

100634B

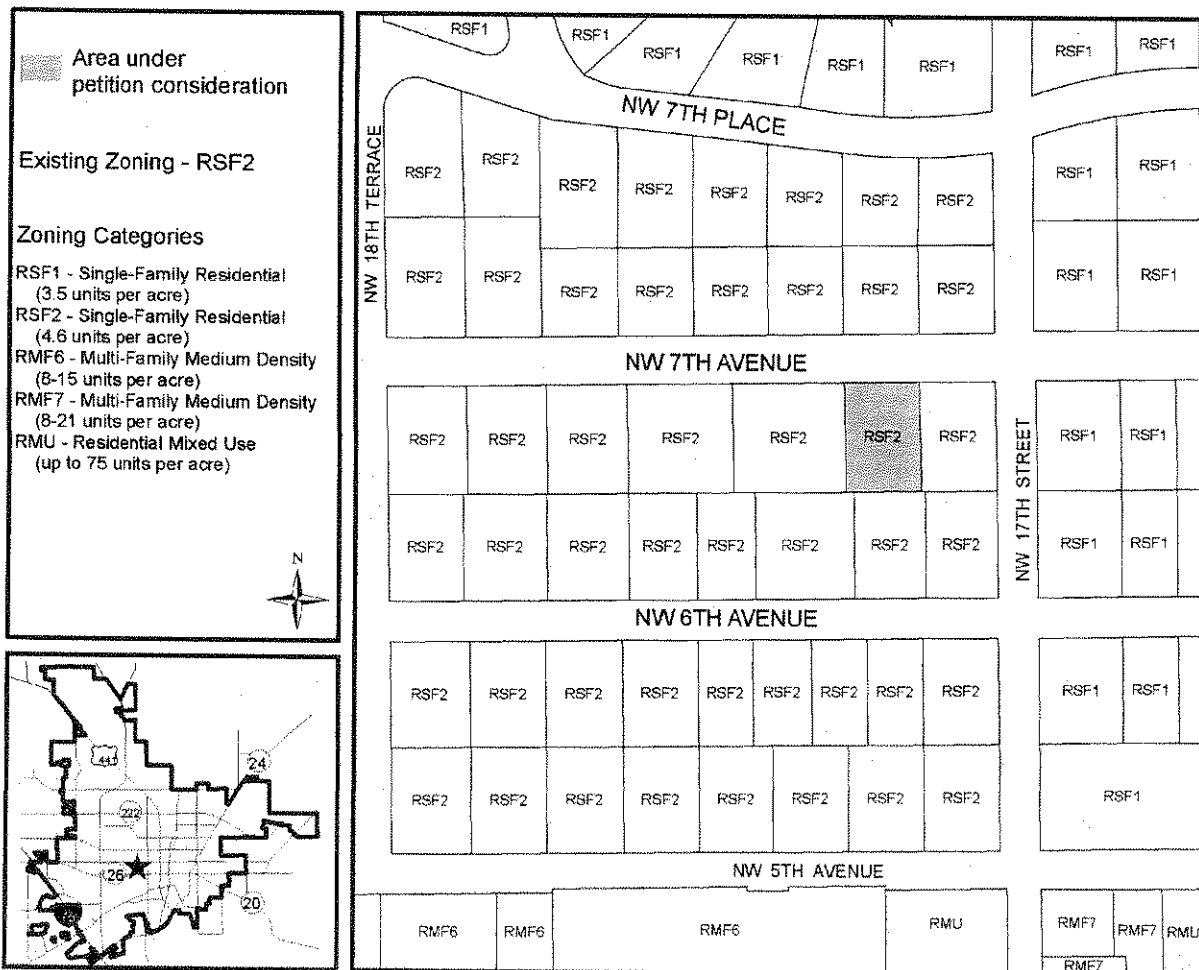
TO: Board of Adjustment

Item Number: 1

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.**



100634B

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 in to 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

- 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