

LEGISLATIVE #

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CITY OF GAINESVILLE
 every path starts with passion
 FLORIDA

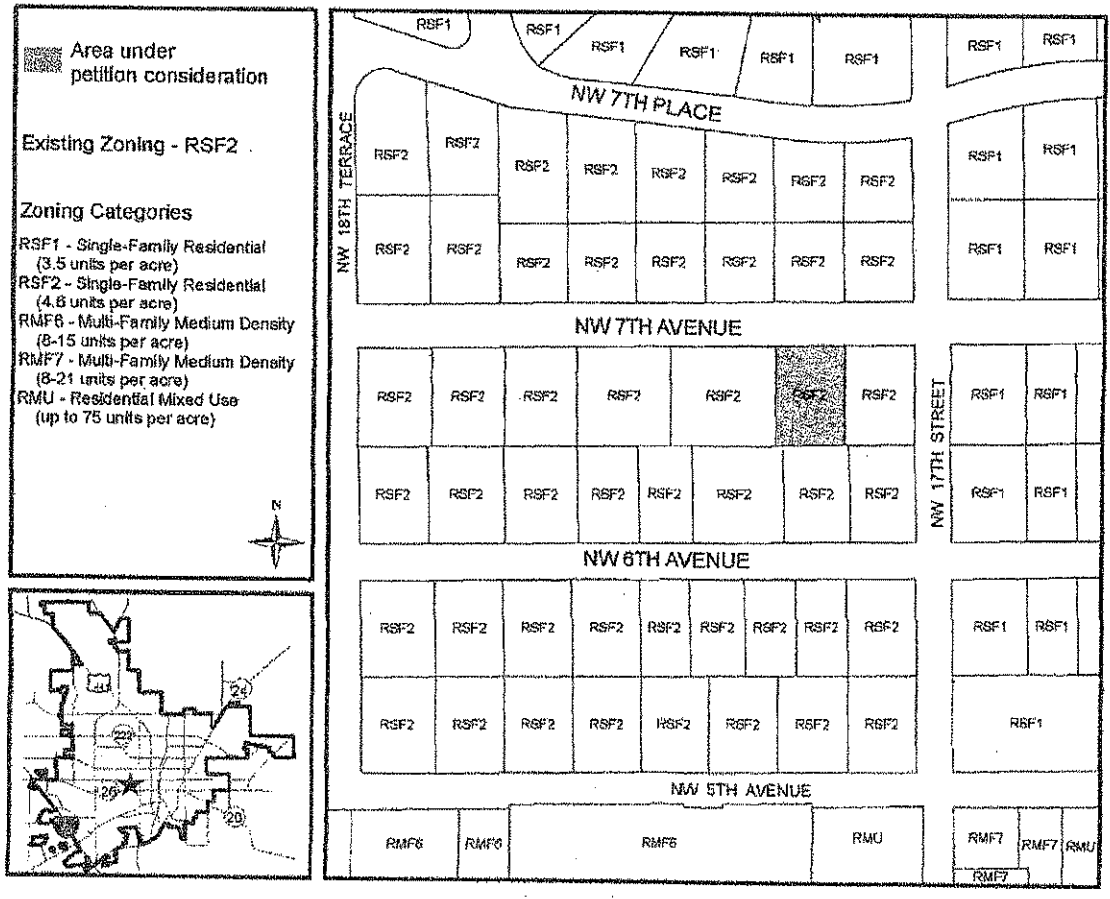
PLANNING DEPARTMENT
 PO Box 490, STATION 11
 GAINESVILLE, FL 32602-0490

306 N.E. 6th AVENUE
 P: (352) 334-5022
 P: (352) 334-5023
 F: (352) 334-2648

TO: Board of Adjustment **Item Number:** I

FROM: Planning Department Staff **DATE:** November 2, 2010

SUBJECT: Petition BA-10-7 APP. Sondra Randon, Esquire, agent for Bruce Wayne Baber, appealing an administrative decision of Planning Staff's determination that a dog sitting business 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. Located at 1713 NW 7th Avenue.



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Explanation

On April 21, 2010, Mr. Baber applied for a home occupation permit for a dog sitting/care business, Mr. Baber stated that he started the business on October 15, 2006 at his home (see Exhibit 1). The application was denied by Code Enforcement because it did not meet the requirements for a home occupation permit. On June 4, 2010, Mr. Baber reapplied for a home occupation permit that was approved by Code Enforcement to have an office in his home for a dog walking business in which Mr. Baber goes to the client's home to walk the dogs. The June 4, 2010 application also indicates that the dog walking business was started at his home on October 15, 2006 (See Exhibit 2).

On June 8, 2010, after receiving a complaint, Code Enforcement investigated and cited Mr. Baber for conducting a dog sitting and dog care business in a single family zoned structure. The "Warning Notice to Correct Violation" (see Exhibit 3) cited three code section violations: Sec. 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. According to the Code Enforcement Division, 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), and now operates his business by visiting his client's homes to dog sit and walk. As a result of his compliance, the Code Enforcement Division closed the matter.

On September 13, 2010, Mr. Baber, through his attorney Sondra Randon, requested 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 (see Exhibit 4). This request is essentially the same as requesting a zoning compliance permit. On September 14, 2010, the Planning & Development Services Department issued a response denying the request for the reasons stated therein (see Exhibit 5). Pursuant to Section 30-354(h), Mr. Baber (the "applicant") is now appealing the September 14, 2010 decision made by the Planning & Development Services Department to the Board of Adjustment.

Given that the City never issued Mr. Baber a home occupation permit or a zoning compliance permit for such a use at the location named above and that Mr. Baber did not apply for an occupational license for the use when he started the business, and that the use is not permitted in a single family zoned area, the City can not establish the use as a legal use. Based on the City's zoning regulations that do not list dog sitting as a permitted use in the RSF-2 (residential-single family) zoning district, and absent the issuance of any permits or licenses, the use is an illegal use in the RSF-2 district. 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." The list of permitted uses in the RSF-2 district is attached (Exhibit 6 and 6A), and the uses have virtually remained unchanged since 1982. The dog sitting and care business can not be considered an accessory use as a home based business because it would not qualify under section 30-58 (d) (1),(6),(9) and (14) of the land development code (see Exhibit 7).

In summary the basis for the staff determination on September 14, 2010 is as follows:

- The City of Gainesville never issued Mr. Baber a permit for the use;
- The land development code does not allow a dog sitting and care business as a use by right, special use permit or accessory use in the RSF-2 zoning district;
- The applicant is in clear violation of Section 30-45 of the land development code which states: Any use not permitted by right, by zoning compliance permit, by special use permit, as a special exception or an accessory use in a zoning district shall be prohibited in such district;
- The dog sitting and care business can not be established as a home occupation because it would not be able to meet the conditions established in Section 30-58(d) (1), (6), (9) and (14); and
- The applicant has not presented any evidence that support the claims that the use was every a permitted use (no permits or licenses).

Staff notes that Mr. Baber's attorney cites the City Code of Ordinances Section 5-3, as authority for her clients position that, since prior to October 23, 1995 a person could keep animals other than "pets" in their home, if Mr. Baber can prove that he kept animals other than "pets" prior to that time, his keeping of such animals is a legal non-conforming use. However, this argument misapprehends Sec. 5-3, which is an Animal Control section enforceable by the Code Enforcement Division and enacted to make clear that persons in the City could not keep fowl, livestock or other animals for labor or food within a residential district. This argument ignores the RSF-2 zoning district, which as far back as 1982 and perhaps earlier, has not allowed the operation of a business, other than a permitted home occupation. So even assuming that Mr. Baber could, prior to 1995, keep animals other than pets at his home, if he were doing so as a business he would have to have met the requirements of and been issued a home occupation permit for such business use in order to be a lawful use in the RSF-2 zoning district. Staff can find no support for the assertions of Mr. Baber's attorney that Section 5-3 can or should be read to "indirectly amend" the Land Development Code or "inherently establish" business uses that are and were, even in 1995, unlawful in a residential zoning district.

In summary, staff finds no legal or factual basis for a determination that Mr. Baber's dog sitting and care business was ever a legal use by right, or use by special use permit, or a use allowed as an accessory use in single family residential district. The applicant has not submitted any evidence that proves otherwise as part of the application submitted on September 16, 2010 (Exhibit 8).

