# THE CITY OF NEW SMYRNA BEACH – PLANNING AND ZONING ORDINANCE NO. 22-16: CONDUCT THE SECOND READING AND PUBLIC HEARING OF ORDINANCE NO. 22-16, WHICH IF ADOPTED, WOULD AMEND THE LAND DEVELOPMENT REGULATIONS, ARTICLE V, SECTION 504.02, SPECIFIC REGULATIONS BY DISTRICT, BY UPDATING AND CHANGING BUILDING HEIGHTS AND DENSITIES IN THE MULTI-USE (MU) ZONING DISTRICT, AND CHANGING DENSITIES IN THE B-3, B-4 AND PUD ZONING DISTRICTS. MAY 24, 2016

# **Background**

City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, FL 32168, Request approval of amendments to Article V Section 504.00, MU Mixed Use District (Central Business District); B-3 Highway Service Commercial District, B-4 Ocean Commercial District, and the PUD Planned Unit Development District of the City's Land Development Regulations.

The purpose of ZT-2-16 is two-fold. First, it will make Land Development Regulations consistent with proposed Comprehensive Plan Amendment 1-16. Secondly, it will make correct inconsistencies between the Land Development Regulation discovered by staff.

ZT-2-16 will modify the Land Development Regulations Section 504.00 MU Mixed Use District (Central Business District) as follows:

• Reducing the permitted height from 82 feet to 72 feet.

• Reducing the maximum density for transient lodging units in the Hospitality Future Land Use designation from 75 to 48 units per acre.

• Addition of the words Southeast Volusia to the term Activity Center to be consistent with Comprehensive Plan text.

• Changing the maximum unit density for transient lodging units in the Southeast Volusia Activity Center Future Land Use designation from 40 to 60 units per acres, to be consistent with the current Comprehensive Plan.

ZT-2-16 will modify the Land Development Regulations Section 504.00 B-4 Ocean Commercial District as follows:

• Reducing the maximum density for transient lodging units in the Hospitality Future Land Use designation from 75 to 48 units per acre.

• Adding the words Southeast Volusia to the term Activity Center to be consistent with Comprehensive Plan text.

• Changing the maximum unit density for transient lodging units in the Southeast Volusia Activity Center Future Land Use designation from 40 - 60 units per acres, to be consistent with the Comprehensive Plan.

• Since the policies associated with the Marina Future Land designation can not be applied in this zoning district, references to the Marina policies are removed.

Z-2-16 will modify the Land Development Regulations Section 504.00 B-3 Highway Service Business District as follows:

• Reducing the maximum density for transient lodging units in the Hospitality Future Land Use designation from 75 to 48 units per acre.

• Adding the words Southeast Volusia to the term Activity Center to be consistent with Comprehensive Plan text.

• Changing the maximum unit density for transient lodging units in the Southeast Volusia Activity Center Future Land Use designation from 40 - 60 units per acres, to be consistent with the Comprehensive Plan text.

• Since the policies associated with the Marina Future Land designation can not be applied in this district, references to the Marina policies are removed.

Z-2-16 will modify the Land Development Regulations Section 504.00 PUD Planned Unit Development as follows:

• Reducing the maximum density for transient lodging units in the Hospitality Future Land Use designation from 75 to 48 units per acre.

• Adding the words Southeast Volusia to the term Activity Center to be consistent with Comprehensive Plan text.

• Changing the maximum unit density for transient lodging units in the Southeast Volusia Activity Center Future Land Use designation from 40 - 60 units per acres, to be consistent with the current Comprehensive Plan.

# **Findings**

On February 2, 2016, Planning and Zoning Board motion failed unanimously on a roll call vote, 0-6, with all Board Members dissenting.

On February 23, 2016, City Commission approved on first reading by 4 to 1 majority vote, with Commissioner Sachs voting no, and with amended recommendations from staff, as reflected in the background of this report.

# **Recommendation**

Staff recommends that the City Commission adopt Ordinance No. 22-16, ZT-2-16.

## **ORDINANCE NO.**

ORDINANCE NO. 22-16: CONDUCT THE SECOND READING AND PUBLIC HEARING OF ORDINANCE NO. 22-16, WHICH IF ADOPTED, WOULD AMEND THE LAND DEVELOPMENT REGULATIONS, ARTICLE V, SECTION 504.02, SPECIFIC REGULATIONS BY DISTRICT, BY UPDATING AND CHANGING BUILDING HEIGHTS AND DENSITIES IN THE MULTI-USE (MU) ZONING DISTRICT, AND CHANGING DENSITIES IN THE B-3, B-4 AND PUD ZONING DISTRICTS.

**APPROVED AS TO FORM AND CORRECTNESS:** 

## • MU, MIXED USE DISTRICT (CENTRAL BUSINESS DISTRICT)

*Intent.* The MU, Mixed Use District forms the metropolitan center for commercial, financial, professional, governmental, and cultural activities. Uses are permitted which require a central location convenient to the general citizenry and provide a supportive relationship to each other. Retail goods and services together with accommodations for tourists, transients, and permanent guests or tenants are permitted. Intermixing of business, professional, and multifamily for new residential uses permit people to live and work in or near the downtown area if they so desire.

## Permitted uses.

- Advertising companies
- Art studios
- Assisted living facilities
- Automobile sales and services, new and used permitted west of Riverside Drive only, except on Canal Street between Riverside Drive and the FEC railroad tracks where the use is prohibited

Bakeries, nonmanufacturing

Bed and breakfast homes

Billiard halls

Charter boat business

Club, sports or health

College level and adult educational facilities

Communication facilities, such as radio, television, telephone, and telegraph buildings

Convenience market with or without gas pumps

Dancing establishments

Day care centers, adult

Delicatessens

Funeral homes

Government buildings and offices

Grocery stores

Laboratories

Newspaper offices and printing shops

Night clubs

Offices, general, professional and real estate

Package stores

Parking lots

Pawn shops

Personal services

Recreational buildings and complexes

Residential, attached dwelling unit

Residential, duplex

Residential, multi-family

Residential, single-family

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

Retail sales and services

Rooming houses

Schools with no more than 250 students

Service stations, types "A" and "B"

Taverns

Taxicab and bus stands and terminals

Theaters

Tour boat business

Transient lodging:

- "Transient lodging rooms, standard," as defined by this LDR, shall be a maximum of 500 square feet.
- "Transient lodging rooms, deluxe," as defined by this LDR, shall be a maximum of 750 square feet.
- The maximum room size does not include any balcony, porch or deck area connected to the unit.
- No more than 30 percent of the units may be deluxe.

Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18.

#### Permitted accessory uses.

All those uses customarily associated with the permitted principal uses.

Attached dwelling units that are structurally part of the principal commercial use.

Sidewalk cafes that comply with [sub]section 801.14 of the LDR.

- Swimming pool, private, in conjunction with apartments, condominiums, hotels, motels, residential developments, bed and breakfast homes, and recreational buildings and complexes subject to the following:
- (1) It is located in the yard area between the rear wall of the residential structure and the rear lot line; or
- (2) It is located at the front or side of the building, but not in required yards, and a six-foot high solid opaque wall or fence totally encloses the pool area.

Conditional uses.

Farmers markets, subject to the following conditions:

- (1) The planning manager or designee determines that adequate parking is available.
- (2) There is adequate space on-site to accommodate all vendors without utilizing public rights-ofway unless city commission approval has been received to utilize the 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. Prepared food and beverages.
  - h. Flea market and yard sale items are prohibited.
- (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. Outdoor displays, subject to the following conditions:
- (1) Any outdoor display must maintain the Americans with Disabilities Act (ADA) continuous three feet of clear sidewalk width. This clear area of three feet in width must also be maintained to building entries. If this standard cannot be met, outdoor display for the business is prohibited.
- (2) No outdoor display of merchandise is permitted unless there is a permitted principal development on the parcel, located in full compliance with all standards and requirements of this chapter. Merchandise is limited to products sold in the primary business.
- (3) Vehicles for rent, scooters, low speed vehicles, bicycles, shall not be considered outdoor display if:
  - a. All vehicles are stored or displayed solely on the private property associated with the business.
  - b. Vehicles for rent are not stored or displayed in required parking spaces.

- c. Vehicles for rent do not impede Americans with Disabilities Act access along the public way or to the business.
- (4) All outdoor business displays shall be temporary and easily moved. The displays shall be placed outside only while the primary business is open.
- (5) All outdoor displays shall be located in a manner which does not cause an obstruction for sight distance problems for vehicles.
- (6) Hanging displays over the pedestrian right-of-way are prohibited.
- (7) Wind drive or motion devices, such as flags beyond those permitted by the sign ordinance or pinwheels that may impede or strike pedestrians are prohibited.
- (8) The outdoor business display shall be placed adjacent to and parallel to the subject business storefront. These displays shall not be placed adjacent to the street curb or perpendicular to the subject business building. An outdoor business display shall not encroach upon the building frontage of an adjacent business.
- (9) The outdoor display area may be calculated at a rate of one-half (0.5) linear foot of outdoor display area per linear foot of storefront to a maximum of 50 linear feet of outdoor display area. The outdoor display area may be broken into clusters so long as the total length of all outdoor business display areas does not exceed permitted maximum as measured in linear feet. The total display area may be as much as five feet in length when 50 percent of the storefront would be less than five feet.
- (10) The outdoor displays may not exceed five feet in height.
- (11) The outdoor display area may not extend beyond the front of the building by more than three feet.
- (12) The outdoor business displays must be stable and constructed to withstand overturning by wind or contact. The display shall not be permanently affixed to any object, structure or the ground.
- (13) All outdoor business displays shall be continuously maintained in a state of order, security, safety and repair.
- (14) All outdoor business displays shall be neat, orderly and otherwise conducive to creating a topquality shopping environment. No display shall contain obscene, indecent or immoral matter.
- (15) These business displays shall not contain any information which would routinely be placed on a business sign located on the building such as the name or type of business, hours of business operation, business logo, brand name information, etc.
- (16) If a business has a sandwich board sign in front of the business, the outdoor display area shall be reduced in size equal to the size of the sandwich board sign.
- (17) Nothing herein is intended to be an abandonment of any dedicated or prescriptive sidewalk or rights-of-way and the temporary displays on the public sidewalk or right-of-way may be removed at the discretion of the city manager or designee if determined that the display interferes with pedestrian traffic or otherwise determines that the display creates a safety hazard.

