

Zoning of the NW 39th Ave. Garage

10/22/07
CITIZEN
COMMENT
070609

From: Tanner Andrews; Tanner Andrews, P.A.; P.O. Box 1208; DeLand 32721.
To: Rev. Barbara Ann Ruth
CC: City of Gainesville Mayor & Commissioners
Subject: Zoning of 405 NW 39th Ave. (Garage) Property
Refs: City Atty memo of 12-Sep-2007

Question Presented

You have asked, essentially, whether the current vehicle maintenance facility at 405 NW 39th Ave. is permitted under the present PS zoning classification, or whether it is a "grandfathered" use.

Brief Answer

The facility appears to be grandfathered, which is to say, it is not a conforming use but was in place when the zoning ordinance was adopted. The zoning ordinance did not provide a "use by right" covering a vehicle maintenance facility.

Applicable Rules

When interpreting a law, we start with the plain language of the law. Where the language is clear, we should end there as well.

The city-wide re-zoning ordinance adopted 19-Jul-1982, Ord. 0-82-76 (pet. 48-82 PB), replaced all earlier zoning ordinances.

The PS zoning classification, § 30-75, provides that "Specific use(s) permitted shall be specified as a part of the ordinance."

Zoning of the NW 39th Ave. Garage

Background

A vehicle maintenance facility (the “Garage”) was constructed at 405 NW 39th Ave. (the “Property”) around 1965. The debris piles, containing construction and other debris, are hard to date because no permit for a dump is on record.

Had the Garage been constructed by someone other than the city, it would have been subject to the 1962-63 zoning ordinance. Copies of relevant portions of the former ordinance are attached hereto as appendix ‘A’. Because the Garage was constructed after 1963, it would not have benefited from the cure provision of former § 29-53(2), App. A pg 543, because that provision was adopted prior to construction, App. A pg 543n*, and by its terms only applies to uses existing at the time of adoption.

Even if the Garage had been made conforming by the earlier ordinance, that ordinance was entirely superseded. The City of Gainesville adopted its city-wide re-zoning ordinance, Ord. 0-82-76 (the “Ordinance”) on 19-Jul-1982. Extracts from the minutes of the Commission and Planning Board are attached hereto as appendix ‘B’. A copy of the Ordinance is attached as appendix ‘C’. With a few uninteresting exceptions on the northwest edge of the City, App. C pg 6, the Ordinance entirely replaced the existing zoning with a new, comprehensive zoning plan. Since the initial adoption in 1982, the zoning code has been re-codified as Chapter 30.

The City Attorney has in his memo used older material; for this paper I use the current codification, which appears to differ only in numbering. The PS zoning portion, § 30-75, is attached hereto as appendix ‘D’. The non-conforming use portion, § 30-346, is attached hereto as appendix ‘E’.

Zoning of the NW 39th Ave. Garage

The 1982 Ordinance

The planning board, in offering advice to the City Commission, announced one of the principles that guided their advice: the City should seek to zone all properties to the lowest classification that would make them conforming. App. B pg 6. That is, the goal was to make all properties conforming, eliminating grandfathered uses.

It appears that this effort was largely successful. Still, as with any human endeavor, there were errors and omissions. The code of ordinances recognizes this in § 30-346. App. E pg 11. Some errors were caught promptly. The minutes of the meeting reflect that there was one industrial area for which a donut hole zoning was sought, App. B pg 1399, a paint company requested a change, App. B pg 1340, and a few residential owners sought down or up zonings, App. B pg 1341.

The minutes do not reflect any discussion of the on NW 39th Ave. This may be attributed to the fact that the owner was satisfied with the zoning; only those both aware of and dissatisfied with proposed changes would appear to request a change.

The zoning atlas shows the property as being designated as “PS”, with a use of “municipal service center”. This language is exceedingly general, such that city staff, already concerned with zoning changes affecting the majority of the city, could have believed and been satisfied that a garage was permitted.

Zoning of the NW 39th Ave. Garage

Permitted Uses in PS

The language of the zoning ordinance does not actually permit a garage or a dump because neither use is called out as a use of the Property. The language of § 30-75

controls the PS zoning classification:

(c) *Uses permitted by right.* The specified use(s) permitted on the subject property shall be specified as a part of the ordinance which places this classification on a particular area of ground and may include:

- (1) Libraries and information centers (GN-853).
- (2) U.S. Postal Service (MG-43).
- (3) Museums and art galleries (GN-841).
- (4) Public administration (D-J).
- (5) School buses (GN-415).
- (6) Public golf courses (IN-7992).

