



001831

CITY OF GAINESVILLE

Clerk of the Commission

May 7, 2001

Nicholas T. Schroeder, Esq.
4010-d Newberry Road
Gainesville, FL 32607

Dear Mr. Schroeder:

In the letter dated April 30, it was stated that the City Commission would hear Petition 5COA-01HPB at 1:00pm on May 14, 2001. However, the City Attorney's Office and Department of Community Development have advised our office that Petition 5COA-01HPB should be heard during the evening portion of the City Commission meeting on May 14, 2001. Therefore, this item will not be heard until 6:00pm or soon thereafter as the matter may be heard.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kurt M. Lannon
Clerk of the Commission

KML/sdw

CC: Tom Saunders, Community Development Director
Wayne Bowers, City Manager
Marion Radson, City Attorney
Members of the City Commission



CITY OF GAINESVILLE

Clerk of the Commission

April 30, 2001

Nicholas T. Schroeder, Attorney
4010-d Newberry Road
Gainesville, Florida 32607

Dear Attorney Schroeder:

Please be advised that your client's appeal to Petition 5COA-01HPB will be heard by the City Commission on May 14, 2001. The meeting begins at 1:00 p.m. in the City Commission Auditorium on the First Floor of City Hall. Please provide any additional back up you would like to include in the City Commission agenda materials by May 9, at 12:00 noon.

Thank you for your attention to this matter and should you have any question(s) please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt M. Lannon".

Kurt M. Lannon
Clerk of the Commission

KML:nbb

CC: Tom Saunders, Community Development Director
Wayne Bowers, City Manager
Marion Radson, City Attorney
Members of the City Commission

NOTICE OF APPEAL FROM THE HISTORIC
PRESERVATION BOARD DECISION

2001 APR 20 AM 11:40

APPEAL BY GENE HONEYCUTT, by and through his undersigned attorney.

DECISION APPEALED FROM:

Denial of Petition 5COA-01HPB by Historic Preservation Board – 634 NE Boulevard Construct fence in side and back yard. The structure is a contributing structure to the Northeast Historic District – Gene Honeycutt, Owner and Agent.

REASONS FOR APPEAL:

REASON 1: Denial of the petition was not made in a timely manner 30-112 (d) (7) (e) requires a decision be made within 45 days of the hearing, it was not. Sec. 30-112 (d)(7)(h) deems such a failure to be approval.

Sec. 30-112 Historic preservation/conservation. Requires under its rules of procedure that an application must be placed on the next regularly scheduled meeting of the Historic Preservation Board.

30-112 (d) (7) (c) Procedure – Referral to Historic Preservation Board

Upon submittal of the completed application and required submittals the city manager or designate shall place the application on the next regularly scheduled meeting.

Honeycutt made application on 01/10/2001. The application was placed on the next regularly scheduled meeting of the Historic Preservation Board. After notice the meeting was held February 6, 2001.

The Board did not issue a decision at the meeting but unilaterally continued the meeting until March 22, 2001.

30-112 (d) (7) (e) (2) requires “The decision of the historic preservation board shall be made at the hearing or no later than 45 days after said hearing. The time period for reaching a decision may be extended by mutual written agreement between the applicant and the historic preservation board.

Mr. Honeycutt did not request or agree to any postponement. There is no written agreement extending the 45 day time period. No subsequent notices pursuant to paragraph (d) were made.

30-112 (d) (7) (h) states that “*Effect of failure to decide within time limit.* Failure of the historic preservation board to act within the time limits established shall be deemed approval of the application...”

The decision of the Historic Preservation Board being appealed from was made on April 3, 2001. The decision was made 55 days after the noticed hearing of February 6, 2001. The decision to deny Mr. Honeycutt’s application was not timely and is inconsistent with 30-112 (d)(7)(h) which deems such a failure as an approval.

REASON 2:

The Historic Preservation Board bases its denial on the following finding:

Fences in highly visible side and rear yards should be no greater than 48" tall if mostly open, and no greater than 36" tall if mostly closed, as design guidelines reflect the Historic Preservation Board's concern over creating long, blank, unarticulated spaces when fences, such as privacy fences are constructed near sidewalks.

The decision ignores important issues and factual matters.

a. **Safety** - The Honeycutts requested a privacy fence because of their concern for the safety of their children. They have two children one under 2 and another age 5. They wanted a fence to allow the children to play in the yard without the fear of them wandering off. Being close to downtown the neighborhood is frequented by persons who do not live in the neighborhood. There have been incidents in the neighborhood involving child molesters and rapists. Privacy was important to them because they did not want their children to be seen by dangerous persons. A 36" fence affords no safety and cannot contain a child. A 48" fence is not sufficient to protect the children from someone reaching over the fence.

The Honeycutt's have a dog and the breeder of the dog recommends a fence of 6 feet or higher to contain that breed of dog.

