

TO: Erik Bredfeldt
Director of Planning & Development Services

FROM: Lawrence Calderon
Lead Planner

DATE: February 15, 2012

SUBJECT: Petition DB-11-145 SUB. Causseaux Hewett and Walpole, Inc., Agent for City of Gainesville, property owner, ADC Development and Investment Group, LLC. (Grace Market Place) Design Plat review for a three-lot subdivision. Zoned I-2 (General Industrial) and PD (Planned Development). Located at 820 NW 53rd Avenue (1850 feet northwest of NW 53rd Avenue).

Recommendation

The attached Final Development Review Board Order in the matter of the above described Design Plat, was approved by the Development Review Board on February 9, 2012, after the City Commission packet was submitted. The City Attorney's office has requested that the signed Development Order and the Mitigation Plan be included as part of the documents for City Commission consideration. Staff has also included a signed copy of the minutes for the Development Review Board meeting of January 12, 2012. Please accept the attached document for City Commission review.

Respectfully submitted,



Lawrence Calderon
Lead Planner

Prepared by:
Lawrence Calderon



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Development Review Board

DATE: January 25, 2012

FROM: City Attorney

CONSENT

SUBJECT: **Development Review Board Order In the Matter of a Design Plat, FILED BY Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development and Investment Group, LLC, regarding a three-lot subdivision of property located at 820 NW 53rd Avenue, Gainesville, Florida.
PETITION No. DB-11-145 SUB.**

Recommendation: The Development Review Board authorize the Development Review Board Chair and Secretary of the Development Review Board to execute the Order.

The Development Review Board, at its meeting on January 12, 2012, announced its oral order in the matter of a Design Plat, filed by Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development and Investment Group, LLC, regarding a three-lot subdivision of property located at 820 NW 53rd Avenue, Gainesville, Florida; PETITION No. DB-11-145 SUB. At the conclusion of the hearing, the Development Review Board, by a vote of 4-0, approved the Design Plat, Petition DB-11-145 SUB. Development Review Board Rules require the decision to be embodied in a written order. Copies of the proposed order were submitted to the Petitioner, the Staff, and the affected parties.

Prepared by:

Sean McDermott
Assistant City Attorney I

Prepared, submitted,
and approved by:

Mason J. Radson
City Attorney

1 **BEFORE THE DEVELOPMENT REVIEW BOARD**
2 **CITY OF GAINESVILLE, FLORIDA**
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4

5 **IN THE MATTER OF DESIGN PLAT FILED BY**
6 **Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development**
7 **and Investment Group, LLC, regarding a three-lot subdivision of property located at 820**
8 **NW 53rd Avenue, Gainesville, Florida.**
9 **PETITION No. DB-11-145 SUB.**
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12 **ORDER**
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14 The Development Review Board of the City of Gainesville held a formal quasi-judicial
15 hearing on December 8, 2011, and January 12, 2012, on Petition DB-11-145 SUB, filed by
16 Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development and
17 Investment Group, LLC (“Petitioner”). The petition is for design plat approval for a 67.34 acre
18 parcel proposed to be subdivided into three lots, located in the vicinity of the 800 Block of NW
19 53rd Avenue, north side, on certain real property as more specifically described in the
20 applications and as shown on the design plat. Nalbandian Properties, LLC, Mogas Investments,
21 Inc., and Ropen Nalbandian (“Affected Parties”) were affected parties entitled to actual written
22 notice of this Petition as provided by the City’s Land Development Code. The Affected Parties
23 timely filed a request for formal quasi-judicial hearing as provided in the Rules of the
24 Development Review Board.

25 **STATEMENT OF THE PETITION**

26 Petition No. DB-11-145 SUB is a petition for design plat approval to subdivide a 67.34
27 acre parcel into three lots, on certain real property, as more specifically shown on the design plat
28 in the record.

29 **PRELIMINARY STATEMENT**

30 After hearing formal presentations and receiving evidence and testimony from the
31 Petitioner and City Staff, whose witnesses were duly sworn, receiving documentary evidence and

1 hearing argument of counsel for Affected Parties, and receiving comments from the general
2 public, the Development Review Board, by a vote of 4-0, approved Petition DB-11-145 SUB
3 with staff conditions.

