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Office of the City Attorney

**Phone: 334-5011/Fax 334-2229
Box 46**

TO: Members of the Development Review Board DATE: March 11, 2010
FROM: City Attorney
SUBJECT: Petition DB-10-6 SPL -- Wal-Mart Stores East, LP

Introduction

During the "Requests to Address the Board" portion of its February 11, 2010 agenda, the Development Review Board (the "DRB") heard and received correspondence from John Hudson regarding his objections to the staff interpretation of the City's Land Development Code (the "LDC") as applied to the Preliminary Development Plan Review for a Wal-Mart Supercenter to be located at the 5800 block of NW 34th Street, Petition DB-10-6 (the "Petition"). The DRB, during "Board Member Comment," requested the City Attorney's Office issue a written memorandum on the issue(s) raised by Mr. Hudson and additionally, that the City Attorney's Office provide counsel to the DRB at the March meeting when the Petition is heard. On March 3, this Office received correspondence from E. Owen McCuller, Jr. as attorney for Mr. Hudson. This letter, a copy of which is attached as Exhibit "A", specifically addresses the issue that Mr. Hudson believes requires legal guidance to the DRB. On March 4, this Office received the complete Development Review Staff Report and has reviewed same. In addition, on March 5, this Office received an email from Attorney McCuller, a copy of which is attached as Exhibit "B."

Issue raised by Attorney McCuller and Mr. Hudson

Whether the "general" and "specific" exceptions provided in the Special Area Plan for Central Corridors (the "SAP") apply to permit the reviewing authority the power to approve variations/exceptions to the standards, and more specifically a greater build-to line than the expressed dimensional requirement in the SAP?

Analysis and Opinion

Paragraph (k)(2) of the SAP provides in pertinent part:

"(k) *Build-to line.*"

"(2) *Standard.* The *build-to line* shall be that which achieves the above-stated intent, as determined by the appropriate reviewing board, city manager or designee, and shall apply even if the *facade* faces a street outside of the overlay affected area. Building walls along a street that is not within the

overlay affected area that are entirely more than 250 feet from the regulated corridor shall be exempt from the Build-to Line standard. If a portion of the wall along a street is within 250 feet, all of the wall is affected by the standard. In most instances, the *build-to line* shall be 80 feet from the curb or edge of pavement for at least 70 percent of the building *facade*. Factors to be considered for variations to this *build-to line* shall be as follows:

- When considering a closer *build-to line*, the building *facade* shall, in most instances, be no closer than 14 feet from the curb or edge of pavement along an arterial, 12 feet along a collector, and 11 feet along a local street, in order to leave space for adequate sidewalks and tree strips (see Map A).
- When the proposed building is *adjacent* to existing buildings on an abutting property the *facade* shall, in most instances, be built at the *facade* of the *adjacent* building closest to the street, or the 80-foot *build-to line*, whichever is closer to the street.
- The appropriate reviewing board, city manager or designee can approve a *facade* closer to the curb or edge of pavement than the previously listed distances so that a consistent *street edge* of *adjacent* buildings can be maintained.
- Buildings on corner lots or buildings on more than one street *frontage* shall, in most instances, have the 80-foot *build-to line* requirement on the more primary street *frontage* area.
- The appropriate reviewing board, city manager or designee may approve a greater *build-to line* (farther from the street) than the required *build-to line* when site constraints such as significant tree features or significant design features warrant it. If such approval by the appropriate reviewing board, city manager or designee is granted, the front yard area must be landscaped to provide shade for pedestrians with tree plantings and to establish the *street edge* articulation.
- The standards described in this subsection shall supersede any landscape buffer width requirements found in Article VIII of the Land Development Code for *frontage* areas, except in front of surface parking lots.

Stoops, stairs, chimneys, and bay windows are allowed to extend beyond the *build-to line* as long as they do not exceed more than 25 percent of the front *facade*. Open porches, projecting signs, balconies, *arcades*, awnings and outdoor cafes may also extend beyond the *build-to line*. However, at least 5 feet of unobstructed sidewalk width and room for any required tree strip must be retained.”

