



City Council Agenda Request

DEVELOPMENT DEPARTMENT REPORT

The agenda request before the Land Development Review Board (LDRB) is an Ordinance amending the Zoning District Map and granting to the Owner RNTC, LLC a development order approving a change in the zoning district from General Commercial (CG) to Light Industrial (LI) for a 0.726 acre property located at 6656 and 6700 Orchid Lake Road. The agenda request is before the LDRB because LDC § 3.06.01.1 provides the LDRB shall recommend to the city council the adoption of ordinances promoting orderly development in conformance with the adopted Comprehensive Plan. *The Development Department recommends the LDRB approve the staff recommendation.*

I. BACKGROUND

Agenda request IX.A and IX.B are amendments for two contiguous properties that change the zoning district from C-2 to LI to accommodate existing land uses. This report is for agenda IX.A.

RNTC, LLC is a Florida Limited Liability Company registered with the Florida Division of Corporations on November 16th, 2009 and with their principal place of business being 8021 Franko Court, Port Richey, Florida. On January 28th, 2010 RNTC, LLC purchased a 31,661+ square foot (0.726 acre) property located at 6656 and 6700 Orchid Lake Road, New Port Richie, Florida.

**GENERAL LOCATION/AERIAL PHOTOGRAPH
6656 & 6700 ORCHID LAKE ROAD**



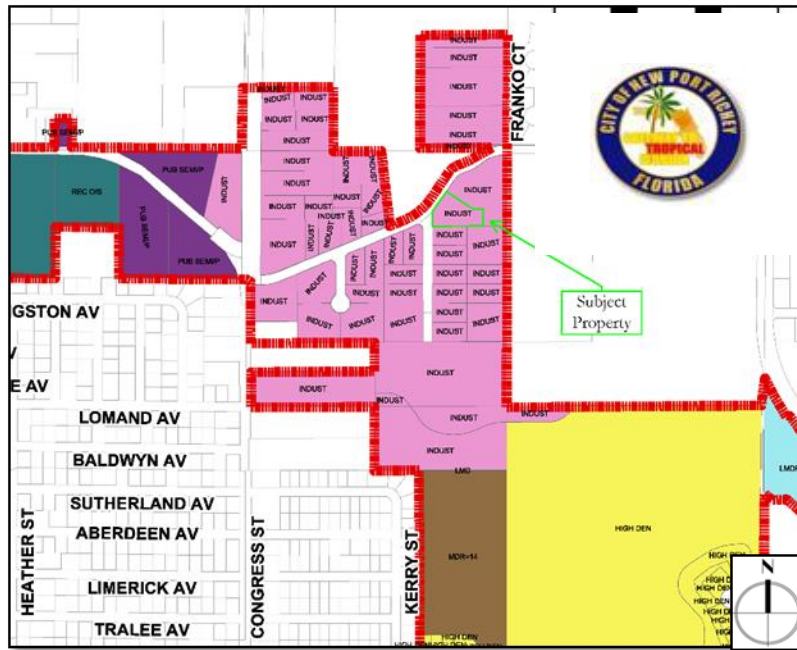
The property is developed with a 5,000 square foot modular metal building with a 144 square foot canopy and with 4,640 square feet of paved asphalt. A 1,440 lineal foot chain link fence is located behind the building.

