

1. CALL TO ORDER

2. MINUTES

A. December 14, 2021 PAB Meeting Minutes

3. OLD BUSINESS

4. NEW BUSINESS

A. Variance Request

- (1) Request from **Daniel J. Peck** to vary the illumination requirements for a monument sign and wall sign on a 0.62± acre tract located on the east side of South Enota Drive, north of Downey Boulevard (a/k/a **440 South Enota Drive, NE**), having a zoning of Office and Institutional (O-I).

Ward Number: Three

Tax Parcel Number(s): 01-064-002-036

Request: Monument sign and wall sign

B. Appeal of an Administrative Decision

- (1) **Phillip R. Brown** requesting an appeal of an administrative decision to disallow use for lodging services on a 3.5± acres tract located at the terminus of Mountain View Circle, west of Honeysuckle Road (a/k/a **725 Mountain View Circle, NW**), having a zoning of Residential-I (R-I).

Ward Number: One

Tax Parcel Number(s): 01-111-001-011

Request: Reverse administrative decision

C. Special Use Request

- (1) Request from **McKinley Homes US, LLC** for a special use on a 7.74± acres tract located on the west side of Florence Drive, across from its intersection with Bentley Park Circle (a/k/a **2920 Florence Drive, SW**), having a zoning of Office and Institutional (O-I).

Ward Number: Four

Tax Parcel Number(s): 08-015-005-029

Request: Residential townhomes

D. Code Amendment Request

- (1) Request from the **City of Gainesville** to amend the Unified Land Development Code for the City of Gainesville, Georgia to amend Table 9-5-1 of Article 9-5 entitled "Permitted and Special Uses for Residential Zoning Districts"; to amend Table 9-6-1 of Article 9-6 entitled "Permitted and Special Uses for Nonresidential Zoning Districts"; to amend Section 9-10-2-5 entitled "Single-Family Attached Dwelling (Fee-Simple Townhouse)"; to amend Section 9-10-3-5 entitled "Private Swimming Pools"; to amend subsection (b) of Section 9-18-6-6 entitled "Changeable Copy"; to amend subsection (c) of Section 9-21-1-12 entitled "Powers and Duties"; to amend subsection (d) of Section 9-22-2-18 entitled "Action by Governing Body".

5. ADJOURNMENT



CITY OF GAINESVILLE

AGENDA REQUEST

Date Submitted: 1/20/2022

Presenter: N/A

Item of Business: December 14, 2021 PAB Meeting Minutes

Meeting Date: 2/8/2022

Purpose of Request:

The purpose of this request is to allow the Planning and Appeals Board to approve the minutes from the referenced meeting.

History/Background:

Facts & Issues for Consideration:

The draft minutes were reviewed by the Office & Records Coordinator and the Community Development Deputy Director.

Department Recommendation:

Approval of the minutes as presented.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Draft Minutes	Minutes

GAINESVILLE PLANNING AND APPEALS BOARD
DRAFT MINUTES OF MEETING
DECEMBER 14, 2021

CALL TO ORDER Chairman Carter at 5:30 p.m.

Members Present: Chairman Doug Carter, Vice-Chair Jane Fleming and Board Members Rich White, Eddie Martin, Kelvin Simmons, Carmen Delgado and Ryan Thompson

Members Absent: None

Staff Present: Community & Economic Director Rusty Ligon, Community & Economic Deputy Director Matt Tate and Recording Secretary Gwen Fleming

Others Present: Council Members Barbara Brooks and George Wangemann

MINUTES OF NOVEMBER 9, 2021

There was a motion to approve the minutes as presented.

Motion made by Board Member Thompson
Motion seconded by Board Member Simmons
Vote – 7 favor

OLD BUSINESS

There was a motion to remove the annexation request from the table.

Motion made by Board Member Martin
Motion seconded by Board Member Delgado
Vote – 7 favor

There was a motion to remove the zoning amendment request from the table.

Motion made by Board Member Martin
Motion seconded by Board Member Delgado
Vote – 7 favor

A. Annexation Request

- 1) Request from **Caballero Holdings, LLC** to annex a total of 140.77± acres to include a 44.91± acres tract located at the northeast side of the terminus of Floyd Road; a 80.8± acres tract located on the north side of Eberhart Cemetery Road; a 9.467± acres tract, 4.397± acres tract and a 1.996± acres tract located southwest of the intersection of Jesse Jewell Parkway and Old Cornelia Highway (a/k/a **0 Eberhart Cemetery Road; 2465 Floyd Road, SE; 2166, 2170 and 2210 Old Cornelia Highway**) and to establish zoning as Planned Unit Development (P-U-D).

Ward Number: Three

Tax Parcel Number(s): 15-022-000-001B, 003 (Part); 15-033B-000-022, 024 and 026A

Request: Master planned mixed-use development

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The proposal consists of two requests. The first request is to annex 140.77± acres with a zoning of Planned Unit Development (P-U-D) consisting of 5 parcels. These parcels are zoned (AR-IV), (AR-III) and (R-II) in the County. The second request is to amend an existing 981.661± acres tract zoned Planned Unit Development (P-U-D) consisting of 6 parcels. All total, the entire property consists of 1,122.43± acres. The property is located within the North Oconee Watershed Protection Overlay Zone. The surrounding uses include undeveloped land, the future Melvin Cooper “The Coop” Athletic Complex, single-family homes, church, gas station, package store, Rabbit Town Café, Avita Behavioral Health Facility and White Sulphur Elementary School. The proposal is for a master planned mixed-use “Gainesville Township” Community. The current approved use for the property was approved in 2001 known as “Sussex”.

The proposal includes a total of 1,414 single-family detached homes, 311 townhomes, 640 multi-family units and up to 75,000 square feet of commercial space. The residential uses include single-family homes ranging from a minimum of 1,200 to 1,800 square feet; townhomes ranging from a minimum of 1,100 to 1,400 square feet; and multi-family apartments. A Central Amenity Center is proposed off of the main entrance road to the community which will include a clubhouse, swim center with lap pool with children’s play area, tennis center with lighted courts, pickle ball courts, great lawn with pavilion for outdoor functions, mail kiosk and dog park, various pocket parks, disc golf, extensive trail, sidewalk and multi-use path system. Other satellite amenities may include boat/RV storage, bicycle racks, small open space cabana’s with neighborhood size pools. A 645± acres will remain as open space. Two points of access are proposed from Old Cornelia Highway. The primary access will be from the new road serving the future “The Coop” Athletic Complex.

A traffic study was conducted for the proposal as well as a Development of Regional Impact Study which are summarized in the staff report. THE DRI stated the project does **NOT** present any potential adverse inter-jurisdictional impacts but recommended a 3rd access point and encouraged protection of the North Oconee Watershed Protection Zone.

The City of Gainesville places the property within the *Low-Medium Density Residential* land use category, and the *Suburban Residential Character Area* which includes areas containing or planned for single-family detached or semi-detached housing at densities ranging from two to four dwelling units per acre. The proposal has a density of 2.11 dwelling units per acre.

The Planning Division staff is recommending **conditional approval** of this annexation and P-U-D amendment request based on the Comprehensive Plan, the existing approved use of the property and the adjacent mixture of uses.

APPLICANT PRESENTATION: Brian Rochester, 425 Oak Street, stated Gee Harvey and Ryan Walker with Caballero Holdings were present. Mr. Rochester said the original project was originally annexed and zoned in 1998 and in 2001 the golf course was eliminated. He stated it is a great location but just trying to determine the timing for it and his company works on large master plan developments. Approximately two years ago or longer the owner of the property which is owned by a fire and police pension fund came to Rochester & Associates inquiring about developing the property. Mr. Rochester stated there were very few developers that could accomplish the project and even fewer that could create a master plan to be proud of in his hometown to serve residents for future years to come. He stated there was a long process of interviewing, Caballero had an extensive resume and are based in Northeast Georgia, and chose them because they are actively involved on the project. Mr. Rochester

said that money has been spent on due diligence to bring a master plan that is well thought out with the knowledge of the locations of streams, rocks and restraints of the property. He complimented the city staff regarding working with them including the visions of the developer for the property. The proposal was tabled due to not being ready to move forward as changes were needed. The developer is now in complete agreement with the 21 conditions presented by the city staff which will ensure the quality of the development. Mr. Rochester stated the development will cover an area on the east side of I-985 between Exit 22 and Exit 24, reviewed nearby locations along with the layout of the project and stated the main entrance way will be shared with the new sports complex. He also said it is just over three miles from downtown Gainesville. He stated the majority of the project is in the city of Gainesville, already rezoned and annexed. Mr. Rochester reviewed the presentation regarding units available for rent and per acre, adding most every lot in the development backs up to open space with 645 acres of open space total. He explained a rendering of the entrance way at Old Cornelia Highway and stated they have been working with the Hall County School Board and City of Gainesville way to include the name of the park and school. He said all single-family housing will be a minimum of 1,800 square feet unless age restricted which will go down to 1,400 square feet including 50 feet and 60 feet lots with age restricted units being 40 feet lots. He then stated the price point for the primary houses should start at \$350,000 with the larger homes going over a half million dollars. He said the attached units/townhomes will be a minimum of 1,100 square feet starting in the low 300,000's. He stated the 640 multifamily units may include apartments, cottages and manor homes with the commercial area being a standard neighborhood shopping area. Mr. Rochester explained the clubhouse area including grills and pool with a great lawn to be used for concerts, disc golf course, tennis courts and golf carts. He said there is a main loop road around the development with possibly four miles of multi-use path/trail with 90 linear feet of side-walks with over 50 percent of the site being maintained. He stated the development is similar to a conservation subdivision being an environmentally friendly project. He said in closing he said acreage is being added with more single-family owner occupied homes being capped at a maximum of 300 total. He said they are aware of some topo challenges with the property and will be less dense than currently zoned.

FAVOR: None

OPPOSE: **Phillip Price**, 3028 Pierce Road, stated he is not opposed to the development but had two concerns since his is an adjoining property. One was the green space with Floyd or Cain Creek with natural wildlife, a marsh located upstream and once was considered in a 100 year flood plain. His property is close to the water but high up and wants to be sure of no erosion problems. He said the area does have some flooding and a big concern for water management and erosion control.

REBUTTAL: Mr. Rochester pointed out on the map the streams are indicated by the dark lines which are staying way out of the buffers and leaving 645 acres undeveloped with opportunities for wildlife to live inside the city. He also stated for erosion control they are keeping natural buffers and the blue dots on the map is all storm-water management. They are staying out of the flood plains other than roadway crossing, sewer lines and trails. The trails will stay outside the state's 25 foot buffer and wanted to create an environmentally friendly project.

PLANNING AND APPEALS BOARD COMMENTS: Chairman Carter asked about the anticipated build-out date and Mr. Rochester replied 10 to 14 years depending on the market. Vice-Chair Fleming asked if the developer would consider donating land for a school and Mr. Rochester stated it is a part of the conditions and had to make available 20 acres to donate

and then the school board could buy an additional 20 acres at fair market value. Mr. Rochester said they did add if the school board did not want to build a school inside the development, then the school would get paid the developers per acre purchase price for the amount of the 20 acres. He stated in the conditions there is also a donation of two acres for a public safety facility. Board Member Simmons asked which of the three phases would be first and asked for more information on the open space. Mr. Rochester stated the single-family phase would be first and pointed out on the slide presentation everything in green will be open space. Vice-Chair Fleming asked if the HOA will cover the entire development and Mr. Rochester stated there will be a master HOA which will be responsible for the open space and amenity areas along with any gated community having a sub-association.

There was a motion to recommend conditional approval of the annexation request for a master planned mixed-use development and establish zoning as Planned Unit Development (P-U-D) with the following conditions:

Conditions

- 1. The development standards within the applicant's narrative, site plans, and architectural renderings shall be made part of the zoning ordinance, and shall be subject to the Community and Economic Development Director approval. Any zoning conditions adopted as part of this zoning ordinance that conflict with the applicant's narrative, concept plan and architectural renderings shall take precedence over the applicant's development standards.**
- 2. The maximum number of single-family detached homes/lots shall be 1,414. The maximum number of single-family attached homes shall be 311. The maximum number of multi-family units shall be 640. The total number of residential units shall not exceed 2,365 units.**
- 3. No more than 300 single-family units (detached and/or attached) and 640 multi-family units shall be rental units for a total of 940 rental units. The multi-family units may be any combination of traditional garden-style apartments, townhomes, manor houses, cottages, and/or carriage houses built within the confines of the multi-family areas.**
- 4. Prior to permits being issued for the residential uses, each contractor/developer shall provide architectural renderings of the proposed single-family detached homes, attached townhomes and multi-family apartments for the review and approval of the Community and Economic Development Department Director.**
- 5. The minimum heated floor space for single-family detached homes shall be as presented in the below table associated with zoning condition number 8. The minimum heated floor space for the attached townhomes shall be 1,100 square feet and 640 square feet for the multi-family units. The single-family detached homes and attached townhomes shall not exceed 3 stories in height. The multi-family apartment buildings shall not exceed 3 stories, although 3 / 4 splits shall be allowed.**
- 6. All exterior wall front, sides, and rear of the single-family detached homes, townhomes, and multi-family units shall consist of a variety of building materials consistent with architectural themes and styles determined by the applicant. Foundation water tables of matching brick or stone material, that also covers all exposed foundation walls, will be used where architecturally compatible. Vinyl siding shall only be permitted on soffit areas.**

Other architectural requirements will include:

- Carriage style garage doors with decorative hardware or other embellishments shall be used on all single-family detached homes and townhomes;
- The roofing material used on all single-family detached homes and townhomes shall be 3-tab architectural/dimensional style asphalt shingles or metal as appropriate to the architectural style of each home as determined by the builder.
- All overhangs including gables and side gables will have a minimum of a 12-inch overhang on all sides;
- The developer shall use a variety of techniques to avoid the monotonous appearance of identical single-family detached homes. Such techniques may employ among others the use of differing front elevations, architectural styles, building exteriors, and other similar techniques so that no single-family detached house is the same as any house directly in front of a single-family detached home or on either adjacent side of a single-family detached home;
- All roofs and gables shall be of a pitch no less than 8/12. This condition shall not apply to dormers, porches, bay windows, and third floor retreats;
- The exterior materials for all homes shall consist of brick, stone, fiber cement siding, cedar shake or wood siding;
- All roof vents, pipes, and other roof equipment (except chimneys) shall be located on the rear elevations and shall be painted to match the color of the roof;
- No above-ground swimming pools shall be permitted;
- No window air conditioning unit may be installed;
- No exterior blank, windowless walls will be constructed;
- If dormers are included, they will not be taller than the main roof;
- All single-family detached house plans will have front or side loaded garages;
- All townhomes will have front or rear entry garages;
- Street lighting will be provided throughout the development;
- All front porches of single-family detached homes shall have a minimum depth of 5';
- Windows are restricted to single hung or double hung windows.

These requirements shall be included in the Covenants to be recorded against the property.

7. Each detached single-family home and townhome shall have, at a minimum, an attached two car garage.
8. Specific development standards for the single-family detached homes shall include the following:

Lot Width	*40'	50'	60'	75'	95'
Minimum Lot Size	4,000 SF	5,000 SF	6,000 SF	7,500 SF	9,000 SF
Minimum Front Yard Setback	25'	25'	25'	25'	25'
Minimum Side Yard Setback	5'	5'	5'	5'	5'
Minimum Rear Yard Setback	10'	10'	10'	10'	10'
Minimum Building Separation	10'	10'	10'	10'	10'

Maximum Height (Number of Stories)	3	3	3	3	3
Minimum Heated Square Feet per Home	1,400 SF	1,800 SF	1,800 SF	2,000 SF	2,200 SF
**Maximum % of SF Detached Lot Type	15%	35%	35%	No Max	No Max

***40' lots are restricted to age-restricted neighborhoods only.**

****Any lot allocation from a smaller category may move to a larger category.**

- 9. The front yard of each lot shall be sodded and planted with at least one 3" caliper in size hardwood tree.**
- 10. The proposed amenities shall be required as shown on the site plan and the pictures shown on pages 10, 14, 15, 16, 17 28, 29, 34, 75, 76, 77, 87, 88 and 89 of the applicant's revised narrative submitted with this application per the approval of the Community and Economic Development Department Director. The amenity area must be started in the first phase of construction. No more than 250 single-family detached homes shall receive a certificate of occupancy (CO) prior to the Central Amenity Center being substantially completed as described on page 37 of the applicant's revised narrative. This shall include at minimum the clubhouse, swim center with lap pool with children's play area, tennis center with lighted courts, pickle ball courts, great lawn with pavilion for outdoor functions, and mail kiosk. Certain elements, such as additional courts may be phased in as demand dictates. Additional CO's may be granted at the discretion of the Community and Economic Development Director, if sufficient progress is being made on the amenity.**
- 11. Covenants shall be put in place by the developer restricting against the parking of boats, trailers, and campers within driveways or streets. In addition, no on street parking shall be permitted for vehicles.**
- 12. No more than 10% of the units within the proposed community storage facility may be leased to non-residents of the proposed development. There are no restrictions for non-resident use of any commercially operated storage facility that is located within the Commercial District.**
- 13. A Uniform Sign Plan as identified within Section 9-18-7-4 of the Unified Land Development Code shall be required from the developer and is subject to approval by the Gainesville Community and Economic Development Director. All signs associated with residential uses shall be limited to indirect lighting. All signs shall be located outside of utility areas and shall not block visibility of vehicular traffic.**
- 14. All proposed detention ponds shall be fenced and landscaped in order to mitigate the view from all roads and adjacent properties. All fencing and landscaping materials shall be approved by the Community and Economic Development Department Director.**
- 15. A site shall be made available within the boundaries of the proposed development to the City of Gainesville for a school consisting of twenty (20) acres of land which meets the criteria established by the Georgia State School Board for such a public school. This site shall be made available by the developer without charge for the land, at any time within seven (7) years after the developer has provided paved**

access to the site. Alternatively, the School Board may elect to receive an amount equal to the Developer's per acre purchase price for 20 acres paid in two installments within 7 years of a land development permit being issued. The School Board shall identify a potential site no later than 180 days from closing, excluding any portions of the property that have been presented as Phase 1 of the community.

