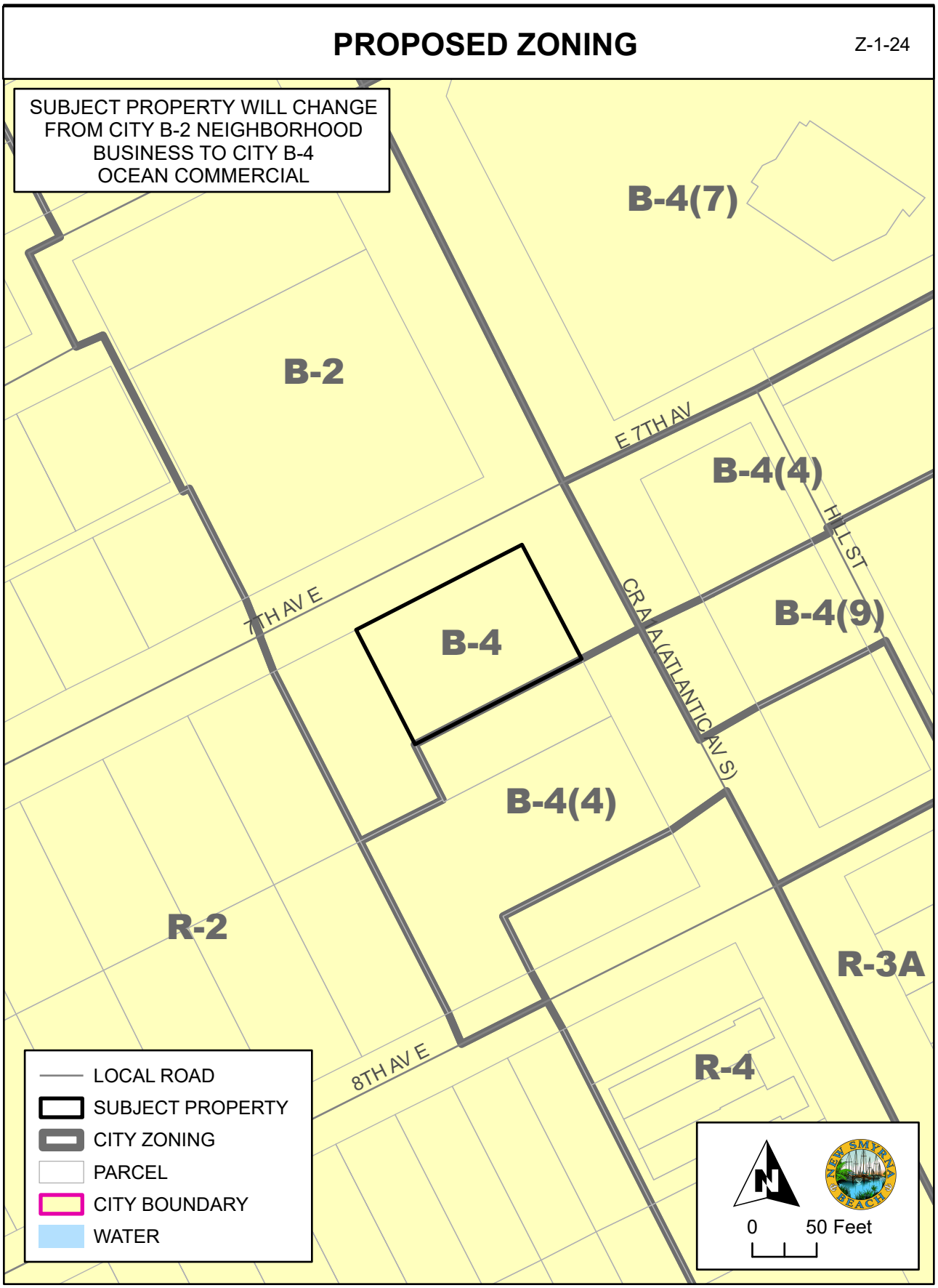
Lots shall have a minimum width of 20 feet where a living unit is to be located.

Lot frontage along a right-of-way or common area shall be a minimum of ten feet.

Front setbacks shall be 20 feet or as required per [sub] section 504.01M. of this LDR.

Side setbacks shall be zero feet.

Rear setbacks shall be 20 feet except if there is a landscaped common area behind the townhome and there is a minimum distance of 20 feet from the project boundary line and the dwelling unit or accessory structures.


PROPOSED ZONING
Z-1-24
SUBJECT PROPERTY WILL CHANGE FROM CITY B-2 NEIGHBORHOOD BUSINESS TO CITY B-4 OCEAN COMMERCIAL
B-4(7)
B-2
E 7TH AV
B-4(4)
HILL ST
7TH AV E
B-4
CR A A (ATLANTIC AV S)
B-4(9)
B-4(4)
R-2
R-3A
8TH AV E
R-4
LOCAL ROAD
SUBJECT PROPERTY
CITY ZONING
PARCEL
CITY BOUNDARY
WATER
0
50 Feet

B-4, OCEAN COMMERCIAL DISTRICT

Intent. The B-4, Ocean Commercial District provides oceanfront living accommodations and related uses for visitors and permanent residents.

Permitted uses.

Multi-family dwelling units

Parking garages

Parking lots

Real estate offices

Restaurants, type "A," "B," "C" and "D"

Single-Family Residential

Transient lodging:

Maximum size 1,200 square feet of interior living space.

Permitted accessory uses.

All those uses customarily associated with the permitted principal uses, including but not limited to central and sales offices, confectionery shops, gift shops, newsstands, nightclubs with bars, or bars separately, and snack bars designed to serve guests of the hotel or motel when accessible only from an interior court lobby, or corridor.

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 aforedescribed 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;

(2) Said sales and brokerage offices shall only be used to sell residential dwelling units located on the same site as the sales office;

(3) Said sales and brokerage offices may only have one sign not to exceed ten square feet in area in addition to the allowable signs indicated in [sub] section 604.14 of this LDR;

(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 aforedescribed on-site temporary sales and brokerage structures:

(a) Said sales and brokerage structures shall have a minimum floor area of 300 square feet and shall not have been formerly a travel trailer, camper, and recreational vehicle or tractor-trailer trailer;

(b) The perimeter of the area between the ground and floor level of the sales and brokerage structures shall be enclosed with ornamental skirting;

(c) Said sales and brokerage structures must be located on the site such that it meets the minimum setback; and

(d) A minimum of three 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 [sub]section 604.10 within this LDR except an alternate surfacing agent, such as shell or mulch, may be used;

(e) A minimum ten-foot-wide and six-foot-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-wide buffer, meeting the requirements of [sub] 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;

(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

(g) Said sales and brokerage structures shall not remain on a site longer than one 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).

Special exceptions. Barber and beauty shops (Multi-Family only)

Dimensional requirements.

Minimum lot size.

Area: 5,000 feet

Depth: 100 feet

Width: 50 feet

Minimum building separation. Where two or more buildings are built on one parcel, there shall be a separation of at least 20 feet between the buildings, plus 1.5 additional feet for each five feet of building height over 20 feet. When buildings vary in height, said distance to be based on the tallest building. (Example: if there is a 20-foot-tall building and a 25-foot-tall building, the separation must be 21.5 feet.)

Minimum yard size for Multi-Family Residential/Transient Lodging.

Front yard: 30 feet, or as required per [sub] section 504.01M. of this LDR.

Side yard: Lots with a street frontage of 100 feet or less, the side yard shall be ten feet plus three additional feet for each story over two stories. Lots with a street frontage of over 100 feet, the side yard shall be ten feet plus five additional feet for each story over two stories. In no event, shall a side yard be required to exceed 45 feet.

Rear yard: 25 feet, plus three additional feet for each story over two stories.

Minimum yard size for Single-Family Residential.

Front yard: 20 feet

Side yard: 7.5 feet

Rear Yard: 7.5 feet

Corner lots.

Parcels which front on two streets shall provide a 20-foot front yard on the street frontage with driveway access and a ten-foot front yard on the other street or as required per [sub]section 504.01 N. of this LDR.

Minimum floor area for Multi-Family. Minimum floor area of an apartment or condominium dwelling unit shall be:

450 square feet of livable area for a one-bedroom unit;

550 square feet of livable area for a two-bedroom unit;

700 square feet of livable area for a three-bedroom unit;

Minimum floor area of a rented sleeping room in a hotel, motel, or rooming house, shall be 150 square feet.

Minimum floor area for Single Family. 650 square feet of livable area for one and two-bedroom dwelling units; 1,200 square feet of livable area for a three-bedroom dwelling unit; and 1,300 square feet of livable area for a four-bedroom dwelling unit.

Maximum unit density for all dwelling units. 12 units per acre. No less than 3,630 square feet of lot area for each dwelling unit.

Maximum unit density for transient lodging.

Hospitality future land use designation: 48 units per acre.

Commercial future land use designations permitting transient lodging units: 24 units per acre.

Maximum building length and width. Building facades parallel to the street upon which the building fronts, or parallel to the oceanfront, shall not exceed 150 feet in length. Also, no building, constructed after the effective date of this LDR, shall have a dimension which exceeds 200 feet in length or width.

Maximum principal building height Multi-Family.

Four (4) stories.

Maximum building height: 45 feet, or 52 feet if a pitched roof or other architectural features are used to articulate the roof line of the building. Habitable space cannot extend more than 45 feet in height.

Building heights on properties already developed with a building taller than four stories in height at the effective date of this ordinance shall be allowed to rebuild at the same number of stories and building height as the previously existing building. This shall be designated by affixing a number after the zoning classification, which will indicate the maximum number of stories allowed. These designations shall be as follows:

B-4(5): Five stories—55 feet

B-4(6): Six stories—66 feet

B-4(7): Seven stories—77 feet

B-4(8): Eight stories—88 feet

B-4(9): Nine stories, provided all of the first story of the building, or that portion of the first story of a building containing nine stories, is used for off-street parking, excluding elevator shafts; maintenance, and utility equipment rooms; laundry rooms; and storage rooms restricted to owner or tenant usage. Maximum building height with garage parking: 95 feet.

Maximum principal building height Single-Family.

Three (3) stories- 35 feet

Maximum lot coverage by all buildings.

Height of Building (stories)	Maximum Percentage of Coverage (includes all solid roofed areas)
1	40
2	40
3	35
4	30
5	30

6	21
7	18
8	15
9	15

Maximum impervious lot coverage Multi-Family. The total area of the property that may be covered with impervious material is 75 percent.

Maximum impervious lot coverage Single-Family. The total area of the lot that may be covered with impervious material is 60 percent.

Through lots **Multi-Family.** [Through lots] shall provide a 30-foot front yard on each street or as required per [sub] section 504.01M. of this LDR.

Through lots Single-Family. [Through lots] shall provide a 20-foot front yard on each street or as required per [sub] section 504.01M. of this LDR.

Atypical lots. Visibility triangles shall be established at the rear corners of an atypical lot. The visibility triangles shall be those areas formed by a line connecting the points 30 feet from the intersection of the side and rear lot line, along the side lot line, and 30 feet from the intersection of the side and rear lot line, along the rear lot line; no principal or accessory structure having a height over four feet, except incidental uses, shall protrude into the area of a visibility triangle.

Off-street parking and loading. Off-street parking and loading space shall be provided as required in this LDR. Off-street parking areas may be located within ten feet of a side or front lot line where such lot lines are landscaped to screen the vehicles as required in this LDR and the parking lot is landscaped as required in this LDR.

Covered off-street garage parking. Covered off-street garage parking may be provided either within or outside of the principal building(s). If the entire first story of the principal building(s) is used only for covered off-street garage parking, the principal building(s) may be five stories but shall not exceed a maximum building height of 60 feet. If covered off-street garage parking is provided outside of the principal building(s), it may be considered open landscaped area if it has

a landscaped periphery and the roof is used for recreation purposes. Covered off-street garage parking located outside the outer wall of the principal building(s) and considered open landscaped area is not included in the maximum percentage lot coverage calculation for solid roof areas. Landscaping shall be provided as required in this LDR.

Building projections. There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than five feet to a property line; and those structures allowed in [sub] section 804.03.

Visibility at intersections. Visibility at intersections shall be provided as required in this LDR.

Buffers, Multi-Family. Landscaped buffer area(s) as defined in this LDR, shall be required at property lines as follows:

(1) All front property lines; and
(2) Alongside or rear lot line abutting a residentially zoned lot.

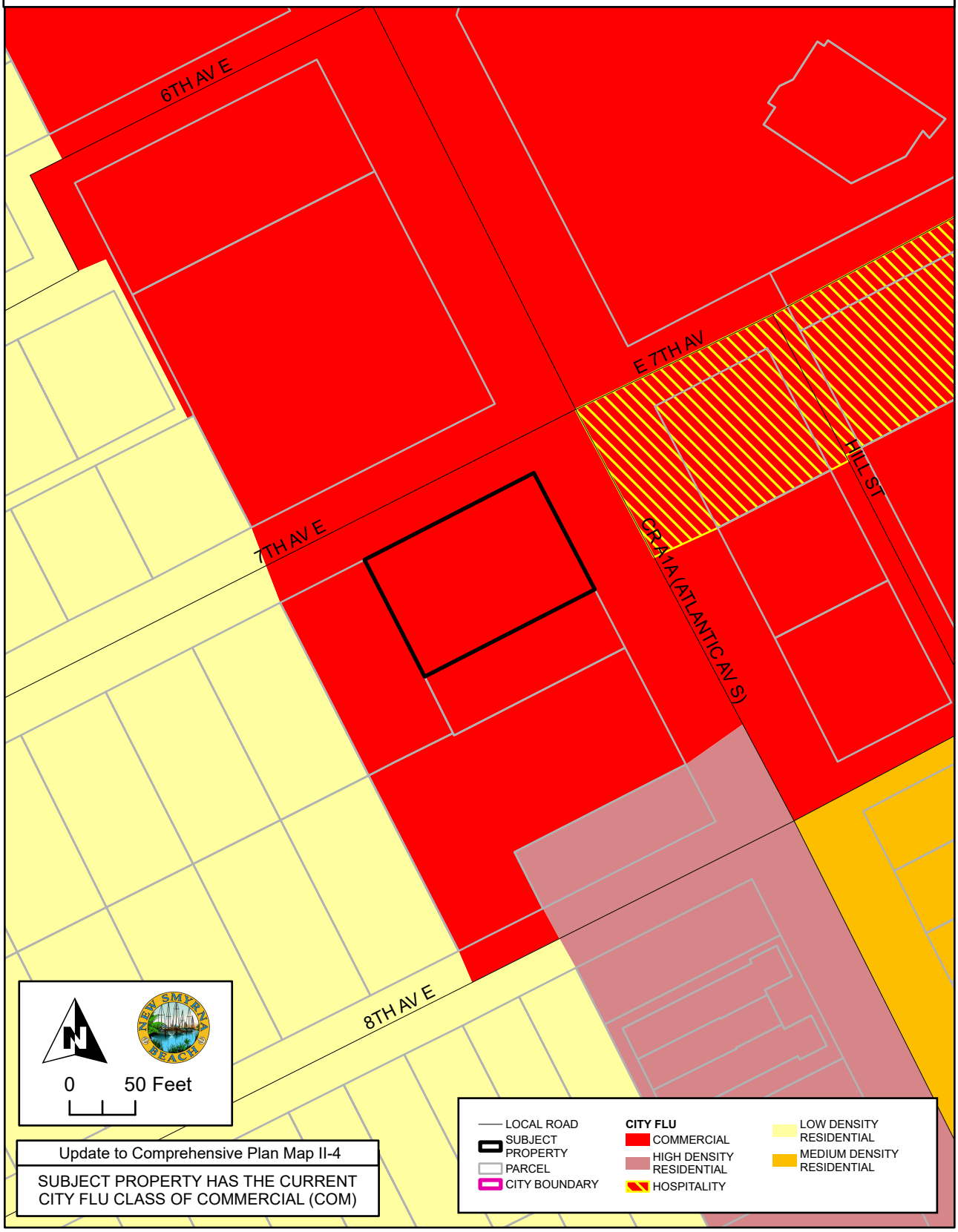
Landscaping. A landscaping plan is required as described in this LDR.

Deed covenants. The developer shall supply in writing all covenants and restrictions that will govern the maintenance of the open space and other aspects of the project that are necessary for welfare of the project and consistent with the best interest of New Smyrna Beach. Such legal instruments shall be submitted with the site plan and approved by the city legal department prior to issuance of a building permit by the chief building official.

Use of recreational amenities and/or owned facilities incidental to commercial and residential living accommodations. Use of all recreational amenities and/or commonly-owned facilities by the owner, the owner's guests, lessees or invitees, shall be limited to that period of time concurrent with the owner's exclusive right of use, possession and occupancy of the residential unit. It shall be unlawful for any person to represent by contract for purchase, promotional material, advertising or any other public statement that amenities and/or commonly owned facilities may be used contrary to the requirements of the New Smyrna Beach land development regulations. This subsection does not prohibit the establishment of permitted accessory uses at commonly owned facilities if such uses are in compliance with all the other requisites required by the New Smyrna Beach land development regulations.

EXISTING FUTURE LAND USE

Z-1-24



Update to Comprehensive Plan Map II-4

SUBJECT PROPERTY HAS THE CURRENT CITY FLU CLASS OF COMMERCIAL (COM)

EXHIBIT H

City Comprehensive Plan

Article II Future Land Use Element

Comprehensive Plan Zoning matrix

Table II-5 Residential Zoning

Zoning District		Maximum-Density[1] (dwelling units per acre)	Future Land Use Category[2]
RE	Residential Estate	1.0	Residential Estate
R-1	Single-Family Residential	3.6	Low-Density Residential
R-2	Single-Family Residential	5	Low-Density Residential
R-2A	Single-Family Detached and Attached Residential	8.0	Medium-Density Residential
R-3	Single-Family Residential	7.6	Medium-Density Residential
	Two-Family Residential		
R-3A	Single-Family Zero Lot Line Residential	8	Medium-Density Residential
	Two-Family Residential		
	Two-Family Residential (east of Atlantic Avenue)	5.8	
R-3B	Single-Family Residential	7.6	Medium-Density Residential
R-4	Single-Family Residential	8.0 or 8.7	Medium- or High-Density Residential
	Two-Family Residential	11.6	High-Density Residential
	Multi-Family Residential	12.0 - 18.0	High-Density Residential
R-5	Single-Family Residential	8.0 or 8.7	Medium- or High-Density Residential
	Two-Family Residential	11.6	High-Density Residential
	Multi-Family Residential	12.0 - 18.0	High-Density Residential
R-6	Single-Family Residential	8.0 or 8.7	Medium- or High-Density Residential
	Two-Family Residential	11.6	High-Density Residential
	Multi-Family Residential	12.0 - 18.0	High-Density Residential
MH-1	Mobile Home Park		Medium-Density Residential
MH-2	Manufactured Housing Subdivision		Low-Density Residential
MU	Mixed Use (Central Business District)	12.0/18.0	Mixed Use
B-2	Neighborhood Business	12.0/18.0	Commercial
B-3	Highway Service Business	12.0/18.0	Commercial
B-4	Ocean Commercial	12.0/18.0	Commercial
B-5	Planned Shopping Center	12.0/18.0	Commercial
B-6	Medical-Professional	12.0/18.0	Commercial
B-6A	Limited Medical-Professional	12.0/18.0	Commercial
PUD	Residential Planned Unit Development	5.0 or 8.0 or 12.0/18.0	Low-, Medium-, High-Residential

BOUNDARY SURVEY

LEGAL DESCRIPTION:

LOTS 1 AND 2, BLOCK G, AUSTIN CORONADO BEACH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGE 83, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

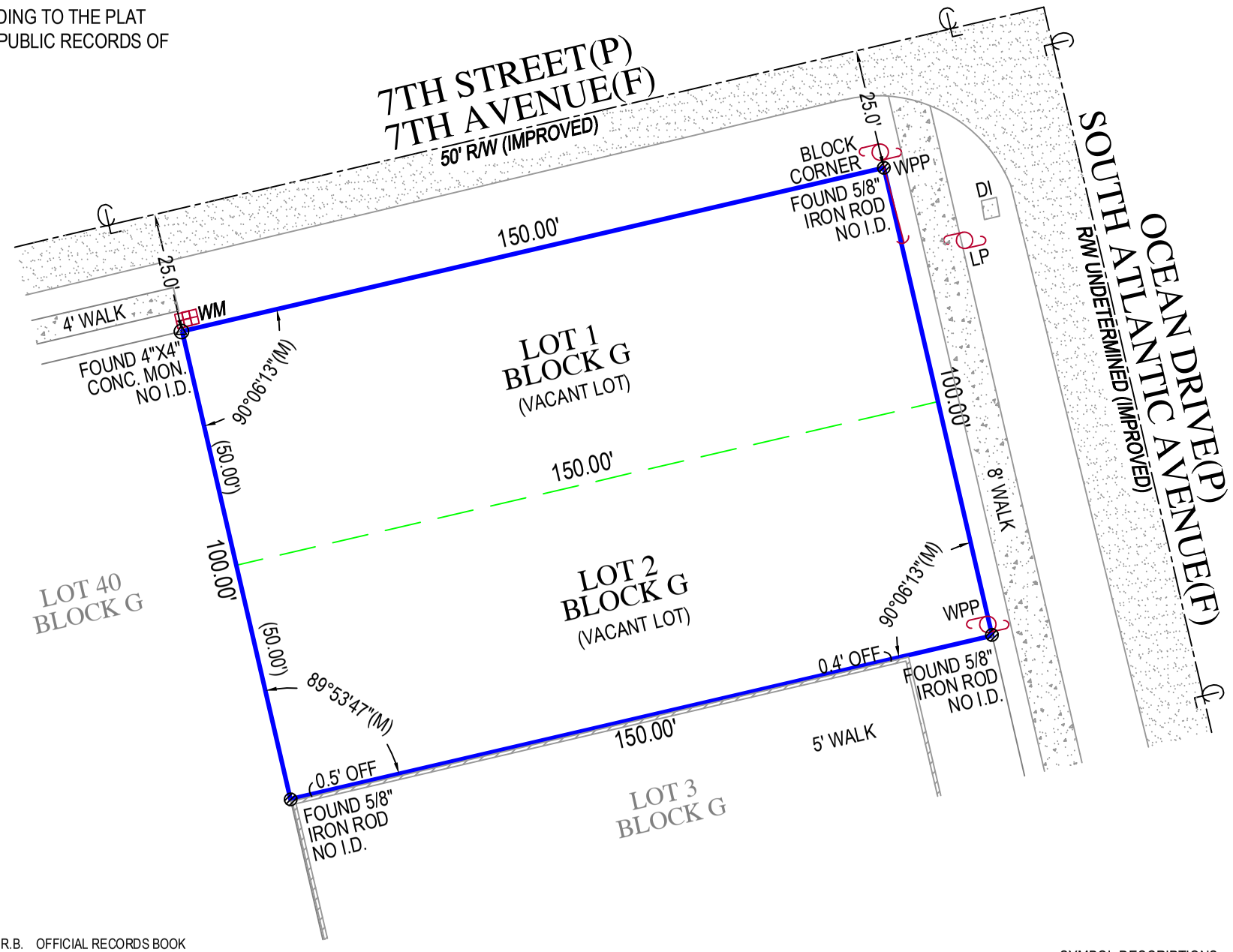
CERTIFIED TO:

COMMUNITY NUMBER: 125132
PANEL: 0544 SUFFIX: J
F.I.R.M. DATE: N/A
FLOOD ZONE: X

FIELD WORK: 10/27/2023

PROPERTY ADDRESS:
XXX SOUTH ATLANTIC AVENUE
NEW SMYRNA, FL 32169

SURVEY NUMBER: 609740
CLIENT FILE NUMBER: N/A



SCALE 1"=30'

SURVEY NOTES
SUBJECT PROPERTY WAS VACANT AT THE TIME OF SURVEY.