4 FINDINGS OF FACT

5 Based upon the oral and documentary evidence presented at the formal quasi-judicial
6 hearing and the entire record of this proceeding, the following findings of fact are made:

7 1) Petitioner presented testimony and evidence that the design plat complies with the City's
8 Land Development Code, including public right-of-way access to the proposed lots and
9 the availability for the provision of necessary utilities through an existing public utility
10 easement.

11 2) Staff presented testimony and evidence that, based on their review, the design plat
12 conforms and is consistent with the City's Comprehensive Plan, Land Development
13 Code, and the Official Roadway Map. Specifically, staff presented testimony that the
14 design plat is compatible with surrounding land uses and complies with the minimum lot
15 size requirements. The design plat provides for adequate right-of-way within the design
16 plat for each lot, and with access to a public road, N.W. 53rd Avenue. In addition, staff
17 testified that the design plat is consistent with the City's Comprehensive Plan provision
18 that allows for 25% of industrial area to contain non-industrial uses. In rebuttal, staff
19 testified that the design plat is not inconsistent with the City's Comprehensive Plan
20 provisions regarding impacts to wetlands because any development of the subdivided
21 parcels must be approved separately in the future and must at that time comply with
22 Policy 1.1.1 (b) of the Conservation, Open Space & Groundwater Recharge Element,
23 which requires the avoidance or minimization of the loss of function or degradation of
24 wetland habitat and/or wetland hydrology.

- 1 3) The Affected Parties did not present any witnesses, but made oral argument through Mr.
2 Karl Sanders, attorney, who submitted documentary evidence into the record. Mr.
3 Sanders argued that the design plat is not consistent with the City's Comprehensive Plan,
4 Future Land Use Element, Policy 3.1.1 (b) in that any future development of the
5 subdivided parcels will result in the loss of function or degradation of wetland habitat
6 and/or wetland hydrology. Mr. Sanders therefore argued that the petition for design plat
7 should be denied.
- 8 4) The Development Review Board finds that after reviewing the entire record, including
9 the exhibits in evidence, the testimony of the witnesses, and hearing argument of counsel
10 for the Affected Parties, there is competent substantial evidence that:
- 11 a) Adequate right-of-way is shown on the design plat to provide access to each lot and
12 to public right-of-way;
 - 13 b) The provision for necessary utilities to the property as shown on the design plat has
14 been demonstrated through adjacent properties.
- 15 5) Legal counsel to the Board notified the Development Review Board and placed in the
16 record the very recent decision of the Eighth Judicial Circuit Court of Florida in the case
17 styled Nalbandian Properties, LLC, Ropen Nalbandian v. City of Gainesville (Case No.:
18 01-2010-CA-6288). In its "Final Order Dismissing Amended Petition for Writ of
19 Certiorari," the court ruled:
- 20 a) On the 9.784 acre parcel with a zoning designation of PD, uses such as retail, office,
21 service, and residential (uses which comprise the Homeless Center PD) are
22 specifically allowed in and consistent with the Industrial Land Use category as
23 described in the City's Comprehensive Plan.

1 b) The City of Gainesville Staff interpretation of the Industrial Land Use category
2 provision in the City's Comprehensive Plan that allows for 25% of industrial area to
3 contain non-industrial uses (uses such as retail, office, service, and residential that
4 comprise the Homeless Center PD) is reasonable and in accord with the essential
5 requirements of law.

6 These same issues were raised by counsel to the Affected Parties. The Development
7 Review Board takes notice of this decision.

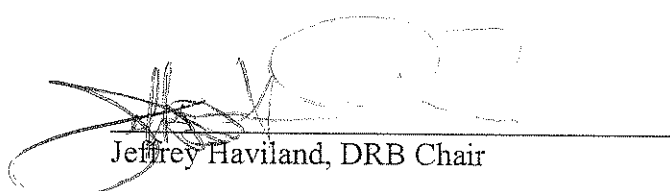
8 **CONCLUSIONS OF LAW**

9 Based on the findings of fact set forth above, the oral and documentary evidence
10 presented at the hearing, and the entire record of this proceeding, the Development Review
11 Board concludes that the design plat is consistent with and complies with all applicable factors
12 and criteria as prescribed by the City's Comprehensive Plan and Land Development Code.