16. The developer agrees to make available an additional twenty (20) acres, for a total of forty (40) acres, if the City of Gainesville has a need for a second school site. The Gainesville School Board would be required to pay fair market value for this last twenty (20) acres. The School Board shall identify a potential site no later than 180 days from closing, excluding any portions of the property that have been presented as Phase 1 of the community.
17. A site shall be made available within the boundaries of the proposed development to the City of Gainesville for a fire station and a precinct for the police department consisting of not more than two (2) acres of land which will be designated by the developer and reasonably approved by the Gainesville City Council for such public services. This site shall be made available by the developer without charge for the land, at any time within seven (7) years after the developer has provided paved access to the site. This site has been identified on the Concept Plan and the City of Gainesville shall have 180 days from closing to determine if the site meets their requirements or if another site is preferred, however any portions of the property that have been presented as Phase 1 of the community shall be excluded.
18. The plan shall include a fifty (50') foot perimeter buffer separating all portions of the development from the existing single-family communities to the south of the project site. The specific parcels are shown on the buffer exhibit attached. The composition of this buffer, including any fencing deemed necessary, shall be subject to final approval by the Community and Economic Development Department Director.
19. Minimum five foot (5') wide sidewalks with a two foot (2') grass beauty strip shall be required as shown on the Pedestrian Access Plan filed with this request. Applicant, at his sole discretion, shall substitute a five foot (5') sidewalk with a ten foot (10') multi-use trail (asphalt or concrete) where indicated on the Pedestrian Access Plan to be maintained by the Homeowners Association (HOA).
20. All new streets shall meet the standards within the current Gainesville Unified Land Development Code, unless varied herein. All proposed residential uses, commercial uses and amenities shall provide for pedestrian connectivity throughout the development. All costs associated with the improvements shall be at the full expense of the developer.
21. All access point design for the subject property shall be submitted for review and approval by the Gainesville Public Works Director, Hall County and/or the Georgia Department of Transportation. The main access road, from Old Cornelia Highway to Applicant's property shall be constructed by the City of Gainesville at its expense. Applicant shall be responsible for access beyond this point and any other access points to the property.

Motion made by Board Member Martin
Motion seconded by Board Member Thompson
Vote – 7 favor

B. Zoning Amendment Request

- 1) Request from **Caballero Holdings, LLC** to amend an existing Planned Unit Development (P-U-D) zoning totaling 981.661± acres located east of Lanier Parkway (I-985), south of the intersection of Old Cornelia Highway and Dana Drive, south of Floyd Road and east of its terminus, having road frontage on the east side of Lenox Drive (a/k/a **0, 2490 and 2544 Floyd Road, SE; 0 Lenox Drive, SE; 0 Old Cornelia Highway, SE**).

Ward Number: Three

Tax Parcel Number(s): 15-021-000-164; 15-022-000-003M, 004, 034 and 086;
15-033-000-001

Request: Master planned mixed-use development

There was a motion to recommend conditional approval of the zoning amendment request for a master planned mixed-use development with Planned Unit Development (P-U-D) zoning with the following conditions:

Conditions

1. The development standards within the applicant's narrative, site plans, and architectural renderings shall be made part of the zoning ordinance, and shall be subject to the Community and Economic Development Director approval. Any zoning conditions adopted as part of this zoning ordinance that conflict with the applicant's narrative, concept plan and architectural renderings shall take precedence over the applicant's development standards.
2. The maximum number of single-family detached homes/lots shall be 1,414. The maximum number of single-family attached homes shall be 311. The maximum number of multi-family units shall be 640. The total number of residential units shall not exceed 2,365 units.
3. No more than 300 single-family units (detached and/or attached) and 640 multi-family units shall be rental units for a total of 940 rental units. The multi-family units may be any combination of traditional garden-style apartments, townhomes, manor houses, cottages, and/or carriage houses built within the confines of the multi-family areas.
4. Prior to permits being issued for the residential uses, each contractor/developer shall provide architectural renderings of the proposed single-family detached homes, attached townhomes and multi-family apartments for the review and approval of the Community and Economic Development Department Director.
5. The minimum heated floor space for single-family detached homes shall be as presented in the below table associated with zoning condition number 8. The minimum heated floor space for the attached townhomes shall be 1,100 square feet and 640 square feet for the multi-family units. The single-family detached homes and attached townhomes shall not exceed 3 stories in height. The multi-family apartment buildings shall not exceed 3 stories, although 3 / 4 splits shall be allowed.
6. All exterior wall front, sides, and rear of the single-family detached homes, townhomes, and multi-family units shall consist of a variety of building materials consistent with architectural themes and styles determined by the applicant. Foundation water tables of matching brick or stone material, that also covers all

exposed foundation walls, will be used where architecturally compatible. Vinyl siding shall only be permitted on soffit areas.

Other architectural requirements will include:

- Carriage style garage doors with decorative hardware or other embellishments shall be used on all single-family detached homes and townhomes;
- The roofing material used on all single-family detached homes and townhomes shall be 3-tab architectural/dimensional style asphalt shingles or metal as appropriate to the architectural style of each home as determined by the builder.
- All overhangs including gables and side gables will have a minimum of a 12-inch overhang on all sides;
- The developer shall use a variety of techniques to avoid the monotonous appearance of identical single-family detached homes. Such techniques may employ among others the use of differing front elevations, architectural styles, building exteriors, and other similar techniques so that no single-family detached house is the same as any house directly in front of a single-family detached home or on either adjacent side of a single-family detached home;
- All roofs and gables shall be of a pitch no less than 8/12. This condition shall not apply to dormers, porches, bay windows, and third floor retreats;
- The exterior materials for all homes shall consist of brick, stone, fiber cement siding, cedar shake or wood siding;
- All roof vents, pipes, and other roof equipment (except chimneys) shall be located on the rear elevations and shall be painted to match the color of the roof;
- No above-ground swimming pools shall be permitted;
- No window air conditioning unit may be installed;
- No exterior blank, windowless walls will be constructed;
- If dormers are included, they will not be taller than the main roof;
- All single-family detached house plans will have front or side loaded garages;
- All townhomes will have front or rear entry garages;
- Street lighting will be provided throughout the development;
- All front porches of single-family detached homes shall have a minimum depth of 5';
- Windows are restricted to single hung or double hung windows.

These requirements shall be included in the Covenants to be recorded against the property.

7. Each detached single-family home and townhome shall have, at a minimum, an attached two car garage.
8. Specific development standards for the single-family detached homes shall include the following:

Lot Width	*40'	50'	60'	75'	95'
Minimum Lot Size	4,000 SF	5,000 SF	6,000 SF	7,500 SF	9,000 SF
Minimum Front Yard Setback	25'	25'	25'	25'	25'
Minimum Side Yard Setback	5'	5'	5'	5'	5'

Minimum Rear Yard Setback	10'	10'	10'	10'	10'
Minimum Building Separation	10'	10'	10'	10'	10'
Maximum Height (Number of Stories)	3	3	3	3	3
Minimum Heated Square Feet per Home	1,400 SF	1,800 SF	1,800 SF	2,000 SF	2,200 SF
**Maximum % of SF Detached Lot Type	15%	35%	35%	No Max	No Max

***40' lots are restricted to age-restricted neighborhoods only.**

****Any lot allocation from a smaller category may move to a larger category.**

9. The front yard of each lot shall be sodded and planted with at least one 3" caliper in size hardwood tree.
10. The proposed amenities shall be required as shown on the site plan and the pictures shown on pages 10, 14, 15, 16, 17 28, 29, 34, 75, 76, 77, 87, 88 and 89 of the applicant's revised narrative submitted with this application per the approval of the Community and Economic Development Department Director. The amenity area must be started in the first phase of construction. No more than 250 single-family detached homes shall receive a certificate of occupancy (CO) prior to the Central Amenity Center being substantially completed as described on page 37 of the applicant's revised narrative. This shall include at minimum the clubhouse, swim center with lap pool with children's play area, tennis center with lighted courts, pickle ball courts, great lawn with pavilion for outdoor functions, and mail kiosk. Certain elements, such as additional courts may be phased in as demand dictates. Additional CO's may be granted at the discretion of the Community and Economic Development Director, if sufficient progress is being made on the amenity.
11. Covenants shall be put in place by the developer restricting against the parking of boats, trailers, and campers within driveways or streets. In addition, no on street parking shall be permitted for vehicles.
12. No more than 10% of the units within the proposed community storage facility may be leased to non-residents of the proposed development. There are no restrictions for non-resident use of any commercially operated storage facility that is located within the Commercial District.
13. A Uniform Sign Plan as identified within Section 9-18-7-4 of the Unified Land Development Code shall be required from the developer and is subject to approval by the Gainesville Community and Economic Development Director. All signs associated with residential uses shall be limited to indirect lighting. All signs shall be located outside of utility areas and shall not block visibility of vehicular traffic.
14. All proposed detention ponds shall be fenced and landscaped in order to mitigate the view from all roads and adjacent properties. All fencing and landscaping materials shall be approved by the Community and Economic Development Department Director.
15. A site shall be made available within the boundaries of the proposed development to the City of Gainesville for a school consisting of twenty (20) acres of land which

meets the criteria established by the Georgia State School Board for such a public school. This site shall be made available by the developer without charge for the land, at any time within seven (7) years after the developer has provided paved access to the site. Alternatively, the School Board may elect to receive an amount equal to the Developer's per acre purchase price for 20 acres paid in two installments within 7 years of a land development permit being issued. The School Board shall identify a potential site no later than 180 days from closing, excluding any portions of the property that have been presented as Phase 1 of the community.

16. The developer agrees to make available an additional twenty (20) acres, for a total of forty (40) acres, if the City of Gainesville has a need for a second school site. The Gainesville School Board would be required to pay fair market value for this last twenty (20) acres. The School Board shall identify a potential site no later than 180 days from closing, excluding any portions of the property that have been presented as Phase 1 of the community.
17. A site shall be made available within the boundaries of the proposed development to the City of Gainesville for a fire station and a precinct for the police department consisting of not more than two (2) acres of land which will be designated by the developer and reasonably approved by the Gainesville City Council for such public services. This site shall be made available by the developer without charge for the land, at any time within seven (7) years after the developer has provided paved access to the site. This site has been identified on the Concept Plan and the City of Gainesville shall have 180 days from closing to determine if the site meets their requirements or if another site is preferred, however any portions of the property that have been presented as Phase 1 of the community shall be excluded.
18. The plan shall include a fifty (50') foot perimeter buffer separating all portions of the development from the existing single-family communities to the south of the project site. The specific parcels are shown on the buffer exhibit attached. The composition of this buffer, including any fencing deemed necessary, shall be subject to final approval by the Community and Economic Development Department Director.
19. Minimum five foot (5') wide sidewalks with a two foot (2') grass beauty strip shall be required as shown on the Pedestrian Access Plan filed with this request. Applicant, at his sole discretion, shall substitute a five foot (5') sidewalk with a ten foot (10') multi-use trail (asphalt or concrete) where indicated on the Pedestrian Access Plan to be maintained by the Homeowners Association (HOA).
20. All new streets shall meet the standards within the current Gainesville Unified Land Development Code, unless varied herein. All proposed residential uses, commercial uses and amenities shall provide for pedestrian connectivity throughout the development. All costs associated with the improvements shall be at the full expense of the developer.
21. All access point design for the subject property shall be submitted for review and approval by the Gainesville Public Works Director, Hall County and/or the Georgia Department of Transportation. The main access road, from Old Cornelia Highway to Applicant's property shall be constructed by the City of Gainesville at its expense. Applicant shall be responsible for access beyond this point and any other access points to the property.

Motion made by Board Member Thompson
Motion seconded by Board Member White
Vote – 7 favor

NEW BUSINESS

A. Variance Requests

- 1) Request from **Sonia del Carmen** to vary the rear yard and right side yard setback requirements on a 0.072± acre tract located on the north side of Rainey Street, west of Woods Mill Road (a/k/a **878 Rainey Street, NW**), having a zoning of Residential-II (R-II).
Ward Number: Five
Tax Parcel Number(s): 01-045-008-012
Request: Bedroom addition

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to vary the rear yard setback from 20-feet to 5-feet and the right side yard setback from 10-feet to 5-feet for a 160 square foot, two-story rear addition to the home that will increase the size of two bedrooms. The property fronts Rainey Street and is 0.072 acre in size, and consists of a 760± square foot, two-story single-family home originally constructed in 1937. The adjacent properties are zoned Residential-II (R-II) and General Business (G-B) and includes older single-family homes and various office/warehouse uses. A building permit for the addition was issued for the proposed addition on June 24, 2021. The applicant partially constructed the addition but stopped when it was determined there was a setback issue due to an inaccurate survey. The applicant states she was unaware there was a setback issue when she purchased the property and found out during construction there was a discrepancy on the original survey which incorrectly located the rear and right side yard property lines further from the existing home. The property owner is basing the hardship on the small size of the lot and the narrow shape of the lot.

The Planning Division staff is recommending **conditional approval** of this variance request based on the size of the property and the location of the existing home.

Applicant Presentation: None

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: None

There was a motion to conditionally approve the request to vary the rear yard setback requirement from 20-feet to 5-feet and right side yard setback requirement from 10-feet to 5-feet for a bedroom addition having a zoning of Residential-II (R-II) with the following conditions:

Conditions

1. **The exterior siding materials for the proposed addition shall match exterior materials on the existing home.**
2. **The subject property shall be properly maintained including the removal of material, appliances and debris stored outside.**

Motion made by Board Member Martin
Motion seconded by Board Member Simmons
Vote – 7 favor

- 2) Request from **Federal Construction** to vary the front yard setback requirement from Race Street on a 0.31± acre tract located on the southwest side of the intersection of Broad Street and Race Street and the northwest side of the intersection of Jesse Jewell Parkway and Race Street (a/k/a **430 Broad Street, SE**), having a zoning of General Business (G-B).
Ward Number: Four
Tax Parcel Number(s): 01-008-002-001
Request: Restaurant

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to vary the front yard setback from Race Street from 40-feet to zero feet (0') for a new restaurant building. The actual proposed building footprint is setback fourteen feet (14') from the front property line, but the proposed exterior stairwell protrudes from the building and extends to the property line. The subject property is 0.31± acre in size and contains a 1,500 square foot office/garage building originally constructed in 1955 previously occupied by Stat Delivery Services. Adjacent uses include medical offices, AT&T office, retail shopping center and Cadence Bank. As well, Brenau University is located just north of the property. The applicant intends to remove the existing building to construct a two-story 6,000± square foot building. The applicant intends to improve an existing access drive from Broad Street and the two driveways from Race Street. The property owner is basing the hardship on the three road frontages and the narrow width of the lot. The applicant states the lot is unbuildable given the front yard setback requirements and the depth of the lot from Race Street.

The Planning Division staff is recommending **conditional approval** of this variance request based on the narrow shape of the subject property and the three front yard building setbacks.

Applicant Presentation: **Larry Phillips**, Federal Construction decided to remove the stairwell from project and feels it is not a good design for the property, lack of space and will rework the plans. Mr. Phillips spoke of the size of the layout and the materials for the building.

John Vachtsevanos, 4782 Hillsboro Road, stated he is one of the co-owners of the restaurant serving Mediterranean food, brick-oven pizza, easy access within walking distance of the square, Brenau and hospital. The staircase has been deleted and agrees with planning for approval.

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: None

There was a motion to conditionally approve the request to vary the front yard setback requirement from Race Street from 40-feet to 0-feet for a restaurant having a zoning of General Business (G-B) with the following conditions:

Conditions

- 1. The proposed building shall be consistent with the architectural rendering provided with this variance application.**
- 2. Upon the discretion of the Community and Economic Development Director and Public Works Director, the proposed exterior stairwell shall be sufficiently setback from Race Street so as not to cause a safety hazard or impede traffic circulation within the property.**

Motion made by Board Member White
Motion seconded by Board Member Delgado
Vote – 7 favor

B. Annexation Request

- 1) Request from **Moez Hasni** to annex a 5.503± acres tract located on the northeast corner of Jesse Jewell Parkway and Crescent Drive, having frontage on Exit 24/ I-985 (a/k/a **374 and 400 Crescent Drive**) and to establish zoning as General Business (G-B).

Ward Number: Two
Tax Parcel Number(s): 15-033C-000-077
Request: Retail shopping center

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to annex the subject 5.5 acres property with a zoning of General Business (G-B). The property is contiguous to the city limits to the east across I-985 and is currently zoned Highway Business (H-B) within unincorporated Hall County. The property is located within the Limestone Parkway Overlay Zone and the Gateway Corridor Overlay Zone. The adjacent uses include single-family homes, Hall County Farmers Market and Fire Station #7, and mini-warehouses and assisted living facility to the east across I-985. The subject property consists of two tracts of land that are undeveloped. The purpose of the request is to access sewer for the development of a 6,070 square foot retail shopping center that will include a Dunkin Donuts restaurant. One access driveway is proposed along Crescent Drive near the center of the property. The subject property previously contained a single-family home that was demolished and has since been graded for a stormwater easement and detention pond located on the north end of the property.

The City of Gainesville Future Development Map places the subject property within the *Retail/Commercial* land use category and the *Limestone Medical Corridor* Character Area which includes commercial service activities such as grocery stores, banks, restaurants, theatres, hotels, mixed-use and such.

The Planning Division staff is recommending **conditional approval** of the proposed annexation request with **General Business (G-B) zoning**, based on the Comprehensive Plan and the adjacent residential and non-residential land uses.

Applicant Presentation: Moez Hasni, 374 Crescent Drive, stated he is one of the owners of the project and will be a retail center with a lease already signed by Dunkin Donuts and is looking for future national tenants. They agree with all seven conditions and hope to do something with the remaining three acres in the future.