The plain language of the SAP allows the DRB the discretion in deciding whether to require adherence to the 80 foot “in most instances” build-to line or to allow a variation/exception. The plain language of the SAP provides intent, standards and factors, to guide the DRB in the exercise of such discretion. One of the factors listed allows the DRB to “approve a greater *build-*

to line (farther from the street) than the required build-to line when site constraints such as significant tree features or significant design features warrant it." Mr. McCuller refers to this as the "specific" exception, as it is specific only to the build-to line standard.

Paragraph (d) of the SAP also provides as follows:

"(d) *Exceptions.* Exceptions to these standards can be granted by the appropriate reviewing board, city manager or designee, upon a finding that either of the following criteria are met:

1. The proposed construction is consistent with the overall intent of the Central Corridors standards; or
2. The applicant proves an undue hardship, owing to conditions peculiar to the land or structure and not the result of the action of the applicant, would result from strict adherence to these standards.

In addition to the exceptions that may be granted above, exceptions to the *build-to line* may be granted if the proposed construction includes an existing structure which has been designated as a historic property or has historic significance because it is potentially eligible for listing on the national or local register, and maintaining a viewshed of the existing historic structure is in the public interest."

The plain language of this exception (Mr. McCuller refers to this as the "general" exception) allows the DRB to grant an exception to any standard (which would include the build-to standard) upon a finding that either of the stated criteria are met. In addition, it provides for any additional exception in the case of certain historic properties.

The general exception and the specific exception are plainly written, are not ambiguous, do not conflict with one another, and the specific exception does not appear intended to further clarify or limit the general exception. As such, based on rules of statutory construction, the specific exception should not be read to render the general exception meaningless. Each exception should be given meaning in the context in which it was plainly written. For example, if the DRB were to exercise its reasonable discretion and consider granting an exception to the build-to line, it may apply the specific exception or the general exception, or both. If the DRB were to consider granting an exception to the glazing requirement (which does not list any specific exceptions), the DRB could only apply the general exception.

This Memorandum and the Development Review Staff Report contain City staff's interpretation and application of the SAP language. However, as set forth in the Final Order in Case No. 09-4240, styled Wal-Mart Stores East, L.P., vs. City of Gainesville, and John Hudson, Intervenor, "[t]here is no legal principle that a decision-making body (the DRB) acts unlawfully when it fails to adopt an interpretation of law preferred by its staff. The Development Review Board can read the plain wording of the Section," "consider the section *in pari materia* (means on the same subject) with related provisions of the Code, and apply an interpretation that is reasonable."

As final guidance to the DRB, courts have upheld land development code provisions that allow a reviewing board to exercise some reasonable discretion as guided by the plain and ordinary

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meaning of the code language and as applied to the particular facts of the petition. Such discretion is not unlimited, nor is it to be exercised in a manner that is arbitrary or capricious. As in all quasi-judicial matters, the DRB should base its decision on the competent, substantial evidence presented at the hearing and members of the DRB should generally state for the record the finding(s) that support their decisions.

In sum, the general and specific exceptions provided in the SAP permit the reviewing authority (the DRB) to approve variations/exceptions to the standards of the SAP, as long as the decision is based on competent substantial evidence and meets the criteria/factors provided in the SAP.

Prepared by: Nicolle Shalley
Nicolle Shalley, Sr. Assistant City Attorney

Prepared and Submitted by: Marion J. Radson
Marion J. Radson, City Attorney

Attachments (2)

cc: Erik Bredfeldt, Planning and Development Director
Ralph Hilliard, Planning Manager
Lawrence Calderon, Chief of Current Planning
Scott Wright, Sr. Planner
E. Owen McCuller, Jr., Esq., Attorney for Mr. Hudson
Karl J. Sanders, Esq., Attorney for Wal-Mart Stores East, LP

EXHIBIT "A"

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SMITH HULSEY & BUSEY

E. OWEN MCCULLER, JR.
DIRECT 904.359.7725
OMCCULLER@SMITHHULSEY.COM

March 3, 2010

SENT VIA E-MAIL

Marion J. Radson, Esq., City Attorney
City of Gainesville
200 E. University Ave., Suite 425
P. O. Box 1110
Gainesville, Florida 32602-1110