BUILDING FRONT ELEVATION



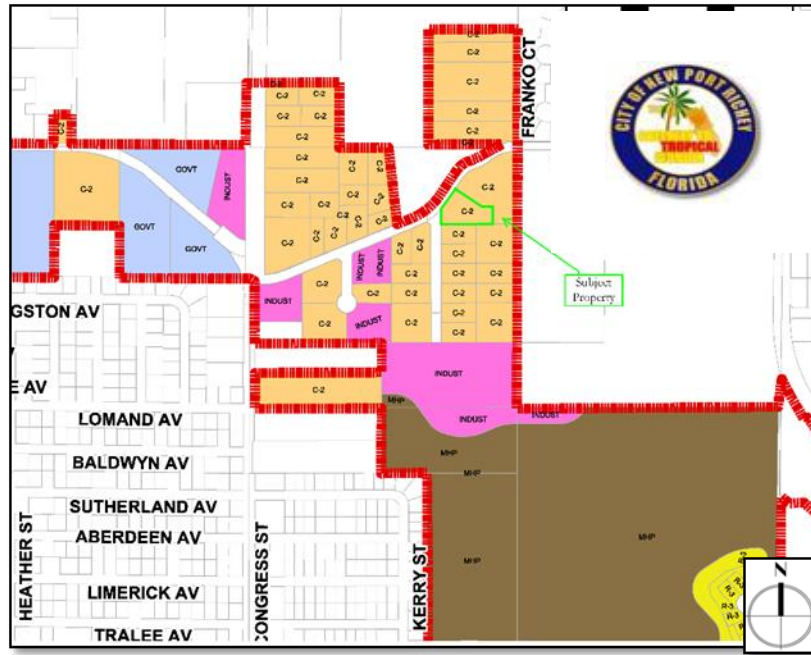
The Future Land Use Map shows the property is located within the Industrial category. The Future Land Use Element provides the primary uses allowed in this category are light warehousing, wholesaling, manufacturing, and processing while ancillary retail, ancillary office, and urban agriculture are allowed as secondary uses.

FUTURE LAND USE MAP 6656 & 6700 ORCHID LAKE ROAD



The Zoning District Map shows the property is located within the General Commercial (C-2) zoning district. LDC § 7.08.00 provides the purpose of the C-2 general commercial zoning district is to provide for the development of the uses necessary to meet the community and regional needs for general commercial and service oriented activities, and to exclude all uses that are not compatible with such commercial activities. This includes such land uses as garages and/or mechanical services, gas stations, and uses permitted in the Light General Commercial (C-1) and Office zoning districts.

ZONING DISTRICT MAP 6656 & 6700 ORCHID LAKE ROAD



Recently, the automotive business that operated from the property vacated the premises and a new business, Elegant Touch Stonework, a granite fabrication business, began operating in the vacated space. Subsequently, the City of New Port Richey Code Enforcement Department became aware the business did not have a Local Business Tax Receipt (LBTR) and Elegant Touch Stonework was issued a citation. On August 19, 2019 the Elegant Touch Stonework owners filed a LBTR and a Zoning Clearance to allow the operation of the business. By letters dated September 18th, 2019, the property owner and business were informed that the granite fabrication business, an industrial use, is prohibited in the C-2 zoning district but could be allowed if the property were rezoned to Light Industrial district.

On October 29, 2019, Tom Canizio, on behalf of Robert A. Canizio and Thomas Canizio, filed with the Development Department a rezoning

application and fee to change the zoning district from General Commercial to Light Industrial (See Attachment A).

II. PROPOSED ORDINANCE

An Ordinance of the City of New Port Richey, Florida amending the Land Development Code (LDC) Zoning District Map; granting to the Owner RNTC, LLC a development order approving a change in the zoning district as is displayed in Exhibit A from General Commercial (C-2) to Light Industrial (LI) for a 0.726 acre property, the street address being 6656 and 6700 Orchid Lake Road, the parcel identification number being 33-25-16-015A-00000-0240, and the legal description provided in Exhibit B; and providing for an effective date.

III. DATA & ANALYSIS

Florida law provides the Applicant/Owner has the burden of proof to demonstrate on the record and through competent substantial evidence that the application conforms to the LDC requirements for rezoning applications. Competent substantial evidence can be interpreted as evidence that:

- is legally sound (sufficient and admissible under the rules of evidence, although it doesn't have to comply with courtroom formality); is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements, surmise, mere probabilities, guesses, whims, or caprices); is reliable (credible, believable);
- is material (pertinent, relevant);

- tends to prove the points (facts, elements, standards) that must be proven (not just create a suspicion or could equally support another result);
- establishes a reasonable, substantial justification (basis of fact) for the point argued; and
- a reasonable mind would accept it as enough (adequate) to support the argued for conclusion.