...

(14) Public service vehicles, in accordance with the conditions and requirements of Article XI.

(15) Any other use specified in the ordinance rezoning property to this classification.

...

App. D pg 7. The list of example uses is extensive, but it is by no means exclusive.

The uses in PS may be any identified above, but could also include “any other use” specified in an ordinance re-zoning property to this classification. § 30-75(c)(15).

The PS zoning classification is, therefore, extremely flexible. Almost anything could be placed on property having this classification. The intent is that the uses be compatible with the surrounding property. § 30-75(a). The requirement, however, is that “the specific use(s)”, § 30-75(c), must be identified in the ordinance zoning the property as PS.

Zoning of the NW 39th Ave. Garage

Specificity Requirement

The requirement of specificity is not met if the specific use is not identified. This interpretation is supported by the precatory language of §30-75(b), which says that the zoning is “intended to” ... (3) “Allow, through the re-zoning process, public review of specific utility, recreation and public facility uses”. This objective would be ill served if we were to ignore the language of § 30-75(c) which requires identification of “specific uses”.

The ordinance also gives us guidance by example as to what might be specific uses. Rather than vague terms, such as “public service”, it calls forth things such as “libraries”, “U.S. Postal Service”, “museums”, “amusement parks”, and the like. App. D pg 7. For each of these examples, we know what will be there: a library, a post office, or a museum.

On page 2 of his memo, the City Attorney gives us examples of uses that might be named in an ordinance as well: storm water, drainage, airport, recreation facility, public park, and museum. Again, for each of these, we know what will be there: storm water ponds and drainage, a place where airplanes take off and land, kids playing, a park, and a museum.

Compare these examples to “municipal service center”. The term is vague, and could cover several of the specific uses identified in the ordinance. The ordinance calls for specificity, § 30-75(c), and identifies the reason as giving the public notice of the actual uses of the land, § 30-75(b). Accordingly, the term “municipal service center” does not satisfy the ordinance’s requirement to identify “[t]he specific use” permitted on the property.

Zoning of the NW 39th Ave. Garage

If we assigned meaning to the term “municipal service center”, surely it would mean a facility for municipal activities “that serve and are used directly by the public”, § 30-75(a). That is, it would be a place where people pay water bills, obtain building permits, or ask about garbage pick-up. Yet none of these activities take place on the Property.

In addition to the vehicle maintenance operations, the Property is used as a dump for construction debris. Pictures of the Property, showing debris and flooding with more debris in the background, are attached as appendix ‘F’.

The public is not invited onto the Property to receive any municipal services. The term “municipal service center”, then, cannot describe the present uses of the Property. Neither a garage nor a dump fit within that term.

New Uses

It is proposed that the Garage be expanded and used not only for city vehicles, but also for large volume of third party (GRU) vehicles. The work should be done on a fee for service, or “enterprise”, basis. Thus, the proposed use would not be “municipal” in nature.

This changes the face of the operation. It would no longer be a City facility for in-house use. Rather, it would become a business, which should be budgeted as an enterprise fund. There is a clear difference between an in-house support facility and one offering services to outside entities.

The difference in volume alone changes the impact. The commercial nature of the enterprise also affects its impact on and perception by the neighbors. Here, we have

Zoning of the NW 39th Ave. Garage

the difference between the City working on its own vehicles and the City working on many third-party vehicles. The boundary is between municipal and outside vehicles; that boundary is erased when the City undertakes to work on outside vehicles at the Garage.

Such a use cannot be considered in any wise consistent with the zoning and the vague term “municipal service center”. Not only are the services not municipal services, the Garage is not restricted to serving municipal customers.

Such a use would be consistent with zoning only if the City were to apply the use “large vehicle service garage” to the land. Applying such a use would constitute re-zoning. This would, however, violate the intent of § 30-75(a) that PS zoning may be “surrounded by any other zoning district compatible with the intended use of the facility”. The present facility is not a good neighbor to the surrounding residential area, and as operated appears incompatible. A large vehicle service garage would obviously be incompatible with surrounding residential zoning.

Late-Produced Compliance Permit

The City, in its quest to expand the Garage, has issued itself a zoning compliance permit. Such a permit is required before construction by § 30-357(a). The compliance permit section § 30-357 is attached hereto as appendix ‘G’. The application, which became a permit, is attached hereto as appendix ‘H’.

