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4 **Final Order of**
5 **The City of Gainesville's**
6 **Board of Adjustment**
7

8 **December 14, 2010**
9

10 **IN THE MATTER OF PETITION BA-10-07 APP, SONDR A RANDON, ESQUIRE, AGENT FOR**
11 **BRUCE WAYNE BABER, APPEALING AN ADMINISTRATIVE DECISION OF PLANNING AND**
12 **DEVELOPMENT SERVICES THAT A DOG SITTING BUSINESS IS NOT A LEGAL**
13 **NONCONFORMING USE OR A USE BY RIGHT IN THE RSF-2 (4.6 UNITS/ACRE SINGLE-**
14 **FAMILY RESIDENTIAL DISTRICT) ZONING DISTRICT. LOCATED AT 1713 NW 7TH AVENUE.**
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16 Upon reaching its decision, the board shall make such order as it shall deem to be proper to each case and to
17 that end shall have all of the powers of the officer from whom the appeal was taken. Each order shall
18 thereafter be reduced to writing and shall contain a full recital of the board in each case. A copy thereof shall
19 be filed in the records of the board by its secretary.
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21 **ORDER**
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23 The Board of Adjustment (BOA) of the City of Gainesville held a quasi-judicial hearing on November 2,
24 2010, on Petition BA-10-07 APP, filed by Sondra Randon, Esquire, agent for Bruce Wayne Baber, appealing
25 an administrative decision of Planning and Development Services Department that a dog sitting business
26 operated at 1713 NW 7th Avenue, is not a legal nonconforming use or a use by right in the RSF-2 (4.6
27 units/acre single-family residential district) zoning district.
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29 **STATEMENT OF THE PETITION**
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31 The issue in this proceeding was whether or not the operation of a "Dog Sitting, Dog Care" use, operated at
32 1713 NW 7th Avenue, is an existing legal non-conforming use.
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34 **PRELIMINARY STATEMENT**
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36 On November 2, 2010, the Board of Adjustment (BOA) held a quasi-judicial hearing on Petition BA-
37 10-07 APP. Testimony and argument was presented by staff in support of its position that dog sitting
38 is not a permitted use in the RSF-2 zoning district and that such use did not constitute a legal
39 nonconforming use. Counsel for Mr. Baber presented argument and witnesses testimony in support of
40 its position that Mr. Baber has a right to use his property to operate a dog-sitting business and that the
41 use is permitted as a legal nonconforming use because it existed before an ordinance restricting the
42 harboring of pets other than as pets in a residential zoning district. Two emails, one supporting each
43 side of the issue, were read into the record.
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FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the informal quasi-judicial hearing and the entire record of this proceeding, the following findings of fact are made:

- 1) The request is specific to the property located at 1713 NW 7th Avenue and incorporates a total of approximately 0.3 acres.
- 2) The Land Development Code specifically states; “any use not permitted by right, by zoning compliance permit, by special use permit, as a special exception or as an accessory use in the zoning district shall be prohibited in such district.”
- 3) The property is zoned Single-family residential districts (RSF-2, 4.6 du/a) and the use “Dog Sitting Business” is not a permitted use in said zoning district
- 4) The dog sitting and care business does not qualify under Sections 30-58 (d) (1),(6),(9) and (14) as an accessory use to a home based business.
- 5) The operator of the business, Mr. Bruce Baber, received a citation from Code Enforcement on June 8, 2010 for conducting a dog sitting and dog care business in a single-family zoning district.
- 6) The citation to Mr. Baber referenced the following ordinances:
 - Section 5-3: keeping or harboring animals for purpose other than pets;
 - Sec. 30-45 any uses not permitted in a zoning district shall be prohibited; and
 - Sec. 30-357(a) establishing a business without a zoning compliance permit is unlawful.
- 7) Mr. Baber came into compliance by ceasing to operate the dog sitting and dog care business in his home, except for a home office (Permit #CE-10-01806).
- 8) On September 13, 2010, Mr. Baber, through his attorney Sondra Randon, requested that the Planning & Development Services Department render a determination that Mr. Baber’s use of his home for operation of a dog sitting business is a legal nonconforming use and/or a use by right.
- 9) On September 14, 2010, the Planning & Development Services Department issued a response denying the request for the reasons stated in the attached Exhibit 5 of the staff report to the Board of Adjustment.
- 10) Pursuant to Section 30-354(h), on September 16, 2010, Mr. Baber (the “applicant”) filed a timely application appealing the administrative decision issued by the Planning and Development Services Department.
- 11) Mr. Baber did not apply for a home occupational license to use his residence for dog-sitting when he started the business.
- 12) The City never issued Mr. Baber a home occupation permit or a zoning compliance permit to operate a “Dog Sitting Business” at the location named above.