WPP = WOOD POWER POLE
LP = LIGHT POLE
DI = DRAINAGE INLET

ABBREVIATION DESCRIPTION:

A.E.	ANCHOR EASEMENT	F.F. EL.	FINISH FLOOR ELEVATION	O.R.B.	OFFICIAL RECORDS BOOK
A/C	AIR CONDITIONER	F.I.P.	FOUND IRON PIPE	(P)	PLAT
B.M.	BENCH MARK	F.I.R.	FOUND IRON ROD	P.B.	PLAT BOOK
B.R.	BEARING REFERENCE	F.P.K.	FOUND PARKER-KALON NAIL	P.C.	POINT OF CURVATURE
(C)	CALCULATED	(L)	LENGTH	P.C.C.	POINT OF COMPOUND CURVE
Δ	CENTRAL / DELTA ANGLE	L.A.E.	LIMITED ACCESS EASEMENT	P.O.B.	POINT OF BEGINNING
CH	CHORD	L.M.E.	LAKE MAINTENANCE EASEMENT	P.O.C.	POINT OF COMMENCEMENT
(D)	DEED / DESCRIPTION	(M)	MEASURED / FIELD VERIFIED	P.R.C.	POINT OF REVERSE CURVE
D.E.	DRAINAGE EASEMENT	M.H.	MANHOLE	P.T.	POINT OF TANGENCY
D.H.	DRILL HOLE	N&D	NAIL & DISK	R/W	RIGHT-OF-WAY
D/W	DRIVEWAY	N.R.	NOT RADIAL	(R)	RADIAL / RADIUS
E.O.W.	EDGE OF WATER	N.T.S.	NOT TO SCALE	S.I.R.	SET IRON ROD
F.C.M.	FOUND CONCRETE MONUMENT	O.H.L.	OVERHEAD UTILITY LINES	T.O.B.	TOP OF BANK
				U.E.	UTILITY EASEMENT

SYMBOL DESCRIPTIONS:

= CATCH BASIN	= MISC. FENCE
= CENTERLINE ROAD	= PROPERTY CORNER
= COVERED AREA	U.B. = UTILITY BOX
+ X.XX = EXISTING ELEVATION	U.P. = UTILITY POLE
= HYDRANT	WM = WATER METER
= MANHOLE	= WELL
= METAL FENCE	= WOOD FENCE

GENERAL NOTES:

1) LEGAL DESCRIPTION PROVIDED BY OTHERS
2) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS OR OTHER RECORDED ENCUMBRANCES NOT SHOWN ON THE PLAT.
3) UNDERGROUND PORTIONS OF FOOTINGS, FOUNDATIONS OR OTHER IMPROVEMENTS WERE NOT LOCATED.
4) WALL TIES ARE TO THE FACE OF THE WALL AND ARE NOT TO BE USED TO RECONSTRUCT BOUNDARY LINES.
5) ONLY VISIBLE ENCROACHMENTS LOCATED.
6) DIMENSIONS SHOWN ARE PLAT AND MEASURED UNLESS OTHERWISE SHOWN.
7) FENCE OWNERSHIP NOT DETERMINED.
8) ELEVATIONS INDICATED HEREON ARE IN FEET AND DECIMALS REFRENCED TO N.A.V.D. 1988
9) THIS SURVEY HAS BEEN COMPLETED FOR A MORTGAGE TRANSACTION, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES. NO DESIGN OR CONSTRUCTION SHALL BE BASED UPON THIS SURVEY WITHOUT APPROVAL FROM TARGET SURVEYING PRIOR TO SUCH USE. TARGET SURVEYING ASSUMES NO RESPONSIBILITIES FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
10) IN SOME INSTANCES, GRAPHIC REPRESENTATIONS HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE RELATIONSHIPS BETWEEN PHYSICAL IMPROVEMENTS AND/OR LOT LINES. IN ALL CASES, DIMENSIONS SHALL CONTROL THE LOCATION OF THE IMPROVEMENTS OVER SCALED POSITIONS.

REVISIONS:

LB #7893
SERVING FLORIDA
6250 N. MILITARY TRAIL, SUITE 102
WEST PALM BEACH, FL 33407
PHONE (561) 640-4800
STATEWIDE PHONE (800) 226-4807
STATEWIDE FACSIMILE (800) 741-0576
WEBSITE: http://targetsurveying.net

TARGET
SURVEYING, LLC

SURVEYORS CERTIFICATE
I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY PREPARED UNDER MY DIRECTION. NOT VALID WITHOUT AN AUTHENTICATED ELECTRONIC SIGNATURE AND AUTHENTICATED ELECTRONIC SEAL OR A RAISED EMBOSSED SEAL AND SIGNATURE.

STEVEN D. MARSHALL
LICENSE NO. 6376
STATE OF FLORIDA
PROFESSIONAL SURVEYOR
Digitally signed by STEVEN D. MARSHALL
Date: 2023.10.31 13:56:53 -05'00'

(SIGNED)

STEVEN D MARSHALL
PROFESSIONAL SURVEYOR AND MAPPER #6376

11/7/2023 9:13:11 AM Instrument #2023227099 #1 Book:8481 Page:1886
Doc Stamps $2,817.50 Transfer Amt $402,500.00

Exhibit J

Prepared by and return to:
Trisha L. Dellinger
Manager
Pyle, Dellinger & Duz, PLLC
1655 N. Clyde Morris Blvd. Suite 1
Daytona Beach, FL 32117
386-615-9007
File No: 11007-001

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM -- §689.02, F.S.)

This Indenture, made this 3rd day of **November, 2023**
Between

Beverly Jean Ross, a married woman

whose post office address is **758 Goodpasture Terrace, Nashville, TN 37221**,
Grantor*, and

MTN Resources, LLC, a Florida limited liability company

whose post office address is **308 N. Orange Street, New Smyrna, FL 32168**,
Grantee*,

WITNESSETH, That Grantor, for and in consideration of the sum of Ten and no/100 ($10.00) Dollars and other good and valuable considerations to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee and Grantee's heirs and assigns forever the following described land, situate, lying and being in **Volusia County** Florida, to-wit:

Lots 1 and 2, Block G, Coronado Beach Realty Co. Subdivision, according to the map or plat thereof as recorded in Plat Book 5, Page 83, Public Records of Volusia County, Florida.

Parcel Identification Number: 7415-04-39-0010

Grantor warrants that at the time of this conveyance, the subject property is not the Grantor's homestead within the meaning set forth in the Constitution of the State of Florida, nor is it contiguous to or a part of Grantor's homestead property.

SUBJECT TO taxes for the current year and subsequent years. SUBJECT TO easements, conditions and restrictions of record, if any, the mention of which herein shall not operate to reimpose same.

and Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Witness Name: Michael Bertrand
Witness Address : 754 Goodpasture Terr
Nashville, TN 37221

Witness Name: Sheri Browne
Witness Address : 807 Gen George Patton Rd
Nashville, TN 37221

Beverly Jean Ross

State of Tennessee
County of Davidson

The foregoing instrument was acknowledged before me by means of [X] physical presence or [_] online notarization, this 3rd day of November, 2023 by Beverly Jean Ross, who [_] is personally known or [X] has produced a driver's license as identification.

[Notary Seal]

BRENDA AVILA
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Notary Public

Printed Name: Brenda Avila

My Commission Expires: May 9th, 2027

LEGAL DESCRIPTION

Address

Southwest corner of East 7th Avenue and South Atlantic Avenue, New Smyrna Beach, Florida 32168

Parcel Number

7415-04-39-0010

AltKey Number

3791886

Metes and Bounds by Pyle, Dellinger & Duz, PLLC

LOTS 1 AND 2, BLOCK G, CORONADO BEACH REALTY CO. SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOL 5, PAGE 83, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

ZT-3-24: REQUEST FOR A LAND DEVELOPMENT REGULATION TEXT AMENDMENT TO REMOVE THE *HOMESTEAD* REQUIREMENT FOR WEDDING VENUES IN THE A-2, AGRICULTURE ZONING DISTRICT

July 1, 2024

Background:

A. Applicant: Joseph Bierworth, 2645 Bravo V Circle, Port Orange, FL 32128

B. Request: Approval of amendment to Section 504.04 of the City's Land Development Regulations (LDR), to no longer require wedding venues in the A-2 Agriculture zoning district (A-2) to be homesteaded.

Exhibits used in this report:

Exhibit A: A-2 zoning map

Exhibit B: Strike thru Version

Exhibit C: Clean Version

Findings:

A. This application is being brought by the owner of Bending Branch Ranch, a wedding and event venue at 1711 Martin Dairy Road. The applicant recently purchased the property and operates a wedding venue. At the time of purchase, the applicant was not aware of the homesteading requirement and was later advised by personal legal council that homesteading would not be in their best interest.

B. Per the City's LDR, the intent of the A-2 is "to preserve and protect rural areas of the city that have some agricultural value, but which are also suitable for rural single-family living."

C. Wedding venues are permitted as conditional uses in the A-2, meaning if specific

conditions are met, the use is thus permissible. The current conditions include:

(1) Applicants shall be limited to homestead resident(s) living on the premises.

(2) The property shall be at least 5 acres in size.

(3) Overnight stays or camping activities shall be prohibited.

(4) The hours of operation will be limited to the following periods:

(a) Thursday from 12:00 p.m. to 10:00 p.m.

(b) Friday and Saturday from 4:00 p.m. to Midnight.

(c) Sunday from 2:00 p.m. to 8:00 p.m.

(5) All artificial lights shall be directed away from adjoining properties.

(6) Applicant shall submit a parking plan showing the location of all off-street parking spaces, including information regarding the materials used for the parking spaces and whether any additional landscaping will be installed. The parking plan shall be reviewed and approved by planning and engineering staff.

(7) Venues that provide 25 or fewer parking spaces shall require Major Class I site plan approval. If the number of proposed parking spaces exceeds 25, Class II site plan approval shall be required.

D. The Conditional Use for a Wedding Venue in the A-2 zoning district, and homesteading condition, were proposed through a zoning text amendment by the original property owner who started the Bending Branch Ranch wedding venue and lived onsite.

E. The LDR defines a conditional use as “a use permitted in a particular zoning district when it is shown that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving authority.

F. To be homesteaded, a property owner must own and occupy the house as their

permanent residence. In this instance, the applicant purchased the business but resides in Port Orange.

G. If the text amendment is approved, homesteading will no longer be required. All the other conditions will still apply.

Recommendations

Staff recommends the Planning and Zoning Board give a positive recommendation to the City Commission to **approve** the proposed changes to the LDR, removing the homesteading condition to operate a wedding venue in the A-2 zoning district.

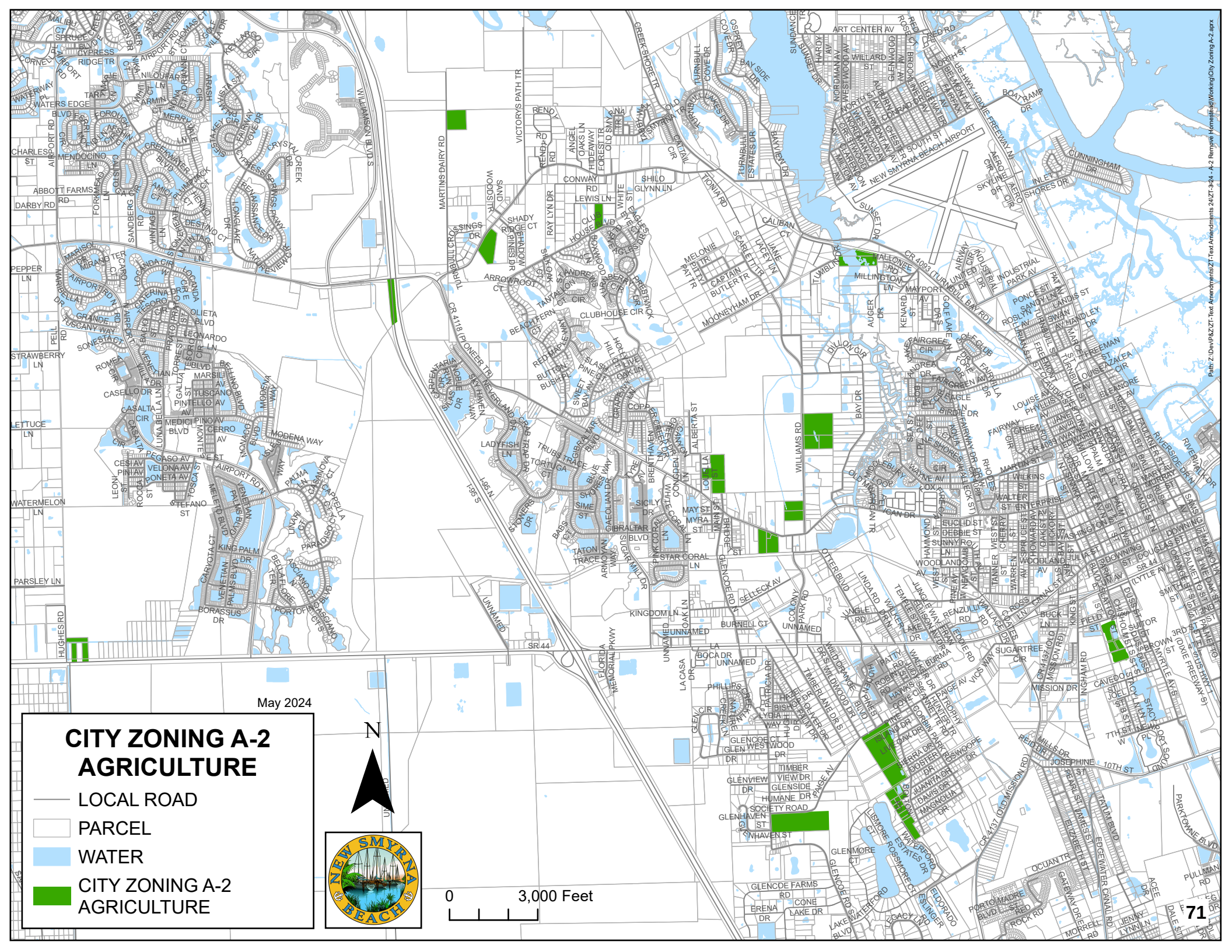
Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Jake Baker - Senior Planner

Attachments:

Exhibit A A-2 Zoning Map.pdf
Exhibit B City A-2 Zoning strike through.pdf
Exhibit C City A-2 Zoning clean version.pdf


May 2024
CITY ZONING A-2
AGRICULTURE
LOCAL ROAD
PARCEL
WATER
CITY ZONING A-2
AGRICULTURE
N
0
3,000 Feet
NEW SMYRNA BEACH
Path: Z:\Dev\P&Z\ZT-Text Amendments\ZT-Text Amendments 24\ZT-3-24 - A-2 Remove Homestead\Working\City Zoning A-2.aprx

A-2, AGRICULTURE DISTRICT **Ord. #24-00**

Intent:
The purpose and intent of the A-2, Agriculture District, is to preserve and protect rural areas of the City that have some agricultural value, but which are also suitable for rural single-family living.

Permitted Principal Uses and Structures:
In the A-2, Agriculture District, no premise shall be used except for the following uses and their customary accessory uses or structures:

Apiaries
Essential Utility service
Fire Stations
Fish, Hunting, or Non-Profit Organization Camps
Hobby Breeder
Home Occupation
Open agricultural uses such as field crops, tree crops, fern crops, grazing land, grass land, and pastures
Parks and Recreation Areas
Pisciculture
Public Uses not listed as a permitted principal use
Public Utility Uses and Structures
Single Family Standard or Manufactured Dwelling
Riding Stables (minimum parcel size requirement of 5 acres)
Wormraising

Permitted Accessory Uses:
Fruit and Vegetable Stands
Garages
Gazebos
Incidental Uses
Non-residential agricultural buildings and recreation facilities related to the permitted use
Storage Sheds

Conditional Uses:

Wedding Venues Subject to the following conditions: **Ord. 57-17**

~~(1) Applicants shall be limited to homestead resident(s) living on the premises~~
(1~~2~~) The property shall be at least 5 acres in size
(2~~3~~) Overnight stays or camping activities shall be prohibited
(3~~4~~) The hours of operation will be limited to the following periods:

(a) Thursday from 12:00 p.m. to 12:00 a.m.
(b) Friday and Saturday from 4:00 p.m. to 2:00 a.m.
(c) Sunday from 2:00 p.m. to 8:00 p.m.

(5) All artificial lights shall be directed away from adjoining properties
(6) Applicant shall submit a parking plan showing the location of all off-street parking spaces, including information regarding the materials used for the parking spaces and whether any additional landscaping will be installed. The parking plan shall be reviewed and approved by planning and engineering staff.
(7) Venues that provide 25 or fewer parking spaces shall require Major Class I site plan approval. If the number of proposed parking spaces exceeds 25, Class II site plan approval shall be required.

Permitted Special Exceptions:

Animal Hospitals, Veterinary Clinics
Excavations (See Section 801.15 of this LDR)
Farm Supply Stores
Farmworker Living Facility associated with a bona fide agricultural use provided:

(a) The minimum floor area per dwelling shall be 720 square feet.
(b) No detached dwelling used in the farmworker living facility shall be closer than 50 feet to any other detached dwelling.
(c) No dwelling used as a farmworker living facility shall be closer than 100 feet to any property line of the premises on which it is placed.
(d) If not already in existence, a visual screen of natural plant materials meeting the requirements of Section 604.05 F. located between the dwellings and all adjoining property lines, shall be constructed and maintained.
(e) Potable water and sewage disposal facilities shall be in compliance with all applicable provisions of Florida law and the City's comprehensive plan.
(f) The area between the ground and the floor of a mobile home dwelling used as a farmworker living facility shall be enclosed with skirting.
(g) No subsequent expansion of a farmworker living facility as shown on the approved site plan for the special exception for shall be allowed unless another special exception for the expansion is approved. However, subsequent decrease of the approved sites are permitted.
(h) The applicant shall provide information to the enforcement official as to the kind of agricultural operation existing on the premises at the time of application for the farmworker living facility.
(i) Dwellings may be arranged in a cluster fashion on the premises. The maximum number of dwellings authorized will be based on the size of the premises, as follows:

Size of Premises	Maximum Dwelling Units Allowed
5 or more acres but less than 20 acres	1
20 or more acres but less than 30 acres	2
30 or more acres but less than 40 acres	3
40 or more acres but less than 50 acres	4
50 or more acres but less than 60 acres	5

60 or more acres but less than 70 acres	6
70 or more acres but less than 80 acres	7
80 or more acres	8

Houses of Worship and Cemeteries provided no principal or accessory building shall be located less than 50 feet from any property line.

Humane Society/animal shelters provided that no building is located closer than 50 feet from the property line.

Kennels

Sawmills and Planing Mills

Dimensional Requirements:

Minimum Lot Size:

Area	5 acres
Width	150 feet

Minimum Yard Size:

Front	50 feet
Rear Yard	50 feet
Side Yard	25 feet
Waterfront Yard	50 feet

Maximum Building Height:

Ninety-five (95) feet

Maximum Lot Coverage:

The total lot area covered with principal and accessory buildings shall not exceed 35%

Screen Enclosures

As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent (10%) building coverage for only a screen pool enclosure if the following conditions are met:

1. A screen pool enclosure shall only cover the swimming pool and surrounding pool deck and shall have a roof and walls consisting entirely of screening; and
2. There shall be no variances granted to exceed the maximum building coverage or additional coverage allowed for screen enclosures.

Ord. #21-09

Minimum Floor Area:

750 square feet of livable area

Off-Street Parking and Loading Requirements:

Off-street parking shall be provided as required in this LDR.