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: None

There was a motion to recommend conditional approval to annex the subject property and establish zoning for a retail shopping center as General Business (G-B) with the following conditions:

Conditions

1. The proposed development shall be generally consistent depicted on the concept plan and architectural renderings provided with this application.
2. Prohibited uses for the subject property shall include adult novelty stores, group homes, crisis centers, adult entertainment centers, pawn shops, dollar-type stores, massage parlors, hookah lounge, tobacco or vaping stores, gas station/convenience stores, tire stores, auto parts stores, auto body shops, automobile sales establishments, marine sales or repair stores, automated or non-automated car washes, truck stops, coin-laundry facilities, tattoo parlors, psychics, fortune tellers, clairvoyants and the like.
3. The proposed buildings shall meet the Limestone Parkway Overlay Zone and Gateway Corridor Overlay Zone standards.
4. The frontage landscape areas shall be sodded with grass and contain minimum 3-inch caliper size hardwood trees subject to the Community & Economic Development Director approval.
5. The subject property shall be limited to one (1) multi-tenant sign not to exceed 15-feet in height, 80 square feet of sign face area, 120 square feet of total sign structure area with internal or external lighting. Building signage shall be permitted as regulated within the Gainesville Unified Land Development Code. An electronic message board sign or electronic changeable copy sign shall not be permitted for the subject property.
6. An updated as-built boundary survey/plat of the subject property, indicating all improvements required for the proposed use shall be required.
7. All access point design for the subject property shall be submitted for review by the Gainesville Public Works Director in coordination with Hall County and the Georgia Department of Transportation (GDOT). The approval of said design shall be required prior to issuance of a building permit. All required access / traffic /

sidewalk improvements associated with the proposed development shall be at the full expense of the owner/developer.

- a) **Crescent Drive shall be improved to City standards along both sides of the roadway for the length of the proposed site. This includes roadway, curb and gutter, sidewalk, etc.**
- b) **Jesse Jewell Parkway frontage shall be improved to City standards along the front roadway side for the length of the proposed site. This includes curb and gutter, sidewalk, etc. There is currently an existing right turn lane at this location.**
- c) **The proposed RCUT at Crescent Drive and Jesse Jewell Parkway to allow left turns onto Crescent Drive shall be reviewed by the Georgia Department of Transportation (GDOT). This will require coordination between the development and GDOT for permitting approval/denial. Any correspondence from the GDOT shall be forwarded to the Gainesville Public Works Department.**
- d) **The westbound left turn lane on Jesse Jewell Parkway at Textile Way and the Jesse Jewell Parkway at East Crescent Drive intersection shall be reviewed by GDOT for improvements to accompany any U-Turn movements. This will require coordination between the development and GDOT for permitting approval/denial. Any correspondence from the GDOT shall be forwarded to the Gainesville Public Works Department.**
- e) **Southern site access on Crescent Drive is proposed to be a full access side street STOP. With the increased development in the area and the projected peak hour/daily trips for the development, it is recommended that the driveway also include a right turn deceleration lane into the development with sufficient spacing for the deceleration lane from the intersection of Jesse Jewell Parkway at no cost to the City. The deceleration lane should be a full width storage of 100 feet with a 50-foot taper.**
- f) **Northern site access on Crescent Drive is proposed to be a full access side street STOP. Should this access be built, site distance shall be evaluated to determine the type of access permitted and it shall meet all City of Gainesville requirements.**

Motion made by Board Member Thompson
Motion seconded by Board Member Delgado
Vote – 7 favor

C. Rezoning Requests

- 1) Request from **Fred and Olivia Skey** to rezone a 0.65± acre tract located on the east side of Northside Drive, southeast of its intersection with Ivey Terrace (a/k/a **352 Northside Drive, NW**) from Office and Institutional (O-I) and General Business (G-B) to Office and Institutional (O-I) with a special use.
Ward Number: Four
Tax Parcel Number(s): 01-025-005-010
Request: Single-family residence

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to rezone the subject 0.65± property from O-I and G-B to O-I with a special use for a single-family residence. The adjacent uses include residential condominiums, residential triplex and quadplex, single-family home, AHAVA Hair Salon, professional offices and the Rock Creek Greenway. The property is vacant of structures but was originally developed for a single-family home many years ago. The proposed home is for a single-story over a basement, 2,500 square foot home to include an attached in-law suite and a detached garage. The proposed architecture of the home is intended to resemble a cottage/bungalow/craftsman style home similar to the original home that burned down around 1970. One driveway for access is proposed off of Northside Drive.

The City of Gainesville places the property within the *Mixed-Use Downtown* land use category and within the *Central Core* Character Area which allows for mixed-use, retail, office and residential.

The Planning Division staff is recommending **conditional approval** of the rezoning request with a special use based on the Comprehensive Plan and the adjacent residential uses.

Applicant Presentation: Fred Skey, 605 Candler Street, recently retired, sold their home in Flowery Branch and recently moved into a condominium. They are excited to live in town within walking distance of town and build a smaller home.

Olivia Skey, 605 Candler Street, stated they are meeting with an architect and will keep the staff posted.

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: None

There was a motion to recommend conditional approval to rezone the subject property with a special use for a single-family residence from Office and Institutional (O-I) and General Business (G-B) to Office and Institutional (O-I) with the following condition:

Condition

- 1. The proposed single-family home shall be generally consistent with the standards depicted on the concept plan and architectural picture provided with this application.**

Motion made by Board Member Delgado

Motion seconded by Board Member Fleming

Vote – 7 favor

- 2) Request from **Two Capital Partners** to rezone a 24.857± acres tract located on the southwest side of Shallowford Road and southeast side of the intersection of Skelton Road and Hudgins Street (a/k/a **600, 610 and 622 Shallowford Road, SW; 1515 Skelton Road, SW; 1448 and 1450 Hudgins Street, SW**) from Neighborhood Business (N-B) and General Business (G-B) to Planned Unit Development (P-U-D).

Ward Number: Five

Tax Parcel Number(s): 01-119C-001-001, 001A, 029, 029A, 029D and 031

Request: Master planned mixed-use rental community

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to rezone the 24.857 acres subject property from Neighborhood Business (N-B) and General Business (G-B) to Planned Unit Development (P-U-D) for a mixed-use rental community. Some of the adjacent uses include Arby's restaurant, US Army Reserve Center, Target, Lowe's, Walgreen's, Gainesville Towne Center and single-family homes. The property consists of six parcels and is the site of the Gainesville Market "Blueridge" Shopping Center, an outdoor soccer field, office/warehouse building and U-Haul rental office. The proposed development is to include 17,000 square feet of commercial space and a total of 385 residential units with a residential density of 15.5 dwelling units per acre. The development is to be called "AVA Shallowford Station" with an anticipated completion date of 2024. The commercial space includes up to 15,000 square feet of retail or restaurant space and an additional 2,000 square feet of pop-up retail space fronting Shallowford Road. The residential uses are intended to be 100% market rate rentals to include a 200 unit multi-family apartment building (4-stories); 100 townhomes (2 to 3 stories) and 85 single-family cottages (1 to 3 stories). Amenities include a 2,000+ square feet of fitness facilities, 1,700 to 2,000+ square feet of co-working facilities, multiple resort pools, outdoor living space, private dining/demonstration kitchens, tech-enable package locker systems, bike storage, virtual sports simulators, oversized dog parks and bark spas. Access is proposed from three existing driveways off of Shallowford Road to serve the commercial, apartments and cottages. As well, one driveway is proposed off of Skelton Road serving the townhomes; with pedestrian connectivity to the apartment and cottage pods. A TIS was submitted with the application.

The subject property is located within the *Retail/Commercial* land use category and *Browns Bridge Corridor* Character Area which includes commercial service activities such as grocery stores, banks, restaurants, theatres, hotels, and automotive related businesses.

Staff believes the residential portion of the proposal is too dense and is considered inappropriate based on the Future Land Use Map. Therefore, Planning Division staff is recommending **denial** of this request.

Applicant Presentation: **Brian Rochester**, 425 Oak Street with Rochester & Associates stated over the years the property has slowly declined and is sort of a poster child for blight in the community. He stated there was a lot of thought and vision about revitalizing midtown and now seeing a vision that is being implemented and the same for redeveloping this part of town. He mentioned the project by Robbie Robinson and Steve McKibbin being risky and pioneering but was successful and believes this project has that same opportunity.

Wes Taubel, 3060 Peachtree Road, Two Capital Partners stated when the application was submitted in August there were delays with the traffic study and the original plans have been revised to 336 units which brings it to 13 units an acre. He said they focus on developing "Class A" apartment/multi-family rental communities targeting renters by choice. He then gave a PowerPoint presentation that included detailed information about the comp plan and density and impacts to schools. He stated the corridor is mostly commercial but sees the need for residential housing. He mentioned they invest in pet spas instead of playgrounds, hire interior designers from the hospitality industry with different architectural styles and will have a good tax and revenue impact. He asked if not this project then what.

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: None

There was a motion to recommend denial to rezone the subject property for a master planned mixed-use rental community from Neighborhood Business (N-B) and General Business (G-B) to Planned Unit Development (P-U-D).

Motion made by Board Member Thompson

Motion seconded by Board Member Martin

Vote – 7 favor

D. Zoning Amendment Request

- 1) Request from **Mark D. Thebaut, D.D.S.** to amend an existing Planned Unit Development (P-U-D) zoning totaling 0.67± acre located on the southeast side of the intersection of Thompson Bridge Road and Lanier Avenue (a/k/a **1398 Thompson Bridge Road, NE**).

Ward Number: Two

Tax Parcel Number(s): 01-087-003-001

Request: Medical/Dental office / restaurant with drive-thru

Staff Presentation: Deputy Director Matt Tate gave the following staff presentation:

The applicant is proposing to amend an existing 0.67± acre Planned Unit Development (P-U-D) for a medical/dental office, with the right to retain the existing use of a drive-thru restaurant. The property is located within the Gateway Corridor Overlay Zone and the adjacent uses include the Lanier Federal Credit Union, Coleman, Chambers & Rogers Law Office, Martin Properties Construction Management Office and the Westminster Presbyterian Church. The property is the current location Pizza Hut which was originally established in 1988. The applicant intends to relocate their existing TEBO Dentistry located further north on Thompson Bridge Road by converting the existing Pizza Hut building to a medical/dental office. The existing building is 2,841 square feet in size and contains 42 parking spaces. The applicant intends to remove the drive-thru to expand the rear of the building an additional 500± square feet for a total of 3,335± square feet. The existing parking lot and driveways on Thompson Bridge Road and Lanier Avenue will remain.

The City of Gainesville places the property within Retail/Commercial land use category and the City Park Neighborhood Center Character Area which includes commercial service activities such as grocery stores, banks, offices, restaurants, and such.

The Planning Division staff is recommending conditional approval of this PUD amendment request based on the Comprehensive Plan and the adjacent nonresidential uses.

Applicant Presentation: Dr. Mark Thebaut, 609 Beaver Ruin Road, currently has an office at 3535 Thompson Bridge Road and wants to relocate to area more accessible to his patients. He asked the restaurant be allowed to function in its current capacity until being able to move forward with the construction. The plan is to expand the footprint by approximately 500 square feet toward the back of property, remove the drive-thru and increase green space to the street. It is the intent to make cosmetic improvements to the building. Dr. Thebaut requested a minor change to condition 2 stating the existing pole sign removed prior to the issuance of a Certificate of Occupancy for medical or dental use. He stated the use of space will be less of a burden of traffic, maintain existing forty-two parking spaces and existing retention pond.

FAVOR: None

OPPOSE: None

PLANNING AND APPEALS BOARD COMMENTS: Chairman Carter asked the applicant to explain the change to condition number two. Deputy Director Tate stated the existing pole sign shall be removed prior to a building permit being issued for a dental office.

There was a motion to recommend conditional approval to amend the existing Planned Unit Development (P-U-D) zoning for a medical/dental office / restaurant with drive-thru with the following conditions with the change in condition number two:

Conditions

1. The proposed development shall be generally consistent with the standards depicted on the concept plan and architectural renderings provided with this application.
2. The existing pole sign shall be removed **prior to the issuance of a building permit for medical or dental office use**. The subject property shall be limited to one (1) monument sign fronting Thompson Bridge Road, not to exceed 10-feet in height, 64 square feet in size, with internal or indirect lighting. Building signage shall be permitted as regulated within the Gainesville Unified Land Development Code. An electronic message board / changeable copy sign shall not be permitted for the subject property.
3. The developer/property owner shall be required to repair or replace the existing privacy fence located to the rear of the building.
4. All access point design for the subject property shall require approval by the Georgia Department of Transportation in conjunction with the Gainesville Public Works Director. All required access / traffic / sidewalk improvements associated with the proposed development shall be at the full expense of the developer/property owner.

Motion made by Board Member Martin

Motion seconded by Board Member Thompson

Vote – 7 favor

Deputy Director Tate stated the City is in the process of updating the Comprehensive Land Use Plan. There are handouts in the foyer on how people can participate online by taking a quick survey to provide input on the future of Gainesville.

ADJOURNMENT

There was a motion to adjourn the meeting at 7:11 p.m.

Motion made by Board Member Thompson

Motion seconded by Board Member Simmons

Vote – 7 favor

Respectfully submitted,

Doug Carter, Chairman

Gwen Fleming, Recording Secretary

Date Submitted: 1/18/2022

Presenter: Matt Tate

Item of Business: Request from **Daniel J. Peck** to vary the illumination requirements for a monument sign and wall sign on a 0.62± acre tract located on the east side of South Enota Drive, north of Downey Boulevard (a/k/a **440 South Enota Drive, NE**), having a zoning of Office and Institutional (O-I).
 Ward Number: Three
 Tax Parcel Number(s): 01-064-002-036
 Request: Monument sign and wall sign

Meeting Date: 2/8/2022

Purpose of Request:

The applicant is proposing to vary the sign illumination requirements within the O-I zoning district to allow an internally illuminated monument sign and wall sign. The O-I zoning district only permits indirect lighting such as ground lighting. The property contains a 6,500 square foot building that was recently renovated for office space. The proposed monument sign is 67.9 square feet in size and the wall sign is 5.28 square feet in size. The applicant provided no hardship statement with the application. The adjacent uses include medical/dental offices and single-family homes. The adjacent signs have indirect lighting; however, there are internal illuminated signs located along South Enota Drive.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Planning staff recommended approval with two conditions. See the Staff Recommendation report for details.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Staff Recommendation Report	Report
☐ Location Maps	Backup Material
☐ Hardship Statement	Backup Material
☐ Renderings	Backup Material
☐ Picture	Backup Material

**GAINESVILLE PLANNING and APPEALS BOARD
STAFF RECOMMENDATION**

Applicant Daniel J. Peck
Property Owner New Horizon Management Company, LLC
Location..... 440 South Enota Drive, NE
Request..... Vary the sign illumination requirements
Size 0.62± acre
Ward..... Three
Proposed Use..... Monument sign and wall sign
Planning Division Staff Recommendation **Approval, with conditions**
Date..... February 8, 2022

▪ **Request**

The applicant is proposing to vary the sign illumination requirements within the Office and Institutional (O-I) zoning district to allow a monument sign and a wall sign with internal illumination. The O-I zoning district only allows for indirect lighting such as ground lighting.

▪ **Background Information and Existing Conditions**

The property contains a 6,500 square foot building that is being renovated for office space. The proposed monument sign is 67.9 square feet in size and the wall sign is 5.28 square feet in size which are within the size limitation requirements. The adjacent properties are zoned Office and Institutional (O-I) and Residential-I (R-I) and include medical/dental offices and single-family homes. The neighboring businesses have signs with indirect lighting; however, there are other internal illuminated signs located along South Enota Drive including Walgreen's, Small Business Access Partners, Wendy's, Dollar Tree and Sherwood Plaza.

▪ **Significant Factors**

The Ordinance requires that the applicant's claim for hardship must be based on the size or shape of the lot, its topography, or other physical characteristics inherent in the lot itself and not on the desired aesthetics. Further, the Code states that a variance shall not be granted as a convenience to the applicant or as a way to gain any advantage or interest over similarly zoned properties.

The applicant did not provide a hardship statement with the application.

According to Planning records, a variance was approved in March of 2015 for the BGW Dental Group located at 1215 Vine Street to vary the sign illumination requirement to allow an internally illuminated sign.

- **Other Departmental Comments**

There are no other departmental comments for this request.

- **Supporting Documents**

Survey, Plat and Pictures.

- **Analysis**

(1) Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography?

The property is of normal size and shape and slopes uphill from South Enota Drive. The existing building and proposed sign locations are clearly visible from the right-of-way.

(2) Would the application of the Unified Land Development Code to this particular piece of property create an unnecessary hardship?

The purpose of the sign illumination requirement is to maintain and enhance the aesthetics of the City by restricting signs and lights which increase clutter and to ensure the reasonable, orderly and effective display of signs. As well, indirect lighting is typically used in neighborhood shopping districts to help reduce the intensity of commercial uses.

(3) Are there conditions that are peculiar to the property which adversely affect its reasonable uses or usability as currently zoned?

The property is not unique and the building location is similar to neighboring properties. The proposed internally illuminated sign appears to be an aesthetic desire of the applicant. The illumination of the signs does not restrict the ability to utilize the building for a particular use.

(4) Would relief, if granted, cause substantial detriment to the public good or impair the purposes and intent of this ordinance?

If approved, the proposed internally illuminated signs should have no direct impact on the neighboring properties and would not be visible from the single-family homes located behind the building. The proposal would not appear to impair the ordinance given that there are other signs within the immediate area of signs internal illumination.

(5) There must be a proved hardship by showing beyond a doubt the inability to make a reasonable use of the land if the zoning ordinance were applied literally.

There appears to be no physical hardship as the proposed visibility of the signs will not be restricted. The subject property can continue to be used for the desired purposes regardless of the sign illumination requirements.