Respectfully submitted,



Ralph Hilliard
Principal Planner

List of Exhibits

Exhibit 1: April 21, 2010 Application for Home Occupation Permit

Exhibit 2: June 4, 2010 Application for Home Occupation Permit

Exhibit 3: June 8, 2010 Warning Notice to Correct Violation

Petition BA-10-7APP
November 2, 2010

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- Exhibit 4: September 13, 2010 request for determination from Attorney Randon
- Exhibit 5: September 14, 2010 determination from Planning and Development Services
- Exhibit 6: Current permitted uses in RSF-2 zoning
- Exhibit 6A: Permitted uses in RSF-2 zoning 1981 through 1989 amendments
- Exhibit 7: Section 30-58, Home Occupation Permits
- Exhibit 8: Applicant's petition to the Board of Adjustment

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Deleted Per John Dates

John

Web-based Applications

Permission Summary

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Occupational License | Master Parcel | Zoning Compliance

Log Off

Businesses | Reports

Edit a Business

Make changes in the fields below and press the 'save' button at the bottom when complete.
Last Updated By Johnsonja on 4/29/2010 8:23:56 AM

Status & Categories

Tax #: 36597

Status: Active

Payment Status: 2009 Paid

Categories: HOME OCCUPATION PERMIT FEE(S) (VARIABLE), SERVICE FOR THE PUBLIC, ADDITIONAL PRIOR YEAR FEE(S), PENALTY 25%, ADDITIONAL PRIOR YEAR PENALTY

Permits: None

Comments:

Business Names

Organization's Legal Name:
Line 1: BABER, BRUCE W
Line 2: MY DOGSPACE

Business Guide Name:
BABER, BRUCE W

Fictitious Name: LEGAL NAME

Fictitious Expiration Date: Exempt Ssn

Federal tax ID:

Applicant's Name:
Last: BABER
First: BRUCE
Middle Init.: W

Owner's Name: Applicant Name
Last: BABER
First: BRUCE
Middle Init.: W

Position:

Dates

Business Start Date: 10/15/2006

Out of Business Date:

Application Date: 04/21/2010

License Mail Date: 04/29/2010

Validation Date: 4/27/2010

Addresses & Numbers

Website:

Fax #:

Email Address: MYDOGSPACE@MAC.C

Business Location

Mailing Address: My Dogspace

Address Line 1: 1713 NW 7TH AVE

Address Line 2:

<input type="text"/>		<input type="text"/>			
Phone:	<input type="text" value="352-327-8809"/>	City:	<input type="text" value="GAINESVILLE"/>	State:	<input type="text" value="FL"/>
		Zip:	<input type="text" value="32603"/>	Phone:	<input type="text" value="352-327-8809"/>
Small Business Procurement					
		Qualification Date:	<input type="text"/>	Vendor ID:	<input type="text" value="0"/>
<input type="button" value="Save"/> <input type="button" value="Cancel"/>					

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CITY OF GAINESVILLE BUSINESS TAX REGISTRATION
FINANCE DEPARTMENT, TREASURY DIVISION, BILLING & COLLECTIONS OFFICE

HOME OCCUPATION REGISTRATION

PO BOX 490
MAIL STATION 47
GAINESVILLE FL 32602-0490

CITY HALL
200 E UNIVERSITY AVE
3RD FLOOR

THOMAS CENTER
306 NE 6 AVE
FIRST FLOOR LOBBY

OFFICE PHONE:
(352) 334-5024

PLEASE NOTE>> WITH THIS REGISTRATION, YOU WILL BE PAYING A BUSINESS TAX ONLY. IT IS THE OBLIGATION OF ALL BUSINESS OWNERS TO DO THE FOLLOWING--

- Meet all other applicable requirements of the City, County, State, and Federal Governments
- Obtain an approved zoning compliance form for new and relocating businesses in commercial locations
- Ensure that all information (incl. email address) provided to the Billing & Collection Office is kept up-to-date for contact and billing purposes. No penalties or fees will be removed for an owner's failure to maintain current information.

PLEASE CHECK AS APPLICABLE

- I have a state license (#) _____ Expiration Date _____
- I am a disabled person, or am 65 years of age or older, or am a widow with minor dependents (an additional form must be completed)
- I am a disabled veteran (an additional form must be completed)

PLEASE COMPLETE WHERE CHECKED, THEN SIGN THE REGISTRATION. COMPLETE BOTH SIDES.

OWNER NAME: BABER BRUCE W
LAST FIRST M.I.

BUSINESS LOCATION & ZIP: 1713 NW 7TH AVE, 32603 (ZIP PER USPS)

MAILING ADDRESS: SAME

BUSINESS NAME: MYDOGSPACE

NATURE OF BUSINESS: DOG SITTING SERVICE DATE STARTED 10 / 15 / 06

IF APPLICABLE, PLEASE PROVIDE PREVIOUS OCCUPANT, OR ADDRESS, OR OWNER OF YOUR BUSINESS:

APPLICANT'S NAME: BRUCE WAYNE BABER IF NOT OWNER, APPLICANT TITLE: _____

Bruce Wayne Baber SIGNATURE OF APPLICANT DATE 04 / 21 / 10 REGISTRATION DATE

PLEASE FILL OUT ALL INFORMATION THAT APPLIES TO YOUR BUSINESS:

- I pay tax based on inventory value (wholesale/retail). Inventory cost at June 1 or opening of business: \$ _____
- I pay tax based on # of W-2 employees (including owner; excl independent contractors). Number of employees: 1
- I pay tax based on numbers of (circle one); vehicles; seats; accommodations; rooms; car stalls; pumps; coin-operated machines; Number used in my business: _____
- * PAY AMOUNT COMPUTED BELOW EITHER WITHIN 7 DAYS OF YOUR BUSINESS STARTING OR BY ____/____/____ IF PAID OR POSTMARKED AFTER THAT DATE. ADD EITHER 25% PENALTY OF \$ _____ OR TOTAL AMOUNT OF \$ SEE BELOW
- * AN ADDITIONAL ADMINISTRATIVE PENALTY OF \$250 IS ADDED TO BUSINESS TAXES NOT PAID WITHIN 180 DAYS OF NOTICE.

6800	HOME OCCUPATION PERMIT	\$	66.25
6460	SERVICE FOR THE PUBLIC	\$	52.50
8991	ADDITIONAL PRIOR YEAR FEES	\$	52.50
9925	PENALTY-25%	\$	13.13
9930	ADDITIONAL PRIOR YEAR PENALTY	\$	13.13
		\$	
	TOTAL FEES DUE:	\$	197.51

Tax # 36597 Val No. 10462412 Val Date 4/27/10 Mail/Delivrd 4/29/10 By 99

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PLEASE PROVIDE THE FOLLOWING INFORMATION AS PART OF THE REGISTRATION PROCESS. THIS INFORMATION IS NOT FOR DISEMINATION TO THE PUBLIC.

BUSINESS PHONE: (352) 327-8809

HOME PHONE: (_____) SAME

BUSINESS FAX: (_____) N/A

E-MAIL ADDRESS: MYDOGSPACE@MAC.COM

CITY USE ONLY:

Notes:

Date: 4/27/2010 12:23 PM JohnsonJa
 WS: XCH IN/RN: 5 00462412
 License # / Permit 365979
 Occupational Licenses-D1 \$118.13
 001 770 7770 1001 AR02
 Occupational License Pen \$13.13
 001 770 7770 1001 AR02
 Home Occupational Permit \$66.25
 001 770 7770 1003 AR02
 CHECK Tendered \$197.51

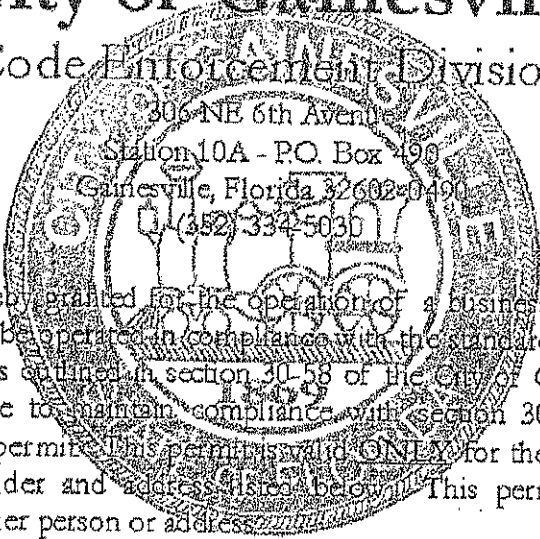


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City of Gainesville

Code Enforcement Division



This permit is hereby granted for the operation of a business from a residence. The business must be operated in compliance with the standards and criteria for a home occupation as outlined in section 30-58 of the City of Gainesville code of ordinances. Failure to maintain compliance with section 30-58 may result in revocation of this permit. This permit is valid **ONLY** for the period designated for the permit holder and address listed below. This permit may **NOT** be transferred to another person or address.