Skirting Requirements for Mobile Home Dwelling:

The area between the ground and floor of the mobile home dwelling shall be enclosed with skirting.

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Hobby Breeder
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THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

V-4-24 518 N. RIVERSIDE DRIVE, A VARIANCE OF 4'-6" TO ALLOW A SHED TO REMAIN 6" FROM THE REAR PROPERTY LINE.

July 1, 2024

Background:

A. Applicant and Property Owner: David and Linda Hudick, 518 N. Riverside Drive, New Smyrna Beach, FL 32128

B. Request: An after-the-fact variance of 4'-6" to allow a shed remain 6" from the rear property line

C. Site Information: The subject property is a vacant lot located on the west side of N. Riverside Drive, between Mary Avenue and Ronnoc Lane. The parcel is zoned R-1, Single-Family Residential.

D. Tax I.D. Number: 7441-30-06-0031

Exhibits used in this report:

Exhibit A: Location Map

Exhibit B: Aerial Map

Exhibit C: Site Photos

Exhibit D: Letter to Code Compliance

Exhibit E: Support Letter

Findings:

A. In 2016, a new house was built on the subject parcel, replacing an older structure that had fallen into disrepair and was razed in 2011. Variances were granted to allow the house and two-story garage in the rear to encroach into the side yard setbacks. The

garage was built 12' from the rear property line. A 9'-6"-wide shed was added in 2020 behind the garage, located 6" from the rear property line.

B. Per the applicant, a contractor was hired to install the shed. Given the layout of their parcel, it was not feasible to bring the shed through their lot, so they contacted the resident behind them to seek permission to bring the shed through their lot, which was granted. Once in place, a vinyl fence was installed along the rear property line, with 6" between the shed and the property line. The property owners were under the impression that the contractor received permits to put in the shed, and everything was done according to City regulations. This was not the case. Please see **Exhibit C** for photos of the location of the shed.

C. Per Section 804.03., accessory structures may have a setback of 5', provided the structure is under 200 square feet. In the R-1 zoning district, the primary structure on an R-1 zoned lot has a setback of 10'.

D. The LDR requires variance requests to meet all of the following criteria. The applicant's responses are *italicized*. Staff's responses are in **bold.**

a. Special circumstances exist which are peculiar to the subject property owner's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings in the same district or vicinity.

The shed was brought in with what we thought had all of the permits and legalities. We spoke with the shed company and the owner came out to our property to see if what we wanted to purchase would be acceptable. He assured us that he would take care of everything and that we had room for the shed in the back yard. There was a sign in the yard of the house directly behind us. At the time there was a chain link fence on the south and west side of our property that we wanted to remove and replace with a vinyl fence. We contacted, by phone, the name of the person on the sign. I asked her if she would contact the owners for us and give them our phone number concerning the fence replacement and bringing the shed into our back yard thru their yard. We received a phone call saying that was acceptable. None of this was in writing and I have no documentation showing who it was that I spoke with. We thought we were justified in the addition of the shed.

The subject parcel is only 39.6' wide, thus there isn't a lot of space on the parcel to place a shed on this parcel besides behind the existing shed in a location that is not in the way of the property owner's normal use of their yard. This criterion has been met.

b. Strict application of the provisions of the Land Development Regulations would deprive the subject property owner of reasonable rights commonly applicable to other properties in the same district *or* may preclude a benefit to the community in general.

Our property on 518 N Riverside Drive was purchased January 2020. The fence was a chain link fence with many tree trunks, branches, weeds, plants entwined throughout the fence. We wanted to replace this fence due to neglect and condition. We wanted privacy and safety for the pool we intended to add to the property. Thinking the shed had been permitted and noticing many sheds and stand-alone garages (close to the property lines) on other properties in our area we felt that this was acceptable. Because of the dimensions of our property and our neighbors' trees on our property line we were unable to bring the shed in from the front or side of our property. Since we were assured that we had permission to enter the neighbor's property we removed the old fence and they delivered the shed from Faulkner Ave.

Given the narrowness of the lot, 39.6', there is very little space to place a shed that isn't in the way of a normally functioning rear yard. The R-1 zoning district requires setbacks of 20', with no side closer than 8', thus putting a shed anywhere besides behind the garage would be difficult. This criterion has been met.

c. The special circumstances and conditions that exist do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner(s) created, to any degree, the hardship that is the subject of the variance request.

We are requesting the variance for the shed to remain in the location west of the back garage. It is hidden from the north, south and east from N Riverside Drive. It is noticeable from the backyard of the property behind our property. We thought we were thorough in requesting (from the owners) bringing in a shed. Our property is land locked. To now remove this shed we would have to take down our fence and several of our neighbor's trees on the north side.

The applicants did not intentionally create the special circumstances they currently face. They hired a contractor who moved the shed onto their property from the parcel behind theirs, which fronts on Faulkner Avenue. Per the applicants, they were under the impression that this was all permitted with the City, as the shed has now been in place for four years.

d. That granting of the variance(s) will not cause substantial detriment to the public welfare or impair the purposes and intent of the Land Development Regulations.

The shed is mostly hidden. It has all of the hurricane safety features. It is not sitting on a concrete pad. It sits up above ground so that water may still flow naturally.

The shed is almost entirely hidden from view. Unless one was looking at an aerial photograph or was in an adjacent yard, one would not know the shed was there. While it is close to the property line, there are no improvements in the neighboring yard anywhere near the shed, and as noted, the shed is elevated, thus runoff can remain on site. This criterion has been met.

e. That granting of the variance will not constitute a grant of special privilege that is denied by the Land Development Regulations to other lands, structures or buildings in the same district.

We are requesting that the variance is granted. The shed is painted to match our home. Several other properties in our area seem to have structures close to the property line.

If this request did not involve a shed that has already been in place for 4 years, staff could not support a shed to be located 6" from a property line. That being said, as noted above, the applicant was under the impression that their shed was approved by the city and all the necessary permits were in place to allow it to be where it is located.

Recommendation: There is approximately 8" that the shed could be shifted so it would be located at least 12" from the rear property line. As the shed has been in its current location for years without seemingly being a problem for anyone, staff recommends **approval of** the variance request. If the Planning and Zoning Board feels that the shed should be moved further east, away from the rear property line, that requirement could be added as condition of approval.

Fiscal Analysis:
N/A

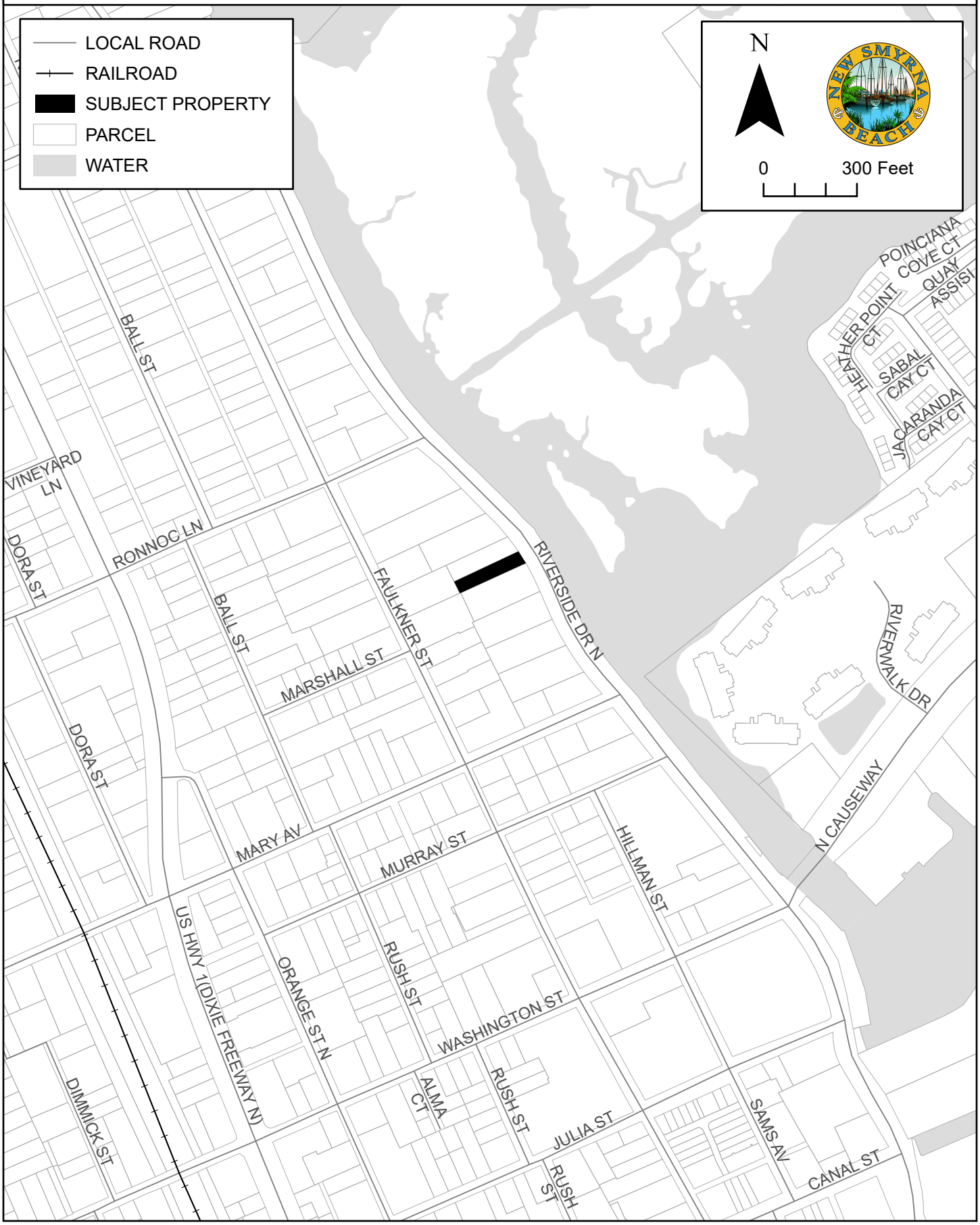
Strategic Plan Item:
No

Staff Report Created By: Jake Baker - Senior Planner

Attachments:

Exhibit A Location Map.pdf
Exhibit B Aerial Map.pdf
Exhibit C Photos.pdf
Exhibit D Letter to Code Compliance.pdf
Exhibit E Support Letter.pdf

V-4-24: 518 N. RIVERSIDE DRIVE
PARCEL: 7441-30-06-0031 LOCATION MAP



V-4-24: 518 N. RIVERSIDE DRIVE
PARCEL: 7441-30-06-0031 AERIAL MAP



Exhibit C







Code Compliant BoardCase No. CE-0050-2024

Upon notification that the shed placed on the property of 518 N Riverside Drive in 2020 was delivered without a permit we are requesting a variance in order for the shed to remain in current placement.

We thought all legal documents were done by the owner of the shed company.

We are trying to rectify this situation by applying for a variance for the placement of the shed.

We made a call to the phone number on a sign that was the property of 523 Faulkner Street. I requested that they give the owner our number and that we were requesting that the shed be delivered through their property because with the trees on the 2 properties north and south of our property the shed could not be delivered from N Riverside Drive.

We received a return call saying we had permission. The shed was brought in and we added a vinyl fence to surround our property and pool.

Due to the design of the property on 518 N Riverside Drive there is no other location for this shed. In order to move the shed we will need to remove our fence and cut down several trees on our neighbors' property (with their permission).

This was not an intentional error. We thought we had followed thru with requests and necessary permits. We have contacted our neighbors concerning the shed. Most of them did not even realize there was shed in the back and they agree it is not an issue for them. One neighbor knew it was there all along and had no problem. We only have 1 neighbor at this time that we have not been able to speak to personally concerning our shed.

Please give this request all of your consideration.

Thank you,

Dave and Linda Hudick

Dave Hudick
Linda Hudick

Code Compliance Board
City of New Smyrna Beach

RE: Case No. CE-0050-2024
Parcel No. 744130060031

Board Members:

This letter is in response to the violation notice for the case number identified above regarding a shed that was constructed on our property located at 518 N. Riverside Drive, New Smyrna Beach, FL 32168. WE believed that the contractor that constructed the shed on our property had obtained all proper permits. After discussion with city staff, it appears that did not occur. Staff instructed us to obtain signatures from the property owners adjacent to our property at 518 N. Riverside Drive that there are no issues in relation to the shed as constructed on the property. Below are signatures from property owners within 150 feet of our property. We appreciate consideration of this by the Code Compliance Board.

Sincerely,

David C. & Linda C. Hudick

David and Jennifer Lotz
524 N. Riverside Drive

David and Margo Brown
525 Faulkner Street

Richard Hsu
520 N. Riverside Drive

Christopher S. Slizyk Trust
516 N. Riverside Drive

Henry A. and Michele C. Salgado
523 Faulkner Street

Cathy Jo Vaughn
519 Faulkner Street

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

JULY 2024 DEVELOPMENT ACTIVITY REPORT

July 1, 2024

Background:
July2024 Development Activity Report

Fiscal Analysis:
N/A

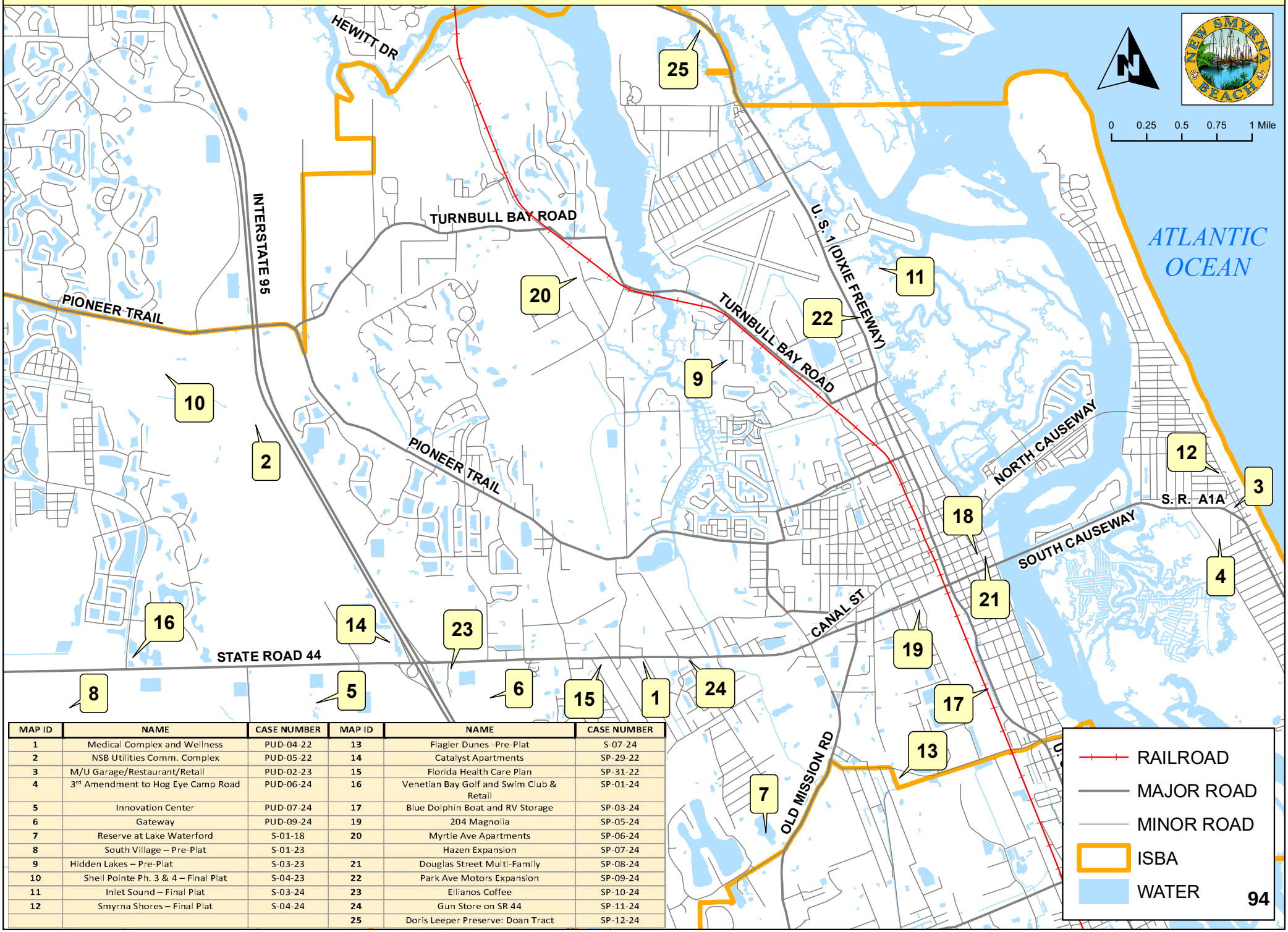
Strategic Plan Item:
No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

Attachments:

FULL REPORT - JULY 2024 Development Activity Report Map - July 2024.pdf
JULY 2024 FULL APPROVED OR UNDER CONSTRUCTION MAP-REPORT revised.pdf

JULY 2024 DEVELOPMENT ACTIVITY REPORT MAP



MAP ID	NAME	CASE NUMBER	MAP ID	NAME	CASE NUMBER
1	Medical Complex and Wellness	PUD-04-22	13	Flagler Dunes -Pre-Plat	S-07-24
2	NSB Utilities Comm. Complex	PUD-05-22	14	Catalyst Apartments	SP-29-22
3	M/U Garage/Restaurant/Retail	PUD-02-23	15	Florida Health Care Plan	SP-31-22
4	3rd Amendment to Hog Eye Camp Road	PUD-06-24	16	Venetian Bay Golf and Swim Club & Retail	SP-01-24
5	Innovation Center	PUD-07-24	17	Blue Dolphin Boat and RV Storage	SP-03-24
6	Gateway	PUD-09-24	19	204 Magnolia	SP-05-24
7	Reserve at Lake Waterford	S-01-18	20	Myrtle Ave Apartments	SP-06-24
8	South Village – Pre-Plat	S-01-23		Hazen Expansion	SP-07-24
9	Hidden Lakes – Pre-Plat	S-03-23	21	Douglas Street Multi-Family	SP-08-24
10	Shell Pointe Ph. 3 & 4 – Final Plat	S-04-23	22	Park Ave Motors Expansion	SP-09-24
11	Inlet Sound – Final Plat	S-03-24	23	Ellianos Coffee	SP-10-24
12	Smyrna Shores – Final Plat	S-04-24	24	Gun Store on SR 44	SP-11-24
			25	Doris Leeper Preserve: Doan Tract	SP-12-24

July 2024 Development Activity Report

****Contact Planning Department at (386) 410-2830 with any questions regarding the DAR*****

Map ID#	Project Name	Project Number	Location	Description	Final Approval By	Current Status	Next Step
1	Medical Complex and Wellness Center	PUD-0004-2022	190 S. Wild Orange Dr.	Medical Office	Future City Commission Meeting	Submitted for Staff Review	Applicant to Resubmit
2	New Smyrna Beach Utilites Commission	PUD-0005-2022	Intersection of S.R. 44 and Interstate 95	Commercial/Utility Uses	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
3	M/U Garage/Restaurant/Retail	PUD-0002-2023	1300 S. Atlantic Avenue	Garage/Restaurant /Retail	City Commission Meeting June 25, 2024	Staff preparing for CC agenda	City Commission Approval
4	3rd Amendment to Hog Eye Camp Road	PUD-0006-2024	Saxon Drive and E. 7th Avenue	Amend Agreement to allow Single Family Residential	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
5	Innovation Center	PUD-0007-2024	West of I-95 and South of SR 44	New Mixed-Use with retail, commercial, hotel, restaurant, light industrial, residential	Future City Commission Meeting	Staff preparing for CC agenda	Staff drafting staff report
6	Gateway	PUD-0009-2024	SR 44, East of I-95	New Mixed-Use with retail, commercial, office, restaurant and Gastation	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
7	Reserve at Lake Waterford	S-1-18	Eslinger Road	45 Lot Residential Subdivision	City Commission Meeting June 25, 2024	Staff preparing for CC agenda	City Commission Approval
8	South Village - Pre Plat	S-0001-2023	State Road 44	Commercial and Residential	City Staff	Staff Comments Issued	Applicant to Resubmit
9	Hidden Lakes - Pre Plat	S-0003-2023	Turnbull Bay Road/Wispering Pines Drive	132 Residential Units	City Staff	Staff Comments Issued	Applicant to Resubmit
10	Shell Pointe Phase 3&4 - Final Plat	S-0004-2023	3350 Pioneer Trail	385 Residential Units	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
11	Inlet Sound	S-0003-2024	N. Dixie Freeway and Inlet Shores Drive	Proposed 3 residental lots	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
12	Smyrna Shores	S-0004-2024	S. Atlantic Avenue and Maralyn Avenue	Proposed 7 single-family residental lots	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
13	Flagler Dunes (Pre-Plat)	S-0007-2024	West of S. Myrtle Avenue and South Side of 10th Street	79 Unit Multifamily Townhoms	City Staff	Submitted for Staff Review	Staff to Issue Comments