(6) The hardship cannot be self-created; e.g., as in a case where the lot was purchased with the knowledge of an existing restriction.

The applicant was made aware of the illumination requirements upon filing for a sign permit.

▪ **Staff Recommendation**

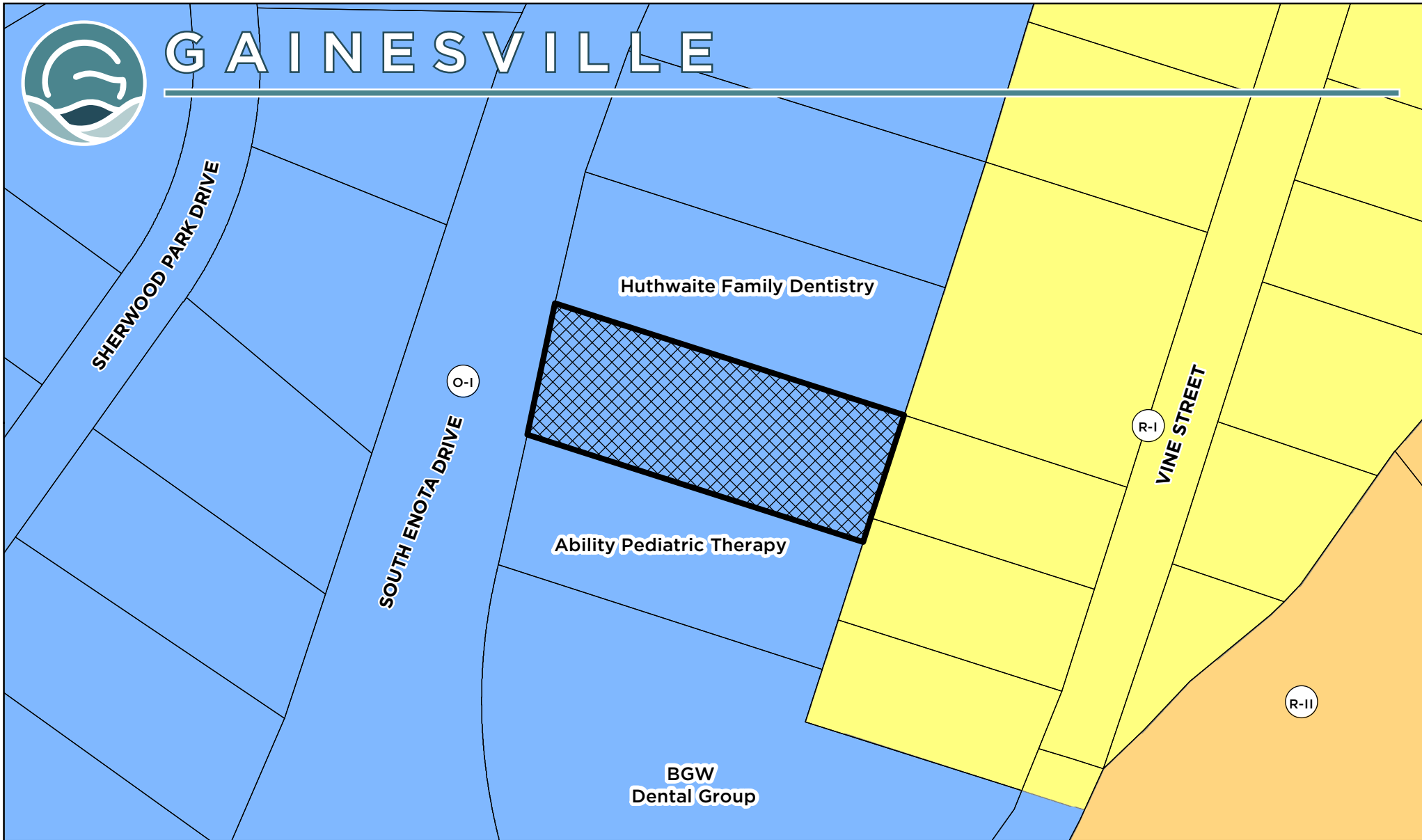
The Planning Division staff is recommending **conditional approval** of this variance request based on there being other internally illuminated signs within the immediate area and there being no direct impact on the adjacent residential properties.

Conditions

1. The base of the proposed monument sign shall match exterior materials of the building.
2. An electronic message board / changeable copy sign shall not be permitted for the subject property.



GAINESVILLE



Applicant: **DANIEL J. PECK**

VARIANCE REQUEST

Subject Property Address:
440 South Enota Drive, NE

Tax Parcel:
01-064-002-036

Request:

Vary the illumination requirements for a monument sign and wall sign on a 0.62+/- acre tract within Office and Institutional (O-I) zoning.

 Subject Property



Meeting Date: **02/08/2022**

Map Prepared: **01/18/2022**

0 50 100 Feet
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SCALE: 1" = 100'



GAINESVILLE



Applicant: **DANIEL J. PECK**

VARIANCE REQUEST

Subject Property Address:
440 South Enota Drive, NE

Tax Parcel:
01-064-002-036

Request:

Vary the illumination requirements for a monument sign and wall sign on a 0.62+/- acre tract within Office and Institutional (O-I) zoning.



Subject Property

Aerial from 2021



Meeting Date: 02/08/2022

Map Prepared: 01/18/2022

0 50 100 Feet
Page 29 of 79

SCALE: 1" = 100'

Variance Request

STATEMENT OF HARDSHIP

The Gainesville Planning and Appeals Board has the authority, in specific cases, to grant variances from the terms of the Unified Land Development Code of the City of Gainesville, Georgia, when the variance will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the Unified Land Development Code will, in specific cases, result in unnecessary hardship and so that the resolution shall be observed, public safety and welfare secured, and substantial justice done. The authority to grant such variances shall be limited to those instances where a hardship is clearly established as required by the Unified Land Development Code. Variances may be granted only upon a finding by the Gainesville Planning and Appeals Board that:

Describe how each situation listed below relates to your application.

1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (The hardship must relate to the physical character of the lot and not to a personal or economic hardship.)

N/A

2) The application of the requirements of this resolution to this particular property would create an unnecessary hardship.

N/A

3) There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned.

N/A

4) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance. For example, granting the variance would not confer any special privilege that is denied by this regulation to other property in the same zoning district. Such conditions are not the result of any actions of the property owner.

N/A

5) There must be a proved hardship by showing beyond a doubt the inability to make a reasonable use of the land if the zoning ordinance were applied literally.

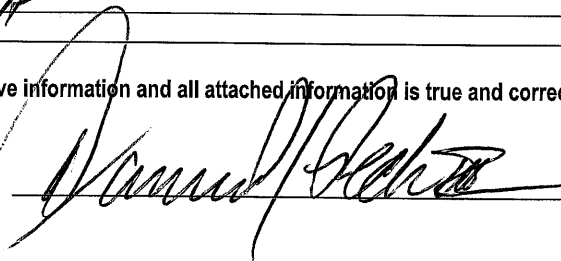
N/A

6) The hardship cannot be self-created; e.g., as in a case where the lot was purchased with the knowledge of an existing restriction.

N/A

I hereby certify that the above information and all attached information is true and correct.

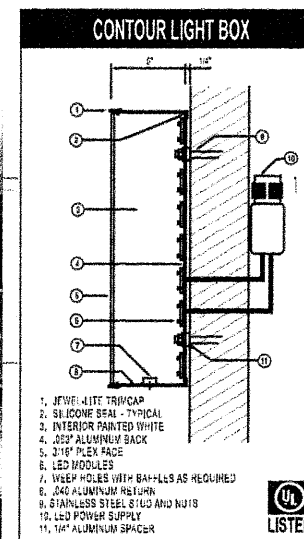
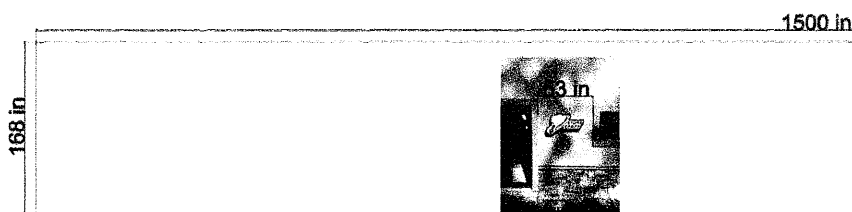
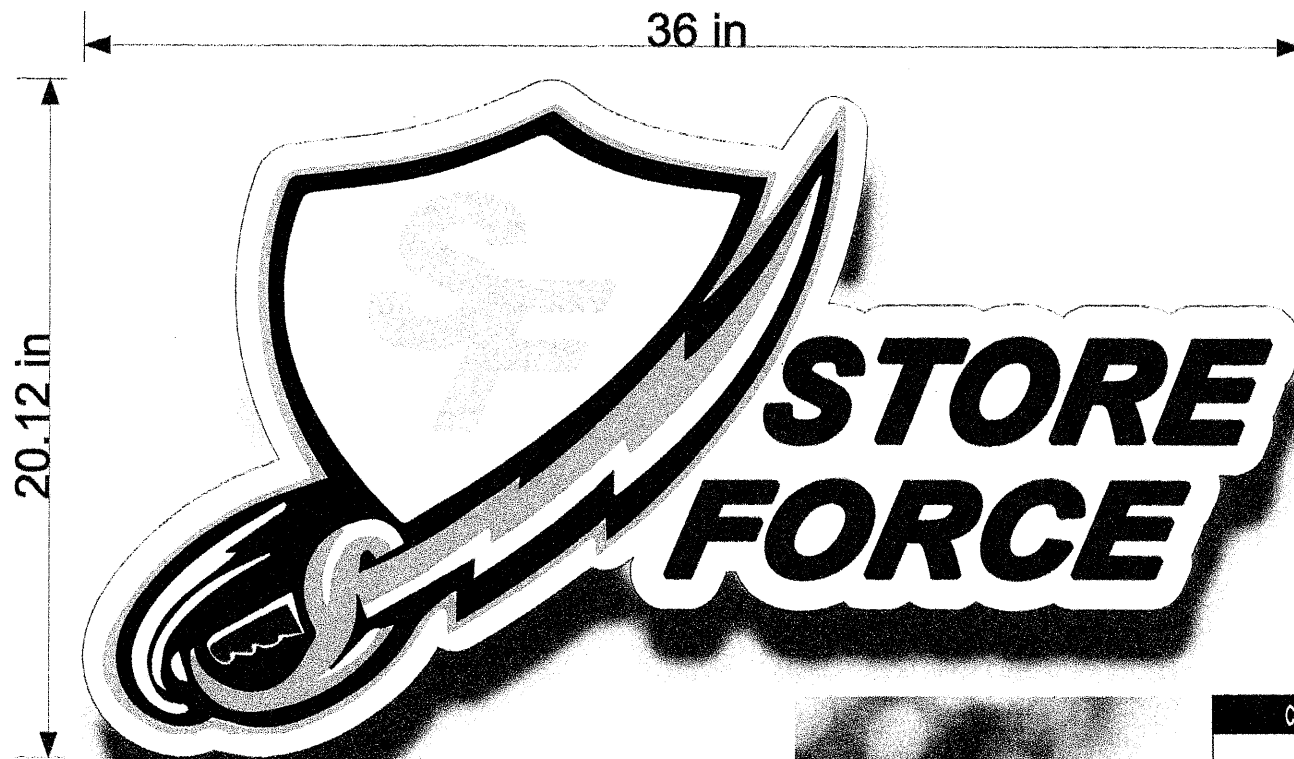
Signature of Applicant



Date

12/27/2021





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REVISIONS

CLIENT: TAB RETAIL REMODELING

SALESPERSON: DAN WELLS

DESIGNER: ROBERT

DATE: 11/30/2021

Signarama
COMMERCIAL SIGN SUPERSTORE
BUFORD AND DULUTH
770.831.9660 SARBUFORD.com

CUSTOMER: TAB RETAIL REMODELING
ADDRESS: 3395 WHITE SULPHUR SPRING RD
CITY, STATE, ZIP: GAINESVILLE GA 30501
JOB LOCATION: GAINESVILLE
JOB # 18282

TYPE OF SIGN: CONTOUR LIGHT BOX
FACE MATERIALS: ACRYLIC
COLOR OF FACE: WHITE
COLOR OF RETURN: BLACK
LIGHT BOX: YES

RETURN DEPTH: N/A
COLOR OF TRIM CAP: BLACK
COLOR OF RACEWAY: PMS 7527
ILLUMINATED: YES
BACKER: N/A



4737 THOMPSON MILL ROAD
BUFORD, GA 30518



Date Submitted: 1/21/2022

Presenter: Abb Hayes

Item of Business: **Phillip R. Brown** requesting an appeal of an administrative decision to disallow use for lodging services on a 3.5± acres tract located at the terminus of Mountain View Circle, west of Honeysuckle Road (a/k/a **725 Mountain View Circle, NW**), having a zoning of Residential-I (R-I).
Ward Number: One
Tax Parcel Number(s): 01-111-001-011
Request: Reverse administrative decision

Meeting Date: 2/8/2022

Purpose of Request:

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Department Director:
Rusty Ligon

If funding is involved, are funds approved within the current budget?
N/A

Amount Requested: **Source of Funds:**

Finance Comments:

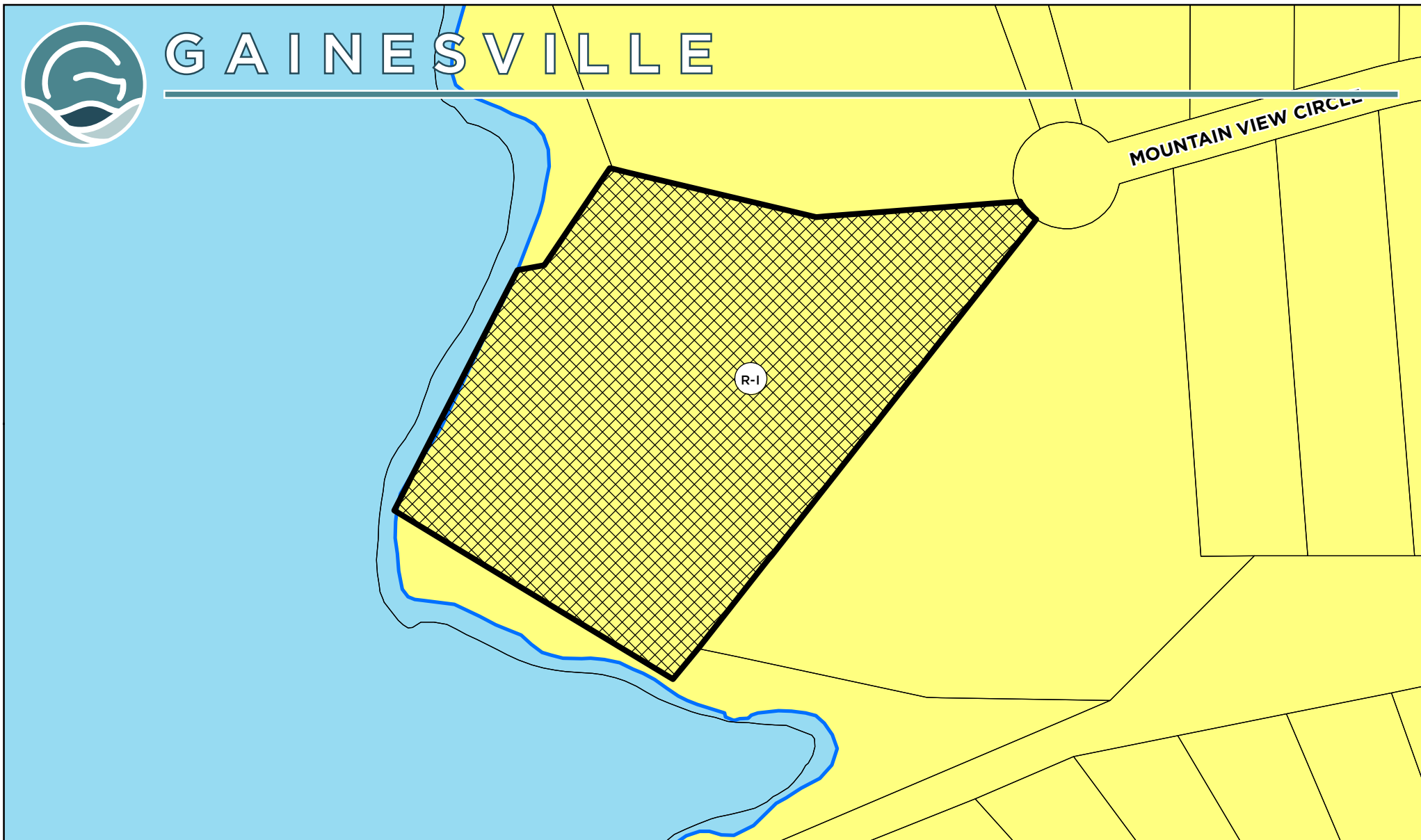
Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Location Maps	Backup Material
☐ Code Enforcement Letter	Backup Material
☐ Applicant Documents	Backup Material
☐ Opposition Letters	Backup Material



GAINESVILLE



Applicant: **PHILLIP R. BROWN**

APPEAL OF AN ADMINISTRATIVE DECISION

Subject Property Address:
725 Mountain View Circle, NW

Tax Parcel:
01-111-001-011

Request:

Appeal of an administrative decision to disallow use for lodging services on a 3.5+/- acres tract within Residential-I (R-I) zoning.



Subject Property



Meeting Date: **02/08/2022**

Map Prepared: **01/18/2022**

0 70 140 Feet
Page 35 of 79

SCALE: 1" = 125'



GAINESVILLE



Applicant: **PHILLIP R. BROWN**

APPEAL OF AN ADMINISTRATIVE DECISION

Subject Property Address:
725 Mountain View Circle, NW

Tax Parcel:
01-111-001-011

Request:

Appeal of an administrative decision to disallow use for lodging services on a 3.5+/- acres tract within Residential-I (R-I) zoning.



