

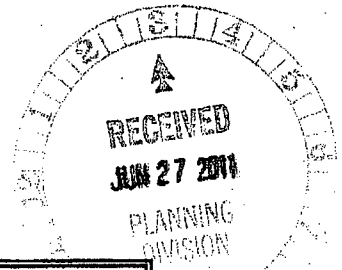
**LEGISLATIVE #**

**110147A**

**GAINESVILLE**

FLORIDA

**APPEAL OF ADVISORY BOARD DECISION**  
**Planning & Development Services Department**



**OFFICE USE ONLY**

Original Petition No. AD-11-95 Fee: \$ 607.75  
 Hearing Date: \_\_\_\_\_ EZ Fee: \$ 303.50 EB  
 Account No. 001-670-6710-3401 [ ]  
 Account No. 001-670-6710-1124 (Enterprise Zone)   
 Account No. 001-670-6710-1125 (Enterprise Zone Credit)

**CHECK ONE:**

- Plan Board       Development Review Board

APPLICANT
Name: <u>Historic Gainesville Inc.</u>
Address: <u>300 E UNIVERSITY AVE</u>
<u>STE 110</u>
<u>Gainesville, FL 32601</u>
E-mail Address: _____
Phone: <u>Historicgainesvilleinc@gmail.com</u>
Fax: _____

Agent Authorized to Act on Applicant Behalf
Name: <u>Michael Volk</u>
Address: <u>20 SE 9th St</u>
<u>Gainesville, FL 32601</u>
E-mail Address: <u>mikevolke@ft.edu</u>
Phone: <u>352-262-3018</u>
Fax: _____

**Please provide the following information:**

- Date the final decision was rendered: June 9, 2011 (DRB approval)
- Briefly summarize the Board's decision: June 14, 2011 (date of board letter approval) & from Lawrence Calderon.  
Development plans for 16 & 24 S. Main Street were approved.

3. A statement to indicate how the applicant is affected by the decision:

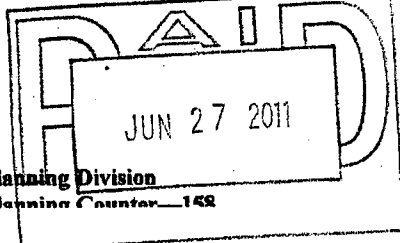
This development proposal is in direct noncompliance w/ the word & intent of the city's comp plan & code, to the detriment

4. Describe the basis for the appeal including the alleged error:

of our downtown district. H&I will be impacted via the negative effects to its members (and other Gainesville citizens) caused by this noncompliant development in our downtown. Please see further arguments attached.

*Please continue on additional sheets as needed*

**Certified Cashier's Receipt:**



Planning Division  
 Planning Counter 152

Fax: 352-334-3259  
 Phone: 352-334-5073

Thomas Center B  
 306 NE 6th Avenue

Please note that the City Attorney's office will engage the services a hearing officer through State of Florida Division of Administrative Hearings office. The applicant is responsible for the application fee to the Planning and Development Services Division and the cost associated with the hearing officer. This application, the decision of the hearing officer, and a record of the proceedings will be maintained with the Planning and Development Services Division.

Refer to the Land Development Code Sec. 30-352.1 for more details regarding this appeals process.

State of Florida Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675

City Attorney's Office  
PO Box 490, Station 46  
Gainesville, FL 32602  
(352)334-5011

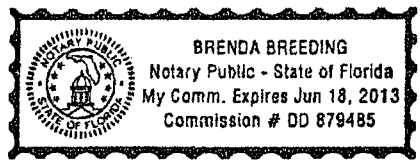
Applicant/Agent Signature: Michael Volk Date: 6/27/11

STATE OF FLORIDA  
COUNTY OF Alachua

Sworn to and subscribed before me this 27th day of June 20 11  
by (Name) Michael J Volk

Brenda Breeding  
Signature - Notary Public

Personally Known  OR Produced Identification  (Type) PDL# V420 549,81,447-0





June 27, 2011

To: City of Gainesville

From: Historic Gainesville Inc (HGI)  
300 E University Avenue, STE 110  
Gainesville, Florida 32601  
historicgainesvilleinc@gmail.com

**Subject:** Appeal of Petition DB-11-38 SPA regarding implementation of the Traditional City Special Area Plan at 16 & 24 South Main Street