HOME OCCUPATION PERMIT # CE-10-01806

PERMIT HOLDER: BRUCE W. BABER

ADDRESS: 01713 NW 7TH AVE

DATE OF APPLICATION: June 4, 2010

DATE OF ISSUANCE: June 28, 2010

*DATE OF EXPIRATION: September 30, 2010

NATURE OF BUSINESS: Service for the Public - DOG WALKING ONLY

NAME OF BUSINESS: MY DOGSPACE

COPY

J.L. Gates
Code Enforcement Officer

*This expiration date may be extended in one-year increments for a maximum total of three years. The Occupational Tax Division will send the permit holder an invoice each year for a minimal processing fee. For more information, call (352) 334-5030.
PCID: 2006_001



Web-based Applications

Permission Summary

100057

Occupational License

Master Parcel

Zoning Compliance

Log Off

Businesses

Reports

Edit a Business

[View History](#)

Make changes in the fields below and press the 'save' button at the bottom when complete.
Last Updated By padgettj on 6/28/2010 4:18:47 PM

Status & Categories

Tax #:	<input type="text" value="36597"/>	Payment Status:	<input type="text" value="2009 Paid"/>
Status:	<input checked="" type="radio"/> Active		<input type="text" value="Monthly Payments"/>
Permits:	<input type="text" value="None"/>	Categories:	<input type="text" value="HOME OCCUPATION PERMIT FEE(S) (VARIABLE), SERVICE FOR THE PUBLIC, ADDITIONAL PRIOR YEAR FEE(S), PENALTY 25%, ADDITIONAL PRIOR YEAR PENALTY"/>
	<input type="button" value="Modify Permits"/>		<input type="button" value="Modify Categories"/>
Comments:	<input -="" dog="" kp"="" no="" sitting="" type="text" value="6/28/10 PBR CONTACT WITH CODES - HE IS ONLY 'WALKING DOGS"/>		

Business Names

Organization's Legal Name:	Business Guide Name:	
Line 1: <input type="text" value="BABER, BRUCE W"/>	<input type="text" value="BABER, BRUCE W"/>	
Line 2: <input type="text" value="NY DOGSPACE"/>		
Fictitious Name:	Fictitious Expiration Date:	Federal tax ID:
<input type="text" value="LEGAL NAME"/>	<input type="text" value=""/>	<input type="text" value="0"/>
	<input type="checkbox"/> Exempt	<input type="checkbox"/> Ssn
Applicant's Name	Owner's Name	
Last: <input type="text" value="BABER"/>	Last: <input type="text" value="BABER"/>	
First: <input type="text" value="BRUCE"/>	First: <input type="text" value="BRUCE"/>	
Middle Init.: <input type="text" value="W"/>	Middle Init.: <input type="text" value="W"/>	
Position: <input type="text" value=""/>		

Dates

Business Start Date:	Out of Business Date:
<input type="text" value="10/15/2006"/>	<input type="text" value=""/>
Application Date:	License Mail Date:
<input type="text" value="04/21/2010"/>	<input type="text" value="04/29/2010"/>
Validation Date:	
<input type="text" value="4/27/2010"/>	

Addresses & Numbers

Website:	Fax #:	Email Address:
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value="NYDOGSPACE@MAC.G"/>
Business Location	Mailing Address	
Address Line 1:	Address Line 1:	
<input type="text" value="1713 NW 7TH AVE"/>	<input type="text" value="1713 NW 7TH AVE"/>	
Address Line 2:	Address Line 2:	
<input type="text" value=""/>	<input type="text" value=""/>	

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<input type="text"/>		<input type="text"/>	
Phone: <input type="text" value="352-327-8809"/>	City: <input type="text" value="GAINESVILLE"/>	State: <input type="text" value="FL"/>	<input type="text"/>
Zip: <input type="text" value="32603"/>		Phone: <input type="text" value="352-327-8809"/>	<input type="text"/>
Small Business Procurement			
Qualification Date: <input type="text"/>		Vendor ID: <input type="text" value="0"/>	<input type="text"/>
<input type="button" value="Save"/> <input type="button" value="Cancel"/>			

City of Gainesville
Home Occupation Permit
Inspection Report

Code Enforcement Division
306 NE 6th Avenue, Room 130
P.O. Box 490, Station 10-A
Gainesville, FL 32602-0490
(352) 334-5030 . FAX (352) 334-2239
www.gainesvillecodes.org



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Applicant: Bruce W. Baber
 Address: 1713 NW 7th Ave
 Date: 06/29/10
 Name of Business: Service for the Public
 Exact nature of proposed home occupation: Dog Walking Only
 Room where home occupation to be conducted: _____
 Total area of dwelling: _____ Sq. Ft. / Total area of room to be utilized: _____ Sq.Ft.

Applicant shall provide a sketch with dimensions showing the floor plan and the area to be utilized for conducting the home occupation. The sketch shall show the location and nature of all equipment to be utilized, as well as the locations for storage of materials used in the home occupation and the identity of the materials being stored. (a sketch may be attached)

SEE
BACK

Sketch drawn by: _____

- Official Use Only:**
Checklist
- Applicant resides at this location
 - Located in principal building
 - No more than one additional person other than residents employed
 - No alteration or change to exterior
 - No signs or displays
 - No more than 20% or 500 Sq.Ft.
 - Meets vehicle/signage requirements
 - No illegal discharge of materials
 - No additional storage of materials associated with HOP
 - No apparent unrelated code violation(s)
 - Applicant provided with list of requirements

Official Use Only:
HOP Approval:

Denied (reason) _____

Approved

Officer: [Signature]