13 **ORDER**

14 Petition DB-11-145 SUB is APPROVED with Staff Conditions.

15 Entered this 9th day of February, 2012.

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18 
Jeffrey Haviland, DRB Chair

19 Attest:

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21 
22 Ralph Hilliard, acting as Secretary to Development Review Board
23

24 Copies furnished to:

25
26 Robert Walpole, Causseaux Hewett and Walpole, Inc.,
27 Erik Bredfeldt, Director, Planning and Development Services
28 Karl Sanders, Attorney for Nalbandian Properties, LLC.

DEVELOPMENT REVIEW BOARD MINUTES

January 12, 2012 6:30 PM
 City Hall Auditorium- Basement
 200 E. University Ave

I. Roll Call: *Ralph Hilliard*

Members Present:	<input type="checkbox"/> Seth T. Lane	
<input checked="" type="checkbox"/> Jeffrey J. Haviland	<input checked="" type="checkbox"/> Katherine Norris	
<input type="checkbox"/> Gary Dounson	<input type="checkbox"/> Adam Zions	
<input checked="" type="checkbox"/> Douglas B. Nesbit	<input checked="" type="checkbox"/> Byron D. Flagg	
Staff Present:		
<input checked="" type="checkbox"/> Ralph Hilliard		
<input checked="" type="checkbox"/> Marion I. Radson		
<input checked="" type="checkbox"/> Lawrence Calderon		
<input checked="" type="checkbox"/> John W. Hendrix		

II. Approval of Agenda:

Motion By: Ms. Norris	Seconded by: Mr. Nesbit
Moved to: Approved Agenda	Upon Vote: Motion passed 4 to 0

III. Approval of Minutes:

Motion By: Mr. Nesbit	Seconded by: Ms. Norris
Moved to: Approve minutes of December 8, 2011	Upon Vote: Motion passed 4 to 0

IV. Requests to Address the Board: *None*

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V. Consent Items: *None*

BOARD MEMBERS		
Chair:	Vice Chair: Jeffrey Haviland	Secretary:
Regular Members:	Katherine Norris, Seth T. Lane, Douglas B. Nesbit, Byron D. Flagg, Lara L. Holimon, Gary Dounson, Adam Zions	
	Staff Liaison: Lawrence Calderon	

These minutes are not a verbatim account of this meeting and have been proofed and edited by staff. A video recording of this meeting is available on the City of Gainesville website (www.cityofgainesville.org) through Video Streaming option. Recordings are also available from the Planning and Development Services Department.

VI. Regular Items

A. Old Business:

01. Petition DB-11-145 Causseaux, Hewett & Walpole, agent for City of Gainesville, Property owner ADC Development & Investment Group, LLC. (Grace Market Place) Design plat review for a three-lot subdivision. Zoned I-2 (General industrial district) and PD (Planned Development). Located at 820 NW 53rd Avenue (1850 feet northwest of 53rd Ave)

Continuation of the December 8, 2011 meeting of the Development Review Board.

Mr. Radson, acting as counsel to the board, addressed the board on filing a voting conflict form. He asked the chair to address his declaration of conflict.

The Chair, Mr. Haviland explained why he declared a conflict at the first meeting. He stated that the situation resulting in his former conflict no longer exists and that he will be voting on the petition.

Mr. Radson discussed the issue of standing raised by Mr. Karl Sanders on behalf of his clients Mr. Nalbandian, Mogus Development and Nalbandian Properties LLC. He stated that, in accordance with the rules of the board, if a property owner is within the noticed area and received notice, that property owner is deemed an affected party for purposes of being able to request a formal hearing and participate as an affected party. The test of "standing" for purposes of litigation in a court proceeding is separate and distinct and may be raised by the City.

Mr. Radson advised the board to take notice of a recent decision of the Eighth Judicial Circuit in the case styled Nalbandian Properties, LLC, Ropen Nalbandian v. City of Gainesville, Case No.: 01-2010-CA-6288. While the decision is not yet final pending possible appeal, the decision is instructive on several matters raised by Mr. Sanders on behalf of his client. Mr. Radson then made reference to the court decision on matters pertaining to consistency with the Comprehensive Plan as to use, and the percentage of use allowed on the parcel. He also addressed the relevance of Paragraph 6 of Section 4 of the PD Ordinance #090763.