Re: Petition DB-10-6 SPL - Wal-Mart

Dear Marion:

As you know, our firm has represented John Hudson in the 34th Street Wal-Mart Supercenter matter. You are also aware that the Development Review Board (the "Board"), at its February 20, 2010 meeting, voted to request your office to address, in writing, questions raised in Mr. Hudson's letter presented to the Board (copy attached). There are several issues raised in the letter; however, we wish to draw your attention to the issue of the authority of the Board to waive or increase the "build-to line" under the Special Area Plan for Central Corridors ("SAPCC") (copy attached).

It is our reading of the SAPCC, specifically Section 7(k), subsection (2), fifth paragraph, that the Board may increase the "build-to line" only upon a finding that "site constraints, such as significant tree features or significant design features warrant it." This is not a discretionary authority. The finding of a "site constraint" would be a prerequisite to the exercise of the authority and would need to be supported by competent substantial evidence. The Board would benefit from your advice as to the requirement of a finding of a site constraint, based on competent substantial evidence, as they decide whether to increase the build-to line established under the SAPCC.

We view Section 7(k) as the sole governing provision for any approved increase in the build-to line, superseding the general "exception" authority in Section 7(d). We believe this interpretation should be communicated to the Board to prevent potential confusion in their decision making.

It is our understanding that the build-to line may not be the only exception requested by the applicant. It may be beneficial for the Board to be advised as to the appropriate standard/criteria for approving a particular exception (general vs. specific) and, in all instances, that there be a specific finding based in competent substantial evidence that the criteria are met for each exception sought.

ATTORNEYS

225 WATER STREET, SUITE 1800 • P.O. Box 53315 • JACKSONVILLE, FL 32201-3315
OFFICE 904.359.7700 • FAX 904.359.7708

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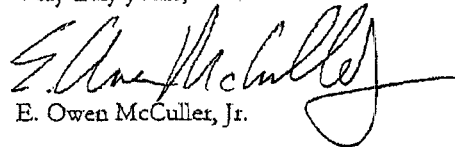
SMITH HULSEY & BUSEY

Marion J. Radson, Esq., City Attorney
March 3, 2010
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Finally, it may be helpful to the Board to be made aware that the Planned Development process is available to potentially accomplish what the applicant seeks regarding building placement. The Planned Development process would allow the elected officials (City Commission) to relax adopted zoning standards that otherwise cannot be accomplished under the Development Plan review process in the absence of a site constraint.

As always, thank you for your assistance.

Very truly yours,



E. Owen McCuller, Jr.

EOM/pmf/00692563.5DOC

Attachment

cc: John Hudson

ATTORNEYS

225 WATER STREET, SUITE 1800 • P.O. BOX 53315 • JACKSONVILLE, FL 32201-3315
OFFICE 904.359.7700 • FAX 904.359.7708 • FEDERAL ID 59-2100518

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John Hudson
2332 NW 54th Blvd.
Gainesville, FL

February 10, 2010

City of Gainesville
Development Review Board
200 East University Avenue
Gainesville, FL

RE: Wal-Mart Petition in Northwest Gainesville

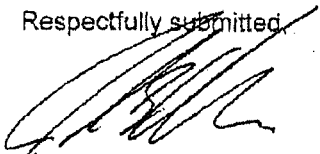
Ladies and Gentlemen,

I am writing to you as an affected party since I own property at the address above to offer comment on the "new" Wal-Mart site plan.

Since the last Wal-Mart application the land is now on a designated "central corridor" (NW 34th Street extension) that requires even more concern with, and stringent controls on, the building's placement and appearance than the underlying MU-2 zoning does. I have spoken with Lawrence Calderon with regard to this and suggest that the Chairman request comment on the interpretation of the code and its application from Elizabeth Waratuke of the City Attorney's Office (who defended the DRB's original decision).

