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TO: City Plan Board

Item Number: 4

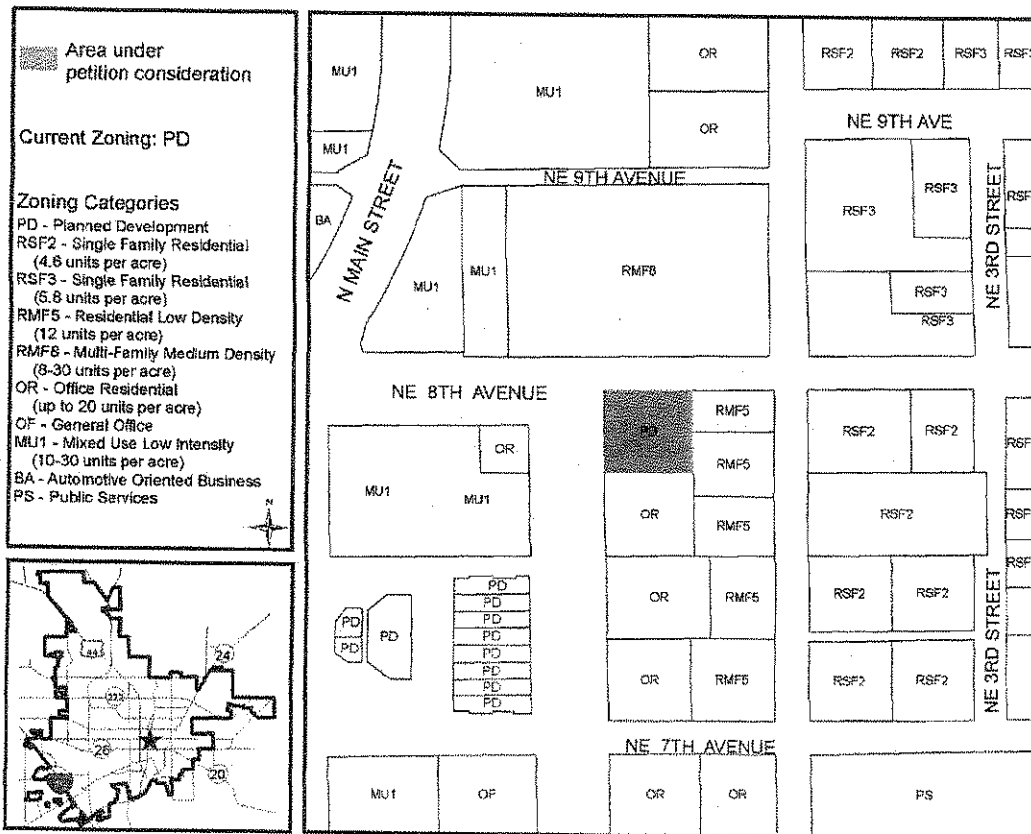
FROM: Planning Department Staff

DATE: July 22, 2010

SUBJECT: Petition PB-10-68 PDA, Jay and Michele Reeves. Amend the Planned Development Ordinance No. 070819 (Fat Tuscan) to allow additional office uses and outdoor music; expand the hours to 6:30am -10:30pm Monday thru Saturday, 8:00am-5:00pm on Sundays; and to increase the amount of seating from 30 to 70 seats. Located at 725 Northeast 1<sup>st</sup> Street.

**Recommendation**

Staff recommends approval of Petition PB-10-68 PDA, with conditions as described in Exhibit 6.



### **Explanation**

This is a request to amend the Fat Tuscan Café Planned Development (PD) Ordinance 070819. The applicants have indicated that “the revisions are necessary to correct a mistake that narrowly restricted the underlying OR Office Residential Uses without the applicant’s knowledge, and to allow adjustments in business hours, seating counts, food restrictions and use of the courtyard, hours and music.” Specifically the amendment would allow additional office uses and outdoor music; expand the hours to 6:30am -10:30pm Monday thru Saturday, 8:00am-5:00pm on Sundays; and increase the amount of seating from 30 to 70 seats. The applicants have indicated that the changes “are required due to development of the business, challenging economic conditions, and requests of the patrons.”

### Background

The City Plan Board heard the original Petition 112PDV-07PB on November 15, 2007 (see Exhibit 1) and voted to approve the petition 7-0 with modified conditions. The Board modified the staff conditions to address the concerns of the applicant. Attached as Exhibit 2 is the original staff report that lists the conditions, including condition 5 that limited the office uses within the PD.

