



# MEMORANDUM

Office of the City Attorney

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

LEGISLATIVE ITEM NO. 980987

DATE: May 24, 1999

TO: Mayor and City Commission

FROM: City Attorney

FIRST READING

SUBJECT: Ordinance No. 0-99-34, Petition No. 229PDA-98PB

An Ordinance of the City of Gainesville, Florida; amending Ordinance No. 960941 that adopted the Planned Development commonly known as "Magnolia Park" located in the vicinity of 4700-4900 block of N.W. 39<sup>th</sup> Avenue; amending the planned development to allow an eating place with a drive-through facility under certain terms and conditions; amending the planned development report to conform with the amendment; providing a severability clause; and providing an immediate effective date.

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Recommendation: The City Commission adopt the proposed ordinance.


## STAFF REPORT

At the public hearing of February 8, 1999, the City Commission approved the petition with conditions. The amended condition stated that "if the petitioner can demonstrate that the traffic impact is not increased, there would be no time restriction associated with the drive-through". Based on the review of a traffic study amendment submitted by the petitioner, which states that the proposed eating place with an accessory drive-through has a higher a.m. peak hour trip generation rate compared to that of a financial institution with a drive-through, the petitioner has not demonstrated that the traffic impact will not be increased, therefore the condition related to a time restriction remains. However, if the City adopts a Transportation Concurrency Exception Area which includes this development, the development would no longer be subject to level of service requirements related to traffic concurrency, therefore it would be unnecessary to apply the time restriction. Additionally, if the level of service on the impacted roadway segments can accommodate additional trips, it would be unnecessary to apply the time restriction. Recent discussions with the Alachua County Public Works Department have indicated that the impacted roadway segments may have additional capacity available, based on recently revised traffic studies.

## CITY ATTORNEY MEMORANDUM

If the City Commission adopts the ordinance on first reading, second reading will be held on June 14, 1999.

Prepared by:

  
\_\_\_\_\_  
Marion J. Radson  
City Attorney

MJR/afm

ORDINANCE NO. \_\_\_\_\_  
0-99-34

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4       **An Ordinance of the City of Gainesville, Florida; amending**  
5       **Ordinance No. 960941 that adopted the Planned Development**  
6       **commonly known as "Magnolia Park" located in the vicinity of**  
7       **4700-4900 block of N.W. 39<sup>th</sup> Avenue; amending the planned**  
8       **development to allow an eating place with a drive-through**  
9       **facility under certain terms and conditions; amending the**  
10       **planned development report to conform with the amendment;**  
11       **providing a severability clause; and providing an immediate**  
12       **effective date.**

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14       **WHEREAS,** The Petitioner has petitioned the City to amend the Magnolia Park to allow  
15       an eating place with an accessory drive-through facility in lieu of a financial institution under  
16       certain terms and conditions; and

17       **WHEREAS,** the City Plan Board authorized the publication of notice of a Public Hearing  
18       to amend the Planned Development commonly known as "Magnolia Park; and

19       **WHEREAS,** notice was given and publication made as required by law of a Public Hearing  
20       which was then held by the City Plan Board on January 21, 1999 and

21       **WHEREAS,** notice was given and publication made of a Public Hearing which was then  
22       held by the City Commission on February 8, 1999; and

23       **WHEREAS,** the City Commission finds that the amendment of the Planned Development  
24       District ordinance is consistent with the City of Gainesville 1991-2001 Comprehensive Plan.

25       **WHEREAS,** pursuant to law, an advertisement no less than two columns wide by 10  
26       inches long was placed in a newspaper of general circulation notifying the public of this  
27       proposed ordinance and of the public hearing to be held in the City Commission Meeting Room,  
28       First Floor, City Hall, in the City of Gainesville at least seven (7) days after the day the first

CODE: Words underlined are additions.

1 advertisement was published; and

2           **WHEREAS**, a second advertisement no less than two columns wide by 10 inches long  
3 was placed in the aforesaid newspaper notifying the public of the second public hearing to be  
4 held at the adoption stage at least five (5) days after the day the second advertisement was  
5 published; and

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

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

11           **Section 1.** Subsection 1 of Section 3 of Ordinance No. 960941, adopted on October 13,  
12 1997 is amended by adopting a revised development plan report as follows:

13           Section 3: The Development Plan attached to this Ordinance which consists of the  
14 following:

- 15           1. the revised development plan report entitled "Magnolia park Planned Development  
16 Standards and Conditions", attached and identified as Exhibit "B"; and

17           **Section 2.** Conditions 13 and 32 of Section 4 of Ordinance No. 960941 adopted on October  
18 13, 1997, are amended to read:

19           Section 4. The following conditions, restrictions and regulations (hereinafter "conditions")  
20 shall also apply to the development and use of the land. In the event of conflict between the  
21 Development Plan referenced in Section 3 of this Ordinance and the following conditions, the  
22 conditions shall govern and prevail.

