



# City of Daytona Beach Shores

*"Life is Better Here"*

*"A Premier, Friendly Place to Be"*

## **AGENDA PLANNING & ZONING BOARD MEETING OCTOBER 12, 2020**

**8:30 AM, Shores Community Center, 3000 Bellemead Drive  
Daytona Beach Shores, FL 32118**

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

**1. OPENING REMARKS**

**2. MINUTES**

A. Planning & Zoning Minutes September 14, 2020

**3. QUASI-JUDICIAL HEARING**

**4. DISCUSSION ITEMS**

A. Ordinance 2020-13: Proposed Amendment to Atlantic Avenue Estates, LLC - Daytona Beach Shores Development Agreement 12020027

B. Ordinance 2020-15: Removal of Background Check Requirement For Fortune Tellers, Palmists, etc.

C. Ordinance 2020-16: Updating Shared Off-street Parking Requirements

**5. OTHER**

**6. BOARD COMMENTS**

**7. ADJOURNMENT**

**MINUTES**  
**PLANNING & ZONING BOARD MEETING**  
**September 14, 2020**  
**3000 Bellemead Drive Daytona Beach Shores, FL 32118**

**1. OPENING REMARKS**

**Present:** Member Rick Delange, Member Chuck Horion, Member James Lilly, Member Rose Ann Tornatore, and Chairman John Schmitz **Staff:** City Clerk Cheri Schwab and City Planner Stewart Cruz.

The meeting started at 8:37 am.

**2. MINUTES**

A. Planning & Zoning Minutes August 10, 2020

**MEMBER CHUCK HORION moved, seconded by MEMBER ROSE ANN TORNATORE to Approve the Planning & Zoning Minutes of August 10, 2020.**

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

**Yes:** Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose Ann Tornatore

**3. QUASI-JUDICIAL HEARING**

**4. DISCUSSION ITEMS**

A. Ordinance 2020-12: Land Development Code Amendment Relating to Expansion of Non Conforming Single-Family Residential Uses/Structures

City Planner Stewart Cruz explained that this change to the code began back in January with a comprehensive plan amendment. This proposed ordinance would change the Land Development Code as Florida Statutes required the two separate items. The new language that would be included in the code would permit an expansion within and up to the existing building footprint of the existing structure but in no case shall the expansion extend beyond the existing building height of the highest part of the roof structure. He showed a visual representation of the allowed expansion to the board. Staff recommended approval of the proposed Ordinance.

**MEMBER CHUCK HORION moved, seconded by MEMBER RICK DELANGE to recommend approval of Ordinance 2020-12 to the City Council.**

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

**Yes:** Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John

**5. OTHER**

**6. BOARD COMMENTS**

Chairman Schmitz advised the board to pay attention to site plans and the small details. He explained that the Aruba construction had to remove the existing sidewalk. When they poured the concrete for the replacement, it is no longer a meandering sidewalk but a straight path. The approved site plan didn't specify the type of sidewalk and he felt it looked out of place. City Planner Cruz advised that board training would be held in the fall.

**7. ADJOURNMENT**

The meeting ended at 8:49 am.

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**Cheri Schwab, Recording Secretary**

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**John Schmitz, Chairman**



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### **AGENDA PLANNING & ZONING BOARD MEETING OCTOBER 12, 2020**

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Daytona Beach Shores, FL 32118**

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### **PLANNING & ZONING BOARD AGENDA MEMORANDUM OCTOBER 12, 2020 AGENDA**

**TO:** The Members of the Planning & Zoning Board

**FROM:** Stewart Cruz, City Planner

**PREPARED BY:** Stewart Cruz, City Planner

**SUBJECT:** Ordinance 2020-13: Proposed Amendment to Atlantic Avenue Estates, LLC - Daytona Beach Shores Development Agreement 12020027

#### **SYNOPSIS:**

Ordinance 2020-13, if adopted, will amend the *Atlantic Avenue Estates, LLC - City of Daytona Beach Shores Development Agreement*, which was approved in 2016. The subject property, Volusia County Tax Parcel ID 6302-05-07-0150, is located on the west side of S. Atlantic Avenue in between 3824 and 3832 S. Atlantic Avenue. The current development agreement allows for the construction of four (4) residential duplexes, or a total of eight (8) units, on the 0.7 acre vacant property. The proposed amendment would allow the option for single-family residential development, on some or all the property, not to exceed a total eight (8) units on the property. If single-family residential construction occurs it shall be consistent with the RSF-2 Urban Single-Family Residential Detached District standards, which is the prevalent City single-family zoning district in the area. The development agreement is for a period of thirty (30) years.

#### **FISCAL IMPACT STATEMENT:**

The City will receive a total of \$10,000 for the complete development of this property. Per the development agreement, these funds will be used towards beach access maintenance, community/recreation center development and/or gateway signage.

## **BACKGROUND:**

### **OVERVIEW OF PROPOSED AMENDMENT**

On September 25, 2020 the City received an application to amend the Atlantic Avenue Estates, LLC - City of Daytona Beach Shores Development Agreement, which concerns a 0.7 acre vacant property located on the west side of S. Atlantic Avenue in between 3824 and 3832 S. Atlantic Avenue. The development agreement concerns the development of the subject property for residential duplex use. Four (4) residential duplexes, or a total of eight (8) units, are permitted on site. Due to a change in the foreseeable market conditions and development pattern in the neighborhood along Cardinal Boulevard, the applicant/owner is proposing to amend the development agreement to add the flexibility of developing some or all of the property for single-family residences, not to exceed eight (8) total units on site. If single-family residential construction occurs anywhere on the property, it shall be consistent with the RSF-2 Urban Single-Family Residential Detached District standards. All other components of the agreement remain unchanged. The proposed amendment language is underlined below and would be added to Section 3 of the agreement:

Section 3. SITE LAYOUT AND CONCEPTUAL PLANS FOR DEVELOPMENT.

\*\*\*

(d). In the event that the Property Owner elects to construct a single family residence on any of the 4 tracts depicted in Exhibit "B" he may do so at his sole discretion provided the minimum yards sizes, minimum floor area, maximum building height, and maximum lot coverage are consistent with the requirements contained in Section 14-17 of the City's Land Development Code for the RSF-2 Urban Single-Family Residential Detached District.

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### **OVERVIEW OF EXISTING DEVELOPMENT AGREEMENT**

The current Development Agreement was executed by the City to foster the development of the subject vacant property. Highlights of the existing Development Agreement include: (a) seven (7) benefits to the public, including, but not limited to, development of a property that was formerly a county enclave; and (b) permitting of four (4) deviations from the City's Land Development Code, including but not limited to minimum lot sizes for duplex construction.

### **AUTHORIZATION OF DEVELOPMENT AGREEMENT**

The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or properties to be annexed to the City limits of the City of Daytona Beach Shores, as authorized in Sections 163.3220 through 163.3243, Florida Statutes, as it may be amended from time-to-time and Chapter 15 of the LDC. Deviations from the provisions of the City's land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative

planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

## **DEVELOPMENT AGREEMENT CONTENT REQUIREMENTS**

All applicable standards required in the development agreement are included accordingly pursuant to Sec. 15-4 of the LDC entitled "Development Agreement Content."

## **DEVELOPMENT AGREEMENT NOTICE REQUIREMENTS**

The development agreement shall be noticed pursuant to Sec. 15-6 "Noticing Requirements" of the LDC. Evidence of the aforementioned has been provided to the City Clerk.

## **PLANING ANALYSIS**

See attached.

## **PLANNING AND ZONING BOARD**

*Pending.*

## **LEGAL REVIEW:**

Approved as to form and legality.

## **RECOMMENDATION:**

Staff recommends approval of Ordinance 2020-13 as presented.

## **SUGGESTED MOTION:**

A Planning and Zoning Board Member may motion as follows:

1. "I move to recommend **approval** of Ordinance 2020-13 as presented."

OR

2. "I move to recommend approval of Ordinance 2020-13, with the following amendments..."

OR

3. "I move to recommend denial of Ordinance 2020-13 on the basis of the following..."

- ATTACHMENT:**
1. Ordinance 2020-13-Amendment to Atlantic Avenue Estates-DA-SC-9-25-20
  2. DRAFT2 ATLANTIC AVE ESTATES FIRST AMENDMENT 9\_30\_2020 - Underlined Format
  3. atlantic ave estates recorded agreement

4. 15200LOT-Approved Duplex Layout
5. DA Application Signed Atlantic Ave Estates
6. Planning Analysis

## **ORDINANCE 2020-13**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF AN AMENDMENT TO THE ATLANTIC AVENUE ESTATES, LLC – CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO THE VACANT PROPERTY WITH VOLUSIA COUNTY SHORT TAX PARCEL ID 6302-05-07-0150, GENERALLY LOCATED BETWEEN 3824 S. ATLANTIC AVENUE AND 3832 S. ATLANTIC AVENUE, IN ACCORDANCE WITH THE PROVISIONS OF THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; ; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR NONCODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on March 22, 2016 the City Council of the City of Daytona Beach Shores approved the Atlantic Avenue Estates, LLC and the City of Daytona Beach Shores Development Agreement pertaining to the development of the vacant property with Volusia County Short Tax Parcel ID 6302-05-07-0150, generally located in between 3824 S. Atlantic Avenue and 3832 S. Atlantic Avenue; and

**WHEREAS**, Atlantic Avenue Estates, LLC has requested an amendment to the subject Development Agreement to provide for single-family construction flexibility consistent with changing market conditions, increased construction costs and reasonable investment return expectation; and

**WHEREAS**, Atlantic Avenue Estates, LLC and the City of Daytona Beach Shores have considered and processed and the City Council of the City of Daytona Beach Shores hereby approves and enacts the amended Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein

verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

**WHEREAS,** Mark Scharff is the manager of Atlantic Avenue Estates, LLC; and

**WHEREAS,** the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS,** this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

**SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.**

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and Atlantic Avenue Estates, LLC are hereby adopted, ratified and affirmed.

**SECTION TWO: APPROVAL OF AMENDMENT AND ENACTMENT OF DEVELOPMENT AGREEMENT.**

The amended Development Agreement between the City of Daytona Beach Shores and Atlantic Avenue Estates, LLC, as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance

### **SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.**

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and Atlantic Avenue Estates, LLC, as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

### **SECTION FOUR: NONCODIFICATION AND IMPLEMENTATION; SCRIVENER'S ERRORS.**

- (a). The provisions of this Ordinance shall not be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.
- (b). The City Manager, or designee(s), is hereby authorized to take any and all actions necessary to implement the provisions of this Ordinance.
- (c). The City Attorney shall assist the City Manager in the implementation of this Ordinance as may be necessary and required.
- (d). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

### **SECTION FIVE: CONFLICTS.**

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

### **SECTION SIX: SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction,

such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof..