LDC Chapter 5 addresses the general rezoning application requirements while LDC Chapter 7 addresses the zoning districts.

A. Application requirements. LDC § 5.01.02 requires a written application and application fee be submitted, which application must include the full legal description of the subject real property; the street address of the subject real property; and the names and addresses of any other person who holds any vested interest, lien or encumbrance, including a mortgagee's interest in the subject real property.

Although the rezoning application did not include the information required in LDC § 5.01.02, the Development Department has supplemented the record by correcting the name of the Owner, adding the name of the mortgagee, and adding the full legal description of the property. Based on the above, the Department now concludes the application is consistent with LDC § 5.01.02.

B. Application processing. LDC § 5.01.03 requires the application be forwarded to the Land Development Review Board (LDRB) for action. At least twenty (20) days prior to the hearing written notice must be mailed by first class to all owners of real property within five hundred (500) lineal feet of the property subject to the rezoning application. An affidavit stating that the mailing has been sent to the designated area of notification must be signed by

the city clerk, or designate, and a copy of the mailing list must be attached to the affidavit and kept on file with the records of the individual case pertaining to that property. The executed affidavit with attached sample letter and mailing list is on file with the Development Department and is incorporated herein by reference.

In addition to notice by mail, LDC § 5.01.03 requires at least twenty (20) days prior to the hearing a conspicuous sign board be erected in a conspicuous location on such real property setting forth the Notice of Rezoning. An affidavit certifying the property was properly posted along with a photograph displaying the posted sign on the property is on file with the Development Department and is incorporated herein by reference.

Furthermore, LDC § 5.01.03 requires that at least fifteen (15) days prior to the LDRB public hearing, public notice shall be published in one (1) issue of any newspaper of general circulation within the City of New Port Richey, Florida. The required public notice is on file with the Development Department and is incorporated herein by reference. The proof of publication is included as a separate agenda request on the LDRB agenda.

- C. Development Review Committee (DRC) action.** LDC § 3.11.02 provides the DRC's functions, powers and duties include reviewing all development within the city to ensure compliance with all applicable municipal ordinances, rules and regulations. Florida Statutes § 380.04(2)(b) defines development as a "change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land." The change in the zoning district from C-2 to LI is an increase in intensity and,

therefore, represents development. At its December 12th, 2019 meeting, the DRC reviewed the application, found that it was consistent with the Comprehensive Plan, and recommend the Development Department forward a recommend of approval.

D. Guidelines for a rezoning application. LDC § 5.01.10 requires that the Development Department consider twelve (12) guidelines when making a recommendation to the LDRB and City Council on whether to adopt an Ordinance granting a rezoning. Likewise, it requires the LDRB and City Council to consider those guidelines.

1. *Whether the proposed zoning district is one of the zoning districts intended to implement or be consistent with the Future Land Use Map designation of the property.*

The Development Department finds the proposed Light Industrial (LI) zoning district is consistent with the Comprehensive Plan's Future Land Use Element Table 1.1.3 on Future Land Use Map (FLUM) categories and with LDC § 7.22.00 on land use and zoning consistency. Thus, the application is in conformance with this guideline.

2. *If more than one zoning district implements or is consistent with the Future Land Use Map designation of the property, whether the proposed zoning district is the most suitable zoning district.*

LDC § 7.22.00 lists the following five (5) zoning districts as being consistent with the Industrial FLUM category: Government (G), Light General Commercial (C-1), General Commercial (C-2), Office (O), and Light Industrial (LI). Of these five zoning districts, the LI zoning district is the most suitable because it is the only one that allows fabrication.

Thus, the application is in conformance with this guideline.

