



MEMORANDUM

Office of the City Attorney

Legistar No. 070819

Phone: 334-5011/Fax 334-2229

Box 46

TO: Mayor and City Commission

DATE: July 14, 2008

FROM: City Attorney

FIRST READING

SUBJECT: Ordinance No. 0-08-05; Petition 112PDV-07 PB

An Ordinance of the City of Gainesville, Florida; rezoning certain lands within the City, as more specifically described in this ordinance, and amending the Zoning Map Atlas from "OR: 20 units/acre office residential district" to "PD: Planned Development District"; located in the vicinity of 725 Northeast 1st Street; commonly known as "Fat Tuscan Planned Development"; adopting a development plan report and development plan maps; providing conditions and restrictions; providing for enforcement; providing a severability clause; and providing an effective date.

Recommendation: The City Commission adopt the proposed ordinance.

PLANNING DEPARTMENT STAFF REPORT

The purpose of this PD zoning overlay is to allow for the creation of a small, pedestrian oriented neighborhood café in an office/residential (OR) zoning district having an office (O) land use designation. The neighborhood café will be established within a portion of the first floor of an existing two-story historic structure which is currently being used as a professional office building for an architectural firm. The existing structure is located within the Northeast Residential Historic District and the Traditional City special area. The Traditional City designation has been established for this area to improve the sense of place and community; improve the environment for business, including smaller, locally owned businesses; and facilitate a healthy economy by providing a vibrant mix of commercial, office, retail and residential uses in close proximity.

The unique aspect of this location is its pedestrian accessibility. It can be accessed via tree lined neighborhood sidewalks/streets that encourage patrons to walk and not drive to this destination. The addition of the café should contribute to the vitality of the area.

The applicant's request is for a neighborhood café to be open for breakfast and lunch six (6) days a week. The proposed development is unique and would provide an eatery within a short walking distance of many offices and residences. The petitioner indicates that the scale of the eatery will be small providing a total of no more than 30 seats. The total of 30 seats will be divided between the interior of the building and a new courtyard plaza area to be installed in the rear of the lot. The courtyard will provide seating in a garden like setting complete with water features and extensive landscaping.

This Petition is related to Petition 115 LUC-07 PB.

After notice was published in the Gainesville Sun on October 31, 2007, the Plan Board held a public hearing on November 15, 2007, and by a vote of 7-0 recommended the City Commission approve the petition.

After notice, the City Commission heard and approved the Petition by a vote of 7-0 at its meeting on January 28, 2008.

CITY ATTORNEY MEMORANDUM

The City Commission, at its meeting of January 28, 2008 authorized the city attorney's office to prepare and advertise the necessary ordinance rezoning certain lands within the city to planned development commonly known as "Fat Tuscan Planned Development" within the City of Gainesville.

This Ordinance requires two public hearings. If adopted on first reading, the second and final reading will be held on July 28, 2008.

Prepared by: Nicolle M. Shalley
Nicolle M. Shalley
Assistant City Attorney II

Approved and
Submitted by: Marion J. Radson
Marion J. Radson
City Attorney

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ORDINANCE NO. _____
0-08-05

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WHEREAS, by initiation of a petition by the property owner, publication of notice of a public hearing was given that the Zoning Map Atlas be amended by rezoning certain property within the City from the zoning category of "OR: 20 units/acre office residential district" to the zoning category of "PD: Planned Development District"; and

WHEREAS, notice was given and publication made as required by law of a public hearing which was then held by the City Plan Board on November 15, 2007; and

WHEREAS, notice was given and publication made of a public hearing which was then held by the City Commission on January 28, 2008; and

WHEREAS, the City Commission finds that the rezoning to Planned Development District is consistent with the City of Gainesville 2000-2010 Comprehensive Plan.

WHEREAS, at least ten (10) days notice has been given once by publication in a newspaper of general circulation prior to the adoption public hearing notifying the public of this

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1 proposed ordinance and of a Public Hearing in the City Commission Meeting Room, First Floor,
2 City Hall, in the City of Gainesville; and

3 **WHEREAS**, notice has also been given by mail to the owner whose property will be
4 regulated by the adoption of this Ordinance, ten days prior to the adoption of this ordinance; and

5 **WHEREAS**, Public Hearings were held pursuant to the published and mailed notices
6 described at which hearings the parties in interest and all others had an opportunity to be and were,
7 in fact, heard.

8 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
9 **CITY OF GAINESVILLE, FLORIDA:**

10 **Section 1.** The Zoning Map Atlas of the City of Gainesville is amended by
11 rezoning the following described property from the zoning category of "OR: 20
12 units/acre office residential district" to the zoning category of "PD: Planned
13 Development District";

14 See Exhibit "A" attached hereto and made a
15 part hereof as if set forth in full.
16

17 **Section 2.** The City Manager or designee is authorized and directed to make the
18 necessary change in the Zoning Map Atlas to comply with this Ordinance.

19 **Section 3.** The Development Plan attached to this Ordinance, which consists of
20 the following, is incorporated and made a part of this Ordinance as if set forth in full:

21 1. the development plan report entitled "PD Report Fat Tuscan Neighbor-
22 hood Café," dated April 29, 2008, attached and identified as Exhibit "B"; and

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1 2. development plan maps consisting of 6 sheets: 1) "cover sheet dated August 8,
2 2007 and revised October 10, 2007; October 29, 2007; December 10, 2007; February 8,
3 2008 and April 29, 2008; 2) "Existing Conditions Map", dated August 8, 2007 and
4 revised October 10, 2007; October 29, 2007; December 10, 2007; February 8, 2008 and
5 April 29, 2008; 3) "Planned Development Layout Plan Map" dated August 8, 2007 and
6 revised October 10, 2007; October 29, 2007; December 10, 2007; February 8, 2008 and
7 April 29, 2008; 4) "Building 1st Floor, Café Layout," undated; and 5) "East Elevation,"
8 undated; and 6) "Building Elevations," dated October 29, 2007 and revised December 10,
9 2007; February 7, 2008; February 15, 2008; and April 29, 2008; all attached and
10 identified as Exhibit "C."