**SECTION SEVEN: EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

\_\_\_\_\_  
**NANCY J. MILLER, MAYOR**

\_\_\_\_\_  
**MICHAEL T. BOOKER, CITY MANAGER**      **CHERI SCHWAB, CITY CLERK**

Approved as to form and legality:

\_\_\_\_\_  
**GRETCHEN R. H. “BECKY” VOSE, CITY ATTORNEY**

Passed on first reading this \_\_ day of \_\_\_\_\_, 2020.

Enacted on second reading this \_\_ day of \_\_\_\_\_, 2020.

**DEVELOPER SIGNATURE BLOCK FOLLOWS:**

**PLENARY CONCURRENCE OF DEVELOPER**

The undersigned developer concurs in each and every respect to the provisions of the subject amendments to the subject Development Agreement and the provisions of this Ordinance.

**ATLANTIC AVENUE ESTATES, LLC**, a  
Florida limited liability company.

\_\_\_\_\_  
Mark Scharff

Date: \_\_\_\_\_, 2020

*WITNESSES:*

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Witness

**STATE OF FLORIDA                    )**

**COUNTY OF VOLUSIA                )**

**I HEREBY CERTIFY** that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Mark Scharff, and he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided \_\_\_\_\_ as identification.

**Witness** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2020.

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_

**Document prepared by:**  
Zev Cohen and Associates, Inc.  
300 Interchange Blvd  
Ormond Beach, FL 32174

**Return recorded document to:**  
City of Daytona Beach Records Clerk  
P.O. Box 2451  
Daytona Beach, FL 32115-2451

**FIRST AMENDMENT TO THE ATLANTIC AVENUE/CITY OF DAYTONA BEACH SHORES  
DEVELOPMENT AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE  
ATLANTIC AVENUE ESTATES DUPLEX DEVELOPMENT**

The **CITY OF DAYTONA BEACH SHORES, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida ("City"), and **ATLANTIC AVENUE ESTATES, LLC**, a Florida Limited Liability Corporation, located at 133-15 Beach Channel Drive, Rockaway Park, New York, 11694 the record title property owner ("Property Owner"), make and enter into this **FIRST AMENDMENT TO THE ATLANTIC AVENUE/CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE ATLANTIC AVENUE ESTATES DUPLEX DEVELOPMENT**.

**Whereas**, the City and Atlantic Avenue Estates, LLC, entered into the Atlantic Avenue/City of Daytona Beach Shores Development Agreement Pertaining To The Development Of The Atlantic Avenue Estates Duplex Development, recorded in the Official Records Book 7238, Page 3066, Public Records of Volusia County, Florida as Instrument Number 2016-062949 (the "Agreement"), and

**Whereas**, Atlantic Avenue Estates, LLC, proposes to amend the Agreement as set forth herein, and

**Whereas**, the City is willing to grant the Property Owner's request subject to the terms and conditions set forth herein, and

**WHEREAS**, for purposes of this instrument, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

**Now, Therefore** the City and the Property Owner hereby agree to amend the Agreement as follows:

1. Section 3, Site Layout and Conceptual Plans for Development, of the Agreement is amended to read, in its entirety as follows:

\*\*\*

(a). The attached Lot Configuration Plan for development of the property into eight (8) individual lots for the development of residential duplex units (Exhibit "B") is hereby approved by the terms and conditions of this Development Agreement.

(b). The attached Site Development Plan for development of the property (Exhibit "C") is hereby approved by the terms and conditions of this Development Agreement.

(c). The dimensions, lots areas, setbacks and densities shown in the Lot Configuration Plan and Site Development Plan are consistent with the requirements contained in Section 14-20 of the City's Land Development Code for the RMF-3 Multi-Family Residential District (Low Density) zoning district.

(d). In the event that the Property Owner elects to construct a single family residence on any of the 4 tracts depicted in Exhibit "B" he may do so at his sole discretion provided the minimum yards sizes, minimum floor area, maximum building height, and maximum lot coverage are consistent with the requirements contained in Section 14-17 of the City's Land Development Code for the RSF-2 Urban Single-Family Residential Detached District.

\*\*\*

2. Except as otherwise expressly provided for herein, the original Agreement shall continue in full force and effect.

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

**[Signature pages following]**

Signed, sealed and delivered in the presence of:

**THE CITY OF DAYTONA BEACH SHORES,  
FLORIDA, a Florida municipal corporation**

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_  
Nancy Miller, Mayor

\_\_\_\_\_  
Print Name of Witness

Attest:

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_  
Cheri Schwab, City Clerk

\_\_\_\_\_  
Print Name of Witness

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Nancy Miller and Cheri Schwab, Mayor and City Clerk, respectively, of The City of Daytona Beach Shores, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public  
Commission No: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

**Atlantic Avenue Estates, LLC [OWNER]**

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_

Name: Mark Scharff

Title: Managing Member

\_\_\_\_\_  
Print Name of Witness

Date: \_\_\_\_\_

[Corporate Seal]

STATE OF NEW YORK  
COUNTY OF KINGS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Mark Scharff as Managing Member of Atlantic Avenue Estates, LLC, referred to in this agreement as "Property Owner." He or she is ☐ personally known to me or ☐ produced identification and did not take an oath.

\_\_\_\_\_  
Notary Public

Commission No. \_\_\_\_\_

**Approved as to legal form:**

By: \_\_\_\_\_  
Gretchen R. H. Vose, City Attorney

**This Instrument Prepared By:**

Lonnie N. Groot, Esquire  
Stenstrom, McIntosh, Colbert,  
& Whigham, P.A.  
1001 Heathrow Park Lane, Suite 4001  
Lake Mary, Florida 32746

**Return To:**

Ms. Cheri Schwab  
City Clerk  
2990 South Atlantic Avenue  
Daytona Beach Shores, Florida 32118

**ATLANTIC AVENUE/CITY OF DAYTONA BEACH SHORES DEVELOPMENT  
AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE ATLANTIC  
AVENUE ESTATES DUPLEX DEVELOPMENT**

**THIS DEVELOPMENT AGREEMENT** is made and entered into on the Effective Date described below, between ATLANTIC AVENUE ESTATES, LLC, a Florida limited liability corporation, registered and authorized to conduct business in the State of Florida, whose address is 133-15 Beach Channel Drive, Rockaway Park, New York, 11694, the legal and equitable owner, hereinafter referred to as the "PROPERTY OWNER", and the City of Daytona Beach Shores, Florida, a municipal corporation of the State of Florida, (the "Landlord"), holding tax exempt status, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as "CITY".

**WITNESSETH:**

**WHEREAS**, the PROPERTY OWNER is the owner of real property located on South Atlantic Avenue between 3824 S. Atlantic Avenue and 3832 S. Atlantic Avenue (Volusia County Tax Parcel Identification Number: 02-16-33-05-07-0150) in Daytona Beach Shores (Exhibit "A") (referred to from time to time as the "property" in this Development Agreement and which is the subject of the site plan referenced herein); and

**WHEREAS**, the PROPERTY OWNER and the CITY have a great interest in the annexation and development of the property in accordance with the CITY's comprehensive plan, official zoning map and *Land Development Code* to continue and maintain a sustainable mix of residential uses.; and

**WHEREAS**, the CITY desires to provide for the orderly development of land within the CITY in order to maintain a high quality of life for residents and businesses; and

**WHEREAS**, Section 163.3202, *Florida Statutes*, provides that the CITY shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

**WHEREAS**, pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction and the CITY enacted Ordinance 2013-10, codified as Chapter 15, *Land Development Code*, to implement the provisions of the referenced statutory provisions; and

**WHEREAS**, the lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning and the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the premises in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for an array of benefits to the citizens of the CITY; and

**WHEREAS**, development agreements entered into pursuant to the *Florida Local Government Development Agreement Act*, strengthen the public planning process, encourage sound capital improvement, planning and financing; assist in assuring that there are adequate capital facilities to support development; encourage private participation in comprehensive planning; and reduce the economic cost of a development by providing assurances to a developer that, upon receipt of a development permit, the developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement; and

**WHEREAS**, development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project and, although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body (the CITY's City Council) through its general plan, and consistent with any applicable specific plan; and

**WHEREAS**, neither the PROPERTY OWNER nor the CITY, as the local government with land use regulatory authority over lands located within the CITY, is required to enter into a development agreement and, when entered, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the CITY's ultimate approval, but while a development agreement must advance the CITY's local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements; and

**WHEREAS**, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to the traditional development approval process which, in practice, it is commonly used in conjunction with; and

**WHEREAS**, the City Council of the CITY finds it is in the best interest and welfare of the citizens of the CITY to approve this Development Agreement with the terms and conditions set forth herein; and

**WHEREAS**, the City Council of the CITY has determined that the terms and conditions of this Development Agreement are in the best interests of the public health, safety and welfare of the citizens of the CITY and provide for specific public benefits; and

**WHEREAS**, the City Council of the CITY hereby finds and concludes that the provisions of this Development Agreement are consistent with the CITY's *Comprehensive Plan* and will result in the provision of enhanced economic development within the City and is consistent with the general purpose and intent of the land development regulations of the CITY and no amendments are required to the CITY's *Comprehensive Plan* or land development regulations in order to approve the development set forth in this Development Agreement; and

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

**NOW, THEREFORE**, in consideration of the foregoing, and the premises and the promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties the PROPERTY OWNER and CITY agree as follows:

**SECTION 1. RECITALS/FINDINGS.**

(a). The recitals, set forth above, are true and correct and form a material part of this Development Agreement upon which the parties have relied.

(b). The findings, set forth above, are, and constitute, the administrative and quasi-judicial findings of the City Council of the CITY and form a material part of this Development Agreement upon which the parties have relied.

## **SECTION 2. PREMISES.**

(a). The PROPERTY OWNER hereby designates, and the CITY hereby accepts, the following described tract of real property as the legal description for the premises for the purposes of this Development Agreement:

(LEGAL DESCRIPTION) – See attached “Exhibit A” to this Development Agreement.

(b). The legal entity having legal or equitable ownership of the premises is the PROPERTY OWNER.

## **SECTION 3. SITE LAYOUT AND CONCEPTUAL PLANS FOR DEVELOPMENT.**

(a). The attached Lot Configuration Plan for development of the property into eight (8) individual lots for the development of residential duplex units (Exhibit “B”) is hereby approved by the terms and conditions of this Development Agreement.

(b). The attached Site Development Plan for development of the property (Exhibit “C”) is hereby approved by the terms and conditions of this Development Agreement.

(c). The dimensions, lot areas, setbacks and densities shown in the Lot Configuration Plan and Site Development Plan are consistent with the requirements contained in Section 14-20 of the CITY’s *Land Development Code* for the RMF-3 Multi-Family Residential District (Low Density) zoning district.