CODE: Words underlined are additions.

1           CONDITION 13: Only one drive-through shall be permitted in Pod “A” or “B” as  
2 identified on the PD Layout Plan and only used as an accessory use to a financial institution or an  
3 eating place. Direct access to the drive-through is not permitted from N.W. 39<sup>th</sup> Avenue. The  
4 facility shall be designed to gain access internally from the Magnolia Park development via a  
5 vehicular use area or an internal driveway. The development plan shall direct drive-through traffic  
6 to areas of the development that will have the least conflict with pedestrian and bicycle travel  
7 routes.

8           CONDITION 32: A traffic impact study prepared by a professional engineer, registered in  
9 the State of Florida, shall be performed at the sole cost and expense of the owner/developer to  
10 determine the impact of this development on N.W. 39<sup>th</sup> Avenue prior to development plan review  
11 of the first phase. The development shall be designed to encourage turning movements to utilize  
12 the existing traffic signal at the intersection of N.W. 39<sup>th</sup> Avenue and N.W.51<sup>st</sup> Street. The traffic  
13 impact study shall analyze existing intersections and proposed intersections. It shall include, but  
14 not be limited to, a capacity analysis of the intersections, geometric recommendation for  
15 intersections (e.g., auxiliary lanes and bus bays). The results of the traffic study shall be used for  
16 traffic safety and concurrency management purposes. If it is determined by the City’s Traffic  
17 Engineer that, based on the traffic study, additional conditions are deemed necessary as an  
18 amendment to this ordinance may be required. Additionally, if the owner/developer chooses to  
19 build and operate an eating place with an accessory drive-through facility in lieu of the financial  
20 institution with an accessory drive-through in either Pods A or B, then the traffic study referenced  
21 above shall be revised to show the change in trip generation and distribution. If the revised traffic

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1 study shows that the overall trip generation (including average daily trips and a.m. and p.m. peak  
2 hour trips of adjacent street traffic) for the proposed eating place is equal to or less than the trip  
3 generation for the financial institution, granted under the preliminary concurrency certificate issued  
4 for this development on October 13, 1997, then the eating place with an accessory drive-through  
5 facility may be granted development plan approval provided all of the terms and conditions of this  
6 ordinance and the Land Development Code are met. If the proposed eating place generates more  
7 trips than the financial institution during the a.m. peak, then the drive-through shall not operate  
8 during the hours between 7 a.m. and 9 a.m. However, if the City adopts the Transportation  
9 Concurrency Exception Area which includes this development, or if the level of service on the  
10 impacted roadway segments (including reserved trips) can accommodate additional trips, then there  
11 shall be no time restrictions placed on the operation of the drive-through, and the eating place with  
12 an accessory drive-through facility may be granted development plan approval provided all of the  
13 terms and conditions of this ordinance and the Land Development Code are met.

14 **Section 3.** Except as modified, amended or changed by this ordinance, the terms,  
15 provisions and conditions of Ordinance No. 960941, adopted on October 13, 1997, shall remain in  
16 full force and effect, and shall govern the development and use of the property described in Section  
17 1 of Ordinance No. 960941.

18 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid  
19 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect

CODE: Words underlined are additions.

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the validity of the remaining portions of this ordinance.

**Section 5.** This ordinance shall become effective immediately upon final adoption.

**PASSED AND ADOPTED** this \_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
KURT LANNON,  
CLERK OF THE COMMISSION

\_\_\_\_\_  
MARION J. RADSON, CITY ATTORNEY

This ordinance passed on first reading this \_\_\_ day of \_\_\_\_\_, 1999.

This ordinance passed on second reading this \_\_\_ day of \_\_\_\_\_, 1999.

229PDA-98PB

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**BROWN & CULLEN INC.**  
 CIVIL ENGINEERS and LAND PLANNERS

4055 N.W. 43rd Street, Suite 21  
 Gainesville, Florida 32606  
 PHONE (352) 375-8999 FAX (352) 375-0833  
 e-mail - bcil@gru.net

# LETTER OF TRANSMITTAL

DATE: <b>4/14/99</b>	JOB NO:
ATTENTION: <b>Kathy Winburn</b>	
REGARDING	
<b>Magnolia Parke PD Report revisions</b>	

TO: Community Development Department  
City of Gainesville  
Thomas Center

WE ARE SENDING:  Attached  Prints  Construction Sets  Shop Drawings  
 Change Order  Plans  Copy of letter  Specifications  
 Other \_\_\_\_\_

COPIES	SETS	DESCRIPTION
1		Magnolia Parke PD Report revisions

THESE ARE TRANSMITTED as checked below:

For approval  For your use  As requested  For review and comment  
 Other \_\_\_\_\_

REMARKS

**Kathy: Attached are the revised tables for the Magnolia PD Report. Please forward this information to the City Attorney's office so that they can prepare the revised PD ordinance. We would like this scheduled on the Commission's agenda as soon as reasonably possible. I have discussed the conditions related to trip generation with Onelia Lazzarri, and we will set up a meeting prior to the City Commission's first reading of the revised PD ordinance. As always, please do not hesitate to call me if you have any questions.**

COPY TO: \_\_\_\_\_

SIGNED: \_\_\_\_\_

*Mike Costme*

If enclosures are not as noted, kindly notify us at once.