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 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.

Special exceptions.

Arcades, subject to the following conditions:

- (1) The city commission shall specify the hours of operation to ensure that the operation does not interfere with the operation of an adjacent business or businesses;
- (2) Smoking shall be prohibited within the establishment and an interior "No Smoking" sign shall be posted in a conspicuous area within the establishment;
- (3) Consumption of alcoholic beverages shall be prohibited within the establishment and an interior "No Consumption of Alcoholic Beverages" sign shall be posted in a conspicuous area within the establishment; and
- (4) The establishment shall be attended by an adult employee during the hours of operation. Beach concession vehicles parked at a business, beachside only. See [sub]section 801.10.

Beach concession vehicle parking lots. See subsection 801.09.

Day care center, child, subject to the following additional conditions:

- (1) The child day care center 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 child day care center 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. Horse drawn carriage tour operations, subject to the following conditions:
- (1) Overnight boarding of horses used to pull the carriages is prohibited within the city limits;
- (2) Hours of operation shall be limited from 9:00 a.m. to 10:00 p.m. on weekdays and 9:00 a.m. to 11:00 p.m. on weekends;
- (3) All horses used to pull the carriages shall be bagged or diapered to prevent animal waste from littering the public rights-of-way;
- (4) All horses used to pull the carriages shall be fully attended at all times unless confined within a stable;
- (5) All carriages must be equipped with an operating rear flashing red light and reflective decals must be placed on all remaining sides of the horse and carriage when on the public rights-ofway;
- (6) The base of operation shall be cleaned of all animal waste at the close of each business day to the extent that any offensive odor will not create a recognizable nuisance to neighboring properties;
- (7) Any stable or animal storage area that is outside of a building must be screened by a six-foot high opaque fence; and
- (8) All tour routes and customer pick up and drop off locations shall require city commission approval based upon compatibility with neighborhoods and safety for other vehicles and the horse and carriage operation.
- In order to obtain an occupational license, all horse drawn carriage tour operations must provide proof of the following:

- (1) A veterinarian certification for all horses to be used in the business operations. The certification shall be based on a treatment for internal parasites and an inspection of teeth, hoofs, shoes and any other indicators of general physical condition.
- (2) Proof of liability insurance with a minimum value of \$1,000,000.00. Houses of worship

Tattoo parlor, subject to the following conditions:

- (1) Shall not operate on any parcel with frontage on the following streets:
  - a. Flagler Avenue
  - b. 3rd Avenue
  - c. Canal Street
  - d. U.S. 1
- (2) Shall not operate on any parcel adjacent to or across the street from a single-family residential zoning district.
- (3) Shall not operate between the hours of 12:00 a.m. and 8:00 a.m.
- (4) Shall not be established within 300 feet of a church, daycare, private school, or public school.
- (5) Shall not be established within 1,000 feet of an existing tattoo parlor.
- (6) The business shall be subject to all requirements of F.S. ch. 877.
- (7) Tattooing areas shall not be visible from the public right-of-way.
- (8) Windows shall maintain a minimum transparent area of 65 percent. Waterfront dining and entertainment establishments

Prohibited uses. The following uses shall be prohibited throughout the entire mixed use zoning district:

Outdoor storage (except operable vehicles, solid waste in an enclosed structure and propane gas tanks to the rear of a principal structure).

Uses not listed in permitted uses.

The following uses shall be prohibited in the Historic Westside Neighborhood:

Package stores

Nightclubs

Taverns

Dimensional requirements.

Minimum lot size.

Area: None

Depth: None

Width: 50 feet

Minimum yard size.

Front yard build-to lines:

Washington Street and intersecting streets one block north & south: 10-15 feet.

Canal Street and intersecting streets one block north and south: 0-5 feet.

- Flagler Avenue: 2—10 feet. Streets intersecting with Flagler Avenue within one block north and south of Flagler Avenue excluding corner lots fronting on the street parallel to Flagler Avenue: 2—10 feet. Streets intersecting Flagler Avenue where lot also fronts on the street parallel to Flagler Avenue: 7—12 feet.
- Other streets: 0—20 feet based on the average setback of buildings that were constructed before 1950 on both sides of the street in the same block. The build-to line may exceed 20 feet but may be no greater than the average setbacks of existing principal pre-1950 buildings within the block on both sides of the street.
- Side yard setback: Washington Street: Four feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Canal Street: None.

- Flagler Avenue: Three feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.
- Other streets: Five feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Rear yard setback: Ten feet

#### Encroachment into required yards.

There shall be no encroachment into required front yard areas except for the following accessory structures:

Eaves, sidewalk/patios/decks at adjacent public sidewalk elevation, planters, signs conforming to city regulations, benches/tables/chairs, other incidental uses may be located up to the front property line. Balconies, awnings, canopies and hanging signs may encroach upon the right-of-way provided there is a minimum vertical clearance of eight feet and a minimum horizontal setback of two feet from the face of the curb or if no curb exists, four feet from the edge of street pavement.

There shall be no encroachment into required side and rear yard areas except eaves may encroach a maximum of 18 inches into the side yard and 42 inches into the rear yard.

#### Visibility triangle for corner lots.

A visibility triangle shall remain clear of any obstructions on corner lots. The visibility triangle shall be measured as follows:

Commence at the point of two intersecting curbs, or if no curbs exist at the point of two intersection edges of pavement and measure 20 feet in each direction and connect the points with a line.

#### Maximum principal building height.

Beachside: Three stories or 42 feet maximum

Mainland: 72 feet maximum

#### ZT-2-16 MU B3 B4 PUD Zoning Districts

*Minimum residential building separation.* Where two or more residential 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.)

Maximum building coverage. None.

*Screen enclosures.* As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent 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.

*Minimum floor area*. Minimum floor area of an apartment dwelling unit or attached 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*. Minimum floor area of a rented sleeping room in a hotel, motel, or rooming house shall be 150 square feet.

Buffers. Landscaped buffer area shall be required as follows:

- (1) As defined in this LDR at property lines abutting or facing a residentially zoned lot; and
- (2) A minimum width of five feet at property lines of off-street parking areas, whether requiring class II or III site plan approval or not (new construction expansion or replacement only).

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

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

Maximum unit density for transient lodging units.

Hospitality future land use designation: 75 units per acre.

Southeast Volusia Activity Center future land use designation: 60 units per acre.

- Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:
- (1) A minimum of 20 percent of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
- (2) The public use area shall comprise at least 40 percent of the total linear footage of shoreline available to the property.

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

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.

## ZT-2-16 MU B3 B4 PUD Zoning Districts

## • B-3, HIGHWAY SERVICE BUSINESS DISTRICT

*Intent.* The B-3, Highway Service Business District is intended for application along highways carrying large volumes of traffic where establishments may locate to serve large sections of the city and the persons traveling in vehicles.

#### Permitted uses.

Adult congregate living facility

Ambulance service

Animal clinics (outpatient care only and no overnight boarding)

Attached dwellings

Automobile sales, new and used

Bakeries

Banks

Boat, motor, and boat trailer sales and service

Bowling alley

Business and communications systems

Bus station

Car rental and leasing

Carwashes

Club, semi-public

College level and adult educational facilities

Convenience stores with gas pumps

Financial services

Funeral homes

Furniture showrooms

Government buildings and offices

Grocery stores

Hospitals

Mobile home sales

4.B.a

Multi-family dwelling units

Offices, general, professional and real estate

Offices, medical

Parking lots

Pawn shops

Personal enrichment establishments

Personal services

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

Retail sales and services

Service stations, types "A" and "B"

Sport facilities

Taverns

Taxicab stands

Theaters

Transient lodging:

- "Transient lodging rooms, standard," as defined by this LDR, shall be a maximum of 500 square feet.
- "Transient lodging rooms, deluxe," as defined by this LDR, shall be a maximum of 750 square feet.
- The maximum room size does not include any balcony, porch or deck area connected to the unit.
- No more than 30 percent of the units may be deluxe.

Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18)

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

Special exceptions.

Building material sales and/or building material yards, provided all building materials that are stored shall be buffered by a screen designed to block the view of the building materials. The screen may include fences, walls, or vegetative landscaping. Building materials shall not project higher than the screen. Walls that are part of a building structure may substitute for the screen buffer.

Child day care facilities, subject to the following additional conditions:

(1) The property shall be located within 500 feet of an arterial or collector roadway.

