

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

## ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

### LAND USE, ZONING, AND ENTITLEMENT PRE-CLOSING MEMORANDUM

To: Brad Rogers, Walmart Stores East, LP

From: Robert Volpe and Darrin Taylor, Holtzman Vogel, PLLC

Date: November 22, 2024

Re: Closing of FL - Ocala #90022 - New NHM

Property Location:	3535 SE Maricamp Road Ocala, Marion County, Florida	Land Use OC:	Holtzman Vogel, PLLC
Parcel ID:	29850-000-20 29850-000-21 29850-001-00	Attorneys:	Robert Volpe; Darrin Taylor (Planner)
Store #:	90022	Anticipated Closing Date:	December 3, 2024
Project Type:	Neighborhood Market		

This land use and zoning pre-closing memorandum relates to the proposed construction of a new neighborhood market in the City of Ocala in Marion County, Florida. The Project is described in more detail below. We have reviewed the status of the project, the anticipated work to be completed by the developer, and the existing ordinances, codes, and regulations governing development of this project. This memorandum provides an opinion regarding land use, zoning, and entitlements for this project at closing.

**Property:** The property consists of approximately 8.38 acres located at 3535 SE Maricamp Road which is at the intersection of Maricamp Road and SE 36<sup>th</sup> Avenue in Ocala, Florida. The specific project boundary is defined in the contract for lease of the property but generally includes all or a portion of Parcels 29850-000-20, 29850-000-21 and 29850-001-00.

**Project:** This project requires the seller to demolish the existing Winn Dixie building, remove the slab foundation and seed the grass where the foundation was located. Walmart will construct the building on the site. The project includes the construction of a 60,483 SF Walmart Neighborhood Market, fuel kiosk, drive-thru pharmacy, Grocery Home Shopping, liquor box and supporting infrastructure. The site plan shows site access via two entrances onto Maricamp Road and two entrances onto SE 36<sup>th</sup> Avenue.

**Future Land Use:** The property is within the jurisdiction of the City of Ocala, Florida (“City”). Its land use designation is Medium Intensity/Special District which will support all anticipated uses of the property.

**Zoning:** The property is zoned Shopping Center (SC). The SC district permits the uses proposed including shopping centers, gas stations, auto supply store, grocery store, drug store and medical and dental offices. The district is intended to provide for a wide variety of commercial uses adjacent to major transportation corridors. This zoning district will support all anticipated uses of the property.

**Remaining Discretionary Approvals for the Project after Closing:**

**Major Development Review Approval:** The Project is currently undergoing site plan review and approval before the City of Ocala as defined in Article IV of the City's Code and requires an amendment to the existing shopping center master plan as defined in Article V Division 29 of the City's LDC. The site plan review and master plan update include a mandatory pre-application review with staff and submittal of all required documents for the review. The pre-application meeting with staff was held as required prior to the site plan submittal on May 1, 2024. Staff deemed the application complete and have issued two rounds of sufficiency comments, in May and September this year. The remaining staff comments are 1) to submit an amendment to the shopping center master plan, and 2) dumpster locations on site. The current shopping center master plan reflects the design and color scheme of the Starbucks that was built in 2020. An amendment is needed to authorize the Walmart design standards and color scheme. CPH will submit both the revised site plan and the master plan concurrently for staff review. The Planning Director must approve the site plan and master plan together which is projected to occur around the first of the year.

**Subdivision Approval:** The Project site includes all or a portion of three parcels based on the Marion County property appraiser website. The parcels are currently in separate ownership based on the County property appraiser's website. The City has not required a unity of title or subdivision of parcels for this Project. If a subdivision is required then it would have to meet the requirements of Chapter 114, LDC.

**Concurrency:** The City is currently reviewing the transportation impact analysis (TIA) for the project as part of its concurrency approval. If traffic capacity is insufficient, the City Commission may enter into a proportionate share mitigation agreement in a public hearing (Chapter 86, Section 86-10, City Code of Ordinances).

**Variance:** We have not identified any necessary variances, and the City has not identified any needed variances at this time.