The Development Review Board (“DRB”), having heard extensive evidence as to both the zoning of the parcel and the compatibility with the surrounding properties, found that the proposed expansion was incompatible. The DRB made and orally

Zoning of the NW 39th Ave. Garage

announced findings in May. It took two months for the city staff to deliver an order acceptably tracking the findings.

Only after the proposed expansion was found incompatible did the City apply to itself for a zoning compliance permit. With amazing alacrity, the planning department conducted its "analysis" the same day, with the permit signed the next day.

It is hard to avoid the conclusion that the zoning compliance permit is late-fabricated evidence intended to overcome the findings of the DRB. It is also difficult to assign any real weight to the cursory same-day analysis by the planning division.

That analysis identifies the parcel number. It calls out the zoning classification as "PS". Yet a bare PS zoning classification is incomplete. The PS classification requires that a specific use be identified in the zoning for the property. § 30-75(c). By all appearances the atlas was not consulted to see what specific use was applied.

The ordinance requires a specific use in the zoning, and the analysis omits that use. The analysis is therefore facially incomplete and cannot be relied upon. It follows that any permit based on this incomplete analysis is invalid.

Effect of Non-Conformity

Because the uses of the property were never identified with the ordained specificity, the present Garage is a non-conforming, or grandfathered, use. That does not mean that you can anticipate any cessation.

The ordinance recognizes that there are non-conforming uses. § 30-346(b) permits such uses to continue until they are destroyed. The threshold is 80% destruction,

Zoning of the NW 39th Ave. Garage

which essentially means that, barring fire or hurricane, the Garage may continue its operation subject to any other applicable regulations.

The ordinance permits non-conforming uses to continue. What it forbids is the same as every other zoning ordinance: a non-conforming use cannot expand. Without a re-zoning specifically placing large vehicle service garage and dump as uses by right, the Garage is limited to its present size and capacity.

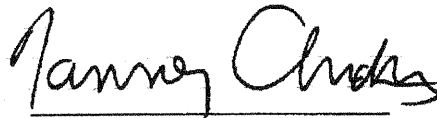
Conclusion

The zoning ordinance requires that the uses of the property be specifically identified within the PS zoning classification. The 405 NW 39th Ave. property is used for industrial-scale vehicle maintenance and as a dump. The ordinance zoning this property, in calling out only "municipal service center", did not specifically identify these uses. Thus, the present use is non-conforming.

Nothing in the ordinance bars the continued non-conforming use of the property.

The ordinance prohibits only expansion of non-conforming uses.

□



Tanner Andrews
Fla Bar #21426

app.

A

pre-1982 ord extract

(city atty B)

ZONING ORDINANCE
(INCLUDING LANDSCAPE ORDINANCE)
OF
GAINESVILLE, FLORIDA

THIS IS A REPRODUCTION OF CHAPTER 29
OF THE GAINESVILLE CODE OF ORDINANCES,
AS AMENDED THROUGH ORDINANCE 1781,
ADOPTED JANUARY 31, 1972.

- (33) *Nonconforming use of land.* The use of any land other than a use specifically permitted in the district in which the lot or parcel of land is located.
- (34) *Parking.* A temporary, transient storage of private passenger motor vehicles used for personal transportation while the operators of such vehicles are engaged in other activities. The term shall not include storage of new or used cars for sale, service, rental, or any other purpose except as specified herein.
- (35) *Parking space.* A land area of not less than one hundred eighty (180) sq. ft., exclusive of driveways and aisles, and adjacent to a driveway or aisle, with minimum dimensions of nine (9) feet by twenty (20) feet, designed so as to be usable for the parking of a private motor vehicle.
- (36) *Person.* The word person includes any individual, group of persons, firm, corporation, association, organization, and any legal public entity.
- (37) *Personal services.* Beauty parlor, shop or salon, barber-shop, massage, reducing, or slenderizing studio, steam or Turkish baths, or any similar use.
- (38) *Plan board.* The term plan board shall refer to the city plan board as provided in Section 37 of the Charter for the City of Gainesville, Florida.
- (39) *Professional services.* The conduct of business in any of the following or related categories: law, architecture, engineering, medicine, dentistry, osteopaths, chiropractors, opticians, or consultants in these or related fields, studios of dancing, music and art.
- (40) *Public body.* Any government or governmental agency, board, commission, authority or public body, of the City of Gainesville, Alachua County, State of Florida, or the U. S. Government, or any legally constituted district.
- (41) *Public use.* The use of any land, water, or buildings by a public body for a public service or purpose.
- (42) *Retail sales and service.* Retail sales and service shall include those business activities customarily providing retail convenience goods. Such uses shall include de-

living environment. *Usable open space* is defined as that part of the ground area, roof, balcony, or a porch which is devoted to outdoor living, recreation, or utility space, but shall not include private roadways open to vehicular traffic, off-street parking area, loading space or required minimum front yards.