4.B.a

4.B.a

## ZT-2-16 MU B3 B4 PUD Zoning Districts

- (2) Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach four feet in height within two years. The hedge plants must be planted three feet apart, on center.
- (3) Play areas shall be located outside all applicable setback dimensions.
- (4) The property shall have a separate vehicular drop off and pickup areas with a minimum 100-foot long drive lane outside of the public right-of-way, or sufficient parking area to provide enough space for drop off and pick up.
- (5) Play areas shall be located to the side or rear of the building, outside of the required setbacks. Churches
  - Fortune telling, subject to the following condition: Shall not be established within 500 feet of an existing fortune telling establishment.
  - Miniwarehouse storage facilities, when constructed a distance of one platted lot depth or 100 feet, whichever is greater, from state and federal highway rights-of-way; no other commercial use or business shall be permitted with the facility, and a landscaped buffer area shall be provided on all boundaries facing a residential district.
  - Outdoor display, storage, or sale of vehicles, or other equipment or material, provided that in the interest of safety to children and adjacent property, outdoor storage areas will be encompassed by a fence or wall at least six feet high, the bottom four feet being solid and the top two feet being open. Operative automobiles and mobile homes for sale shall be exempt from this requirement.

Tattoo parlor, subject to the following conditions:

- (1) Shall not operate on any parcel with frontage on the following streets:
  - a. Flagler Avenue
  - b. 3rd Avenue
  - c. Canal Street
  - d. U.S. 1
- (2) Shall not operate on any parcel adjacent to or across the street from a single-family residential zoning district.
- (3) Shall not operate between the hours of 12:00 a.m. and 8:00 a.m.
- (4) Shall not be established within 300 feet of a church, daycare, private school, or public school.
- (5) Shall not be established within 1,000 feet of an existing tattoo parlor.
- (6) The business shall be subject to all requirements of Chapter 877, Florida Statutes.
- (7) Tattooing areas shall not be visible from the public right-of-way.
- (8) Windows shall maintain a minimum transparent area of 65 percent. Waterfront dining and entertainment establishments

Dimension requirements.

Minimum yard size. (Properties along Canal Street and State Road 44)

Front yard: 40 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 40-foot front yard on one street and a 20-foot front yard on the other street. The 40-foot front yard shall be adjacent to the major or most traveled roadway.
- (2) Parcels which front on three streets shall provide a 40-foot front yard on one street and a 20-foot front yard on the other two streets. The 40-foot front yard shall be adjacent to the major or most traveled roadway.

Minimum yard size. (Properties within U.S. 1 Corridor)

Front yard: Five feet

Side yard: Five feet

Rear yard: Ten feet

*Corner lots.* Parcels which front on two or more streets shall provide a minimum five-foot front yard along each street frontage.

Maximum principal building height. 35 feet.

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

*Maximum impervious lot coverage* (Properties along Canal Street and State Road 44). The total area of the lot that may be covered with impervious material is 75 percent.

*Maximum impervious lot coverage* (Properties along U.S. 1 Corridor). The total area of the lot that may be covered with impervious material is 80 percent.

#### Buffers.

- Properties along Canal Street and State Road 44. 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) Along side or rear lot line abutting a residentially zoned lot, the buffer shall be 25 feet wide; and
- (3) Along side 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 605.05 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.
- Properties within U.S. 1 Corridor. Landscaped buffer area(s) as defined in this LDR shall be required at property lines of multi-family and non-residential developments as follows:
- (1) Front property lines: Five feet
- (2) Side and rear property lines (not adjacent to residentially-zoned properties): Three feet

4.B.a

- (3) Side and rear property lines (adjacent to residentially-zoned properties): Five feet. A tenfoot wide buffer will be required for taverns, outdoor seating areas and type "B" service stations.
- The landscape buffer adjacent to residentially-zoned property must include a six-foot tall masonry wall or fence.

*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.

Maximum unit density for transient lodging units.

Hospitality future land use designation: 75 units per acre.

Southeast Volusia Activity Center future land use designation: 40 60 units per acre.

*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 beachside dwelling unit and 2,420 square feet of lot area for each mainland dwelling unit.

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.

## • 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"

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:

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- (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, 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

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.

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.

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

Minimum floor area. 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.

*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: 75 units per acre; oceanfront parcels located between Esther Street and East 8th Avenue shall have a maximum allowed density of 24 transient lodging 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.

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 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*. The total area of the property that may be covered with impervious material is 75 percent.

*Through lots*. [Through lots] shall provide a 30-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; 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.

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

- (1 All front property lines; and
- (2) Along side 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.

#### PUD, PLANNED UNIT DEVELOPMENT

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

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

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

- Art, dance, modeling, music, etiquette, or any other personal enrichment schools or studios having scheduling or costs associated which are not typically found in a public or private elementary or high school curriculum
- Auction parlors, indoor
- Automobile service station, type A, B, or C
- Bars and liquor stores
- Beauty shops, barbershops
- Bowling alleys
- Cafeterias
- Child care centers
- Employment agencies
- Entertainment and recreational uses and structures
- Essential utility services
- Excavations only for lakes or stormwater retention ponds
- Exercise and health spas
- **Financial institutions**

Game rooms or arcades for pool, billiards, pinball machines, juke boxes or other coin-operated amusements

General offices

Home occupations

Hospitals

Houses of worship and cemeteries

Laundry and dry cleaning establishments

Medical and dental clinics

Multiple-family and single-family standard or manufactured dwellings

Nightclubs

Nursing homes, assisted living facilities, and adult congregate living facilities approved and licensed by the appropriate state agency

Pharmacies

Printing and publishing establishments

Professional or trade schools related to permitted uses

Public uses

Public utility uses and structures

Recovery homes

Restaurants, type A, B, C, and D

Retail sales and services

Retail specialty shops

Schools, parochial and private

Tailor shops

Taxicab stands

Theaters

Transient lodging:

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

**Travel agencies** 

Other uses approved by the city commission

Permitted principal uses and structures in the corridor overlay zone. The following land uses and their customary accessory uses and structures shall be allowed in the PUD Corridor Overlay Zone zoning district.

[The following are permitted uses.]

Art, dance, modeling, and music schools

Beauty shops, barber shops

Child care facilities

Essential utility services

Exercise and health spas

Financial institutions

- **Funeral homes**
- General offices

Hospitals, nursing homes, adult congregate living facilities, assisted living facilities

Houses of worship

Laundry and dry cleaning establishments (no coin operation)

Medical and dental clinics

Multiple-family standard dwellings, provided the following requirements are met:

- (1) Sixty percent of the commercial development must be completed prior to the start of residential construction, unless an alternate phasing plan is approved; and
- (2) The maximum permitted density will be 18 units per acre.

Pharmacies

Public uses

Restaurants (class "A")

Retail printing shops

- Retail specialty shops
- Schools, parochial and private

Single-family residences

Tailor shops

Taxicab stands

Theaters (no drive-ins)

Transient lodging:

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

#### Travel agencies

Two-family residences

Other uses and structures of a nature similar to those listed, after determination by the city commission at the time of overall development plan approval that such uses and structures are compatible with the PUD development and the surrounding area.

Permitted principal uses and structures within the activity center and west of Interstate 95. Permitted uses of land and their customary accessory uses and structures shall be as allowed in the written development agreement approved by the city commission.

Permitted accessory uses.

- 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

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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 onsite temporary sales and brokerage structures:
  - 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, recreational vehicle or tractor 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 requirements;
  - (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).

#### Conditional uses.

Farmers markets, subject to the following conditions:

- (1) The development services director determines that adequate parking is available.
- (2) The farmers market is located in the business portion of the PUD.
- (3) There is adequate space on-site to accommodate all vendors without utilizing public rightsof-way unless city commission approval has been received to utilize the public rights-of-way.
- (4) Vendors shall not block pedestrian ways.

- (5) Products offered for sale shall be limited to the following:
  - a. Fresh fruits and vegetables.
  - b. Herbs and spices.
  - c. Farmstead products including but not limited to cheese, meats, fish/seafood, poultry, eggs, baked goods, canned goods, honey, maple syrup and preserves.
  - d. Bedding plants, hanging and potted plants, and cut flowers.
  - e. Dried flowers or plants.
  - f. A maximum of 50 percent of the total area used for the market shall be allowed for handicrafts.
  - g. Prepared food and beverages.
  - h. Flea market and yard sale items are prohibited.
- (6) The farmers market organization must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (7) Each vendor operating within the farmers market must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (8) Informational booths for 501(c)3 non-profit organizations shall be permitted.

Approval of a conditional use. At the time the applicant applies for a business tax receipt with the city, the applicant shall also submit a conceptual plan to the development services department. The conceptual plan shall show the general location of the vendor stalls on the site. Based upon the criteria listed above, the development services director, or his/her designee, shall approve or deny the application for a conditional use.

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

Violation of conditional use terms or conditions. It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of a conditional use. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

# Special exceptions.

Pain management clinics, subject to the following conditions:

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

# Dimensional requirements.

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

Minimum PUD parcel size—All other areas (including properties within the Corridor Overlay Zone):

Residential	5.0 acres
Non-residential	2.0 acres

A PUD shall be considered residential if 50 percent or more of developed land or 50 percent or more of the proposed building square footage is designated for residential uses. Residential uses include, but are not limited to single-family, duplex, multi-family (including townhomes, apartments, condominiums), and live-work units.

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

Minimum lot size. If all or a portion of the PUD is subdivided, the minimum lot size shall be described in the proposed master planned unit development agreement.

Minimum yard size. Minimum yard size shall be described in the proposed master planned unit development agreement. In determining yard size, the city commission shall consider whether or not the proposed PUD will have adverse effects upon adjoining properties.