#### Executive Summary

The purpose of this appeal is to contest the proposed development on 16 & 24 South Main Street. We believe this proposal is in direct noncompliance with City of Gainesville Codes and the Comprehensive Plan and request that a revised proposal be submitted that is compliant, enhances our downtown, and is not merely the least cost and highest profit solution possible. In addition to being noncompliant, the project as currently proposed creates a disruption of the linear street rhythm along Main Street as well as creating a large void in the downtown urban fabric. By no means do we wish to preclude development of this focal downtown corner site. In fact we advocate the best possible redevelopment, which ideally would include construction of a two story building consistent with the existing downtown streetscape, and complimentary to the character of our historic Main Street. *However, at a minimum we request that the proposed development meet the intent and word of the Gainesville Comprehensive Plan and Land Development Code.* At this point it clearly does not, and we outline these points of noncompliance below. HGI wishes to be a proactive force in the redevelopment and prosperity of our Downtown and City. Should this appeal be upheld, we would more than welcome the opportunity to provide community input towards the best possible planning and redevelopment of this site.

#### Summary of recent actions and conditions:

- An application for a minor development plan was submitted to the Planning and Development department proposing conversion of part of an existing office building at 16 South Main Street to a bar and installation of an associated outdoor café located at 24 South Main Street (previously Jack's Bar, demolished due to neglect). *Both properties are within the CCD zoning district and subject to the Traditional City Special Area Plan*

- The Development Review Board (DRB) considered this development petition at their May 12, 2011 meeting and requested additional information from the applicant to be presented at the June 9, 2011 DRB regarding the principal use of the existing primary structure as an Alcoholic Beverage Establishment.
- Subsequently, a new design proposal was submitted at the June 9 DRB meeting, but was not provided to the public in advance of the meeting as required.
- Nonetheless, the development plan was approved at the June 9, 2011 meeting (*Refer to Staff Report and development plans posted on the advisory board website here: [Citizen Advisory Boards: DRB Agenda](#)*)
- Under a provision of the Traditional City Special Area Plan, Land Development Code Chapter 30, Appendix A, Section 4(e), a decision rendered by a reviewing body or designee may be appealed to the City Commission.
- This document serves as an appeal of this decision: Petition DB-11-38 SPA.

#### Grounds for Appeal:

HGI states the following areas of noncompliance as grounds for appeal of this development proposal:

1. Intensification of a non-conforming condition: We believe that the existing property at 24 S Main Street and proposed development do not conform to City of Gainesville codes and the Comprehensive Plan. *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. City code section 30-346 states that, "Except as otherwise provided, it is the further intent of this chapter that nonconformities shall not be enlarged upon, expanded, intensified or extended nor be used as a basis for adding other structures or uses prohibited within the district".*

Therefore, if the following arguments for non-compliance and nonconformity to the code are accepted, *this should be sufficient basis to require any new construction or development proposals to be in compliance rather than expanding, intensifying, or adding to existing and proposed nonconformities.*

2. Noncompliance with the Comprehensive Plan, Urban Design Element, Policy 3.5.6: The proposed development does not comply with the intent of the Urban Design Element of the Comprehensive Plan, policy 3.5.6. This policy states that:

*"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."*

HGI states that construction of a ground level open air use on this extremely prominent corner is in no way sensitive to the context or scale of the two story

historic buildings directly adjacent. Further, the proposed materials are entirely incompatible with the existing historic materials on this block. *Use of compatible materials and building massing similar to the adjacent buildings should be proposed in order to meet the intent of the above policy with reference to context and scale.*

2. **Noncompliance with the Special Area Plan for the Traditional City:** The proposed development does not comply with the intent and word of the "Special Area Plan for the Traditional City" and its designation of Main Street and Southwest 1<sup>st</sup> Avenue as "A streets" (please see City of Gainesville Code Chapter 30, Appendix A, Section 4). The Plan defines "A streets" as typified by buildings located close to the street with pedestrian scaled lighting, articulated building walls, and aligned building facades.

