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Planning & Development Services

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Monday, November 01, 2010

Mr. Todd Pressman
Agent for Main & Waldo Investments, LLC
P.O. Box 6015
Palm Harbor, FL 34684

Ref: Petition BA-10-6 APP

Pressman and Associates, Inc., agent for Main and Waldo Investments LLC. Ice House America appealing an administrative decision of the Planning Manager to classify the proposed ice making and dispensing machine as a use in the Standard Industrial Classification as IN 2097 (Manufactured Ice) instead of a retail use for zoning purposes. Zoned MU-1 (Mixed Use Low Intensity, 8-30 du/ac). Located at 1030 SE 4th Ave.

Dear Mr. Pressman:

This communication is to inform you of the decision of the Board of Adjustment concerning the above referenced Petition BA-10-6 APP.

Per the attached order, the board conducted a public hearing on October 6, 2010 and voted to deny your request to classify "...the proposed ice making and dispensing machine" as a use in the Standard Industrial Classification IN 5999. The board confirmed the Administrative Decision that the use is more appropriately classified as Standard Industrial Classification IN2097 which is not allowed in the MU-1 zoning District.

With reference to the above, the action of the board may be appealed to the City Commission in accordance with Article 30-354 of the Land Development Code.

Should you have any questions or need additional information, please contact me at (352) 334-5023.

Sincerely,

Lawrence D. Calderon
Chief of Current Planning
LDC: ldc

File: Petition BA-10-06 APP

Final Order of
The City of Gainesville's
Board of Adjustment

IN THE MATTER OF PETITION BA-10-05 APP, PRESSMAN AND ASSOCIATES, INC.,
AGENT FOR MAIN AND WALDO INVESTMENTS LLC. ICE HOUSE AMERICA
APPEALING AN ADMINISTRATIVE DECISION OF THE PLANNING MANAGER TO
CLASSIFY THE PROPOSED ICE MAKING AND DISPENSING MACHINE AS A USE
IN THE STANDARD INDUSTRIAL CLASSIFICATION AS IN 2097
(MANUFACTURED ICE) INSTEAD OF A RETAIL USE FOR ZONING PURPOSES.
ZONED MU-1 (MIXED USE LOW INTENSITY, 8-30 DU/AC). LOCATED AT 1030 SE
4TH AVE.

Upon reaching its decision, the board shall make such order as it shall deem to be proper to each case and to that end shall have all of the powers of the officer from whom the appeal was taken. Each order shall thereafter be reduced to writing and shall contain a full recital of the board in each case. A copy thereof shall be filed in the records of the board by its secretary

ORDER

The Board of Adjustment (BOA) of the City of Gainesville held an informal quasi-judicial hearing on October 5, 2010, on Petition BA-10-05 APP, filed by Pressman and Associates, Inc., agent for Main and Waldo Investments LLC, Ice House America. Appealing an administrative decision of the Planning Manager to classify the proposed ice making and dispensing machine as a use in the Standard Industrial Classification as IN 2097 (Manufactured Ice) instead of a retail use for zoning purposes.

STATEMENT OF THE PETITION

The issue in this proceeding was whether or not the proposed use, (manufacturing of ice and selling such ice from a fixed location), is classified as an establishment engaged in manufacturing ice for sale (Standard Industrial Classification IN 2097) or as an ice dealer (IN5999).

PRELIMINARY STATEMENT

On October 5, 2010, the Board of Adjustment (BOA) held an informal quasi-judicial hearing on Petition BA-10-05 APP. After hearing presentations, receiving evidence, and testimony from staff, and the applicant, the Board of Adjustment voted to deny the applicant's request to classify the proposed use as (Standard Industrial Classification SIC) IN5999.

FINDINGS OF FACT

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

- 1) The request is specific to the property located at 1030 SE 4th Avenue and incorporates a total of approximately 0.43 acres.