3. *Whether there are substantial reasons why the property cannot be used in accordance with its present zoning district, that is, why the existing zoning district is unsuitable.*

The substantial reason why the property cannot be used in accordance with its C-2 zoning district is because a granite fabrication business is a prohibited use. The LI zoning district is the only zoning district that will allow a fabrication business to continue operating from its present location. Thus, the application is in conformance with this guideline.

4. *Whether the proposed zoning district is consistent with the existing land use pattern.*

Table 1 displays the existing land use pattern surrounding the site subject to the proposed rezoning application.

**TABLE 1
FUTURE LAND USE, ZONING DISTRICT & EXISTING LAND USES**

DIRECTIONS	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
Site	Industrial	General Commercial (C-2)	Granite fabrication
North & Northwest	Industrial & Industrial Light (Pasco County)	C-2 & Agricultural (Pasco County)	Air conditioning company; Orchid Lake Drive, a 2-lane undivided local road then single-family residential (Pasco County)
Southeast & Southwest	Industrial	C-2	Auto mechanic garage; air conditioning company
East	Industrial & Industrial Light (Pasco County)	C-2 & Agricultural (Pasco County)	Garage door warehouse; Orchid Lake Drive, a 2-lane undivided local road then single-family residential (Pasco County)
West	Industrial &	C-2 & AC (Pasco County)	Rutilio Court, a 2-lane undivided local road then garage door business

Sources: City and County Future Land Use and Zoning District Maps; Planning & Zoning Division site visit (Feb. 4, 2020).

It shows the existing land use pattern consists of heavy commercial uses (garage and air conditioning) and light industrial warehouse and distribution uses. While granite

fabrication is a more intense light industrial use, it is consistent with the surrounding land use pattern.

5. *Whether the proposed zoning district abuts a property with a zoning district similar in intensity to the proposed zoning district, or serves as a suitable transition zoning district between two or more different abutting zoning districts.*

Table 1 shows the Future Land Use Map category, zoning districts, and existing land uses abutting the subject property.

It shows, together with the Zoning District Map, the property abuts or is contiguous to property within the City that is zoned C-2 district. The proposed LI zoning district is greater in intensity than, and not similar in intensity to, the C-2 zoning district. Notwithstanding, the Zoning District Map displays four (4) other properties that are zoned LI district within the area shown as Industrial on the FLUM. In addition, a rezoning application from C-2 to LI has been filed for an abutting property and that application will be heard today together with this application. Thus, at this time the application is **not in conformance** with this guideline because the property does not abut property with a zoning district similar in intensity to the proposed LI district.

6. *Whether there are substantial changed or changing conditions in the character of the area where the property is located so that the proposed zoning district is now suitable.*

There have not been substantial changed or changing conditions in the character of the area where the property is located. As noted earlier, LDC § 7.22.00 lists five different

zoning districts that are consistent with the Industrial FLUM category. Notwithstanding, the specific land use is prohibited in the existing C-2 zoning district and allowed only in the LI zoning district. Consequently, the proposed LI zoning district is now suitable. Thus, the application is **not in conformance** with this guideline because there have not been substantial changed or changing conditions in the character of the area.

7. *Whether based upon the property's size, shape, or characteristics the proposed zoning district is out-of-scale with the surrounding area.*

The subject property has a size of 0.726 acres, is irregularly shaped, and is developed with a 5,000 square foot modular medal building with 4,640 square feet of paved asphalt. The Development Department finds that the size of other properties in the surrounding area an Industrial FLUM category range with from 0.3 to 6.73 acres and that there are other irregularly shaped properties. Further, there are other modular medal buildings with similarly sized paved asphalt areas in front of the building. Moreover, properties within the surrounding area already zoned LI district also range in size from 0.3 to 6.73 acres. Based on the above findings, it is concluded the proposed zoning is not out of scale with the surrounding area and, therefore, the application is in conformance with this guideline.