On any building site on which there are located five (5) or more living units, there shall be provided two hundred square feet (200 sq. ft.), of usable open space for each one bedroom living units and two hundred fifty square feet (250 sq. ft.) of usable open space for each living unit with two (2) or more bedrooms. Such usable open space shall be provided for in a common area or areas having no dimension less than twenty feet (20'), except as permitted in the succeeding paragraph, which shall be conveniently located and readily accessible from all living units located on the building site.

In calculating the usable open space for an apartment project, a minimum of seventy-five per cent (75%) must be provided at ground level, the remaining open space may be areas devoted to balconies with a minimum dimension of four feet, six inches (4'6"), and roof space which is designed for safe and convenient use of occupants of the project.

(7) *Site plan approval required.* The site plan for all elder-ly housing developments shall be approved by the plan board in accordance with section 29-36(IV) before a building permit may be issued for the construction of such development. (Ord. No. 1538, § 1, 12-11-67)

Amendment note—Ord. No. 1538, § 1, adopted Dec. 11 1967, amended this Code by adding § 29-31.3.

Article V. Zoning Districts

Sec. 29-32. Establishment of districts.

Within the corporate area of the City of Gainesville, Florida, the following zoning districts are established:

(1) *Residential.*

- (1) RE, residential-estate.
- (2) R-1a, single family, low density.
- (3) R-1b, single family, medium density.

Supp. No. 19

522.10

- (4) R-1c, Single Family, high density.
- (5) R-2, Multiple Family, low density.
- (6) R-2a, Multiple Family, medium density.
- (7) R-3, Multiple Family, high density.
- (8) RP, Residential-Professional.
- (9) RM, Mobile Home Park.
- (10) R2-RD, Multiple Family, restricted density.
- (2) *Business.*
 - (1) BP, Business and Professional.
 - (2) BI-1, Business-Institutional districts.
 - (3) BI-2, Business-Institutional districts.
 - (4) BU, Business, University service.
 - (5) SC, Shopping Center districts.
 - (6) BR-1, Central Business districts.
 - (7) BR-2, Retail Business.
 - (8) BA-1, Business-Automotive, restricted.
 - (9) BA-2, Business-Automotive.
- (3) *Industrial.*
 - (1) MS, local service industrial districts.
 - (2) MP, manufacturing industrial districts.
- (4) *Other .*
 - (1) A-P, administrative and professional districts.
 - (2) MED, Medical Center district. (Ord. No. 1090, Art. V, § 1, 6-25-62; Ord. No. 1452, § 1, 1-16-67; Ord. No. 1456, § 1, 1-16-67; Ord. No. 1479, § 6, 6-5-67; Ord. No. 1522, § 2, 10-16-67)

Amendment note—Ord. No. 1522, § 2, adopted Oct. 16, 1967, amended § 29-32 by adding business districts, BI-1 and BI-2.

Editors note—Ord. No. 1631, § 1, enacted August 18, 1969, amended Chapter 29 by adding a new district. It did not, however, specifically amend § 29-32. Paragraph (1)(10) was added at the discretion of the editors in order to more accurately reflect the contents of the article.

Sec. 29-33. District boundaries.

(1) Zoning districts are hereby established and declared to be in effect upon all land and water areas included within the boundaries of each district as shown on the zoning map of the City of Gainesville.

(2) Unless otherwise indicated on the zoning map, the boundaries of zoning districts are the lot lines, the center-lines of streets, street rights-of-way, alleys, railroad rights-

Supp. No. 24

600 - 1,200	..	44	47
1,200 - 2,400		38	41
2,400 - 4,800		32	35
4,800 - and over		30	33

(d) *Odor.* There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive at the points of measurements. Any process which may involve the creation or emission of any such odors shall be provided with both a primary and a secondary safeguard system so that control may be maintained in the event of failure of the primary safeguard system. There is hereby established, as a guide in determining such quantities of offensive odors, Chapter 5, "Air Pollution Abatement Manual", Copyright 1951, by Manufacturing Chemists, Incorporated, Washington, D. C.

(e) *Glare.* There shall be no direct or sky reflected glare, whether from floodlights, high temperature processing, combustion, welding, or otherwise, so as to be visible at the specified points of measurement. (Ord. No. 1090, Art. XII, § 4, 6-25-62)

Article XIII. Public Uses

Sec. 29-52. Application.