Sec 30-112 Findings indicates that protection of historic structures and neighborhoods is essential to the health, safety, morals and economic, educational, cultural and general welfare of the public. The protection of the nature of the neighborhood should be consistent with the safety of its occupants and especially their children. One of the purposes of 30-112 as stated therein is the enhancement of stabilization of neighborhoods and protecting the families of the neighborhood is very important to its stabilization.

b. **Visibility** - The Honeycutts contend their side and rear yard are not highly visible, they are currently bordered by various plantings that are higher than the proposed fence.

c. **Appropriateness** - The proposed fence was designed to fit the historic nature of the neighborhood, it is not simple a board fence but involves spaced brick columns with boards between and it would not create a "long blank, unarticulated space".

d. **Similar Structures** - There are numerous other privacy fences in the neighborhood that are highly visible and are not as well designed. The Board's denial of the Honeycutts' fence application is arbitrary and inconsistent with other approved fences in the neighborhood. The area to be enclosed is the Honeycutt's back yard many homes in the neighborhood have privacy fences in their back yards.

e. **Neighbors** - Immediate neighbors signed letters indicating the proposed fence was acceptable to them.

April 20, 2001



Nicholas T. Schroeder
Attorney for Gene Honeycutt
4010-D Newberry Road
Gainesville, FL 32607
352-376-8118

mending to him various alternatives that would make the project acceptable.

- h. *Effect of failure to decide within time limit.* Failure of the historic preservation board to act within the time limits established shall be deemed an approval of the application, and, upon request of the applicant, the building official shall issue any permit dependent upon the issuance of a certificate of appropriateness.
 - i. *Right to appeal.*
 - 1. Any person aggrieved by a decision rendered by the historic preservation board may appeal the decision to the city commission within 14 days from the date the decision by the historic preservation board is reduced to writing and served by certified or registered mail, return receipt requested, to such person. The appeal shall be made by filing a written notice of appeal within the above-proscribed time period with the clerk of the city commission. The notice shall set forth concisely the decision appealed from and the reasons or grounds for the appeal.
 - 2. The appeal shall be heard by the city commission at its next regular meeting, provided at least 14 days have intervened between the time of the filing of the notice of appeal and the date of such meeting. The city commission shall hear and consider all evidence and testimony placed before it, and shall render its decision promptly. The city commission may affirm, amend or reverse the historic preservation board's decision. The decision of the city commission shall be reduced to writing and shall constitute final administrative review. Appeals from decisions of the city commission may be made to the courts as provided by law.
 - j. *Posting requirement.* No work for which a certificate of appropriateness is required may be undertaken unless a certificate of appropriateness authorizing the work is conspicuously posted on the property with appropriate building permits where the work is to be performed.
- (8) *Emergency issuance of certificates of appropriateness.* The following procedure shall be used when the building official or designee determines that a building or structure listed on the Local Register of Historic Places or located within a district on the Local Register of Historic Places is in imminent danger of structural failure or collapse due to an event or events outside the control of the owner of the structure.
- a. The building official or designee shall convene a meeting of an emergency committee which shall consist of the building official or designee, the city manager or designee and a member of the historic preservation board who is an architect, engineer or building contractor. Every reasonable measure shall be taken to notify the owner of the structure, as determined by the records of the Alachua County Property Appraiser. In addition, the property on which the structure is located shall immediately be posted with the time and place of the emergency meeting.
 - b. At the meeting, the building official or designee shall present evidence of the imminent danger of structural failure or collapse. The owner and members of the public shall be given the opportunity to present evidence.
 - c. If the majority of the emergency committee finds that the structure is in

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CITY OF GAINESVILLE

Department of Community Development

April 5, 2001

Mr. Gene Honeycutt
634 NE Boulevard
Gainesville, FL 23601

Petition 5COA-01HPB.

634 NE Boulevard. Construct fence in side and backyard. The structure is a contributing structure to the Northeast Historic District. Gene Honeycutt, Owner and Agent.

Dear Mr. Honeycutt:

The Historic Preservation Board heard the above-cited item at its April 3, 2001 public meeting. The Board DENIED the request to construct a 6'tall privacy fence on highly visible side and rear yard.

The recommendation was based on the following findings:

- *Fences in highly visible side and rear yards should be no greater than 48" tall if mostly open, and no greater than 36" tall if mostly closed, as design guidelines reflect the Historic Preservation Board's concern over creating long, blank, unarticulated spaces when fences, such as privacy fences, are constructed near sidewalks.*

Section 30-112 of the Land Development Code also allows any person aggrieved by a decision rendered by the Historic Preservation Board (IIPB) to appeal the decision within 14 days from the date the decision by the HPB is reduced to writing and served by certified or registered mail, return receipt requested, to such person. Filing a written notice of appeal within the above-proscribed time period with the Clerk of the Commission shall make the appeal. The notice shall set forth concisely decision appealed from and the reasons or grounds for the appeal.

If appealed, it will be heard by the city commission at its next regular meeting, provided at least 14 days have intervened between the time of the filing of the notice of appeal and the date of such meeting. If you have any questions, please do not hesitate to contact me at (352) 334-5022.

Sincerely,

D. Henrichs
Historic Preservation Planner

Cc: Historic Preservation Board
Tom Saunders
Ralph Hilliard

Attachment Enclosed

Planning Division

P.O. Box 490 • Gainesville, FL 32602-0490
(352) 334-5023 • FAX (352) 334-3259

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U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

7099 3400 0001 9862 1000 004E 6605

Article Sent To:
Mr. Gene Henerycistt

Postage	\$.34
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.74

Postmark
Here

Name (Please Print Clearly) (to be completed by mailer) **D Henrichs**
~~Gene Henerycistt~~
 Street, Apt. No., or PO Box No. **624 N. G. Blvd., Box 11**
 City, State, ZIP+4 **Gainesville, FL 32601**