Date: 6-29-10

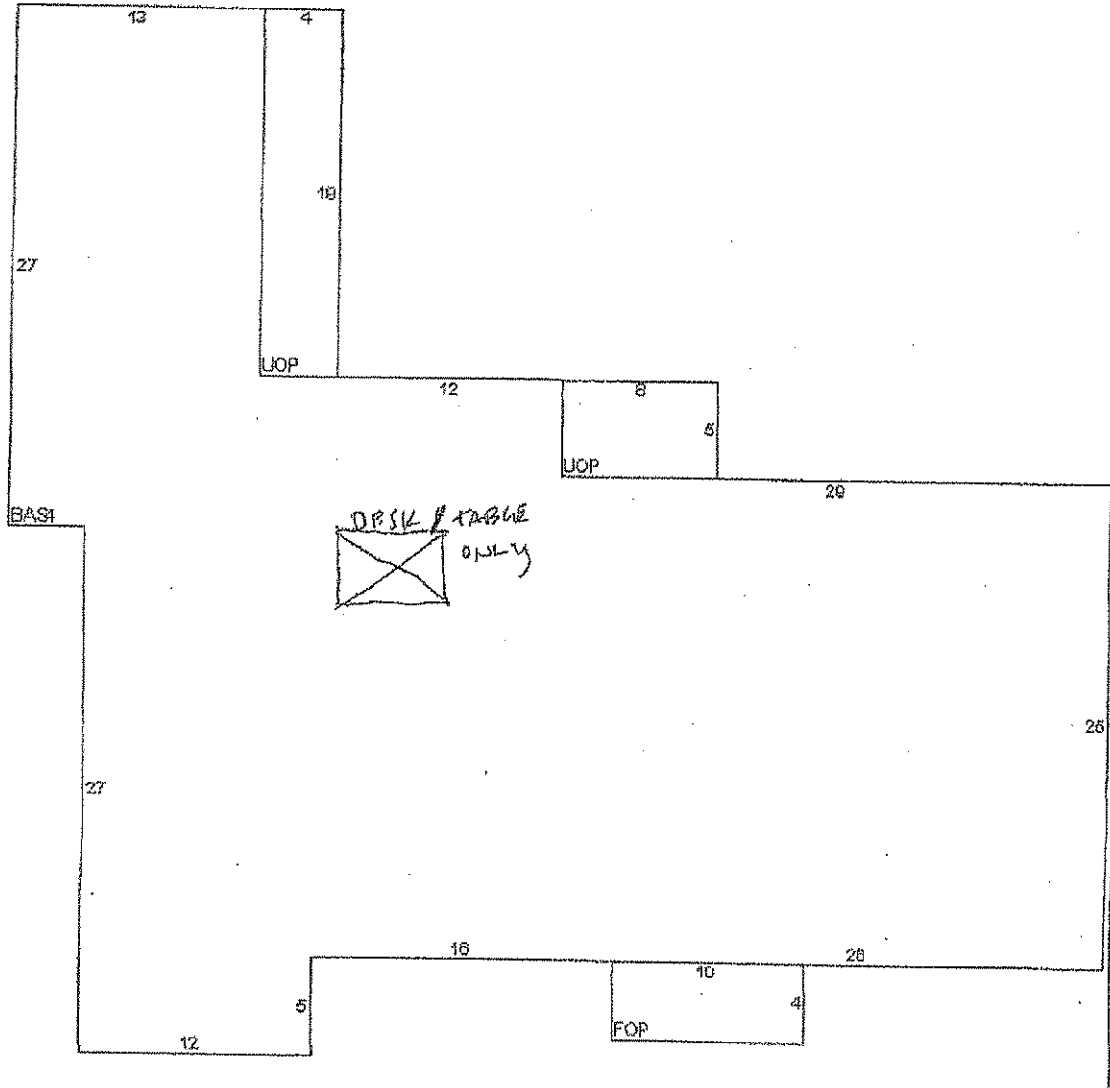
Case #: _____

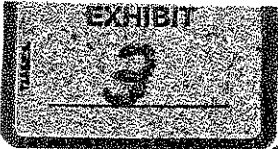
Search Date: 7/6/2010 at 7:45:33 AM - Data updated: 07/05/10

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Parcel: 15277-000-000

For color, check here.





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CE-10-01637

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CITY OF GAINESVILLE WARNING NOTICE TO CORRECT VIOLATION

Name: <u>BRUCE WAYNE BABER</u>		Warning Notice Number:	
Date Issued: <u>6-8-10</u>	Time Issued: <u>1:05 AM (PM)</u>		<u>CE 00390</u>
Date of Birth: <u>7-15-46</u>	Race: <u>W</u>	Sex: <u>M</u> F	Height: <u>6'0 1/2"</u> Weight: <u>160</u>
Social Security Number/Other ID:		Driver License Number/State: <u>8160-079-46-335-0</u>	
Address (Street, P.O. Box, Etc.):		Business Name (If Applicable): <u>My Dog Space</u>	
City: <u>GAINESVILLE</u>	State: <u>FL</u>	Zip Code: <u>32603</u>	Telephone Number: <u>327-8809</u>
Location of Violation: <u>1713 NW 7TH AVE</u>			
Code/Section of Violation: <u>5.3 KEEPING OR HARBORING ANIMALS FOR PURPOSE OTHER THAN PETS</u>			
<input type="radio"/> 5-2 (1) No owner or keeper of any animal shall permit the animal to become a public nuisance.			
<input type="radio"/> 13-171(b) It shall be unlawful for the owner or occupant of a residential building structure or property to utilize the premises of the residential property for the open outdoor storage of any blight-inducing materials such as abandoned motor vehicle or part thereof including tires, icebox, refrigerator, stove, or other appliances, planks, timbers, glass, or other building material, building rubbish, packing material, barrels, bottles, cans, boxes or similar items.			
<input type="radio"/> 13-181 It shall be unlawful for the owner or occupant to create, maintain, keep or allow the existence of any hazardous condition, equipment, facility, fixture, premises or building.			
<input type="radio"/> 15-3 Causing or allow the making of any sound that exceeds the limits set forth in chapter 15 of the Gainesville Code of Ordinance, causing a noise disturbance, or a noise or sound that is plainly audible as defined in section 15-2 of the Gainesville Code of Ordinance.			
<input type="radio"/> 19-52 It shall be unlawful for any person to beg or solicit alms, or financial assistance of any kind or nature on developed private property without written permission of the owner, which permission must be carried upon his/her person.			
<input checked="" type="radio"/> 30-45 Any use not permitted by right, by zoning compliance permit, by special use permit, as a special exception or an accessory use in a zoning district shall be prohibited in such district.			
<input type="radio"/> 30-56(c)(4) Failure to park on an approved driveway area on property within the University of Florida Comprehensive Master Plan 2005-2015 Context Area that is in an RC, RSF-1, 2, 3, 4 zoning district.			
<input type="radio"/> 30-56(e)(4) f Failure to provide an unpaved driveway parking areas with mulched, graveled or covered with other erosion-preventing material clearly defining the driveway parking area, and having side borders of plants, landscape ties, pressure treated wood, brick, concrete or similar border materials.			
<input type="radio"/> 30-56 (e)(4) g. Failure to comply with driveway parking area standards.			
<input type="radio"/> 30-316 (b) The unlawful erection, or maintenance of an illegal sign.			
<input checked="" type="radio"/> 30-357 (a) It shall be unlawful to begin a new development, an addition to a new development, <u>make a change of use, establish any business, profession or occupation, or to change the location of a business, profession or occupation which is subject to occupational license tax as provided for in sections 25-41 through 25-43 of the Code of Ordinances, until the city manager or his/her designee has issued a zoning compliance permit certifying that such intended business, profession or occupation complies with the applicable provisions of this chapter.</u>			
<input type="radio"/> 30-358 Failure to obtain the required permit.			
Other: <u>30-361; CONDUCTING DOG SITTING / CARE</u>		This Warning Notice is effective for twelve (12)	
<u>BUSINESS IN SINGLE FAMILY ZONE STRUCTURE</u>		months from the date issued. The next violation	
will result in a Civil Citation with a penalty as			
provided in section 2-339, City Code of Ordinances.			
Corrective Action Necessary: <u>DO NOT KEEP OR HARBOR ANY ANIMALS FOR ANY PURPOSE OTHER THAN PETS. CEASE CONDUCTING BUSINESS UNTIL OR UNLESS A SPECIAL</u>			
<u>EXCEPTION OR ZONING CHANGE CAN BE MADE. (SEE 30-45)</u>			
Failure to correct this violation within <u>15 DAYS</u> may result in a citation or mandatory court appearance with civil penalty not to exceed \$500.00, per infraction.			
Official Issuing Notice:			
<u>JL - GATES</u>			
Issuing Agency: City of Gainesville: <input checked="" type="radio"/> Code Enforcement Division <input type="radio"/> Police Department <input type="radio"/> Gainesville Fire and Rescue			
Agency Address: <u>306 NE 6TH AVE</u>		Agency Phone #: <u>352-334-5030</u>	
Person Receiving Notice: <u>X. Bruce W. Baber</u>			

White Copy - Issuing Agency

Green Copy - Individual



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FOLDS & WALKER, LLC.

527 East University Avenue
Post Office Box 1775
Gainesville, Florida 32602

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TELECOPIER TRANSMITTAL COVER SHEET

TOTAL NUMBER OF PAGES: (4), INCLUDING COVER SHEET

NOTE: IF ANY PROBLEMS OCCUR DURING TRANSMISSION,
PLEASE TELEPHONE (352) 372-1282
FAX: (352) 375-9960

PLEASE DELIVER TO: Ellen Bailey, Clerk 1
- 3259
FAX NUMBER: 352-334-3259
DATE: September 13, 2010
FROM: Sondra Randon, Esq.
RE: Bruce Baber Zoning Verification/Compliance

COMMENTS:

Please see Letter dated September 13, 2010 and receipt of payment.

ORIGINAL TO FOLLOW: Yes No

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed. It is confidential and may be privileged attorney-client information or work product, may constitute inside information, or may be otherwise restricted as to disclosure. If you are neither the intended recipient nor the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, notify us immediately by telephone and return the original message to us at the above address by mail. Thank you.

ALLISON E. FOLDS†
S. SCOTT WALKER

FOLDS & WALKER, LLC
ATTORNEYS AT LAW

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L. ALISON WALKER
TOSHA D. FERNANDEZ
NORMAN BLEDSOE
SONDRA RANDON
† Certified Family & Circuit
Civil Mediator

527 EAST UNIVERSITY AVENUE
POST OFFICE BOX 1775
GAINESVILLE, FL 32602

TELEPHONE (352) 372-1262
FAX (352) 375-8960

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September 13, 2010

City of Gainesville
Planning & Development Services Department
Via Facsimile Only (352)334-3259

Re: Request for Determination

To Whom It May Concern:

Bruce Baber respectfully requests the City of Gainesville Planning and Development Services Department to render a favorable recommendation to his request for a legal nonconforming use and/or a use by right on his property located at 1713 NW 7th Avenue under the additional analysis.