## **SECTION 4. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.**

(a). In addition to all other covenants, obligations, duties and responsibilities set forth herein, the PROPERTY OWNER is approved for the following development on the premises:

(1). The development uses, including setbacks, population densities, and building heights, as set forth on the site plan approved in Section 3(a) of this Development Agreement.

(2). The development uses, including setbacks, population densities, building intensities and building heights, as set forth on the site plan approved in Section 3 of this Development Agreement comply with criteria for development approved in this Development Agreement and the applicable provisions cited in the land development regulations of the CITY applicable to the development project on the premises.

(3). The public facilities that will service the development of the premises shall continue as the premises are currently served although sewer service from the City of Daytona Beach may be provided in lieu of the services being provided by the City of Port Orange as determined by the CITY. All necessary public facilities shall be available concurrent with the impacts of the development.

(4). Numerous public benefits derive from the terms and conditions of this Development Agreement to include:

(a). Public purposes and benefits deriving from and provided by the development of the premises as set forth in this Development Agreement by means of payments made by the PROPERTY OWNER to the CITY in the sum of \$2,500.00 each and every time a building permit is issued for the project approved under the terms and conditions of this Development Agreement until the sum of \$ 10,000.00 is reached in the aggregate said sum to be expended and used in the CITY's discretion towards funding one or more of the following activities or projects of the CITY: the community/recreation center development, beach access maintenance, and/or gateway sign development.

(b). Additionally, the following normative development standards have been achieved in an innovative manner to infill the premises in a high quality manner while attaining planning goals and enhancing the ad valorem tax base of the CITY:

(i). The PROPERTY OWNER shall provide for the development of residential buildings and lots to maintain the low density development of the surrounding neighborhood.

(ii). The voluntary annexation of the property assists the CITY in reducing potential enclaves within the CITY and makes the CITY a logically configured community.

(iii). The PROPERTY OWNER shall provide and maintain landscaping in accordance with the CITY's *Land Development Code*.

(iv). The approved lot configuration provides for ownership of land and building that otherwise would not occur.

(v). The development of the premises for a duplex development that can be conveyed fee simple is consistent with various goals, objectives and policies established in the CITY's *Comprehensive Plan* for the establishment of a variety of owner-occupied housing opportunities.

(vi). The development of this in-fill property allows for a transition

between the higher density development along the east side of Atlantic Avenue and the single-family homes along the west side of Cardinal Drive.

(5). Impact fees and other funding requirements for the project on the premises are as established by controlling law and shall be met in the normative course and processes of development.

(6). All development permits normatively needed to be approved for the development of the premises shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no *Comprehensive Plan* amendments or changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the premises nor any required submissions to or approvals from Volusia County; the State of Florida, Departments of Economic Opportunity, Environmental Protection, Transportation, or such other department or agency of the State as may be applicable; the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other federal departments or agencies with competent jurisdiction over any aspect of the approved development, but such requirements are not precluded by this Development Agreement.

(7). The following deviations that have been granted by the CITY with regard to the provisions of the CITY's land development regulations:

(a). Section 14-20.4 of the CITY's *Land Development Code*, entitled "Dimensional Requirements" to allow minimum lot size as set forth relative to the project.

(b). Section 14-20.4 of the CITY's *Land Development Code*, entitled "Dimensional Requirements" to allow minimum lot width as set forth relative to the project.

(c). Section 14-20.4 of the CITY's *Land Development Code*, entitled "Dimensional Requirements" to allow the interior (side) yard setback as set forth relative to the project.

(d). Section 12-6.6 of the CITY's *Land Development Code*, entitled "Sidewalks" to allow the sidewalks to be constructed as set forth relative to the project.

(8). The failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the PROPERTY OWNER of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.

#### **SECTION 5. REASONABLE APPROVAL.**

In those instances in this Development Agreement in which a party's approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

#### **SECTION 6. REMEDIES.**

Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Development Agreement.

#### **SECTION 7. TIME IS OF THE ESSENCE.**

Time is of the essence of the lawful performance of the duties and obligations contained in this Development Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Development Agreement.

#### **SECTION 8. HEADINGS/CAPTIONS.**

All sections and descriptive headings in this Development Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

#### **SECTION 9. FORCE MAJEURE.**

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

**SECTION 10. DEVELOPMENT AGREEMENT BINDING; RUNS WITH THE LAND.**

(a). This Development Agreement shall be binding upon and inure to the benefit and burden of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Development Agreement, and that it has the legal authority to enter into this Development Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Development Agreement and bind the respective parties herein.

(b). This Development Agreement touches and concerns the premises and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

**SECTION 11. EXHIBITS.**

All exhibits to this Development Agreement are hereby incorporated into this Development Agreement by this reference thereto.

**SECTION 12. PUBLIC RECORDS.**

The PROPERTY OWNER shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and other controlling law and which have been made or received by the PROPERTY OWNER in conjunction with this Development Agreement and shall adhere to the controlling provisions of State law relating to public records.

**SECTION 13. EQUAL OPPORTUNITY.**

The PROPERTY OWNER agrees that it will not discriminate against any employee or applicant for employment for work relating to the services provided under this Development Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demoting or transfer; recruitment advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

**SECTION 14. CONFLICT OF INTEREST.**

The PROPERTY OWNER agrees that it will not commit any act that would

cause or create a conflict of interest as defined by Chapter 112, *Florida Statutes*, to exist or occur in the performance of its obligations pursuant to this Development Agreement with the CITY.

**SECTION 15. COMPLIANCE WITH LAWS AND REGULATIONS.**

In performing pursuant to this Development Agreement, the PROPERTY OWNER shall abide by all statutes, ordinances, rules, and regulations pertaining to, regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. This provision shall include, but not be limited to, the provisions of the CITY's land development regulations and the codes and ordinances of the CITY. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Development Agreement.

**SECTION 16. NOTICES.**

(a). Whenever either party desires to give notice unto the other, notice may be sent to:

For the CITY:

Mr. Michael Booker  
City Manager  
City of Daytona Beach Shores  
2990 South Atlantic Avenue  
Daytona Beach Shores, Florida 32118

For the PROPERTY OWNER:

Mr. Mark Scharff  
133-15 Beach Channel Drive  
Rockaway Park, New York, 11694

(b). Either party may change the address for notification by providing notice of such change to the other party.

**SECTION 17. INTERPRETATION/APPLICABLE LAW/VENUE.**

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a

default shall not be deemed a waiver of any subsequent defaults. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

#### **SECTION 18. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.**

This Development Agreement is the result of *bona fide* arms length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against any one (1) party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

#### **SECTION 19. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.**

(a). This Development Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein. This Development Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all parties to this Development Agreement.

(b). If the City Council of the CITY finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Development Agreement, this Development Agreement may be revoked or modified by the City Council upon affording the PROPERTY OWNER administrative due process rights in accordance with controlling law.

(c). A substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, *Land Development Code*. This Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest; provided, however, that a substantial modification of this Development Agreement shall, in the City's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, *Land Development Code*.

(d). If State or Federal laws are enacted after the execution of this Development Agreement, which are applicable to and preclude the parties' compliance with the terms of this Development Agreement, this Development Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws.

## **SECTION 20. THIRD PARTY BENEFICIARIES/TRANSFERABILITY.**

(a). The CITY shall not be liable to any person, firm or corporation who contracts with or provides goods or services to the PROPERTY OWNER in connection with services provided by the PROPERTY OWNER to the CITY; and there is no contractual relationship, either expressed or implied, between the CITY and any other person, firm, or corporation supplying any work, labor, services, goods or materials to the PROPERTY OWNER as a result of its services to the CITY hereunder. This Development Agreement is solely for the benefit of the formal parties to this Development Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party not a formal party hereto. Nothing in this Development Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Development Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns as set forth herein.

(b). This Development Agreement is transferable. However, so long as the land or structure or any portion thereof covered under the development agreement continues to be used for the purposes for which it was issued, then no person (including successors and assigns of the person(s) or entity(ies) who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of this Development Agreement. The provisions of this Development Agreement run with and burden the real property to which it relates until release or amended in accordance with formal action of the City.

## **SECTION 21. ATTORNEYS FEES AND COSTS.**

In the event of any action to enforce the terms of this Development Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

## **SECTION 22. SEVERABILITY.**

If any one or more of the covenants or provisions of this Development Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against

public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Development Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Development Agreement.

**SECTION 23. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.**

(a). This Development Agreement shall take effect on the date that this Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida.

(b). This Development Agreement shall be in effect for a period of thirty (30) years, but may be extended by mutual consent of the CITY and the PROPERTY OWNER. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said Development Agreement; provided, however, that the City has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein.

(c). Prior to the completion of the project and at the issuance of a certificate of completion by the City, the City shall review this Development Agreement as well as at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

**SECTION 24. COUNTERPARTS.**

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

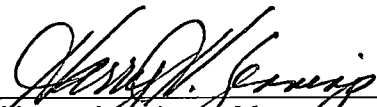
**SIGNATURE PAGES FOLLOW:**

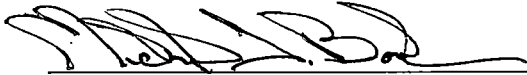
**IN WITNESS WHEREOF**, the parties have executed this Development Agreement on the date stated below their signature.

Attest:

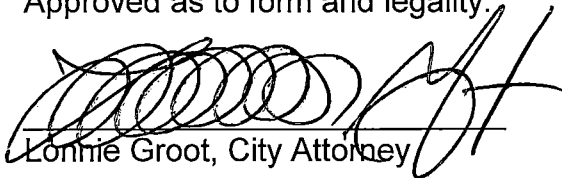
**CITY OF DAYTONA BEACH SHORES**

  
Cheri Schwab, City Clerk

  
Harry Jennings, Mayor  
Date: March 22, 2016

  
Michael T. Booker, City Manager

Approved as to form and legality:

  
Lonnie Groot, City Attorney

**ADDITIONAL SIGNATURE PAGE FOLLOWS:**

Witnesses:

PROPERTY OWNER/  
ATLANTIC AVENUE ESTATES, LLC

Mark Scharff  
Printed Name

By: [Signature]  
Mark Scharff  
Managing Member

[Signature]  
Signature of Witness  
Printed name of witness: ALEX ZEYERBERG

**Acknowledgment**

State of New York )

County of Kings )

I **Hereby Certify** that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Mark Scharff and he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided NY Driver License as identification.

