

LEGISLATIVE #

120667A

1 **BEFORE THE CITY COMMISSION**
2 **CITY OF GAINESVILLE, FLORIDA**

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5 **IN THE MATTER OF DESIGN PLAT FILED BY**
6 **Causseaux Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development**
7 **and Investment Group, LLC, regarding a three-lot subdivision of property located at 820**
8 **NW 53rd Avenue, Gainesville, Florida.**
9 **PETITION No. DB-11-145 SUB. (Legistar No. 110667)**

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12 **ORDER**

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14 The City Commission of the City of Gainesville held a formal quasi-judicial hearing on
15 February 16, 2012 on Petition DB-11-145 SUB (Legistar No. 110667), filed by Causseaux
16 Hewett and Walpole, Inc., agent for City of Gainesville, and ADC Development and Investment
17 Group, LLC (“Petitioner”). The petition is for design plat approval for a 67.34 acre parcel
18 proposed to be subdivided into three lots, located in the vicinity of the 800 Block of NW 53rd
19 Avenue, north side, on certain real property as more specifically described in the applications
20 and as shown on the design plat. Nalbandian Properties, LLC, Mogas Investments, Inc., and
21 Ropen Nalbandian (“Affected Parties”) were affected parties entitled to actual written notice of
22 this Petition as provided by the City’s Land Development Code. The Affected Parties, by and
23 through their attorney and counsel of record, Karl J. Sanders, timely filed a request for formal
24 quasi-judicial hearing as provided in the Rules of the City Commission.

25 **STATEMENT OF THE PETITION**

26 Petition No. DB-11-145 SUB is a petition for design plat approval to subdivide a 67.34
27 acre parcel into three lots, on certain real property, as more specifically shown on the design plat
28 in the record.

29 **PRELIMINARY STATEMENT**

30 After hearing formal presentations and receiving evidence and testimony from the
31 Petitioner and City Staff, whose witnesses were duly sworn, receiving documentary evidence and

1 hearing argument of counsel for Affected Parties, the City Commission, by a vote of 7-0,
2 approved Petition DB-11-145 SUB with staff conditions.

3 **FINDINGS OF FACT**

4 Based upon the oral and documentary evidence presented at the formal quasi-judicial
5 hearing and the entire record of this proceeding, the following findings of fact are made:

- 6 1) Petitioner presented testimony and evidence that the design plat complies with the City's
7 Land Development Code, including public right-of-way access to the proposed lots and
8 the availability for the provision of necessary utilities through an existing public utility
9 easement.
- 10 2) City Staff presented testimony and evidence that, based on their review, the design plat
11 conforms and is consistent with the City's Comprehensive Plan, Land Development
12 Code, and the Official Roadway Map. Specifically, City staff presented testimony that
13 the design plat is compatible with surrounding land uses and complies with the minimum
14 lot size requirements. The design plat, according to City staff, provides for adequate
15 right-of-way for each lot within the design plat, including access to a public road, N.W.
16 53rd Avenue. City Staff testified that the design plat is consistent with the City's
17 Comprehensive Plan provisions regarding impacts to wetlands, which require the
18 avoidance or minimization of the loss of function or degradation of wetland habitat
19 and/or wetland hydrology. In addition, City staff testified in rebuttal that the Eighth
20 Judicial Circuit Court of Florida in the case styled *Nalbandian Properties, LLC, Ropen*
21 *Nalbandian v. City of Gainesville* (Case No.: 01-2010-CA-6288) recently ruled:
- 22 a) On the 9.784 acre parcel with a zoning designation of Planned Development, uses
23 such as retail, office, service, and residential (uses which comprise the Homeless

1 Center Planned Development) are specifically allowed in and consistent with the
2 Industrial Land Use category as described in the City's Comprehensive Plan.

3 b) The City of Gainesville Staff interpretation of the Industrial Land Use category
4 provision in the City's Comprehensive Plan that allows for 25% of industrial area to
5 contain non-industrial uses (uses such as retail, office, service, and residential that
6 comprise the Homeless Center Planned Development) is reasonable and in accord
7 with the essential requirements of law.

8 3) The Affected Parties through Mr. Karl Sanders, attorney, questioned staff, submitted
9 documentary evidence into the record, and made oral argument. Mr. Sanders argued that
10 the design plat is not consistent with the City's Comprehensive Plan because subdividing
11 the parcel that has a Planned Development zoning designation is inconsistent with the
12 parcel's Industrial Land Use Category. Specifically, Mr. Sanders argued that subdividing
13 the parcel with the Planned Development zoning designation will create a parcel where
14 the permissible uses may be entirely non-industrial and therefore inconsistent with the
15 Industrial Land Use Category Comprehensive Plan provision that limits non-industrial
16 uses to no more than 25 percent of the industrial area. Mr. Sanders therefore argued that
17 the petition for design plat should be denied.

18 4) The City Commission finds that after reviewing the entire record, including the exhibits
19 in evidence, the testimony of the witnesses, and hearing argument of counsel for the
20 Affected Parties, there is competent substantial evidence that:

- 21 a) Adequate right-of-way is shown on the design plat to provide access to each lot and
22 to public right-of-way;
- 23 b) The provision for necessary utilities to the property as shown on the design plat has
24 been demonstrated through adjacent properties.

CONCLUSIONS OF LAW


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Based on the findings of fact set forth above, the oral and documentary evidence presented at the hearing, and the entire record of this proceeding, the City Commission concludes that the design plat is consistent with and complies with all applicable factors and criteria as prescribed by the City's Comprehensive Plan and Land Development Code. In particular, the design plat is consistent with the Industrial Land Use Category of the City's Comprehensive Plan that allows for 25 percent of industrial area to contain non-industrial uses (uses such as retail, office, service, and residential that comprise the Homeless Center Planned Development).

ORDER


Petition DB-11-145 SUB (Legistar No. 110667) is APPROVED with Staff Conditions.

Entered this 1st day of March, 2012.



Craig Lowe, Mayor

Attest:



Kurt M. Lannon, Clerk of the Commission

- Copies furnished to:
- Robert Walpole, Causseaux Hewett and Walpole, Inc.,
 - Erik Bredfeldt, Director, Planning and Development Services
 - Karl Sanders, Attorney for Nalbandian Properties, LLC.