SP - Site Plan, S - Subdivision,
PUD - Planned Unit Development

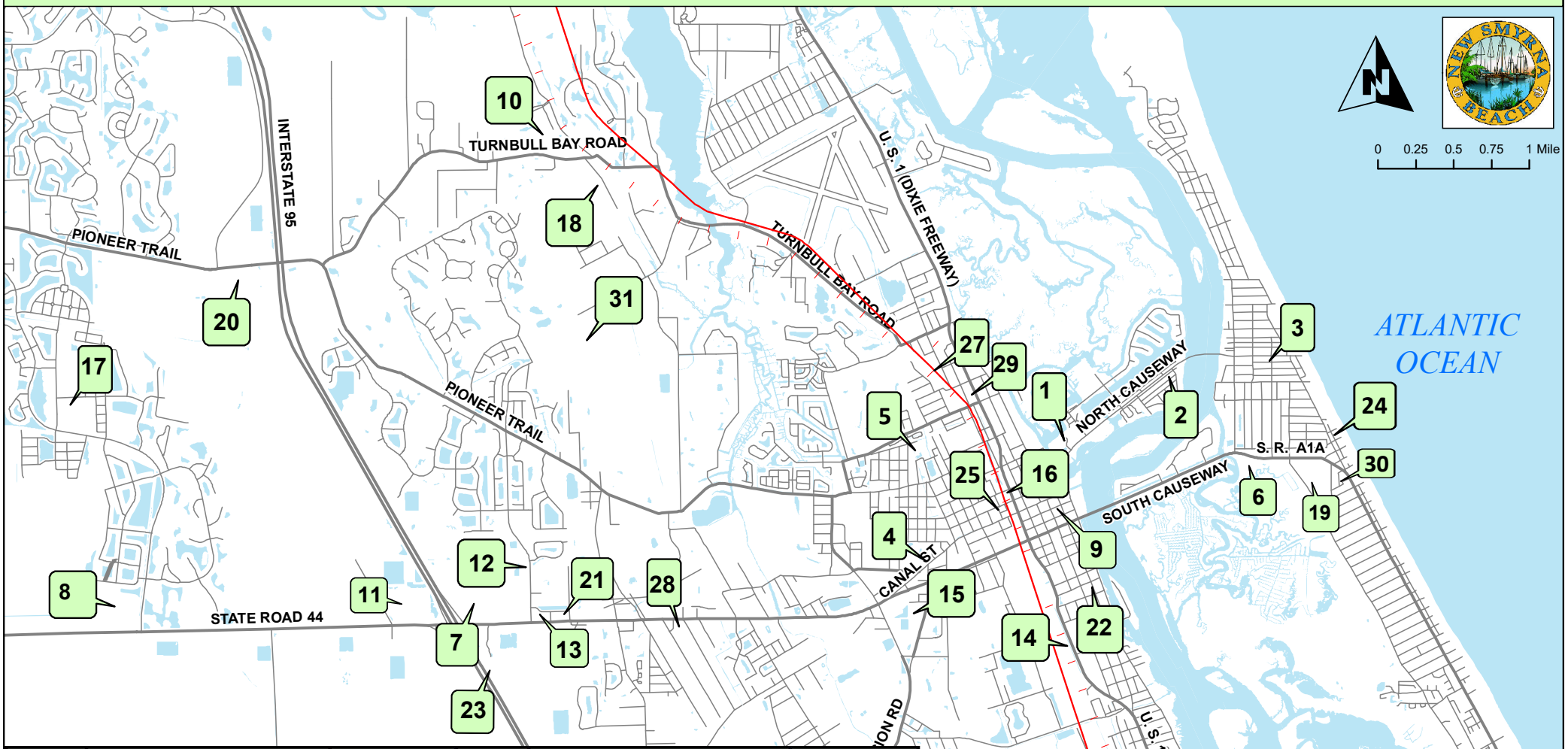
July 2024 Development Activity Report

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Map ID#	Project Name	Project Number	Location	Description	Final Approval By	Current Status	Next Step
14	Catalyst Apartments	SP-0029-2022	Regency/Wal-mart PUD - SR 44	279 Multifamily Units with 558 parking spaces	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
15	Florida Health Care Plan	SP-0031-2022	Timberlane/ SR44 & Oliver Drive	12,713 SF Medical Office and Pharmacy Building	City Staff	Staff Comments Issued	Applicant to Resubmit
16	Venetian Bay Golf and Swim Club & Retail	SP-0001-2024	State Road 44 and Airport Road	Two 2-Story Commercial Buildings	City Staff	Staff Comments Issued	Applicant to Resubmit
17	Blue Dolphin Boat and RV Storage	SP-0003-2024	S. of 3rd Street extended West of S. Dixie Freeway	150 Boat/RV Storage Spaces	Future Planning and Zoning Board Meeting	Staff Comments Issued	Applicant to Resubmit
18	204 Magnolia	SP-0005-2024	Southwest Corner of Downing Street and Magnolia Street.	Construct and stripe additional on-site parking and landscaping	City Staff	Staff Comments Issued	Applicant to Resubmit
19	Myrtle Ave Apartments	SP-0006-2024	Between S. Duss Street and S. Myrtle Ave.	2 proposed 3 story (12) unit apartment building	City Staff	Staff Comments Issued	Applicant to Resubmit
20	Hazen Expansion	SP-0007-2024	1599 Tionia Road	Proposed 2 office/industrial building	City Staff	Submitted for Staff Review	Staff to Issue Comments
21	Douglas Street Multi-family	SP-0008-2024	118 Douglas Street	Proposed 6 story 8 unit residential condos	City Staff	Submitted for Staff Review	Staff to Issue Comments
22	Park Ave Motors Expansion	SP-0009-2024	1313 N. Dixie Freeway	2 proposed commercial buildings	City Staff	Submitted for Staff Review	Staff to Issue Comments
23	Ellianos Coffee	SP-0010-2024	110 Floirda Memorial Pkwy	800 sf Coffee Restaurnat with Drive-thru	City Staff	Submitted for Staff Review	Staff to Issue Comments
24	Gun Store on SR 44	SP-0011-2024	176 Corbin Park Rd	9,598 sf 2 Story Commercial Retail Building	City Staff	Submitted for Staff Review	Staff to Issue Comments
25	Doris Leeper Preserve: Doan Tract	SP-0012-2024	3234 N Dixie Freeway	Additional Amenities and Entranceways at existing nature preserve	City Staff	Submitted for Staff Review	Staff to Issue Comments

SP - Site Plan, S - Subdivision,
PUD - Planned Unit Development

JULY 2024 PROJECTS APPROVED AND/OR UNDER CONSTRUCTION MAP



MAP ID	NAME	CASE NUMBER	MAP ID	NAME	CASE NUMBER
1	Riverwalk Ph. 3	SP-03-18	18	Tionia Storage	SP-29-23
2	North Causeway Townhomes	S-05-18	15	St. James Estates – Final Plat	S-01-22
3	300 Jessamine Ave	SP-27-18	19	Oakwiler Townhomes	SP-23-22
4	Donatti Boat Storage	SP-05-20	20	Shell Pointe Phase 1&2	S-03-22
5	Greenlawn Manor Senior Housing	SP-10-21	21	Del Taco	SP-06-23
6	Hyatt Place Hotel	SP-30-18	22	J&C Air Handling Systems	SP-09-23
7	Advent Health	PUD-2-20	23	Medical City Park	SP-05-22
8	The Palms Phase 6	S-05-21	24	Carwile Beach Parking Lot	SP-10-23
9	204 Magnolia Street	SP-03-22	25	FOA Medical Plaza	SP-03-23
10	Florida Days Ph 4	S-04-21	26	Seaview Terrace	SP-01-23
11	O'Reilly	SP-32-21	27	707 Cheston Street	SP-15-23
12	The Cove	SP-25-21	28	Village Square MDA/PUD	PUD-03-21
13	Arby's	SP-21-22	29	Davis Bros Warehouse	SP-24-22
14	Blue Dolphin Boat/RV Storage	PUD-02-22	18	Tiona Warehouse	SP-19-23
15	St. James Estates	SP-11-22	30	Bless Gas Station	SP-33-21
16	218 N. Dixie Freeway	SP-26-22	31	Rolling Hills	S-10-18
17	Cordova	SP-04-23			

JULY 2024 PROJECTS APPROVED AND/OR UNDER CONSTRUCTION MAP

Map ID #	Project Name	Project Number	Location	Description	Final Approval Date	Final Approval By	Current Status
1	Riverwalk Ph. 3	SP-03-18	99 N Causeway	Residential Condo 112 units	December 3, 2018	Planning and Zoning	Under Construction
2	North Causeway Townhomes	S-05-18	N Causeway and Desoto Drive	Residental Townhomes 2 building with 14 units	June 11, 2019	City Commission	Not Under Construction
3	300 Jessamine Ave	SP-27-18	300 Jessamine Ave	36 seat Restaurant	November 4, 2019	Staff Approval	Not Under Construction
4	Donatti Boat Storage	SP-05-20	1245 Canal Street	10 mini-warehouse building and 1 office building	December 8, 2020	Planning and Zoning	Under Construction
5	Greenlawn Manor Senior Housing	SP-10-21	600 Greenlawn St	80 unit 3 story multi-family senor living facility	September 23, 2021	Planning and Zoning	Under Construction
6	Hyatt Place Hotel	SP-30-18	SR A1A and 3rd Ave	114 room hotel facilit, one 4 story building and 8,550 SF one story restaurant with 278 seats	February 7, 2022	Planning and Zoning	Not Under Construction
7	Advent Health	PUD-02-20	NE Corner of SR & I-95	New Medical Center	February 8, 2022	City Commission	Waiting for Site Plan to be submitted
8	The Palms Phase 6	S-05-21	The Palms Subdivision on Airport Rd	209 Single Family Lots	March 8, 2022	City Commission	Under Construction
9	204 Magnolia Street	SP-03-22	204 Magnolia	Restaurant with 2 apartment units	August 18, 2022	Staff Approval	Not Under Construction
10	Florida Days Ph 4	S-01-21	Turnbull Bay Rd. and Creek Shore Trail	307 Single Family Residential Lots	September 13, 2022	City Commission	Not Under Construction
11	O'Reilly	SP-32-21	3193 State Road 44	Autoparts Store	September 15, 2022	Staff Approval	Under Construction
12	The Cove	SP-25-21	306 Sugar Mill Drive	47 Quadplexes of 188 dwellings	October 3, 2022	Planning and Zoning	Under Construction
13	Arby's	SP-21-22	2705 State Road 44	Resturant with drive-thru	November 21, 2022	Staff Approval	Not Under Construction
14	Blue Dolphin Boat/RV Storage	PUD-2-20	S. of 3rd Street extended West of S Dixie Freeway	Boat and RV Storage Facility	January 24, 2023	City Commission	Site Plan submitted for review

15	St. James Estates	SP-11-22	S of SR 44 and Old Mission Rd.	7 Residential Townhouses	March 8, 2023	Planning and Zoning	Not Under Construction
16	218 N. Dixie Fwy.	SP-26-22	218 N. Dixie Freeway	Commercial business	May 3, 2023	Staff Approval	Not Under Construction
17	Cordova (Village Center East	SP-4-23	419 Luna Bella Lane	322 unit apartment complex	May 16, 2023	City Commission Approved	Under Construction
18	Tionia Storage	SP-29-21	1674 Tionia Road	Boat and RV Storage Facility	June 5, 2023	Planning and Zoning	Not Under Construction
15	St. James Estates - Final Plat	S-1-22	S of SR 44 and Old Mission Rd.	31 proposed lots	June 13, 2023	City Commission	Not Under Construction
19	Oakwiler Townhomes	SP-23-22	Saxon Drive North of 7th Ave	77 Town houses units	June 27, 2023	City Commisson Approval	Not Under Construction
20	Shell Pointe Phase 1 &2	S-03-22	3350 Pioneer Trail	Commercial and Residential	June 27, 2023	City Commission	Under Construction
21	Del Taco	SP-06-23	2669 State Road 44	Restaurant with double Drive Thru	August 21, 2023	Staff Approval	Not Under Construction
22	J&C Air Handling Systems	SP-09-23	802 Magnolia	Replacement of Existing Storage Shop	August 21, 2023	Staff Approval	Under Construction
23	Medical City Park	SP-05-22	South of SR 44 and East of I-95	Mixed Use Medical Office and hotel facility	September 5, 2023	Planning and Zoning	Not Under Construction
24	Carwile Beach Parking Lot	SP-10-23	1208 S. Atlantic Ave	86 space parking lot	September 5, 2023	Planning and Zoning	Under Construction
25	FOA Medical Plaza	SP-03-23	617 Canal Street	3,834 SF medical building	September 22, 2023	Staff Approval	Not Under Construction
26	Seaview Terrace	SP-01-23	4430 S. Atlantic Avenue	5 Condominium	October 26, 2023	Staff Approval	Not Under Construction
27	707 Cheston Street	SP-15-23	707 Canal Street	2240 sq ft office and Warehouse	October 31, 2023	Staff Approval	Not Under Construction
28	Village Square MDA/PUD	PUD-03-21	2360 State Road 44	Retail/Office/ Resturant	November 28, 2023	City Commission	Waiting for Site Plan to be submitted
29	Davis Bros Warehouse	SP-24-22	708 N. Dixie Freeway	6,267 SF Warehouse	January 1, 2024	Staff Approval	Under Construction
18	Tiona Warehouse	SP-19-23	1674 Tionia Road	4,800 SF Office and Warehouse	January 9, 2024	Staff Approval	Not Under Construction
30	Bless Gas Station & Convenience Store	SP-23-21	1650 S. Atlantic Ave	Convenience Store and Gas Station	April 2, 2024	Staff Approval	Not Under Construction
31	Rolling Hills	S-10-18	Sugar Mill Drive	194 lot subdivision	May 14, 2024	City Commission	Not Under Construction

THE CITY OF NEW SMYRNA BEACH - DEVELOPMENTAL SERVICES

LAND DEVELOPMENT REGULATIONS SECTION 604.04 LANDSCAPING REQUIREMENTS AMENDMENTS

July 1, 2024

Background:

Over the years staff has identified out of date information within the City's Land Development Regulations. Section 604.04, Landscaping Regulations has been a section of concern with each Development Services Director going back to 2019. Minor amendments had been worked on but never moved forward due to staff turnover and lack of time to dedicate to the project.

Findings:

In mid 2022, VHB Consulting was hired to review and amend section 604.04, Landscaping Requirements. City planning staff (past and current) and VHB consulting staff have worked together on changes being presented, while also highlighting areas for commission input prior to moving forward for final adoption.

Attachments:

1. Landscape Code Recommended Language Strikethrough
2. Landscape Code Table Crosswalk Final
3. Landscape Code Recommended Language Clean

Fiscal Analysis:

N/A

Strategic Plan Item:

No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

Attachments:

Landscape Code Recommended Language Strikethrough
Landscape Code Table Crosswalk Final
Landscape Code Recommended Language Clean

Intent:

It is the intent of this section is to provide minimum standards for landscaping, buffers, and tree protection for the City. The provision and enforcement of these standards enhance the health, safety, and welfare of the citizens of New Smyrna Beach and are designed to meet the following goals:

1. Improving the appearance of the City;
2. Maintaining and protecting property values;
3. Providing an acceptable degree of buffering between abutting property uses;
4. Providing appropriate barriers and relief from traffic, noise, heat, glare, and the spread of dust and debris;
5. Providing for the protection and preservation of trees and native vegetation;
6. Ensuring the local stock of native trees and vegetation is preserved;
7. Encouraging Florida-Friendly landscaping principles into landscape design; and
8. Protect local waterways through the development of environmentally sustainable landscaping practices.

Applicability:

The types of development listed below, unless exempted, shall comply with the requirements of this code:

1. All new construction;
2. Any change of use which results in an increase in the required off-street parking, as determined by the standards in this LDR;
3. All non-residential redevelopment which results in an increased building footprint, reconfiguration or expansion of parking areas (including increasing or decreasing parking spaces), or development of outparcels within an existing shopping center;
4. Clearing of any site, including root-rake clearing, shall be subject to the requirements for tree protection, submittal of a tree survey or a tree inventory prepared by a certified arborist or surveyor, and obtaining a tree removal permit;
5. An application for a building permit for a single-family or two-family dwelling proposed on an existing parcel shall include a tree survey or a tree inventory that illustrates the species and diameter at breast height of all trees on site; and

6. The removal of Category I invasive trees as identified on the Florida Invasive Species Council Invasive Plant list, as amended, shall require administrative approval by the Development Services Director or his designee, but is otherwise exempt from the provisions of this section.

The following situations are exempt from the requirements of this landscaping code:

1. Development that occurs within the Corridor Overlay Zone (COZ) zoning district;

2. Any interior construction, renovation, or remodeling which does not increase the footprint of the building;

3. Licensed plant or tree nurseries or botanical gardens with respect to those plants and trees grown for sale to the general public in the ordinary course of the licensed business or for public purposes; and

4. The removal of underbrush and trees less than four (4) inches measured at DBH.

General Requirements:

1. Landscape Plan:

Single Lot: One and Two Family

a. The name, address, and telephone number of the applicant, as well as landscape professional (if applicable); and

b. Tree survey illustrating the species, size, and location of all existing trees on site to be removed or preserved;

c. Landscape plan illustrating;

i. Type, size, and location of all plant materials, in accordance with this code;

ii. Landscape area protection structures (i.e. curbs, planters, or other similar structures);

iii. Plans and specifications for an irrigation system; and

iv. Required landscape buffer areas per this LDR.

Subdivision, Multi-Family (3 or more units), or Commercial and Industrial

a. The name, address, and telephone number of the applicant, as well as landscape professional (if applicable); an

b. Tree survey illustrating the species, size, and location of all existing trees on site to be removed or preserved.

c. Landscape plan signed and sealed by a landscape professional illustrating:

i. Type, size, and location of all plant materials, in accordance with this code;

ii. Landscape area protection structures (i.e. curbs, planters, or other similar structures).

iii. Plans and specifications for an irrigation system; and

iv. Required landscape buffer areas, in accordance with the City's Land Development Regulations.

d. The final landscape plan shall be reviewed by the ~~City manager~~ Development Services Director or his/her designee and no building permit shall be issued by the Building Department ~~for any building~~ until the plan is approved and the following steps have been taken:

(1) A land clearing permit has been issued by the City Engineer;

(2) Existing trees and vegetation to remain on the property have been flagged by the developer, or his/her designee, and verified by the ~~City Manager~~ Development Services Director or his/her designee.

e. A Certificate of Occupancy cannot be issued until the Development Services Director or his/her designee has verified to the Building Official, in writing, that all landscape and irrigation improvements have been completed in accordance with the approved landscape plan.

Existing Residential, Commercial, or Industrial Property

The entire replacement of existing landscaping for existing residential, commercial, or industrial property with an existing primary structure, shall at that time be treated as new construction and meet all current landscaping regulations under Article VI. The plan shall indicate the following:

a. The name, address, and telephone number of the applicant, as well as the registered landscape architect or landscape designer;

b. Type, size, and location of all plant materials, in accordance with the City's Land Development Regulations~~;~~

c. Landscape area protection structures (i.e. curbs, planters, or other similar structures);

d. Plans and specifications for an irrigation system; and

e. Required landscape buffer areas, in accordance with the City's Land Development Regulations.

2. Landscape Materials Standards:

a. One hundred percent (100%) of all required landscaping shall be Florida-Friendly Landscaping™ (FFL). The Florida Friendly Landscaping program is a partnership between the University of Florida, Institute of Food and Agricultural Sciences Extension (UF/IFAS Extension) and the Florida Department of Environmental Protection. Detailed information for FFL standards can be found on the IFAS program website or by contacting the Volusia County's local IFAS Extension office at 3100 East New York Avenue, DeLand.

b. All plant materials shall be healthy, well proportioned, disease-free, and pest-free. Additionally, all plant materials shall be Florida No. 1 grade, or better, according to the current "Grades and Standards for Nursery Plants," State of Florida Department of Agriculture, Tallahassee, except where in the discretion of the ~~city manager~~ Development Services Director or his/her designee, natural vegetation is adequate to provide the necessary visual screening.

c. Trees:

i. Canopy trees shall be a minimum of twelve (12) feet in height and have a minimum caliper of three (3) inches when measured six (6) inches above ground level.

ii. Understory Trees shall be a minimum of eight (8) feet in height and have a minimum caliper of two (2) inches when measured at six (6) inches above ground level.

iii. Trees planted within twelve (12) feet of publicly maintained streets or other improvements shall be selected from Florida-Friendly Landscaping™ or shall be a tree species approved by the ~~city manager~~ Development Services Director or his/her designee.

iv. Driveways and parking areas may be placed under the branches of trees so long as the impervious surface does not exceed ~~50~~ fifty percent (50%) of the total area under the drip line of the tree. Impervious areas may be no closer than ~~six feet from the trunk of the tree~~ two (2) feet for palm trees and four (4) feet for all other species of trees.

d. Shrubs shall be a minimum of two (2) feet in height, immediately after planting. Plants for the purpose of creating hedges shall be spaced no more than three (3) feet apart measured from center to center, maintaining a minimum of thirty inches (30") in height after the first year of planting.

e. Ground covers may include any plant materials that reach an average height of not more than twelve (12) inches. They may be used in lieu of grass. Ground covers must present a finished appearance and provide reasonably complete coverage at time of planting.

f. Grassed areas shall be planted with any of the following species of grass common to central Florida: St. Augustine (Stenotaphrum secundatum), Bermuda (Cynodon Dactylon), Zoysia (Zoysia Japonica) and Bahia (Paspalum notatum). Such areas shall be sodded, plugged, or sprigged. Sod is required in swales or other areas subject to erosion.

g. Stone, gravel, pine straw, bark, or a mulch approved by the Development Services Director or his/her designee shall be used in combination with other plants. Cypress bark is not an approved material.

h. Synthetic plants or artificial material in the form of trees, shrubs, ground covers or vines shall not be used in lieu of plant requirements in this section.

