

**ORDINANCE 2008 - 43**

**AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM CITY'S C-2 GENERAL COMMERCIAL TO CITY'S PD, PLANNED DEVELOPMENT, ON PROPERTY LOCATED AT 502 EAST INTERNATIONAL SPEEDWAY BOULEVARD, APPROVING A PLANNED DEVELOPMENT PLAN CONSISTING OF APPROXIMATELY ± 1.25 ACRES OF PROPERTY; MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, CPH Engineering on behalf of AutoZone (hereinafter referred to as "Applicant"), owns ± 1.25 acres of land located at 502 East International Speedway Boulevard, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

**WHEREAS**, the Applicant has applied for a change of zoning from the present zoning classification of City's C-2 General Commercial to City's PD, Planned Development District; and

**WHEREAS**, said rezoning as a PD District is consistent with both the Comprehensive Plan and the purpose and intent of Section 33-32 of the Code of Ordinances of the City of DeLand (the "Code"); and

**WHEREAS**, the Applicant has submitted an application for the approval of a development plan in order to develop the property for Commercial purposes to encompass all of the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

**WHEREAS**, the proposed development plan meets or exceeds the minimum conditions and standards for the PD District with respect to minimum development size, perimeter setbacks, comprehensive plan consistency, internal compatibility, external compatibility, open spaces, sidewalks, environmental constraints, internal access and circulation, external transportation access, off-street parking, public facilities and unified control; and

**WHEREAS**, the proposed development plan is consistent with the Highway Commercial land use designation which encourages intensified development in outlying or newly developed areas for a variety of commercial and office needs; encourages clustering of new development to promote shared facilities and access and to discourage linear development along collector and arterial level roadways; permits cost effective delivery of services; and requires properly designed ingress and egress to avoid undue traffic hazards or congestion.

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

**Section 1.** The City Commission has held a public hearing to approve the change of zoning from City's C-2 General Commercial to City's PD, Planned Development, on the site located at 502 East International Speedway Boulevard, to develop the property for commercial purposes.

**Section 2.** Pursuant to the determination made at public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City to include the land described in Exhibit "A" as AutoZone DeLand PD, Planned Development District.

**Section 3.** The zoning of the Property as PD, Planned Development District, is made pursuant to Section 33-32 of the Code and the development of the Property shall take place in accordance with that Section and in substantial compliance with the Development Plan Report, Narrative, Maps and other supporting documentation submitted by Applicant which shall be filed and retained for public inspection in the office of the City Planning Department and constitute a supplement to the official Zoning Map of the City.

**Section 4.** The approved Development Plan for the AutoZone DeLand PD, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are attached hereto as Exhibit "B" and by this reference made a part hereof.

**Section 5.** The failure of the approved Development Plan to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with any law governing said permitting requirements, conditions, terms or restrictions, as same may be amended or enacted from time to time in the future. All current land development regulations of the City are applicable to the PD District except to the extent that they conflict with a specific provision of the approved Development Plan.

**Section 6.** At the time of development, the Applicant shall comply with all relevant building codes and development standards contained in the City's Code of Ordinances or in the Development Plan; provided, however, that the development standards contained in the adopted Development Plan shall supersede comparable standards contained in the Code of Ordinances.

**Section 7.** Pursuant to Article 5 of the City's Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

**Section 8.** The City Commission may rezone any portion of the Project which has not obtained a site plan or preliminary plat approval within five years from the date of adoption of this Ordinance.

**Section 9.** Prior to the issuance of a building permit for any nonresidential development, Applicant shall submit an easement document, acceptable to the City of DeLand, permitting additions to shared access, parking, utilities and stormwater.

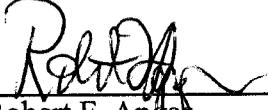
**Section 10.** The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

**Section 11.** No rights to obtain final development orders nor any rights to develop the property have been granted or implied by this Ordinance. Final development orders for the property including, but not limited to, subdivision and site plan approval shall be subject to a determination of concurrency.

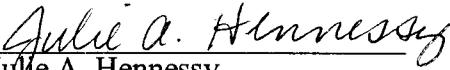
**Section 12.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 13.** This Ordinance shall become effective immediately upon its adoption.