**Witness** my hand and official seal in the County and State last aforesaid this 31 day of March, 2016.

(Affix Notary Seal)

[Signature]  
Notary Public; State of ~~Florida~~ State of New York  
Print name: Michael Donohoe

MICHAEL DONOHOE  
NOTARY PUBLIC, State of New York  
No. 01-DO6128399  
Qualified in Kings County  
Commission Expires Jun. 13 2017

Exhibit A  
Legal Description and Sketch



Exhibit B  
Lot Configuration

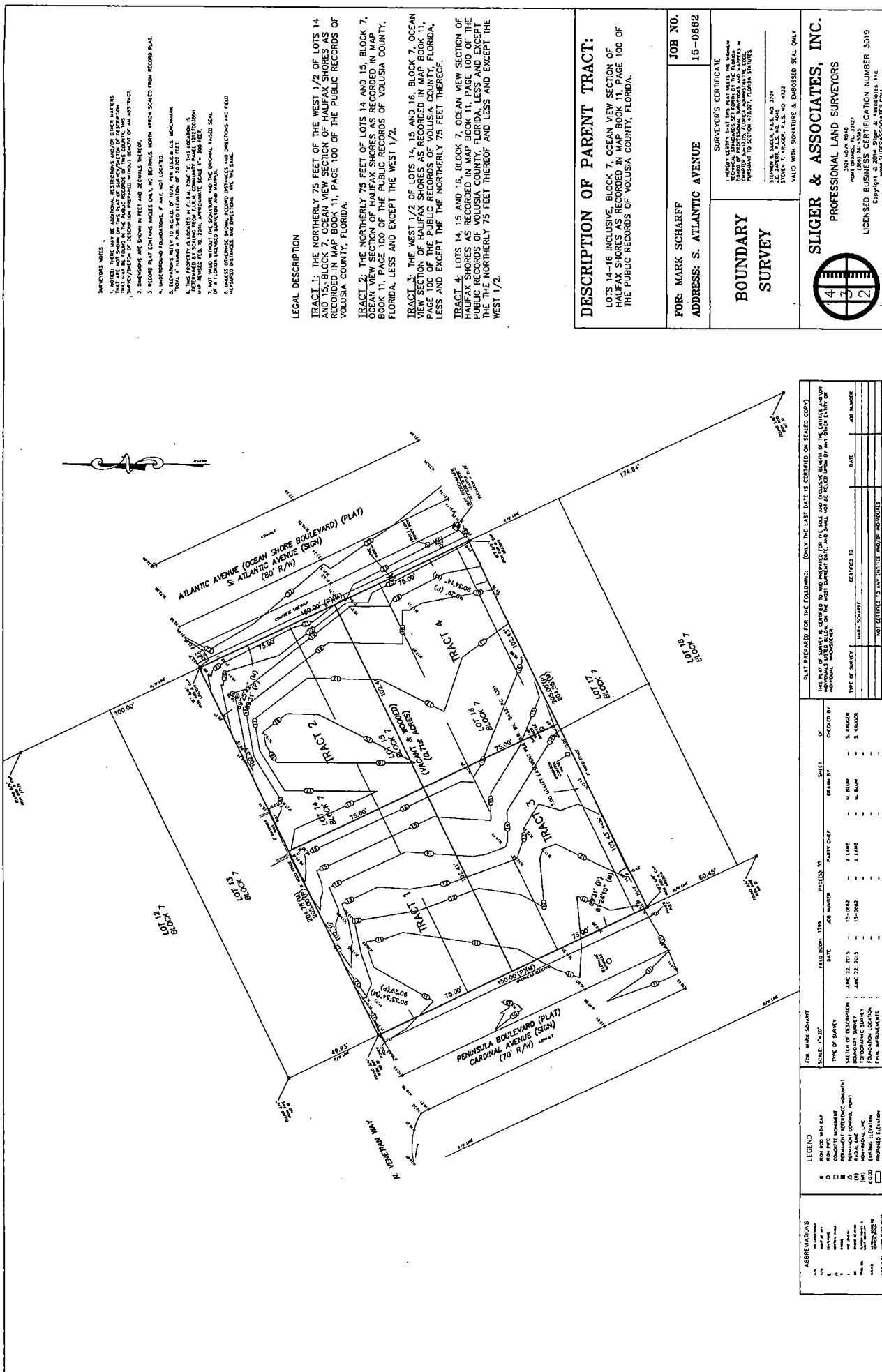
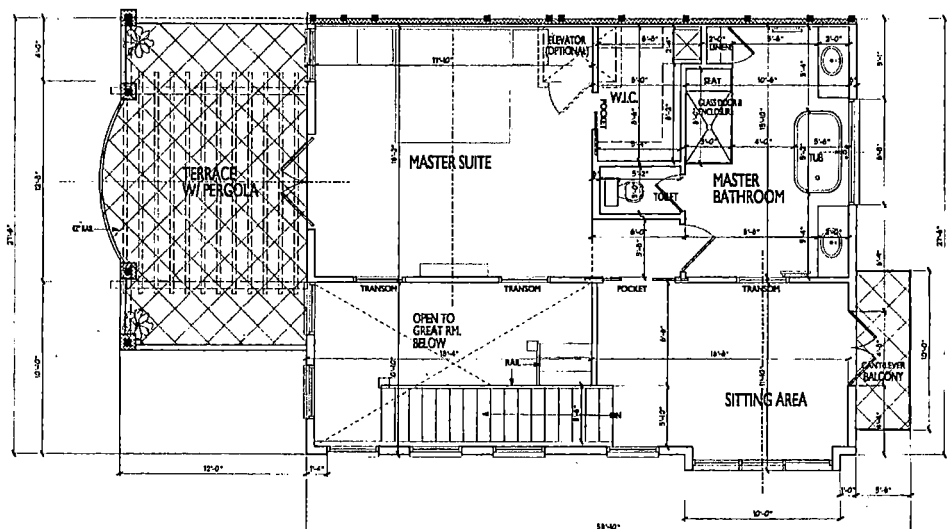
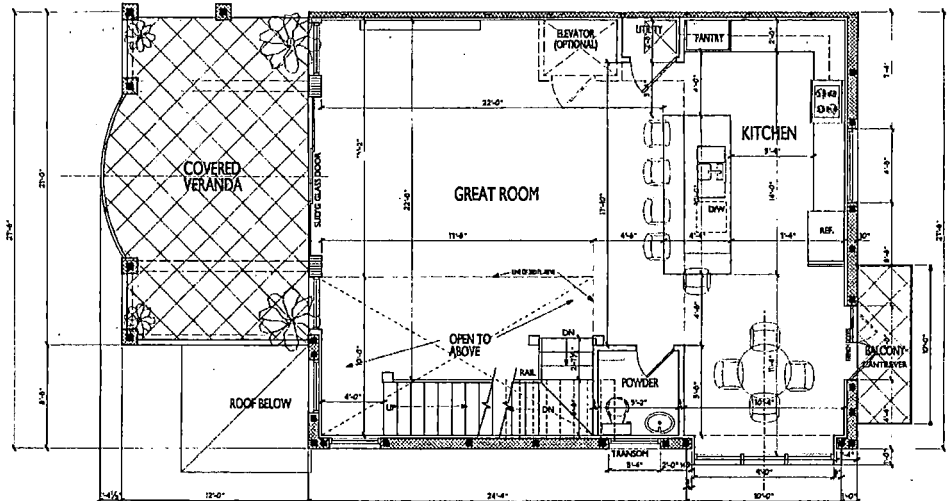
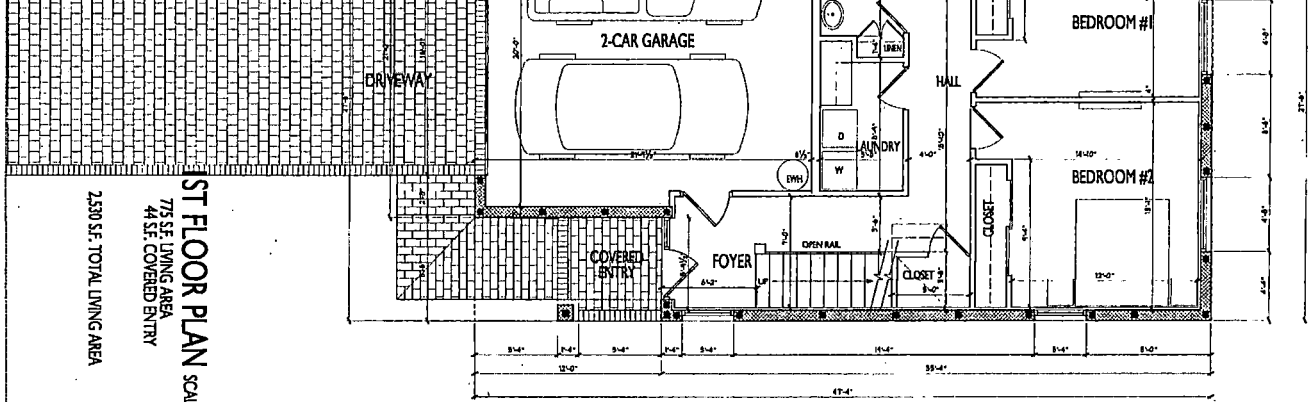


Exhibit C  
Site Development Plan



COPYRIGHT © - BRY ASSOCIATES INC. 2016

**-BRY-**  
Associates Inc.  
AA2801107

ARCHITECT:

**-BRY Associates Inc.**  
Home: (407) 255-1111  
10000 Biscayne Blvd., Suite 1100  
Miami, FL 33131  
P: (407) 255-1111 Fax: (407) 255-1112

CONSULTANT:

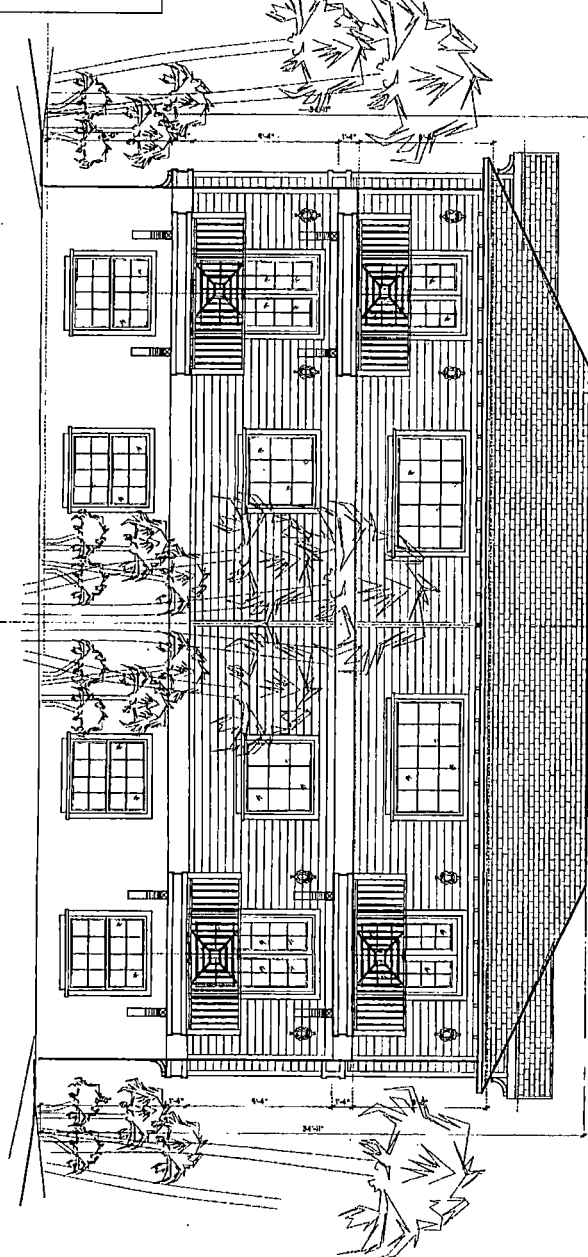
REVISIONS:

DUPLEX  
ATLANTIC AVENUE ESTATES LLC

PROJECT LOCATION:  
DAYTONA BCH SHORES, VOLUSIA COUNTY, FL

**RECEIVED**  
FEB 12 2016  
FLOOR PLANS  
711  
GULF COAST CODES DIVISION  
DAYTONA BCH SHORES, FL 32118

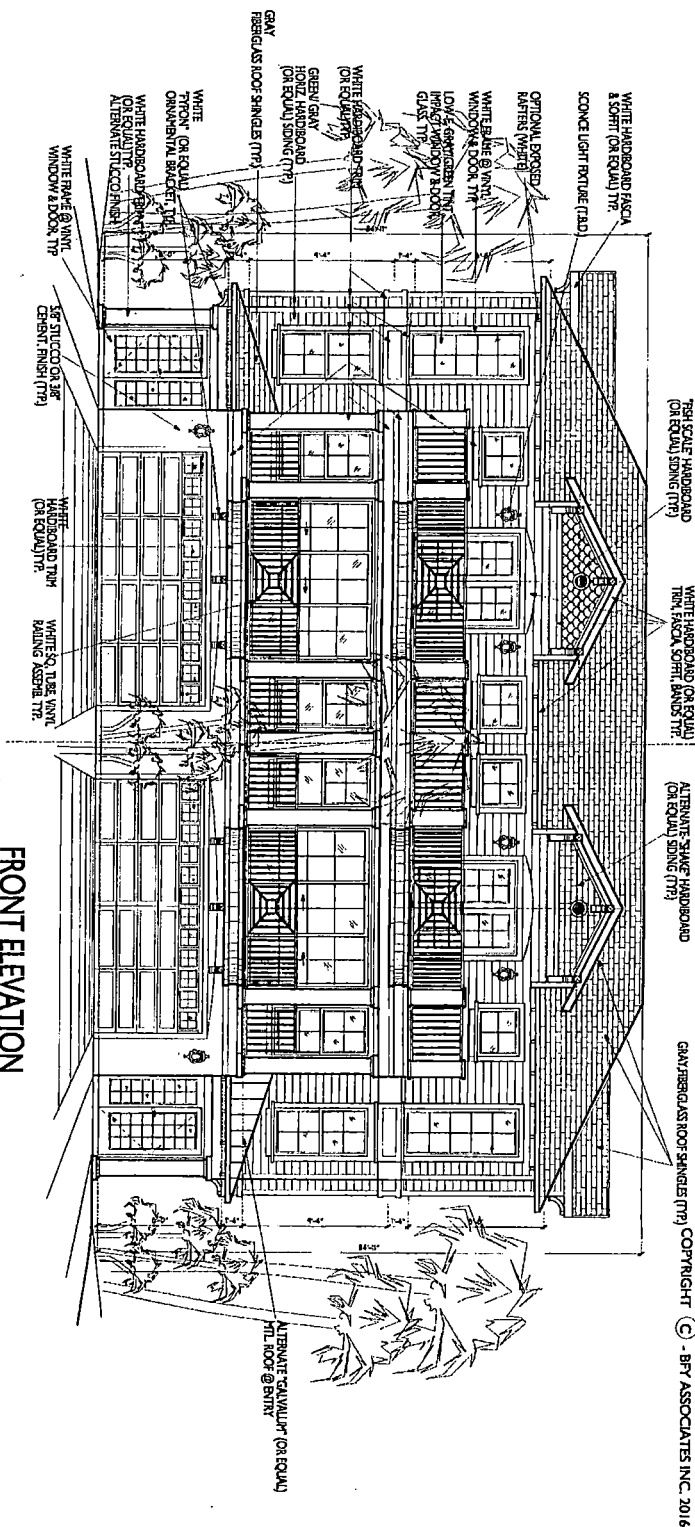




SCALE: 1/4"=1'-0"

**FRONT ELEVATION**

SCALE: 1/4"=1'-0"



**"FISH SCALE" HANDBOARD  
(OR EQUAL) SLIDING TYPE)**

WHITE HARDBOARD (OR EQUIV.)  
TRIM, FASCI, SOFT, BANDS TYP.

ALTERNATE-SHAKE HARDBOARD  
(FOR FOIL) SINKING (TOP)

GRAY FIBERGLASS ROOF SHINGLES (TTP) COPYRIGHT © - BRY ASSOCIATES INC. 2016

© - BRY ASSOCIATES INC. 2016

WHITE HARDBOARD FASCIA  
& SOFFIT (OR EQUIV. TYP.)

WHITE LEDGE © VINYL  
WINDOW & DOOR, TYP  
LOW-E GREEN TINT  
IMPACT WINDOW & DOOR  
GLASS TYP

GREEN/GRAY  
HORIZ. HARDBOARD  
(OR EQUIV.) SIDING (7/8")

WHITE FRAME @ VINYL WINDOW & DOOR, TYP

5/8" STUCCO OR 3/8"  
CEMENT. FINISH (TYP)

WHITE  
HARDBOARD TRIM  
(OR EQUIV.)

USE VINYL  
FLOOR TYP.

ALTERNATE GALVALLIF (OR EQUIV.)  
HTL ROOF @ ENTRY

**-B-F-Y-**  
Associates Inc.  
AA 26031107  
ARCHITECT;

# ARCHIE

**-B-Y Associates Inc.**  
Ramon Yarbuz, P.E., Reg. No. AR 001541  
201 Glenview Blvd., Daytona Beach, FL 32119  
Ph: 386/258-2161 Email: bya@b-y.com

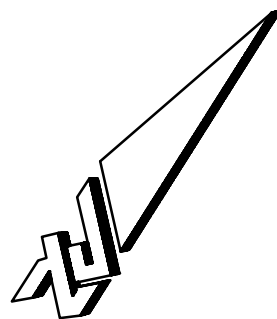
## CONSULTANTS

**REVISIONS:**

DUPLEX  
ATLANTIC AVENUE ESTATES LLC

PROJECT LOCATION:  
DAYTONA BCH SHORES, VOLUSIA COUNTY, FL

DATE REBUILT 1/2016  
FEB ELEVATIONS U  
SHEET # 2055BES DISCREP  
BUILDING 2055BES DISCREP  
CITY OF ARLINGTON  
AZ-1  
Arlington, VA  
Arlington, VA



**NOTES:**

1. BUILDING FOOTPRINTS REFLECT MAXIMUM BUILDING AREA BASED ON REQUIRED SETBACKS. ACTUAL DEVELOPMENT MAY OCCUR ANYWHERE WITHIN THIS BUILDING ENVELOPE, SUBJECT TO MAXIMUM BUILDING COVERAGE REQUIREMENTS.
2. ADDITIONAL EASEMENTS MAY BE REQUIRED. FINAL SITE PLANS SHALL REFLECT LOCATION, SIZE, AND PURPOSE.
3. EXISTING UTILITIES MAY NEED RELOCATION IN ORDER TO ACCOMMODATE PROPOSED DEVELOPMENT AND PURPOSE. DEVELOPER SHALL BE RESPONSIBLE FOR COORDINATION WITH UTILITY PROVIDERS AND COST OF RELOCATION.

Page 40 of 66



**City of Daytona Beach Shores  
Community Services Department  
2990 South Atlantic Avenue  
Daytona Beach Shores, FL 32118**

**APPLICATION TO ENTER INTO OR AMEND A NON-PUD DEVELOPMENT AGREEMENT**

Application for New Development Agreement: ☐

Application to Amend Existing Development Agreement: ☒

The Undersigned Applicant requests the City Council to decide upon this application in accordance with Daytona Beach Shores Ordinance 2013-10.

**FEES MUST BE PAID AT THE TIME THE APPLICATION IS SUBMITTED**

Date Submitted: 9 /24 /2020

Current Zoning: RMF - 3

Applicant's Name: Atlantic Avenue Estates, LLC. - Mark Scharff

133-15 Beach Channel Dr.

Address: Rockaway Park, NY 11694 Phone #: 718-236-6065

Representative: Zev Cohen & Associates, Inc.

300 Interchange Blvd. Ste C

Address: Ormond Beach, FL 32174 Phone #: 386-677-2482

Email: mkaret@zevcohen.com

Property Address & Parcel ID: No assigned address - PID# 6302-05-07-0150

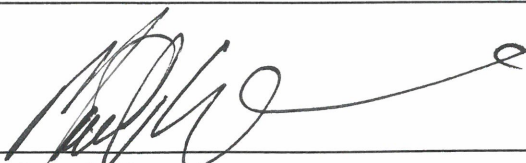
Property Owner: Atlantic Avenue Estates, LLC.

**Legal Description of Property:**

Lots 14, 15 & 16, Block 7, Ocean View Section of Halifax Estates per Map Book 11,

Page 100 per the Official Records of Volusia County, Florida (1612 PG 0174 per or

4705 PGS 2478-2479 per OR 5532 PG 4310)

  
Applicant's Signature

9.24.2020  
Date

# DA12020027 PLANNING ANALYSIS

## (1) DEVELOPMENT PROPOSAL

The development site is located in the west side of the 3800 block of S. Atlantic Avenue (**Figure 1**) and has dimensions of 150' x 206' with an acreage of 0.7.

**Figure 1:** Aerial View Development Site



**Source:** Volusia County PALMS, 2020

The property is currently vacant (**Figure 2**) and approved for four (4) residential duplexes resulting in a total of eight (8) dwelling units on the property. Each duplex would be three (3) stories, not to exceed 35 feet in height as prescribed by the underlying RMF-3 Multifamily Residential (Low Density) zoning district standards. The proposed amendment, if approved, would allow the developer/owner to build a single-family residential structure on any or all of the property, with total units not to exceed eight (8), consistent with the RSF-2 Urban Single-Family Residential Detached District standards (**Exhibit A**), which is the prevalent City single-family zoning district in the area.



Source: GoogleMaps, 2020

## **(2) VARIANCES**

No variances were granted or are anticipated to be associated with this project.

## **(3) STAFF AND BOARD REVIEW**

COMMUNITY SERVICES – Fred Hiatt, Director / Building Official

The Director has reviewed the development agreement and he has no comments.