Off-street parking and loading requirements. Off-street parking and loading spaces shall be required as indicated in [sub]section 604.10 of this LDR and in addition shall meet the following: off-street parking and loading areas shall not be permitted in any required landscaped buffer area. All parking areas shall contain a minimum of 20 percent interior landscaping excluding any required landscaped buffer areas.

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

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

Hospitality future land use designation: 75 units per acre; oceanfront parcels located between Esther Street and East 8th Avenue shall have a maximum allowed density of 24 transient lodging units per acre.

Southeast Volusia Activity center future land use designation: 60 units per acre.

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

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

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

Landscape buffer requirements—Traditional City Area.

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

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

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

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

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

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

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

Canopy Trees	Understory Trees	Shrubs
2	2	20

When natural vegetation is disturbed, the buffer shall be irrigated as required in [sub]section 604.05 of this LDR.

Landscape buffer requirements—All other areas.

ZT-2-16 MU B3 B4 Zoning Districts

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

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

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

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

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

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

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

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

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

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

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

When natural vegetation is disturbed, the buffer shall be irrigated as required in [sub]section 604.05 of this LDR.

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

- (1) Unified ownership. All land within the PUD shall be under the ownership of one person, either by deed, agreement for deed, or contract for purchase. PUD applicants shall present either an opinion of title by an attorney licensed in Florida, or a certification by an abstractor or a title company, authorized to do business in Florida, that, at the time of application, unified ownership of the entire area within the proposed PUD is in the applicant, or contract seller. Unified ownership shall thereafter be maintained until after the recording of the overall development plan or final plat.
- (2) Retail uses within a PUD with more than one use. When retail uses or structures are approved as part of a PUD containing more than one type of use, the retail operation shall not begin until certificates of occupancy have been issued for all residential, industrial and/or office units in the total project, unless otherwise provided in the development agreement.
- (3) Utility system. All utilities within a PUD shall be located underground. However, appurtenances requiring above ground installations may be exempted by a majority vote of the city commission if the location and approximate size of the appurtenances requiring an above ground location is specified on sketch plans.
- (4) Open space requirements.
  - a. Property designated on the city's comprehensive plan future land use map as activity center shall have a minimum open space requirement of 40 percent for a residential PUD project and 30 percent for a non-residential or mixed-use PUD project;
  - b. Property in the Traditional City Area (east of the Turnbull Bay/Turnbull Creek waterway, north of State Road 44 and east of Mission Road, south of State Road 44 and excluding properties in the Corridor Overlay Zone) shall have a minimum open space requirement of 30 percent for a residential PUD project and 20 percent for a non-residential or mixed-use PUD project;
  - c. Property located west of Interstate 95, within the West New Smyrna Beach Urban Overlay Zone, shall have a minimum open space requirement of 50 percent for all PUDs;
  - d. Property east of Interstate 95 and west of the Traditional City Area (east of the Turnbull Bay/Turnbull Creek waterway north of State Road 44 and east of Mission Road south of state Road 44) and within the city's Corridor Overlay Zone (COZ), but excluding property located in the activity center, shall have a minimum open space requirement of 60 percent for a residential PUD project and 50 percent of a non-residential or mixed-use PUD project.

A minimum of 35 percent of the open space shall be designated as common open space for a residential PUD. Common open space shall meet the following standards:

a. It shall be accessible to and usable by all residents of the PUD;

- b. Its location, shape, size, character and use shall be illustrated on the overall development plan; and
- c. Maintenance guarantees shall be approved by the city commission.

Procedure for rezoning to PUD.

- (1) Preapplication stage. A pre-application meeting with the development services director or his/her designee is required before a PUD rezoning application can be accepted. This meeting is intended to provide an opportunity for an informational exchange between the applicant and the planning staff. During this meeting the applicant shall provide a conceptual plan indicating the layout and land uses within the proposed PUD. No fee shall be charged for this meeting.
- (2) Application stage. The applicant may submit an application package to the development services department at any time. Applications for PUD rezonings will be reviewed in the order in which received. The application package shall consist of the following items:
  - a. Completed application form;
  - b. Application administration fee as approved by the city commission;
  - c. Two copies of a plat of survey indicating property boundaries, legal description, acreage, and limits of the jurisdictional wetlands;
  - d. Names and addresses of property owners within 150 feet of the affected property. This distance shall be measured in an air line at the closest points between two properties;
  - e. Certification from landowner of record that applicant has authorization to make application for the requested zoning action;
  - f. Two copies of the traffic impact analysis;
  - g. Boundary survey and legal description;
  - h. Opinion of title;
  - i. Eleven paper copies and one electronic version of the written development agreement; and
  - j. Eleven paper sets and one electronic version of the conceptual development plans of the area to be rezoned at a scale no smaller than one inch equals 200 feet indicating the following:
    - 1. Adjoining land uses and zoning classifications;
    - 2. Locations and dimensions of proposed land uses;
    - 3. Location of proposed buildings and off-street parking lots;
    - 4. Density of residential dwellings;
    - 5. Total acreage and location of open space by type;
    - 6. Total acreage and location of common open space by type;
    - 7. Proposed right-of-way width and layout;
    - 8. Proposed front, side, and rear setbacks;
    - 9. Locations, dimensions, and contents of buffer areas;
    - 10. Locations, dimensions, and types of existing easements;
    - 11. Proposed phasing of the development;
    - 12. Location of surrounding streets, driveway, rights-of-way, walkways, water courses, and buildings on adjacent property within 75 feet perpendicular to subject property lines;
    - 13. Proposed lot sizes and arrangement;

- 14. Sites for schools;
- 15. Location, width, and approximate depth of waterways within the project site;
- 16. Proposed number of lots by size;
- 17. Existing character of the land (e.g. wooded, marsh);
- 18. Title, date, north arrow, scale and legend;
- 19. Any other additional information requested by development services department or other reviewing agencies deemed necessary to adequately review the proposal;
- 20. General feasibility plans for potable water, sewage disposal, stormwater drainage, and solid waste management;
- 21. General plans for stormwater drainage and solid waste management;
- 22. General topography at two-foot contours;
- 23. General soil and vegetation types;
- 24. Natural drainage patterns; and
- 25. List of threatened or endangered species.
- k. Such additional materials, maps, studies, or reports subsequently deemed necessary by any reviewing department or agency.
- (3) Written development agreement. A written development agreement shall be prepared by the developer or his/her authorized representative. The contents of the development agreement shall conform to the conditions of approval of the city commission. The development agreement, along with the conceptual development plan, shall govern the development of the PUD and shall regulate the future use of the land. However, site plan and/or platting of subdivided land shall also be required prior to developing any land. The development agreement shall include the following:
  - a. Evidence of unified ownership and control;
  - b. Statement agreeing to:
    - 1. Proceed with the proposed development according to all regulations;
    - 2. Provide appropriate performance and maintenance guarantees; and
    - Follow all other provisions of this ordinance to the extent not expressly inconsistent with the master planned unit development agreement, and bind the applicant's successors in title to his commitments;
  - c. The acreage and percentage of total land area devoted to each of the proposed land uses;
  - d. Maximum density for each type of dwelling;
  - e. Maximum building heights;
  - f. Minimum building spacing and floor areas;
  - g. Lot sizes, yard areas, percentage of interior landscaping in the parking lot and buffer areas, including perimeter buffers;
  - h. Statement regarding the disposition of sewage and stormwater, and arrangements for potable water;
  - i. When the PUD is planned for phase development, a schedule of the phases;
  - j. The proposed language of any covenants, easements, or other restrictions;
  - k. Any additional information or statements subsequently deemed necessary by any reviewing department or agency;

- I. A copy of the conceptual development plan as an appendix.
- (4) Review procedure.
  - a. Staff review. The plan review committee (PRC) members shall review the proposed rezoning to PUD upon receipt of a completed application package. The PRC members shall review the application at a regularly scheduled meeting. At the PRC meeting, the PRC members shall provide the applicant with written and verbal comments about the written development agreement and conceptual development plan, including any actions required to conform the plan to city code and any actions that might be taken to improve the quality of the proposed development.
  - b. Proposal revisions. After receiving comments from the plan review committee, the applicant shall then revise the proposed agreement and support documents and submit revised documents to the development services department. The PRC members shall review the revised documents to ensure that all comments have been addressed. If all of the comments have not been addressed, staff shall submit a list of remaining outstanding comments to the applicant. The applicant shall then revise the agreement to address all staff comments.

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

- c. Planning and zoning board review. Upon receipt of the development services department staff recommendation, the planning and zoning board, at a regularly scheduled meeting, shall review and make a recommendation to the city commission pertaining to the proposed zone change. Said recommendation shall be either denial, approval, or approval with conditions.
- d. City commission review. Upon receipt of the planning and zoning board recommendation, the city commission, at a regularly scheduled meeting, shall review and either deny, approve, or approve with conditions, the proposed zone change.

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

All planned unit developments shall be approved by the city commission by ordinance approving the PUD in the same manner as required for a rezoning and in accordance with the procedures set forth in this section.

- e. Subdivision and/or site plan review. No property zoned PUD shall be developed without site plan and/or subdivision review and approval with the exception of developing single-family and two-family dwellings on individual lots previously and properly subdivided. An applicant may request a PUD rezoning concurrently with subdivision and/or site plan review and approval. Should an applicant request concurrent PUD rezoning and subdivision and/or site plan review and approval, the site plan and/or subdivision, which obtains final approval by the planning and zoning board, is automatically made contingent upon any conditions the city commission makes. The applicant hereby assumes the risk of receiving concurrent PUD rezoning approval and subdivision and/or site plan approval. All site plans and subdivisions must be consistent with approved PUD rezonings.
- f. Amendments to PUD site plans and subdivision proposals after PUD rezoning approval. No site plan or subdivision may deviate from approved PUD rezoning without another development services department staff and planning and zoning board review and

recommendation and city commission review and approval. An exception to the above is minor changes such as the location of buildings, drainage systems, and parking lots, and the lowering of densities, intensities and impacts of the development may be approved by the planning and zoning board during subdivision or site plan review and approval.