**PASSED AND DULY ADOPTED** this 20<sup>th</sup> day of October, 2008.

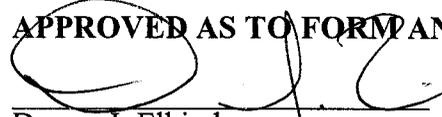
  
\_\_\_\_\_  
Robert F. Appa  
Mayor - Commissioner

**ATTEST:**

  
\_\_\_\_\_  
Julie A. Hennessy  
City Clerk - Auditor

Passed on first reading: Oct. 6, 2008  
Adopted on second reading: Oct. 20, 2008

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
Darren J. Elkind  
City Attorney

**EXHIBIT A**

**Legal Description**

4-17-30 W 200 Ft of South  $\frac{1}{2}$  of Northeast  $\frac{1}{4}$  of Northeast  $\frac{1}{4}$  South of Rd exc West 15 Ft  
per OR 2578 Pg 0172

Z-08-97 +/- 1.25 acres  
502 E. International Speedway Blvd.  
AutoZone

MODEL PD PLANNED DEVELOPMENT AGREEMENT

IN THE CITY COMMISSION OF THE

CITY OF DELAND, FLORIDA

IN RE: #Z-08-97, Application of

KAREN R. STARLING

ORDINANCE # 2008-43

(# to be Provided After Commission Approval)

ORDER AND RESOLUTION

GRANTING A REQUEST FOR CHANGE OF ZONING FROM C-2 TO

AutoZone DeLand PD

The application of *Karen R. Starling*, hereinafter, "Applicant", for rezoning was heard by and before the City Commission, DeLand Florida, on October 6, 2008. Based upon the verified Application and other supporting documents, maps, charts, overlays, other evidence and instruments; the advice, report, and recommendations of the Community Development, and other Departments and agencies of DeLand, Florida; and the testimony adduced and evidence received at the Public Hearing on this Application by the Planning Board on September 17, 2008, and otherwise being fully advised, the City Commission does hereby find and determine as follows:

GENERAL FINDINGS

A. That the application of *Karen R. Starling* was duly and properly filed herein on *July 23, 2008* as required by law.

B. That all fees and costs which are by law, regulation, or Ordinance required to be borne and paid by the applicant have been paid.

C. That the applicant is the *owner* of a +/- 1.253 acre parcel of land which is situated in DeLand, Florida. This parcel of land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

D. That the Applicant has complied with the concept plan provision as required by Land Development Regulations Ordinance # 2002-09, as amended.

E. That the Applicant has complied with the "Due Public Notice" requirements of the City Commission, Land Development Regulations Ordinance # 2002-09 , as amended.

FINDINGS REGARDING REZONING

A. That the Applicant has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from C-2 to AutoZone DeLand PD.

B. That the said rezoning to a(n) PD is consistent with both the City of DeLand Comprehensive Plan Ordinance # 1990-04, as amended, and the intent and purpose of the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY COMMISSION CHAMBERS, 120 SOUTH FLORIDA AVENUE, DELAND, FLORIDA, THIS DAY OF \_\_\_\_\_, A.D., \_\_\_\_\_, AS FOLLOWS:

A. That the Application of *Karen R. Starling* for the rezoning of the subject parcel is hereby granted.

B. That the zoning classification of the subject parcel described in Exhibit "A" attached hereto is hereby amended from C-2 to AutoZone DeLand PD as described in Article XII of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

C. That the Official Zoning Map of the City of DeLand, is hereby amended to show the rezoning of said parcel to *AutoZone DeLand* PD.

D. That the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, is consistent with the provisions of the "Development Agreement" as hereinafter set forth in this Ordinance and with respect to any conflict between Land Development Regulations Ordinance # 2002-09, as amended, and the "Development Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No. 02-09, as amended, shall govern with respect to any matter not covered by the "Development Agreement." The City of DeLand, will ensure overall compliance with this Ordinance.

E. Unless otherwise provided for herein the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended, shall apply to the PD in the same manner as the C-2 zoning classification.

F. Nothing in this Ordinance shall abridge the requirements of any City of DeLand Ordinance other than Ordinance 2002-09, as amended. Timing and review procedures contained in this Order and Resolution may be modified to comply with the City of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended. Further, nothing in the Development Agreement is intended to abridge the requirements of Ordinance No. 2002-09, as amended, and any other City Ordinances.

DEVELOPMENT AGREEMENT

A. Development Concept The property shall be developed as a PD substantially in accordance with the Planned Development Plan. The Planned Development Plan shall govern the development of the property as a PD and shall regulate the future land use of this parcel.

