

0 9 0 6 4 3 8

City of
Gainesville

Inter-Office Communication

Planning Division

Item No. 1

TO: City Plan Board

DATE: October 28, 2009

FROM: Planning Division Staff

SUBJECT: Petition PB-09-124 TCH. City of Gainesville. Amend the Land Development Code by revising the definitions, criteria and standards for regulating sexually oriented businesses, distinguishing between retail and entertainment type uses, allowing retail uses in the BT (Tourist-oriented business district), BUS (General business district) and I-2 (General industrial district), and allowing entertainment type uses in the BT (Tourist-oriented business district) and I-2 (General industrial district).

Recommendation:

Staff recommends approval of this petition

Explanation:

The purpose of this petition is to address potential legal issues related to how the City allows adult and sexually oriented businesses. The City's current regulations only allow such business/entertainment type uses in the BT (Tourist-oriented business district). There are only a few sites available within the BT zoning district for such uses.

Based on concerns expressed by legal staff the City Commission authorized city staff to hire a consultant to review the City's land development regulations related to this issue. In 2008 the City of Gainesville retained Duncan Associates to assist in updating the portions of its zoning ordinance that deal with sexually oriented businesses, or adult entertainment. The courts and the consultant agree that local governments can legitimately regulate sexually oriented businesses differently from businesses that are otherwise similar if the purpose of the regulations is to reduce "negative secondary effects" of such businesses. Measurable secondary effects, frequently associated with sexually oriented businesses are reductions in market values of residential and, in some cases, commercial property, as well as increases in certain types of crime. Both types of secondary effects diminish with distance. To minimize these secondary effects, local governments typically limit sexually oriented businesses to specific industrial or commercial zoning districts and then impose additional separation or setback distances between any sex

business and such sensitive uses as residential neighborhoods, places of religious assembly and schools. One of the challenges that local governments face in developing such regulations is that the desire to separate sex businesses from these other uses must be balanced with what the courts have held to be a "reasonable opportunity" for such businesses to locate in a community. The courts have made it clear that such a "reasonable opportunity" must be based on zoning by right or something very similar and not through a process that requires issuance of a special use permit, rezoning or other discretionary decision.

One of the most difficult parts of the "reasonable opportunity" principle is to determine how much land area or how many sites a community must provide for a "reasonable opportunity." In First Amendment terms, the issue is typically addressed as one of providing adequate "alternate avenues" for the communication of the lawful speech that is restricted through the zoning or other ordinances. The consultant has made specific recommendations for amending the zoning provisions of Gainesville's Land Development Code to provide "adequate alternative avenues" for businesses protected by the First Amendment, including design standards, separation requirements and other provisions to limit the potential negative secondary effects of such businesses on the community. Alachua County adopted provisions to accomplish the same purpose in 2004. Clearly the City of Gainesville is different in character from the county and cannot precisely follow the Alachua County model. On the other hand, some of the design standards and definitions used in the County's code have been incorporated into a new regulatory for the City of Gainesville.

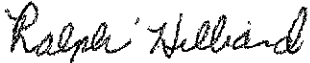
Compatibility was the major factor considered when determining where to allow sexually oriented businesses to locate. The focus of the compatibility analysis was to restrict the use in areas where the "negative secondary effects" of such businesses, would have the most impacts. Those areas include residential areas, public and private schools locations, and parks and recreational areas. Given that a majority of the land area in Gainesville is designated for residential and educational uses, and the overall distribution of other land uses, the City is limited in where we can allow such uses. Areas designated with mixed use type land use designations were eliminated because those areas would allow residential development and are more pedestrian oriented. Business Automotive and Limited Industrial areas were also eliminated due to the close proximity of these areas to residential development and their location along major roadways such as 13th Street and Main Street. The BT, BUS and I-2 districts were chosen because they provided the best opportunity with the least amount of negative impact on the overall community. These districts are also more automotive oriented than the mixed use type pedestrian areas, automotive oriented areas appear to better suited for these types of uses.

Exhibit 1 provides a table that highlights the major changes, current versus proposed code changes. The most significant change is the expansion of the

090643B

number of zoning districts where adult and sexually oriented business will be able to locate. The proposed change will allow retail uses (sex shops and sexually oriented media stores) in the BUS (General Business District) and I-2 (General Industrial District), the uses are currently allowed in the BT district. In addition to the BT district the proposed change would allow adult cabarets and adult motion picture theaters in the I-2 district. The proposed amendment also includes design standards, separation requirements, signage, lighting and other provisions to limit the potential negative secondary effects of such businesses on the community. Exhibit 2 provides the findings and recommended revision to the city's land development code. Exhibit 3 and 4 are maps showing eligible parcels zoned BUS, BT and I-2. Exhibit 5 provides some case law for review.

Respectfully submitted,



Ralph Hilliard,
Planning Manager