

**BOARD OF ADJUSTMENT MINUTES**

NOVEMBER 2, 2010 6:30 PM  
 City Hall Room 16  
 200 E. University Ave

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**I. Roll Call:**

<b>Members Present:</b>	<input checked="" type="checkbox"/> James Harnsberger	
<input checked="" type="checkbox"/> Laura Dukes	<input checked="" type="checkbox"/> Rolf Hummel	
<input checked="" type="checkbox"/> Debra Neill-Mareci	<input checked="" type="checkbox"/> Joseph Schmid	
<b>Staff Present:</b>	<b>Ron Combs</b>	
<b>Erik Bredfeldt</b>	<b>Lawrence Calderon</b>	
<b>Ralph Hilliard</b>		

**II. Approval of Agenda**

<b>Motion By: Schmid</b>	<b>Seconded by: Harnsberger</b>
<b>Moved to: Approve Agenda</b>	<b>Upon Vote: Motion passed 5 to 0</b>

**III. Approval of Minutes:**

Dr. Hummel stated that as you well know, we had quite a bit of discussion about this case and I must say, I contributed about ten points and all what is left here is just one sentence and that is actually not the one on which I placed the most emphasis. It was kind of a negative thing. I said many positive things. For this reason, I am opposing it; I would ask that we make those minutes more elaborate and write down what happened so future generations can see what happened. I am not approving the minutes.

The board asked staff to review the minutes.

<b>Motion By:</b>	<b>Seconded by:</b>
<b>Moved to:</b>	<b>Upon Vote:</b>

**IV. Requests to Address the Board: None**

**V. Old Business: None**

**VI. New Business**

<b>BOARD MEMBERS</b>	
Chair: Laura Dukes    Vice Chair: Debra Neill-Mareci	
Regular Members: James Harnsberger, Rolf E. Hummel, Joseph Schmid	
Staff Liaison: Lawrence Calderon	

**A. Variances: None**

**B. Appeals**

01. 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 7<sup>th</sup> Avenue.

Mr. Combs asked the board to address the issue of ex-parte communication

Mr. Hilliard presented the petition to the board and read the definition of Legal non-conforming use and explained what is generally classified as a non-conforming use. He also explained that Section 5.3 has nothing to do with business and explained how the ordinance may have been designed to regulate over accumulation of pets and farm animals.

Dr. Harnsberger stated that he knows that dog-sitting is not permitted in the RSF-2 but he thought that tonight's meeting was about a non-conforming use. He went on to ask for an explanation of a legal non-conforming use.

Mr. Hilliard answered that it is a use that was at one time legal; it had to be legal at some point in time and recognized by the city.

Dr. Harnsberger asked about Wilbert's as a non-conforming use. He stated that the property is zoned single-family but how is it a legal non-conforming use. Those activities were never legal.

Mr. Hilliard explained how a use could become a legal non-conforming use.

Dr. Harnsberger repeated his understanding of what was stated by Mr. Hilliard.

Ms. Sandra Randon addressed the board on behalf of Mr. Baber. She stated that Mr. Baber has lived in the house since 1987. She addressed the issues about determining the start date of the business. She said that it is true that he filled out the application indicating the business started in 2006 but that is because he did not have the benefit of council when he completed the form. She informed the board that 2006 was the date he started his web site with the web cam. She alluded to Ms. Jane Adeere (Not certain about spelling) and Mr. Albert Mathenee (Not certain about spelling) who used the services of Mr. Baber from 1987 to 2009.

She asked the board to find that a legal non-conforming use exist on Mr. Baber's property. She stated that his services are low impact, neighborhood oriented, centric, community oriented and protects the green environment. She presented a brief history of Mr. Baber. He came back from the Navy to Gainesville in 1987 and was asked by Ms. Jane Adeere and Mr. Mathenee to take care of dogs and he charged a small fee since 1987. He walked them during the day and sometimes kept them overnight. He did this until 2010 when a complaint was filed. His assertion is that his use is a legal non-conforming use from the time it started.

Ms. Randon stated that the use is a legal non-conforming use for a few reasons:

1. It is Bruce's contention that Section 5-3 of the Code of Ordinances amends the Land Development Code; it directly creates an allowed use. She read the section and stated that by enacting that section, the code created an existing use. She stated that the issue was referred to the Community Development committee but nothing was done because this is not their role. She requested that the dog sitting business be allowed to continue and not extended to anyone else.