In essence, Section 5-3 of the Animal Control Code, created a *prohibited use* in all residential and mixed-use districts as defined in sections 30-41(a)(1) and 30-41(a)(4), respectively. Although the prohibition did not amend Chapter 30 of the Land Development Code, it clearly established a prohibited use in certain zoning districts within the City of Gainesville. Prior to the adoption of Section 5-3 (10/23/1995), a similar or consistent prohibited use did not exist in the City of Gainesville Code of Ordinances. In fact, in 1987, when Mr. Baber began dogsitting, the City Code was entirely silent as to the care of animals in residential districts.

Furthermore, Section 5-3 permits the use Mr. Baber previously enjoyed for the past 22 years by right or as a legal nonconforming use existed on October 23, 1995.

It is Mr. Baber's position that Section 5-3 indirectly amended the Land Use Code in a way that inherently established Mr. Baber's use as a implicit use by right or a legal nonconforming use due to the existence of his use prior to the adoption of the use prohibition on October 23, 1995 and the continuation of same without incident until he received a City of Gainesville Warning Notice to Correct Violation on June 8, 2010.

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I thank you for your time and consideration in this matter. Should you have any further questions or concerns, please do not hesitate to contact me at my office (352)372-1282 or email: Sondra@foldsandwalker.com.

100686 G

Sincerely,



Sondra Randon

Cc: Client

~~100057~~

Hilliard, Ralph W.

From: Hilliard, Ralph W.
Sent: Monday, September 13, 2010 5:53 PM
To: 'Sondra Randon, Esq.'
Subject: RE: Request for determination

100686 ⚡

Thanks, I will add this to the file. I will e-mail you our determination tomorrow after review by the City Attorney's office.

Ralph

From: Sondra Randon, Esq. [mailto:sondra@foldsandwalker.com]
Sent: Monday, September 13, 2010 5:03 PM
To: Hilliard, Ralph W.
Cc: Bredfeldt, Erik A.
Subject: RE: Request for determination

Mr. Hilliard:

I apologize for the delay in returning this message. I was in a trial all day and just returned to my desk.

* Bruce Baber is requesting clearance to use his property to keep other people's dogs on his property for certain periods of time (dog-sitting) for a monetary amount.

I understand your position that BOA can only review issues relating to Chapter 30, however, it is our position that Section 5-3 creates a prohibited use that directly effects operation of Chapter 30.

If you have any questions, please feel free to contact me.

Thanks,

Sondra

Sondra Randon
Attorney at Law
FOLDS & WALKER, LLC
527 East University Avenue
Post Office Box 1775
Gainesville, Florida 32602
Tel: (352) 372-1282
Fax: (352) 375-9960
sondra@foldsandwalker.com

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From: Hilliard, Ralph W. [mailto:hilliardrw@cityofgainesville.org]
Sent: Monday, September 13, 2010 2:06 PM
To: 'Sondra@foldsandwalker.com'
Cc: Bredfeldt, Erik A.
Subject: Request for determination

Ms. Randon, I received your request for a determination. However, the first paragraph of your letter does not clearly state for what purpose the request is being made. Your letter specifically states, "request the City of Gainesville Planning and Development services Department to render a favorable recommendation to his request for a legal nonconforming uses and/or use by right on his property located at 1713 NW 7th Avenue under the additional analysis." The request does not state the specific use for which a determination is being request. Please state the specific use for which you are requesting a determination. You can do this via return e-mail to me that I will attach to your letter dated September 13, 2010. Given the quasi-judicial nature of the proposed request we need to make sure the record is clear about the request. Please be advised that the Board of Adjustment can only review issues related to Chapters 6 and 30 of the City Code of Ordinances.

Ralph Hilliard
Planning Manager
Planning Department - City of Gainesville
Telephone: (352) 334-5022
FAX: (352) 334-2648

FYI: Under Florida's public records law, most written communications to or from City officers and employees regarding City business are public records and are available to the public upon request. Your e-mail communications may be subject to public disclosure.

Please note that normal hours are now 7:00 a.m. to 6:00 p.m., Monday through Thursday.



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every path starts with passion
GAINESVILLE
FLORIDA

Planning & Development Services

PO Box 490
Gainesville, FL 32602-0490
352-334-5022
352-334-2648 (fax)
www.cityofgainesville.org

September 14, 2010

Sondra Randon
Folds & Walker, LLC
527 East University Avenue
P.O. Box 1775
Gainesville, Florida 32602

Subject: Request for Determination (Dog Sitting)

City Staff has reviewed your letter dated September 13, 2010 and follow-up email requesting a determination that Mr. Baber's dog sitting business is either a legal nonconforming use and/or a use by right on property located at 1713 NW 7th Avenue.

Given that the City never issued Mr. Baber a permit for such a use at the location named above and that Mr. Baber did not apply for an occupational license for the use when he started the business, and that the use is not permitted in a single family zoned area, the City can not establish the use as a legal use. Based on the City's zoning regulations that do not list dog sitting as a permitted use in the RSF-2 (residential-single family) zoning district, and absent of the issuance of any permits or licenses, the use is an illegal use in the RSF-2 district. 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."

The list of permitted uses in the RSF-2 district is attached, and the uses have virtually remained unchanged since 1982. The use can not be considered an accessory use as a home based business because it would not qualify under section 30-58 of the land development code.

Sincerely,

Ralph Hilliard
Planning Manager

cc: Erik Bredfeldt
Lawrence Calderon

Zoning Districts	Future Land Use Category
OR, OF, MD, PD, CON, PS	Office (O)
BA, BT, BUS, W, PD, CON, PS	Commercial (C)
BI, PD, CON, PS	Business industrial (BI)
I-1, I-2, W, PD, BI, CON, PS	Industrial (IND)
ED, PD, CON, PS	Education (E)
PS, PD, CON	Recreation (REC)
CON, PD, PS	Conservation (CON)
AGR, CON, PS	Agriculture (AGR)
AF, PS, PD, CON	Public facilities (PF)
PD, TND, PS or rezoning consistent with the underlying land use designation	Planned Use District (PUD)

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 070769, § 2, 1-28-08; Ord. No. 080435, § 2, 3-19-09)

Secs. 30-47—30-50. Reserved.

DIVISION 2. RESIDENTIAL ZONING DISTRICTS

Sec. 30-51. Single-family residential districts (RSF-1, RSF-2, RSF-3 and RSF-4).

(a) *Purpose.* The single-family districts are established for the purpose of providing areas for low density single-family residential development with full urban services at locations convenient to urban facilities, neighborhood convenience centers, neighborhood shopping centers and activity centers. These districts are characterized by single-family residential structures designed and located so as to protect the character of single-family residential neighborhoods.

(b) *Objectives.* The provisions of these districts are designed to:

- (1) Protect and stabilize the essential characteristics of such existing development;
- (2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this type of development;

- (3) Enable single-family development to occur at appropriate locations and with sufficient density so as to facilitate the provision of urban services and facilities in an economical and efficient manner;
- (4) Encourage low density development where higher density development would be detrimental to the health, safety and welfare of the community by reason of environmental constraints, open space or other factors; and
- (5) Discourage any activities not compatible with such residential development.

(c) *Permitted uses.*

(1) *Uses by right.*

- a. Single-family dwellings and customary accessory buildings incidental thereto.
- b. Occupancy of a single-family dwelling by one family.
- c. Community residential homes, in accordance with article VI.
- d. Family child care homes, in accordance with state law.
- e. Adult day care homes, in accordance with article VI.
- f. Home occupations, in accordance with article IV.
- g. Large family child care homes, in accordance with article VI.

(2) *Uses by special use permit.*

- a. Places of religious assembly, in accordance with article VI.
- b. Private schools, in accordance with article VI.
- c. Public schools, other than institutions of higher learning, in accordance with section 30-77, educational services district (ED).

(d) *General requirements.* All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-56 and article IX.



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Sec. 30-51. - Single-family residential districts (RSF-1, RSF-2, RSF-3 and RSF-4).