- g. Issuing building permits. Building permits shall be issued on any PUD zoned land with an approved site plan or subdivision and a certificate of zoning prior to the beginning of construction.
- (5) Non-delegation of police powers and legislative authority.
  - a. The entry into a master planned unit development (PUD) development agreement (MDA) by the city shall in no way whatsoever limit or modify any legislative power by the city to adopt ordinances, resolutions, regulations, or to make executive, administrative or legislative decisions of any kind which it had the power to make prior to the entry of such master planned unit development (PUD).
  - b. The submission of a request for consideration of a master planned unit development (PUD) development agreement (MDA), the city commission's willingness to pursue discussions, the resultant negotiations regarding a master planned unit development (PUD) development agreement (MDA), the payment of any application fees for the submission of any applications, engineering plans, surveys, and any other expenditures or efforts in prosecution of the master planned unit development (PUD) development agreement (MDA) provided for herein by a parcel of land owner, shall not vest any rights whatsoever in any zoning or land use designation in such parcel of land owner, or other individual, nor shall it in any manner whatsoever limit the city commission from undertaking any zoning or land use plan amendments that it would otherwise legally be entitled to undertake.
  - c. To the extent that any provision of any development agreement shall be inconsistent with the city's vested right's ordinance, the city's vested rights ordinance shall control over the inconsistent provision in the development agreement. See, New Smyrna Beach, Fla., Ordinance 36-96 (January 8, 1997).
  - d. To the extent that any provision of any development agreement shall be inconsistent with the city's adopted comprehensive plan that was in force at the time the development agreement was approved, the city's adopted comprehensive plan that was in force at the time the development agreement was approved shall control over the inconsistent provision in the development agreement.
  - e. The city shall take into account before approving any amendment to any development agreement any and all changes in conditions that have occurred on the subject property and surrounding area between the time the agreement was first approved and time the amendment has been requested. See generally, City of New Smyrna Beach v. Andover Development Corp., 672 So.2d 618 (5th DCA 1996).

## • MU, MIXED USE DISTRICT (CENTRAL BUSINESS DISTRICT)

*Intent.* The MU, Mixed Use District forms the metropolitan center for commercial, financial, professional, governmental, and cultural activities. Uses are permitted which require a central location convenient to the general citizenry and provide a supportive relationship to each other. Retail goods and services together with accommodations for tourists, transients, and permanent guests or tenants are permitted. Intermixing of business, professional, and multifamily for new residential uses permit people to live and work in or near the downtown area if they so desire.

# Permitted uses.

- Advertising companies
- Art studios
- Assisted living facilities
- Automobile sales and services, new and used permitted west of Riverside Drive only, except on Canal Street between Riverside Drive and the FEC railroad tracks where the use is prohibited

Bakeries, nonmanufacturing

Bed and breakfast homes

Billiard halls

Charter boat business

Club, sports or health

College level and adult educational facilities

Communication facilities, such as radio, television, telephone, and telegraph buildings

Convenience market with or without gas pumps

Dancing establishments

Day care centers, adult

Delicatessens

Funeral homes

Government buildings and offices

Grocery stores

Laboratories

Newspaper offices and printing shops

Night clubs

Package stores

Parking lots

Pawn shops

Personal services

Residential, duplex

Residential, multi-family

Residential, single-family

Retail sales and services

Rooming houses

Taverns

Theaters

Offices, general, professional and real estate

Recreational buildings and complexes Residential, attached dwelling unit Restaurants, type "A," "B," and "D" Schools with no more than 250 students Service stations, types "A" and "B" Taxicab and bus stands and terminals

Transient lodging:

Tour boat business

- "Transient lodging rooms, standard," as defined by this LDR, shall be a maximum of 500 square feet.
- "Transient lodging rooms, deluxe," as defined by this LDR, shall be a maximum of 750 square feet. •
- The maximum room size does not include any balcony, porch or deck area connected to the unit. •
- No more than 30 percent of the units may be deluxe.

Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18.

## Permitted accessory uses.

All those uses customarily associated with the permitted principal uses.

Attached dwelling units that are structurally part of the principal commercial use.

Sidewalk cafes that comply with [sub]section 801.14 of the LDR.

- Swimming pool, private, in conjunction with apartments, condominiums, hotels, motels, residential developments, bed and breakfast homes, and recreational buildings and complexes subject to the following:
- (1) It is located in the yard area between the rear wall of the residential structure and the rear lot line; or
- (2) It is located at the front or side of the building, but not in required yards, and a six-foot high solid opaque wall or fence totally encloses the pool area.

Conditional uses.

Farmers markets, subject to the following conditions:

- (1) The planning manager or designee determines that adequate parking is available.
- (2) There is adequate space on-site to accommodate all vendors without utilizing public rights-ofway unless city commission approval has been received to utilize the 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. Prepared food and beverages.
  - h. Flea market and yard sale items are prohibited.
- (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. Outdoor displays, subject to the following conditions:
- (1) Any outdoor display must maintain the Americans with Disabilities Act (ADA) continuous three feet of clear sidewalk width. This clear area of three feet in width must also be maintained to building entries. If this standard cannot be met, outdoor display for the business is prohibited.
- (2) No outdoor display of merchandise is permitted unless there is a permitted principal development on the parcel, located in full compliance with all standards and requirements of this chapter. Merchandise is limited to products sold in the primary business.
- (3) Vehicles for rent, scooters, low speed vehicles, bicycles, shall not be considered outdoor display if:
  - a. All vehicles are stored or displayed solely on the private property associated with the business.
  - b. Vehicles for rent are not stored or displayed in required parking spaces.

- c. Vehicles for rent do not impede Americans with Disabilities Act access along the public way or to the business.
- (4) All outdoor business displays shall be temporary and easily moved. The displays shall be placed outside only while the primary business is open.
- (5) All outdoor displays shall be located in a manner which does not cause an obstruction for sight distance problems for vehicles.
- (6) Hanging displays over the pedestrian right-of-way are prohibited.
- (7) Wind drive or motion devices, such as flags beyond those permitted by the sign ordinance or pinwheels that may impede or strike pedestrians are prohibited.
- (8) The outdoor business display shall be placed adjacent to and parallel to the subject business storefront. These displays shall not be placed adjacent to the street curb or perpendicular to the subject business building. An outdoor business display shall not encroach upon the building frontage of an adjacent business.
- (9) The outdoor display area may be calculated at a rate of one-half (0.5) linear foot of outdoor display area per linear foot of storefront to a maximum of 50 linear feet of outdoor display area. The outdoor display area may be broken into clusters so long as the total length of all outdoor business display areas does not exceed permitted maximum as measured in linear feet. The total display area may be as much as five feet in length when 50 percent of the storefront would be less than five feet.
- (10) The outdoor displays may not exceed five feet in height.
- (11) The outdoor display area may not extend beyond the front of the building by more than three feet.
- (12) The outdoor business displays must be stable and constructed to withstand overturning by wind or contact. The display shall not be permanently affixed to any object, structure or the ground.
- (13) All outdoor business displays shall be continuously maintained in a state of order, security, safety and repair.
- (14) All outdoor business displays shall be neat, orderly and otherwise conducive to creating a topquality shopping environment. No display shall contain obscene, indecent or immoral matter.
- (15) These business displays shall not contain any information which would routinely be placed on a business sign located on the building such as the name or type of business, hours of business operation, business logo, brand name information, etc.
- (16) If a business has a sandwich board sign in front of the business, the outdoor display area shall be reduced in size equal to the size of the sandwich board sign.
- (17) Nothing herein is intended to be an abandonment of any dedicated or prescriptive sidewalk or rights-of-way and the temporary displays on the public sidewalk or right-of-way may be removed at the discretion of the city manager or designee if determined that the display interferes with pedestrian traffic or otherwise determines that the display creates a safety hazard.

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 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.

Special exceptions.

Arcades, subject to the following conditions:

- (1) The city commission shall specify the hours of operation to ensure that the operation does not interfere with the operation of an adjacent business or businesses;
- (2) Smoking shall be prohibited within the establishment and an interior "No Smoking" sign shall be posted in a conspicuous area within the establishment;
- (3) Consumption of alcoholic beverages shall be prohibited within the establishment and an interior "No Consumption of Alcoholic Beverages" sign shall be posted in a conspicuous area within the establishment; and
- (4) The establishment shall be attended by an adult employee during the hours of operation. Beach concession vehicles parked at a business, beachside only. See [sub]section 801.10.

Beach concession vehicle parking lots. See subsection 801.09.