PUBLIC WORKS – Brian Edwards, Deputy Director / Facilities Superintendent

N/A.

PUBLIC SAFETY – Lt. Karen Howard, Support Services Commander

The Commander has reviewed the development agreement and she has no objections.

## ENGINEERING

Engineering review is not required at this time but will be conducted during the site plan process.

## **(4) FINDINGS**

### **(1) CONSISTENCY WITH THE COMPREHENSIVE PLAN UPDATE 2020**

According to the City's Adopted Comprehensive Plan (2030) Future Land Use Map, the future land use (FLU) classification of the subject property is Low Density Residential. Said FLU classification allows low density development such as the proposed duplex and single-

family residences at the density of 0-12 units per acre. The proposed development meets the aforementioned, therefore, the proposed development is consistent with the City's Adopted Comprehensive Plan (2030) and the designated FLU classification.

## (2) CONSISTENCY WITH THE LAND DEVELOPMENT CODE

The subject property is zoned "RMF-3 Multifamily Residential (Low Density) District". Residential duplexes are permitted as a principal use in the district and within the permitted prescribed density established by the City's LDC (Sec. 14-20). The proposed single-family residential use, while not permitted in the RMF-3 District, would be permitted pursuant to the amended development agreement, if approved. In addition, the proposed development and the proposed amendment are consistent with the general purpose and intent of the City's LDC (Sec. 1-3).

## (3) REQUIRED AMENDMENTS TO THE COMPREHENSIVE PLAN AND/OR LAND DEVELOPMENT CODE

There are no required amendments to the City's adopted Comprehensive Plan and/or the City's Land Development Code necessary for the amendment to be approved.

## EXHIBIT A

### **Sec. 14-17. - RSF-2 Urban Single-Family Residential Detached District.**

#### **14-17.1. Purpose and Intent.**

The purpose and intent of the RSF-2 Urban Single-Family Residential Detached District is to provide medium residential density for the purpose of preserving the character of existing residential neighborhoods and generally implementing the city's land use plan within, but not necessarily limited to, those areas shown for single-family use.

#### **14-17.2. Permitted Principal Uses and Structures.**

Single-family dwelling.

Telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq.

#### **14-17.3. Permitted Accessory Uses and Structures.**

Home occupations regulated by section 14-45 and other accessory uses or structures customarily incidental to the permitted principal use or structure.

#### **14-17.4. Dimensional Requirements.**

Minimum lot size:

Area: Seven thousand five hundred (7,500) square feet.

Width: Fifty (50) feet.

Minimum yard size:

Front yard: Thirty (30) feet.

Rear yard: Twenty-five (25) feet.

Side yard:

Interior lot: Ten (10) feet

Abutting any street right-of-way: Twenty-five (25) feet.

Waterfront: Twenty-five (25) feet (river); fifty (50) feet (ocean).

Minimum floor area: One thousand (1,000) square feet.

Maximum building height: Thirty-five (35) feet.

Maximum lot coverage: The total area covered with principal and accessory buildings shall not exceed thirty-five (35) percent of the total lot area.

---

### **VOLUSIA COUNTY R-9 URBAN SINGLE-FAMILY RESIDENTIAL CLASSIFICATION (For Comparison Only)**

*Purpose and intent:* The purpose and intent of the R-9 Urban Single-Family Residential classification, is to provide for continued medium-density single-family dwelling residential development on existing platted lots.

\*\*\*

*Dimensional requirements:*

*Minimum lot size:*

Area: 7,500 square feet.

Width: 75 feet.

*Minimum yard size:*

Front yard: 25 feet, except on a corner lot, one front yard may be reduced to 15 feet.

Rear yard: 20 feet.

Side yard: Seven feet.

Waterfront yard: 25 feet.

*Maximum building height:* 35 feet.

*Maximum lot coverage:* The total lot area covered with principal and accessory buildings shall not exceed 35 percent.

*Minimum floor area:* 1,000 square feet.

*Off-street parking and loading requirements:* Off-street parking and loading areas meeting the requirements of sections [72-286](#) and [72-287](#) shall be constructed.



## City of Daytona Beach Shores

*"Life is Better Here"*

*"A Premier, Friendly Place to Be"*

### **AGENDA PLANNING & ZONING BOARD MEETING OCTOBER 12, 2020**

**8:30 AM, Shores Community Center, 3000 Bellemead Drive  
Daytona Beach Shores, FL 32118**

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

### **PLANNING & ZONING BOARD AGENDA MEMORANDUM OCTOBER 12, 2020 AGENDA**

**TO:** The Members of the Planning & Zoning Board

**FROM:** Stewart Cruz, City Planner

**PREPARED BY:** Stewart Cruz, City Planner

**SUBJECT:** Ordinance 2020-15: Removal of Background Check Requirement For Fortune Tellers, Palmists, etc.

#### **SYNOPSIS:**

Ordinance 2020-15, if approved, would amend Sec. 14-61.1(m) of the Daytona Beach Shores Land Development Code (LDC) to remove the background check requirement for fortunetellers, palmist and similar occupations in conjunction with the issuance of a certificate of use. A certificate of use review, which analyzes zoning and parking standards relative to a land use, is required prior to the opening of a new business or a business transfer in Daytona Beach Shores. In the case of fortunetelling and similar businesses a background check is also required. However, there is no legal requirement for a background check regarding these occupations and the LDC itself does not contain an administrative or enforcement process subsequent to receiving the results of the background check. Hence, the proposed amendment to remove the background check requirement for the subject occupations is purely an administrative housing cleaning effort.

#### **FISCAL IMPACT STATEMENT:**

#### **BACKGROUND:**

The Courts have deemed fortune telling and similar occupations as protected under the "free speech" provisions of the US Constitution. There is also no Florida Statute requiring background checks on these occupations and the City does not have an established process for addressing the results of background checks relative to the occupations in question. Hence the proposed amendment is merely an administrative housecleaning effort.

**LEGAL REVIEW:**

Approved as to form and legality.

**RECOMMENDATION:**

Staff recommends approval of Ordinance 2020-15 as presented.

**SUGGESTED MOTION:**

A Planning and Zoning Member may move as follows:

(1) "I move to recommend **approval** of Ordinance 2020-15 as presented."

OR

(2) "I move to recommend approval of Ordinance 2020-15, with the following amendment(s)."

OR

(3) "I move to recommend denial of Ordinance 2020-15 on the basis of the following."

**ATTACHMENT:**     1.     Ordinance 2020-15-Background Check Fortune Tellers-Certificate of Use

## ORDINANCE 2020-15

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO FORTUNE TELLING, ASTROLOGY, SPIRITUALISTS AND SIMILAR OCCUPATIONS; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING SECTION 14-61.1 ENTITLED “ZONING CONFIRMATION; CERTIFICATE OF USE OR HABITABILITY”; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

**WHEREAS**, the City of Daytona Beach Shores finds that this Ordinance is in the best interest of its citizens and the appropriate regulation of Fortunetelling business within the City; and

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

**SECTION ONE:** The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores, Appendix G-Land Development Code*, Section 14-61.1, entitled “Zoning confirmation; certificate of use or habitability,” by adding the following:

**Sec. 14-61.1. - Zoning confirmation; certificate of use or habitability.  
modified**

(a) A zoning confirmation and certificate of use process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, prior to a certificate of use being issued by the City and a certificate of use is required for all new occupancies or changes in occupancies relative to all commercial and industrial uses within the City. It is prohibited and unlawful to place commercial or industrial property in use without first obtaining a zoning confirmation and certificate of use from the City.

(b) A certificate of habitability process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, upon a building or structure located on such property being vacant for a period exceeding sixty (60) calendar days. It is prohibited and unlawful to allow a building or structure located on a commercial or industrial property to be vacant without timely receiving a certificate of habitability from the City with an associated plan of maintenance while the building or structure is vacant to ensure that the building or structure is and remains habitable and safe to the public while vacant. A certificate of habitability shall be applied for every 6 months after the initial certificate of habitability application is due and it is prohibited and unlawful to maintain a vacant building or structure without being granted a timely certificate of habitability and appropriately displaying the certificate of habitability on the vacant building or structure. A certificate of habitability is required for each building or structure located on a parcel of property.

(c) An application for a zoning confirmation and certificate of use or a certificate of habitability for a building or structure shall be submitted to the City in such form as the City Manager, or designee, shall prescribe.

(d) The owner or lessee or agent of either shall make application for zoning confirmation and certificate of use prior to commencing the use of property or for a certificate of habitability within five (5) calendar days after a building or structure has been vacant for a period of sixty (60) calendar days.

(e) Zoning confirmation and certificate of use or a certificate of habitability shall only be issued by the City when the use on the property is found to be in compliance with all applicable land development regulations of the City or the use is a legal non-conforming use.

(f) Prior to the change in occupancy relative to a parcel of real property, and as part of the zoning confirmation and certificate of use application process, a site plan shall be submitted to the City for review and approval which site plan shall include, but not be limited to, a parking plan depicting the parking lot that will serve the applicant business. Within five (5) days after a building or structure has been vacant for a period of sixty (60) calendar days, the property owner shall file an application with the City requesting a certificate of habitability which shall contain a statement identifying a plan of maintenance while the building or structure is vacant.

(g) Upon acceptance of a completed application, the application shall be forwarded to the City's pertinent staff for approval of proper zoning, compliance with the pertinent land development regulations and building regulations of the City. The Public Safety Department shall evaluate the property and inspect the property, as necessary, to ensure compliance with the fire codes and applicable safety codes.

(h) The City may engage in inspections by City inspectors as determined to be necessary and desirable with regard to the property under consideration. If it is determined that the applicant's business location does not comply with the requirements of the City's land development regulations, building codes, fire codes, or safety codes, such application shall be denied by the City and the applicant shall not be permitted to engage in the business at such location or, in the case of a vacant building or structure, administratively ordered to remedy all identified issues.

(i) Upon approval of the zoning confirmation and other matters set forth in this section by the City a certificate of use shall be issued to the applicant and the applicant shall prominently display the certificate of use at the property for which the certificate of use was issued or, in the case of a certificate of habitability, upon approval of the vacant building or structure maintenance plan, a certificate of habitability shall be issued.

(j) The Building Official/Community Services Director may revoke a permit or approval issued under the provisions of this section in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based or, in the case of a certificate of habitability, the vacant building or structure maintenance plan has not been adhered to.

(k) Right of appeal.

(1) If the designee of the City Manager denies a certificate of use or certificate of habitability, or the Building Official/Community Services Director revokes a certificate of use or certificate of habitability the applicant therefore shall have the right to appeal such action to the City Manager by filing a notice of appeal with the City Manager within ten (10) days after such action. The City Manager, within fifteen (15) days of such appeal, shall hold an informal hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the City Manager to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the action. The City Manager, after hearing from all interested parties, shall either sustain or reverse the action. The City Manager shall issue a written decision.