My position differs with Mr. Calderon in that I believe that the store must meet the "build-to" line requirements (70% of the building facade 80' maximum from curb) of the Central Corridor for the 250 feet of depth of the parcel that abut the street, and the build-to requirement of MU-2 for the remainder of the parcel. I further believe that the DRB can not relax the Central Corridor standards unless there are existing site constraints that are defined in the LDR's which are not present on this site. This is the same thing we saw before, staff looking for a "loophole" rather than following the LDR's and the Comprehensive Plan. The City Attorney's Office is the only agency that can provide the DRB with a definitive and final resolution to this question and are available to you before the plan comes back before this board.

Respectfully submitted,



John Hudson
Affected Party

SECTION 5. SPECIAL AREA PLAN FOR CENTRAL CORRIDORS

ORDINANCE NO. 980015
0-98-62

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA, IMPOSING THE SPECIAL AREA PLAN OVERLAY ZONING DISTRICT FOR THE "CENTRAL CORRIDORS" ON CERTAIN PROPERTY LOCATED ON W. UNIVERSITY AVENUE, S.W. 2ND AVENUE, W. 13TH STREET, N.W. 23RD AVENUE, W. 6TH STREET, N. MAIN STREET, WALDO ROAD AND HAWTHORNE ROAD; ADOPTING A SPECIAL AREA PLAN FOR THIS PROPERTY; PROVIDING DIRECTIONS TO THE CODIFIER; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on December 17, 1997; and

WHEREAS, notice was given and publication made of a Public Hearing which was then held by the City Commission on March 5, 1998; and

WHEREAS, pursuant to law, an advertisement no less than 2 columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission Auditorium, City Hall, City of Gainesville, at least 7 days after the day this advertisement was published; and

WHEREAS, a second advertisement no less than 2 columns wide by 10 inches long was placed in the same newspaper notifying the public of the second Public Hearing to be held at the adoption stage at least 5 days after the day this advertisement was published; and

WHEREAS, the Public Hearings were held as advertised and the parties in interest and all others had an opportunity to be and were, in fact, heard;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. The Special Area Plan overlay district is imposed on certain property located adjacent to W. University Avenue, S.W. 2nd Avenue, W. 13th Street, N.W. 23rd Avenue, W. 6th Street, N. Main Street, Waldo Road and Hawthorne Road, as shown on the map attached hereto as Exhibit "A," and made a part hereof as if set forth in full.

Section 2. The Special Area Plan of the Central Corridors (Exhibit "B") is hereby adopted. The specific regulations of the Special Area Plan for the aforementioned property and the administration and enforcement of these regulations as delineated in Exhibit "B" shall be made a part hereof as thought set forth in full.

Section 3. The City Manager is authorized and directed to make these changes in the zoning map in order to comply with this ordinance and administer the provisions of the Central Corridors Special Area Plan.

Section 4. It is the intention of the City Commission that the provisions of the special area plan adopted by this ordinance shall become and be made a part of Land Development Code of the City of Gainesville, Florida, and that the Sections and Paragraphs of this plan may be renumbered or relettered in order to accomplish such intentions.

Section 5. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 6. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed, except as stated in this ordinance.

Section 7. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this 22nd day of June, 1998.

Exhibit A. Central Corridors

Exhibit B. Special Area Plan for the Central Corridors
Minimum Development Standards

(a) *Purpose.* The Central Corridors are established to improve the sense of place and community; improve the environment for businesses, including smaller, locally-owned businesses; support a healthy economy by providing a vibrant mix of commercial, office, retail and residential uses in close proximity; reduce crime by encouraging a 24-hour mix of uses and a significant number of pedestrians; strike a balance between the needs of the car and pedestrian by creating a pleasant ambiance and interesting *people-scaled* features, and make the pedestrian feel safe and inconvenienced; increase transit viability; and improve independence of people without access to a car. The standards are designed to make Gainesville a more vibrant, livable place, and increase citizen pride in its development. The standards are designed to establish an important engine in job creation, a strengthened tax base, and an incubator for new, entrepreneurial, locally-owned businesses and entry-level job opportunities. The standards are also intended to protect the property values of nearby residential areas.