8. *Whether the proposed zoning district is premature based upon conditions in the surrounding area.*

The proposed rezoning to LI district is not premature because there is an existing land use that is operating on the

premises and this business cannot continue operating unless the property is rezoned to LI district. Furthermore, the existing land use pattern where the subject property is located is trending towards industrial uses. Thus, the application is in conformance with this guideline.

9. *Whether there is a substantial public need or purpose for the proposed zoning district consistent with the public health, safety and general welfare.*

There is a substantial public need consistent with the public health, safety and general welfare for the City to have an area where light industrial and heavy commercial land uses can locate. The City only has one area shown on the FLUM with an Industrial category. This is the only area where a fabrication business can locate. Based on the above, it is concluded the application is in conformance with this guideline.

10. *Any other factors that may be relevant to the rezoning, such as its location within an enclave, recent annexation into the City, or to conserve the value of buildings and natural resources.*

Although the subject property is not within an enclave and was not recently annexed, it is located on the border with unincorporated Pasco County and that area may be suitable for future annexation as it is bounded on three sides by the City of New Port Richey. The rezoning would have no impact on conserving the value of buildings or natural resources. Based on the above, it is concluded this guideline is not applicable to this rezoning application.

11. *The totality of the circumstances.*

The Development Department finds the application is in conformance with six guidelines, it is not in conformance with two guidelines (5 on abutting districts and 6 on changed conditions), and one guideline is inapplicable. With regard to the guideline 5, it was noted that although there are no abutting properties zoned LI district there are four (4) other LI zoned properties within the surrounding area. With regard to guideline 6, although conditions have not changed the proposed LI zoning district is now suitable based upon the proposed land use. Based on the totality of the circumstances, the Development Department recommends the LDRB forward a recommendation to the City Council to adopt the Ordinance approving the rezoning application.

12. *Any competent substantial evidence presented at the public hearings.*

Public hearings are scheduled for:

- Thursday, May 21st, 2020 at 2:00 p.m.; and
- Tuesday, June 2nd, 2020 at 7:00 p.m.; and
- Tuesday, June 16th, 2020 at 7:00 p.m.

At those times, the Applicant and the public may present competent substantial evidence in favor or opposition to the application.

- E. Public notice.** Florida Statutes § 166.041(2) provides each ordinance shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to

revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

Florida Statutes § 166.041(3) provides a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

The proposed Ordinance is in writing and it embraces a single subject, an amendment to LDC Zoning District Map. The proposed Ordinance has been noticed in the Tampa Bay Times, a newspaper of general circulation within the City of New Port Richey, and a copy of the order confirmation is included within the May 21st, 2020 LDRB agenda package. The notice states the date, time and place of the LDRB and City Council meetings, the ordinance titles, where the ordinance can be inspected, and advises that interested parties may appear at the meeting and be heard.

IV. ATTACHMENTS

Attachment A: Rezoning application

V. FINDINGS AND CONCLUSIONS

Based upon the information contained in this Development Department Report, the following findings of fact and conclusions of law are offered:

- A. RNTC, LLC is the owner of a 0.726 acre irregularly shaped parcel developed with a modular metal building with paved asphalt surface. The Future Land Use Map shows the property is located within the Industrial category and the Zoning District Map shows the property is situated in the General Commercial (C-2) zoning district.
- B. The Owner has leased the premises to a granite fabrication business and that land use is prohibited in the C-2 zoning district but is a permitted use in the Light Industrial (LI) zoning district.
- C. An application was filed to rezone the property from C-2 to LI district. The Development Department finds the application is consistent with LDC § 5.01.02.
- D. The Development Department finds the application is consistent with LDC § 5.01.03 because the public notice requirements have been met.
- E. The DRC has reviewed the application consistent with LDC § 3.11.02 and has recommended approval.
- F. The Development Department has reviewed the application consistent with the requirements in LDC § 5.01.10 and concludes the application should be forwarded to the LDRB with a recommendation of approval.