11 The terms, conditions, and limitations of the Development Plan shall regulate the use and
12 development of the land described herein zoned to the category of Planned Development District
13 as provided in Chapter 30, Land Development Code of the City of Gainesville (hereinafter
14 referred to as "Land Development Code"). In the event of conflict between the provisions of the
15 development plan report (Exhibit "B") and the development plan maps (Exhibit "C"), the
16 provisions, regulations, and restrictions of the development plan maps (Exhibit "C") shall govern
17 and prevail.

18 **Section 4.** Any provision of this Ordinance to the contrary notwithstanding, the following
19 additional conditions, restrictions and regulations shall apply to the development and use of the
20 land:

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- 1 1. Sheet 4 of the development plan maps, entitled "Building 1st Floor, Café Layout," is
2 provided for illustrative purposes and is not to be considered a binding requirement
3 of this Ordinance, as the exact layout could change during the development review
4 process.
- 5 2. At the time of application for development plan review, the owner/developer shall
6 file an application for a Certificate of Final Concurrency with the City.
- 7 3. The development plan must comply with all relevant Transportation Concurrency
8 Exception Area (TCEA) requirements in the Concurrency Management Element of
9 the Comprehensive Plan.
- 10 4. The permitted uses by right in the planned development shall be limited to
11 professional office use (only those office uses within SIC Industry Groups 801, 802,
12 803, 804 and Major Groups 81 and 87) or residential use (up to 20 du/ac, provided
13 the density does not exceed two times the average permitted density of adjacent
14 residential districts), as principal uses, and an eating place as an accessory use.
- 15 5. The eating place shall not prepare on-site fried or barbequed foods.
- 16 6. All cooking and food preparation for the eating place shall be conducted indoors.
- 17 7. The indoor hours of operation of the eating place shall be limited to 7 a.m. until 4
18 p.m., Monday through Saturday. The outdoor hours of operation of the eating place
19 shall be limited to 9 a.m. until 4 p.m., Monday through Saturday.
- 20 8. The eating place shall be limited to a maximum of 30 seats, inclusive of indoor and
21 outdoor seats.

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- 1 9. No music or amplified sound of any type or nature shall be played or broadcast
2 outside of the walls of a fully enclosed building.
- 3 10. The owner/developer shall install and maintain a site-built, 6-foot privacy stockade
4 fence with pickets facing out, along the south property line, along the east property
5 line and immediately north of the plaza area for screening and aesthetic purposes.
- 6 11. The planned development shall provide bicycle racks to accommodate twelve (12)
7 bicycles.
- 8 12. All signage associated with this planned development shall be regulated by the
9 City of Gainesville Land Development Code.
- 10 13. Except as expressly provided herein, the use, regulations and development of the
11 property shall be governed by the "OR: 20 units/acre office residential district"
12 zoning district.
- 13 14. This Ordinance does not eliminate the necessity to obtain any required federal,
14 state, local and special district authorizations prior to the start of any activity
15 approved by this Ordinance. This Ordinance does not convey to the
16 owner/developer or create in the owner/developer any property right, or any
17 interest in real property, nor does it authorize any entrance upon or activities on
18 property which is not owned or controlled by the owner/developer, or convey any
19 rights or privileges.
- 20 15. The development shall comply with or exceed the Traditional City Special Area
21 Plan standards as provided in the City of Gainesville Land Development Code.

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1 16. The owner/developer shall obtain all necessary permits and commence and
2 complete construction of the planned development within three years from the
3 effective date of the rezoning as provided in Section 9 of this Ordinance. In the
4 event either the owner/developer fails to obtain the permits, or the permits are
5 issued but the development, or a portion of the development, fails to proceed to
6 completion within the three year period, then the development order granted by
7 this Ordinance shall expire and be deemed null and void at the expiration of the
8 three year period. The City Commission may grant a one-year extension to the
9 three year period, if a request for good cause is filed in writing with the Clerk of
10 the Commission at least thirty days prior to the expiration date. The City
11 Commission shall be the sole arbiter of good cause and its decision shall be final.
12 If the three year period, or one year extension thereof, expires without completion
13 of construction of the development, thereby rendering the development order
14 void, then the City will designate other appropriate zoning consistent with the
15 Comprehensive Plan.

16 **Section 5.** Any person who violates any of the provisions of this ordinance shall be
17 deemed guilty of a municipal ordinance violation, and shall be subject to fine or imprisonment as
18 provided by section 1-9 of the Gainesville Code of Ordinances. Each day a violation occurs or
19 continues, regardless of whether such violation is ultimately abated or corrected, shall constitute
20 a separate offense.

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2 This ordinance passed on first reading this _____ day of _____, 2008.

3 This ordinance passed on second reading this _____ day of _____, 2008.

EXHIBIT "A"
Legal Description for Fat Tuscan Neighborhood Café

The North 100 feet of the West 106 feet of Block 6, Brush's Addition to Gainesville, a Subdivision as per plat thereof, recorded in Deed Book "O", Page 218, of the Public Records of Alachua County, Florida.

EXHIBIT "B"

See report entitled "PD Report Fat Tuscan Neighborhood Café, Petition No. 112PDV-07PB, April 29, 2008" attached hereto and by this reference made a part hereof

EXHIBIT "C"

(Due to bulk and size, Exhibit "C" is not attached, but is on file in the Office of the Clerk of the Commission.)