

FINAL ORDER OF THE CITY OF GAINESVILLE, FLORIDA

IN THE MATTER OF APPEAL OF THE WRITTEN ORDER ISSUED DECEMBER 14, 2010 BY THE BOARD OF ADJUSTMENT OF THE CITY OF GAINESVILLE REGARDING A DOG SITTING BUSINESS OPERATED BY BRUCE WAYNE BABER AT HIS RESIDENCE LOCATED AT 1713 NW 7TH AVENUE, GAINESVILLE, FLORIDA , IN THE RSF-2 ZONING DISTRICT

JUNE BOWE, APPELLANT

BOARD OF ADJUSTMENT OF THE CITY OF GAINESVILLE, APPELLEE

STATEMENT OF THE APPEAL

On November 2, 2010, the Board of Adjustment held a quasi-judicial hearing on Petition BA-10-07APP filed by Sondra Randon, Esquire, agent for Bruce Wayne Baber, appealing an administrative decision of the Planning and Development Services Department that a dog sitting business operated at 1713 NW 7th Avenue, is not a legal non-conforming use or a use by right in the RSF-2 (4.6 units/acre single family residential district) zoning district.

The Board of Adjustment, by a vote of 3-2, reversed the decision of the Planning and Development Services Department and issued a written order on December 14, 2010 allowing Mr. Baber to keep animals other than as pets, with the provision that maintaining animals other than as pets at his single-family residential property cannot be done as a business, and compensation cannot be accepted for doing so.

On January 3, 2011, June Bowe ("Appellant") filed a Notice of Appeal of the written order issued December 14, 2010 by the Board of Adjustment. The Notice of Appeal alleges that the written order should be reversed for the following reasons:

1. The Board of Adjustment did not apply the correct law in rendering its order.
2. The Board of Adjustment order was not based on competent and substantial evidence.
3. Due process was not afforded by the Board of Adjustment.

At its regular City Commission Meeting on February 3, 2011, the City Commission held an appellate hearing to consider the appeal.

At the hearing, the City Commission was advised that the appeal is governed by Section 30-354(n)(2) of the City's Land Development Code which provides that "the City Commission shall consider only the evidence and testimony placed in the record before the board at its hearing and may hear oral arguments by each party in support of or in opposition to the board's finding and decision. The City Commission shall consider only whether due process was afforded all parties, whether the board applied the correct law, and whether the board's findings are supported by competent substantial evidence and shall promptly make its decision and issue a final order affirming, amending or reversing the board's decision. The decision of the City Commission

shall be reduced to writing and shall constitute final administrative action. Appeals from decisions of the City Commission may be made to the courts by writ of certiorari."

At the hearing, the record for purposes of the appeal was identified as the following: the Planning and Development Services Staff Report dated November 2, 2010, the video recording of the Board of Adjustment meeting of November 2, 2010 available on the City of Gainesville website, and the written order issued December 14, 2010 by the Board of Adjustment.

At the hearing, the City Commission heard oral argument by the Appellant, received information from City Staff and received citizen comment.

FINDINGS

Based upon the record, the City Commission, in its deliberations at the hearing, finds that:

1. The Board of Adjustment did not apply the correct law.

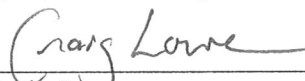
The Board of Adjustment erroneously based its decision on Section 5-3 (an animal control regulation) and disregarded Section 30-45 of the Land Development Code which states "any use not permitted by right, by zoning compliance permit, by special use permit, as a special exception or as an accessory use in the zoning district shall be prohibited in such district" and disregarded Section 30-51 of the Land Development Code which sets forth the permitted uses in Single-Family Residential Zoning Districts and does not include dog sitting businesses.

2. The decision of the Board of Adjustment was not based on competent and substantial evidence.

There is no competent, substantial evidence that the dog sitting business is a legal non-conforming use on this property in the Single-Family Residential Zoning District. Additionally, there is no record of permits issued for this business on this property.


ORDER

On February 3, 2011, the City Commission, by a vote of 5-1, reversed the Board of Adjustment's written order dated December 14, 2010. This Order constitutes final administrative action by the City concerning this matter. Entered this 22 day of February, 2011.



Craig Lowe
Mayor

Attest:



Kurt M. Lannon
Clerk of the Commission

Copies furnished to:

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