VI. ALTERNATIVE ACTIONS

The LDRB has one of the following alternative actions at its disposal:

- A. Enter the Development Review Report and all competent substantial evidence presented at the hearing into the record and forward the record to the Council with a recommendation the Ordinance changing the zoning of the property to LI district be adopted.
- B. Enter the Development Review Report and all competent substantial evidence presented at the hearing into the record, amend the record to support changes, and forward the record to the Council with a recommendation a different zoning district be approved.
- C. Enter the Development Review Report and all competent substantial evidence presented at the hearing into the record and forward the record to the Council with a recommendation the Ordinance be denied because based on inconsistency with guideline 5 on abutting zoning district, guideline 6 on substantial changes, guideline 11 on the totality of the circumstances, and guideline 12 on competent substantial evidence presented at the hearing.
- D. Enter the Development Review Report and all competent substantial evidence presented at the hearing into the record and forward the record to the Council with a recommendation the Ordinance be continued until such time as additional information is brought back to support.

VII. RECOMMENDED ACTION

- A. Recommendation. The Development Department recommends the Land Development Review Board enter the Development Review Report and all competent substantial evidence presented at the hearing into the record, and forward the record to the Council with a recommendation the Ordinance be adopted.
- B. Land Development Review Board (LDRB) recommendation. LDC § 5.01.10 requires that at the duly noticed public hearing, the LDRB consider all of the rezoning guidelines when making a recommendation to the City Council on a rezoning application in determining whether to adopt an Ordinance granting such rezoning. LDC § 5.01.03 also requires the Land Development Review Board (LDRB) hear the evidence of the proponents for the zoning or rezoning and the opponents thereto, if any, and, based upon the evidence heard at such meeting, the LDRB shall then file written findings of fact and a report and recommendation to the city council within thirty (30) days from the date of such hearing. This Development Review Report serves as the LDRB report with written findings of fact, conclusions, and LDRB recommendations.

At the duly noticed May 21st, 2020 LDRB public hearing, Director Hahn read the title of the Ordinance into the record and introduced Senior Planner Lisa Algieri, who made the staff presentation on the application. Ms. Algieri summarized her educational background and her decades of experience in the planning profession and she was accepted as an expert witness without objection. Senior Planner Algieri guided the LDRB members through the staff report and the conclusion the application was consistent with the guidelines for a rezoning. Subsequently, she requested the LDRB move to recommend to the City Council the proposed Ordinance be adopted. At the

conclusion of the presentation, Senior Planner Algieri stated she would entertain any questions.

Discussion subsequently ensued. The members noted that since the property was in an area shown on the Future Land Use Map (FLUE) as Industrial, why the zoning for that entire area wasn't changed to Light Industrial district. In addition, an issue relating to the differences in the allowable land uses between the General Commercial (C-2) and the LI district was raised. There being no further discussion, Chairman Grey moved to recommend the City Council approve the Ordinance, which motion was seconded by Mr. Maysilles, and which passed unanimously 7-0.

After the vote, Mr. Steinmann complained he was not allowed to offer his comments. Vice-Chairperson Dr. Cadle, Jr. requested Director Hahn give Mr. Steinmann the oath and Mr. Steinman was sworn in. Mr. Steinmann is the owner of the adjoin property located at 6722 Orchid Lake Road and raised three issues: that the granite stone company was spilling granite filled water into his yard; that the grass behind his building was cut and he is fearful a dumpster will be placed there; and concerns about a fence. Subsequently, some LDRB members expressed concern about taking a vote on the ordinance before receiving public testimony. Vice-Chairperson Dr. Cadle, Jr. noted Mr. Steinmann was given the opportunity to be sworn-in and provide testimony but he declined to do so. In addition, the issues he raised pertained to code enforcement issues and did not relate to any of the rezoning guidelines and, therefore, was a harmless procedural error.

- C. City Council action. This Ordinance is scheduled for first reading before the City Council at their duly noticed June 2nd, 2020 public hearing and for second reading and adoption at their duly noticed June 16th, 2020 public hearing.