1 13) Section 5.3 was presented by Ms. Randon as the basis of the claim that the dog sitting use is a legal
2 non-conforming use.

3 14) The petition stated that there were no "disputed issues of material fact".
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6 REVIEW CONSIDERATIONS 7

8 In accordance with the Land Development Code, the Board of Adjustment is authorized to hear appeals
9 regarding a specific property where a person has a legal interest (affected person). The appeal must be taken
10 to the Board of Adjustment by the affected person within 20 days from the date of the notice of the final
11 administrative action by an administrative officer regarding any land development code or building chapter
12 provision (chapters 6 and 30), which affects a specific property where the affected person has a legal interest,
13 when that decision is adverse to his/her interest or by the applicant within 20 days from the time the building
14 inspector refuses to issue any permit after application therefore has been duly made. Each notice of final
15 administrative action shall include an explanation of the affected person's right to appeal and give the time
16 period (20 days) for filing a petition for appeal to the board.
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18 All petitions for appeal containing or attaching the requisite information described in this paragraph shall be
19 filed with the secretary of the board on forms prescribed by the board and shall be accompanied by all of the
20 papers constituting the record upon which the action was taken. In addition, all petitions for appeal must
21 include:

- 22 a. An explanation of how the petitioner's substantial interest is affected by the administrator's decision;
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- 24 b. A statement of how and when the petitioner received notice of the administrator's decision;
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- 26 c. A statement of all disputed issues of material fact or a statement that there are no disputed issues of
27 material fact;
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- 29 d. A concise statement of the ultimate facts alleged, including specific facts that the petitioner contends
30 would warrant reversal by the board or would warrant modification of the administrator's decision; and
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- 32 e. A statement of relief sought by the petitioner, stating precisely the remedy the petitioner seeks from the
33 board.
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35 The board shall hear and determine all appeals promptly after giving to all parties at least ten days' written
36 notice of the time and place of the hearing, as is stated in this section.
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- 38 a. Timely filed petitions stating there are no disputed issues of material fact shall be processed and heard as
39 follows:
 - 40 i. The board secretary shall schedule a quasi-judicial hearing of the matter before the board after giving
41 all parties at least ten days written notice of the time and place of the hearing.
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 - 43 ii. All parties shall submit to the secretary of the board any documentary evidence intended to be
44 introduced at the hearing on their behalf at least five business days prior to the hearing.

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- iii. At the hearing, the board shall provide all parties including the public an opportunity to present written or oral evidence in support of the documentary evidence submitted on their behalf.
- iv. If during the course of the proceeding a disputed issue of material fact arises then, unless waived by all parties, the proceeding under Section 30-354(h)(5)a shall be terminated and a proceeding under Section 30-354(h)(5)b shall be conducted.

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CONCLUSIONS OF LAW

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- 1) The Board of Adjustment is authorized by Section 30-354(h), Gainesville Code of Ordinances, to review and approve or deny appeals of decisions issued by an administrative official.
 - 2) The City of Gainesville Board of Adjustment provided proper procedural due process to all parties in consideration of a request to overturn an administrative decision that the use "dog sitting and care" operated at 1713 NW 7th Avenue, is not allowed in the RSF-2 zoning district; is not a legal nonconforming use or a use by right in the RSF-2 (4.6 units/acre single-family residential district) zoning district.
 - 3) Section 5-3 of the Gainesville Code of Ordinances was amended on October 1995 to prohibit persons from harboring any animal for use other than as a pet within any residential district. Prior to that amendment, it was not illegal for persons living in single family residential districts to keep animals in a residential district other than as pets.
 - 4) Mr. Baber kept animals at the subject residence, other than as pets, prior to and subsequent to the amendment of chapter 5-3 of the Gainesville Code or ordinances which prohibits such activity.

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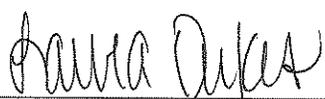
ORDER

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Based upon the foregoing findings of fact and conclusions of law, and upon a Motion made by Dr. Harnsberger and second by Mr. Schmid, the Board of Adjustment at its meeting of November 2, 2010, voted 3 - 2 to allow Mr. Baber to keep animals other than as pets at 1713 NW 7th Avenue. Maintaining animals other than as pets at this residential property cannot be done as a business and compensation cannot be accepted for doing so.

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Dated this 14 day of December, 2010.



Chair, Board of Adjustment