3. Maintenance Requirements:

a. All plantings must be maintained in an attractive and healthy condition. Maintenance must include, but not be limited to, watering, tilling, fertilizing and spraying, mowing, weeding, removal of litter and dead plant material, and necessary pruning and trimming.

b. All trees may be pruned to maintain shape and promote their shade-giving qualities and to remove diseased or dying portions in areas where falling limbs could be a hazard. Trees shall be pruned only as necessary to promote healthy growth or to avoid power lines. Pruning shall comply with current International Society of Arboriculture (ISA) standards. No more than 20% of the crown shall be removed within a one (1)-year period.

c. It is the responsibility of the property owner, renter, lessee, or agent, adjacent to the right-of-way to maintain all areas within the right-of-way which do not contain the road, curb, median, or sidewalk, to maintain the sod or other materials approved by the city engineer.

d. All landscaped areas and irrigation systems must be maintained in perpetuity by the property owner, tenant, or agent according to these regulations at a minimum. Any property owner who does not maintain the landscaped areas in a healthy, neat, and orderly fashion, free from refuse and debris, is subject to action from the Code Compliance department.

4. Sodding:

a. All common space, whether used for water retention or not, shall be sodded.

b. It is the responsibility of the property owner, renter, lessee, or agent, adjacent to the right-of-way to sod all areas within the right-of-way which do not contain the road, curb, or sidewalk prior to the city issuing a certificate of occupancy for a home or other building.

5. Non-Vegetative Materials.

a. Stone, gravel, artificial turf and rock beds may be used as an accent but shall not be considered permanent landscaping.

b. Stone, gravel, artificial turf and rock beds may be used as an accent but shall not require a permit unless they exceed five hundred (500) square feet.

c. Stone, gravel, artificial turf and rock beds that exceed five hundred (500) square feet are permitted subject to obtaining permit from the Building Department and compliance with the provisions of this Section.

i. The installation of artificial turf is permitted on all zoning districts and limited to play areas of public/private parks and institutions subject to the requirements of this Section.

ii. All artificial turf shall, at a minimum, be installed according to the manufacturer's specifications and shall be subject to City stormwater requirements.

iii. Installation of artificial turf within public and private rights-of-way is prohibited.

iv. Artificial turf shall not be visible from rights-of-way on residentially zoned properties.

v. Artificial turf may not be installed within fifty (50) feet of any artificial or natural water body with the exception of swimming pools.

vi. Artificial turf is prohibited within drainage features (e.g. retention ponds, swales, and etc.).

vii. Artificial turf must be installed out-side of the drip line of any tree.

viii. Impervious Surface Ratio (ISR). Artificial turf shall be considered one hundred percent (100%) impervious surface unless an acceptable impervious surface ratio is submitted to and approved by the City Engineer. The quantity of artificial turf to be incorporated into the landscaping of a property shall be limited by the maximum ISR for the subject property within the applicable zoning district and location requirements above.

ix. Artificial turf shall consist of materials that appear natural in appearance and color. The use of indoor/outdoor plastic or nylon carpeting as an installation of artificial turf is prohibited.

6. Utilities:

a. Required plantings shall avoid utility easements unless approved by the New Smyrna Beach Utilities.

b. Where the height and location of overhead powerlines requires the planting of small or low growing trees, planting under or adjacent to powerlines shall be approved by New Smyrna Beach Utilities.

i. Required canopy tree plantings in buffer areas that fall within utility easements may be reduced to understory trees at a rate of two (2) understory trees per required canopy tree.

c. Plant materials shall be selected to minimize potential root system damage or interference with public utilities.

7. Minimum Landscape Standards:

a. In General:

Irrigation:

i. All landscaped areas shall be irrigated with a workable underground irrigation system. Areas left in their natural state do not need to be irrigated.

ii. All multi-family developments containing more than ten (10) units shall use a non-potable water irrigation system for watering landscaped areas if available.

b. Residential:

i. In general:

1. Each residential lot shall contain a minimum of one (1) tree for every 2,500 square feet of lot area or portion thereof (rounded to the nearest whole number. If a lot contains an insufficient number of existing trees to meet

this requirement, replacement trees shall be provided. A minimum of 50% of the trees provided must be a canopy tree, as defined by Florida-Friendly Landscaping™. In addition, a minimum of ten (10) shrubs preserved or planted on the property.

ii. New subdivisions:

1. Subdivisions that create new streets shall provide a landscaped entrance buffer having minimum dimensions of twenty (20) feet in width, fifty (50) feet in depth, and 1,000 square feet in area on both sides of the main vehicular entranceway to the subdivision.

2. Platted lots shall have a minimum of one (1) tree for every 2,500 square feet of lot area or portion (rounded to the nearest whole number) and a minimum of ten (10) shrubs preserved or planted on the property. Fifty percent (50%) of the trees provided must be canopy trees. No less than eight (8) of the shrubs shall be located in front of the home. No Certificate of Occupancy shall be issued until this requirement has been met.

3. All ~~disturbed~~ recreation areas within a subdivision shall ~~be sodded except that recreation~~ shall be landscaped except those with natural vegetation or conservation areas. Recreation areas having trails for walking, jogging or biking in a corridor or lineal type fashion, and having a length of at least 250 feet and a width of at least fifteen (15) feet may be left natural, stabilized, or paved.

4. Fifteen percent (15%) of the gross area of any new subdivision shall be designated for the protection of trees. The area required to protect specimen trees as defined in this LDR's Definitions section may be included to satisfy this requirement.

c. Multi-family and Non-residential:

I. A minimum of fifteen percent (15%) of the total gross land area of any development site shall be landscaped. This landscaped area shall be inclusive of required landscape buffers. This requirement may be reduced to ten percent (10%) at the discretion of the Development Services Director or his/her designee.

d. Parking Areas:

I. All off-street parking lots with eight (8) or more required parking spaces and vehicular use areas (access driveways, service drives, and loading areas) are required to include landscaping.

II. All landscaped areas, whether on private property or public right-of-way, shall be curbed to protect the landscaping from traffic. If the elevation of a grassed landscaped area is the same as the surrounding impervious area, then curbing shall be gapped to allow flow of water into and through the grassed landscaped area.

III. Required off-street parking areas with parking spaces for eight (8) vehicles or more shall have interior landscaped areas covering ten (10%) percent of the total off-street parking area.

IV. Shopping centers in the B-5, Planned Shopping Center District, shall have interior landscaped areas covering 20 percent of the total off-street parking area.

V. Interior landscaped areas are exclusive of any required landscaped buffer areas. No more than 25 percent of the required interior landscaped area shall be placed in any one location except as necessary for minimum area requirements.

VI. Interior landscaped area shall include a minimum of one tree per 100 square feet or fraction thereof. Interior landscaped areas shall have a minimum area of 75 square feet with no dimensions less than six feet.

VII. Each landscaped area shall include at least one tree. The remaining area shall be landscaped with shrubs (less than four feet high), grass, or a ground cover, and all plants shall be mulched.

VIII. A minimum of one (1) landscaped island shall be provided for every ten (10) parking spaces, as follows:

1. Each island shall contain a minimum of one canopy tree as defined by the Florida-Friendly Landscaping™. For the purpose of accent or landscape design, other trees may be used if approved by the Development Services Director or his/her designee.

2. Islands shall divide parking spaces in order to relieve large expanses of paved areas.

3. The size of the island shall be a minimum width of nine (9) feet, as measured from the interior side of the curb, and a minimum area of one hundred sixty (160) square feet. A reduction in width may be allowed on a case-by-case basis, down to six (6) feet wide, and one hundred (100)

square feet of area upon approval of the Development Services Director or his/her designee.

4. Parking lot islands are required at all terminal ends of parking space rows, regardless of whether they have more than ten (10) parking spaces in that row.

5. A waiver of the required ten (10) parking spaces without an island can be authorized by the Development Services Director or his/her designee, if in support of existing tree preservation. In no case shall there be more than fifteen (15) parking spaces without an island. Should a waiver be approved, landscaped islands shall be provided at a minimum width of ten (10') feet wide, as measured form the interior side of curb, and have a minimum area of one hundred eighty (180) square feet.

IX. Tree preservation in parking areas. Preservation and planting of trees in parking lots shall be approved by the Development Services Director or his/her designee in accordance with this LDR. The preservation of trees in parking areas having a diameter of ~~six~~ four (4) inches DBH or larger qualify for a reduction in required parking spaces at the discretion of the Development Services Director or his/her designee, when the reduction in parking spaces will preserve approved species of trees. A reduction of up to fifteen percent (15%) of the required parking spaces may be approved, the total reduction in parking spaces shall not exceed fifty (50) spaces. The reduction in parking spaces shall be subject to the following:

1. The number of parking spaces and "the percentage reduction requested" shall be provided on each site plan application.

2. The required number of parking spaces shall be designated on an approved site plan.

Additional Requirements for Specific Uses:

1. The following uses require additional considerations beyond the minimum requirements listed above:

a. Adult congregate living facilities: In addition to the LDR Section 504.00 requirements, twenty five percent (25%) of the yard shall be covered with grass or other vegetation. Vegetation or plants other than grass shall be approved by the Development Services Director or his/her designee.

b. Airport Industrial Park: All unpaved lot areas shall be tastefully landscaped with an effective combination of trees, shrubbery, and ground cover. Decorative plazas, pools, flower beds, rock gardens, and other decorative treatments, may be

incorporated. landscaping is to be accomplished using quality materials and workmanship.

c. Child day care on church property: Play areas shall be fenced and landscaped. The landscaping shall include a vegetative hedge planted at least four (4) feet in height, three (3) feet on center, and be six (6) feet in height within two years.

d. Construction and demolition debris disposal facility, materials recovery facility, recovered materials facility or off-site disposal of land clearing debris facility: Perimeter landscape buffers shall be established prior to initiation of the activity and shall be a minimum of fifty (50) feet adjacent to all boundaries.

Landscape Buffers:

Where a landscaped buffer area is required, the following regulations shall apply:

1. In General:

a. Buffer areas shall consist of a combination of trees, shrubs, and groundcover. The number of required minimum plantings for trees and shrubs shall conform to Buffer Table 2. 20% of the buffer area shall be planted with groundcover.

b. The developing parcel shall be responsible for the creation and maintenance of all required buffer areas.

c. If plant materials are used for screening, ~~they shall be selected and located to provide, within two (2) years, a visual barrier that is three feet to six feet above the average ground level of the buffer area.~~ they shall be at least three (3) feet tall at time of planting.

d. If a decorative wall or fence is used for screening, it shall be six (6) feet high with shrubs planted abutting the side of the wall or fence facing the adjoining property or street. Shrubs shall be planted at intervals of no more than ~~ten~~ six (6) feet.

e. Any proposed landscape buffer plantings ~~shall be placed outside any utility easement~~ within a utility easement shall be approved by New Smyrna Beach Utilities.

f. A fence or wall included in a buffer screen shall be constructed with the side of the fence or wall with the finished appearance facing the use of lesser intensity or right-of-way.

g. An opening through a buffer area shall be provided where required to facilitate pedestrian or vehicular traffic between developments, this shall not reduce the requirement for plantings based upon linear feet.

h. Pedestrian paths or bike trails may provide access through a buffer provided that openings to allow such crossing points shall be a maximum of one (1) foot wider than the path or trail and not less than 100 feet apart.

i. A buffer may incorporate stormwater low impact development (LID) best management practices (BMPs) as long as the required plantings are also provided, the landscaping does not interfere with proper functioning of the stormwater system, and the design water depth does not harm the viability of such plantings.

j. Street lighting may be incorporated into the buffer area.

k. A buffer area shall not be used for any building, parking, storage, loading area, or active recreation area, except for approved pedestrian and bike path access as described above.

2. A buffer shall be required between zoning districts according to the standards set forth in Buffer Table 1. The existence of public or private right-of-way along a property boundary shall not be construed as meeting any part of the buffer requirement, nor as relieving the applicant from providing the required buffer.

Buffer Table 1.

Intensity of Use	1	2	3	4	5
1: A-1C, A-2, A-3, A-4, FR, C, RA, R	No Buffer	Low	Low	Medium+	High
2: RE, R-1, R-2, R-2A, R-3, R-3A, , R-1CO, R-3CO	Low	No buffer	Low	Medium	High
3: R-3B, R-4, R-5, R-6z, MH-1, MH-1CO, MH-2, MH-4	Low	Low	Low	Medium	Medium +
4: MU*, B-2, B-3**, B-4, B-5, B-6, B-6A, CM, I-1	Medium+	Medium	Medium	Low	Medium +
5: I-2, I-3, I-4	High	High	High	Medium+	Med

*MU zoning district is exempt from buffers except for a five (5) foot buffer around parking areas or when adjacent to residentially zoned properties.

**B-3 zoned parcels may provide a minimum buffer width of five (5') feet abutting other B-3 zoned parcels. B-3 zoned parcels may provide a minimum buffer width of five (5') feet abutting residentially

zoned properties when a six (6') foot tall block wall is provided. These buffered areas shall require two (2) canopy trees and thirty-three (33) shrubs planted per 100 linear feet and 20% of the buffer area planted with groundcover.

3. Where a buffer is required it shall conform to the standards set forth in Buffer Table 2.

Buffer Table 2.

Buffer Type	Buffer Width	Required minimum plantings per 100 linear feet
Low	10 Feet	Two (2) Canopy Trees, 66 Shrubs
Medium	15 Feet	Two (2) Canopy Trees, four (4) Understory Trees, 100 Shrubs
Medium +	15 Feet	Two (2) Canopy Trees, four (4) Understory Trees, 100 Shrubs Unbroken hedge, fence, or wall.
High	20 Feet	Three (3) Canopy Trees, Four (4) Understory Trees, 133 Shrubs Unbroken hedge, fence, or wall.

604.051 Tree Preservation:

In General:

1. It is unlawful for any person to cut down, move, remove or destroy any tree without first obtaining a tree removal permit (if a permit is required) from the City's Development Services Department. No permit to cut down, move, remove or destroy any tree shall be issued for any property unless the property owner has an active building permit, or land clearing permit, or water management permit.
2. Fees to cut down, move, remove or destroy any tree shall be as established by resolution of the City Commission.
3. Removal of mangrove trees shall require a permit from the Florida Department of Environmental Protection.
4. ~~West of the Indian River, this section shall apply to trees that are six (6) inches or greater in diameter measuring four (4) feet above ground level and trees with a multi-stem trunk system with a well developed crown at least fifteen (15) feet high as measured from its base shall be subject to the provisions of this section. East of the Indian River, this section shall apply to trees that are four (4) inches or greater measured four feet above ground level. Trees smaller than the aforesaid trees (to wit: saplings) are specifically excluded and shall not be subject to the provisions of this section.~~ This section shall apply to trees that are four (4) inches or greater in diameter at DBH.

5. Trees with a multi-stem trunk system with a well-developed crown at least fifteen (15) feet high as measured from its base shall be subject to the provisions of this section.

6. Trees classified as Category I Invasive Species per the Florida Exotic Pest Plant Council list, as amended, may be granted a waiver from the Development Services Director or his designee for removal without a fee.

7. The tree regulations for the city shall be generally in three groups: residential, commercial and industrial, and agriculture zoning classifications. The specific zoning classifications that are covered within each of these groups are set forth in each individual group.

Residential Areas:

1. *Residential zoning classifications.* The following tree removal and replacement requirements shall apply in all land zoned for residential uses. This provision shall apply in the RE, R-1, R-2, R-2A, R-3, R-3A, R-3B, R-4, R-5, R-6, R1-CO, R3-CO, MH-1, MH-2, MH1-CO, MH2-CO, zoning districts.

2. *Minimum tree coverage standard.* All properties zoned for residential uses shall have no less than one (1) tree for every 2,500 square feet of property or portion thereof (rounded to the nearest whole number). Example: 8,700 sf: 3 trees, 8,750: 4 trees.

   If any ~~a~~ lot contains an insufficient number of existing trees to meet this requirement~~, or if the lot has no existing trees to meet this requirement,~~ replacement trees shall be provided by the owner.

3. Time to come into compliance with minimum tree coverage standard.

   a. New construction:

      i. New construction on vacant property zoned for residential uses shall comply with the minimum tree coverage standards prior to issuance of a certificate of occupancy.

      ii. All residential lots shall be fully landscaped no longer than ~~9~~60 days after a certificate of occupancy has been issued for the dwelling unit.

   b. Existing properties:

      i. Existing nonconforming properties shall comply with the minimum tree coverage standard when all of the existing structures on the property are replaced with new structures. An Alternative to this requirement is described in Section (7), below.

4. *Fifteen percent of development set aside for trees.* Fifteen percent (15%) of the area of any subdivision shall be designated for the protection of trees. The area required to protect specimen trees may be included to satisfy this requirement. This required area may be constituted as one or more sub-areas within the development. Said area may include any landscape buffer or other landscape areas required by the LDR for a development. Such designated areas shall contain sufficient land area to comply with minimum tree protection standards to adequately protect the trees contained within the areas. A minimum of fifty percent (50%) of the required minimum number of trees as provided in ~~[sub] section (c)~~ section (5) below shall consist of existing trees within said area. This requirement does not apply to single-family lots in approved subdivisions or additions, remodeling or similar modification of existing multi-family or non-residential development.

5. *Specimen tree protection.* The following table sets forth the minimum requirements for the protection of specimen trees:

No. of Specimen Trees	Minimum Specimen Tree Protection Requirement
Less than 3 per acre	80% of all specimen trees
3.0 to 5.0 per acre	65% of all specimen trees
5.1 to 8.0 per acre	50% of all specimen trees
8.0 or more per acre	30% or 6, whichever is greater, specimen trees per acre

6. *Legal mechanism to protect specimen trees.* The developer of a subdivision shall provide legal mechanisms which ensure the protection of specimen trees after construction has occurred. Such mechanisms may include but shall not be limited to conservation easements, common open space, tree protection easements, deed restrictions and homeowner's association documents. Specimen tree protection on residential lots shall only apply in the designated setback areas. Said legal mechanisms shall be reviewed and approved by the City Attorney.

7. As an alternative to meeting ~~planting~~ the minimum number of required trees on-site, owners of nonconforming properties shall be allowed to pay into the city's tree mitigation fund. The cost of replacement is outlined in in the Tree Removal and Replacement subsection, below. Properties having made an application for building or development permits prior to the adoption of this section and active at the time of adoption of this section shall comply with the tree regulations in force at the time the building or development permit application was made.

Commercial and Industrial Areas:

1. *Commercial and industrial zoning classifications*. The following tree removal and replacement requirements shall be required in all land zoned for commercial and industrial uses. This provision shall apply in the MU, B-2, B-3, B-4, B-5, B-6, B-6A, CM, I-1, I-2, I-3, I-4, BBH, COZ, PUD, HBOD, C, R and PUD zoning districts.

2. *Minimum tree coverage standard.* All properties zoned for commercial and industrial uses shall have no less than one (1) tree for every 2,500 square feet of property or as required by an approved site plan.

3. *Time to come into compliance with minimum tree coverage standard*. New construction shall comply with the minimum tree coverage standards prior to issuance of a certificate of occupancy. All nonconforming properties shall comply with the minimum tree coverage standard when all of the existing structures on the property are replaced with new structures. Properties having made an application for building or development permits prior to the adoption of this section and active at the time of the adoption of this section shall comply with the tree regulations in force at the time the building or development permit application was made.

Tree Protection During Construction

1. *Marking trees.* Prior to the commencement of construction any tree or tree groups to be maintained shall be clearly marked and the markings shall remain in place during construction. Any land clearing equipment shall be operated in a manner as not to injure or destroy any trees designated to remain on the site.

2. *Temporary barriers.* During the period of construction a temporary barrier at least three (3) feet in height shall be formed a minimum of seven (7) feet from the base of the tree or trees and it shall include at least ~~50~~ fifty percent (50%) of the area under the drip line of the tree(s). ~~(Driveways and parking areas may be placed under the branches of trees so long as the impervious surface does not exceed 50 percent of the total area under the drip line of the tree. The impervious area may not be located closer than six feet from the trunk of the tree.)~~

3. *Natural soil level.* Except for palm trees, all trees and replacement stock shall have their natural soil level maintained. Tree wells and/or planter islands shall be provided if necessary to maintain the natural existing soil level.

Tree Removal and Replacement:

Residential, Commercial, and Industrial Zoned Property. All tree removal on land zoned for residential, commercial, and industrial zoned uses shall be in compliance with this provision.

1. Trees not requiring permits or mitigation. ~~Trees that may be removed without a permit and no replacement trees are required~~

   The trees listed on the Florida Invasive Species Council list of Category I trees may be removed ~~from land zoned for commercial and industrial uses without obtaining a permit from the city~~ with an administrative waiver issued by the Development Services Director of his designee and replacement trees shall not be required to replace trees that have been removed, provided that the removal of the tree or trees does not result in the number of the trees on the property falling below the minimum tree coverage standards. If the removal of a tree or trees results in the number of the trees on the property falling below the minimum tree coverage standard replacement trees are required.

   ~~See, section 169(a)(6) of the Volusia County Code of Ordinances for list of exempt species of trees.~~

2. Trees requiring permits for removal and do not require mitigation. ~~Trees that permits for removal are required and replacement trees are not required.~~

   The trees listed below may be removed with a permit from the city and replacement trees shall not be required to replace trees that have been removed, provided that the removal of the tree or trees does not result in the number of the trees on the property falling below the minimum tree coverage standard of no less than one (1) tree for every 2,500 square feet of property. If the removal of a tree or trees results in the number of the trees on the property falling below less than one (1) tree for every 2,500 square feet of property replacement trees are required.

   a. All dead, dying and diseased trees., per an arborist report.

   ~~See, section 169(a)(3) of the Volusia County Code of Ordinances for list of exempt species of trees.~~

3. Trees requiring permits for removal and may require mitigation.

   The trees listed below may be removed with a permit from the city and replacement trees shall be required to replace trees that have been removed.

   a. All specimen trees.

   b. All historic trees (permit must be issued by City Commission.)

   c. All trees other than the invasive exotic trees listed in (2)c.1.(a) above.