Day care center, child, subject to the following additional conditions:

- (1) The child day care center 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 child day care center 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. Horse drawn carriage tour operations, subject to the following conditions:
- (1) Overnight boarding of horses used to pull the carriages is prohibited within the city limits;
- (2) Hours of operation shall be limited from 9:00 a.m. to 10:00 p.m. on weekdays and 9:00 a.m. to 11:00 p.m. on weekends;
- (3) All horses used to pull the carriages shall be bagged or diapered to prevent animal waste from littering the public rights-of-way;
- (4) All horses used to pull the carriages shall be fully attended at all times unless confined within a stable;
- (5) All carriages must be equipped with an operating rear flashing red light and reflective decals must be placed on all remaining sides of the horse and carriage when on the public rights-ofway;
- (6) The base of operation shall be cleaned of all animal waste at the close of each business day to the extent that any offensive odor will not create a recognizable nuisance to neighboring properties;
- (7) Any stable or animal storage area that is outside of a building must be screened by a six-foot high opaque fence; and
- (8) All tour routes and customer pick up and drop off locations shall require city commission approval based upon compatibility with neighborhoods and safety for other vehicles and the horse and carriage operation.
- In order to obtain an occupational license, all horse drawn carriage tour operations must provide proof of the following:

- (1) A veterinarian certification for all horses to be used in the business operations. The certification shall be based on a treatment for internal parasites and an inspection of teeth, hoofs, shoes and any other indicators of general physical condition.
- (2) Proof of liability insurance with a minimum value of \$1,000,000.00. Houses of worship

Tattoo parlor, subject to the following conditions:

- (1) Shall not operate on any parcel with frontage on the following streets:
  - a. Flagler Avenue

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- b. 3rd Avenue
- c. Canal Street
- d. U.S. 1
- (2) Shall not operate on any parcel adjacent to or across the street from a single-family residential zoning district.
- (3) Shall not operate between the hours of 12:00 a.m. and 8:00 a.m.
- (4) Shall not be established within 300 feet of a church, daycare, private school, or public school.
- (5) Shall not be established within 1,000 feet of an existing tattoo parlor.
- (6) The business shall be subject to all requirements of F.S. ch. 877.
- (7) Tattooing areas shall not be visible from the public right-of-way.
- (8) Windows shall maintain a minimum transparent area of 65 percent. Waterfront dining and entertainment establishments

Prohibited uses. The following uses shall be prohibited throughout the entire mixed use zoning district:

Outdoor storage (except operable vehicles, solid waste in an enclosed structure and propane gas tanks to the rear of a principal structure).

Uses not listed in permitted uses.

The following uses shall be prohibited in the Historic Westside Neighborhood:

Package stores

Nightclubs

Taverns

Dimensional requirements.

Minimum lot size.

Area: None

Depth: None

Width: 50 feet

Minimum yard size.

Front yard build-to lines:

Washington Street and intersecting streets one block north & south: 10-15 feet.

Canal Street and intersecting streets one block north and south: 0-5 feet.

- Flagler Avenue: 2—10 feet. Streets intersecting with Flagler Avenue within one block north and south of Flagler Avenue excluding corner lots fronting on the street parallel to Flagler Avenue: 2—10 feet. Streets intersecting Flagler Avenue where lot also fronts on the street parallel to Flagler Avenue: 7—12 feet.
- Other streets: 0—20 feet based on the average setback of buildings that were constructed before 1950 on both sides of the street in the same block. The build-to line may exceed 20 feet but may be no greater than the average setbacks of existing principal pre-1950 buildings within the block on both sides of the street.
- Side yard setback: Washington Street: Four feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.
- Canal Street: None.
- Flagler Avenue: Three feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.
- Other streets: Five feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Rear yard setback: Ten feet

#### Encroachment into required yards.

There shall be no encroachment into required front yard areas except for the following accessory structures:

Eaves, sidewalk/patios/decks at adjacent public sidewalk elevation, planters, signs conforming to city regulations, benches/tables/chairs, other incidental uses may be located up to the front property line. Balconies, awnings, canopies and hanging signs may encroach upon the right-of-way provided there is a minimum vertical clearance of eight feet and a minimum horizontal setback of two feet from the face of the curb or if no curb exists, four feet from the edge of street pavement.

There shall be no encroachment into required side and rear yard areas except eaves may encroach a maximum of 18 inches into the side yard and 42 inches into the rear yard.

## Visibility triangle for corner lots.

A visibility triangle shall remain clear of any obstructions on corner lots. The visibility triangle shall be measured as follows:

Commence at the point of two intersecting curbs, or if no curbs exist at the point of two intersection edges of pavement and measure 20 feet in each direction and connect the points with a line.

#### Maximum principal building height.

Beachside: Three stories or 42 feet maximum

Mainland: Seven stories or 82 feet maximum 72 feet maximum

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*Minimum residential building separation.* Where two or more residential 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.)

Maximum building coverage. None.

*Screen enclosures.* As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent 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.

*Minimum floor area*. Minimum floor area of an apartment dwelling unit or attached 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*. Minimum floor area of a rented sleeping room in a hotel, motel, or rooming house shall be 150 square feet.

Buffers. Landscaped buffer area shall be required as follows:

- (1) As defined in this LDR at property lines abutting or facing a residentially zoned lot; and
- (2) A minimum width of five feet at property lines of off-street parking areas, whether requiring class II or III site plan approval or not (new construction expansion or replacement only).

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

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

Maximum unit density for transient lodging units.

Hospitality future land use designation: 75 units per acre.

Southeast Volusia Activity Center future land use designation: 40 60 units per acre.

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

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

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

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.

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## • B-3, HIGHWAY SERVICE BUSINESS DISTRICT

*Intent.* The B-3, Highway Service Business District is intended for application along highways carrying large volumes of traffic where establishments may locate to serve large sections of the city and the persons traveling in vehicles.

#### Permitted uses.

Adult congregate living facility

Ambulance service

Animal clinics (outpatient care only and no overnight boarding)

Attached dwellings

Automobile sales, new and used

Bakeries

Banks

Boat, motor, and boat trailer sales and service

Bowling alley

Business and communications systems

Bus station

Car rental and leasing

Carwashes

Club, semi-public

College level and adult educational facilities

Convenience stores with gas pumps

Financial services

Funeral homes

Furniture showrooms

Government buildings and offices

Grocery stores

Hospitals

Mobile home sales

Multi-family dwelling units Offices, general, professional and real estate Offices, medical Parking lots Pawn shops Personal enrichment establishments Personal services Restaurants, types "A," "B," "C," and "D" Retail sales and services Service stations, types "A" and "B" Sport facilities Taverns Taxicab stands Theaters

Transient lodging:

- "Transient lodging rooms, standard," as defined by this LDR, shall be a maximum of 500 square feet.
- "Transient lodging rooms, deluxe," as defined by this LDR, shall be a maximum of 750 square feet.
- The maximum room size does not include any balcony, porch or deck area connected to the unit.
- No more than 30 percent of the units may be deluxe.

Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18)

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

Special exceptions.

Building material sales and/or building material yards, provided all building materials that are stored shall be buffered by a screen designed to block the view of the building materials. The screen may include fences, walls, or vegetative landscaping. Building materials shall not project higher than the screen. Walls that are part of a building structure may substitute for the screen buffer.

Child day care facilities, subject to the following additional conditions:

(1) The property shall be located within 500 feet of an arterial or collector roadway.

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- (2) Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach four feet in height within two years. The hedge plants must be planted three feet apart, on center.
- (3) Play areas shall be located outside all applicable setback dimensions.
- (4) The property shall have a separate vehicular drop off and pickup areas with a minimum 100-foot long drive lane outside of the public right-of-way, or sufficient parking area to provide enough space for drop off and pick up.
- (5) Play areas shall be located to the side or rear of the building, outside of the required setbacks. Churches
  - Fortune telling, subject to the following condition: Shall not be established within 500 feet of an existing fortune telling establishment.
  - Miniwarehouse storage facilities, when constructed a distance of one platted lot depth or 100 feet, whichever is greater, from state and federal highway rights-of-way; no other commercial use or business shall be permitted with the facility, and a landscaped buffer area shall be provided on all boundaries facing a residential district.
  - Outdoor display, storage, or sale of vehicles, or other equipment or material, provided that in the interest of safety to children and adjacent property, outdoor storage areas will be encompassed by a fence or wall at least six feet high, the bottom four feet being solid and the top two feet being open. Operative automobiles and mobile homes for sale shall be exempt from this requirement.

Tattoo parlor, subject to the following conditions:

- (1) Shall not operate on any parcel with frontage on the following streets:
  - a. Flagler Avenue
  - b. 3rd Avenue
  - c. Canal Street
  - d. U.S. 1
- (2) Shall not operate on any parcel adjacent to or across the street from a single-family residential zoning district.
- (3) Shall not operate between the hours of 12:00 a.m. and 8:00 a.m.
- (4) Shall not be established within 300 feet of a church, daycare, private school, or public school.
- (5) Shall not be established within 1,000 feet of an existing tattoo parlor.
- (6) The business shall be subject to all requirements of Chapter 877, Florida Statutes.
- (7) Tattooing areas shall not be visible from the public right-of-way.
- (8) Windows shall maintain a minimum transparent area of 65 percent. Waterfront dining and entertainment establishments

#### Dimension requirements.

Minimum yard size. (Properties along Canal Street and State Road 44)

Front yard: 40 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 40-foot front yard on one street and a 20-foot front yard on the other street. The 40-foot front yard shall be adjacent to the major or most traveled roadway.
- (2) Parcels which front on three streets shall provide a 40-foot front yard on one street and a 20-foot front yard on the other two streets. The 40-foot front yard shall be adjacent to the major or most traveled roadway.

Minimum yard size. (Properties within U.S. 1 Corridor)

Front yard: Five feet

Side yard: Five feet

Rear yard: Ten feet

*Corner lots.* Parcels which front on two or more streets shall provide a minimum five-foot front yard along each street frontage.

Maximum principal building height. 35 feet.