- (a) *Purpose.* The single-family districts are established for the purpose of providing areas for low density single-family residential development with full urban services at locations convenient to urban facilities, neighborhood convenience centers, neighborhood shopping centers and activity centers. These districts are characterized by single-family residential structures designed and located so as to protect the character of single-family residential neighborhoods.
- (b) *Objectives.* The provisions of these districts are designed to:
 - (1) Protect and stabilize the essential characteristics of such existing development;
 - (2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this type of development;
 - (3) Enable single-family development to occur at appropriate locations and with sufficient density so as to facilitate the provision of urban services and facilities in an economical and efficient manner;
 - (4) Encourage low density development where higher density development would be detrimental to the health, safety and welfare of the community by reason of environmental constraints, open space or other factors; and
 - (5) Discourage any activities not compatible with such residential development.
- (c) *Permitted uses.*
 - (1) *Uses by right.*
 - a. Single-family dwellings and customary accessory buildings incidental thereto.
 - b. Occupancy of a single-family dwelling by one family.
 - c. Community residential homes, in accordance with article VI.
 - d. Family child care homes, in accordance with state law.
 - e. Adult day care homes, in accordance with article VI.
 - f. Home occupations, in accordance with article IV.
 - g. Large family child care homes, in accordance with article VI.
 - (2) *Uses by special use permit.*
 - a. Places of religious assembly, in accordance with article VI.
 - b. Private schools, in accordance with article VI.
 - c. Public schools, other than institutions of higher learning, in accordance with section 30-77, educational services district (ED).
- (d) *General requirements.* All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-56 and article IX.
- (e) *Dimensional requirements.* (See Table 1):

TABLE 1. DIMENSIONAL REQUIREMENTS FOR RSF DISTRICTS
Principal Structures

	RSF-1	RSF-2	RSF-3	RSF-4
Maximum density	3.5 du/a	4.6 du/a	5.8 du/a	8 du/a
Minimum lot area	8,500 sq. ft.	7,500 sq. ft.	6,000 sq. ft.	4,300 sq. ft.
Minimum lot width at minimum front yard setback	85 ft.	75 ft.	60 ft.	50 ft.
Minimum lot depth	90 ft.	90 ft.	90 ft.	80 ft.
Minimum yard setbacks:				
Front	20 ft.	20 ft.	20 ft.	20 ft.
Side (interior)	7.5 ft.	7.5 ft.	7.5 ft.	7.5 ft.
Side (street)	10 ft.	10 ft.	7.5 ft.	7.5 ft.
Rear	20 ft.	20 ft.	15 ft.	10 ft.
Maximum building height	35 ft.	35 ft.	35 ft.	35 ft.

Accessory Structures¹, Excluding Fences and Walls

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Minimum front and side yard setbacks	Same requirements are for the principal structure.
Minimum yard setback, rear ²	7.5 ft.
Maximum building height	25 ft.
Transmitter towers ³	80 ft.

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¹ Accessory screened enclosure structures whether or not attached to the principal structure may be erected in the rear yard as long as the enclosure has a minimum yard setback of three feet from the rear property line. The maximum height of the enclosure at the setback line shall not exceed eight feet. The roof and all sides of the enclosure not attached to the principal structure must be made of screening material.

² One preengineered or premanufactured structure of 100 square feet or less may be erected in the rear and side yards as long as the structure has a minimum yard setback of three feet from the rear or side property lines, is properly anchored to the ground, and is separated from neighboring properties by a fence or wall which is at least 75 percent opaque.

³ In accordance with article VI.

(Ord. No. 3777, § 1, 6-10-82; Ord. No. 3955, § 10, 2-14-94; Ord. No. 960060, § 1, 6-8-98; Ord. No. 980990, § 1, 6-28-99; Ord. No. 041268, § 2, 8-22-05; Ord. No. 070619, § 1, 3-24-08)

EXHIBIT

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ZONING CODE



CITY OF GAINESVILLE, FL

Adopted October 26, 1981
5th Edition, April 1989

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(A) No accessory structure, excluding fences and walls, shall be closer to any side or front property line than the required yard setbacks for the principal structure.

(B) Minimum yard setback, rear 7.5 ft.

(C) Maximum building height 25 ft.

(3) Maximum lot coverage 35 per cent

(e) General requirements. All structures and uses within this district shall also comply with the applicable requirements and conditions of Section 29-26 and Article XVI.

Se. 29-14. RSF-2; 4.6 Units/Acre Single-family Residential District.

(a) Purpose. The RSF-2 district is established for the purpose of providing suitable areas for residential development of low-medium density presenting a moderately spacious character.

(b) Objectives. The provisions of this district are intended to:

(1) Protect and stabilize the essential characteristics of such existing development;

(2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this

type of development;

- (3) Encourage low-medium density development to occur where public facilities and services, open space, or other factors are available which are conducive to residential development of such densities; and
- (4) Discourage any activities not compatible with such residential development.

(c) Permitted uses:

(1) Uses by right:

- (A) Single-family dwellings and customary accessory buildings incidental thereto;
- (B) Foster family home for children, and foster family home for adults, in accordance with the conditions and requirements of Article XI; and
- (C) Occupancy of a single-family dwelling by one family; and
- (D) Family day care homes, in accordance with the conditions and requirements of Section 29-69.1.
- (E) Adult day care homes.

(2) Uses by special use permit, provided the requirements and conditions of Article XI (except as noted) are met:

- (A) Churches;
- (B) Private schools;
- (C) Reserved
- (D) Reserved
- (E) Reserved; and
- (F) Public libraries.

(d) Dimensional requirements. All principal and ac-

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cessory structures shall be located and constructed in accordance with the following requirements:

(1) Principal structures:

- (A) Minimum lot area 7,500 sq. ft.
- (B) Minimum lot width at
minimum front yard setback 75 ft.
- (C) Minimum lot depth 90 ft.
- (D) Minimum yard setbacks:
 - (I) Front 25 ft.
 - (II) Side, interior 7.5 ft.
 - (III) Side, street 10 ft.
 - (IV) Rear 20 ft.
- (E) Maximum building height 35 ft.

(2) Accessory structures:

- (A) No accessory structure, excluding fences and walls, shall be closer to any side or front property line than the required yard setbacks for the principal structure.
- (B) Minimum yard setback, rear 7.5 ft.
- (C) Maximum building height 25 ft.

(3) Maximum lot coverage 35 per cent

(e) General requirements. All structures and uses within this district shall also comply with the



Sec. 30-58. - Home occupation permits.

- (a) *Findings.* The city recognizes that there are benefits to be gained from allowing residents to earn income from occupations conducted within their homes. These benefits include but are not limited to:
 - (1) A reduction in work-related and other automobile trips.
 - (2) Permitting more citizens, including the handicapped, aged and mothers of small children, to participate in the workplace.
 - (3) Allowing many of these citizens to have jobs while meeting various family obligations.
 - (4) Providing individuals and families income necessary to own and properly maintain homes in the city's neighborhoods.
- (b) *Purpose.* At the same time the city recognizes that its residents should expect their neighborhoods to be quiet and safe places to live and that home occupations should not be allowed to alter the primarily residential character of these neighborhoods or to endanger the health, safety or morals of residents of the neighborhood. For these reasons, it is the purpose of this section to:
 - (1) Protect residential areas from the adverse impacts of activities associated with home occupations.
 - (2) Permit residents of the community a broad choice in the use of their homes as a place of livelihood and the production or supplementing of personal and family income.
 - (3) Establish criteria, development standards and performance standards for home occupations conducted in dwelling units.

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It is not the intent of this section to regulate the teaching of fine arts, family day care homes and community residential homes, as defined in article II.

- (c) *Permits.*
 - (1) A person desiring a permit for a home occupation shall make an application in the departments designated by the city manager. A person may only apply for a home occupation permit to be used at his/her primary place of residence. An initial filing fee to cover the cost of an inspection issuing a permit shall be paid at the time of submitting the application, an annual permit processing fee shall be paid for each and every year, and an additional fee shall be paid every three years to cover the cost of reinspection. All fees shall be in accordance with Appendix A. Any person exempt from the payment of a license tax under the provisions of subsection 25-50 (a) shall also be exempt from the payment of the above-mentioned fees. Such application for a permit shall include the following:
 - a. Name of applicant;
 - b. Location of dwelling unit where the home occupation will be conducted;
 - c. Total floor area of the dwelling unit;
 - d. Area of room or rooms to be utilized in the conduct of the home occupation;
 - e. A sketch with dimensions showing the floor plan and the area to be utilized for the conduct of the home occupation. This sketch will show the location and nature of all equipment to be utilized in the conduct of the home occupation, as well as the locations for storage of materials used in the conduct of the home occupation and the identity and nature of these materials; and
 - f. The exact nature of the home occupation.
 - (2) If the proposed home occupation complies with all of the requirements of subsection (d) of this section, the enforcing officer shall issue the home occupation permit. Once such home occupation permit is issued to an applicant, it cannot be transferred to another person through the sale, leasing or rental of the premises on which the home occupation is located or in any other manner; except that, in the case of death, should a surviving spouse or child residing at the same address desire to continue the home occupation, written notice to that effect shall be given to the enforcing officer and the permit may be transferred. Such home occupation permit cannot be used by the applicant for any premises other than that for which it was granted.
 - (3) All persons possessing a home occupation permit at the effective date of this section shall be phased into the annual process upon expiration of their current permit. Any home occupation permit issued after the effective date of this section shall expire on September 30, 1989, and be renewable for October 1 through September 30 for all successive years. The city shall not automatically renew each home occupation permit previously granted, but shall scrutinize all applications, either original or renewal, to ensure that permitted home occupations are in compliance with this section.
 - (4) Any person may seek revocation of a home occupation permit by making application therefor to the enforcing officer, who shall cause an investigation to be made to determine whether the permit holder is conducting such home occupation in a lawful manner as prescribed in this section. In the event that the enforcing officer determines that the permit holder is in violation of the provisions of this section, the permit shall be immediately revoked by the enforcing