Agriculture Zoning Classifications. This provision shall apply in the A-1, A-2 and FR zoning districts, and property on which trees were planted and grown for sale to the general public or some public purposes, and licensed plant or tree nurseries, and botanical gardens Trees located on agricultural cultivation or grazing land, or on commercial plant nursery sites are exempt from the provisions of this section, with the following conditions:

1. Any property owner who removes or destroys trees from agricultural cultivation or grazing land, or commercial plant nursery sites within three (3) years of filing an application for rezoning to a non-agricultural classification, applying for subdivision approval, or filing for special exception approval shall be presumed to have performed such removal or destruction of trees with the intent of developing the land for a non-agricultural use and shall not be exempt from the provisions of this section. Said presumption shall be a legally rebuttable presumption.

2. The applicant shall submit with its application for an exemption to the tree replacement requirement copies of any and all contracts, agreements, deeds and all usual and customary business records that would be reasonably necessary for the city to review to determine whether or not the applicant is entitled to an exemption. The applicant shall not fraudulently withhold any document. See generally, section 50 of the Volusia County Code of Ordinances.

3. The property owner shall have rebutted the presumption that the removal or destruction of trees on his property was with the intent of developing the land for a non-agricultural use by filing a sworn and notarized affidavit with the city attesting that any trees that were removed in the past three years from the subject property were removed in conformity with recognized agricultural management or production practices and not merely for the purpose of avoiding the requirements of this section.

   The affidavit filed by the property owner may be challenged by the city within thirty (30) days of filing the affidavit.

   In the event that the city elects to challenge the property owner's affidavit, the exemption may be denied by the city upon showing by substantial competent evidence that the trees were not removed in conformance with recognized agricultural management or production practices. The city shall have the burden of proof to refute the affidavit filed by the property owner.

4. Any decision to deny an exemption under this provision shall be in writing, state the factors considered in denying the exemption, state the reasons for denying the exemption, and be signed by the Development Services Director ~~city manager~~ or his designee.

   The city shall consider, among any and all other relevant factors, the following when reviewing any request for an exemption under this provision:

   a. The specific reasons stated by the property owner for removal of the trees.

   b. The length of time the land has been in agricultural production.

   c. Whether the agricultural use has been continuous.

   d. The size of the area as it relates to efficient agricultural production.

e. Whether the land has been sufficiently and adequately cared for within accepted commercial practices of the dominant type of production.

f. Whether the land is under lease and if so, the type and terms of said lease.

g. Whether the tree removal was done in the ordinary course of business.

h. Any contract for sale in existence at the time the affidavit is submitted.

i. Other factors that are relevant to the determination of good faith land use.

See generally, section 50 of the Volusia County Code of Ordinances.

Replacement Trees.

1. Approved trees. Only ~~the following trees shall~~ trees listed on the Florida-Friendly Landscaping™ shall be planted to meet the minimum tree requirements of this section and be used as replacement trees:

   ~~See Exhibit "A" attached hereto and by reference made a part hereof.~~

   Historic and specimen trees shall be replaced with trees of like species unless like species are not reasonably available.

2. Trees listed as Category I invasive species by the Florida Exotic Pest Plant Council are prohibited.

3. Replacement of trees shall be calculated based on the replacement of ~~one-tenth~~ 40% of the total DBH inches of the protected tree(s) permitted for removal. Single trees may be replaced with two (2) or more trees meeting the standards of this code ~~as set forth in the following paragraph.~~ For one and two-family residences, replacement trees are to be provided based on one replacement tree for each protected tree 12-inches or less DBH and two replacement trees for each tree in excess of 12-inches DBH.

4. To encourage the retention of existing large trees in the city, the following credits shall be applied to reduce the number of replacement trees required by this section:

   a. Preserved specimen trees will be credited at 15% of DBH inches of each tree.

   b. Preserved historic trees will be credited at 20% of DBH inches of each tree.

   Replacement trees shall ~~be a~~ adhere to the minimum tree standards in this code. Credited trees shall not reduce the number of required onsite plantings bellow the minimum requirements of this code. ~~of nine feet in height and have a minimum caliper of two and one-half inches when measured six inches above ground level~~ ~~(6)~~

~~Replacement trees shall be selected from the tree list included as section B.(1), above. Historic and specimen trees must be replaced with trees of like species unless like species are not reasonably available.~~

5. Replacement trees shall be selected from Florida-Friendly Landscaping™. Historic and specimen trees must be replaced with trees of like species unless like species are not reasonably available.

6. Palms may be used as replacement stock up to the full DBH inches of palms being removed from the site and up to one-fifth of the DBH inches of non-palm.

   Where non-palm species are proposed as replacements for palm trees, the replacements shall be done according to the following chart:

DBH of Palm	DBH of Non-Palm Species
6 inches	1.5 inches
8 inches	2 inches
10 inches	2.5 inches
12 inches	3 inches
14 inches	3.5 inches
16 inches	4 inches

7. When replacement trees are required, the replacement trees shall be provided prior to the issuance of a certificate of occupancy. If there is no certificate of occupancy required for the site, then the replacement trees shall be installed within sixty (60) days of the date when notice is provided that replacement trees are required.

8. Survival of replacement trees shall be guaranteed for one year. Replacement trees that die during the first year after planting must be replaced.

9. Alternate Placement of Replacement Trees

   a. In the event that a property has existing tree canopy coverage of thirty percent (30%) or greater of the property, the property owner may request to place required replacement trees on the public right-of-way immediately adjacent to the property owner's property, or on the publicly-owned neighborhood park or recreation area servicing the property owner's property. Said park or recreation area must be within the incorporated boundaries of the city. The city may grant permission when the proposed tree planting is accompanied by an approved landscape plan and associated maintenance and guarantee agreement between the developer requesting the plantings and the city department that would be responsible for the area in which the trees would be placed. This provision shall in no way affect a property owner's right to seek and receive a general variance granted by the planning and zoning board from the tree preservation requirements.

b. If replacement trees cannot be placed within public rights-of-way or parks, the developer shall provide a payment to the city for the cost of the remaining replacement trees. The developer shall pay these fees into the city Tree Mitigation Fund.

c. The cost of replacement trees shall be assessed at the following rates:

i. One hundred thirty-five dollars ($135.00) per DBH inch if verified on-site;

ii. Three hundred twenty-five dollars ($325.00) per DBH inch for impacts to specimen trees;

iii. Seven hundred fifty dollars ($750.00) per DBH inch for impacts to any permit identified historic tree.

If needed, an amendment to this Code will be brought to the planning and zoning board in February of each calendar year. Costs per tree shall be based upon average costs per tree as established by local nurseries selling trees that meet the minimum size requirements outlined in this section. ~~If needed, an amendment to this Code will be brought to the planning and zoning board in February of each calendar year.~~

Funds deposited into the Tree Mitigation Fund shall be appropriated in accordance with the annual adopted budget of the city for, but not limited to, the following projects:

- Planting native trees, shrubs and plants on city-owned property.
- Purchasing environmentally sensitive land for permanent preservation.
- Purchasing a vacant parcel that could be planted with replacement trees.
- Removing invasive species from city-owned property.
- Raising community awareness about the care of the natural environment.
- Funding of matching grants for projects involving vegetative plantings.
- Designing and planting right-of-way beautification projects.

Permitting.

The tree removal application shall be made in the following manner:

1. Class I Site Plans. If a resident applies to remove a tree from a developed lot, a survey of the lot indicating the location, size and number of trees is required shall be provided.

a. The survey shall confirm that there is at least 1 tree for every 2,500 square feet. If the site is heavily wooded, note that on the application.

b. In instances of already developed lots, a sketch plan may be prepared and submitted by the property owner and/or applicant in lieu of a tree survey.

2. Class II or Class III Site Plans. Sites requiring ~~plan review committee (class II or class III site plans)~~ Technical Review Staff-approval shall be required to provide a survey of the property prepared by a surveyor registered with the State of Florida showing existing features of the property including elevations, buildings, structures, trees over six (6) inches in trunk diameter at 4.5 feet above ground level, all specimen and historic trees, streets, utility easement rights-of-way, and land use. For properties east of the Indian River the survey must show trees over four (4) inches in diameter at 4.5 feet above ground level. Credit for trees between 2.5" to 6" in diameter can be given if indicated on the survey in lieu of having to provide mitigation or replacement trees.

   a. A sample size of 20% of a site may be surveyed in lieu of a full survey, or a similar suitable size, based on the discretion of the Development Services Director.

3. No permit to clear or grade shall be issued until either the required survey or sketch is ~~filed~~ included with a building permit.

4. The location of all trees on the site, designating the trees to be retained, removed, relocated or replaced along with their name (botanical) must be illustrated on the site plan.

5. In the case of partial development, show only those areas and items affected.

6. Upon receipt of the application and fee for tree removal permit, the ~~city manager~~ Development Services Director or his designee shall review the plans and may inspect the site.

7. If the work described is not begun within one (1) year from the date of issuance of the permit for tree removal, said permit shall be void. The ~~city manager~~ Development Services Director or his designee reserves the right to extend or rescind the tree removal permit if conditions warrant.

8. Historic trees in all zoning districts shall be removed only upon a tree removal permit granted by the ~~city commission~~ City Commission at a quasi-judicial public hearing, after a finding that the evidence presented is more compelling for the removal of the historic tree than for it to remain.

a. Petitioners wishing to obtain a permit must show:

i. The tree is currently damaging or is posing an imminent danger to an existing structure; or

ii. The tree is damaging and/or interfering with the installation, operation, and/or maintenance of existing or proposed public infrastructure; or

iii. The tree is dead, diseased, structurally unsound, or severely injured such that the tree is likely to die within two years; or

iv. Other extraordinary circumstance or hardship where the applicant has demonstrated that no other feasible option exists to preserve the tree.

b. Applications for historic tree removals shall be accompanied by a written tree evaluation report prepared by an ISA certified arborist which identifies the tree's location, size, species, condition, and basis for meeting one or more of the listed removal conditions.

9. Specimen trees 24-inches DBH or greater shall be removed only upon a tree removal permit approved by the Development Services Director or his designee, based on the proposed tree removal meeting one (1) of the four (4) conditions listed in Section 8 (a) above. Appeals of the Director's decision may be made to the City Commission as a quasi-judicial matter.

Violations and penalties.

Any person, organization, society, association, or corporation or any agent or representative ~~thereof~~, who shall violate the provisions of this section shall, upon a finding of violation by the ~~code enforcement board~~ Development Services Director or their designee, be required replace all removed trees with a number of trees ~~trees chosen from the "Large and Medium Trees" section of the "New Smyrna Beach Tree List" provided as Exhibit A~~ equal to the total DBH inches of the tree(s) removed. The violator may, at the discretion of the Development Services Director or their designee, pay into the City's Tree Fund at the rates described below, after demonstrating that minimum onsite planting requirements have been met, in lieu of meeting the requirements for replacement of damaged or removed trees, in whole, or in part. The replacement of trees or required payments under this section shall not preclude the imposition of any other penalties provided by law or ordinance for the violation. Replacement trees shall be maintained and guaranteed survival for one (1) year.

Payments into the Tree Mitigation Fund for violations to this code shall be made at the following rates:

1. One hundred thirty-five dollars ($135.00) per DBH inch if verified on-site;

2. Three hundred twenty-five dollars ($325.00) per DBH inch for impacts to specimen trees;

3. Seven hundred fifty dollars ($750.00) per DBH inch for impacts to any permit identified historic tree.

4. Four hundred dollars ($400.00) per DBH inch for impacts to any permit identified preserved tree in addition to the rates above;

5. If no evidence exists on site to calculate the DBH of the tree(s) removed, then each tree shall be presumed to be a minimum of a 24-inch preserved specimen tree. It is the property owner's responsibility to prove otherwise.

No certificate of occupancy or certificate of completion shall be issued for any development until all applicable administrative fines or civil penalties, and permits have been paid, accepted, approved, and verified by the Development Services Director or their designee.

Appeal.

Within thirty (30) days after any decision made by the ~~city manager or his designee~~ Development Services Director in the administration and interpretation of this section, but not thereafter, the applicant may appeal to the city commission, who by majority vote may affirm, reverse or modify the decision of the ~~city manager or his designee~~ Development Services Director. The city commission's review of the city manager's decision shall be de novo with notice to all interested parties at least ten days prior to the hearing on the appeal. Notice shall be made by the city clerk by U.S. mail and by publication in a newspaper of general circulation in the city of the time and place of the hearing. Any decision by the city commission shall be subject to review by the circuit court of appeal.

Stop work orders.

The city shall issue a stop work order to any person found in the act of cutting down, destroying, damaging or removing trees in violation of this section (See, section 50-165 of the Volusia Code of Ordinances.)

Article	Refrence Number
	C
	R
	R-1, R-2, R-2A, R-3, R-3A, R-3B, R-4, R-5, R-6, MH-1
	R-3A Cont.
	R-4, R-5, R-6 Cont.
	MU, B-2, B-3, B-5, B-6, B-6A
	B-6 Cont.
	CM
	I-3
	I-4
	COZ
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	b.
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	iii
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Article V	a
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PUD

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Article VI

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Article VIII	801.24 C 801.25 E F G 1 2 801.26 A 801.27 F 801.30 6
Article X	1006.00 A B C (1 (2 (3 (4
Article XI	1105.00 (4 a b c d

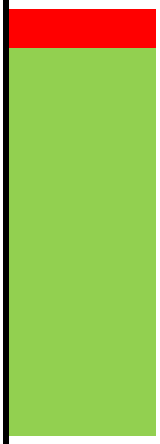
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Conservation District		
Landscaping		
Recreation District		
Landscaping		
Various Districts		
Special Exceptions		
Zero lot line development requirements.		
Special Expectations		
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Special Exceptions		
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Site development plan review requirements		
Variances		
Tree Replacement		
Landscaping Maintenance		
Penalty and Violations		

Off-street parking and loading requirements.

Landscape buffer requirements Traditional City Area.
Landscape buffer requirements All other areas.

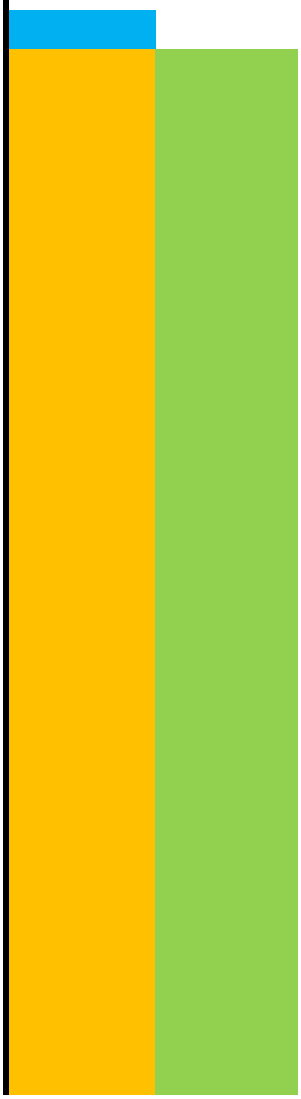


Landscape standards
Shrubs
Landscape Plan
Landscaped Buffer Requirements
Commercial Buffers
Irrigation
Multi-Family Irrigation
Failure to maintain irrigation system
Common space sodding requirement
Residential Sodding within 90 days
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Tree Preservation
In General- Tree Preservation
Residential zoning classifications
A minimum tree converage standard
Time to come into compliance with minimum tree coverage standard.
New Construction
Existing non-conforming Properties
Permit and tree replacement requirement.

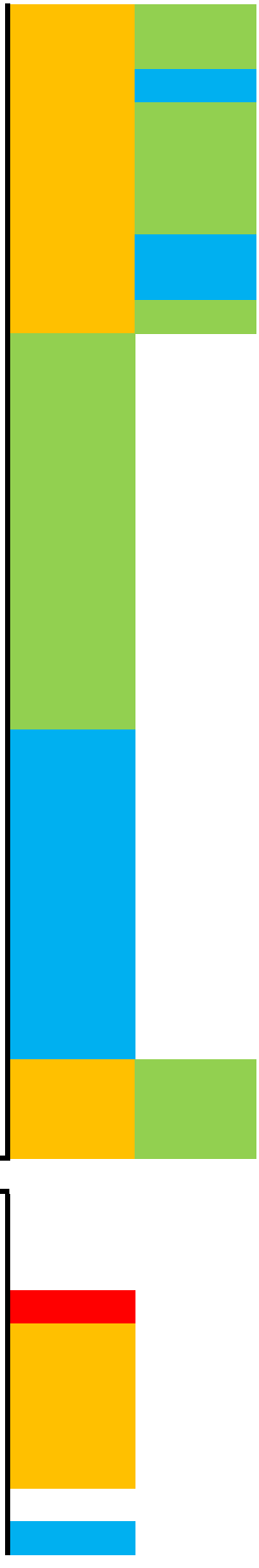
Trees that may be removed without a permit and no replacement trees are required.
Trees that permits for removal are required and replacement trees are not required.
Trees requiring permits for removal and replacement trees are required.
Commercial and industrial zoning classifications.
Minimum tree coverage standard
Time to come into compliance with minimum tree coverage standard.
Permit and tree replacement requirement.
Commercial and industrial zoned property.
Trees that may be removed without a permit and no replacement trees are required.
Trees that permits for removal are required and replacement trees are not required.
Trees requiring permits for removal and replacement trees are required.
Agriculture zoning classifications.



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Prohibited Trees
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Replacement Tree Diminsions
Replacement Tree Selections
Palms as Replacements
Replacement Tree Timing
Survival Guarantee
Placement Options
Tree Mitigation Fund
Tree Protection During Construction
Marking Trees
Temporary Barriers
Natural Soil Level
Variances
Variances allowing removal without replacement
Variances allowing removal with replacement.
Exemptions
Storm threat to a residential structure.
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Permitting
class II or class III site plans
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Special conditions for condominium garages permitted as a principal use by special exception approval only.
Landscape buffer areas

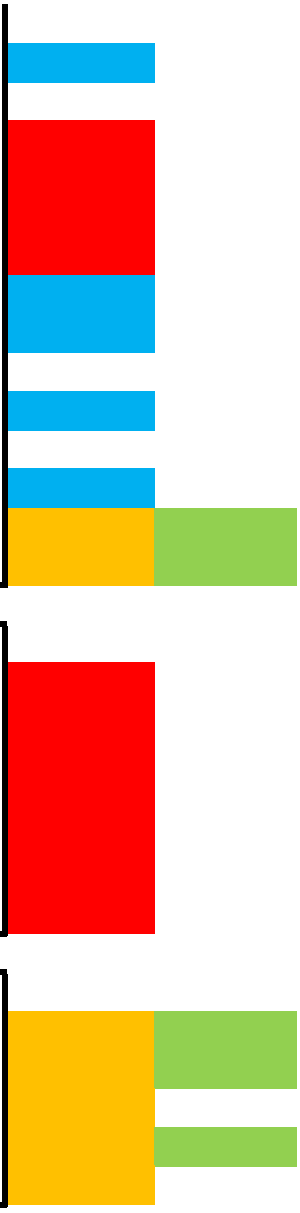
Landfills, construction and demolition debris disposal facility, materials recovery facility, recovered materials facility or off-site disposal of land clearing debris facility.
Perimeter landscape buffers
Cemeteries, parochial or private schools.
Requirement to Meet 604.04 and 604.051



Group Homes and Nursing Homes, Boarding Houses
Requirement to Meet 604.04 and 604.051
Off-street parking areas
Requirement to meet Lighting, Landscaping, Stormwater Standards
Special exception conformance to 604.04, 604.051
Landscape Plan Requirement
Natural Vegetation Planning
Conformance to 604.04, 604.051, 604.09
Public Utility Uses and Structures
Requirement to Meet 604.04 and 604.051
Recreational Areas
Requirement to Meet 604.04 and 604.051
Property maintenance standards.
Landscaping shall Adhere to Landscape Plan

Landscaping Improvements
Subdivision Enterance
Recreation Area Requirements
Tree Preservation
1 Tree Per 2500 Sq Ft
Fifteen Percent of Development Set Aside for Trees
Specimen Tree Protection
Legal Mechanism to Protect Speciment Trees

Minimum Site Improvements
Tree Preservation
One tree per every 2,500 square feet of property.
Fifteen percent of development set aside for trees.
Specimen tree protection.
Legal mechanism to protect specimen trees.