On July 28, 2008, the City Commission approved Ordinance 070819 (see Exhibit 3) Fat Tuscan Café PD modifying the hours of operations to provide additional flexibility.

On May 11, 2010, the business was issued a Notice of Violation (see Exhibit 4) of the land development code for violating the conditions of the PD. Code Enforcement was asked to investigate the operations of the business after receiving a complaint about amplified music at the establishment. Code enforcement found that the business was indeed operating and advertising hours of operation in violation of the PD (see Exhibit 5)

### Proposed Amendments

The petitioners have proposed several modifications to the conditions in Ordinance 070819. Listed below are the conditions that are under consideration for change. The original condition is listed first, followed by the applicant’s modification and then staff’s recommendation and explanation.

#### **Condition 4**

The permitted uses by right in the planned development shall be limited to professional office use (only those office uses within SIC Industry Groups 801, 802, 803, 804 and Major groups 81 and 87) or residential use (up to 20du/ac, provide the density does not exceed two times the average permitted density of adjacent residential districts), as principal uses and an eating place as an accessory use.

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Applicant's modification:

Condition 4

The permitted uses by right in the planned development shall be limited to professional office use (~~only those office uses within SIC Industry Groups 801, 802, 803, 804 and Major groups 81 and 87~~) or residential use (up to 20du/ac, ~~provide the density does not exceed two times the average permitted density of adjacent residential districts~~), as permitted in the original OR zoning as principal uses and an eating place as an accessory use.

Staff's recommendation:

Condition 4

The permitted uses by right in the planned development shall be limited to professional office use (~~only those office uses within SIC Industry Groups 801, 802, 803, 804 and Major groups 81 and 87~~) to those uses shown in Table 1 or residential use (up to 20du/ac, provide the density does not exceed two times the average permitted density of adjacent residential districts), as principal uses and an eating place as an accessory use.

**Staff recommends using a table to list the uses instead of a reference to the general OR district. This will avoid any confusion in the future if the OR district is modified or eliminated. The restriction on residential use is the current restriction in the OR district and therefore should be retained. The OR district places a condition on the residential development whereas "residential density cannot exceed more than two times the average permitted density of adjacent residential districts".**

**Condition 5**

The eating place shall not prepare on-site fried or barbequed foods.

Applicant's Modification:

~~Condition 5~~

~~The eating place shall not prepare on-site fried or barbequed foods~~

Staff's recommendation:

~~Condition 5~~

~~The eating place shall not prepare on-site fried or barbequed foods (renumber conditions)~~

**Staff's concerns about smoke and other nuisances associated with outdoor cooking at an eating place are addressed in Condition 6 which states that: "All cooking and food preparation for the eating place shall be conducted indoors".**

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**Condition 7**

The indoor hours of operation of the eating place shall be limited to 7 a.m. until 4 p.m., Monday through Saturday. The outdoor hours of operation of the eating place shall be limited to 9 a.m. until 4 p.m., Monday through Saturday. Solid waste collection/pickup shall not take place prior to 9 a.m., Monday through Saturday, with no pickup on Sunday.

Applicant's Modification:

Condition 7

The indoor hours of operation of the eating place shall be limited to ~~7 a.m. until 4 p.m., Monday through Saturday.~~ The outdoor hours of operation of the eating place shall be limited to ~~9 a.m. until 4 p.m., Monday through Saturday.~~ open to the public from the hours of 6:30 a.m. until 10:30 p.m. Monday through Saturday and limited to Sunday hours of open to the public consisting of 8 a.m. to 5 p.m. Solid waste collection/pickup shall not take place prior to 9 a.m., Monday through Saturday, with no pickup on Sunday.

Staff's Recommendation:

Condition 7

The indoor hours of operation of the eating place shall be limited to 6:30a.m until 6:30p.m. ~~7 a.m. until 4 p.m., Monday through Saturday.~~ The outdoor hours of operation of the eating place shall be limited to 9 a.m. until 4 p.m., Monday through Saturday. Solid waste collection/pickup shall not take place prior to 9 a.m., Monday through Saturday, with no pickup on Sunday. After hours private parties shall be prohibited.