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- officer. The decision of the enforcing officer shall be subject to appeal to the board of adjustment as prescribed in section 30-354. During such an appeal, the action of the enforcing officer is stayed. If the enforcing officer determines that the public safety is at risk, appropriate regulating agencies and authorities shall be immediately notified.
- (5) The following shall be considered as grounds for the revocation of a home occupation permit:
 - a. Any change in use or any change in extent or nature of use, or area of the dwelling unit being used, that is different from that specified in the granted home occupation permit form, that is not first approved by the enforcing officer shall be grounds for the revocation of a home occupation permit. The operator of a home occupation must apply for a new home occupation permit prior to any such changes.
 - b. Any change in use, extent of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that results in conditions not in accordance with the provisions of the required conditions of subsection 30-58(d) shall result in immediate revocation of the home occupation permit.
 - c. Failure to pay the annual permit processing fee or the reinspection fee required every three years shall result in the loss of the home occupation permit.
 - (6) The following conditions shall apply for home occupation permits which have been revoked:
 - a. Initial revocation: Reapplication may only occur when the condition(s) causing the revocation has been abated.
 - b. Second revocation: Reapplication may only occur after one year and when the condition(s) causing the revocation has been abated.
 - c. Third violation: The home occupation permit shall not be reissued.
 - (d) *Required conditions.* All permitted home occupations shall comply with the following standards and criteria:
 - (1) The home occupation shall be conducted only within the principal building, except for any related activities conducted off the premises.
 - (2) No more than one additional person other than the residents residing on the premises shall be employed or engaged in the home occupation at the premises.
 - (3) There shall be no alteration or change to the outside appearance, character or use of the building or premises, or other visible evidence of the conduct of such home occupation. There shall be no display of products visible in any manner from the outside of the dwelling.
 - (4) No home occupation shall occupy more space than 20 percent of the total floor area of a dwelling unit, exclusive of any open porch, attached garage or similar space not suited for or intended to be occupied as living quarters, provided that in no event shall such home occupation occupy more than 500 square feet. Rooms which have been constructed as additions to the dwelling unit and any attached garage or open porch which has been converted into living quarters shall not be utilized for such home occupation, nor shall they be considered as floor area, until two years after the date of completion thereof, as shown on the city's records.
 - (5) No commodities or goods of any kind shall be sold on the premises, nor displayed on the premises for sale elsewhere, with the following exceptions:
 - a. The sale and display of items produced or fabricated on the premises as part of the home occupation, such as art and handicrafts, is permitted.
 - b. Orders made by phone, mail or sales party may be filled on the premises.
 - c. If sales parties for the purpose of selling merchandise or taking orders take place at the location of the home occupation, such parties shall not take place more than four times in any one calendar year, and each party is limited to one 24-hour period.
 - (6) No equipment or process shall be used in such home occupation which creates noise, vibrations, heat, glare, fumes, dust, odors or electrical interference detectable to the normal senses outside the dwelling, or, in the case of attached dwelling units or multiple-family dwellings, detectable to the normal senses beyond the walls of the dwelling unit; nor shall there be any combustible materials located anywhere on the premises which are in violation of the city's fire code. In the case of electrical interference, no equipment shall be used which creates any visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
 - (7) No articles or materials used in connection with such home occupation shall be stored on the premises other than in the principal building so used, and any area used for storage shall be counted toward the maximum permissible floor area used for such home occupation.
 - (8) No more than one automobile or truck, which shall not be larger than a stock three-quarter-ton panel or pickup truck, used in conjunction with such home occupation shall be permitted to park on the premises in question or off the premises in question and within view from surrounding properties. Such vehicle may only have two signs, not exceeding two square feet in area, each mounted flat against or painted on the sides.
 - (9)

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No home occupation shall be permitted which involves the visitation of clients, customers, salesmen, suppliers or any other persons to the premises which would generate vehicular traffic in excess of two vehicles concurrently or more than ten vehicles per day.

- (10) Deliveries from commercial suppliers shall not be made more than twice a week to the dwelling unit in question, and the deliveries shall not restrict traffic circulation.
- (11) In no case shall a home occupation be open to the public at times earlier than 7:00 a.m. nor later than 10:00 p.m.
- (12) The total number of home occupations conducted within a dwelling unit is not limited, except that the cumulative impact of all home occupations conducted within the dwelling shall not exceed the limits of one home occupation as established in subsection 30-58(d).
- (13) There shall be no illegal discharge of any materials, fluids or gases into the sewer system or any other manner of discharging such items in violation of any applicable government code.
- (14) Home occupations shall comply with all local, state or federal regulations pertinent to the activity pursued, and shall not be construed as an exemption from such regulations.



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RECEIVED
SEP 16 2010
PLANNING
DIVISION

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9

PETITION TO THE BOARD OF ADJUSTMENT
Planning & Development Services Department

OFFICE USE ONLY	
Petition No. <u>EA-10-7 APP</u>	Fee: \$ <u>364.50</u>
Hearing Date: _____	EZ Fee: \$ _____
Account No. 001-670-6710-3401 <input checked="" type="checkbox"/>	
Account No. 001-670-6710-1124 (Enterprise Zone) []	
Account No. 001-670-6710-1125 (Enterprise Zone Credit []	

CHECK ONE:

- Variance Appeal of Administrative Decision Special Exception Special Permit

Please note that a pre-application conference is required before submitting this application

Owner(s) of Record (please print)	Agent Authorized to Act on Owner Behalf
Name: Bruce Baber	Name: Sondra Randon, Esquire
Address: 1713 NW 7th Avenue Gainesville, Florida	Address: 527 East University Avenue Gainesville, Florida 32602
E-mail Address: brucebaber@mac.com	E-mail Address: sondra@foldsandwalke.com
Phone:	Phone: 352-372-1282
Fax:	Fax: 352-375-9960

PROPERTY INFORMATION:

Street address: 1713 NW 7th Avenue

Tax parcel no(s): 15277-000-000

Legal description (may be attached):

Existing Zoning: RSF-2	Lot size:
Present use: Residential	Proposed use: Residential and dog care
Historic District or Landmark?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Present structures (type) and improvements upon the land: Home and fenced in yard

SURROUNDING PROPERTY INFORMATION: (List all uses surrounding the subject property under "Existing use." Staff is available to supply zoning and land use information.)

	Zoning	Land Use	Existing Use
North	RSF-2		RESIDENTIAL
South	RSF-2		RESIDENTIAL
East	RSF-2		RESIDENTIAL
West	RSF-2		RESIDENTIAL

Certified Cashier's Receipt:

SEP 16 2010

SIGNATURE PAGE

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- (a) I hereby attest to the fact that the above supplied parcel number(s) and legal description(s) is (are) the true and proper identification of the area of this petition.
 (b) I authorize staff from the Planning and Development Services Department to enter onto the property in question during regular city business hours in order to take photos which will be placed in the permanent file.
- I/We understand that this petition becomes a part of the permanent records of the Board of Adjustment. I/We hereby certify that the above statements and the statements or showings made in any document or plans submitted herewith are true and correct to the best of my/our knowledge.

Property Owner Signature: Bruce W. Baber Date: 9-15-10

STATE OF FLORIDA
COUNTY OF Alachua

Sworn to and subscribed before me this 15th day of September 2010,
by (Name) Bruce Baber

Brigitte A. Dyce
Signature Notary Public

Personally Known ✓ OR Produced Identification _____ (Type) _____



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SIGNATURE PAGE

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- (a) I hereby attest to the fact that the above supplied parcel number(s) and legal description(s) is (are) the true and proper identification of the area of this petition.
 (b) I authorize staff from the Planning and Development Services Department to enter onto the property in question during regular city business hours in order to take photos which will be placed in the permanent file.
- I/We understand that this petition becomes a part of the permanent records of the Board of Adjustment. I/We hereby certify that the above statements and the statements or showings made in any document or plans submitted herewith are true and correct to the best of my/our knowledge.