(b) *Effect of classification.* The Central Corridors standards are an overlay zoning district. They shall operate in conjunction with any underlying zoning district in the subject area. The regulations of the underlying zoning district, and all other applicable regulations, remain in effect and are further regulated by the Central Corridors standards. If provisions of the Central Corridors standards conflict with the underlying zoning, the provisions of the Central Corridors standards shall prevail.

(c) *Annual evaluation.* The City Plan Board shall conduct an evaluation of these standards on an annual basis.

(d) *Exceptions.* Exceptions to these standards can be granted by the appropriate reviewing board, city manager or designee, upon a finding that either of the following criteria are met:

1. The proposed construction is consistent with the overall intent of the Central Corridors standards; or
2. The applicant proves an undue hardship, owing to conditions peculiar to the land or structure and not the result of the action of the applicant, would result from strict adherence to these standards.

In addition to the exceptions that may be granted above, exceptions to the *build-to line* may be granted if the proposed construction includes an existing structure which has been designated as a historic property or has historic significance because it is potentially eligible for listing on the national or local register, and maintaining a viewshed of the existing historic structure is in the public interest.

(e) *Right to appeal.*

1. Any person aggrieved by a decision rendered by the appropriate reviewing board, city manager or designee may appeal the decision to the City Commission within 14 days from the date that the decision by the appropriate reviewing board, city manager or designee is reduced to writing and served by certified or registered mail, return receipt requested, to such person. The appeal shall be made by filing a written notice of appeal within the above prescribed time period with the clerk of the city.

or appeal within the above-prescribed time period with the clerk of the city commission. The notice shall set forth concisely the decision under appeal and the reasons or grounds for the appeal.

2. The Planning and Development Services Department shall prepare the appeal for the City Commission. The appeal shall be de novo and shall be heard by the City Commission at its next regular meeting, provided at least 14 days have intervened between the time of the filing of the notice of appeal and the date of such meeting. The City Commission shall hear and consider all evidence and testimony placed before it, and shall render its decision promptly, based on competent, substantial evidence. The City Commission may affirm, amend or reverse the decision of the appropriate reviewing board, city manager or designee. The decision by the City Commission shall be reduced to writing and shall constitute final administrative review. Appeals from decisions of the City Commission may be made to the courts as provided by law.

(f) *Definitions.* Defined terms are as defined in the Traditional City standards, section 4 of this Appendix, and are italicized in the text. Drawings are illustrative only. They do not represent required designs.

(g) *Delineation of Central Corridors Overlay District.* The Central Corridors overlay district shall apply to all lands adjacent to the streets shown on the map of the Central Corridors. Distances from the Central Corridors overlay district to structures outside the Central Corridors overlay district shall be measured from the nearest curb or edge of pavement.

(h) *Required compliance.* All new commercial, office, civic and multi-family buildings and developments shall be required to comply with the sections of the text labeled "standards." Automotive dealers (both new and used vehicles) located on N. Main Street north of N. 16th Avenue and south of N. 53rd Avenue are exempt from standards of this special area plan as applied through the Transportation Concurrency Exception Area.

(i) *Presumptive vested rights.* Developments shall be presumptively vested for the purposes of consistency with this overlay if they have filed a valid application for a preliminary development order issued by the city, as specified by Article VII, Division 1, prior to the effective date.

(j) *Non-conforming uses and buildings.*

(1) *Continuation of use.* A nonconforming use may be continued as provided in section 30-23, Non-Conforming Use, and section 30-346, Non-conforming Lots, Uses or Structures.