This article shall apply to all public and semi-public uses of land and buildings in all zoning districts except as may otherwise be provided in these regulations. (Ord. No. 1090, Art. XIII, § 1, 6-25-62)

Sec. 29-53. Regulation of public uses.

All public uses shall comply with the following regulations:

- (1) *Uses permitted in new subdivisions.* Any public use may be permitted in accordance with an approved plat of any subdivision or development on which there is established and identified specific areas for public use.

- (2) *Existing public uses.* All public uses existing at the time of the effective date of this chapter,* and as indicated on the zoning map, are hereby legally established as conforming public uses.
- (3) *Abandoned property.* See Article IV Section 1. (Ord. No. 1090, Art. XIII, § 2, 6-25-62)

Sec. 29-54. Semi-public uses.

All semi-public uses shall be subject to the following provisions:

- (1) *Uses permitted in certain zoning districts.* Any semi-public use shall be permitted in any R-3, RP, BP, BU, BR-1, BR-2, BA-1, BA-2, and MS districts, subject to the provisions of this article.
- (2) *Procedure.* All semi-public uses may be permitted in any other district subject to the approval of the board of adjustment which shall hold a public hearing on such request after giving ten (10) days' due notice of the time and place of such hearing.
- (3) *Existing semi-public uses.* All semi-public uses existing at the time of the effective date of this chapter,* and as indicated on the zoning map, are hereby legally established as conforming semi-public uses. (Ord. No. 1090, Art. XIII, § 3, 6-25-62; Ord. No. 1131, § 2, 1-21-63)

Amendment note—Ord. No. 1131, § 2, amended § 3 of Art. XIII, Ord. No. 1090, codified herein as § 29-54 to substitute the board of adjustment for the plan board, and to reduce the required notice from 15 days to 10 days, in subsection (2).

Sec. 29-55. Special public uses.

Special public uses shall be permitted as follows:

- (1) *Utilities.* Public utilities not owned and operated by public body shall be permitted in any district subject to the approval of the board of adjustment. The board

*Note—Ord. No. 1090 effective June 25, 1962; Ord. No. 1131 was enacted Jan. 21, 1963.
Supp. No. 7

EVIDIT C

of adjustment shall hold a public hearing on such request after giving ten (10) days' due notice of the time and place of such public hearing.

- (2) *Public facilities.* Transportation terminals and facilities, including commercial bus, railroad and air, and newspapers with general circulation in the City of Gainesville shall be permitted in any "B" and "M" districts, provided that such application is approved by the board of adjustment which shall hold a public hearing on such request after giving ten (10) days' due notice of the time and place of such public hearing. (Ord. No. 1090, Art. XIII, § 4, 6-25-62; Ord. No. 1131, § 3, 1-21-63)

Amendment note—Ord. No. 1121, § 3, amended § 4 of Art. XIII, Ord. No. 1090, to substitute the board of adjustment for the plan board, to reduce required notice from 15 days to 10 days, and to add newspapers to the public facilities.

Sec. 29-56. Lot and building requirements.

All public, semi-public, and special public uses shall meet the lot and building requirements of the district in which they are located, off-street parking requirements, and all other applicable regulations of this chapter, unless it is determined by the board of adjustment that variances to lot and building requirements, or other requirements, as provided in this chapter, are justified. (Ord. No. 1090, Art. XIII, § 5, 6-25-62)

Article XIV. Administration and Enforcement

Sec. 29-57. Administration by building inspector.

The city manager shall designate a person or persons to administer and enforce the provisions of this zoning chapter. Such designated person shall be known as the building inspector. (Ord. No. 1090, Art. XIV, § 1, 6-25-62)

Sec. 29-58. Applicability.

No building or structure, or part thereof, shall hereafter be erected, constructed, re-constructed, or altered, and no ex-

Supp. No. 7

app.

B

minutes

(city atty D)

PUBLIC HEARING - ORDINANCE

(Continued This Date from April 28, May 17, June 28 and July 12 1982.)

Commissioner Goldstein moved that the Ordinance: 0-82-76 (2740)

AN ORDINANCE OF THE CITY OF GAINESVILLE REZONING
MORE THAN FIVE PERCENT OF THE TOTAL LAND AREA OF THE
CITY AS SHOWN ON THE MAP ATTACHED TO THIS ORDINANCE;
PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING
CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
(Petition No. 48-82 PB)

adopted on first reading June 28, 1982, be placed on second and
final reading.