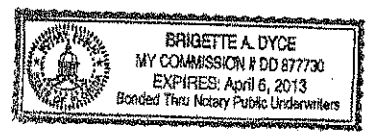
Property Owner Signature: Jordia Randa Date: 9/15/10
 Authorized Agent

STATE OF FLORIDA
 COUNTY OF Alachua

Sworn to and subscribed before me this 15th day of September 2010,
 by (Name) Sandra Randa

Brigitte A. Dyce
 Signature - Notary Public

Personally Known OR Produced Identification (Type) _____



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APPEAL OF ADMINISTRATIVE DECISION

The process for requesting an appeal is documented in the Land Development Code Chapter 30-354(h).

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Please provide the following:

- A copy of the administrative official's written decision (e.g., written interpretation of code, denial of permit, etc.). NOTE: An appeal must be filed within 20 days from the date of the written decision.
- Date of Administrative Decision: 9/14/2010
- Reduced images or digital submission for oversized paper documents (greater than 11x17)
- Any additional information to support the application for appeal

(1) Please describe the nature of the administrative decision that was rendered and how the petitioner is adversely affected by the decision.

City Staff determined Petitioner's dog care use can not be established as a legal use because (1) he was never issued a permit for use, (2) he did not apply for an occupational license for the use when he started, and (3) the use is not permitted in a single family residence.

The Petitioner is adversely affected by this decision due to the unreasonable hardship he endures from losing the business he depended on for so many years as well as the companionship and enjoyment he shared with the dogs and his customers.

(2) Please provide a statement of all disputed issues of material fact or state that there are no disputed issues of material fact.

There are no disputed issues of material fact.

(3) If there are disputed issues of material fact, the petitioner is entitled to have the dispute heard by a third party hearing officer or by the Board of Adjustment. Please indicate if the right to a hearing officer is waived in which case the Board of Adjustment will decide on the matter of the disputed issues of material fact.

- Third party hearing officer
Refer to procedures in 30-354(h)(5)b
- Defer to the Board of Adjustment

(4) Please provide a concise statement of the ultimate facts alleged, including specific facts that the applicant contends would warrant reversal by the board or would warrant modification of the administrator's decision.

In essence, Section 5-3 of the Animal Control Code, created a prohibited use in all residential and mixed-use districts as defined in sections 30-41(a)(1) and 30-41(a)(4), respectively. Although the prohibition did not directly amend Chapter 30 of the Land Development Code, it is the position of Petitioner that it established a prohibited use in specific zoning districts, thereby indirectly amending Chapter 30-41(a)(1) and (a)(4).

Even though Chapter 30 did not expressly provide that dog sitting was a permitted use in the RSF-2 district at the time Petitioner began his use in 1987, adoption of Section 5-3 established that such use

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was previously permitted in Residential districts. Further, Section 5-3 prohibited this use after October 23, 1995, unless such use was allowed by right, or special use permit or if such use existed as a legal non-conforming use on October 23, 1995.

City Staff correctly stated in their decision that dog-sitting was not an expressly permitted use in RSF-2 districts at the time Petitioner began dog-sitting. However, it is Petitioner's assertion that dog-sitting was a permitted use until the date it was found to be prohibited, thereby inherently establishing Petitioner's use as a implicit use by right; or in the alternative, a legal nonconforming use due to the existence of his use prior to the adoption of Section 5-3 and the continuation of same without incident until he received a City of Gainesville Warning Notice to Correct Violation on June 8, 2010.

Furthermore, prior to the adoption of Section 5-3, a similar or consistent prohibited use did not exist in the City of Gainesville Code of Ordinances. In fact, in 1987, when Mr. Baber began dog sitting, the City Code was entirely silent as to the care of animals in residential districts.

(5) Please provide a statement of relief sought by the applicant, stating precisely the remedy the applicant seeks from the board.

Petitioner respectfully requests the Board:

- (1) find that he has a right to use his property to operate a dog-sitting business, in addition to its current permitted residential use; and/or
- (2) find that his use is permitted by operation of a legal nonconforming use based on the existence of same use prior to the use restriction created by Section 5-3 and the continuation of the same use until he received Notice from Code Enforcement; and
- (3) reimburse the filing fee-associated with filing this appeal; and
- (4) permit his dog-sitting business to resume upon a finding that he has a right to use or a legal nonconforming use; and
- (5) award any other remedy that the Board deems appropriate and just.

Please continue on additional pages as needed

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September 14, 2010

Planning & Development Services

PO Box 490
 Gainesville, FL 32602-0490
 352-334-5022
 352-334-2648 (fax)
www.cityofgainesville.org

Sondra Randon
 Folds & Walker, LLC
 527 East University Avenue
 P.O. Box 1775
 Gainesville, Florida 32602

Subject: Request for Determination (Dog Sitting)

City Staff has reviewed your letter dated September 13, 2010 and follow-up email requesting a determination that Mr. Baber's dog sitting business is either a legal nonconforming use and/or a use by right on property located at 1713 NW 7th Avenue.

Given that the City never issued Mr. Baber a permit for such a use at the location named above and that Mr. Baber did not apply for an occupational license for the use when he started the business, and that the use is not permitted in a single family zoned area, the City can not establish the use as a legal use. Based on the City's zoning regulations that do not list dog sitting as a permitted use in the RSF-2 (residential-single family) zoning district, and absent of the issuance of any permits or licenses, the use is an illegal use in the RSF-2 district. 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."

The list of permitted uses in the RSP-2 district is attached, and the uses have virtually remained unchanged since 1982. The use can not be considered an accessory use as a home based business because it would not qualify under section 30-58 of the land development code.

Sincerely,

Ralph Hilliard
 Planning Manager

cc: Erik Bredfeldt
 Lawrence Calderon

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LAND DEVELOPMENT CODE

§ 30-51

Zoning Districts	Future Land Use Category
OR, OF, MD, PD, CON, PS	Office (O)
BA, BT, BUS, W, PD, CON, PS	Commercial (C)
BI, PD, CON, PS	Business industrial (BI)
I-1, I-2, W, PD, BI, CON, PS	Industrial (IND)
ED, PD, CON, PS	Education (E)
PS, PD, CON	Recreation (REC)
CON, PD, PS	Conservation (CON)
AGR, CON, PS	Agriculture (AGR)
AF, PS, PD, CON	Public facilities (PF)
PD, TND, PS or rezoning consistent with the underlying land use designation	Planned Use District (PUD)

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 070769, § 2, 1-28-08; Ord. No. 080435, § 2, 3-19-09)

Secs. 30-47--30-50. Reserved.

DIVISION 2. RESIDENTIAL ZONING DISTRICTS

Sec. 30-51. Single-family residential districts (RSF-1, RSF-2, RSF-3 and RSF-4).

(a) *Purpose.* The single-family districts are established for the purpose of providing areas for low density single-family residential development with full urban services at locations convenient to urban facilities, neighborhood convenience centers, neighborhood shopping centers and activity centers. These districts are characterized by single-family residential structures designed and located so as to protect the character of single-family residential neighborhoods.

(b) *Objectives.* The provisions of these districts are designed to:

- (1) Protect and stabilize the essential characteristics of such existing development;
- (2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this type of development;

- (3) Enable single-family development to occur at appropriate locations and with sufficient density so as to facilitate the provision of urban services and facilities in an economical and efficient manner;
- (4) Encourage low density development where higher density development would be detrimental to the health, safety and welfare of the community by reason of environmental constraints, open space or other factors; and
- (5) Discourage any activities not compatible with such residential development.

(c) *Permitted uses.*

(1) *Uses by right.*

- a. Single-family dwellings and customary accessory buildings incidental thereto.
- b. Occupancy of a single-family dwelling by one family.
- c. Community residential homes, in accordance with article VI.
- d. Family child care homes, in accordance with state law.
- e. Adult day care homes, in accordance with article VI.
- f. Home occupations, in accordance with article IV.
- g. Large family child care homes, in accordance with article VI.

(2) *Uses by special use permit.*

- a. Places of religious assembly, in accordance with article VI.
- b. Private schools, in accordance with article VI.
- c. Public schools, other than institutions of higher learning, in accordance with section 30-77, educational services district (ED).

(d) *General requirements.* All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-56 and article IX.