(2) If the applicant desires to appeal the decision of the City Manager, the applicant shall have the right to appeal the decision of the City Manager to the City's special magistrate by filing a notice of appeal with the City Clerk within ten (10) days after such action. The City's special magistrate shall, as soon as practicable, hold a hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations or if the certificate of habitability should have been granted or not revoked. Written notice of the hearing shall be provided by the City Clerk to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the action. The City's special magistrate, after hearing from all interested parties, shall either sustain or reverse the action of the City Manager and shall issue a written decision which shall be final City action on the matter.

(l) Applicant for a zoning confirmation and certificate of use or certificate of habitability shall pay a fee for applying as well as a fee for each appeal as established in the schedule of fees adopted by the City Council.

(m) ~~Fortunetellers, astrologers,~~ pain management clinics and similar enterprises.

(1) No certificate of use will be issued to any person engaged or operating in the business of ~~fortunetelling, astrology, palmistry, spiritualists or mediums or other occupation professing to foresee or — predict the future or recall past events by any physical or spiritual means, or involving a pain~~

management clinic or similar enterprises until such person shall furnish the following information to the City:

- a. The place or places of residence of the applicant for the five (5) years immediately preceding application.
  - b. The address and nature of business engaged in for five (5) years immediately preceding the date of application.
  - c. The names and present addresses of all persons, whether adults or minors, connected with or associated with the proposed business or occupation.
- (2) The City shall direct an inquiry to the Volusia County Sheriff and the City's Chief of Police in order that they can accomplish such investigation(s) and issue such report(s) as they deem appropriate in order to evaluate the moral and law abiding character of the applicant.
- (3) The applicant for a pain management clinic certificate of use shall provide to the City proof of registration with the Florida Department of Health, pursuant to F.S. § 458.3265 or 459.0137, as amended, prior to the issuance of a certificate of use for the business. If the registration of a pain management clinic is revoked or suspended by the Florida Department of Health, the certificate of use shall be revoked automatically and shall not be appealable.
- (4) The application for a certificate of use for a pain management clinic shall include an affidavit by the owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended, attesting to the fact that no employee, full-time, part-time, contract, independent or volunteer has been convicted of or has pled guilty or nolo contendere at any time to an offense constituting a felony in this State or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance within a five-year period prior to the date of employment at the pain management clinic.
- (5) If at any time the City determines that a pain management clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this section or any other applicable code or law, the City may revoke the certificate of use through the process outlined in this Code.
- (6) The application for a certificate of use for a pain management clinic shall disclose, in detail, the names and addresses of the owners and operators of the pain management clinic and shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended.
- (7) A copy of each ~~fortuneteller, astrologer,~~ pain management clinic and similar enterprise's certificate of use shall be posted in a conspicuous location at or near the entrance to the business in order that it may be easily observed and read at any time.

\*\*\*

## **SECTION TWO: ENFORCEMENT AND PENALTIES.**

- (a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.
- (b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

(c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

**SECTION THREE: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to temporary promotional activities are hereby ratified and affirmed.

**SECTION FOUR: CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Two, Three, Four, Five, Six and Seven shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION FIVE: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION SIX: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION SEVEN: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

## **CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**NANCY MILLER, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**GRETCHEN R. H. "BECKY" VOSE, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.



## City of Daytona Beach Shores

*"Life is Better Here"*

*"A Premier, Friendly Place to Be"*

### **AGENDA PLANNING & ZONING BOARD MEETING OCTOBER 12, 2020**

**8:30 AM, Shores Community Center, 3000 Bellemead Drive  
Daytona Beach Shores, FL 32118**

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

### **PLANNING & ZONING BOARD AGENDA MEMORANDUM OCTOBER 12, 2020 AGENDA**

**TO:** The Members of the Planning & Zoning Board

**FROM:** Stewart Cruz, City Planner

**PREPARED BY:** Stewart Cruz, City Planner

**SUBJECT:** Ordinance 2020-16: Updating Shared Off-street Parking Requirements

#### **SYNOPSIS:**

Ordinance 2020-16, if approved, will amend the Daytona Beach Shores Land Development Code (LDC) off-street parking requirements relative to shared parking. Off-street parking has been one of the limiting factors to physical and economic development in Daytona Beach Shores due to the nonconforming nature of commercial properties. Properties become nonconforming because the dimensional and or built out state of the property preexisted the City's LDC, which was adopted in 1990. Initially, land development parking regulations were established for worse case scenarios, eg. holiday shopping periods, and resulted in very restrictive parking standards. Today however, parking regulations contemplate mixed use internal capture and alternative modes of transportation such as transit, ride hailing (Uber, Lyft, etc.), carpooling, etc. Considering the City's economic development goals, staff has drafted Ordinance 2020-16 to provide a more modern set of off-street parking requirements for commercial centers in order to encourage economic development and in particular, reuse of vacant commercial center spaces within the City.

#### **FISCAL IMPACT STATEMENT:**

## **BACKGROUND:**

### **A. Context**

Parking in Daytona Beach Shores is a limiting factor for economic and physical development due to the difficulty in satisfying the City's off-street parking requirements, which is related to the nonconforming nature of properties in the City. In addition to demographic, economic and social conditions, new businesses attempting to establish themselves in the City have to contend with nonconforming sites and parking regulations that do not contemplate changes in user behavior. Moreover, existing businesses desiring to expand often time cannot due to the additional off-street parking requirement. Currently, there is at least new two businesses that are yet to open in the City that will have parking challenges at their proposed intensities and in one case a business may not be able to open its doors due to the current parking standards in a shopping center.

### **B. Planning Analysis**

See attached.

### **C. Proposed Amendments**

Below is a summary of the substantive changes contained in Ordinance 2020-16:

1. Amend the general definition of a "shopping center" (Sec. 2-2 LDC), by defining community center as having four (4) or more units, to among other things, provide consistency with the number of shopping center units contained in Chapter 6 "Signs and Advertising." Comment: This amendment will not negatively impact shopping centers less than four (4) units by expanding or creating nonconforming properties.
2. Amend the "Combination Off-street Parking" regulations (Sec. 14-48.3 LDC) to, among other things, combine and improve the City's combined off-street parking requirements for uses with varying peak hours of operation. Comment: This is a housecleaning and streamlining amendment that will not negatively impact properties by expanding or creating nonconforming properties.
3. Amend the "Combination Off-street Parking" regulations (Sec. 14-48.3 LDC) to, among other things, provide shopping centers with the option to calculate overall off-street parking required by utilizing the current method or a universal method of one (1) parking space for every 250 square feet of gross floor area of the entire shopping center, provided certain conditions exist. Comment: This amendment will not negatively impact properties by expanding or creating nonconforming properties.

## **LEGAL REVIEW:**

## **RECOMMENDATION:**

Staff recommends approval of Ordinance 2020-16 as presented.

## **SUGGESTED MOTION:**

A Planning and Zoning Board Member may move as follows:

(1) "I move to recommend **approval** of Ordinance 2020-16 as presented."

OR

(2) "I move to recommend approval of Ordinance 2020-16, with the following amendment(s)..."

OR

(3) "I move to recommend denial of Ordinance 2020-16 on the basis of the following..."

**ATTACHMENT:**

1. Ordinance 2020-16-Shopping Center Shared Parking-10-02-20
2. Planning Analysis

## ORDINANCE 2020-16

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO REQUIRED OFF-STREET PARKING IN SHOPPING CENTERS; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING SECTION 2-2 ENTITLED “GENERAL DEFINITIONS”; BY AMENDING SECTION 14-48, ENTITLED “OFF-STREET PARKING AND LOADING”; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

**WHEREAS**, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible and dynamic; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that parking on beachside is a limiting factor for economic development; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that commercial shopping center sites in Daytona Beach Shores are built out on properties that were platted, designed, approved and developed prior to the adoption of the Daytona Beach Shores Land Development Code and therefore nonconforming in several aspects, including parking; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that the nonconforming nature of parking lots in commercial shopping centers may inhibit economic development and the attraction of new businesses to the City; and

**WHEREAS**, removing obstacles to bringing new businesses to the City is consistent with the Daytona Beach Shores Strategic Plan; and

**WHEREAS**, the Institute of Transportation Engineers Parking Generation Manual (4<sup>th</sup> Edition) was used as a guide in the drafting of this Ordinance; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the businesses, visitors, residents and citizens of the City of Daytona Beach Shores; and

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

**SECTION ONE:** The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Section 2-2, entitled “General Definitions,” by adding the following:

**Sec. 2-2. - General definitions.**

\*\*\*

*Shopping center:* A group of four (4) or more retail stores, service establishments or any other businesses, each located in a separate, distinct and independent leasable space of at least 800 square feet, not necessarily owned by one (1) party nor by a single land ownership which are adjacent to and utilize a common off-street parking area or areas.

\*\*\*

**SECTION TWO:** The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Section 14-48, entitled “Off-street parking and loading,” as follows:

**Sec. 14-48. - Off-street parking and loading.**

Off-street parking areas are required in all zoning districts in order that every use or structure will have an adequate number of off-street parking spaces for the use of occupants, employees, visitors, customers or patrons. Off-street loading areas are required in all zoning districts except single-family residential zoning districts in order to provide adequate space for temporary parking of motor vehicles while loading or unloading. All off-street parking and loading areas shall be designed in accordance with the following requirements:

*14-48.1. Surfacing, Drainage, Lighting and Access.*

Required off-street parking and loading areas except in conjunction with single-family homes shall be surfaced with brick, asphalt, bituminous or concrete material and maintained in a smooth, well-graded condition, drained so as not to cause any runoff problems onto adjacent properties, so lighted to

prevent flare [glare] or excessive light onto adjacent property and arranged for convenient access and safety of pedestrians and vehicles.

#### *14-48.2. Location.*

The required off-street parking or loading areas shall be located on the same lot or parcel of land they are intended to serve. However, if the required off-street parking spaces cannot reasonably be provided on the same lot on which the principal building or use is located, such required off-street parking spaces may be located on another lot or parcel of land within two hundred (200) feet of the premises to be served provided:

1. The owner of such parking area enters into a written agreement with the city council providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required, and
2. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns.

