

LEGISLATIVE #

110667A

DEVELOPMENT REVIEW BOARD RECOMMENDED CONDITIONS

Condition 1.

The applicant shall be required to make arrangements to improve the intersection of the proposed road with NW 53rd Avenue to facilitate pedestrian circulation and transit facilities.

Condition 2.

The lots resulting from this subdivision are not automatically guaranteed development rights. Proposed developments must demonstrate compliance with all requirements of the Comprehensive Plan and Land Development Code prior to issuing and development order.

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.	

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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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- X 03. Petition DB-11-145 SUB Causseaux, Hewett & Walpole agent for City of Gainesville, Property owner ADC Development & Investment Group, LLC. (Grace Market Place) Design plan 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 Avenue).

This portion of the meeting was conducted as a Formal Quasi Judicial hearing.

Mr. Haviland declared a conflict but indicated that he will chair the meeting.

Mr. Calderon addressed the board indicating that the petition is simply a request to divide a single lot into three separate lots.

Mr. Shawn Webber addressed the board. Using a PowerPoint presentation, he described the request and the associated roads to provide access to the public road network. He illustrated to the board how utilities will be provided to the lots with associated easements. He indicated that the new roads and easements for utilities will provide needed infrastructure to allow development of some type on the surrounding undeveloped areas. He illustrated how the road will be improved and its impact on wetlands in very minimal.

He demonstrated how the three lots will be created in relationship to the new roads and the ability to provide necessary facilities. He addressed four of staff's recommendations: Items 9, 10, 13 and 14 which will be addressed prior to City Commission review. He addressed the avoidance and minimization requirement as part of the manner in which the wetlands are impacted.

He concluded his presentation and asked whether the board had any questions.

The board asked questions.

Mr. Saunders, representing Nalbandian Properties LLC, Morgas Investments and Nalbandian Properties, addressed the board. He questioned Mr. Weber about uses proposed for the property, land uses and zoning. He asked about the easements under the control of the applicant which are related to the proposed subdivision.

Mr. Calderon addressed the board and explained that the petition is primarily a request to divide a parcel into three separate lots. Using a PowerPoint presentation, he discussed surrounding land use, zoning and existing developments. Mr. Calderon illustrated the existence of a single lot with a legally established accessible road to the property. Mr. Calderon demonstrated how the petition addresses the requirements listed in the Land Development Code and the Comprehensive Plan. Mr. Calderon cited several goals, objectives and policies of the Comprehensive Plan which the petition addressed. He continued to list specific standards of the Land Development Code required for approval of a subdivision. He addressed the construction design and standards of the petition and illustrated how the petition meets those

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requirements. He showed areas of wetland impacts and how the proposal has addressed the avoidance and minimization considerations leading to the need for mitigation.

The board asked questions about the creation of the lots and the zoning.

Mr. Calderon answered that the entire parcel is zoned industrial but a portion of it is zoned PD.

Mr. Saunders questioned Mr. Calderon about his testimony.

Mr. Saunders continued to address the board presenting documents in an attempt to establish standing to participate in the hearing.

Mr. Hilliard informed the board of the notice procedures used by the City as part of the hearing process.

Mr. Saunders addressed the board in an attempt to illustrate that use of the property is important in the subdivision review process. He emphasized that the use of a piece of property entirely for non-industrial uses is inappropriate. He also stated that the subject property was listed by the City as a parcel with significant ecological communities.

Mr. Lane asked if the board recommends approval of the subdivision and it is approved by the City Commission, will the parcel zoned PD be subject to regulations limiting non-industrial use to 25%?

Mr. Saunders answered no, stating that the City Commission has approved a PD which regulates allowable uses on the parcel and those uses are not industrial.

Chair Haviland asked questions about the process which Mr. Hilliard answered indicating the current petition addresses design plat which will be reviewed by the City Commission and will be followed by Final Plat review.

The board continued discussion and asked questions of staff and the

Mr. Walpole addressed the board explaining a condition of the PD pertaining to access. He proceeded to ask the board about Mr. Saunders alleged testimony concerning the non-industrial use being more than 25% of the parcel. He also objected to Mr. Saunders providing testimony.

Discussion continued about Mr. Saunders alleged testimony and a claim that the subject property was designated as environmentally sensitive lands.

Mr. Calderon asked Mr. Saunders a question about the percentage of industrial use on the subject parcel.

The board continued discussion about the presence of an attorney at Formal Quasi-judicial hearings and the role of staff in the deliberations. The board also discussed various options towards reaching a decision.

Mr. Flag made a motion to continue the petition to another DRB meeting and asked that a representative from the City Attorney be present to provide guidance to the board.

Discussion continued about the motion.

Motion By: Mr. Flag	Seconded by: Mr. Lane
Moved to: Continue the petition to another DRB meeting and asked that a representative from the City Attorney be present to provide guidance to the board.	Upon Vote: Motion passed 4 to 0

The board deliberated concerning a request to invite a representative from the City Attorney's office to attend the next DRB meeting to guide the board in its deliberation.

Mr. Lane made a motion to have the attorney look at the PD zoning as listed in the public record, specifically to item #6 of the PD Ordinance; whether it has any bearing on our decision to recommend approval of the subdivision

Mr. Haviland asked whether there were other concerns such as procedural issues.

Mr. Lane added that the City Attorney's representative should guide the board during the proceedings and not staff.

Ms. Norris asked that any documents that will be discussed in reference to the petition should be provided prior to the meeting. She also asked that staff provide a map showing the location of affected party members.

VII. Development Review Board Referrals None

VIII. Information Items

IX. Board Member Comments

Chair Haviland asked that there be a clear delineation between staff presenting the petition and the staff member guiding the board.

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