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

*Maximum impervious lot coverage* (Properties along Canal Street and State Road 44). The total area of the lot that may be covered with impervious material is 75 percent.

*Maximum impervious lot coverage* (Properties along U.S. 1 Corridor). The total area of the lot that may be covered with impervious material is 80 percent.

#### Buffers.

- Properties along Canal Street and State Road 44. 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) Along side or rear lot line abutting a residentially zoned lot, the buffer shall be 25 feet wide; and
- (3) Along side 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 605.05 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.
- Properties within U.S. 1 Corridor. Landscaped buffer area(s) as defined in this LDR shall be required at property lines of multi-family and non-residential developments as follows:
- (1) Front property lines: Five feet
- (2) Side and rear property lines (not adjacent to residentially-zoned properties): Three feet

- (3) Side and rear property lines (adjacent to residentially-zoned properties): Five feet. A tenfoot wide buffer will be required for taverns, outdoor seating areas and type "B" service stations.
- The landscape buffer adjacent to residentially-zoned property must include a six-foot tall masonry wall or fence.

*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.

Maximum unit density for transient lodging units.

Hospitality future land use designation: 75 units per acre.

Southeast Volusia Activity Center future land use designation: 40 60 units per acre.

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

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

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

*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 beachside dwelling unit and 2,420 square feet of lot area for each mainland dwelling unit.

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.

## • 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"

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, 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

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.

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 floor area. 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.

*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: 75 units per acre; <u>oceanfront parcels located between</u> <u>Esther Street and East 8th Avenue shall have a maximum allowed density of 24 transient</u> <u>lodging units per acre</u>.

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

- Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:
- (1) A minimum of 20 percent of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
- (2) The public use area shall comprise at least 40 percent of the total linear footage of shoreline available to the property.

All other 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.

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 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*. The total area of the property that may be covered with impervious material is 75 percent.

*Through lots.* [Through lots] shall provide a 30-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 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

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

- (1 All front property lines; and
- (2) Along side 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.

## PUD, PLANNED UNIT DEVELOPMENT

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

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

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

- Art, dance, modeling, music, etiquette, or any other personal enrichment schools or studios having scheduling or costs associated which are not typically found in a public or private elementary or high school curriculum
- Auction parlors, indoor
- Automobile service station, type A, B, or C
- Bars and liquor stores
- Beauty shops, barbershops
- Bowling alleys
- Cafeterias
- Child care centers
- Employment agencies
- Entertainment and recreational uses and structures
- Essential utility services
- Excavations only for lakes or stormwater retention ponds
- Exercise and health spas
- **Financial institutions**

Game rooms or arcades for pool, billiards, pinball machines, juke boxes or other coin-operated amusements

General offices

Home occupations

Hospitals

Houses of worship and cemeteries

Laundry and dry cleaning establishments

Medical and dental clinics

Multiple-family and single-family standard or manufactured dwellings

Nightclubs

Nursing homes, assisted living facilities, and adult congregate living facilities approved and licensed by the appropriate state agency

Pharmacies

Printing and publishing establishments

Professional or trade schools related to permitted uses

Public uses

Public utility uses and structures

Recovery homes

Restaurants, type A, B, C, and D

Retail sales and services

Retail specialty shops

Schools, parochial and private

Tailor shops

Taxicab stands

Theaters

Transient lodging:

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

**Travel agencies** 

Other uses approved by the city commission

Permitted principal uses and structures in the corridor overlay zone. The following land uses and their customary accessory uses and structures shall be allowed in the PUD Corridor Overlay Zone zoning district.

[The following are permitted uses.]

Art, dance, modeling, and music schools

Beauty shops, barber shops

Child care facilities

Essential utility services

Exercise and health spas

Financial institutions

General offices

Hospitals, nursing homes, adult congregate living facilities, assisted living facilities

Houses of worship

Laundry and dry cleaning establishments (no coin operation)

Medical and dental clinics

Multiple-family standard dwellings, provided the following requirements are met:

- Sixty percent of the commercial development must be completed prior to the start of residential construction, unless an alternate phasing plan is approved; and
- (2) The maximum permitted density will be 18 units per acre.

Pharmacies

Public uses

Restaurants (class "A")

Retail printing shops

Retail specialty shops

Schools, parochial and private

Single-family residences

Tailor shops

Taxicab stands

Theaters (no drive-ins)

Transient lodging:

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

Travel agencies

Two-family residences

Other uses and structures of a nature similar to those listed, after determination by the city commission at the time of overall development plan approval that such uses and structures are compatible with the PUD development and the surrounding area.

Permitted principal uses and structures within the activity center and west of Interstate 95. Permitted uses of land and their customary accessory uses and structures shall be as allowed in the written development agreement approved by the city commission.

Permitted accessory uses.

- 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 onsite temporary sales and brokerage structures:
  - 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, recreational vehicle or tractor 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;
  - Said sales and brokerage structures must be located on the site such that it meets the minimum setback requirements;
  - (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).

## Conditional uses.

Farmers markets, subject to the following conditions:

- (1) The development services director determines that adequate parking is available.
- (2) The farmers market is located in the business portion of the PUD.
- (3) There is adequate space on-site to accommodate all vendors without utilizing public rightsof-way unless city commission approval has been received to utilize the public rights-of-way.
- (4) Vendors shall not block pedestrian ways.

- (5) Products offered for sale shall be limited to the following:
  - a. Fresh fruits and vegetables.
  - b. Herbs and spices.
  - c. Farmstead products including but not limited to cheese, meats, fish/seafood, poultry, eggs, baked goods, canned goods, honey, maple syrup and preserves.
  - d. Bedding plants, hanging and potted plants, and cut flowers.
  - e. Dried flowers or plants.
  - f. A maximum of 50 percent of the total area used for the market shall be allowed for handicrafts.
  - g. Prepared food and beverages.
  - h. Flea market and yard sale items are prohibited.
- (6) The farmers market organization must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (7) Each vendor operating within the farmers market must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.
- (8) Informational booths for 501(c)3 non-profit organizations shall be permitted.

Approval of a conditional use. At the time the applicant applies for a business tax receipt with the city, the applicant shall also submit a conceptual plan to the development services department. The conceptual plan shall show the general location of the vendor stalls on the site. Based upon the criteria listed above, the development services director, or his/her designee, shall approve or deny the application for a conditional use.

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

Violation of conditional use terms or conditions. It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of a conditional use. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

#### Special exceptions.

Pain management clinics, subject to the following conditions:

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

#### Dimensional requirements.

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

Minimum PUD parcel size—All other areas (including properties within the Corridor Overlay Zone):

Residential	5.0 acres
Non-residential	2.0 acres

A PUD shall be considered residential if 50 percent or more of developed land or 50 percent or more of the proposed building square footage is designated for residential uses. Residential uses include, but are not limited to single-family, duplex, multi-family (including townhomes, apartments, condominiums), and live-work units.

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

Minimum lot size. If all or a portion of the PUD is subdivided, the minimum lot size shall be described in the proposed master planned unit development agreement.

Minimum yard size. Minimum yard size shall be described in the proposed master planned unit development agreement. In determining yard size, the city commission shall consider whether or not the proposed PUD will have adverse effects upon adjoining properties.

Off-street parking and loading requirements. Off-street parking and loading spaces shall be required as indicated in [sub]section 604.10 of this LDR and in addition shall meet the following: off-street parking and loading areas shall not be permitted in any required landscaped buffer area. All parking areas shall contain a minimum of 20 percent interior landscaping excluding any required landscaped buffer areas.

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

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

Hospitality future land use designation: 75 units per acre; <u>oceanfront parcels located between Esther</u> <u>Street and East 8th Avenue shall have a maximum allowed density of 24 transient lodging units</u> <u>per acre</u>.

Southeast Volusia Activity center future land use designation: 40 60 units per acre.

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

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

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

Landscape buffer requirements—Traditional City Area.

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

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

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

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

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

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

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

Canopy Trees	Understory Trees	Shrubs
2	2	20

When natural vegetation is disturbed, the buffer shall be irrigated as required in [sub]section 604.05 of this LDR.

Landscape buffer requirements—All other areas.

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

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

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

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

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

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

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

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

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

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

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

When natural vegetation is disturbed, the buffer shall be irrigated as required in [sub]section 604.05 of this LDR.

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

- (1) Unified ownership. All land within the PUD shall be under the ownership of one person, either by deed, agreement for deed, or contract for purchase. PUD applicants shall present either an opinion of title by an attorney licensed in Florida, or a certification by an abstractor or a title company, authorized to do business in Florida, that, at the time of application, unified ownership of the entire area within the proposed PUD is in the applicant, or contract seller. Unified ownership shall thereafter be maintained until after the recording of the overall development plan or final plat.
- (2) Retail uses within a PUD with more than one use. When retail uses or structures are approved as part of a PUD containing more than one type of use, the retail operation shall not begin until certificates of occupancy have been issued for all residential, industrial and/or office units in the total project, unless otherwise provided in the development agreement.
- (3) Utility system. All utilities within a PUD shall be located underground. However, appurtenances requiring above ground installations may be exempted by a majority vote of the city commission if the location and approximate size of the appurtenances requiring an above ground location is specified on sketch plans.
- (4) Open space requirements.
  - Property designated on the city's comprehensive plan future land use map as activity center shall have a minimum open space requirement of 40 percent for a residential PUD project and 30 percent for a non-residential or mixed-use PUD project;
  - b. Property in the Traditional City Area (east of the Turnbull Bay/Turnbull Creek waterway, north of State Road 44 and east of Mission Road, south of State Road 44 and excluding properties in the Corridor Overlay Zone) shall have a minimum open space requirement of 30 percent for a residential PUD project and 20 percent for a non-residential or mixed-use PUD project;
  - c. Property located west of Interstate 95, within the West New Smyrna Beach Urban Overlay Zone, shall have a minimum open space requirement of 50 percent for all PUDs;
  - d. Property east of Interstate 95 and west of the Traditional City Area (east of the Turnbull Bay/Turnbull Creek waterway north of State Road 44 and east of Mission Road south of state Road 44) and within the city's Corridor Overlay Zone (COZ), but excluding property located in the activity center, shall have a minimum open space requirement of 60 percent for a residential PUD project and 50 percent of a non-residential or mixed-use PUD project.