#### *14-48.3. ~~Combined~~ Shared Off-Street Parking.*

1. ~~Combined off-street parking~~ Separate Peak Usage-General. The required off-street parking spaces for one-half [one use] shall not be assigned to another except that one-half (1/2) One half (1/2) of the required off-street parking spaces for churches, theaters, restaurants or other places of assembly businesses whose peak attendance or usage will be at night, weekends or a particular time of the day or on Sundays may be assigned to a use which peak hour of attendance or usage vary from a church, theater, restaurant or other business on the same property or within 200 feet of the subject use. is closed at night or on Sundays. The property and or business owners shall provide the Community Services Director with competent evidence demonstrating consistency with this provision. Approval under this subsection shall be memorialized in a development order.
2. Overlapping Peak Usage-Shopping Centers. Shopping centers may utilize either of the following methodology to determine the total shopping center off-street parking requirement:
  - a. One (1) parking space for every 250 square feet of gross floor area of the entire shopping center. Providing however, (i) total restaurant gross floor area shall not exceed more than 50% of the total shopping center gross floor area; and (ii) total shopping center off-street parking requirement calculated using this methodology shall not be less than one-half (1/2) the off-street parking requirement total when method "b" of this subsection is applied to the shopping center.
  - b. The sum of the total required off-street parking for each individual use pursuant to Sec. 14-48.6 of this code.

\*\*\*

#### *14-48.11. Specialized Off-Street Parking Requirements.*

\*\*\*

14-48.11.6.

~~*Combined Parking.* One-half the required off-street parking may be permitted for principal uses within a shopping plaza when the Building Official determines that competent evidence exists demonstrating that the principal uses on the property are not in use within the same time period during which the other use or uses for which the parking will be required. Such approval shall be memorialized in a development order.~~

\*\*\*

### **SECTION THREE: ENFORCEMENT AND PENALTIES.**

- (a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.
- (b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.
- (c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

**SECTION FOUR: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to required off-street parking are hereby ratified and affirmed.

**SECTION FIVE: CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Three, Four, Five, Six, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION SIX: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION SEVEN: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION EIGHT: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

\_\_\_\_\_  
**NANCY MILLER, MAYOR**

\_\_\_\_\_  
**MICHAEL T. BOOKER, CITY MANAGER**

\_\_\_\_\_  
**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

\_\_\_\_\_  
**GRETCHEN R. H. "BECKY" VOSE, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

# ORDINANCE 2020-16: PLANNING ANALYSIS

## A. PROPOSED AMENDMENTS

The proposed ordinance, if approved, would make the below substantive changes,

1. Amend the general definition of a "shopping center" (Sec. 2-2 LDC), by defining a shopping center as having four (4) or more units. This proposal ensures consistency with Chapter 6 (Signs and Advertising) of the City's LDC, which provides that a shopping center sign is permitted on a lot or parcel with four (4) or more businesses.
2. Amend the "Combination Off-street Parking" regulations (Sec. 14-48.3 LDC) to combine and improve the City's combined off-street parking requirements for uses with varying peak hours of operation. This proposal is a housecleaning and streamlining amendment relocating and combining said provision in a more efficient section of the parking regulations.
3. Amend the "Combination Off-street Parking" regulations (Sec. 14-48.3 LDC) to, among other things, provide shopping centers (with uses that have peak hour overlap) with the option to calculate overall off-street parking required by utilizing the current method or a universal method of one (1) parking space for every 250 square feet of gross floor area of the entire shopping center, provided certain conditions exist.

## B. AMENDMENT A.3 METHODOLOGY

### Overview

This proposal is the most substantive amendment proposed in the ordinance. The methodology used to select the 250 square footage was based on (i) an analysis of the Institute of Transportation Engineer's (ITE) Parking Generation Manual (4<sup>th</sup> Edition) and (ii) an analysis of shopping center parking regulations in all Volusia County beachside communities.

### Observations/Results

1. Amendment A.3(i): The ITE Parking Generation Manual revealed the typical strip plaza parking supply ratio is 4.1/1000sf, or 1/243sf, per gross leasable area in strip shopping centers. Strip shopping centers are characterized as having less than 30,000sf of gross leasable area and with small businesses as tenant type and anchor type. This characterization fits the description of all shopping centers in Daytona Beach Shores, apart from the Winn Dixie Plaza, which is classified as a neighborhood shopping center. More importantly however, the ITE Parking Generation Manual notes average peak parking demand in shopping centers on a Friday (December) and Saturday (December) per 1,000 gross leasable area (GLA)

was 3.96 and 4.67, respectively. This translates to a parking ratio 1/253sf and 1/214sf on the typical busiest shopping days of the year. In generating these results, the ITE surveyed over 197 shopping centers across the country, including several from Florida. The ITE manuals are the most trusted and widely used vehicular trip and parking generation manuals used in the United States.

2. Amendment A.3(ii): Volusia County communities researched included Ormond Beach, Daytona Beach, Volusia County, Ponce Inlet and New Smyrna Beach. Observations included:

- a. No two community had the same off-street parking standard for shopping centers.
- b. Every community provided a credit, i.e. reduced parking requirement, for off-street parking in shopping centers. This is probably because of the trip generation and land use concept of internal capture, which assumes a reduction in total parking demand in a mixed use center due to the customer practice of shopping at multiple onsite businesses.
- c. The City of Port Orange, which has a larger population and average daily trip generation than Daytona Beach Shores on its major thoroughfares, off-street parking requirements for shopping center is a standard 1/250sf. This standard comes the closest to those of the ITE.

#### METHOD SELECTED

Considering the ITE and Port Orange standards, staff elected to utilize the 1/250sf off-street parking requirement with additional safeguards, which provides that this methodology shall only be utilized in shopping centers under the following conditions:

- a. The total restaurant gross floor area in the shopping center shall not exceed 50% of the total shopping center gross floor area. Comment: The purpose behind installing this threshold is to ensure a shopping center remains a shopping center and not a restaurant hub. If the latter occurs then internal capture is less likely to occur and hence, off-street parking demand would be higher than what the proposed standard requires. This would lead to potential parking conflicts and failure of one or more restaurants through the land use attrition process.
- b. The total shopping center off-street parking requirement calculated using the 1/250sf methodology shall not be less than one-half (1/2) the off-street parking requirement total when calculated the conventional methodology. Comment: The purpose of installing this threshold is to provide an off-street parking failsafe mechanism that would preclude potential parking conflicts and the failure of shopping center businesses.

**NOTE:** Required off-street parking for shopping centers may still be calculated utilizing the existing or conventional method. This may be useful should the nature and intensity of businesses in the shopping center result in a less restrictive requirement.

### **C. NONCONFORMITY**

The subject ordinance will not create or expand any parking nonconformity but instead it will make some shopping center properties more conforming in relation to parking due to the additional method of calculating required off-street parking. The proposed amendments will not increase off-street parking requirements and in fact, shopping centers will still be able to utilize the existing standards currently in place.

### **D. DRIVER DECISION OPTIONS**

While there are always concerns regarding relaxing parking standards, a typical driver contemplates the following when faced with a full parking lot:

1. Seek alternative destination
2. Return at an alternative time or date
3. Return via ride hailing service (Uber, Lyft, etc.)
4. Return via transit
5. Stand vehicle on site until space becomes available
6. Park illegally elsewhere on site
7. Park illegally on nearby property
8. Park illegally on roadway

As seen in the Public Safety Director's comments below, the City of Daytona Beach Shores does not experience noticeable illegal parking related to commercial or on-street parking. If a problem arises the Director has indicated the Department will address immediately. However, most residents and visitors to City are law abiding and therefore, staff does not anticipate decisions 6, 7 and 8 to materialize significantly, if any at all.

### **E. BUSINESS/PROPERTY OWNER DECISION OPTIONS**

In the unlikely event that options 6, 7 and 8 noted in Section D above becomes a reality, business and property owners will need to act accordingly due to their desire to be successful. Decisions contemplated include:

1. Entering a parking arrangement with a nearby property.
2. Require employees to utilize alternative means of transport, e.g. carpool, transit, scooters, etc.
3. Reduce intensity of restaurants, i.e. reduce number of seats in a restaurant, etc.
4. Focus on alternative services, i.e. delivery, take out, online sales, etc.

While inadequate parking can be problematic for businesses, shopping center owner and a community, Local decisions and market corrections typically stabilize this issue. The business/property owner, sometimes at the encouragement of the City or tenants, will act on one or more of the above decision-making options while the customer/driver will select one or more of the options noted in Section D above.

## **F. STAFF AND BOARD REVIEW**

COMMUNITY SERVICES – Fred Hiatt, Director / Building Official

The Director has reviewed the ordinance and his comments have been addressed.

PUBLIC WORKS – Brian Edwards, Deputy Director / Facilities Superintendent

N/A.

PUBLIC SAFETY – Chief Stephan Dembinsky

The Chief has indicated illegal parking related to commercial use is generally not an issue in the City, however, if it becomes a problem the Public Safety Department will address immediately.

ENGINEERING

N/A

PLANNING AND ZONING BOARD

Pending.

## **G. FINDINGS**

### **(1) CONSISTENCY WITH THE COMPREHENSIVE PLAN UPDATE 2030**

The proposed ordinance is consistent with the City's Adopted Comprehensive Plan (2030) and the following policies:

1. Future Land Use (FLU) Policy 1-1.1.1.c: Provide for adequate off-street parking spaces. Comment- This ordinance does not amend parking design and will not impact parking space configuration and dimensions. In addition, the proposed parking standards closely resemble the ITE recommendations for shopping centers.
2. FLU Policy 1-1.4.1: Provide for adequate off-street parking spaces. Comment- This ordinance does not amend parking design and will not impact parking space configuration and dimensions. In addition, the proposed parking standards closely resemble the ITE recommendations for shopping centers.

3. Transportation Policy 2-1.1.7: Safe and convenient onsite transportation traffic flow. Comment- This ordinance does not amend parking design or internal circulation and should not negatively impact onsite transportation traffic flow.
4. Transportation Policy 2-1.1.8: Accommodate emergency services. Comment- This ordinance does not amend parking design or internal circulation standards and should not negatively impact emergency service equipment.
5. Transportation Policy 2-1.1.10: Prohibition of parking on S.R. A1A. Comment- The ordinance does not propose parking on S.R. A1A or any public roads. Per sections D and E of this report, a user and tenant/landlord have various decision options to address potential parking shortages while the Public Safety Department will address any and all illegal parking if needed.
6. Transportation Policy 2-1.2.2: Site plan review criteria. Comment-Site plan review will continue for all new and redeveloped shopping center properties consistent with the ordinance.

## (2) CONSISTENCY WITH THE LAND DEVELOPMENT CODE

The subject Ordinance will provide housecleaning, streamlining and another method of calculating required off-street parking for shopping centers. The ordinance will not increase or expand nonconformities but in fact will provide an opportunity for shopping centers to become in conformity with the proposed LDC off-street parking standards.

## (3) ECONOMIC DEVELOPMENT

The proposed ordinance, if approved, will remove one barrier inhibiting the reuse of some vacant shopping center spaces. If this barrier is removed the changes will facilitate new businesses coming into the City. Since business spur business, this ordinance has clear economic development implications for business growth on the west side of S. Atlantic Avenue, which is a goal of the City's Strategic Plan.