CARRIED

Whereupon the ordinance was read in full.

A copy of the Ordinance is filed in Ordinance Book No. 26 located
in the Clerk of the Commission's Office.

Commissioner Goldstein moved to adopt the Ordinance on final reading
as read.

The City Plan Board submitted the following related communication:

Re: Review of Industrial Zoning in Hugh Edwards
Industrial Park

On July 15, 1982, the City Plan Board reviewed the
proposal for allowing interior of the industrial park
to be zoned I-2 instead of I-1. Mr. Jim Painter, the
citizen who brought this request to the City
Commission, was present to describe what he proposed.
The Planning Staff stated that they agreed with the
proposal. After some discussion the Plan Board
approved the following motion:

Motion by Mr. Budd

Seconded by Mr. Muzzell

Motion to approve
the idea of changing
the zoning in the
interior of the Hugh
Edwards Industrial
Park from I-1 to I-2
and to communicate
this action to the
City Commission.

Upon Vote, motion carried 5-1

Yeas: Muzzell, Perry, Budd,
Meiss, Pfaff

Nays: Sussky

Community Development Department Director Norm Bowman reviewed the above communication.

(Mayor-Commissioner Junior handed the gavel to Chairman Pro tem McEachern and left the meeting room at 10:20 P.M.)

Planning Manager Sam Mutch reviewed with the Commission a map of the proposed rezoning of the Hugh Edwards Industrial Park interior, as outlined in the above communication.

Commissioner Chalmers moved to amend the motion to approve I-2 zoning for the interior of the Hugh Edwards Industrial Park, as recommended.

Vote on Motion to Amend,

CARRIED

Planning Manager Sam Mutch and Commissioner Goldstein discussed the Plan Board's recommended zoning change from I-1 to I-2 for Suntec Paints, Inc. at 1111 S.E. 22nd Avenue.

Commissioner Chalmers moved to amend the motion and confirm the Commission's July 12, 1982 action to approve I-2 zoning for Suntec Paints, Inc., as recommended by the City Plan Board.

Vote on Motion to Amend,

CARRIED

There was discussion among Planning Manager Sam Mutch, Commissioners Collier and Chalmers, Community Development Director Bowman, and property owner Amelia Wilson concerning: 1) the Plan Board's recommendation of OR-2 instead of BO zoning for the south side of Newberry Road between street addresses 3831 and 3999 with the exception of O-2 zoning for the Peoples Bank property (3919 Newberry Road); 2) Sugarfoot Prairie Association's position against any ingress/egress for commercial/office along the University Avenue extension; 3) disallowance of "strip zoning" due to the resulting denial of access to a public thoroughfare; 4) difference between OR-1 and OR-2 zoning; and 5) existing OR-2 uses in the area.

(During the above discussion, Mayor-Commissioner Junior reentered the meeting room and reassumed the gavel; Commissioner McEachern left the meeting room at 10:27 P.M.)

Commissioner Goldstein moved to amend the motion to approve the Plan Board's recommendation of OR-2 instead of BO zoning for the south side of Newberry Road between street addresses 3831 and 3999 with the exception of O-2 zoning for the Peoples Bank property (3919 Newberry Road).

Vote on Motion to Amend,

CARRIED

Chairman Junior recognized citizen Bill Wilson who presented a Planned Development for his property at 2200 N.W. 39th Avenue.

The following discussion among the Commission, Planning Manager Mutch, Community Development Department Director Bowman, and Mr. Wilson pertained to: 1) whether the basic use, i.e., recreation, meets the intent of the local neighborhood shopping center category; 2) Plan Board and Staff support of the neighborhood shopping center classification for this property; 3) adverse effects on the neighborhood due to the wider appeal of a recreational facility; and 4) community need and expectation for a shopping center in the area.

During the above discussion, Chairman Junior recognized citizen Bob Thomason who spoke to the matter.

(There was no further action by the Commission at this time regarding this matter.)

Attorney David LaCroix, representing Northwood Seven Acres Corp., spoke for the record regarding upcoming petitions to change the land use and zoning of the property located at 740 N.E. 23rd Avenue, proposed for RSF-1 zoning.

There was discussion among Commissioners Goldstein and Chalmers, Chairman Junior, Planning Manager Mutch, Director Bowman, and Mr. LaCroix regarding the previously approved multi-family zoning for the planned 72-unit apartment development which, due to beginning construction, cannot be made non-conforming under the proposed rezoning.