1. Planned Development Plan The Planned Development Plan shall consist of the Development Plan Map prepared by *CPH Engineers, Inc.* and dated *September 13, 2008* and this development agreement. The Planned Development Plan is hereby approved and incorporated in this Ordinance by reference as Exhibit "B". The Planned Development Plan shall be filed and retained for public inspection in the Planning Department and it shall constitute a supplement to the Official Zoning Map of the City of DeLand.

2. Amendments. All amendments of the Planned Development Plan, other than those deemed by the Planning Department to be minor amendments as set out in Ordinance No. 2002-09, as amended, shall require the review and recommendation of the Planning Board and action by the City Commission in the same manner as a rezoning of the parcel.

3. Final Site Plan Approval. After the Planned Development Plan is recorded, and prior to issuance of any permits for construction, including clearing and landfill, a Final Site Plan shall be prepared and submitted for review and approval in the manner required by Article 12 of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

B. Unified Ownership. The Applicant or his successors shall maintain unified ownership of the subject parcel until after issuance of the Final Site Plan Development Order.

C. Land Uses Within the PD. The development of the parcel shall be consistent with the uses prescribed for each area within the proposed AutoZone DeLand PD. The location and size of said land use areas are shown on the Development Plan Map, Exhibit "B". The following land uses shall be allowed as permitted principal uses and structures along with their customary accessory uses and structures:

The property shall be developed with a retail store which may be used for any purpose permitted in the C-2 zoning district, as said district may be amended from time to time. In order to accommodate an existing billboard on the site, the existing billboard shall be considered a permitted primary use as well. However, when the lease for the existing billboard expires on September 30, 2027, the billboard must then be removed within sixty (60) days. Thereafter only one primary use may be maintained on the site. Conditional uses and Special Exceptions uses must be approved according to the Land Development Regulations.

D. Development Standards.

1. *Minimum lot area:* 1.0 acres
2. *Minimum lot width:* 75 ft
3. *Maximum lot coverage:* 70%
4. *Maximum building height:* 80 ft
5. *Landscape buffer requirements:* US 92: 40 ft, East, Buffer

- Standard D- Emerging Gateway Overlay standards in accordance with the LDR's: 10 ft, Garfield Ave (as approved by Variance V-08-53 and Emerging Gateway Overlay standards in accordance with the LDR's): 15 ft, South: 25 ft
6. *Perimeter building setbacks:* US 92: 20 ft, East: 10 ft, Garfield Ave: 20 ft, South: 25 ft
  7. *Off-street parking requirements:* Parking requirements are to be regulated by the City of DeLand Land Development Code Chapter 33, Article VIII, Section 33-91.
  8. *Signage requirements:* Signs are to be regulated by the City of DeLand Land Development Code Chapter 33, Article VII and IV Overlay and Floating Zone Standards for the Emerging Gateway District. The billboard allowed as a primary use is to be exempt from any signage regulations and is not to be counted towards any signage for the second primary use.

E. Environmental Considerations. *The requirements of the Land Development Regulations Ordinance # 2002-09, as amended, shall be met.*

F. Sewage Disposal and Potable Water. Provision for sewage disposal and potable water needs of the PD will be provided in accordance with the Comprehensive Plan, Ordinance No.1990-04, as amended, the Land Development Regulations Ordinance No. 2009-09, as amended, and State of Florida Administrative Code 64E-6.

G. Stormwater Drainage. Provision for stormwater retention shall be in accordance with the Land Development Regulations Ordinance # 2002-09, as amended.

H. Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the Land Development Regulations, Ord. 02-09, as amended. The parcel shall be developed in substantial accordance with the following access and transportation system improvements:

1. Access. One point of ingress/egress per street frontage is to be permitted. Any driveway connection or other disturbance of the US 92/ SR 600 right-of-way is to be permitted through the Florida Department of Transportation. Any driveway connection or other disturbance of the Garfield Ave right-of-way is to be permitted through Volusia County.

2. Transportation System Improvements. Any transportation system improvements required are to be permitted through the Florida Department of Transportation or Volusia County.

I. Reverter Provision: The City Commission may rezone any portion of the project which has not secured a *final development order* on or before 5 years from the effective date of this ordinance as may be necessary or appropriate to protect adjoining properties or the public health, safety and welfare, unless the City Commission, for good cause shown, shall extend the time period indicated in this paragraph.

