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TO: Honorable Mayor and City Commissioners
THRU: Erik A. Bredfeldt, Director 
FROM: Planning Division Staff
DATE: July 11, 2011
SUBJECT: Response to the Appeal of the Decision of the DRB.

Petition DB-11-38 SPA: Eng Denman & Associates, Inc., Agent for William Chick, Jack's Bar. Preliminary and Final Development Plan review for conversion of an existing office space to a bar with an associated outdoor cafe. Zoned CCD (Central City District). Located at 16 and 24 South Main Street.

The proposal includes combining an existing office building (Tax Parcel 14613-000-000) with an adjacent vacant lot (Tax Parcel 14614-000-000) to create a combination of uses which include Offices, an Alcoholic Beverage Establishment, eating place and an outdoor café.

The appeal alleges that Preliminary Development Plan approval should not have been granted for the following reasons:

- 1. The project is an intensification of a non-conforming condition and does not conform to the City of Gainesville's Code and the Comprehensive plan.***

Response:

The specific non-conforming condition is not stated in the appellant's application.

The application states, "*The applicant has created a self-imposed non-conforming condition on his property at 24 S Main Street through the demolition of the existing 130 year old building on the property*".

Staff's review of the proposal shows that the uses listed, Offices, Alcoholic Beverage Establishment, Eating Places and Outdoor Café are not included in the list of prohibited uses in the Traditional City per Appendix A, Section 4(r) of the Gainesville Land Development Code. Alcoholic Beverage Establishment and Outdoor Café are further required to comply with Sections 30-87 and 30-105 of the Gainesville Land Development Code (See attachment "A"). Staff has determined that there are no non-conformities as to use.

The existing building conforms to the standards of the Traditional City standards. Due to demolition of the building to the south, on Tax Parcel 146114-000-000, the south wall of the building on Tax Parcel 14113-000-000 has no architectural features or glazing. This however is an existing situation of the south wall as proposed in the development plan and is considered a non-conforming wall.

The project presented to the Development Review Board (DRB) did not include any structural modifications to the south wall of the existing building and was therefore presented as an existing wall. During the DRB meeting, the adjacent neighbor raised the issues about stability of the wall which should have been addressed during the demolition permit. The applicant indicated that the wall was unstable and needed to be redesigned; he stated that a type of corrugated metal would be used. Staff informed the board that there are no regulations on the use of corrugated materials within the Traditional City Overlay District. No design details were presented during development review. A building permit for the wall has been approved through the building permitting process.

2. *The project does not comply with the intent of Policy 3.5.6 of the Urban Design Element of the Comprehensive Plan*

Response:

Policy 3.5.6 reads as follows:

The City shall encourage renovations of historic buildings downtown and new development or redevelopment that is sensitive to the context or scale of historic buildings near the new development or redevelopment.

This above policy states that the City will “encourage” renovations of historic buildings in a manner sensitive to context and scale of historic buildings. Through this project, the City is encouraging sensitive development of the existing building associated with the proposed project by allowing reasonable development, consistent with the CCD by facilitating the combination of the adjacent vacant parcel. It should also be noted that the adjacent property is vacant and does not contain a building to which the term “encourage renovations of historic buildings” can be applied. The policy is therefore not directly applicable to the proposed development.

The policy is also associated with Objective 3.5 which addresses working with the Community Redevelopment Agency (CRA) to implement urban design improvements for downtown. The City continues to meet this objective and policy through many of the projects with which the CRA is associated.

3. *The project does not comply with the intent and word of the “Special Area Plan overlay district for the Traditional City”.*

Response:

The applicant cites five areas under the Traditional City Special Area to which the proposed development is non-compliant: a. Buildings located close to the street; b. Articulated building walls; c. Aligned building façades; d. build-to lines and e. non-conforming building may not increase the degree of non-conformity.

Four of the items listed above refer to regulations addressing buildings. There appears to be an assumption that an individual independent lot is being improved with a principal building that does not meet the standards of the Traditional City Special Area Plan; this is not the case.

a. Buildings located close to the street

The project includes an outdoor café which is allowed per Sec. 30-66(c); no new building is involved.

b. Articulated building walls

During development plan review, the south building wall was not presented to be modified as proposed and no details addressing architectural requirements were presented. Modification of the wall arose as part of a condition to stabilize the building wall because of the demolition.

c. Aligned building façades and d. build-to lines

The existing principal building meets the Build-to line regulations; the canopy over a portion of the outdoor café is considered an extension of the primary building.

e. non-conforming building may not increase the degree of non-conformity

The development is not non-conforming.

Attachment “A”

ARTICLE VI. - REQUIREMENTS FOR SPECIALLY REGULATED USES

Sec. 30-87 and Sec. 30-105

Sec. 30-87. - Outdoor cafes.