(Television coverage ended during the above discussion, at 11:00 P.M.)

Vote on Motion, As Amended, ROLL CALL

Commissioner	Chalmers	. . . . .	Aye
	Collier	. . . . .	Aye
	Goldstein.	. . . . .	Aye
	McEachern.	. . . . .	Aye
Chairman	Junior	. . . . .	Aye

Ayes - 5

Nays - 0

ADOPTED

Chairman Junior noted that the meeting had run past the 11:00 P.M. adjournment time set in the Rules of the City Commission, and suggested all but emergency items be continued to July 26, 1982.

PUBLIC HEARING - ORDINANCE

(Continued This Date From July 12, 1982)

The City Attorney submitted for consideration on second and final reading the following Ordinance: 0-82-77

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA CREATING SECTION 30-7.1, ENTITLED "PROHIBITION AND/OR REGULATION OF CONSTRUCTION ADJACENT TO HOGTOWN CREEK AND ITS TRIBUTARIES"; PROVIDING DEFINITIONS; PROHIBITING CONSTRUCTION WITHIN THIRTY-FIVE (35) FEET OF THE CENTERLINE OF HOGTOWN CREEK AND ITS TRIBUTARIES; REQUIRING A SHOWING OF NO DECREASE IN THE QUALITY OF RUNOFF OR INCREASE IN THE QUANTITY OF RUNOFF FROM THIRTY-FIVE (35) FEET TO ONE HUNDRED FIFTY (150) FEET OF THE CENTERLINE; REQUIRING PLAN BOARD REVIEW; PROVIDING A PENALTY CLAUSE AND AN IMMEDIATE EFFECTIVE DATE.

Commissioner Chalmers moved to continue the public hearing on Ordinance No. 0-82-77 on second and final reading to July 26, 1982.

CARRIED

PUBLIC HEARING - ORDINANCE

(Continued This Date From June 28, 1982)

The City Attorney submitted for initial consideration the following Ordinance: 0-81-104

AN ORDINANCE CREATING A LOCAL REGISTER OF HISTORIC PLACES AS A MEANS OF IDENTIFYING AND CLASSIFYING VARIOUS SITES, BUILDINGS, STRUCTURES AND OBJECTS AS HISTORIC; AMENDING SECTION 2-133 OF THE CITY OF GAINESVILLE CODE OF ORDINANCES CONCERNING THE URBAN NEIGHBORHOOD CONSERVATION ADVISORY BOARD AS RELATING TO THEIR DUTIES AND AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

GAINESVILLE SUN
Published Daily and Sunday
GAINESVILLE, FLORIDA

STATE OF FLORIDA }
COUNTY OF ALACHUA }

Before the undersigned authority personally appeared Gary Miller
who on oath says that he is Retail Advertising Manager, of the GAINESVILLE SUN, a daily
newspaper published at Gainesville in Alachua County, Florida; that the attached copy of advertisement, being a
Petition No. 48-82PB

in the matter of _____
in the _____ Court, was published in said newspaper in the issue of
April 20, 1982

Affiant further says that the said GAINESVILLE SUN is a newspaper published at Gainesville, in said Alachua
County, Florida, and that the said newspaper has heretofore been continuously published in said Alachua County,
each day, and has been entered as second class mail matter at the postoffice in Gainesville, in said Alachua County,
Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and
affiant further says that he has neither paid nor promised any person, firm or corporation any discount for pub-
lication in the said newspaper.

Sworn to and subscribed before me this

20 day of April, A.D. 1982

[Signature]
(Seal) Notary Public

[Signature]
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES APR 8 1986
BONDED THRU GENERAL INS. UND.

5M-481-45229

PETITION NO. 48-82PB
The City of Gainesville will
hold a Public Hearing on April
28, 1982, and May 17, 1982, at 7:00
P.M. in the City of Gainesville
Auditorium, 1100 University
Building, 200 East University
Avenue, to receive the City of
Gainesville's authority from
existing laws and regulations as
outlined in Ordinance No. 2650,
City of Gainesville, 1983, and
EXCEPT the following:
Those portions of Section 3,
Twp 10 S., Rge 19 E., Section 13,
Twp 9 S., Rge 19 E., Section 14,
Twp 9 S., Rge 19 E., Section 15,
Twp 9 S., Rge 19 E., Section 22,
Twp 9 S., Rge 19 E., Section 23,
Twp 9 S., Rge 19 E., Section 24,
Twp 9 S., Rge 19 E., Section 25,
Twp 9 S., Rge 19 E., Section 26,
Twp 9 S., Rge 19 E., Section 34,
10, Twp 9 S., Rge 20 E., lying with-
in the corporate limits of the
City of Gainesville.
(1615)4:20

Motion by Dr. Fried

Seconded by Ms. Meiss

Moved to approve juvenile services in the PS district within Sec. 25, Twp. 10 S, R20E, where the property is at least 1500' east of the airport entrance road, west of the area designated Conservation on the Land Use Plan, 500' south of the airport boundary, and out of sight of State Road 232.