Notes	Result
To be described in general landscaping rules	
To be described in general landscaping rules	
All special exceptions to have their own section in the landscape code or Article VIII To be included with landscaping standards To be described in general landscaping rules All special exceptions to have their own section in the landscape code or Article VIII To be described in general landscaping rules All special exceptions to have their own section in the landscape code or Article VIII To be described in general landscaping rules To be included with landscaping standards To be described in general landscaping rules	
COZ standards to be included in Landscaping code. Should any modifications be proposed it would be to ensure there is no contradiction within the landscape code. The intention is to keep this code language intact within the Landscape Code, with reference to said code in Article V.	Maybe t

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New location

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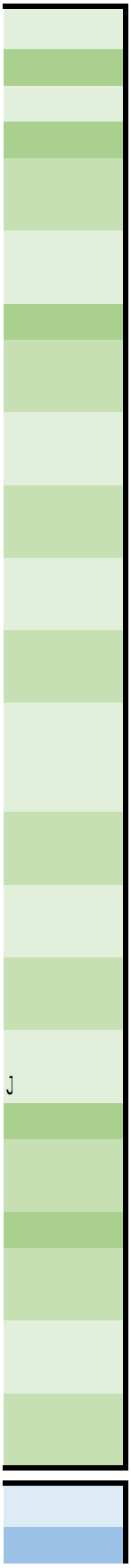
Landscape Standards				
Intent				
	New Text			
Applicability				
Development subject to this code				
	New Text			
Exemptions from this code				
	New Text			
General Requirements				
Landscape Plan				
	New Text	604.04 Sec B		
Landscape Material Standards				
	New Text	604.04 Sec A	604.04 Sec B	
Maintinance Requirements				
	New Text	604.04 Sec J		
Sodding				
	604.04 Sec H	604.04 Sec J		
Non-Vegative Materials				
	New Text			
Utilities				
	New Text			
Minimum Landscape Standards				
In General				
	New Text	604.04 Sec E	604.04 Sec F	
Residential				
	New Text	1105.00 (4) a	1106.00 Sec A - C	
Multifamily and Non-residential				
	New Text			
Parking Areas				
	New Text	604.04 Sec D	604.04 Sec E	604.04 Sec
Additional Requirements for Specific Uses				
Uses Requiring Additional Considerations				
	New Text	501.00 Various Text from Specific Uses		
Landscape Buffers				
In General				
	New Text	604.04 Sec C		
Buffer Size Requirements				
	New Text			
Buffer Minimum Planting Standards				
	New Text			

Tree Preservation
In General

	Requiring of Permits		
		604.051 Sec A	
	Establishment of Fees		
		604.051 Sec A	
	Removal of Mangrove Trees		
		604.051 Sec A	
	Applicability		
		604.051 Sec A	
	Multi-stem trunk systems		
		604.051 Sec A	
	Invasive Species		
		New Text	
	Tree Regulations by Land Use Type		
		604.051 Sec A	
Residential Areas			
	Residential Zoning Classifications		
		New Text	604.051 (1)
	Minimum Tree Coverage Standard		
		New Text	604.051 (1) a
	Time to Come into Compliance		
		604.051 (1) b	
	Fifteen percent of development set aside for trees		
		New Text	1006.00 C (2)
	Specimen Tree Protection		
		1006.00 C (3)	
	Legal Mechanism to protect specimen trees		
		1006.00 C (4)	
	Tree Fund Alternative		
		New Text	604.051 (1) b
Commercial and Industrial			
	Commercial and Industrial Zoning Classifications		
		604.051 (2)	
	Minimum Tree Coverage Standard		
		604.051 (2) a	
	Time to Come into Compliance		
		604.051 (2) b	
Tree Protection During Construction			
	Marking Trees		
		604.051 Sec C	
	Temporary Barriers		
		New Text	604.051 Sec C
	Natural Soil Level		
		604.051 Sec C	
Tree Removal and Replacement			

	Residential , Commercial, and Industrial		
	Trees not requiring permits or mitigation		
	604.051 (1) c		
	Trees requiring permits for removal, no mitigation		
	604.051 (1) c		
	Trees requiring permits for removal, mitigation		
	604.051 (1) c		
	Agriculture Zoning Classifications		
	Intent for development		
	604.051 (3)		
	Exemption Submissions		
	604.051 (3)		
	Rebuttals		
	604.051 (3)		
	Decisions for denial		
	New Text	604.051 (3)	
Replacement Trees			
	Approved Trees		
	604.051 Sec B (1)		
	Prohibited Trees		
	604.051 Sec B (2)		
	Replacement Tree Calculations		
	604.051 Sec B (3)		
	Retention Credits		
	New Text		
	Replacement Trees Minimum Standards		
	New Text	604.051 Sec B (4)	604.051 Sec B (8)
	Replacement Trees Selection		
	New Text	604.051 Sec B (5)	
	Palms		
	604.051 Sec B (6)		
	Replacement Tree Timing		
	604.051 Sec B (7)		
	Alternate Replacement Tree Location		
	604.051 Sec B (9)		
	Replacement Tree Costs		
	New Text	604.051 Sec B (10)	
Permitting			
	Class I Site Plans		
	New Text		
	Class II and III Site Plans		
	New Text	604.051 Sec F (1)	
	No permit to clear or grade		
	604.051 Sec F (1)		

	Site Plan Illustration		
		604.051 Sec F (2)	
	Partial Development		
		604.051 Sec F (3)	
	Upon Receipt		
		New Text	604.051 Sec F (4)
	Void Permits		
		New Text	604.051 Sec F (5)
	Historic Trees		
		604.051 Sec F (6)	
Appeal			
		New Text	604.051 Sec G
Violations and Penalties			
		New Text	604.051 Sec H
Stop Work Orders			
		New Text	604.051 Sec I



Intent:

It is the intent of this section is to provide minimum standards for landscaping, buffers, and tree protection for the City. The provision and enforcement of these standards enhance the health, safety, and welfare of the citizens of New Smyrna Beach and are designed to meet the following goals:

1. Improving the appearance of the City;
2. Maintaining and protecting property values;
3. Providing an acceptable degree of buffering between abutting property uses;
4. Providing appropriate barriers and relief from traffic, noise, heat, glare, and the spread of dust and debris;
5. Providing for the protection and preservation of trees and native vegetation;
6. Ensuring the local stock of native trees and vegetation is preserved;
7. Encouraging Florida-Friendly landscaping principles into landscape design; and
8. Protect local waterways through the development of environmentally sustainable landscaping practices.

Applicability:

The types of development listed below, unless exempted, shall comply with the requirements of this code:

1. All new construction;
2. Any change of use which results in an increase in the required off-street parking, as determined by the standards in this LDR;
3. All non-residential redevelopment which results in an increased building footprint, reconfiguration or expansion of parking areas (including increasing or decreasing parking spaces), or development of outparcels within an existing shopping center;
4. Clearing of any site, including root-rake clearing, shall be subject to the requirements for tree protection, submittal of a tree survey or a tree inventory prepared by a certified arborist or surveyor, and obtaining a tree removal permit;
5. An application for a building permit for a single-family or two-family dwelling proposed on an existing parcel shall include a tree survey or a tree inventory that illustrates the species and diameter at breast height of all trees on site; and

6. The removal of Category I invasive trees as identified on the Florida Invasive Species Council Invasive Plant list, as amended, shall require administrative approval by the Development Services Director or his designee, but is otherwise exempt from the provisions of this section.

The following situations are exempt from the requirements of this landscaping code:

1. Development that occurs within the Corridor Overlay Zone (COZ) zoning district;

2. Any interior construction, renovation, or remodeling which does not increase the footprint of the building;

3. Licensed plant or tree nurseries or botanical gardens with respect to those plants and trees grown for sale to the general public in the ordinary course of the licensed business or for public purposes; and

4. The removal of underbrush and trees less than four (4) inches measured at DBH.

General Requirements:

1. Landscape Plan:

   Single Lot: One and Two Family

   a. The name, address, and telephone number of the applicant, as well as landscape professional (if applicable); and

   b. Tree survey illustrating the species, size, and location of all existing trees on site to be removed or preserved;

   c. Landscape plan illustrating;

      i. Type, size, and location of all plant materials, in accordance with this code;

      ii. Landscape area protection structures (i.e. curbs, planters, or other similar structures);

      iii. Plans and specifications for an irrigation system; and

      iv. Required landscape buffer areas per this LDR.

   Subdivision, Multi-Family (3 or more units), or Commercial and Industrial

   a. The name, address, and telephone number of the applicant, as well as landscape professional (if applicable); an

b. Tree survey illustrating the species, size, and location of all existing trees on site to be removed or preserved.

c. Landscape plan signed and sealed by a landscape professional illustrating:

    i. Type, size, and location of all plant materials, in accordance with this code;

    ii. Landscape area protection structures (i.e. curbs, planters, or other similar structures).

    iii. Plans and specifications for an irrigation system; and

    iv. Required landscape buffer areas, in accordance with the City's Land Development Regulations.

d. The final landscape plan shall be reviewed by the Development Services Director or his/her designee and no building permit shall be issued by the Building Department until the plan is approved and the following steps have been taken:

    (1) A land clearing permit has been issued by the City Engineer;

    (2) Existing trees and vegetation to remain on the property have been flagged by the developer, or his/her designee, and verified by the Development Services Director or his/her designee.

e. A Certificate of Occupancy cannot be issued until the Development Services Director or his/her designee has verified to the Building Official, in writing, that all landscape and irrigation improvements have been completed in accordance with the approved landscape plan.

Existing Residential, Commercial, or Industrial Property

The entire replacement of existing landscaping for existing residential, commercial, or industrial property with an existing primary structure, shall at that time be treated as new construction and meet all current landscaping regulations under Article VI. The plan shall indicate the following:

a. The name, address, and telephone number of the applicant, as well as the registered landscape architect or landscape designer;

b. Type, size, and location of all plant materials, in accordance with the City's Land Development Regulations;

c. Landscape area protection structures (i.e. curbs, planters, or other similar structures);

d. Plans and specifications for an irrigation system; and

e. Required landscape buffer areas, in accordance with the City's Land Development Regulations.

2. Landscape Materials Standards:

a. One hundred percent (100%) of all required landscaping shall be Florida-Friendly Landscaping™ (FFL). The Florida Friendly Landscaping program is a partnership between the University of Florida, Institute of Food and Agricultural Sciences Extension (UF/IFAS Extension) and the Florida Department of Environmental Protection. Detailed information for FFL standards can be found on the IFAS program website or by contacting the Volusia County's local IFAS Extension office at 3100 East New York Avenue, DeLand.

b. All plant materials shall be healthy, well proportioned, disease-free, and pest-free. Additionally, all plant materials shall be Florida No. 1 grade, or better, according to the current "Grades and Standards for Nursery Plants," State of Florida Department of Agriculture, Tallahassee, except where in the discretion of the Development Services Director or his/her designee, natural vegetation is adequate to provide the necessary visual screening.

c. Trees:

i. Canopy trees shall be a minimum of twelve (12) feet in height and have a minimum caliper of three (3) inches when measured six (6) inches above ground level.

ii. Understory Trees shall be a minimum of eight (8) feet in height and have a minimum caliper of two (2) inches when measured at six (6) inches above ground level.

iii. Trees planted within twelve (12) feet of publicly maintained streets or other improvements shall be selected from Florida-Friendly Landscaping™ or shall be a tree species approved by the Development Services Director or his/her designee.

iv. Driveways and parking areas may be placed under the branches of trees so long as the impervious surface does not exceed fifty percent (50%) of the total area under the drip line of the tree. Impervious areas may be no closer than two (2) feet for palm trees and four (4) feet for all other species of trees.

d. Shrubs shall be a minimum of two (2) feet in height, immediately after planting. Plants for the purpose of creating hedges shall be spaced no more than three (3) feet apart measured from center to center, maintaining a minimum of thirty inches (30") in height after the first year of planting.

e. Ground covers may include any plant materials that reach an average height of not more than twelve (12) inches. They may be used in lieu of grass. Ground covers must present a finished appearance and provide reasonably complete coverage at time of planting.

f. Grassed areas shall be planted with any of the following species of grass common to central Florida: St. Augustine (Stenotaphrum secundatum), Bermuda (Cynodon Dactylon), Zoysia (Zoysia Japonica) and Bahia (Paspalum notatum). Such areas shall be sodded, plugged, or sprigged. Sod is required in swales or other areas subject to erosion.

g. Stone, gravel, pine straw, bark, or a mulch approved by the Development Services Director or his/her designee shall be used in combination with other plants. Cypress bark is not an approved material.

h. Synthetic plants or artificial material in the form of trees, shrubs, ground covers or vines shall not be used in lieu of plant requirements in this section.

3. Maintenance Requirements:

a. All plantings must be maintained in an attractive and healthy condition. Maintenance must include, but not be limited to, watering, tilling, fertilizing and spraying, mowing, weeding, removal of litter and dead plant material, and necessary pruning and trimming.

b. All trees may be pruned to maintain shape and promote their shade-giving qualities and to remove diseased or dying portions in areas where falling limbs could be a hazard. Trees shall be pruned only as necessary to promote healthy growth or to avoid power lines. Pruning shall comply with current International Society of Arboriculture (ISA) standards. No more than 20% of the crown shall be removed within a one (1)-year period.

c. It is the responsibility of the property owner, renter, lessee, or agent, adjacent to the right-of-way to maintain all areas within the right-of-way which do not contain the road, curb, median, or sidewalk, to maintain the sod or other materials approved by the city engineer.

d. All landscaped areas and irrigation systems must be maintained in perpetuity by the property owner, tenant, or agent according to these regulations at a minimum. Any property owner who does not maintain the landscaped areas in a healthy, neat, and orderly fashion, free from refuse and debris, is subject to action from the Code Compliance department.

4. Sodding:

   a. All common space, whether used for water retention or not, shall be sodded.

   b. It is the responsibility of the property owner, renter, lessee, or agent, adjacent to the right-of-way to sod all areas within the right-of-way which do not contain the road, curb, or sidewalk prior to the city issuing a certificate of occupancy for a home or other building.

5. Non-Vegetative Materials.

   a. Stone, gravel, artificial turf and rock beds may be used as an accent but shall not be considered permanent landscaping.

   b. Stone, gravel, artificial turf and rock beds may be used as an accent but shall not require a permit unless they exceed five hundred (500) square feet.

   c. Stone, gravel, artificial turf and rock beds that exceed five hundred (500) square feet are permitted subject to obtaining permit from the Building Department and compliance with the provisions of this Section.

      i. The installation of artificial turf is permitted on all zoning districts and limited to play areas of public/private parks and institutions subject to the requirements of this Section.

      ii. All artificial turf shall, at a minimum, be installed according to the manufacturer's specifications and shall be subject to City stormwater requirements.

      iii. Installation of artificial turf within public and private rights-of-way is prohibited.

      iv. Artificial turf shall not be visible from rights-of-way on residentially zoned properties.

      v. Artificial turf may not be installed within fifty (50) feet of any artificial or natural water body with the exception of swimming pools.

      vi. Artificial turf is prohibited within drainage features (e.g. retention ponds, swales, and etc.).

      vii. Artificial turf must be installed out-side of the drip line of any tree.

viii. Impervious Surface Ratio (ISR). Artificial turf shall be considered one hundred percent (100%) impervious surface unless an acceptable impervious surface ratio is submitted to and approved by the City Engineer. The quantity of artificial turf to be incorporated into the landscaping of a property shall be limited by the maximum ISR for the subject property within the applicable zoning district and location requirements above.

ix. Artificial turf shall consist of materials that appear natural in appearance and color. The use of indoor/outdoor plastic or nylon carpeting as an installation of artificial turf is prohibited.

6. Utilities:

a. Required plantings shall avoid utility easements unless approved by the New Smyrna Beach Utilities.

b. Where the height and location of overhead powerlines requires the planting of small or low growing trees, planting under or adjacent to powerlines shall be approved by New Smyrna Beach Utilities.

i. Required canopy tree plantings in buffer areas that fall within utility easements may be reduced to understory trees at a rate of two (2) understory trees per required canopy tree.

c. Plant materials shall be selected to minimize potential root system damage or interference with public utilities.

7. Minimum Landscape Standards:

a. In General:

Irrigation:

i. All landscaped areas shall be irrigated with a workable underground irrigation system. Areas left in their natural state do not need to be irrigated.

ii. All multi-family developments containing more than ten (10) units shall use a non-potable water irrigation system for watering landscaped areas if available.

b. Residential:

i. In general:

1. Each residential lot shall contain a minimum of one (1) tree for every 2,500 square feet of lot area or portion thereof (rounded to the nearest whole number. If a lot contains an insufficient number of existing trees to meet

this requirement, replacement trees shall be provided. A minimum of 50% of the trees provided must be a canopy tree, as defined by Florida-Friendly Landscaping™. In addition, a minimum of ten (10) shrubs preserved or planted on the property.

ii. New subdivisions:

1. Subdivisions that create new streets shall provide a landscaped entrance buffer having minimum dimensions of twenty (20) feet in width, fifty (50) feet in depth, and 1,000 square feet in area on both sides of the main vehicular entranceway to the subdivision.

2. Platted lots shall have a minimum of one (1) tree for every 2,500 square feet of lot area or portion (rounded to the nearest whole number) and a minimum of ten (10) shrubs preserved or planted on the property. Fifty percent (50%) of the trees provided must be canopy trees. No less than eight (8) of the shrubs shall be located in front of the home. No Certificate of Occupancy shall be issued until this requirement has been met.

3. All recreation areas within a subdivision shall shall be landscaped except those with natural vegetation or conservation areas. Recreation areas having trails for walking, jogging or biking in a corridor or lineal type fashion, and having a length of at least 250 feet and a width of at least fifteen (15) feet may be left natural, stabilized, or paved.

4. Fifteen percent (15%) of the gross area of any new subdivision shall be designated for the protection of trees. The area required to protect specimen trees as defined in this LDR's Definitions section may be included to satisfy this requirement.

c. Multi-family and Non-residential:

I. A minimum of fifteen percent (15%) of the total gross land area of any development site shall be landscaped. This landscaped area shall be inclusive of required landscape buffers. This requirement may be reduced to ten percent (10%) at the discretion of the Development Services Director or his/her designee.

d. Parking Areas:

I. All off-street parking lots with eight (8) or more required parking spaces and vehicular use areas (access driveways, service drives, and loading areas) are required to include landscaping.

II. All landscaped areas, whether on private property or public right-of-way, shall be curbed to protect the landscaping from traffic. If the elevation of a grassed landscaped area is the same as the surrounding impervious area, then curbing shall be gapped to allow flow of water into and through the grassed landscaped area.

III. Required off-street parking areas with parking spaces for eight (8) vehicles or more shall have interior landscaped areas covering ten (10%) percent of the total off-street parking area.

IV. Shopping centers in the B-5, Planned Shopping Center District, shall have interior landscaped areas covering 20 percent of the total off-street parking area.

V. Interior landscaped areas are exclusive of any required landscaped buffer areas. No more than 25 percent of the required interior landscaped area shall be placed in any one location except as necessary for minimum area requirements.

VI. Interior landscaped area shall include a minimum of one tree per 100 square feet or fraction thereof. Interior landscaped areas shall have a minimum area of 75 square feet with no dimensions less than six feet.

VII. Each landscaped area shall include at least one tree. The remaining area shall be landscaped with shrubs (less than four feet high), grass, or a ground cover, and all plants shall be mulched.

VIII. A minimum of one (1) landscaped island shall be provided for every ten (10) parking spaces, as follows:

1. Each island shall contain a minimum of one canopy tree as defined by the Florida-Friendly Landscaping™. For the purpose of accent or landscape design, other trees may be used if approved by the Development Services Director or his/her designee.

2. Islands shall divide parking spaces in order to relieve large expanses of paved areas.

3. The size of the island shall be a minimum width of nine (9) feet, as measured from the interior side of the curb, and a minimum area of one hundred sixty (160) square feet. A reduction in width may be allowed on a case-by-case basis, down to six (6) feet wide, and one hundred (100) square feet of area upon approval of the Development Services Director or his/her designee.

4. Parking lot islands are required at all terminal ends of parking space rows, regardless of whether they have more than ten (10) parking spaces in that row.

5. A waiver of the required ten (10) parking spaces without an island can be authorized by the Development Services Director or his/her designee, if in support of existing tree preservation. In no case shall there be more than fifteen (15) parking spaces without an island. Should a waiver be approved, landscaped islands shall be provided at a minimum width of ten (10') feet wide, as measured form the interior side of curb, and have a minimum area of one hundred eighty (180) square feet.

IX. Tree preservation in parking areas. Preservation and planting of trees in parking lots shall be approved by the Development Services Director or his/her designee in accordance with this LDR. The preservation of trees in parking areas having a diameter of four (4) inches DBH or larger qualify for a reduction in required parking spaces at the discretion of the Development Services Director or his/her designee, when the reduction in parking spaces will preserve approved species of trees. A reduction of up to fifteen percent (15%) of the required parking spaces may be approved, the total reduction in parking spaces shall not exceed fifty (50) spaces. The reduction in parking spaces shall be subject to the following:

1. The number of parking spaces and "the percentage reduction requested" shall be provided on each site plan application.

2. The required number of parking spaces shall be designated on an approved site plan.

Additional Requirements for Specific Uses:

1. The following uses require additional considerations beyond the minimum requirements listed above:

a. Adult congregate living facilities: In addition to the LDR Section 504.00 requirements, twenty five percent (25%) of the yard shall be covered with grass or other vegetation. Vegetation or plants other than grass shall be approved by the Development Services Director or his/her designee.

b. Airport Industrial Park: All unpaved lot areas shall be tastefully landscaped with an effective combination of trees, shrubbery, and ground cover. Decorative plazas, pools, flower beds, rock gardens, and other decorative treatments, may be incorporated. landscaping is to be accomplished using quality materials and workmanship.

c. Child day care on church property: Play areas shall be fenced and landscaped. The landscaping shall include a vegetative hedge planted at least four (4) feet in height, three (3) feet on center, and be six (6) feet in height within two years.

d. Construction and demolition debris disposal facility, materials recovery facility, recovered materials facility or off-site disposal of land clearing debris facility: Perimeter landscape buffers shall be established prior to initiation of the activity and shall be a minimum of fifty (50) feet adjacent to all boundaries.