J. Binding Effect of Plans; Recording; and Effective Date. The Planned Development Plan, including any and all amendments shall bind and inure to the benefit of the Applicant and his successor in title or interest. The

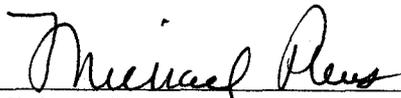
AutoZone DeLand PD zoning, provisions of the "Development Agreement," and all approved plans shall run with the land and shall be administered in a manner consistent with Article 12 of the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended.

This Ordinance and all subsequent amendments shall be filed with the Clerk of the Court and recorded within forty-five (45) days following execution of the document by the City Commission, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the Planning Department for placement in the public file. The date of recording of this document shall constitute the effective date of the \_PD or its subsequent amendments. The applicant shall pay all filing costs for recording documents.

DONE and ORDERED by the City Commission, City of DeLand, Florida,  
this 12<sup>th</sup> day of NOVEMBER 2008 (mo/yr).

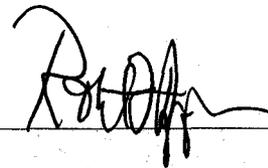
ATTEST:

City Commission of DeLand Florida

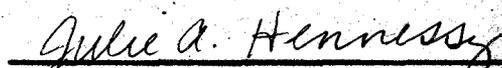
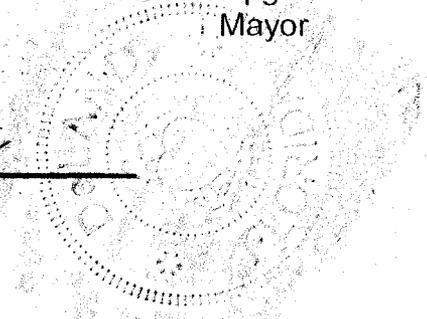


Michael Pleus  
City Manager

ATTEST:



Robert Apgar  
Mayor

  
**Julie A. Hennessy, MMC**  
City Clerk - Auditor

STATE OF FLORIDA  
CITY OF DELAND

The foregoing instrument was acknowledged before me this  
12<sup>th</sup> day of November 2008 (mo/yr), by Michael Pleus and  
Robert Appgar, as City Manager and Mayor, City of DeLand,  
respectively, on behalf of the City of DeLand, and who are  
personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Suellen Pope

Commission No.:

My Commission Expires:



WITNESSES:

Cindy L. Pierce  
CINDY L. PIERCE  
Sue Alexander  
Sue Alexander

Karen R Starling  
Karen R Starling

The foregoing instrument was acknowledged before me this  
23<sup>rd</sup> day of October, 2008 (mo/yr), by Karen R.  
Starling, who is personally known to me or who has produced  
\_\_\_\_\_ as identification. no oath.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Cindy L. Pierce

Commission No.:

My Commission Expires:



**CINDY L. PIERCE**



**EXHIBIT A**

**LEGAL DESCRIPTION AUTOZONE DELAND**

THE WEST 200 FEET OF THAT PORTION OF THE WEST 3/8 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 SECTION 4, TOWNSHIP 17 SOUTH, RANGE 30 EAST, LYING SOUTH OF THE DELAND-DAYTONA BEACH ROAD, EXCEPT THE WEST 15 FEET THEREOF.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE POINT OF INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF EAST INTERNATIONAL SPEEDWAY BOULEVARD (A 200 FOOT RIGHT OF WAY) AND THE EAST RIGHT OF WAY LINE OF NORTH GARFIELD AVENUE (A 50 FOOT RIGHT OF WAY); THENCE NORTH 89°53'21" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 175.02 FEET TO A POINT ON THE EAST LINE OF THE WEST 200 FEET OF THE WEST 3/8 OF THE SOUTH 1/2 SAID SECTION 4; THENCE SOUTH 01°02'50" EAST, ALONG SAID EAST LINE, A DISTANCE OF 311.79 FEET TO A POINT ON THE SOUTH LINE OF SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4; THENCE SOUTH 89°49'33" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 175.02 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF NORTH GARFIELD AVENUE (COUNTY ROAD #4099); THENCE NORTH 01°02'50" WEST ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 311.99 FEET TO THE POINT OF BEGINNING.

02'50" WEST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 311.99 FEET TO THE POINT OF BEGINNING.

CONTAINING: 54580.91 SQUARE FEET OF 1.253 ACRES MORE OR LESS

TAX FOLIO NUMBER: 04-17-30-00-00-0130