Upon Vote, motion carried 4-2
Yeas: Fried, Meiss, Muzzell, Perry
Nays: Sussky, Pfaff

Mr. Mutch then made a brief presentation to the Board regarding the reasons for the City-wide rezoning. He noted that one of the Plan Board's principles in doing the rezoning was to designate the least intensive zoning district that would allow existing uses to be conforming. He noted that the Plan Board might be asked to decide whether to make lots in single-family districts nonconforming in order to provide a lower density zoning category. Mr. Mutch also informed the Plan Board that the Rustic Springs site would now be designated Single-family and given RSF-1 zoning in accordance with the Plan Board's decision on April 15th to deny it MF (h) zoning, and that it would thus become a nonconforming use and landlord licensing would apply.

Mr. Roy Crum, 1506 N.W. 14th Avenue, spoke concerning the zoning for the Florida Park area west of N.W. 13th Street around N.W. 14th Avenue. He requested that the designation for these parcels be changed from RSF-2 to RSF-1. Mr. Mutch stated that some of the lots would be conforming only with an RSF-2 designation, and that if they were to be destroyed, the owners would have to go to the Board of Adjustment in order to be allowed a Special Exception to rebuild on these lots.

Motion by Dr. Fried

Seconded by Mr. Muzzell

Moved to rezone all lots in Florida Park designated Single-Family to RSF-1.

Upon Vote, motion carried 6-0
yeas: Fried, Meiss, Muzzell, Perry
Sussky, Pfaff

Mr. Robert Bennett, 1415 N.W. 11th Road, asked if this motion would extend RSF-1 zoning to 13th Street. Mr. Mutch said no, it would cover only those areas that are shown as Single-Family on the Land Use Plan, and not the lots fronting 13th Street.

Mr. John T. Brasington, 4601 N.W. 95th Boulevard, spoke regarding the parcel at 4156 N.W. 13th Street. Staff stated that this area is designated Commercial, currently zoned BA-2, and proposed for B-1 zoning.

app.

C

1982 adoption w/ ad, extract from atlas
(city atty E)

AN ORDINANCE OF THE CITY OF GAINESVILLE
REZONING MORE THAN FIVE PERCENT OF THE
TOTAL LAND AREA OF THE CITY AS SHOWN ON THE
MAP ATTACHED TO THIS ORDINANCE; PROVIDING
A SAVINGS CLAUSE; PROVIDING A REPEALING
CLAUSE; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE.

WHEREAS, pursuant to law notices have been given in
a newspaper of general circulation notifying the
public of this proposed ordinance and of Public Hearings
in the A. Clarence O'Neill Auditorium of the Municipal
Building of the City of Gainesville; and

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

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

Section 1. The areas shown in the map attached
and made a part of the Ordinance as Exhibit A, which
comprise more than five (5) percent of the total land
area of the City, are rezoned to the zone classifications
as indicated on the map.

PETITION NO. 48-82 PB

Section 2. The City Manager is authorized and directed to make the changes in the Zoning Map in order to comply with this Ordinance.

Section 3. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 5. This Ordinance shall become effective immediately upon final adoption.

DATED this 19th day of July 1982.


MAYOR-COMMISSIONER

ATTEST:


CLERK OF THE COMMISSION

This Ordinance passed on first reading this 28th day of April, 1982.

This Ordinance passed on second and final reading this 19th day of July, 1982.

MJR:bh
4/28/82

-2-

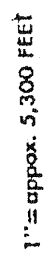
Approved as to form and correctness

By


J. T. Frankenberger, City Attorney
City of Gainesville, Florida

EXHIBIT F

Petition No.- 48-82PB



THE CITY OF GAINESVILLE proposes to rezone the land within the areas shown in the map in this advertisement. Public Hearing will be held on April 28, 1982 at 7:00 PM, and May 17, 1982 at 7:00 p.m. in the A. Clarence O'Neill Auditorium, 4th Floor, Municipal Building, 200 East University Avenue