(2) *Expanding existing non-conforming uses.*

a. A special use permit may be issued for expansion of uses made non-conforming by the Central Corridors standards when the City Plan Board makes findings that the proposed expansion is in compliance with Article VII, Division 4, Special Use Permit.

b. In addition, no permit for expansion of a non-conforming use shall be issued unless the City Plan Board makes the following findings concerning the proposed expansion:

1. The expansion complies with the Central Corridors standards, as applicable;
2. Auto Dealers, Auto Service and Limited Auto Services, and Gas Service Stations shall comply with sections 30-93 and 30-94;
3. Carwashes shall comply with section 30-95;

4. Outdoor Storage shall comply with section 30-97;
5. Parking Lots, as the principal use other than structured parking or the use of existing parking lots shall comply with section 30-114;
6. The expansion shall not reduce pedestrian safety by increasing driveway widths, adding a new driveway crossing to a sidewalk or crosswalk, or increasing the number of driveway lanes;
7. The expansion shall not increase the size of signs on the site;
8. The non-conforming use shall not be changed (except to a conforming use) as a result of the expansion;
9. The expansion shall not result in a conversion of the non-conforming use from a seasonal to a year-round operation, nor shall it result in the use expanding its hours of operation;
10. Outdoor storage areas shall not be expanded or located any closer to residential development as a result of the expansion; and
11. The proposed expansion shall not add more than 25 percent of new floor area to existing buildings on the site.

(3) *Change of use.* A non-conforming use may only be changed to a conforming use.

(4) *Development, enlargement, or modification of a non-conforming building.* A non-conforming building may be developed, enlarged, or modified without requiring conformance with this overlay if the change would not increase the degree of non-conformity with the standards in this overlay.

(k) *Build-to line.*

(1) *Intent.* The intent of the *build-to line* is to pull the building *facade* close to the street and streetside sidewalk. Because of the transitional nature of these corridors, the *build-to line* is more flexible than in the Traditional City. The *build-to line* allows new buildings to be aligned with existing buildings, or, in the future, allows a building to be built in front of the building and allows this future building to abut the streetside sidewalk. Over time, building *facades* along a block face should be aligned to form a *street edge* that frames the public realm, while retaining sufficient width for people to walk, and sufficient space to provide a *formal landscape* created by street trees. Over time, the intent is to pull building *facades* close to the street and streetside sidewalk, frame a comfortable public realm, and prevent overly large *setbacks*.

Overly large *setbacks* are inconvenient and unpleasant for pedestrians. They can significantly increase walking distances from the public sidewalk. They prevent the pedestrian on the public sidewalk from enjoying building details and activity within the building. Similarly, overly large *setbacks* contribute to sign proliferation and visual blight because a building set back a large distance often needs to "shout," with signs, at passing motorists, transit users, bicyclists and pedestrians in order to be noticed. Buildings pulled up to the street sidewalk have more of a human scale and allow for the construction of canopies which shield the pedestrian from wet weather.

(2) *Standard.* The *build-to line* shall be that which achieves the above-stated intent, as determined by the appropriate reviewing board, city manager or designee, and shall apply even if the *facade* faces a street outside of the overlay affected area. Building walls along a street that is not within the overlay affected area that are entirely more than 250 feet from the regulated corridor shall be exempt from the Build-to Line

standard. If a portion of the wall along a street is within 250 feet, all of the wall is affected by the standard. In most instances, the *build-to line* shall be 80 feet from the curb or edge of pavement for at least 70 percent of the building *facade*. Factors to be considered for variations to this *build-to line* shall be as follows:

- When considering a closer *build-to line*, the building *facade* shall, in most instances, be no closer than 14 feet from the curb or edge of pavement along an arterial, 12 feet along a collector, and 11 feet along a local street, in order to leave space for adequate sidewalks and tree strips (see Map A).
- When the proposed building is *adjacent* to existing buildings on an abutting property the *facade* shall, in most instances, be built at the *facade* of the *adjacent* building closest to the street, or the 80-foot *build-to line*, whichever is closer to the street.
- The appropriate reviewing board, city manager or designee can approve a *facade* closer to the curb or edge of pavement than the previously listed distances so that a consistent *street edge* of *adjacent* buildings can be maintained.
- Buildings on corner lots or buildings on more than one *street frontage* shall, in most instances, have the 80-foot *build-to line* requirement on the more primary *street frontage* area.
- The appropriate reviewing board, city manager or designee may approve a greater *build-to line* (farther from the street) than the required *build-to line* when site constraints such as significant tree features or significant design features warrant it. If such approval by the appropriate reviewing board, city manager or designee is granted, the front yard area must be landscaped to provide shade for pedestrians with tree plantings and to establish the *street edge* articulation.
- The standards described in this subsection shall supersede any landscape buffer width requirements found in Article VIII of the Land Development Code for *frontage* areas, except in front of surface parking lots.

