



Legislation Details (With Text)

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This item is an appeal filed challenging the Development Review Board's decision to grant Preliminary Development Plan approval of Petition DB-11-38 SPA for conversion of an existing office space to a bar (Alcoholic Beverage Establishment) with an associated outdoor café.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 110147A_Appeal Application_20110804.pdf, 2. 110147B_Letter to Sergio Reyes_20110804.pdf, 3. 110147C_SPA Comments SPUTO_20110804.pdf, 4. 110147D_5-4-11 Development Plan_20110804.pdf, 5. 110147E_5-23-11 Development Plan_20110804.pdf, 6. 110147F_Appeal Response - Staff Memo_20110804.pdf, 7. 110147G_6-9-11 DRB Minutes_20110804.pdf, 8. 110147H_Staff Power Point_20110804.pdf, 9. 110147I_Applicant Ppt_20110804.pdf, 10. 110147_MOD_HGI full presentationfinal1_20110804.pdf, 11. 110147_MOD_homassa-vs-citruscaselaw220110804.pdf, 12. 110147_MOD_nassau-vs-williscaselaw1_20110804.pdf, 13. 110147_MOD_Appeal Standing Documentation20110804.pdf, 14. 110047_MOD_ExpertLetterHGI Appeal_20110804.pdf, 15. 110147_finalorder_20110804.pdf

Date	Ver.	Action By	Action	Result
8/4/2011	0	City Commission	Approved as Recommended	Pass

Appeal of Development Review Board Decision - Jack's Bar Case - 16 and 24 S. Main Street, Petition DB-11-38 SPA (B)

This item is an appeal filed challenging the Development Review Board's decision to grant Preliminary Development Plan approval of Petition DB-11-38 SPA for conversion of an existing office space to a bar (Alcoholic Beverage Establishment) with an associated outdoor café.

On May 12, 2011, the Development Review Board (DRB) considered Petition DB-11-38 SPA at a public hearing and voted 4 - 0 to continue the petition asking the applicant to address issues related to establishing a principal use by expanding the interior space allocated for the Alcoholic Beverage Establishment, including a photometric plan, establishing a definitive fence height of 48 inches and working with staff to address comments from an adjacent neighbor.

On June 9, 2011, the petition was resubmitted to the Development Review Board (DRB) at a public hearing. The board voted to approve the Petition with staff conditions, by a vote of 4-0.

On June 27, 2011, Mr. Michael Volk, representing Historic Gainesville Inc., filed an appeal to the DRB decision. The appeal alleges that Preliminary Development Plan approval should not have been granted for the following reasons: 1) the project is an intensification of a non-conforming condition and does not conform to the City of Gainesville's Code and the Comprehensive plan; 2)

the project does not comply with the intent of Policy 3.5.6 of the Urban Design Element of the Comprehensive Plan; 3) the project does not comply with the intent and wording of the "Special Area Plan overlay district for the Traditional City"; 4) the project does not comply with the requirements of the Central City District in that the area devoted to outdoor café is greater than the area devoted to Alcoholic Beverage Establishment; and 5) the proposed development does not comply with Sections 30-87 and 30-23 of the City of Gainesville Land Development Code.

There are two threshold legal issues that staff feels are appropriate for the City Commission to examine from the outset regarding deliberations on this appeal.

Standing

In order to have standing to appeal a decision under the City's Land Development Code (Appendix A. Section 4. Special Area Plan for Traditional City, Exhibit B. (e) Right to appeal) or to appeal and challenge the consistency of a development order with the comprehensive plan (Section 163.3215, Florida Statutes), a person must be "adversely affected" or "aggrieved" by the decision. As defined in the City's Land Development Code (Sec. 30-23) and Section 163.3215, the term "adversely affected" or "aggrieved" person/party means:

any person who is suffering or will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including but not limited to: interests related to health and safety; densities or intensities of development; transportation facilities; recreational facilities; educational facilities; health care facilities, or services; and environmental or natural resources. The alleged adverse effect may be shared in common with other members of the community at large, but must exceed in degree the general interest in community good shared by all persons.

With respect to organizations or citizen groups, the courts have recognized that an organization whose members are injured may represent those members in an appeal proceeding. However, a general interest in the matter does not place the organization, or its members, among the injured. In this case, the Appellant (an organization) has asserted that it "will be impacted via the negative effects to its members (and other Gainesville citizens) caused by this noncompliant development in our downtown." The Appellant has failed to assert how it, or any of its individual members, will suffer injury or adverse effect of a greater degree than the general citizenry. The Appellant does not own property within the 400 foot notice area, nor was it recognized as an "adversely affected" or "aggrieved" party at the DRB hearing on this matter.

For these reasons, Staff recommends the City Commission dismiss the appeal based on lack of standing by the Appellant.

Limited Jurisdiction

If the City Commission finds the Appellant has established standing, the City Commission should limit its review to only two of the issues raised by the Appellant (Noncompliance with the Special Area Plan for the Traditional City and Noncompliance with the Comprehensive Plan, Urban Design Element, Policy 3.5.6.) for the following reasons. Section 30-352.1(b) of the City's Land Development Code generally provides that any final order of the Development Review Board may be appealed to the appropriate court within 30 days of the order by an action in the nature of a writ of certiorari. However, with respect to the Traditional City Special Area Plan standards, the Land Development Code (Appendix A. Section 4. Special Area Plan for Traditional City, Exhibit B. (e) Right to appeal) provides a right to appeal to the City Commission, after which the decision of the City Commission may be appealed to the courts as provided by law. In addition, with respect to inconsistency with the Comprehensive Plan, Section 163.3194

(1)(a), Florida Statutes, requires that all actions taken in regard to development orders by governmental agencies be consistent with its adopted comprehensive plan. Therefore, because this is a de novo hearing before the City Commission that will result in a development order, the City Commission has jurisdiction to consider consistency with the Comprehensive Plan.

For these reasons, Staff recommends the City Commission limit this appeal hearing to two issues: 1) Noncompliance with the Special Area Plan for the Traditional City, and 2) Noncompliance with the Comprehensive Plan, Urban Design Element, Policy 3.5.6. The remaining issues may be appealed to the appropriate court, as provided by the Land Development Code and state law.

None.

Recommendation: Staff to City Commission: Dismiss appeal based on lack of standing by Appellant.

Alternative Recommendation: City Commission: 1) Find that Appellant has established standing; 2) Hear appeal as to two issues: Noncompliance with the Special Area Plan for the Traditional City and Noncompliance with the Comprehensive Plan, Urban Design Element, Policy 3.5.6., including presentations from staff, William Chick and/or his agents (the applicant) and Historic Gainesville, Inc. (the affected party appellant); and 3) affirm, amend or reverse the decision of the Development Review Board.