

FINAL ORDER OF THE CITY OF GAINESVILLE, FLORIDA

IN THE MATTER OF APPEAL OF PRELIMINARY DEVELOPMENT PLAN APPROVAL GRANTED BY THE DEVELOPMENT REVIEW BOARD FOR THE HIGHWAY 441 SUPER WAL-MART (PETITION NO. DB-10-6)(Leg. No. 090906)

**JOHN HUDSON, APPELLANT
WAL-MART STORES EAST, L.P., APPELLEE**

On March 16, 2010, John Hudson (the “Appellant”) filed an appeal with the City of Gainesville challenging the Preliminary Development Plan approval granted by the Development Review Board for Petition No. DB-10-6 (the “Petition”) submitted by Wal-Mart Stores East, L.P. (the “Petitioner.”) The Petition is for construction of a 170,200 square foot retail supercenter with three associated outparcels located in the 5800 block of NW 34th Street and south of Highway 441 within the City of Gainesville (the “Project”).

The City Commission of the City of Gainesville held a formal quasi-judicial hearing to hear the appeal on April 1, 2010 and May 4, 2010.

STATEMENT OF THE APPEAL

On March 11, 2010, the Development Review Board (the “DRB”) considered the Petition at a public hearing and approved, by a vote of 3-2, Preliminary Development Plan approval for the Project with staff conditions. As part of its approval, the DRB granted exceptions from the specific standards for ‘build-to line’ and ‘building wall articulation’ as set forth in the Special Area Plan for the Central Corridors (the “Central Corridors Plan”).

This appeal filed by the Appellant alleges that Preliminary Development Plan approval should not have been granted for the following reasons:

- 1) The Project does not qualify for either of the exception criteria (consistent with overall intent of the Central Corridors Standards or undue hardship) that are allowable under Section (d) of the Central Corridors Plan; and
- 2) The Project does not qualify for an exception to the “build-to line” because it does not meet the exception criteria (presence of site constraints) that is allowable under Section (k)(2) of the Central Corridors Plan; and
- 3) The Project does not meet the “building orientation” standard, because its “main entrance” is not on the “more primary street” as required by Section (n)(2) of the Central Corridors Plan; and the Project was not granted an exception from that standard; and
- 4) The Project does not meet the “building articulation” standard, because window “glazing” does not cover at least 25% of the building wall facing the “more primary street” as required by Section (o)(2) of the Central Corridors Plan; and

- 5) The Project is inconsistent with the City's Comprehensive Plan.

These are the sole issues raised on appeal.

PRELIMINARY STATEMENT

The City Commission held a hearing to consider the appeal at its regular City Commission Meeting on April 1, 2010. The appeal was unable to be concluded at that meeting due to time constraints and upon consent of the parties to the appeal, the hearing was continued to May 3, 2010. However, on April 15, 2010, the City Commission, with notice to and consent of the parties, continued the hearing to May 4, 2010.

After considering preliminary procedural motions filed by the Petitioner concerning recusal and jurisdiction, both of which were denied, hearing formal presentations, receiving evidence and testimony from staff, the Appellant, the Petitioner, expert witnesses, affected parties, argument of counsel, all of whom were duly sworn, and receiving comments from the general public, the City Commission ruled on each of the issues on appeal, which resulted in affirming the approval of the Preliminary Development Plan granted by the DRB, but with further amendments by the City Commission as stated below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the oral testimony and documentary evidence presented at the formal quasi-judicial hearings and the entire record of this appeal proceeding, the following findings of fact and conclusions of law are made concerning the issues raised on appeal:

- 1) As described in 2) through 4) below, the City Commission summarily finds that the Project qualifies for certain exceptions based upon the criteria as set forth in the City Land Development Code; and
- 2) As to the "Build-to Line" issue: By a vote of 4-3, the City Commission approved an exception to the "build-to line" standard due to an undue hardship, owing to conditions peculiar to the land and not the result of the action of the applicant. The City Commission found that the infrastructure along NW 34th Street created an undue hardship, namely the curvature of the road, the existence of a large drainage swale and uncertainties as to where the edge of the road will be given future planned work by the Petitioner and FDOT requirements; and
- 3) As to the "Building Orientation" issue: By a vote of 7-0, the City Commission denied an exception to the Building Orientation standard based on undue hardship finding that no conditions existed that were peculiar to the land and not the result of the action of the applicant. However, by a second motion approved by a vote of 7-0, the City Commission found that NW 34th Street is the "more primary street" and directed the Petitioner to redesign the NW 34th Street façade to take on the architectural appearance of a "main entrance" in order to meet the "Building

Orientation” standard. The City Commission further directed that staff review the redesigned entrance as part of the Final Development Plan approval process; and

- 4) As to the “Building Articulation” issue: By a vote of 6-1, the City Commission denied an exception to the window “glazing” standard and directed the Petitioner to meet the 25% minimum standard stated in the Central Corridors Plan as part of the Final Development Plan approval process; and;
- 5) As to the Comprehensive Plan issue: By a vote of 7-0, the City Commission concluded the Project is consistent with the City’s 2000-2010 Comprehensive Plan finding that retail business use, which includes “big box” stores such as Wal-Mart, is allowed as a use by right in the Mixed-Use Medium Intensity (MU-2) zoning district and is consistent with the Mixed-Use Medium (MUM) land use category in the Comprehensive Plan.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the action of the City Commission at its April 1, 2010 and May 4, 2010 formal quasi-judicial hearings affirms the Preliminary Development Plan approval of Petition No. DB-10-6 granted by the DRB, subject to the following additional amendments imposed by the City Commission, which shall be addressed as part of the Final Development Plan approval process with City staff:

- a) The Petitioner shall amend the development plan by redesigning the NW 34th Street façade to take on the architectural appearance of the “main entrance” in order to meet the “Building Orientation” standard; and
- b) The Petitioner shall amend the development plan so that it meets the 25% minimum glazing requirement of the “Building Articulation” standard.

This Order constitutes final administrative action by the City on the issues raised on appeal.

Entered May 20, 2010.

Craig Lowe
Mayor

Attest:

Kurt M. Lannon
Clerk of the Commission

Copies furnished to: John Hudson, Appellant
E. Owen McCuller, Jr., attorney for the Appellant
Karl J. Sanders, attorney for the Appellee