Landscape Buffers:

Where a landscaped buffer area is required, the following regulations shall apply:

1. In General:

   a. Buffer areas shall consist of a combination of trees, shrubs, and groundcover. The number of required minimum plantings for trees and shrubs shall conform to Buffer Table 2. 20% of the buffer area shall be planted with groundcover.

   b. The developing parcel shall be responsible for the creation and maintenance of all required buffer areas.

   c. If plant materials are used for screening, they shall be at least three (3) feet tall at time of planting.

   d. If a decorative wall or fence is used for screening, it shall be six (6) feet high with shrubs planted abutting the side of the wall or fence facing the adjoining property or street. Shrubs shall be planted at intervals of no more than six (6) feet.

   e. Any proposed landscape buffer plantings within a utility easement shall be approved by New Smyrna Beach Utilities.

   f. A fence or wall included in a buffer screen shall be constructed with the side of the fence or wall with the finished appearance facing the use of lesser intensity or right-of-way.

   g. An opening through a buffer area shall be provided where required to facilitate pedestrian or vehicular traffic between developments, this shall not reduce the requirement for plantings based upon linear feet.

   h. Pedestrian paths or bike trails may provide access through a buffer provided that openings to allow such crossing points shall be a maximum of one (1) foot wider than the path or trail and not less than 100 feet apart.

   i. A buffer may incorporate stormwater low impact development (LID) best management practices (BMPs) as long as the required plantings are also provided,

the landscaping does not interfere with proper functioning of the stormwater system, and the design water depth does not harm the viability of such plantings.

j. Street lighting may be incorporated into the buffer area.

k. A buffer area shall not be used for any building, parking, storage, loading area, or active recreation area, except for approved pedestrian and bike path access as described above.

2. A buffer shall be required between zoning districts according to the standards set forth in Buffer Table 1. The existence of public or private right-of-way along a property boundary shall not be construed as meeting any part of the buffer requirement, nor as relieving the applicant from providing the required buffer.

Buffer Table 1.

Intensity of Use	1	2	3	4	5
1: A-1C, A-2, A-3, A-4, FR, C, RA, R	No Buffer	Low	Low	Medium+	High
2: RE, R-1, R-2, R-2A, R-3, R-3A, , R-1CO, R-3CO	Low	No buffer	Low	Medium	High
3: R-3B, R-4, R-5, R-6z, MH-1, MH-1CO, MH-2, MH-4	Low	Low	Low	Medium	Medium +
4: MU*, B-2, B-3**, B-4, B-5, B-6, B-6A, CM, I-1	Medium+	Medium	Medium	Low	Medium +
5: I-2, I-3, I-4	High	High	High	Medium+	Med

*MU zoning district is exempt from buffers except for a five (5) foot buffer around parking areas or when adjacent to residentially zoned properties.

**B-3 zoned parcels may provide a minimum buffer width of five (5') feet abutting other B-3 zoned parcels. B-3 zoned parcels may provide a minimum buffer width of five (5') feet abutting residentially zoned properties when a six (6') foot tall block wall is provided. These buffered areas shall require two (2) canopy trees and thirty-three (33) shrubs planted per 100 linear feet and 20% of the buffer area planted with groundcover.

3. Where a buffer is required it shall conform to the standards set forth in Buffer Table 2.

Buffer Table 2.

Buffer Type	Buffer Width	Required minimum plantings per 100 linear feet
Low	10 Feet	Two (2) Canopy Trees, 66 Shrubs
Medium	15 Feet	Two (2) Canopy Trees, four (4) Understory Trees, 100 Shrubs
Medium +	15 Feet	Two (2) Canopy Trees, four (4) Understory Trees, 100 Shrubs Unbroken hedge, fence, or wall.
High	20 Feet	Three (3) Canopy Trees, Four (4) Understory Trees, 133 Shrubs Unbroken hedge, fence, or wall.

604.051 Tree Preservation:

In General:

1. It is unlawful for any person to cut down, move, remove or destroy any tree without first obtaining a tree removal permit (if a permit is required) from the City's Development Services Department. No permit to cut down, move, remove or destroy any tree shall be issued for any property unless the property owner has an active building permit, or land clearing permit, or water management permit.
2. Fees to cut down, move, remove or destroy any tree shall be as established by resolution of the City Commission.
3. Removal of mangrove trees shall require a permit from the Florida Department of Environmental Protection.
4. This section shall apply to trees that are four (4) inches or greater in diameter at DBH.
5. Trees with a multi-stem trunk system with a well-developed crown at least fifteen (15) feet high as measured from its base shall be subject to the provisions of this section.
6. Trees classified as Category I Invasive Species per the Florida Exotic Pest Plant Council list, as amended, may be granted a waiver from the Development Services Director or his designee for removal without a fee.
7. The tree regulations for the city shall be generally in three groups: residential, commercial and industrial, and agriculture zoning classifications. The specific zoning classifications that are covered within each of these groups are set forth in each individual group.

Residential Areas:

1. *Residential zoning classifications.* The following tree removal and replacement requirements shall apply in all land zoned for residential uses. This provision shall

apply in the RE, R-1, R-2, R-2A, R-3, R-3A, R-3B, R-4, R-5, R-6, R1-CO, R3-CO, MH-1, MH-2, MH1-CO, MH2-CO, zoning districts.

2. *Minimum tree coverage standard.* All properties zoned for residential uses shall have no less than one (1) tree for every 2,500 square feet of property or portion thereof (rounded to the nearest whole number). Example: 8,700 sf: 3 trees, 8,750: 4 trees.

   If any lot contains an insufficient number of existing trees to meet this requirement replacement trees shall be provided by the owner.

3. Time to come into compliance with minimum tree coverage standard.

   a. New construction:

      i. New construction on vacant property zoned for residential uses shall comply with the minimum tree coverage standards prior to issuance of a certificate of occupancy.

      ii. All residential lots shall be fully landscaped no longer than ~~9~~60 days after a certificate of occupancy has been issued for the dwelling unit.

   b. Existing properties:

4. Existing nonconforming properties shall comply with the minimum tree coverage standard when all of the existing structures on the property are replaced with new structures. An Alternative to this requirement is described in Section (7), below. *Fifteen percent of development set aside for trees.* Fifteen percent (15%) of the area of any subdivision shall be designated for the protection of trees. The area required to protect specimen trees may be included to satisfy this requirement. This required area may be constituted as one or more sub-areas within the development. Said area may include any landscape buffer or other landscape areas required by the LDR for a development. Such designated areas shall contain sufficient land area to comply with minimum tree protection standards to adequately protect the trees contained within the areas. A minimum of fifty percent (50%) of the required minimum number of trees as provided in section (5) below shall consist of existing trees within said area. This requirement does not apply to single-family lots in approved subdivisions or additions, remodeling or similar modification of existing multi-family or non-residential development.

5. *Specimen tree protection.* The following table sets forth the minimum requirements for the protection of specimen trees:

No. of Specimen Trees	Minimum Specimen Tree Protection Requirement
Less than 3 per acre	80% of all specimen trees
3.0 to 5.0 per acre	65% of all specimen trees

5.1 to 8.0 per acre	50% of all specimen trees
8.0 or more per acre	30% or 6, whichever is greater, specimen trees per acre

6. *Legal mechanism to protect specimen trees.* The developer of a subdivision shall provide legal mechanisms which ensure the protection of specimen trees after construction has occurred. Such mechanisms may include but shall not be limited to conservation easements, common open space, tree protection easements, deed restrictions and homeowner's association documents. Specimen tree protection on residential lots shall only apply in the designated setback areas. Said legal mechanisms shall be reviewed and approved by the City Attorney.

7. As an alternative to meeting the minimum number of required trees on-site, owners of nonconforming properties shall be allowed to pay into the city's tree mitigation fund. The cost of replacement is outlined in in the Tree Removal and Replacement subsection, below. Properties having made an application for building or development permits prior to the adoption of this section and active at the time of adoption of this section shall comply with the tree regulations in force at the time the building or development permit application was made.

Commercial and Industrial Areas:

1. *Commercial and industrial zoning classifications*. The following tree removal and replacement requirements shall be required in all land zoned for commercial and industrial uses. This provision shall apply in the MU, B-2, B-3, B-4, B-5, B-6, B-6A, CM, I-1, I-2, I-3, I-4, BBH, COZ, PUD, HBOD, C, R and PUD zoning districts.

2. *Minimum tree coverage standard.* All properties zoned for commercial and industrial uses shall have no less than one (1) tree for every 2,500 square feet of property or as required by an approved site plan.

3. *Time to come into compliance with minimum tree coverage standard*. New construction shall comply with the minimum tree coverage standards prior to issuance of a certificate of occupancy. All nonconforming properties shall comply with the minimum tree coverage standard when all of the existing structures on the property are replaced with new structures. Properties having made an application for building or development permits prior to the adoption of this section and active at the time of the adoption of this section shall comply with the tree regulations in force at the time the building or development permit application was made.

Tree Protection During Construction

1. *Marking trees.* Prior to the commencement of construction any tree or tree groups to be maintained shall be clearly marked and the markings shall remain in place during construction. Any land clearing equipment shall be operated in a manner as not to injure or destroy any trees designated to remain on the site.

2. *Temporary barriers.* During the period of construction a temporary barrier at least three (3) feet in height shall be formed a minimum of seven (7) feet from the base of the tree or trees and it shall include at least fifty percent (50%) of the area under the drip line of the tree(s).

3. *Natural soil level.* Except for palm trees, all trees and replacement stock shall have their natural soil level maintained. Tree wells and/or planter islands shall be provided if necessary to maintain the natural existing soil level.

Tree Removal and Replacement:

Residential, Commercial, and Industrial Zoned Property. All tree removal on land zoned for residential, commercial, and industrial zoned uses shall be in compliance with this provision.

1. Trees not requiring permits or mitigation.

   The trees listed on the Florida Invasive Species Council list of Category I trees may be removed with an administrative waiver issued by the Development Services Director of his designee and replacement trees shall not be required to replace trees that have been removed, provided that the removal of the tree or trees does not result in the number of the trees on the property falling below the minimum tree coverage standards. If the removal of a tree or trees results in the number of the trees on the property falling below the minimum tree coverage standard replacement trees are required.

2. Trees requiring permits for removal and do not require mitigation.

   The trees listed below may be removed with a permit from the city and replacement trees shall not be required to replace trees that have been removed, provided that the removal of the tree or trees does not result in the number of the trees on the property falling below the minimum tree coverage standard of no less than one (1) tree for every 2,500 square feet of property. If the removal of a tree or trees results in the number of the trees on the property falling below less than one (1) tree for every 2,500 square feet of property replacement trees are required.

   a. All dead, dying and diseased trees., per an arborist report.

3. Trees requiring permits for removal and may require mitigation.

   The trees listed below may be removed with a permit from the city and replacement trees shall be required to replace trees that have been removed.

a. All specimen trees.

b. All historic trees (permit must be issued by City Commission.)

c. All trees other than Category 1 invasive trees.

Agriculture Zoning Classifications. This provision shall apply in the A-1, A-2 and FR zoning districts, and property on which trees were planted and grown for sale to the general public or some public purposes, and licensed plant or tree nurseries, and botanical gardens Trees located on agricultural cultivation or grazing land, or on commercial plant nursery sites are exempt from the provisions of this section, with the following conditions:

1. Any property owner who removes or destroys trees from agricultural cultivation or grazing land, or commercial plant nursery sites within three (3) years of filing an application for rezoning to a non-agricultural classification, applying for subdivision approval, or filing for special exception approval shall be presumed to have performed such removal or destruction of trees with the intent of developing the land for a non-agricultural use and shall not be exempt from the provisions of this section. Said presumption shall be a legally rebuttable presumption.

2. The applicant shall submit with its application for an exemption to the tree replacement requirement copies of any and all contracts, agreements, deeds and all usual and customary business records that would be reasonably necessary for the city to review to determine whether or not the applicant is entitled to an exemption. The applicant shall not fraudulently withhold any document. See generally, section 50 of the Volusia County Code of Ordinances.

3. The property owner shall have rebutted the presumption that the removal or destruction of trees on his property was with the intent of developing the land for a non-agricultural use by filing a sworn and notarized affidavit with the city attesting that any trees that were removed in the past three years from the subject property were removed in conformity with recognized agricultural management or production practices and not merely for the purpose of avoiding the requirements of this section.

   The affidavit filed by the property owner may be challenged by the city within thirty (30) days of filing the affidavit.

   In the event that the city elects to challenge the property owner's affidavit, the exemption may be denied by the city upon showing by substantial competent evidence that the trees were not removed in conformance with recognized agricultural management or production practices. The city shall have the burden of proof to refute the affidavit filed by the property owner.

4. Any decision to deny an exemption under this provision shall be in writing, state the factors considered in denying the exemption, state the reasons for denying the exemption, and be signed by the Development Services Director or his designee.

The city shall consider, among any and all other relevant factors, the following when reviewing any request for an exemption under this provision:

a. The specific reasons stated by the property owner for removal of the trees.

b. The length of time the land has been in agricultural production.

c. Whether the agricultural use has been continuous.

d. The size of the area as it relates to efficient agricultural production.

e. Whether the land has been sufficiently and adequately cared for within accepted commercial practices of the dominant type of production.

f. Whether the land is under lease and if so, the type and terms of said lease.

g. Whether the tree removal was done in the ordinary course of business.

h. Any contract for sale in existence at the time the affidavit is submitted.

i. Other factors that are relevant to the determination of good faith land use.

See generally, section 50 of the Volusia County Code of Ordinances.

Replacement Trees.

1. Approved trees. Only trees listed on the Florida-Friendly Landscaping™ shall be planted to meet the minimum tree requirements of this section and be used as replacement trees:

   Historic and specimen trees shall be replaced with trees of like species unless like species are not reasonably available.

2. Trees listed as Category I invasive species by the Florida Exotic Pest Plant Council are prohibited.

3. Replacement of trees shall be calculated based on the replacement of 40% of the total DBH inches of the protected tree(s) permitted for removal. Single trees may be replaced with two (2) or more trees meeting the standards of this code one and two-family residences, replacement trees are to be provided based on one replacement tree for each protected tree 12-inches or less DBH and two replacement trees for each tree in excess of 12-inches DBH.

4. To encourage the retention of existing large trees in the city, the following credits shall be applied to reduce the number of replacement trees required by this section:

   a. Preserved specimen trees will be credited at 15% of DBH inches of each tree.

b. Preserved historic trees will be credited at 20% of DBH inches of each tree.

5. Replacement trees shall adhere to the minimum tree standards in this code. Credited trees shall not reduce the number of required onsite plantings bellow the minimum requirements of this code. Replacement trees shall be selected from Florida-Friendly Landscaping™. Historic and specimen trees must be replaced with trees of like species unless like species are not reasonably available.

6. Palms may be used as replacement stock up to the full DBH inches of palms being removed from the site and up to one-fifth of the DBH inches of non-palm.

   Where non-palm species are proposed as replacements for palm trees, the replacements shall be done according to the following chart:

DBH of Palm	DBH of Non-Palm Species
6 inches	1.5 inches
8 inches	2 inches
10 inches	2.5 inches
12 inches	3 inches
14 inches	3.5 inches
16 inches	4 inches

7. When replacement trees are required, the replacement trees shall be provided prior to the issuance of a certificate of occupancy. If there is no certificate of occupancy required for the site, then the replacement trees shall be installed within sixty (60) days of the date when notice is provided that replacement trees are required.

8. Survival of replacement trees shall be guaranteed for one year. Replacement trees that die during the first year after planting must be replaced.

9. Alternate Placement of Replacement Trees

   a. In the event that a property has existing tree canopy coverage of thirty percent (30%) or greater of the property, the property owner may request to place required replacement trees on the public right-of-way immediately adjacent to the property owner's property, or on the publicly-owned neighborhood park or recreation area servicing the property owner's property. Said park or recreation area must be within the incorporated boundaries of the city. The city may grant permission when the proposed tree planting is accompanied by an approved landscape plan and associated maintenance and guarantee agreement between the developer requesting the plantings and the city department that would be responsible for the area in which the trees would be placed. This provision shall in no way affect a property owner's right to seek and receive a general variance granted by the planning and zoning board from the tree preservation requirements.

b. If replacement trees cannot be placed within public rights-of-way or parks, the developer shall provide a payment to the city for the cost of the remaining replacement trees. The developer shall pay these fees into the city Tree Mitigation Fund.

c. The cost of replacement trees shall be assessed at the following rates:

i. One hundred thirty-five dollars ($135.00) per DBH inch if verified on-site;

ii. Three hundred twenty-five dollars ($325.00) per DBH inch for impacts to specimen trees;

iii. Seven hundred fifty dollars ($750.00) per DBH inch for impacts to any permit identified historic tree.

If needed, an amendment to this Code will be brought to the planning and zoning board in February of each calendar year. Costs per tree shall be based upon average costs per tree as established by local nurseries selling trees that meet the minimum size requirements outlined in this section.

Funds deposited into the Tree Mitigation Fund shall be appropriated in accordance with the annual adopted budget of the city for, but not limited to, the following projects:

- Planting native trees, shrubs and plants on city-owned property.
- Purchasing environmentally sensitive land for permanent preservation.
- Purchasing a vacant parcel that could be planted with replacement trees.
- Removing invasive species from city-owned property.
- Raising community awareness about the care of the natural environment.
- Funding of matching grants for projects involving vegetative plantings.
- Designing and planting right-of-way beautification projects.

Permitting.

The tree removal application shall be made in the following manner:

1. Class I Site Plans. If a resident applies to remove a tree from a developed lot, a survey of the lot indicating the location, size and number of trees is required shall be provided.

a. The survey shall confirm that there is at least 1 tree for every 2,500 square feet. If the site is heavily wooded, note that on the application.

b. In instances of already developed lots, a sketch plan may be prepared and submitted by the property owner and/or applicant in lieu of a tree survey.

2. Class II or Class III Site Plans. Sites requiring Technical Review Staff-approval shall be required to provide a survey of the property prepared by a surveyor registered with the State of Florida showing existing features of the property including elevations, buildings, structures, trees over six (6) inches in trunk diameter at 4.5 feet above ground level, all specimen and historic trees, streets, utility easement rights-of-way, and land use. For properties east of the Indian River the survey must show trees over four (4) inches in diameter at 4.5 feet above ground level. Credit for trees between 2.5" to 6" in diameter can be given if indicated on the survey in lieu of having to provide mitigation or replacement trees.

    a. A sample size of 20% of a site may be surveyed in lieu of a full survey, or a similar suitable size, based on the discretion of the Development Services Director.

3. No permit to clear or grade shall be issued until either the required survey or sketch is included with a building permit.

4. The location of all trees on the site, designating the trees to be retained, removed, relocated or replaced along with their name (botanical) must be illustrated on the site plan.

5. In the case of partial development, show only those areas and items affected.

6. Upon receipt of the application and fee for tree removal permit, the Development Services Director or his designee shall review the plans and may inspect the site.

7. If the work described is not begun within one (1) year from the date of issuance of the permit for tree removal, said permit shall be void. The Development Services Director or his designee reserves the right to extend or rescind the tree removal permit if conditions warrant.

8. Historic trees in all zoning districts shall be removed only upon a tree removal permit granted by the City Commission at a quasi-judicial public hearing, after a finding that the evidence presented is more compelling for the removal of the historic tree than for it to remain.

    a. Petitioners wishing to obtain a permit must show:

        i. The tree is currently damaging or is posing an imminent danger to an existing structure; or

ii. The tree is damaging and/or interfering with the installation, operation, and/or maintenance of existing or proposed public infrastructure; or

iii. The tree is dead, diseased, structurally unsound, or severely injured such that the tree is likely to die within two years; or

iv. Other extraordinary circumstance or hardship where the applicant has demonstrated that no other feasible option exists to preserve the tree.

b. Applications for historic tree removals shall be accompanied by a written tree evaluation report prepared by an ISA certified arborist which identifies the tree's location, size, species, condition, and basis for meeting one or more of the listed removal conditions.

9. Specimen trees 24-inches DBH or greater shall be removed only upon a tree removal permit approved by the Development Services Director or his designee, based on the proposed tree removal meeting one (1) of the four (4) conditions listed in Section 8 (a) above. Appeals of the Director's decision may be made to the City Commission as a quasi-judicial matter.

Violations and penalties.

Any person, organization, society, association, or corporation or any agent or representative, who shall violate the provisions of this section shall, upon a finding of violation by the~~board~~ Development Services Director or their designee, be required replace all removed trees with a number of trees equal to the total DBH inches of the tree(s) removed. The violator may, at the discretion of the Development Services Director or their designee, pay into the City's Tree Fund at the rates described below, after demonstrating that minimum onsite planting requirements have been met, in lieu of meeting the requirements for replacement of damaged or removed trees, in whole, or in part. The replacement of trees or required payments under this section shall not preclude the imposition of any other penalties provided by law or ordinance for the violation. Replacement trees shall be maintained and guaranteed survival for one (1) year.

Payments into the Tree Mitigation Fund for violations to this code shall be made at the following rates:

1. One hundred thirty-five dollars ($135.00) per DBH inch if verified on-site;

2. Three hundred twenty-five dollars ($325.00) per DBH inch for impacts to specimen trees;

3. Seven hundred fifty dollars ($750.00) per DBH inch for impacts to any permit identified historic tree.

4. Four hundred dollars ($400.00) per DBH inch for impacts to any permit identified preserved tree in addition to the rates above;

5. If no evidence exists on site to calculate the DBH of the tree(s) removed, then each tree shall be presumed to be a minimum of a 24-inch preserved specimen tree. It is the property owner's responsibility to prove otherwise.

No certificate of occupancy or certificate of completion shall be issued for any development until all applicable administrative fines or civil penalties, and permits have been paid, accepted, approved, and verified by the Development Services Director or their designee.

Appeal.

Within thirty (30) days after any decision made by the Development Services Director in the administration and interpretation of this section, but not thereafter, the applicant may appeal to the city commission, who by majority vote may affirm, reverse or modify the decision of the Development Services Director. The city commission's review of the city manager's decision shall be de novo with notice to all interested parties at least ten days prior to the hearing on the appeal. Notice shall be made by the city clerk by U.S. mail and by publication in a newspaper of general circulation in the city of the time and place of the hearing. Any decision by the city commission shall be subject to review by the circuit court of appeal.

Stop work orders.

The city shall issue a stop work order to any person found in the act of cutting down, destroying, damaging or removing trees in violation of this section (See, section 50-165 of the Volusia Code of Ordinances.)