Ms. Neill-Mareci stated, what you are asking is that the use be classed as a legal non-conforming use. My understanding is that there has been no occupational tax representing a legal existence of the business since 2006, is this correct?

Ms. Randon stated yes this is correct.

Ms. Neill-Mareci went on further to ask, does that mean that it was not a legal use since it did not have a license? Ms. Randon stated that a home occupation does not embrace a business of this sort. It is for accountants, lawyers and this type of profession. His business is more like a large family daycare which is a use by right. It has similar impact as a daycare.

Ms. Neill-Mareci, could you explain exactly what he does?

He has a doggie daycare, people drop their dogs at Bruce, he feeds them, take them on runs, never leaves them unsupervised. He has a web cam to see your animals. He trains the animals.

Neill-Mareci, are the dogs allowed outside during the day?

Ms. Randon answered that they are allowed outside.

Ms. Dukes asked about the maximum number of animals kept at the house.

Ms. Randon indicated 12 at some times.

Ms. Dukes asked, what was the initial complaint which started this process?

Ms. Randon answered that the initial complaint is that he is conducting a business in violation of Section 5-3.

Dr. Hummel asked about some dates which were mentioned, 1987, 1995 and 2006; he recalled that the City Code was silent on the issue until October 23, 1995. He concluded that Bruce conducted the business long before 1995. He then asked for documentation but none was available. Ms. Randon offered the testimony of Ms. Jane Adeer and Mr. Mathenee (Not certain about spelling). Dr. Hummel stated that he cannot imagine that Mr. Baber was not aware of the need for proper licensing.

Ms. Randon indicated that his only proof is his customers.

Dr. Hummel asked, when was the property annexed into the city?

Mr. Hilliard indicated that it was prior to 1980.

Mr. Schmidt stated that he is having trouble understanding the relationship of Section 5-3 and the Land Development Code.

Ms. Randon stated that Section 5-3 indirectly amended the Land Development Code. It created a specific use in residential and mixed use districts. In order for a municipality to create a use restriction, there must be due process, thus the option for non-conformities.

Section 5-3 was presented on an overhead and read to the board.

Dr. Harnsberger stated that it appears that prior to 1995, this business was allowable.

Ms. Randon stated yes.

Mr. Schmidt said that it seems that the issue is whether the use was legal.

Mr. Hilliard read the definition of non-conforming use. He referred to the staff report where it referenced Section 5-3 and indicated to the board that it had nothing to do with conducting a business. He stated that the section deals with the number of animals one may have in a residential area.

He stated that the code does not allow a dog sitting business in the neighborhood.

Dr. Harnsberger asked whether this is stated in the code.

Mr. Hilliard referred to the section of the code which states that if the use is not specifically listed, it is prohibited. He continued to state that it is clear that dog sitting was not allowed in the residential district; that allowable uses are determined in the Land Development Code.

There were questions about who initiated the complaint.

Mr. Hilliard called on Mr. Cooper from Code Enforcement.

Ms. Dukes referred to the RSF-2 zoning district and asked whether the uses listed are those allowed in the district.

Mr. Hilliard affirmed the statement.

Mr. Schmidt asked about precedence.

Mr. Hilliard indicated that the decision could have precedence setting effect.

Mr. Combs affirmed that the decision of the board could have precedence setting effect.

Dr. Hummel asked, if one has a property with a shed that is non-conforming, if you change the code, does the person have to take down the shed?

Mr. Hilliard said no.

Dr. Hummel said that this is his understanding so what is the difference, one is a shed and the other is a dog sitting business.

Mr. Hilliard stated that at one time the shed was permitted in its location but if the shed was placed there illegally, it would have to be removed. He stated that in order for the shed to be legal non-conforming, it had to have had a permit.

Ms. Mareci asked about the Home Occupation and whether someone must have a permit to conduct a business at their house.

Mr. Hilliard answered yes.

Mr. Cooper addressed the board and explained how Code Enforcement was informed of the dog sitting business.

The chair opened the floor to the general public.

Mr. Goldstein talked about his tenure in the neighborhood and spoke in support of the petition.

Mr. Mathenie (Not certain about spelling) of 2613 NW 24<sup>th</sup> Terrace spoke of his residency in the neighborhood and that Bruce took care of his dog.