Subject Property

Aerial from 2021



Meeting Date: **02/08/2022**

Map Prepared: **01/18/2022**

0 70 140 Feet
Page 36 of 79

SCALE: 1" = 125'

CITY OF
GAINESVILLE

COMMUNITY AND ECONOMIC DEVELOPMENT

| Code Enforcement Division

October 15, 2021

VIA CERTIFIED MAIL,
VIA US MAIL, and
VIA HAND DELIVERY

Phillip R. Brown
725 Northwest Mountain View Circle
Gainesville, GA 30501

**RE: Property located at 725 Northwest Mountain View Circle
Gainesville, GA 30501 (Tax Parcel No. 01111001011)**

Dear Mr. Brown:

I am the Code Enforcement Manager for the City of Gainesville. It has been brought to my attention that you are using the above-referenced property, which is further described in the attached Quitclaim Deed dated June 12, 2020, recorded at Deed Book 8508, Pages 563-564, Hall County, Georgia, Deed Records (said property hereinafter referred to as "the Property"), for lodging services. "Lodging services" is defined in Table 9-6-1 of the City's Unified Land Development Code ("ULDC") as a facility that offers shelter accommodations to the public for 15 days or less for a fee. The Property is zoned as R-1, and lodging services is not allowed in an R-1 zoning district.

Please accept this as your written notice pursuant to Section 9-24-2-5 of the ULDC to comply by ceasing any lodging services on the Property. Unless you provide me with written or verbal confirmation within ten (10) days of the date of this letter that you have ceased offering lodging services on the Property, including but not limited to the removal of the Property from all rental websites such as VRBO and Airbnb, I will issue a citation for the violation and proceed with prosecution in the City of Gainesville Municipal Court.

If you wish to discuss this matter, please do not hesitate to contact me.

Sincerely,



Sarah Wilson-Britt,
City of Gainesville Code Enforcement Manager

Enclosures

cc: Abbott S. Hayes, Jr. (via email at ash@homlaw.com)
Matt Tate (via email at mtate@gainesvillega.gov)
Rusty Ligon (via email at rligon@gainesvillega.gov)

ASH/ois/15100/257583

Page 38 of 79

Use	Definition	Specific Regulations	O-I	N-B	C-B	R-B	G-B	L-I	H-I
Kennel	Kennel: Any facility used for the purpose of commercial boarding of domestic animals or pets such as dogs and cats, and any other customarily incidental treatment of the animals such as grooming, cleaning, selling of pet supplies, or otherwise. This term includes animal grooming services and pet psychologists.		X	X	X	●	●	●	●
Lodging Services	Lodging services: A facility offering shelter accommodations, or place for such shelter, to the public for a fee for 15 days or less in one or more rooms within the same facility, with provisions for living, sanitation, and sleeping. Includes hotels and motels.	9-10-6-15	X	X	●	●	●	●	●
Lodging Services, Extended Stay (also referred to as Extended Stay Lodging Services)	Lodging services, extended stay (also referred to as Extended Stay Lodging Services): A facility offering shelter accommodations, or place for such shelter, to the public for a fee for more than 15 days but not to exceed 30 days in one or more rooms within the same facility, with provisions for living, sanitation, sleeping and fixed cooking appliances. Includes hotels and motels.	9-10-6-16	X	X	X	X	○	X	X
Marina	Marina: A facility for the mooring, berthing, storing, or securing of watercraft, and which may include boat sales, boat fuel sales, boat construction, boat repair, marine equipment sales, boat and jet ski rental, and other uses clearly incidental to watercraft activities.		X	X	X	X	○	●	●
Museum	Museum: A building having public significance by reason of its architecture or former use or occupancy, or a building serving as a repository for a collection of natural, scientific, literary curiosities or objects of interest, or works of art, and arranged, intended, and designed to be viewed by members of the public with or without an admission fee, and which may include as an accessory use the sale of snacks and goods to the public as gifts or for their own use.		●	●	●	●	●	●	●
Office	Office: A building or portion thereof wherein services are performed involving predominantly administrative, professional or clerical operations and not involving retail sales or other sales of any kind on the premises. Includes medical, dental, clinical, CPA, attorney, and real estate offices among others. This term includes freight agency or shipping coordinators involved in the remote arrangement of freight or cargo transportation.		●	●	●	●	●	●	●
Open-air business	Open air business: Any commercial establishment with the principal use of displaying products in an area exposed to open air on three or more sides, including but not limited to rock yards, nurseries and garden centers and garden supply stores, landscaping companies, lumber and building materials yards, outdoor flea markets, statuary and monument sales establishments, petroleum dealers and tank sales.		X	X	X	●	●	●	●
Parking lot, off-site	Parking lot, off-site: A parcel of land or portion thereof principally used for the parking or storage of motor vehicles as a commercial enterprise, where a fee is paid for parking.	9-10-1-4	○	○	●	●	●	●	●

Last Revised December 17, 2019

EXHIBIT "A"
Legal Description

000433A

ALL THAT TRACT OR PARCEL OF LAND Lying and being in the City Of Gainesville, Hall County, Georgia, located at the end of the cul-de-sac on Mountain View Circle, being a portion of Lots 10 & 11, Section 1, Honeysuckle Hills Subdivision, containing 3.473 acres, and being particularly described on a plat of survey for Blanche Blum by Farley-Collins Associates, Registered Surveyors, dated February 7, 1992, recorded on Plat Slide 189, Page 235-A, Hall County, Georgia Plat Records, reference to said plat and the record thereof is hereby made for the more complete description of said property.

Quit Claim Deed
Prepared without Title Examination

STATE OF GEORGIA,
COUNTY Hall,

THIS INDENTURE, made this 12th day of June, 2020, between Kristof Holdings LLC, of the County of Hall, State of Georgia, (hereinafter referred to as "Grantor") and Phillip R. Brown, of the County of Hall, State of Georgia, (hereinafter referred to as "Grantee")

Wherever there is a reference herein to the Grantor or the Grantee, the singular includes the plural and the masculine includes the feminine and the neuter, and said terms include and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

WITNESSETH

GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has bargain, sold, and by these presents does remise, convey and forever QUIT-CLAIM unto Grantee the following described property:

All that property described on "Exhibit A" attached hereto and incorporated as a part hereof for a full and complete description.

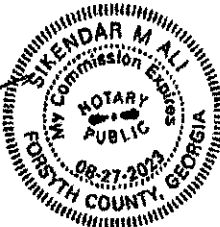
TO HAVE AND TO HOLD the said tract or parcel of land to Grantee, so that neither the Grantor nor its heirs, nor any other person or person claiming under Grantor shall at any time, by any means or ways, have, claim, or demand any right or title to the aforesaid tract or parcel of land or appurtenances, or rights thereof.

IN WITNESS WHEREOF, Grantor has hereunto set her hand and seal the day and year first above written.

Signed, sealed and delivered
this 12 day of June
2020, in the presence of:

Laura Collins
Unofficial Witness

[Signature]
Notary Public



[Signature] (SEAL)
Kristof Holdings LLC
Phillip R Brown / Managing Member

Kristof Holdings LLC
725 Mountain View Circle
Gainesville, GA, 30501



JENKINS, BOWEN & WALKER, P.C.

ATTORNEYS AT LAW

FRANK E. JENKINS, III
BRANDON L. BOWEN
ROBERT L. WALKER
ERIK J. PIROZZI
D. RYAN BRUMLOW
RYLEE G. MUNSON
ELLIOT T. NOLL

15 SOUTH PUBLIC SQUARE
CARTERSVILLE, GEORGIA 30120-3350

TELEPHONE
(770) 387-1373

FACSIMILE
(770) 387-2396

www.jbwpc.com

January 12, 2022

Via Overnight Delivery

Mr. Rusty Ligon
Director
Community and Economic Development Department
City of Gainesville, Georgia
311 Henry Ward Way
Gainesville, GA 30501

Re: Appeal of Administrative Decision

Dear Mr. Ligon,

Enclosed please find my client Phillip Brown's application for appeal of administrative decision, along with the \$250.00 filing fee and supporting documents from my prior correspondence with Mr. Hayes. I understand that this will be on the February calendar of the Planning & Appeals Board.

Very truly yours,

JENKINS, BOWEN & WALKER, P.C.



Brandon L. Bowen

Enclosures

cc (by email only): Dr. Phillip Brown
Mr. Abbott Hayes
Mr. Matt Tate

Bonnie J. Ellis

From: Brandon L. Bowen
Sent: Wednesday, January 12, 2022 3:37 PM
To: Bonnie J. Ellis
Subject: FW: Gainesville- Phillip Brown
Attachments: Scan Oct 15, 2021, 12.13 PM.pdf; Morgan County v May (1).pdf

From: Brandon L. Bowen
Sent: Tuesday, October 26, 2021 3:21 PM
To: ash@homlaw.com
Subject: Gainesville- Phillip Brown

Dear Mr. Hayes,

This is to follow up on our recent call. My client Phillip Brown received the attached letter, in which the Gainesville Code Enforcement Manager determined that Mr. Brown was using his property for lodging services in violation of the Gainesville code. We respectfully disagree with that interpretation. According to the City's zoning code, single family residential uses are permitted in the applicable zoning district. It does not say that rental of property is prohibited or limited. The lodging services that the Code Enforcement Manager refers to comes from an entirely different district, and is defined to mean hotels and motels. As I understand it, Gainesville does not have a short term rental ordinance like we have seen in other jurisdictions.

This scenario is quite comparable to Morgan County v May, which is attached. There, Morgan County had a zoning ordinance that allowed residential uses in the applicable district. Later, it adopted a short term rental ordinance. The Supreme Court held that because the old ordinance did not clearly prohibit rental of homes, it could not be interpreted to prevent that use. I believe that is the same scenario here.

My client wants to be a good citizen, and if there are nuisance issues that we are unaware of, please let me know and we will address. But we would like to get your or the code enforcement manager's confirmation that my client's use of his property is not in violation of the ordinance. If you do not agree with my reasoning, and the code enforcement manager's opinion stands, then, rather than dealing with a citation or declaratory judgment law suit, we believe it would be appropriate to administratively appeal the determination. The ordinance indicates that there is a form and fee for that, however, I do not see that on the City's website with its other forms- can you please provide that to me so that we may initiate the appeal if that is required?

Yours,

Brandon

Brandon L. Bowen
Jenkins, Bowen & Walker, P.C.
15 South Public Square
Cartersville, Georgia 30120
(770) 387-1373

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by [Slice of Life, LLC v. Hamilton Township Zoning Hearing Board](#), Pa., April 26, 2019

305 Ga. 305
Supreme Court of Georgia.

MORGAN COUNTY

v.

MAY.

May

v.

Morgan County.

S18A1622

|

S18X1623

|

Decided: February 18, 2019

Synopsis

Background: Defendant was convicted in a bench trial in the Superior Court, Morgan County, [Alison T. Burleson, J.](#), of violating zoning ordinance by leasing her vacation home for short-term rentals. Defendant appealed. The Court of Appeals, [343 Ga.App. 255, 807 S.E.2d 28](#), vacated and remanded. On remand, the Superior Court granted defendant's motion to dismiss. County appealed, and defendant cross-appealed.

The Supreme Court, [Nahmias, P.J.](#), held that ordinance that did not address any permissible or prohibited time limit for house rentals, but which stated that single-family detached dwellings were permitted and defined "dwelling" as a structure which was "designed or used exclusively for residential purposes," was unconstitutionally vague in violation of due process as applied to defendant.

Affirmed; defendant's cross-appeal dismissed.

Attorneys and Law Firms

Hall Booth Smith, [Christian G. Henry](#), for appellant.

DuBose Law Group, [C. Wilson DuBose](#), [Jennifer L. Pridgeon](#), [Matthew R. Frick](#), for appellee.

Opinion

[NAHMIAS](#), Presiding Justice.

***366 *305** Morgan County appeals the trial court's order dismissing Christine May's criminal citation for violating the County's amended zoning ordinance by renting out her house near Lake Oconee for a week. The court concluded that the zoning ordinance in effect at the time May began renting her house for short periods was unconstitutionally vague as applied, meaning that her use of the house for such rentals was "grandfathered" and not subject to the amended ordinance's explicit prohibition of short-term rentals for fewer than 30 days. May cross-appeals, but we need not address her claimed errors, because we affirm the trial court's dismissal of her citation.

1. May built a vacation home in Morgan County, and in 2008 she began renting her house to others, typically for periods of about a week.¹ The County's zoning ordinance in effect at that time did not contain any specific language addressing rentals of any duration for houses in May's zoning district. In practice, the County took the position that fewer-than-30-day rentals were prohibited but rentals for 30 days or longer were permitted. In October 2010, the County amended its zoning ordinance to explicitly prohibit most "short-term rentals," which were defined as rentals for fewer than 30 consecutive days. May had continued to rent her house, and in August 2011, after she again rented her house for seven nights, the County issued her a citation for violating the amended zoning ordinance, thereby initiating a misdemeanor criminal proceeding against her. May's criminal case was stayed for several years, however, while she and the County extensively litigated a civil lawsuit she filed challenging the ***306** short-term rental ban in the County's amended ordinance as applied to her property.²

After her criminal case was revived in 2015, May filed a motion to dismiss her citation, arguing among other things that the County's old zoning ordinance was unconstitutionally vague because it did not specifically prohibit seven-night rentals, that her use of her house for such rentals was therefore lawful under the old ordinance, and that she consequently had a grandfathered right to continue renting the house in that way that precluded her from being prosecuted under the short-term rental prohibition in the amended ordinance.³

The trial court held a ****367** bench trial in June 2015. In November 2015, the court denied May's motion to dismiss on non-constitutional grounds, and in March 2016, the court found her guilty of violating the amended zoning ordinance and imposed a sentence of 30 days in jail, six months on probation, and a \$500 fine. May appealed, and her case worked its way through the appellate courts and was ultimately remanded to the trial court in October 2017 for a ruling on her constitutional vagueness challenge. See [May v. Morgan County](#), 343 Ga.App. 255, 260-262, 807 S.E.2d 28 (2017).

On May 31, 2018, the trial court granted May's motion to dismiss her criminal citation, ruling that the County's old zoning ordinance was unconstitutionally vague as applied to short-term rentals of the sort at issue; that consequently, there was no zoning ordinance prohibiting such rentals when May began renting her house; and that her use of her house for such rentals was therefore grandfathered so ***307** that the explicit prohibition of that use under the amended ordinance does not apply to her property. Morgan County appealed the dismissal order to this Court, and May then filed a cross-appeal. The case was docketed to our August 2018 term and was orally argued on November 5, 2018.

2. To satisfy due process,

a challenged statute or ordinance [must] give a person of ordinary intelligence fair warning that specific conduct is forbidden or mandated and provide sufficient specificity so as not to encourage arbitrary and discriminatory enforcement. Vagueness challenges to statutes [and ordinances] that do not implicate First Amendment freedoms must be examined in the light of the facts of the case to be decided.

[Parker v. City of Glennville](#), 288 Ga. 34, 35, 701 S.E.2d 182 (2010).

The County's old zoning ordinance listed permitted uses for properties in May's zoning district and banned any uses that were not listed. There was no mention of rentals of any duration. The County contends that because the ordinance did not list rentals, a person of ordinary intelligence would understand that short-term rentals of "single-family detached dwellings" were not allowed. But the old ordinance failed to provide any guidelines whatsoever to enable May to determine that fewer-than-30-day rentals would be prohibited but rentals for 30 days or longer would be allowed, as the County contends and as the County applied the old ordinance in practice.

Unlike the amended zoning ordinance, the old ordinance contained no language regarding the permissible duration for rentals of houses like May's, much less any sort of ban on rentals for fewer than 30 days. As the trial court noted in its order dismissing May's citation, the County's director of planning and development testified that the old ordinance did not address any permissible or prohibited time limit for rentals.⁴ The director also admitted that, despite that silence in the old zoning ordinance, the County's practice was to prohibit fewer-than-30-day rentals but to allow longer rentals. That May would have been allowed to rent her house for a month but criminally ***308** prosecuted for renting it for a week was nowhere to be found in the text of the old ordinance.

The County argues that even though no language in the old ordinance specifically addressed rentals of houses in May's district, the ordinance's definition of "single-family detached dwellings" was sufficient to put May on notice that week-long rentals of her house were unlawful. The ordinance listed as permitted "single-family detached dwellings" and defined "dwelling" as "a structure ... which is designed or used exclusively for residential purposes," but did not define "residential." The Definitions section of the ****368** old ordinance said that all words not defined in the ordinance "shall have their customary dictionary meaning." Relying on a definition of "residence" in the 1979 edition of Webster's New Collegiate Dictionary—"the place where one actually lives as distinguished from a place of temporary sojourn"—the County asserts that single-family detached dwellings like May's house could be used only as a place where a family "actually lives," rather than as a place where people stay temporarily.

As the trial court recognized but the County's brief to this Court ignores, the old ordinance's use of the word "or" in its definition of "single-family detached dwelling" required only that May's house be "designed" for residential purposes — not that it also be "used" only for residential purposes. See [Haugen v. Henry County](#), 277 Ga. 743, 744-745, 594 S.E.2d 324 (2004) (explaining that "[t]he natural meaning of 'or,' where used as a connective, is to mark an alternative and present choice, implying an election to do one of two things" (citation and punctuation omitted)). But even putting this hole in the County's argument aside, the County makes no attempt to explain how its selected dictionary definition of residence would put a person of common intelligence on notice that the dividing line for illegal "temporary" residences would be drawn at 30 days rather than three, seven, 21, or 60.

The County's definition of residence in no way suggests that individuals establish a home where they "actually live" only by living there for 30 days or longer. To the contrary, a person may legally establish a residence in only one day. See [Dozier v. Baker](#), 283 Ga. 543, 545, 661 S.E.2d 543 (2008) (analyzing residency in the context of election laws and recognizing that "[n]o definite amount of time spent in a place is essential to make that place a home" (citation and punctuation omitted)). A family that moves into a new house "actually lives" there on the day they move in—not only after 30 days have passed. That the family has not yet lived in their new home for 30 days does not mean that they are merely "temporarily sojourn[ing]" there.