A minimum of 35 percent of the open space shall be designated as common open space for a residential PUD. Common open space shall meet the following standards:

a. It shall be accessible to and usable by all residents of the PUD;

- b. Its location, shape, size, character and use shall be illustrated on the overall development plan; and
- c. Maintenance guarantees shall be approved by the city commission.

Procedure for rezoning to PUD.

- (1) Preapplication stage. A pre-application meeting with the development services director or his/her designee is required before a PUD rezoning application can be accepted. This meeting is intended to provide an opportunity for an informational exchange between the applicant and the planning staff. During this meeting the applicant shall provide a conceptual plan indicating the layout and land uses within the proposed PUD. No fee shall be charged for this meeting.
- (2) Application stage. The applicant may submit an application package to the development services department at any time. Applications for PUD rezonings will be reviewed in the order in which received. The application package shall consist of the following items:
  - a. Completed application form;
  - b. Application administration fee as approved by the city commission;
  - c. Two copies of a plat of survey indicating property boundaries, legal description, acreage, and limits of the jurisdictional wetlands;
  - d. Names and addresses of property owners within 150 feet of the affected property. This distance shall be measured in an air line at the closest points between two properties;
  - e. Certification from landowner of record that applicant has authorization to make application for the requested zoning action;
  - f. Two copies of the traffic impact analysis;
  - g. Boundary survey and legal description;
  - h. Opinion of title;
  - i. Eleven paper copies and one electronic version of the written development agreement; and
  - j. Eleven paper sets and one electronic version of the conceptual development plans of the area to be rezoned at a scale no smaller than one inch equals 200 feet indicating the following:
    - 1. Adjoining land uses and zoning classifications;
    - 2. Locations and dimensions of proposed land uses;
    - 3. Location of proposed buildings and off-street parking lots;
    - 4. Density of residential dwellings;
    - 5. Total acreage and location of open space by type;
    - 6. Total acreage and location of common open space by type;
    - 7. Proposed right-of-way width and layout;
    - 8. Proposed front, side, and rear setbacks;
    - 9. Locations, dimensions, and contents of buffer areas;
    - 10. Locations, dimensions, and types of existing easements;
    - 11. Proposed phasing of the development;
    - 12. Location of surrounding streets, driveway, rights-of-way, walkways, water courses, and buildings on adjacent property within 75 feet perpendicular to subject property lines;
    - 13. Proposed lot sizes and arrangement;

- 14. Sites for schools;
- 15. Location, width, and approximate depth of waterways within the project site;
- 16. Proposed number of lots by size;
- 17. Existing character of the land (e.g. wooded, marsh);
- 18. Title, date, north arrow, scale and legend;
- 19. Any other additional information requested by development services department or other reviewing agencies deemed necessary to adequately review the proposal;
- 20. General feasibility plans for potable water, sewage disposal, stormwater drainage, and solid waste management;
- 21. General plans for stormwater drainage and solid waste management;
- 22. General topography at two-foot contours;
- 23. General soil and vegetation types;
- 24. Natural drainage patterns; and
- 25. List of threatened or endangered species.
- k. Such additional materials, maps, studies, or reports subsequently deemed necessary by any reviewing department or agency.
- (3) Written development agreement. A written development agreement shall be prepared by the developer or his/her authorized representative. The contents of the development agreement shall conform to the conditions of approval of the city commission. The development agreement, along with the conceptual development plan, shall govern the development of the PUD and shall regulate the future use of the land. However, site plan and/or platting of subdivided land shall also be required prior to developing any land. The development agreement shall include the following:
  - a. Evidence of unified ownership and control;
  - b. Statement agreeing to:
    - 1. Proceed with the proposed development according to all regulations;
    - 2. Provide appropriate performance and maintenance guarantees; and
    - Follow all other provisions of this ordinance to the extent not expressly inconsistent with the master planned unit development agreement, and bind the applicant's successors in title to his commitments;
  - c. The acreage and percentage of total land area devoted to each of the proposed land uses;
  - d. Maximum density for each type of dwelling;
  - e. Maximum building heights;
  - f. Minimum building spacing and floor areas;
  - g. Lot sizes, yard areas, percentage of interior landscaping in the parking lot and buffer areas, including perimeter buffers;
  - h. Statement regarding the disposition of sewage and stormwater, and arrangements for potable water;
  - i. When the PUD is planned for phase development, a schedule of the phases;
  - j. The proposed language of any covenants, easements, or other restrictions;
  - k. Any additional information or statements subsequently deemed necessary by any reviewing department or agency;

- I. A copy of the conceptual development plan as an appendix.
- (4) Review procedure.
  - a. Staff review. The plan review committee (PRC) members shall review the proposed rezoning to PUD upon receipt of a completed application package. The PRC members shall review the application at a regularly scheduled meeting. At the PRC meeting, the PRC members shall provide the applicant with written and verbal comments about the written development agreement and conceptual development plan, including any actions required to conform the plan to city code and any actions that might be taken to improve the quality of the proposed development.
  - b. Proposal revisions. After receiving comments from the plan review committee, the applicant shall then revise the proposed agreement and support documents and submit revised documents to the development services department. The PRC members shall review the revised documents to ensure that all comments have been addressed. If all of the comments have not been addressed, staff shall submit a list of remaining outstanding comments to the applicant. The applicant shall then revise the agreement to address all staff comments.

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

- c. Planning and zoning board review. Upon receipt of the development services department staff recommendation, the planning and zoning board, at a regularly scheduled meeting, shall review and make a recommendation to the city commission pertaining to the proposed zone change. Said recommendation shall be either denial, approval, or approval with conditions.
- d. City commission review. Upon receipt of the planning and zoning board recommendation, the city commission, at a regularly scheduled meeting, shall review and either deny, approve, or approve with conditions, the proposed zone change.

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

All planned unit developments shall be approved by the city commission by ordinance approving the PUD in the same manner as required for a rezoning and in accordance with the procedures set forth in this section.

- e. Subdivision and/or site plan review. No property zoned PUD shall be developed without site plan and/or subdivision review and approval with the exception of developing single-family and two-family dwellings on individual lots previously and properly subdivided. An applicant may request a PUD rezoning concurrently with subdivision and/or site plan review and approval. Should an applicant request concurrent PUD rezoning and subdivision and/or site plan review and approval, the site plan and/or subdivision, which obtains final approval by the planning and zoning board, is automatically made contingent upon any conditions the city commission makes. The applicant hereby assumes the risk of receiving concurrent PUD rezoning approval and subdivision and/or site plan approval. All site plans and subdivisions must be consistent with approved PUD rezonings.
- f. Amendments to PUD site plans and subdivision proposals after PUD rezoning approval. No site plan or subdivision may deviate from approved PUD rezoning without another development services department staff and planning and zoning board review and

- g. Issuing building permits. Building permits shall be issued on any PUD zoned land with an approved site plan or subdivision and a certificate of zoning prior to the beginning of construction.
- (5) Non-delegation of police powers and legislative authority.

ZT-2-16 MU B3 B4 PUD Zoning Districts

- a. The entry into a master planned unit development (PUD) development agreement (MDA) by the city shall in no way whatsoever limit or modify any legislative power by the city to adopt ordinances, resolutions, regulations, or to make executive, administrative or legislative decisions of any kind which it had the power to make prior to the entry of such master planned unit development (PUD).
- b. The submission of a request for consideration of a master planned unit development (PUD) development agreement (MDA), the city commission's willingness to pursue discussions, the resultant negotiations regarding a master planned unit development (PUD) development agreement (MDA), the payment of any application fees for the submission of any applications, engineering plans, surveys, and any other expenditures or efforts in prosecution of the master planned unit development (PUD) development agreement (MDA) provided for herein by a parcel of land owner, shall not vest any rights whatsoever in any zoning or land use designation in such parcel of land owner, or other individual, nor shall it in any manner whatsoever limit the city commission from undertaking any zoning or land use plan amendments that it would otherwise legally be entitled to undertake.
- c. To the extent that any provision of any development agreement shall be inconsistent with the city's vested right's ordinance, the city's vested rights ordinance shall control over the inconsistent provision in the development agreement. See, New Smyrna Beach, Fla., Ordinance 36-96 (January 8, 1997).
- d. To the extent that any provision of any development agreement shall be inconsistent with the city's adopted comprehensive plan that was in force at the time the development agreement was approved, the city's adopted comprehensive plan that was in force at the time the development agreement was approved shall control over the inconsistent provision in the development agreement.
- e. The city shall take into account before approving any amendment to any development agreement any and all changes in conditions that have occurred on the subject property and surrounding area between the time the agreement was first approved and time the amendment has been requested. See generally, City of New Smyrna Beach v. Andover Development Corp., 672 So.2d 618 (5th DCA 1996).