**Hours of Operation:** Except for the sale of alcohol, there appear to be no limitations on hours of operation.

**Alcohol Sales:** Alcohol sales are addressed in Chapter 6 of the City's Code. Alcohol sales are permitted between 7:00 am until 2:00 am for each day of the week except Sunday (Section 6-5, City Code). For Sunday between the hours of 7:00 am to 2:00 am on Monday only beer and wine sales are permitted. Liquor sales are prohibited on Sunday for consumption off the

premises (Section 6-5, City Code). There are no distance restrictions for beer and wine sales. Liquor sales are restricted within 500 feet of any established church, school or day care center. Distance is measured from the nearest point of the property line of the place of business to the nearest point of the property line of the church, school or day care center (Section 6-35, City Code). There is a middle school, church and day care center in an adjacent commercial center fronting Maricamp Road. All three of these establishments are more than 580 feet from the nearest property line. In addition, each use is located on its own parcel making the actual distance from property line to property line closer to 700 feet in measured distance. Thus, the City's distance requirements do not impact this project.

**Development Standards:** The following is a listing of applicable development standards for the Project:

- A. **Parking/Loading:** Parking areas must meet the design requirements in Article VI, LDC. Businesses with over 60,000 square feet must provide three loading spaces. Gas stations must provide three motor vehicle storage spaces for each service lane. Retail Stores require 1 parking space per 250 square feet of gross floor area. Drive Up Windows must provide 6 waiting spaces per drive up window including the receiving window. One loading space is required for 10,000 square feet of floor area (Section 4.06.02, LDC). The City requires one parking space for each 250 square feet of floor area for Shopping Centers (Section 122-1010, LDC). Individual retail stores must provide 1 space per 300 square feet of floor area. The site plan meets this standard.
- B. **Pedestrian Access:** Commercial development must provide a sidewalk system that connects sidewalks on the public road frontages to the core of the development and each outparcel (Section 122-917, LDC). Bicycle parking must also be provided at a rate of 5% for the total parking required for the development. The site plan meets this standard.
- C. **Signs:** Project signs must be consistent with Chapter 110, Section 110-153 of the City LDC. The location and type of all shopping center signage must be provided at the time of site plan review including freestanding, ground, wall and directional signs. There is allowed one freestanding sign structure per 500 feet and must be 150 feet from ground signs. Each freestanding sign is allowed one primary sign face up to 200 square feet of sign face area which can be increased to 280 square feet if all other permitted freestanding signs are eliminated, excluding outparcels. Outparcels are allowed a ground sign if not included in the shopping center signage. Individual businesses are allowed a maximum of two square feet of wall sign area for each building front foot. Corner stores are allowed additional signage. The site plan meets the City's sign standards.
- D. **Lighting:** Lighting of parking facilities shall be designed to prevent any glare and excessive light on adjacent property pursuant to Section 122-1008, LDC. The maximum permitted height is 20 feet. The site plan meets this standard.

E. **Noise:** Noise within the City is addressed in Chapter 34, Article VIII of the City's Code of Ordinances. Construction noise is not specifically addressed but is not exempted in the Code. The City's Code prohibits excessive noise between 10 pm and 6 am seven days a week. For non-residential use noise is defined as clearly audible 50 feet from the property line. The Code does not establish a decibel standard for clearly audible sounds, so it is subjective.

F. **Landscaping:** A Landscape Plan must be provided with the site plan that meets the requirements of Chapter 118 of the LDC. Shade trees must be provided on a basis of one shade tree per 5,000 square feet of total area. A minimum of 50% of the shade trees must be live oaks since the site is more than 5 acres. Cash payments to the City's tree fund can be made in lieu of tree plantings if determined by the Planning Director that the number of trees can't be planted on site. A minimum of 20% of the site's area must be open space (Section 118-132, LDC). For parking areas, all parking areas must be screened from bordering streets with a minimum five feet wide landscaped buffer strip three feet in height between the parking area and the street, excluding sidewalks, driveways etc. Interior landscaping of parking areas must account for a minimum of ten percent of the parking area. Other paved surface areas must provide one square foot of interior landscaping for each 50 square feet of pavement in all areas exceeding 5,000 square feet. Each separate interior area must have one shade tree. Finally, a 30 foot buffer to the right of way is required. The site plan meets the City's standards.

**Conclusion:** This Project has the appropriate land use and zoning and is ready for contingency waiver closing and is proceeding with commercial site plan and master plan approval from the City of Ocala.