Ms. Jane Adeer of 2613 NW 24<sup>th</sup> Terrace, addressed the board and said that the laws are old and were originally centered around regulating farm animals and are not suitable for regulating modern new services such as doggy day care.

Ms. Pat Krikos (Not certain about spelling) of 1743 NW 17<sup>th</sup> Lane talked about the services offered which has helped her family in taking care of their dogs. She asked whether the use can be conducted as a day care for dogs.

Ms. Len (Could not identify last name) of 1732 NW 7<sup>th</sup> Avenue spoke and stated that the service is not a problem, that Bruce has been providing a service to the neighborhood and they love the service.

Mr. Calderon asked the board to observe the written comments which were submitted by people who could not attend the meeting.

The board discussed the issues of whether to read the comments into the record.

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Ms. Randon objected to reading any of the comments which do not have names and addresses.

The chair asked to read two of the comments into the record.

Dr. Harnsberger stated that a legal non-conforming use is one that is not permitted but because of its long standing existence prior to rezoning or annexation it is grandfathered, until it is discontinued. He stated that it is his understanding that it was always 12 months but he heard staff stated that it is 9 months. He referenced a case in Alachua County, Ralph Dunn vs. City of Gainesville which has implications on the current case and stated that he is very familiar with the case.

The fact that a dog sitting business was not permitted by current rules does not mean that there can't exist legally, a non-conforming use of that nature in a single-family neighborhood or in any neighborhood where it is prescribed. One part of this case, at least to me is very clear, the date which we have homed on, October 23, 1995; prior to then we can all keep significant number of animals in our houses and after that we could not. Now that's separate from my making money doing this? Prior to that date it was legal because there were rules adopted that impacted the ability for us to say that the cat lady is keeping lots and lots of animals. Clearly Mr. Baber was keeping a modicum amount of pets prior to 1985. I have not heard any evidence to rebut that. Kind of the question still in my mind is when did the business began and I did not hear anything that clarify that at all so far and I would not mind if someone chimed in at some point in time. It seems to me there is a strong basis for a legal non-conforming use at least for keep animals in the home and potentially a case for it also being a legal business.

Ms. Neil-Mareci addressed the board.

What I heard is that Mr. Baber who clearly loves animals and I know is a very kind person has lived into taking care of dogs out of the kindness of his heart and sort of morphed into covering some of his time. According to the testimony from the gentleman, whose name escapes me, I'm sorry; it actually became a formal business in 2006. Now in 2006 there is nothing that makes that legal, it is not a legal business in 2006, no matter how you look at it. I do not know about how he started. The other thing that is clear to me is that I understand that we are in murky ground between a formal business where your friends are sort of thankful in giving you gifts of gratitude in cash verses a formal business where you are covering cost and expecting a return for your services. What I am hearing is the business really formulated in 2006. I am saying the actual formal recognition of a request for an Occupational Permit, which actually I believe was in 2008, and predated to 2006 in the application, which is why there is a penalty clause in the cost, so that tells me that even Mr. Baber formally looked on it as a business in 2006. It is not legal under city codes to have that type of business in that area of the City in 2006. It is a tough call; I spent several years in a situation where a neighbor had multiple dogs, this was not a business, it was just multiple dogs; it took 3 years, petitions, meeting with the police and finally filing with the State Attorney's Office to solve that problem; so it is a real problem when you have a lot of dogs in one space, whether they are your dogs or somebody else's dog. It's a tough situation because everybody love dogs and every body wants to support dog lovers. I think it is very difficult when you have an agglomeration of so many dogs in one place in a residential area.

Ms. Dukes stated; when I look at the animal code it pertains to livestock, it does not apply to the situation before us. It was enacted to control animals in a residential area.

Dr. Harnsberger stated that prior to 1985 this was not regulated. It was not allowed but prior to 1985 he was keeping pets in his home.

Discussion ensued between the board members.

Dr. Harnsberger referred to Wilberts as an example of a non-conforming use and compared the petition to that situation. He stated that the applicant has been keeping dogs before the change and should be allowed to continue as a non-conforming use.

Ms. Neil-Mareci indicated that the business has changed and one cannot change a non-conforming use.

Mr. Combs stated that when he started charging for the service it became a business which was never permitted and is therefore not now a legal non-conforming use. He referred to the code that states that anything not permitted is prohibited and since the activity was never permitted, it is illegal and therefore not a legal non-conforming use.

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Dr. Harnsberger stated that there are two issues, one deals with keeping animals and the other is operating a business taking care of dogs. He suggested that the two issues should be separated.