Stoops, stairs, chimneys, and bay windows are allowed to extend beyond the *build-to line* as long as they do not exceed more than 25 percent of the front *facade*. Open porches, projecting signs, balconies, *arcades*, awnings and outdoor cafes may also extend beyond the *build-to line*. However, at least 5 feet of unobstructed sidewalk width and room for any required tree strip must be retained.

(l) *Parking.*

(1) *Intent.* Parking is one component of the successful commercial area, but should not dominate the streetscape or degrade the public realm. Parking areas located in front of buildings are inconvenient and unpleasant for pedestrians. They significantly increase walking distances from the public sidewalk. They create hot expanses of asphalt, and prevent the pedestrian on the public sidewalk from enjoying building details and activity within the building. In addition, they prevent the building from contributing to an intimate, comfortable *street edge*. Buildings pulled up to the street without intervening motor vehicle parking have more of a human scale. A larger curb turning radius at a parking area ingress and egress point allows vehicles to negotiate a turn rapidly, whereas a smaller radius forces a vehicle to slow down.

(2) *Standard.*

- a. No motor vehicle parking is required. All motor vehicle parking except a double-loaded row of parking is to be located in the rear or interior side, or both, of the building, unless topography, stormwater retention, or significant trees, as determined by the appropriate reviewing board, city manager or

designee, prevent such a location. In no case shall more than 50 percent of the parking be located between the *frontfacade* and the primary abutting street. However, driveway entrances and exits to parking areas shall be allowed on the front side of the building. The minimum number of motor vehicle parking spaces required by section 30-332 is the maximum allowed. However, there shall be no limit on the number of parking spaces in *parking structures*.

b. Bicycle parking spaces shall be installed as called for by section 30-332. Such parking may encroach into the public right-of-way or beyond the *build-to line* provided that at least 5 feet of unobstructed sidewalk width and any required tree strip is retained. Bicycle parking requirements may be waived if public bicycle parking exists to serve the use.

(m) *Sidewalks.*

(1) *Intent.* Sidewalks, when properly dimensioned and maintained, provide the pedestrian with a pleasant, safe, and convenient place to walk, and mitigate traffic impacts by making the area more walkable. Sidewalks that are too narrow are inconvenient, especially in areas with large volumes of pedestrians.

(2) *Standard.*

a. All developments must provide sidewalks along all *streetfrontage*. All developments must provide pedestrian connections from the public sidewalk to the principal building. Entrance sidewalks shall be a minimum of 5 feet of clear width.

b. Minimum sidewalk widths:

TABLE INSET:

Street Classification	Multi-Family Residential/ Industrial (feet)	Commercial/ Institutional/Office/ Mixed Use (feet)
Local	6	7
Collector	7	8
Arterial	7	10

The minimum unobstructed width shall be 2 feet less than the required sidewalk width, as long as at least 5 feet of unobstructed width is retained. At transit stops, the minimum width is 8 feet of unobstructed width. Minimum width for a tree strip shall be 4 feet, or such other width as may be adequate for tree placement, unless the tree strip requirement is waived by the appropriate reviewing board, city manager or designee.

c. In order to maintain a consistent *street edge of adjacent buildings*, the appropriate reviewing board, city manager or designee may modify the required sidewalk width and the tree strip width in order to achieve the above-stated intent. In areas where a sidewalk pattern as to materials and width has been adopted, the appropriate reviewing board, city manager or designee can allow the pattern to be continued by each new development. If the sidewalks installed are less than the minimums provided above, sufficient space shall be provided in order for these minimum sidewalk widths to be added in the future.