*309 Likewise, people can stay in a place even longer than 30 days without "actually" residing there. See, e.g., [Conrad v. Conrad](#), 278 Ga. 107, 108, 597 S.E.2d 369 (2004) ("It requires both act and intent to establish a residence, and either without the other is insufficient." (citation and punctuation omitted)). A construction worker may stay in a rented house for several months while she completes a project, but that house does not automatically become her new residence on day 30 of her stay. Nor do vacationers who plan to return home after spending their whole summer in a rented lake house necessarily establish a residence at the lake after 30 days of rental.

Thus, the County's "actually live" versus "temporary sojourn" view of what makes a dwelling "residential" does not make clear that seven-night rentals are prohibited. As the trial court aptly said in its order dismissing May's citation, "The County's definitions within definitions fail to provide any sort of practical guidelines to enable a homeowner to determine *at what point* a structure ceases to be 'residential.'" (emphasis supplied). We are persuaded by the trial court's reasoning, which the County has failed to address, much less rebut, in its brief on appeal. Accordingly, we agree with the trial court's determination that the County's old zoning ordinance was unconstitutionally vague as applied to seven-night rentals of May's property. As a result, the old ordinance cannot be applied to that use of May's property, meaning that her use of her house for such a rental was grandfathered and not subject to the short-term rental ban in the amended ordinance. May's criminal citation for violating the amended ordinance was properly dismissed.⁵

Judgment affirmed in Case No. S18A1622. Appeal dismissed in Case No. S18X1623.

All the Justices concur.

All Citations

305 Ga. 305, 824 S.E.2d 365

Footnotes

- ¹ We view the record in the light most favorable to the trial court's findings and orders. Additional details about this case and its complicated procedural history can be found in [May v. Morgan County](#), 343 Ga.App. 255, 255-257, 807 S.E.2d 28 (2017).
- ² May's September 2012 civil bench trial concluded with a declaratory judgment in her favor. But the Court of Appeals in an unpublished opinion vacated that judgment in September 2013 ([May v. Morgan County](#), 323 Ga.App. XXVI (Case Nos. A13A1564, A13A1960) (Sept. 12, 2013) (unpublished)), and on remand the civil trial court ruled for the County on procedural grounds in April 2014. The Court of Appeals denied May's application for discretionary appeal of that decision, and in December 2014 this Court denied her petition for certiorari.
- ³ Under the amended ordinance, May's use of her property for rentals of fewer than 30 days would be a "nonconforming" use, which—if that use was in fact lawful under the old ordinance would give her a protected or "grandfathered" property right in that use which could not be immediately eliminated by the amended ordinance. See [Rockdale County v. Burdette](#), 278 Ga. 755, 756, 604 S.E.2d 820 (2004) ("[A] protected ... use is ordinarily defined as a use which lawfully existed prior to the enactment of a zoning ordinance, or of an amendment to a theretofore existing zoning ordinance, and which therefore may be maintained after the effective date of the ordinance or amendment although it does not comply with the zoning restrictions applicable to the area." (citation and emphasis omitted)). See also [Ga. Const. of 1983, Art. I, Sec. I, Par. X](#) (prohibiting "retroactive law[s]"); [BBC Land & Dev., Inc. v. Butts County](#), 281 Ga. 472, 473, 640 S.E.2d 33 (2007) (distinguishing between "nonconforming uses" and "vested rights"). The amended provision of the ordinance did not say that nonconforming uses would be terminated at a later time, and an unamended provision of the ordinance said, with several exceptions, "[t]he lawful use of any building, structure, or land existing at the time of the enactment of this ordinance may be continued, even though such use does not conform with the provisions of this ordinance."

- 4 We also note on this point that at a meeting on the proposed zoning amendments, another official from the planning and development department explained that County "staff and the County Attorney had concerns regarding the legality of enforcing" the existing ordinance against vacation rentals and "felt as if the County needed something more concrete in the [ordinance] so that the use could be regulated." The County official also showed a visual presentation that said, "Morgan County currently has no language in the Morgan County Zoning Ordinance that regulates Vacation/Short Term Rentals" and that "the legality of enforcement is questionable."
- 5 May's motion to dismiss the County's appeal is denied, and her cross-appeal is dismissed as moot.

End of Document

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Government Works.

Appeal of an Administrative Decision



CITY OF GAINESVILLE APPLICATION TO APPEAL AN ADMINISTRATIVE DECISION

For Application Requirements, Refer to Chapter 9-22-7
of the Unified Land Development Code

Date Application Made 1.12.22

Meeting Date 2.8.22

Applicant Information

Name	Phillip Brown
Address	225 NW Monahan Way
City/State/Zip	Gainesville, GA 30501
Phone	(770) 387-1323
Cell	
Email	brown@jgwp.com

Property Owner Information

Name	Same as applicant
Address	
City/State/Zip	
Phone	
Cell	
Email	

Status of Applicant

☒ Current Property Owner
☐ Option to Purchase
☐ Area Resident
☐ Other (Explain)

Appeal Request(s)

Describe Type of Appeal Requested
Appeal of Code Enforcement Manager's determination that material of residential property is prohibited

Parcel Information

Tax Parcel Number(s)	0111 001011	Ward No.	1
Location (Street Address)	225 NW Monahan Way	Size	1/2 3.5 acres
Existing Structure(s)	Residence		
Description of Proposed Use	Residential		

Fee Information

Appeal of an Administrative Decision	\$ 250.00
Amount Due (include all fees required)	\$ -

Supporting Documents Required

Narrative	A. Hochel
Other (Explain)	

Method of Payment

☒ Paid by Check	Check No.	12252
☐ Paid Cash	Receipt No.	87285

Applicant's Certification: I hereby certify the above information, and all attached information, is true and correct; and that I have read, understand, and have received a copy of the Public Notice Requirements.

Signature of Applicant

[Signature]

Date

1/12/22

Application Taken By

[Signature]

Date

1.13.22

Application WITHDRAWAL Notification: I/we hereby withdraw the above application.

Signature of Applicant

Date

Appeal of an Administrative Decision

PROPERTY OWNER AUTHORIZATION

As the owner of the subject property, I hereby authorize the person named below to act on my behalf as Applicant in the pursuit of an Appeal of an Administrative Decision for this property.

Applicant's Name, if not Owner	
--------------------------------	--

OWNER INFORMATION CERTIFICATION

I swear that I am the owner of the property which is the subject matter of this application, as shown in the records of Hall County, Georgia:

Name of Owner	
Owner's Address	
City / State / Zip Code	
Owner's Phone Number	
Owner's Cell Phone Number	

NOTARY PUBLIC CERTIFICATION

Personally appeared before me the following:

Signature of Property Owner

who swears that the information contained in this authorization is true and correct to the best of his or her knowledge and belief.

Notary Public

Date

In the event there is more than one property owner, a separate Property Owner Authorization page must be completed by each property owner.

Appeal of an Administrative Decision

CAMPAIGN CONTRIBUTIONS DISCLOSURE FORM

NOTE: This form is required for all annexation and/or zoning actions

- (a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
- (1) The name and official position of the local government official to whom the campaign contribution was made; and
 - (2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- (b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.
- (c) When any opponent of a rezoning action had made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government showing:
- (1) The name and official position of the local government official to whom the campaign contribution was made; and
 - (2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- (d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government or any of its agencies on the rezoning application.

APPLICANT'S CERTIFICATION

I hereby certify that I have read the above campaign disclosure information and declare that (select have or have not)

☐ I have within the two years immediately preceding this date made any campaign contribution(s) aggregating \$250.00 or more to any local government official involved in the review or consideration of this application.

☒ I have not within the two years immediately preceding this date made any campaign contribution(s) aggregating \$250.00 or more to any local government official involved in the review or consideration of this application.

***NOTE:** If you are an applicant and you have made any such contribution(s), you must provide the information required in subsection (a) above within ten (10) days after the rezoning action is first filed. If you are an opponent and you have made a contribution, you must provide the information required in subsection (c) above at least five (5) calendar days prior to the first hearing by the City Council or any of its agencies on the rezoning application.

(1) _____
(Name and official position of the City Council Member and/or Planning or Zoning Commission of the City of Gainesville, Georgia to whom campaign contribution was made)

(2) Amount: \$ _____ Date: _____

Appeal of an Administrative Decision

PUBLIC NOTICE REQUIREMENTS

City of Gainesville zoning regulations require public notice be given on all zoning applications as follows:

1. A legal advertisement shall be published no less than fifteen (15) days and no more than forty-five (45) days prior to the public hearing. (This requirement is covered by Planning Division staff.)
2. A public notice sign shall be placed in a conspicuous location on the property which is subject to the zoning application. The original public notice sign will be posted by Planning Division staff.
3. It is City policy to notify, by letter, the surrounding property owners within three hundred feet (300') of the applicant's property that an application has been filed and when it will be considered. (This requirement is covered by the Planning Division staff.)

As the applicant, you are responsible for ensuring the public notice sign remains on the site during the entire zoning process. The Planning Division staff will prepare and place a sign (or signs) for you. If any problem arises with regard to the sign, notify the City of Gainesville Community Development Department immediately by calling 770-531-6570 so the sign can be replaced. Failure to report problems with the sign during the entire period of the hearings will also result in a delay.

The purpose of the public notice sign is to inform the surrounding property owners that an application has been filed. Placement of the sign in a manner that is not clearly visible violates the requirements. Failure to place the sign in a conspicuous location will result in your request being tabled until the sign is posted as required. Failure to ensure the sign remains posted on the site during the entire zoning process means there will be a delay in the hearing date set for your request. Legally, the City cannot consider a request until proper notice has been given. If it is determined at any time during the zoning process that the sign is not properly placed on the site, the Gainesville Planning and Appeals Board has no choice but to table the request, even if there is no opposition to the application. Many of the board members, as well as the planning staff, visit the sites and will be looking for the sign. Additionally, local citizens, particularly those who receive notice letters, often report when a sign is not visible. The City will not consider your request until it is satisfied that proper public notice has been given.

Multiple sign posting on a site may be required if it is so determined by Planning Division staff to be necessary. Signs should be placed as near to the road as possible so they are clearly visible. The sign(s) cannot be obstructed by vegetation, etc.; may not be placed at an inappropriate distance from the road; or placed on something in such a manner so as to blend into the scenery.

When the zoning process is complete and final action has been taken by the Gainesville City Council, it is the responsibility of the applicant to remove the sign (or signs) and return it (or them) to the City of Gainesville Community Development Department.

Applicant's Certification: I hereby certify the above information, and all attached information, is true and correct; and that I have read, understand, and have received a copy of the Public Notice Requirements.

Signature of Applicant

X 

Date 1/12/22

Matt Tate

From: Judy Foster
Sent: Wednesday, January 26, 2022 3:52 PM
To: Matt Tate; Gwen Fleming
Cc: Rusty Ligon
Subject: Appeal of Administrative Decision - Phillip Brown

Good afternoon,

Just wanted to let you know that I received a phone call this afternoon from Mary Allison, 670 Mountain View Road. She wanted to express her opposition to the request and does not want lodging services in her neighborhood. She is 92 years old and cannot attend the meeting, but wanted to voice her concerns. She said her daughter also lives on Mountain View and she will have her send us an email voicing both their opposition.

Thanks,

JUDY FOSTER
Planning Technician
Community & Economic Development



770.531.6572
www.gainesville.org

311 Henry Ward Way
Gainesville, Georgia 30501
P.O. Box 2496 Gainesville, Georgia 30503
770.531.6570

January 27, 2022

Dear City Leaders:

I want to say “thank you” to you and current city leaders for enforcing current ordinances against short term rentals.

I have had some unique personal experiences living next to a short-term rental here in my Gainesville R1 neighborhood that have shaped my thinking on the phenomenon. I have done some research about national trends. Let me make a couple of comments in this note:

While I appreciate private property rights, and that such may be limited by not allowing short-term-rentals, this whole now industry created by a few clever online tools has created many problems in cities around the world.

Airbnb's come with many well documented problems: a revolving door of unknown strangers living next door, noise, traffic, garbage, property damage, large drunken-parties, public urination, and out-of-state landlords who care nothing about the neighborhood. Several Georgia cities already report (AJC) that Airbnb's enable mobile gangs selling drugs with cash to burn to skip from town to town. Short term renters are not tracked or reported for being on the GA Sex Offender Registry, and that is important for some people living in Gainesville R1 neighborhoods, especially women and families with children. Living next to an unregulated business with transient renters is not like living next to a neighbor where one can negotiate various behaviors over time.

Short term rentals in R1 neighborhoods are pitting tourism against traditional neighborhoods; and home ownership, quietness and stability, against party-houses; neighbors vs. transient strangers; local control vs. corporate control; peace for the many, vs. profits for the few.

In Gainesville, an open short-term rental /Airbnb industry will divide neighborhoods between those who desire to turn a residential street into their personal business asset, and those that want to live in a traditional residential neighborhood and create meaningful community with neighbors they know over many years.

While one may be sympathetic to current Gainesville residents renting all or part of their home, (as am I), all evidence suggests that if the City of Gainesville permits short term rentals, out of state and foreign real estate moguls who buy up certain properties and turn them in Airbnb's. They will enter this market and stress some of Gainesville's oldest and most stable communities and create many problems. Additionally, all those businesses are going to be organized as LLC's, and economists observe that the total income coming to GA and Gainesville is generally going to be minimal. We are better off preserving the traditional communities and accepting the reasonable tax revenues the city gets from such.

Additionally, turning Gainesville's oldest communities and biggest houses into motels is going to detract support for the new hotel and downtown area in which we just invested.

I am sympathetic to “small cottages” doing short term rentals. And I think most would agree individuals doing a traditional B&B and providing a room to tourists is unobjectionable. Likewise, problems are unlikely to occur when a retired person or such rents a room or two to traveling nurses and such to assist with their own income. However, when the short-term rental industry organizes around Gainesville’s biggest houses with many bedrooms to enable independent holidays and events, as is the tendency in other cities, problems predictably occur. I could happen in the house next to where you or anyone current lives. I personally believe that it is unethical to change the rules on the people who purposely purchased a house in a city, thinking usual city ordinances would protect them from zoning failure. Any changes should be gradual to enable current homeowners to move to other locations before their own homes are forced to be next to a short term rental. Placing short term rentals often negatively impacts housing values in adjacent homes.

Too, the properties around the lake in Gainesville -- perhaps some of the most tempting targets for out-of-state Airbnb developers -- offer unique challenges and are particularly hard to police or manage with the usual laws in place to protect residents. First, the properties on the lake tend not to be “cottages.” A portion of those homes tend to be very large homes. When they are rented, they will be marketed for events such as holidays, weddings, concerts, reunions, etc. Imagine one of those houses in the hands of an out-of-state real-estate company next to your home. ??? No one wants to live next to that. What about the needs of the neighborhood and the neighbors? Such business do not comply with the usual ordinances of R1 neighborhoods, families, i.e, related people, living consistently in a community. R1’s are not for disturbing businesses, not for event venues, not for what are effectively motels.

Another unique problem with the Gainesville lake-houses is this: They usually have a house on a Gainesville street, and behind the house, usually through dense woods owned by the Army Corps of Engineers, is a private dock on the federally operated lake. If one calls the Gainesville Police at 1:00 am to complain about the noise, down at a party on a dock, at the neighboring Airbnb, the poor Gainesville police would have to walk through the dark woods down to the dock, if they do it. This is an uncomfortable task for any policemen, who would rather stay with his/her car. But then if the good Gainesville policemen does walk down to the dock, and he/she sees two or more boats at the dock of the rental house having a big lake-side party, all he/she can do is observe that “the lake is not my jurisdiction”; that is the jurisdiction of the DNR.” Well, the DNR is notoriously understaffed, does not work at night, and has bigger fish to fry than a 1:00 am party at some Gainesville dock. In short, current rules and laws already do not address that grey and lawless area that is the Gainesville-Lake Lanier boundary. There is not currently a way to enforce the Gainesville noise ordinances on a dock or in a Gainesville cove with a boat 10 feet off shore. We should not invite and create more noise problems right up to the boundary of the city in R1 neighborhoods with no way to regulate it. That’s a reason to resist Airbnb’s in Gainesville that offer a dock or shore for use on DNR property. Keep the boats and the parties at the licensed marinas. Help the lake communities be quiet.

People here, like me, just want a quiet place to relax with family after work and/or a place to quietly work from home. We can all take a neighbor that we know having 2, 4, 6 or even 8 parties a year. But it’s different when one lives next to business; the people are different every weekend, and the parties can be continuous. My personal experiences thus far tell me Airbnb’s

do not fit well in some Gainesville communities. Thanks for letting me share that. (P.S. We do not even live immediately "on" the lake; lake houses do however impact whole neighborhoods).

Thanks for your service and being a fair and critical thinkers.

If the city did ever want to evolve or change its codes about short-term rentals, there are very many things to think through to do it right, and we should not quickly change because of one petition and one out of town lawyer. We would need a smart, slow, organic process driven by Gainesville leaders and Gainesville residents if we were to change current ordinances.

In a subsequent note, I would like to share some research that has been done about economic ramifications that frequently result in communities with short term rentals.