Discussion continued among the board members.

Dr. Harnsberger stated that if the board is thinking about the element of keeping animals without pay, it is well within their authority to do so. The board can grant the petition as a whole, grant it with conditions or modify the request.

Mr. Combs read the definition of Non-conforming use. He stated that the activity is a dog sitting use which is not a legal use.

Dr. Harnsberger moved that we grant the petition the appeal by Ms. Randon with conditions: Condition 1, the sitting portion of the sitting activity cannot be a business; 2. He cannot charge money for sitting but he can allow pets other than his own to be sat in his house.

The motion was second by Mr. Schmidt.

Mr. Calderon asked to address the board. He informed the board that they are limited to the application before them; the application asks to classify the business as a legal non-conforming use. He then went on to inform the board that their strict role is to determine whether the use is or is not a legal non-conforming use.

Mr. Neil-Mareci asked whether there are regulations limiting the amount of dogs one may have at a residence. The other question was how the condition would be evaluated and monitored.

Mr. Combs stated that he does not know that answer and does not believe that there is a numerical limit in the ordinance.

Mr. Cooper informed the board on how Code Enforcement handles such matters.

Mr. Schmidt indicated that he is inclined to support the motion if it would remove the business portion.

Ms. Dukes stated that she is inclined to vote against the motion because the use is not illegal.

The board continued discussion about the motion and the nature of the activity.

Dr. Harnsberger asked whether dog walking is a legal business.

Mr. Cooper indicated that dog walking is a legal business.

Mr. Goldstein approached the board.

Mr. Calderon informed the board that since the floor was previously closed the floor should be reopened to allow Mr. Goldstein to speak.

The chair reopened the floor.

Mr. Goldstein addressed the board and asked whether the board would reconsider the issue of Dr. Hummel recusing himself from voting.

Dr. Hummel responded to Mr. Goldstein's remarks that he was a complainer. He stated that this not correct. He stated that he has not complained to the city but have spoken to the neighbors.

Ms. Randon addressed the board and stated that she supports Mr. Harnsberger's motion to add conditions. She referred to her petition to request any remedy the board deemed appropriate and just. She stated that this opens it up to creating conditions the board sees fit and believes that the board has the right to disagree with staff, to listen to the facts but not blindly follow staff's directions.

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She addressed the issues of when the business started and when fees were collected for the services rendered.

Ms. Dukes asked how the activity is different from a kennel.

Mr. Calderon made a statement about the testimony provided by one witness who seemed to be contradicted by other statements.

Ms. Ashley of 805 NE 7<sup>th</sup> Street stated that she thinks that staff is confused about the case.

Dr. Jeanne Beasley of 621 NE Blvd. spoke in support of the petition and explained how Bruce's business is different from a kennel.

Ms. Dukes closed the floor.

Dr. Hummel indicated that he can make an informed decision and stated that he thinks he can vote.

<b>Motion By: Dr. Harnsberger</b>	<b>Seconded by: Mr. Schmidt</b>
<b>Moved to: That we grant the petition the appeal by Ms. Randon with conditons: Conditon 1. The sitting portion of the activity cannot be a business; 2. He cannot charge money for sitting but he can allow pets other than his own to be sat in his house</b>	<b>Upon Vote: The motion carried by a vote of 3 to 2: Aye: James Harnsberger, Joseph Schmid and Rolf Hummel Nay: Laura Dukes and Debra Neill-Mareci,</b>

## VII. Board of Adjustment Referrals -

- A. Staff will be scheduling a training session for the Board of Adjustment members

Mr. Calderon referred the board to training materials available on the City's web site.

<b>Motion By:</b>	<b>Seconded by:</b>
<b>Moved to:</b>	<b>Upon Vote:</b>

## VIII. Information Items

- A. Election of Officers

<b>Motion By: Dr. Harnsberger</b>	<b>Seconded by: Mr. Schmidt</b>
<b>Moved to: Nominate Ms. Dukes as Chair and Ms. Neil-Mareci as Vice Chair</b>	<b>Upon Vote: Passed 5 to 0</b>

## IX. Board Member Comments: None.

X. **Adjournment:** Meeting adjourned at 9:15 pm

\_\_\_\_\_  
Secretary, Board of Adjustment

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Calderon, C.C.P.

\_\_\_\_\_  
Date

DRAFT