Since witnesses were not previously sworn at the hearing on December 8, 2011, as required by the board's Rules in a formal hearing, witnesses were sworn by the court reporter and Mr. Radson asked each witness two questions relating to their testimony and the witnesses responded.

Mr. Radson provided instructions to the board on the procedures for conducting the formal quasi judicial hearing and properly reaching a decision on the petition before them.

The Chair, Mr. Haviland, addressed the board on matters pertaining to staff as liaison to the board and staff as evaluator of the petition. He then provided instructions to the board on the format for

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conducting the meeting and, with the concurrence of the board members, allowed all parties to submit additional testimony and evidence.

Mr. Walpole address the board indicating that the applicant's application addresses all the requirements of the Comprehensive Plan and Land Development Regulations and that the petition as presented is consistent and in conformance with the Comprehensive Plan and the Land Development Code.

Mr. Sanders asked questions of Mr. Walpole pertaining to his claim of inconsistency with the Comprehensive Plan. He asked for a copy of the documents referenced by Mr. Walpole.

Mr. Calderon addressed the board indicating that the proposed subdivisions and resulting lots will be consistent with the requirements of the Land Development Code and the Planned Development. He stated that staff has reviewed the petition and found it to be consistent with the Official Roadway Map and with the Comprehensive Plan.

Mr. Sanders reminded the board that they also have the authority to deny the plat.

Mr. Sanders questioned the City's Environmental Coordinator, Mr. Hendrix on the issues of significant ecological communities and other environmentally sensitive features on the site.

The board asked a question about designating one lot in the subdivision as Conservation.

Mr. Hendrix informed the board that there are wetlands on site with a strong concentration on Lot 1 for mitigation which is planned to be placed in Conservation.

Discussion continued about avoidance, minimization and mitigation of impacted wetlands.

The board opened the floor for public comment.

Mr. Jack Donovan addressed the board in support of the petition.

Mr. Calderon addressed the board regarding a reference in the Comprehensive Plan to avoidance and minimization.

Mr. Sanders addressed the board stating his objection to staff's determination that the petition is consistent with the Comprehensive Plan.

Discussion and deliberation by the board continued, with questions to staff, the applicant and Mr. Sanders.

Mr. Radson informed the board about the procedures related to issuing the written Order as required by the board's rules.

BOARD MEMBERS		
Chair:	Vice Chair: Jeffrey Haviland	Secretary:
Regular Members:	Katherine Norris, Seth T. Lane, Douglas B. Nesbit, Byron D. Flagg, Lara L. Holimon, Gary Dounson, Adam Zions	
	Staff Liaison: Lawrence Calderon	

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Ms. Norris stated that she is convinced that the subdivision is consistent with the Comprehensive Plan, specifically the section from the Conservation, Open space and Water Recharge and that it is also consistent with the Land Development Code, specifically the City's existing zoning requirements and with the City's Official Roadway Map.

Motion By: Mr. Nesbit	Seconded by: Mr. Flagg
Moved to: Continue to next meeting	Upon Vote: Motion passed 4 to 0
Approve Petition DB-11-145SUB being that the petition is consistent with the goals and policies of the Land Use regulations and the Comprehensive Plan and is consistent with the City's rules, policies and plans. He recommended approval of all staff conditions and recommendations.	

B. New Business:

01. Petition DB-11-146 SPA Rex Weeks, Director of Construction agent for ABC, Liquors, Inc. Development Plan Review for construction of a retail store. Zoned: MU-2 (12-30 units/acre mixed use medium intensity). Located at 5820 NW 34th Street.

In the same motion related to approval of the agenda:

Motion By: Mr. Nesbit	Seconded by: Ms. Norris
Moved to: Continue to next meeting	Upon Vote: Motion passed 4 to 0

VII. Development Review Board Referrals: *None*

VIII. Information Items:

Mr. Hilliard addressed administrative issues of attendance with the board.

The board asked staff to review the language pertaining to avoidance and minimization of wetlands as stated in the Future Land Use Element and the Conservation Element of the Comprehensive Plan.

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IX. Board Member Comments: *None*


X. Adjournment:

Meeting adjourned at 9:20pm



Secretary, Development Review Board

2-09-2012
Date



Staff Liaison, Development Review Board
Lawrence Calderon

2/9/2012.
Date