(n) *Building orientation.*

(1) *Intent* A successful commercial district must have vital streetfronts

(1) *Intent.* Neighborhoods with lively streetfronts become the healthiest for business. Streetfront entrances provide convenience for customers and residents by minimizing walking distances from public sidewalks and nearby buildings. Rear or side entrances, or entrances oriented toward a parking lot, when no streetfront entrance is available, make travel highly inconvenient for pedestrians and transit users, cuts the building off from street life, "turns the building's back" to the public realm, and hides architectural character from public view. When a building is located at an intersection, the most convenient entrance is usually abutting the public sidewalks at the corner of the intersection.

(2) *Standard.* The *main entrance* of buildings or units must be located on the first floor on the more primary street, even if the more primary street is outside of the overlay affected area. The Building Orientation standard applies if a portion of the wall along the more primary street outside of the overlay affected area is within 250 feet of the overlay affected area.

(o) *Building wall articulation.*

(1) *Intent.* All buildings shall be designed to provide streetfront vitality. Long expanses of blank walls tend to be monotonous. Windows attract pedestrians, who act as a security system for the business. Buildings without such relief and interest tend to create a "massive scale," and make the public realm impersonal.

(2) *Standard.* Building walls facing the more primary street shall have non-reflective, transparent windows or *glazed area* covering at least 25 percent of their surface at pedestrian level (between 3 feet above grade and 8 feet above grade) on the first floor, even if the wall faces a street outside of the overlay affected area. Operable entrance doors shall be excluded from the calculation of total *facade* surface area. Building walls along a street that is not within the overlay affected area that are entirely more than 250 feet from the regulated corridor shall be exempt from the Building Wall Articulation standard. If a portion of the wall along a street is within 250 feet, all of the wall is affected by the standard.

(p) *Mechanical equipment.*

(1) *Intent.* *Mechanical equipment*, when improperly located on a site or improperly screened, can contribute to noise problems and create visual blight.

(2) *Standard.* All *mechanical equipment* must be placed on the roof, in the rear, or side of the building, or otherwise visually screened from the street. In no case shall *mechanical equipment* be allowed along street *frontage(s)*. *Mechanical equipment* on the roof shall be screened from abutting streets with *parapets* or other types of visual screening.

(q) *Auto-oriented uses.*

(1) *Intent.* Auto-oriented uses tend to create visual blight, and noise and light pollution that detracts from community character and nearby neighborhoods.

(2) *Standard.* Gas Stations, Car Washes, Auto Dealers, and Limited Automotive Services shall be designed to minimize interruption of pedestrian traffic. The number of gas pumps and service bays shall not exceed 4 fueling positions and 3 service bays. (see figures 1 and 2)

(Ord. No. 000619, § 1, 1-22-01)

From: E. Owen McCuller, Jr. [omcculler@smithhulsey.com]
Sent: Friday, March 05, 2010 1:52 PM
To: Radson, Marion J.
Cc: John Hudson
Subject: Wal-Mart 34th St.
Attachments: DB-10-6 DRB Staff Report.PDF

Marion,

I just received the attached staff report and note that staff has cited to the general "exception" standard in Sec. 7(d) of the SAPCC, (consistency with intent of the SAPCC and undue hardship) as being the appropriate standard for the DRB to increase the build-to line from the 80' standard - and did not apply or suggest the DRB apply the specific "site constraint " standard found in Sec. 7(k) that expressly is to be applied to the decision to increase to the "build-to line". Interestingly, the staff report makes reference to the 7(k) "site constraint" standard elsewhere in the report, but does not follow or recommend it as the appropriate decision standard for the DRB. I can easily foresee the DRB applying the wrong "exception" standard to a build-to line increase, using the general (7d) instead of the specific (7k) standard, which would be appeasable error. This should be even more of a concern since factually there are no site constraints to prevent meeting the build-to standard. Thanks for your consideration of these matters and advising staff and the DRB accordingly. Mack

E. Owen McCuller, Jr.
Smith Hulsey & Busey
225 Water Street
Suite 1800
Jacksonville, Florida 32202
Telephone: 904-359-7725
Facsimile: 904-359-7708
email: omcculler@smithhulsey.com

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