The properties at 16 and 24 S Main Street are clearly critical and prominent properties within the Traditional City Area and redevelopment of these sites should adhere to the described character of the streets within the Special Area Plan. The building at 24 South Main Street was "demolished by neglect", which created a vacant lot and created a self-imposed condition that does not conform to the above definition and design requirements. New construction should adhere to these requirements and include buildings with articulation, which are close to the street, and aligned with the existing historic facades. Unfortunately, the proposed development ignores the "A Streets" designation as carefully outlined by the City and described below:

- a. **Buildings located close to the street:** The proposed outdoor bar is entirely the opposite of "buildings located close to the street"- in that there is no building proposed. This is an intensification of a self-imposed nonconforming condition.
- b. **Articulated building walls:** Metal siding was inappropriately proposed and approved by the DRB for installation on the south wall of the building at 16 South Main Street in violation of the requirement to provide building wall articulation described above. Section 4(n)(2)a states that, "Building wall articulation or architectural relief can include but is not limited to, pilasters, windows, pedestrian entrances, arcades, awnings, shutters and canopies or other types of building massing that modulates the building mass or surface texture". The metal screening material currently being installed is antithetical to "modulating the massing of the building" and was a practice of urban renewal that is now being appropriately reversed across the country. It is not structural and disguises the inherent wall articulation. Additionally, the code states that "no more than 20 feet of horizontal distance of wall shall be provided without articulation or architectural relief. The approved siding exceeds the 20 feet defined in the standard.

- c. **Aligned building facades:** The proposed outdoor bar has no building façade. The proposed design will in fact be a detriment to the “aligned building facades” along Main Street and will break the continuous line of existing facades at a critical and focal corner.
  - d. **Build to lines:** The proposed development is inconsistent with the intent of Code section 4(i), Build-to line due to the self-imposed condition resulting from demolition by neglect, followed by the development proposal as submitted. There are clear urban design and planning reasons for the standards outlined in this portion of the code, including a desire to promote a continuous and consistent streetscape and rhythm of facades on important urban corridors. We strongly request that the proposed new construction be in compliance with this section of the code, which is possibly the most critical of all for its urban design implications, ideally through redevelopment of a building that replaces the historic building lost, anchors this critical and visible corner, and reinforces the urban character of Main Street as intended in the code.
  - e. Code section 4(h)(2)d states that a non-conforming building may not increase the degree of non-conformity with the following standards: build-to line, parking, trash and recycling receptacles and loading docks, sidewalks, building orientation, building wall articulation, mechanical equipment, landscaping or lighting. As previously described, this project violates these standards in that the nonconformity is actually accentuated via the utter lack of building articulation and lack of adherence to the required build-to line.
3. **Noncompliance with the Central City District (CCD):** The proposed development does not comply with City code Section 30-66 (c), which states that allowable uses within the Central City District (CCD) include: "Any accessory uses customarily and clearly incidental to any permitted principal use".

With approval by the DRB, the permitted principal use for this project is an alcohol establishment with outdoor café at 24 S Main. The proposed development uses a minor percentage of the building square footage at 16 S Main as supporting interior space, with the primary percentage of the development constituting the outdoor beer garden to the south. Interior seating is approximately for 34 patrons, while exterior seating is approximately for 190.

Clearly the small usage of interior space containing the permitted "principal use" will be incidental to the outdoor accessory area containing the outdoor beer garden. Therefore, this development proposal is in direct conflict with the intent and word of the code described above, with subsequent negative effect on the urban character of this prominent corner in our historic downtown.

4. The proposed development does not comply with City of Gainesville Code Section 30-87 and 30-23. The approved zoning compliance permit for this project is for an alcoholic beverage establishment while the development review application is for an outdoor café. City of Gainesville Code Section 30-87 states that an outdoor café can be operated in conjunction with an alcoholic beverage establishment but the café may only include the sale of alcoholic beverages for consumption on premises when at least 51% of the revenue is from food and non-alcoholic beverage sales. Since the primary business of the outdoor café (beer garden) will be the sale of alcohol for consumption on premises, the proposed development is in direct violation of this code.

Furthermore, an alcoholic beverage establishment is defined in Section 30-23 as being, "any use located *in* any structure or building or portion thereof". This reinforces the argument that the alcoholic beverage establishment should be principally located within a building (not in the proportions proposed with 190 outdoor seats and only 34 seats inside). Therefore we state the proposed development is inconsistent with both the definition of an outdoor café and an alcoholic beverage establishment as written in the code.

Appeal Summary:

In summary, we believe that this project is in noncompliance with the City's Land Development Code and Comprehensive Plan and that a plan should be proposed and approved that is in compliance as outlined above. We believe redevelopment of this site should occur and is essential in order to rebuild the integrity of our Main Street corridor after the unfortunate demolition of this building due to chronic neglect by its owner.

We respectfully request and greatly appreciate consideration of this appeal.