- (a) An outdoor cafe (defined in section 30-23) may be operated only in conjunction with an eating place (defined in section 30-23), or, if located within the central city district (CCD), in conjunction with an alcoholic beverage establishment (defined in section 30-23) or eating place. An outdoor cafe may include the sale of alcoholic beverages for consumption on premises when at least 51 percent of the establishment's monthly gross revenues from food and beverage sales are attributable to the sale of food and non-alcoholic beverages.
- (b) Every outdoor cafe shall be open to the weather and shall not interfere with the circulation of pedestrian or vehicular traffic on adjoining streets, alleys or sidewalks.
- (c) When an outdoor cafe abuts a public sidewalk or street, the outdoor cafe shall provide a safety barrier along the public/private boundary. The barrier shall consist of plants, screens, or fencing. The barrier shall be architecturally consistent with the associated building and be at least three feet high. The barrier may deviate from these standards if approved by the appropriate reviewing board or city manager or designee, as required.
- (d) Parking requirements shall be calculated based on the seating, to be consistent with the parking requirements for eating establishments, in accordance with this chapter.
- (e) Outdoor cafes shall not be located in a side or rear yard when abutting any residential property.
- (f) Noise, smoke, odor or other environmental nuisances shall be confined to the lot upon which the outdoor cafe is located.
- (g) Consistent with article VII, development plan review shall be required. The area for the outdoor cafe shall be shown on the development plan. The area must not be in conflict with required landscaped areas and development review shall determine appropriate modifications of existing landscaped areas. Stormwater management shall be required for pervious areas that become impervious for the cafe use.

{Ord. No. 3777, § 1, 6-10-92; Ord. No. 980862, § 2, 11-13-85; Ord. No. 991153, § 2, 9-11-00; Ord. No. 031012, § 3, 7-12-04}

Sec. 30-105. - Alcoholic beverage establishments.

- (a) *Spacing.*
 - (1) No alcoholic beverage establishment may be located within three hundred (300) linear feet of an established place of religious assembly, which distance shall be measured by extending a straight line from the main entrance of the alcoholic beverage establishment to the main entrance of the place of religious assembly.
 - (2) No alcoholic beverage establishment may be located within four hundred (400) linear feet of any public or private school, duly accredited and offering any grades from kindergarten through the twelfth grade, which distance shall be measured by a straight line from the main entrance of the alcoholic beverage establishment to the nearest part of the school grounds normally and regularly used in connection with such school program.
- (b) *Development plan approval.* Development plan approval shall be required prior to the issuance of a development order for any or all of the following:
 - (1) The construction of any new alcoholic beverage establishment;
 - (2) The construction of any new parking spaces required or provided for the building or structure in which an existing or proposed alcoholic beverage establishment is located;
 - (3) The expansion of the gross floor area of a building or structure in which an existing or proposed alcoholic beverage establishment is located;
 - (4) The alteration or enlargement of a building envelope or alteration of the site configuration of a building or structure in which an existing or proposed alcoholic beverage establishment is located; and
 - (5)

The construction of a pedestrian or vehicular pickup window or menu board for an existing or proposed alcoholic beverage establishment.

(c)

Additional regulations.

(1)

No entrance or exit, except as provided below, connected to any portion of a building normally utilized by patrons of an alcoholic beverage establishment by a continuous and unobstructed path of travel, shall be located within:

a.

One hundred (100) linear feet of the district boundary line of a residential district as enumerated in Article IV of this chapter.

b.

One hundred (100) linear feet of the lot line of a lot located in an OR zoned district which lot has a building(s) located thereon which contains one (1) or more dwelling units. Emergency exits may be located within the one-hundred-linear-foot distance requirement described above provided that such exits are controlled by a door equipped with panic hardware, and designed so as to prevent their utilization as an entrance. For purposes of the distance requirements provided in subsection (c)(1) of this section, the measurement shall be made by extending a straight line from the district boundary or lot line in question to any entrance or exit. If the building housing the alcoholic beverage establishment lies within the path of the straight line, then the shortest distance between the door and the boundary or lot line (including the length of the intervening exterior walls of the building) shall be utilized to calculate the distance requirements.

(2)

Landscape buffer requirements for incompatible land uses. There shall be a landscape buffer in accordance with the specifications provided in section 30-253 along the entire common boundary of the lot upon which the alcoholic beverage establishment is located and:

a.

The district boundary line of any residential district as enumerated in Article IV of this chapter.

b.

The lot line of a lot located in an OR zoned district which lot has a building located thereon which contains one (1) or more dwelling units.

(d)

Special use permit. In addition to all of the above specific requirements, the plan board shall consider the factors and standards for special use permits stated in Article VII and may prescribe appropriate conditions and safeguards as stated in Article VII. In granting a special use permit for an alcoholic beverage establishment, the plan board shall consider the factors and standards usual to all special use permits, including the effect of the following factors on surrounding properties, particularly on surrounding properties located in residential districts or districts which contain dwelling units as enumerated in Article IV of this chapter:

(1)

Noise generated by the proposed establishment, considering placement of doors, windows and open spaces and any plans for music or entertainment;

(2)

Amount of traffic generation and the pattern of its dispersal from the site, considering likely impacts on residential areas or conflicts with other uses; and

(3)

Hours of activity.

{Ord. No. 3777, § 1, 6-10-92}

Cross reference: Distance of alcoholic beverage establishments from schools, churches and universities, § 4-3