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- 1 2) The interpretation applies to all zoning district which allows the uses listed in
- 2 SIC IN 2097 and IN 5999.
- 3 3) The property is zoned Mixed-Use Low Intensity (MU-1) and the use IN2097 Manufactured
- 4 Ice: Establishments primarily engaged in manufacturing ice for sale is a not a permitted use
- 5 in the MU-1 zoning district.
- 6 4) The use "IN5999 Miscellaneous Retail Stores, Not Elsewhere Classified: Establishments
- 7 primarily engaged in the retail sale of specialized lines of merchandise, not elsewhere
- 8 classified", is a permitted use in the MU-1 Zoning District.
- 9 5) The proposed use involves the Manufacturing of ice as well as the sale of ice.
- 10 6) The petition was timely filed and there were no disputed issues of material fact.
- 11
- 12 7) On March 3, 2010, the applicant filed an application for a Text Change to the Land
- 13 Development Code as follows:
- 14 Ice House America, LLC (IHA) respectfully requests a text amendment to the
- 15 Gainesville zoning code Chapter 30, Land Development Code, Article IV, Use
- 16 Regulations, division 4, Business and Mixed Use Districts, Sections 30-63 and 30-65 to
- 17 allow the IHA automated ice vending machines as one of the permitted uses. Or in the
- 18 alternative IHA request reclassification of its Ice Vending machine to SIC5999 from
- 19 SIC 2097 as this will appropriately characterize the machines as commercial retail, thus
- 20 avoiding the need for an amendment to the code.

REVIEW CONSIDERATIONS

In accordance with the Land Development Code, the Board of Adjustment is authorized to hear appeals regarding a specific property where a person has a legal interest (affected person). The appeal must be taken to the Board of Adjustment by the affected person within 20 days from the date of the notice of the final administrative action by an administrative officer regarding any land development code or building chapter provision (chapters 6 and 30), which affects a specific property where the affected person has a legal interest, when that decision is adverse to his/her interest or by the applicant within 20 days from the time the building inspector refuses to issue any permit after application therefore has been duly made. Each notice of final administrative action shall include an explanation of the affected person's right to appeal and give the time period (20 days) for filing a petition for appeal to the board.

All petitions for appeal containing or attaching the requisite information described in this paragraph shall be filed with the secretary of the board on forms prescribed by the board and shall be accompanied by all of the papers constituting the record upon which the action was taken. In addition, all petitions for appeal must include:

- a. An explanation of how the petitioner's substantial interest is affected by the administrator's decision;
- b. A statement of how and when the petitioner received notice of the administrator's decision;

1
2 c. A statement of all disputed issues of material fact or a statement that there are no disputed
3 issues of material fact;

4
5 d. A concise statement of the ultimate facts alleged, including specific facts that the petitioner
6 contends would warrant reversal by the board or would warrant modification of the
7 administrator's decision; and

8
9 e. A statement of relief sought by the petitioner, stating precisely the remedy the petitioner
10 seeks from the board.

11
12 The board shall hear and determine all appeals promptly after giving to all parties at least ten
13 days' written notice of the time and place of the hearing, as is stated in this section.

14
15 a. Timely filed petitions stating there are no disputed issues of material fact shall be processed
16 and heard as follows:

17 i. The board secretary shall schedule a quasi-judicial hearing of the matter before the board
18 after giving all parties at least ten days written notice of the time and place of the hearing.

19
20 ii. All parties shall submit to the secretary of the board any documentary evidence intended
21 to be introduced at the hearing on their behalf at least five business days prior to the
22 hearing.

23
24 iii. At the hearing, the board shall provide all parties the opportunity to present written or
25 oral evidence in support of the documentary evidence submitted on their behalf including
26 the petition.

27
28 iv. If during the course of the proceeding a disputed issue of material fact arises then, unless
29 waived by all parties, the proceeding under this subsection (5)a. shall be terminated and a
30 proceeding under subsection (5)b., below, shall be conducted.

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32 **CONCLUSIONS OF LAW**

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34 1) The Board of Adjustment is authorized by Section 30-354(h), Gainesville Code of
35 Ordinances, to review and approve or deny appeals of decisions issued by an
36 administrative official.

37
38 2) The City of Gainesville Board of Adjustment provided proper procedural due process to
39 all parties in consideration of a request to overturn an administrative decision that the
40 proposed use is classified as IN2097 which is not allowed in the MU-1 zoning district.

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42 **ORDER**

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1 Based upon the foregoing findings of fact and conclusions of law, the Board of Adjustment at its
2 meeting of October 5, 2010, voted 3 -1 to deny the request to overturn an administrative decision
3 that the proposed use is classified as IN2097 which is not allowed in the MU-1 zoning district.
4

5 In a second motion, the Board of Adjustment voted 4 - 0, to "submit a referral to the City
6 Commission, the City Manager, the City Attorney's Office and staff, requesting a speedy review
7 of a text change submitted by the applicant that would address the manufacturing and sale of ice
8 in the MU-1 zoning district with appropriate development standards.
9

10 Dated this 26 day of October, 2010, nunc pro tunc _____, 2010
11
12
13
14

15 Laura Duker
16 _____
17 Laura Duker
18 Chair, Board of Adjustment