According to the applicant's PD report submitted October 2007, the original hours proposed by the applicant was 7 a.m. to 4 p.m. 6 days a week to serve breakfast and lunch. The current proposal would allow for an operation open to the public from 6:30 a.m. to 10:30 p.m. 6 days a week and from 8 a.m. to 5 p.m. on Sundays. Staff has the same concerns as we had with the original petition: 1) days of operation; 2) hours of operation; 3) intensity of the development; 4) noise created; and 5) odors generated outside the premises. The hours of operation and the days of operation have a direct impact on the adjacent residential properties. The purpose of the restrictions on hours and days of operation were placed on the use to make it function more like an office use. The office use does not have outdoor activities and all uses are conducted entirely within an enclosed building. Office uses are generally closed to the general public after 6 p.m. and are also generally closed on the weekend. In the original petition staff felt that due to the property location on 8<sup>th</sup> Avenue that the outdoor activity of the business would be negligible given the ambient traffic noise during the workweek. In making a recommendation staff must review the PD amendments based on the impacts to the community in general, and not at who owns the property. Unfortunately the planning process does not allow planners to base a decision on what is best for one property over that of others. It is staff's opinion that residential property owners should have the right to the peace and enjoyment of their neighborhood without a business intrusion into the neighborhood. The residential properties were there first and the business was allowed to come in as a small neighborhood café.

During the review process it has been brought to staff's attention that the premises are being use for gatherings outside of business hours approved in the PD. For example the facilities were used for a high school reunion gathering on June 25. Based on these concerns and the failure of the applicant to comply with the rules of the original PD, staff can only recommend minor changes to the hours of operation. It is staff's opinion that the minor changes recommended are those that would allow the residential areas near the site to remain viable and protect the character of the Duck Pond Residential Historic District. Staff's proposed hours would be consistent with those of an office district.

**Condition 8**

The eating place shall be limited to a maximum of 30 seats, inclusive of indoor and outdoor seats.

Applicant's modification:

Condition 8

The eating place shall be limited to a maximum of ~~30~~ 70 seats, ~~inclusive of indoor and outdoor seats.~~

Staff's recommendation:

Condition 8

The eating place shall be limited to a maximum of ~~30~~ 70 seats, inclusive of indoor and outdoor seats not exceeding fire safety or building capacity.

Staff is concern about public health, safety and welfare regarding the number of seats. Since the applicant has not presented any information or designs that indicate that the space can accommodate the additional seating, staff feels that it is important to have the clarifying language and to limit capacity to that of building and fire safety code.

**Condition 9**

No music or amplified sound of any type or nature shall be played or broadcast outside of the walls of a fully enclosed building.

Applicant's recommendation:

Condition 9

~~No music or amplified sound of any type or nature shall be played or broadcast outside of the walls of a fully enclosed building.~~ All uses of the outside enclosed courtyard shall adhere to the City of Gainesville's Noise Ordinance, Chapter 15 of the Code of Ordinances. No amplified music shall be broadcast outside the walls of the fully enclosed building on Sundays.

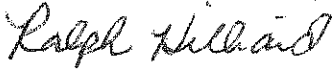
Staff recommendation:

Condition 9

No music or amplified sound of any type or nature shall be played or broadcast outside of the walls of a fully enclosed building.

Staff recommends that the prohibition on outdoor music be retained. It is this very reason that the regulations in Sec. 30-87 for outdoor cafés prohibits the location of such cafes in a side or rear yard when abutting any residential property. The regulations further state that: "noise, smoke and odor or other environmental nuisances shall be confined to the lot upon which the outdoor café is located". Given the location of the outdoor courtyard to adjacent residential use, outdoor amplified music as proposed by the applicant's would be a nuisance to most residents in the area. While some existing residents may not complain, future residents who unknowingly rent or purchase in the area may see this as a problem. It was a noise complaint that generated the notice of violation investigation. The noise ordinance is enforced by the Police Department and given their priorities noise complaints are not going to be high priority.

Respectfully submitted,



Ralph Hilliard  
Planning Manager

**List of Appendices**

<b>Table 1</b>	<b>List of permitted office uses</b>
<b>Exhibit 1</b>	<b>Plan Board Minutes of November 15, 2007</b>
<b>Exhibit 2</b>	<b>Staff Report for Petition 112 PDV- 07PB</b>
<b>Exhibit 3</b>	<b>Ordinance 070819</b>
<b>Exhibit 4</b>	<b>Notice of Violation</b>
<b>Exhibit 5</b>	<b>Fat Tuscan's Web page advertising May 11, 2010</b>
<b>Exhibit 6</b>	<b>Staff recommended conditions</b>
<b>Exhibit 7</b>	<b>Petitioner's application and backup materials</b>