Respectfully,

John O'Sullivan
724 Honeysuckle
Gainesville, GA 30501
jvosullivan@earthlink.net
O) 678 717 3795

Date Submitted: 1/18/2022

Presenter: Matt Tate

Item of Business: Request from **McKinley Homes US, LLC** for a special use on a 7.74± acres tract located on the west side of Florence Drive, across from its intersection with Bentley Park Circle (a/k/a **2920 Florence Drive, SW**), having a zoning of Office and Institutional (O-I).
Ward Number: Four
Tax Parcel Number(s): 08-015-005-029
Request: Residential townhomes

Meeting Date: 2/8/2022

Purpose of Request:

The applicant is proposing a special use for the development of 70 fee-simple townhomes. The townhomes are two-story in design with two car garages. The units will range from 1,603 to 1,863 square feet in size. Amenities will include a small pocket park and a dog walk. Access is proposed from Florence Drive. The property contains an older abandoned church building that will be demolished. Surrounding uses include residential townhomes, condominiums, Free Chapel Worship Center and the Hall County Government and Sheriff's office.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Planning staff recommended approval with nine conditions. See the Staff Recommendation report for details.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Staff Recommendation Report	Report
☐ Location Maps	Backup Material
☐ Narrative	Backup Material
☐ Survey	Backup Material
☐ Site Plan	Backup Material
☐ Architectural Renderings	Backup Material
☐ Various concept models	Backup Material

GAINESVILLE PLANNING and APPEALS BOARD
STAFF RECOMMENDATION

Applicant McKinley Homes US, LLC
Property Owner America's Home Place, Inc.
Location 2920 Florence Drive, SW
Request Special use within O-I zoning
Total Acres 7.74± acres
Ward Four
Proposed Use 70 residential townhomes
Planning Division Staff Recommendation **Approval, with conditions**
Date February 8, 2022

▪ **Applicant's Proposal and Background Information**

The applicant is proposing a special use for the development of 70 fee-simple townhomes. The proposed residential density for the property is 9.04 dwelling units per acre. The townhomes are two-story in design ranging from 1,603 to 1,863 square feet in size, with two car garages. Exterior materials include a mixture of brick, cementitious siding, shakes and board & batten. Two driveways are proposed from Florence Drive and 18 guest parking spaces will be provided in the community. Amenities are to include a small pocket park, children's play area, dog walk and community mailbox. Stormwater detention will be located to the rear of the development.

The property contains a church building, parking lot and two driveways that will be demolished. The property is heavily wooded and includes a Georgia Power easement.

▪ **Adjacent Land Use and Zoning**

Location	Use	Zoning
North	Richmond Gardens Townhomes	Office and Institutional (O-I)
South	Cellular Tower	Office and Institutional (O-I)
East	Bentley Park Condominiums Single-family home	Office and Institutional (O-I) Agricultural Residential-III (AR-III) -County
West	Free Chapel Campus	Neighborhood Business (N-B)

▪ **Other Departmental Comments**

There were no other departmental comments for this request.

▪ **Zoning History**

The following zoning actions have taken place in the immediate area during the last ten years:

2021 - A request by Adventures Real Estate, LLC to rezone a 17.028± acres tract located at 2520 Browns Bridge Road from Residential-I-A (R-I-A) to General Business (G-B) was conditionally approved for an automotive related facility.

2021 – A request by Pamela Eagar to annex a 0.15± acre tract located at 2834 Browns Bridge Road with a zoning of General Business (G-B) was conditionally approved for no proposed use.

2020 – A request by CenterPoint Integrated Solutions to annex a 7.81± acres tract located at 2602 Browns Bridge Road with a zoning of General Business (G-B) was conditionally approved for a CarMax Auto Superstore.

2020 – A request by Gainesville City Board of Education to rezone a 16.67± acres tract located at 1263 and 1279 McEver Road, SW from Residential-I (R-I) to Office and Institutional (O-I) was conditionally approved for a new middle school.

2020 – A request by Gainesville City Board of Education to annex a 5.931± acres tract located at 2550 and 2560 Gould Drive with Office and Institutional (O-I) zoning with a special use was conditionally approved for a new middle school and existing single-family home.

2020 – A request by Mauricio Ortega to annex a 0.51± acre tract located at 23 Cherrywood Drive with Residential-I (R-I) zoning was approved for sewer for a single-family home.

2018 – A request by Tyler Land Holdings to amend a 2.98± acres tract located at 1209 and 1229 Hillside Gardens Lane zoned Planned Unit Development (P-U-D) was conditionally approved for a boat sales dealership.

2017 – A request by Pro Building Systems to annex a 0.516± acre tract located at 2431 S Smith Road was approved with conditional General Business (G-B) zoning for an auto collision center.

2017 – A request by Manor Lake Development, LLC for a special use on a 9.24± acres tract located at 2900 McEver Road was approved with conditional Office and Institutional (O-I) zoning for an assisted living facility.

2015 – A request by the Roman Catholic Archdiocese of Atlanta to amend a 14.233± acres tract located at 2436 S. Smith Road and zoned Planned Unit Development (P-U-D) was conditionally approved for a church.

2015 – A request by the Roman Catholic Archdiocese of Atlanta to amend and rezone a 4.899± acres tract located at 0 S Smith Road from Residential-I (R-I) to Planned Unit Development (P-U-D) was conditionally approved for a church.

2013 – A request by Foote & Miller Properties, LLC to annex a 2.72± acres tract located at 2420 Browns Bridge Road was approved with General Business (G-B) zoning for sewer for an existing auto dealership.

2012 – A request by Rescate 2000, Inc. for a special use on an 8.19± acres tract located at 2920 Florence Drive (Subject Property) was approved with conditional Office and Institutional (O-I) zoning for a daycare center.

▪ **Staff Analysis**

(1) Is the proposed use suitable in view of the zoning and development of adjacent and nearby property?

The property is located at the southern end of Florence Drive which is a public street that extends from Browns Bridge Road to the Free Chapel Worship Center campus. The surrounding uses include a mixture of public and private property which includes the Hall County Administrative and Sheriff's office, 42-unit Bentley Park condominiums, 52-unit Richmond Gardens condominiums,

47-unit Richmond townhomes, 26-unit Fox Hollow condominiums, two residential homes, cellular tower, The Furniture Store and the Auto Gallery car sales/rental facility. These properties are zoned Office and Institutional (O-I), Neighborhood Business (N-B) Residential-II (R-II), Agricultural Residential-III (AR-III) and General Business (G-B). It appears the proposed use is suitable given the adjacent and nearby uses.

(2) Will the proposed use adversely affect the existing use or usability of adjacent or nearby property?

The proposed townhome development will function in a similar manner as the surrounding residential communities. There are 169 existing residential housing units located off of Florence Drive not including the 70 proposed townhome units. The additional units will increase traffic and turning movements at the intersection of Browns Bridge Road and Florence Drive.

(3) Is the proposed use compatible with the purpose and intent of the Comprehensive Plan?

The Future Development Map for the City of Gainesville places the subject property within the Public / Institutional / Transportation / Utility land use category which includes areas planned for public and institutional uses including governmental, educational, medical, houses of worship, major transportation, utilities or communication facilities.

According to the Character Area map for the City of Gainesville, the subject property is located within the *Suburban Residential* Character Area. The vision for this area is to preserve older, stable residential subdivisions and encourage newer projects with smaller lot sizes, pedestrian infrastructure, and buildings patterned after traditional local housing, possibly containing a small neighborhood-serving "village center".

As well, the quality community objectives state that housing choices should continue to be diversified to support a range of household incomes, sizes, types, but consist mostly of traditional single-family detached lots. In areas where natural features or sensitive environments are important, cluster housing or conservation subdivision design may be appropriate. Land uses allowed in the *Suburban Residential Character Area* include low-density residential, medium-high density residential, multifamily residential, public / institutional, commercial, and parks / recreation / conservation, mixed-use.

(4) Are there substantial reasons why the property cannot or should not be used as currently zoned?

The applicant desires to keep the zoning as O-I which requires special use approval for the proposed residential townhomes. A zoning of O-I could allow for the property to be redeveloped for an office complex, bank, club, lodge, custom order shop, daycare, public use, school and a church. It appears the proposal is more suitable given the adjacent and nearby residential uses.

(5) Will the proposed use cause an excessive or burdensome use of public facilities or services, including but not limited to streets, schools, water or sewer utilities, and police or fire protection?

Public water, sewer and public safety currently serve the subject property and are sufficient. Existing public safety services currently respond to the adjacent and nearby properties. Gainesville Fire Station #4 is located approximately 1.97± miles away off of Memorial Park Drive.

The proposed townhomes will increase traffic turning movements onto Browns Bridge Road. Left turning movements are especially difficult during peak hour traffic. Secondary access is available through the adjacent Free Chapel campus and the Hall County Sheriff's office when the gates are open. According to the Institute of Transportation Engineers (ITE) Trip Generation Handbook

(9th Edition), the 65 residential townhomes on average could generate 406± new trips per weekday (50% entering, 50% exiting), 31± A.M. peak hour trips (19% entering, 81% exiting) and 36± P.M. peak hour trips (64% entering, 36% exiting).

The proposed development is not an age-restricted community. The projected number of students that would attend public schools within the proposed development is unknown at this time. The City of Gainesville currently provides bus service within the immediate area.

(6) Is the proposed use supported by new or changing conditions not anticipated by the Comprehensive Plan or reflected in the existing zoning on the property or surrounding properties?

The property has functioned as a church for over 40+ years. Much of the neighboring land was undeveloped until the neighboring Richmond Townhomes and Richmond Garden Condominiums were developed in the mid 1990's which changed the growth pattern from potentially office and institutional to high density residential which is consistent with the proposed townhome use.

(7) Does the proposed use reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property?

Based on the Comprehensive Plan and the adjacent attached residential uses, the proposed special use request appears to reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property.

Special Use Criteria

(1) The type of street providing access to the subject property is adequate to serve the proposed Special Use.

Florence Drive is a two lane asphalt road with no curb / gutter / sidewalks and is maintained by the City of Gainesville. The proposed 70-unit townhome development will moderately increase vehicular traffic on the road but it appears the existing road is sufficient for the proposal.

(2) Access into and out of the property adequately provides for traffic and pedestrian safety, the anticipated volume of traffic flow, and access by emergency vehicles.

The development proposes two driveways off of Florence Drive which are sufficient. Internal 5-foot wide sidewalks are proposed on both sides of the internal roads to provide the community walkability to all common areas. There are no sidewalks on Florence Drive except for a small segment which fronts the Auto Gallery car dealership property on the east side of Florence Drive.

(3) Public facilities such as schools, water or sewer utilities, and police or fire protection are adequate to serve the Special Use.

Existing public facilities are adequate to serve the proposed use. Police and Fire facilities are located within 1.97 miles of the property. It is unknown the number of school aged children that will be living in the development. Gainesville Elementary School and the new Gainesville Middle School are located in close proximity off of McEver Road.

- (4) Refuse, service, parking and loading areas on the property are located and screened to protect other properties in the area from such adverse effects as noise, light, glare or odor.

The townhomes are designed with two-car garages, driveway parking for two additional vehicles and 18 additional guest parking spaces within the development. Garbage pickup will be provided by the City of Gainesville. The proposed use should not create noise, light, glare or odor which are regulated by City codes.

- (5) The hours and manner of operation of the Special Use have no adverse effects on other properties in the area.

The proposed townhome development will function similar to the adjacent and nearby residential townhome and condominium communities located off of Florence Drive. No hours of operation are proposed.

- (6) The height, size and location of the buildings or other structures proposed on the property are compatible with the height, size or location of buildings or other structures on neighboring properties.

The proposed townhomes are two-story in design and include a total of 13 buildings with each building having no more than 6-townhome units. The proposed scale and quality of the development appears to be compatible with the other residential developments along Florence Drive.

▪ **Staff Recommendation**

The Planning Division staff is recommending **approval** of special use request based on the Comprehensive Plan and the adjacent attached residential uses.

Conditions

1. The proposal shall be generally consistent with the concept plan and architectural elevations provided with this application per the review and approval of the Community and Economic Development Director.
2. The proposed townhome development shall adhere to the development standards stated within Section 9-10-2-5 of the Unified Land Development Code entitled "Single-Family Attached Dwelling (Fee-Simple Townhouse)."
3. Each townhome unit shall provide a two car garage.
4. The rear and sides of each townhome building shall be constructed with a minimum 3-foot high watermark of brick or stone material. In addition, all roof structures shall be constructed with architectural shingles.
5. All proposed privacy fencing shall be decorative in nature and shall consist of wrought iron, aluminum or vinyl material.
6. A minimum 20-foot wide planted landscape buffer shall be required along Florence Drive. The landscape buffer shall include a minimum 3-foot high landscaped berm. In addition, a minimum 10-foot wide landscape buffer shall be required along the northerly property line to help screen the rear and side of the proposed townhomes, pocket park and dog walk.
7. All stormwater detention ponds shall be properly fenced and screened with a mixture of evergreen trees. The location, spacing, size and type of trees planted shall be

subject to the approval of the Community and Economic Development Department Director.

8. The developer/property owner shall construct 5-foot (5') wide sidewalks on both sides of the proposed interior private streets.
9. All access point design for the subject property shall be submitted for review by the Gainesville Public Works Director. The approval of said design shall be required prior to issuance of a building permit. All required access/traffic/sidewalk improvements associated with the proposed development shall be at the full expense of the developer/property owner.



GAINESVILLE

Hall County
Administration
Offices

Richmond Towne Homes

FLORENCE DRIVE

BENTLEY PARK CIRCLE

O-I

N-B

Free Chapel

R-II

Applicant: **MCKINLEY HOMES US, LLC**

SPECIAL USE REQUEST

Subject Property Address:
2920 Florence Drive, SW

Tax Parcel:
08-015-005-029

Request:

Special use on a 7.74+/- acres tract within Office and Institutional (O-I) zoning for residential townhomes.

 Subject Property



Meeting Date: **02/08/2022**

Map Prepared: **01/18/2022**

0 90 180 Feet
Page 63 of 79

SCALE: 1" = 167'



GAINESVILLE

Hall County
Administration
Offices

Richmond Towne Homes

FLORENCE DRIVE

BENTLEY PARK CIRCLE

Free Chapel

Applicant: **MCKINLEY HOMES US, LLC**

SPECIAL USE REQUEST

Subject Property Address:
2920 Florence Drive, SW

Tax Parcel:
08-015-005-029

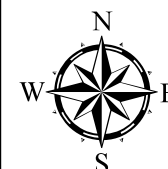
Request:

Special use on a 7.74+/- acres tract within Office and Institutional (O-I) zoning for residential townhomes.



Subject Property

Aerial from 2021



Meeting Date: **02/08/2022**

Map Prepared: **01/18/2022**

0 90 180 Feet
Page 64 of 79

SCALE: 1" = 167'

City of Gainesville
Planning and Appeals Board.
300 Henry Ward Way
Gainesville, GA 30501

RE: Project Narrative for 2920 SW Florence Dr. Special Use Application of McKinley Homes US, LLC.

McKinley Homes US, LLC (the "Applicant"). Submits this Narrative and the attached zoning Application for the purpose of Special Use within the existing O-I zoning. The 7.74 acre site is located at 2924 SW Florence Dr., Gainesville, GA. The proposed community will include 70 fee simple townhomes. We believe the proposed townhome community and location provides for the housing needs of a growing, diverse population with attractive attached, pedestrian scaled townhomes.

The 7.74 acre site is located on Florence Dr, just south of Browns Bridge Rd. The property is adjacent to other townhome communities and the Hall County Sheriffs Office. The site currently has a vacant church on the property that will be removed. There will be 2 entries into the community from Florence Dr. Our main entry will be lined up across the street from Bentley Park Circle, a second entry is proposed approximately 300' south of the main entry. Florence Dr. provides convenient access to Brown Bridge Rd.. Browns Bridge Rd will provide easy access to shopping, employment centers, schools, and I-985. The site is walkable to the nearby Walmart Neighborhood Market, Walgreens and other nearby retail located at the Browns Bridge Rd/ McEver intersection.

The site is currently zoned O-I. We are proposing a Special Use within the existing O-I zoning. The proposed Special Use is in keeping with the surrounding townhome communities and will not adversely impact their uses or values.

The homes in the proposed community will include 70 front load townhomes. The 6 proposed townhome plans will range in size from 1603sf to 1863sf. The attractive townhome exteriors will include Brick, Cementitious Siding, Shakes and Board & Batten. Each home will include a 2 car garage and additional 2 spaces provided on the driveway for guest. There will be 18 additional guest parking spaces provided in the community.

The community will have an amenity area that will include a small pocket park with children's play area, community mailbox, and dog walk.

We plan to build at one furnished model home which will include a sales office in the garage.