Table 2-5: STANDARDS FOR AUTO CIRCULATION AND DRIVE THROUGH FACILITIES

POD	A	B	C	D	E	F	G
Auto Circulation	Access shown generally on layout plan. Exact location and movement of circulation will be established at the time of development review.	Access shown generally on layout plan. Exact location and movement of circulation will be established at the time of development review.	Generally shown on layout plan. Exact location, dimensions and movement of circulation will be established at the time of development review.	Generally shown on layout plan. Exact location, dimensions and movement of circulation will be established at the time of development review.	Generally shown on layout plan. Exact location, dimensions and movement of circulation will be established at the time of development review.	Generally shown on layout plan. Exact location, dimensions and movement of circulation will be established at the time of development review.	Access shown generally on layout plan. Exact location and movement of circulation will be established at the time of development review.
Drive-through Facilities	Only one drive-through shall be permitted in Pod "A" or "B" as identified on the PD Layout Plan and only in association with a financial institution or restaurant. Direct access to the drive-through shall not be permitted from N.W. 39th Avenue. The facility shall be designed to gain access internally from the development via a vehicular use area or an internal driveway. The development plan shall direct drive-through traffic to areas of the site that will have the least conflict with pedestrian and bicycle travel routes. Designed to maintain the integrity of pedestrian corridors addressed elsewhere. Required sidewalks shall not cross stacking areas.	Only one drive-through shall be permitted in Pod "A" or "B" as identified on the PD Layout Plan and only in association with a financial institution or restaurant. Direct access to the drive-through shall not be permitted from N.W. 39th Avenue. The facility shall be designed to gain access internally from the development via a vehicular use area or an internal driveway. The development plan shall direct drive-through traffic to areas of the site that will have the least conflict with pedestrian and bicycle travel routes. Designed to maintain the integrity of pedestrian corridors addressed elsewhere. Required sidewalks shall not cross stacking areas.	Not allowed	Not allowed	Not allowed	Not allowed	Not allowed



XII. Uses

Table 4:  
(Major Group, Industry Group and Group Numbers are those listed in the Standard Industrial Classification Manual, 1987).

SIC	Uses	Conditions
	Residential (up to 20 dwelling units per acre development)	
	Residential use buffer	
	Compound uses	
	Any accessory uses customarily and clearly incidental to any principal use	
	Family day care homes	When part of a permitted single-family or multifamily residential component and in accordance with state law
	Eating places	Including outdoor cafes as either principal or accessory uses. Excluding adult entertainment establishments as defined by City of Gainesville Code of Ordinances. <u>Excluding-d Drive-throughs are allowed only in Pods A and B.</u>
	Places of religious assembly	
	Repair services for household needs	As defined in Article II
	Bed and breakfast establishments	
GN-074	Veterinary services	Only within enclosed buildings and in accordance with Article VI
GN-078	Landscape and horticultural services	
IN-0752	Animal specialty services, except veterinary	Only within enclosed buildings
MG-15	Building construction-General contractors and operative builders	
GN-171	Plumbing, heating and air conditioning	
GN-172	Painting and paper hangers	
GN-173	Electrical work	
MG-27	Printing, publishing and allied industries	
MG-43	U.S. Postal Service	
GN-472	Arrangement of Passenger service	Offices only, with no operation of passenger tours from the site
GN-481	Telephone communications	
GN-482	Telegraph and other message communications	
GN-483	Radio and television broadcasting stations	Excluding freestanding towers
GN-523	Paint, glass and wallpaper stores	
GN-525	Hardware stores	
MG-526	Retail nurseries, lawn and garden supply stores	
MG--53	General merchandise stores	
MG-54	Food stores	
GN-533	Auto and home supply stores	Excluding garage and installation facilities
MG-56	Apparel and accessory stores	
MG-57	Furniture, home furnishings and equipment stores	
MG-59	Miscellaneous retail	Excluding direct selling establishments (IN-5963), fuel dealers (IN-5983); including liquor stores (IN-5921), limited to 2,000 square feet and excluding onsite consumption ; inside storage for all uses
Div. H	Finance, insurance and real estate	Excluding cemeteries (IN-6553)
MG-72	Personal services	Excluding funeral services and crematories, and linen