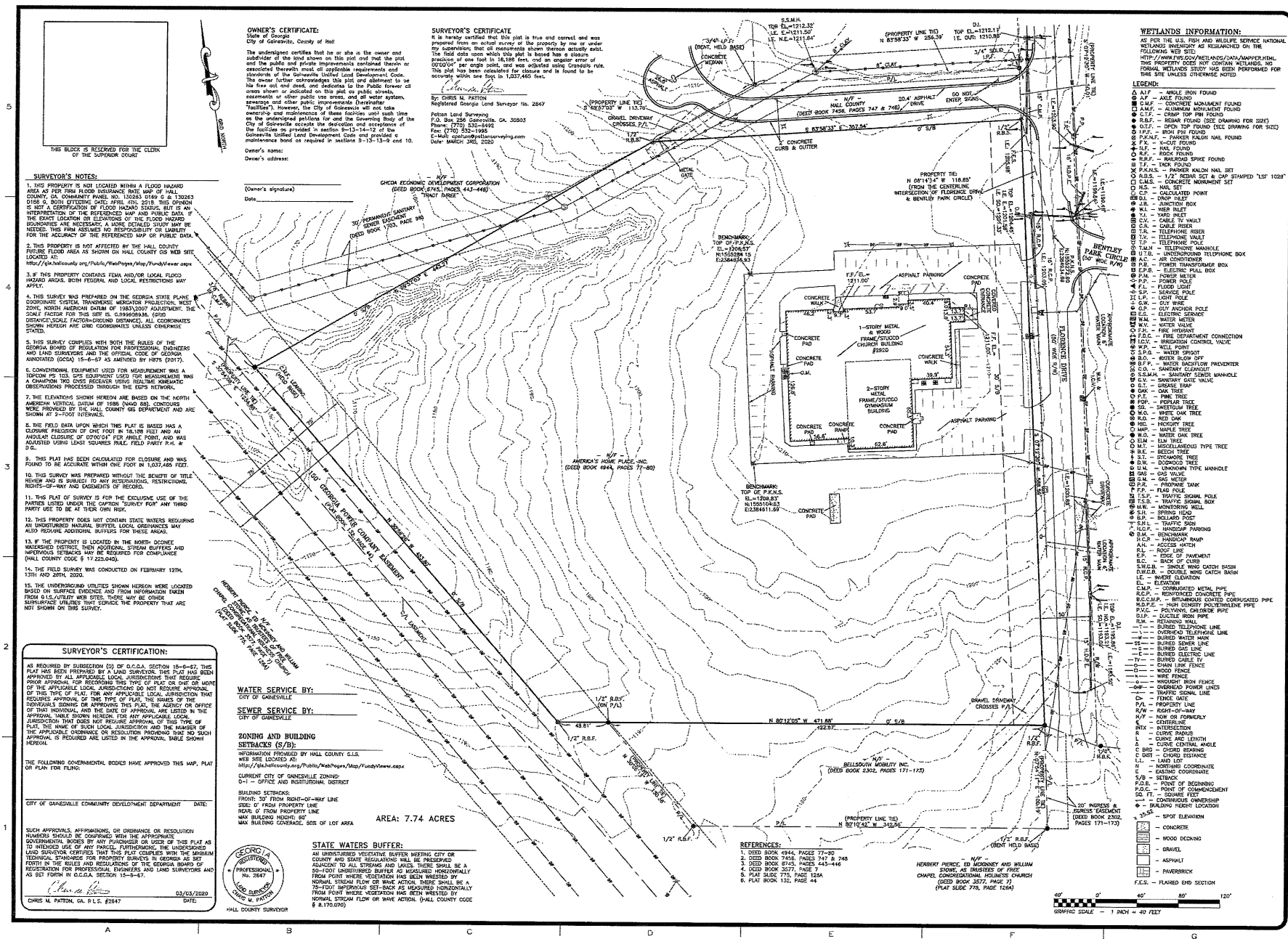
We welcome the opportunity to meet with the staff of The City of Gainesville Planning and Development Department to answer or address any questions or concerns relating to the matters set forth in this letter or in our application.

Respectfully submitted this 29th day of December, 2021.

McKinley Homes

A handwritten signature in blue ink, appearing to read "Bill Schmidt", is written over the printed name.

Bill Schmidt
VP of Land Acquisition



REGISTERED PROFESSIONAL
LAND SURVEYORS
P.O. BOX 266
GAINESVILLE, GA 30603
PHONE (770) 492-1815
WWW.PATONLANDSURVEYING.COM

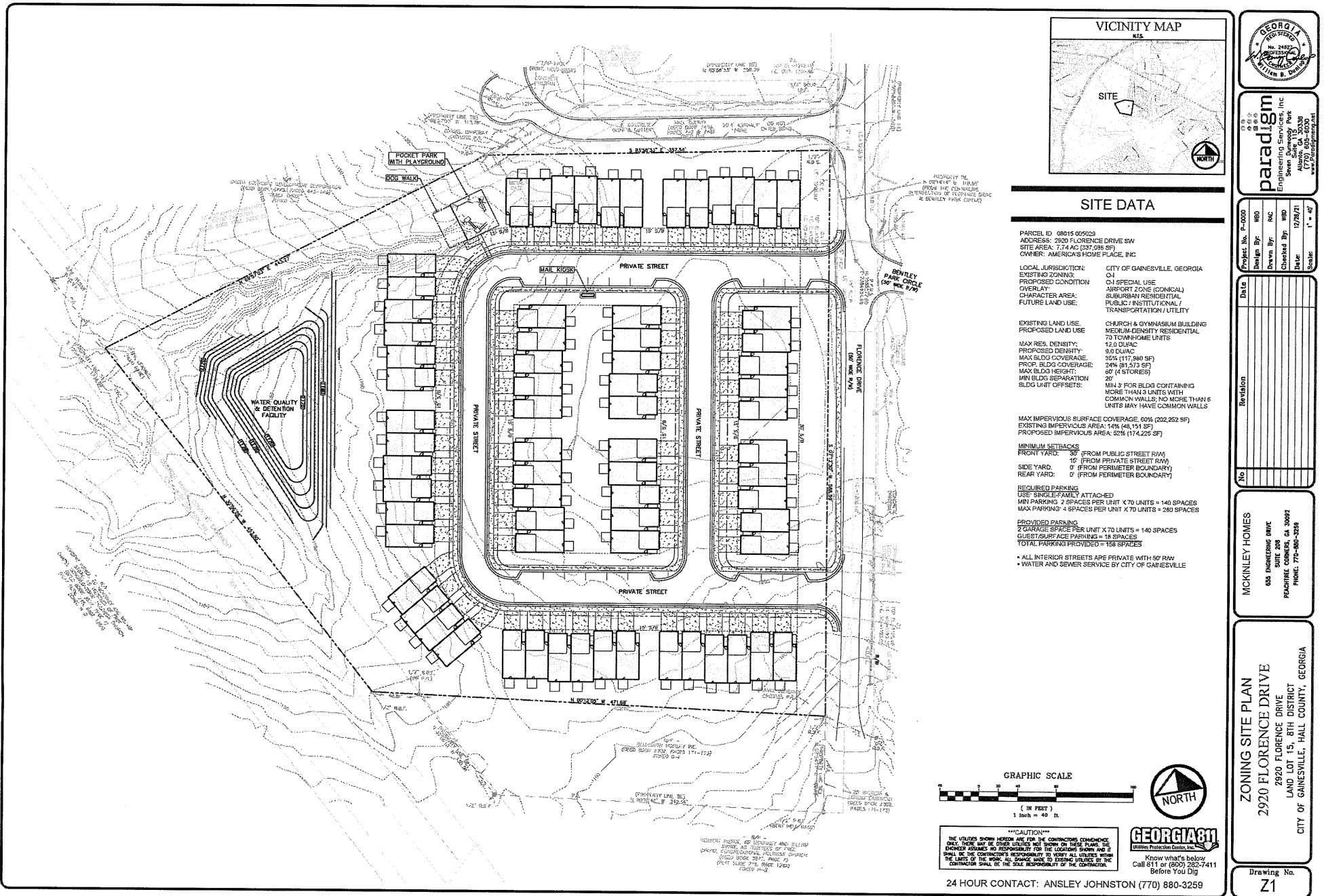


COMPLETIONS BY: C.H.K.
CHECKED BY: R.H. & G.
DRAWN BY: C.H.K.
CHECKED BY: C.H.K.

AMERICA'S HOME PLACE
- LOCATED IN -
LAND LOT 15
8TH LAND DISTRICT
CITY OF GAINESVILLE
HALL COUNTY, GEORGIA

REVISIONS	
NO.	DESCRIPTION

SHEET NUMBER
1 of 1
SCALE: 1" = 40'
SURVEY DATE: 02/26/2020
PLAT DATE: 03/03/2020
20-016a
JN. 20-016







THE SINCLAIR



THE HARTWELL



THE OCONEE



THE BURTON



THE LANIER



THE RABUN



Date Submitted: 1/18/2022

Presenter: Matt Tate

Item of Business: Request from the **City of Gainesville** to amend the Unified Land Development Code for the City of Gainesville, Georgia to amend Table 9-5-1 of Article 9-5 entitled "Permitted and Special Uses for Residential Zoning Districts"; to amend Table 9-6-1 of Article 9-6 entitled "Permitted and Special Uses for Nonresidential Zoning Districts"; to amend Section 9-10-2-5 entitled "Single-Family Attached Dwelling (Fee-Simple Townhouse); to amend Section 9-10-3-5 entitled "Private Swimming Pools"; to amend subsection (b) of Section 9-18-6-6 entitled "Changeable Copy"; to amend subsection (c) of Section 9-21-1-12 entitled "Powers and Duties"; to amend subsection (d) of Section 9-22-2-18 entitled "Action by Governing Body".

Meeting Date: 2/8/2022

Purpose of Request:

The Gainesville Community and Economic Development Department is proposing to amend the Unified Land Development Code to provide for further clarification. The following amendments are proposed:

- Table 9-5-1 entitled "Permitted and Special Uses for Residential Zoning Districts" to add a new use entitled "Short Term Rental";
- Table 9-6-1 entitled "Permitted and Special Uses for Nonresidential Zoning Districts" to add a new use entitled "Short Term Rental" and to allow a drive-thru restaurant within Neighborhood Business (N-B);
- Section 9-10-2-5 entitled "Single-Family Attached Dwelling (Fee-Simple Townhouse)" to adopt a new subsection (h) entitled "Driveways" and a new subsection (i) entitled "Parking";
- Section 9-10-3-5 entitled "private swimming pools" to change the fence height requirements;
- Subsection (b) of Section 9-18-6-6 entitled "Changeable Copy" to allow a fuel canopy electronic price changer sign in lieu of a monument sign;
- Subsection (c) of Section 9-21-1-12 entitled "Recommendations on text amendments" to eliminate it in its entirety;
- Subsection (d) of Section 9-22-2-18 entitled "Action by Governing Body" to amend the tabling requirements for zoning applications.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description

Type

 Code Amendment Ordinance Redlined
 Legal Ad

Ordinance
Legal Ad

Passed: _____

AN ORDINANCE

No. 2022-

AN ORDINANCE TO AMEND TABLES 9-5-1 AND 9-6-1 AND SECTIONS 9-10-2-5, 9-10-3-5, 9-18-6-6, 9-21-1-12, AND 9-22-2-18 OF THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF GAINESVILLE, GEORGIA HEREINAFTER REFERRED TO AS “THE ULDC” AS SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Table 9-5-1 of the ULDC is hereby amended by adding the use entitled “Short Term Rental” in the section of Table 9-5-1 entitled “OFFICE AND COMMERCIAL USES” between the uses entitled “Personal service establishment, 2,500 square feet or less of gross floor area per establishment” and “Special event facility” as set forth below:

Use	Definition	Specific Regulations	R-I-A	R-I	N-C	R-II	R-O
Office and Commercial Uses							
Short Term Rental	Short Term Rental: The occupancy of all or a portion of a residential structure, rented to the public for a fee for the purpose of overnight lodging for a period not more than 15 days. Includes Airbnb, Vrbo and the like.		X	X	X	X	●

SECTION II.

Table 9-6-1 of the ULDC is hereby amended by adding the use entitled “Short Term Rental” in the section of Table 9-6-1 entitled “OFFICE AND COMMERCIAL USES” between the uses entitled “Sexually-oriented adult use” and “Special event facility” as set forth below:

Use	Definition	Specific Regulations	O-I	N-B	C-B	R-B	G-B	L-I	H-I
Office and Commercial Uses									
Short Term Rental	Short Term Rental: The occupancy of all or a portion of a residential structure, rented to the public for a fee for the purpose of overnight lodging for a period not more than 15 days. Includes Airbnb, Vrbo and the like.		X	X	●	●	●	●	●

SECTION III.

Table 9-6-1 of the ULDC is hereby amended to permit a “Restaurant, drive-through” use within the Neighborhood Business (N-B) zoning district as set forth below:

ORDINANCE NO. 2022-

Use	Definition	Specific Regulations	O-I	N-B	C-B	R-B	G-B	L-I	H-I
Office and Commercial Uses									
Restaurant, drive-through	Restaurant, drive-through: Any establishment in which the principal business is the sale of foods and beverages to customers in a ready-to consume state and in which the principal or accessory method of operation of all or any portion of the business is to allow food or beverages to be served directly to the customer in a motor vehicle either in a parked state or in vehicle aisles, without the need for the customer to exit the motor vehicle.		X	●	○	●	●	●	●

SECTION IV.

Section 9-10-2-5 of the ULDC is hereby amended by adding at the end of Section 9-10-2-5 subsection (h) entitled “Driveways” and subsection (i) entitled “Parking” to read as follows:

Section 9-10-2-5. Single-Family Attached Dwelling (Fee-Simple Townhouse).

(h) Driveways. Townhouse developments shall be designed with shared access to minimize the number of driveways off of a public street. Access must be reviewed and approved by the Public Works Department, and no more than two (2) driveways for a townhouse development shall be permitted on a public street.

(i) Parking. Each townhouse unit shall have a two (2) car garage. An exemption from this requirement may be allowed if the parking is located behind the townhouse building(s).

SECTION V.

Section 9-10-3-5 of the ULDC is hereby amended to read as follows:

Section 9-10-3-5. Private Swimming Pool.

Swimming pools accessory to single-family dwellings shall be located in rear or side yards. All swimming pools shall be located at least ten (10) feet from all property lines. Swimming pools must be enclosed by a fence or wall at least **four (4)** feet in height (or as otherwise specified in an adopted swimming pool code or building code) and maintained in good condition with a lockable gate.

SECTION VI.

Section 9-18-6-6 of the ULDC is hereby amended to read as follows:

Section 9-18-6-6. Changeable Copy.

- (a) No more than one (1) changeable copy electronic sign shall be permitted for any single lot.
- (b) Changeable copy, not to exceed twenty (20) square feet in area, shall be authorized to be incorporated into a principal use, monument (ground) sign. **A changeable copy electronic price**

ORDINANCE NO. 2022-

changer sign may be permitted on no more than two sides of a fuel canopy in lieu of a principal use, monument (ground) sign.

- (c) Changeable copy electronic signs are authorized only if in compliance with Chapter 9-18-4 of this Article with regard to illumination and electronic changeable copy signs.
- (d) Changeable copy shall not be incorporated into an existing billboard.

SECTION VII.

Section 9-21-1-12 of the ULDC is hereby amended to read as follows:

Section 9-21-1-12. Powers and Duties.

The Planning and Appeals Board shall have without limitation the following powers and duties:

- (a) Recommendations on comprehensive plan. Review the provisions of the City's Comprehensive Plan from time to time, and to make such recommendations to the Governing Body as it deems appropriate concerning its adoption or amendment.
- (b) Recommendations on annexation, rezoning and special use applications. Conduct a public hearing on each application for annexation, rezoning or special use approval, review the application in accordance with the standards and procedures set forth in this Unified Land Development Code and the Zoning Procedures Law (O.C.G.A. 36-66-1 et seq.), and make such recommendations to the Governing Body as it deems appropriate on each application.
- (c) Initiation of rezoning applications and text amendments. Initiate on its own motion a zoning change or an amendment to the text of any article of this Unified Land Development Code when, in its determination, such changes are appropriate for consideration. Any initiation by the Planning and Appeals Board must go through the normal public notification and application requirements as stated in Article 9-22 of the Unified Land Development Code.
- (d) Decisions on variances. Conduct a public hearing and make a final decision in accordance with the procedures and provisions of this Unified Land Development Code on each application for a zoning variance or flood protection variance.
- (e) Decisions on administrative appeals. Conduct a public hearing and make a final decision in accordance with the procedures and provisions of this Unified Land Development Code on each appeal of an administrative decision pursuant to this Code or an interpretation of the provisions of this Code by an administrative officer. In exercising these powers regarding an appeal of an administrative decision, the Planning and Appeals Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decisions or determinations of the administrative official, and to that end shall have the power to direct issuance of a permit.
- (f) Other powers. The Planning and Appeals Board shall also have such other powers, duties or responsibilities assigned to it by the Governing Body, explicitly assigned by this Unified Land Development Code, or reasonably implied by Code.

SECTION VIII.

Section 9-22-2-18 of the ULDC is hereby amended to read as follows:

Section 9-22-2-18. Action by Governing Body.

No action shall be taken on a Rezoning or Special Use application by the Governing Body until it has received a recommendation by the Planning and Appeals Board, or upon the expiration of the sixty-five (65) day review period of the Planning and Appeals Board. In rendering a decision on a Rezoning or Special Use application, the Governing Body shall consider all information supplied by the applicant, the Director, and the Planning and Appeals Board, any information presented at the public hearing of the Planning and Appeals Board, and information gained at its own public hearing.

After conducting a public hearing, in taking action on an application, the Governing Body may:

- (a) Approve the application as submitted by ordinance.
- (b) Approve the application with conditions.
- (c) Deny the proposal.
- (d) Table the proposal for consideration **at a future meeting.**
- (e) Refer the application back to the Planning and Appeals Board for further consideration, with notice of public hearings before the Planning and Appeals Board and Governing Body, the same as required for the initial application.
- (f) Refer the application back to the Planning and Appeals Board for further consideration, without the requirement to hold a public hearing and provide notice thereof.

SECTION IX.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION X.

If any portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid and unconstitutional.

SECTION XI.

The effective date of this ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

ORDINANCE NO. 2022-

W. Samuel Couvillon, Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk

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amend and
terms of the loan
AR FINANCIAL
ION, 135 Maxes
ville, NY 11747,
769.
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the undersigned.
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following items
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ordinances; b)
hich would be
by an accurate
by an inspection
roperty; c) any
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cluding taxes,
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erty whether or
lue and payable;
assessments; e)
f redemption of
j authority; f) all
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hich constitute
n said property;
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s, rights-of-way
other matters of
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knowledge and
the undersigned,
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Williams and
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R FINANCIAL
TION, as Attorney-
Bert Williams and
e Williams
Padgett Law
67 Old Water Oak
e 203, Tallahassee,
(850) 422-2520
5,12,19,26
OF GEORGIA
OF JACKSON
OF SALE UNDER
to the power
ontained in the
Deed executed
EL MCGOLDRICK
NIFER PARKER-
RICK to
N CHASE BANK,
original principal
of \$239,900.00
ember 1, 2018
rdered in Deed
174, Page 362,
County records,
rity Deed being
ferred to NEWREZ
/A SHELLPOINT
SE SERVICING in
k 8409, Page 581,
County records,
rsigned will sell
outcry to the
bidder for cash,
the Courthouse
aid County, or at
er place as lawfully

mortgage.
THIS LAW FIRM IS ACTING
AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT
A DEBT. ANY INFORMATION
OBTAINED MAY BE USED
FOR THAT PURPOSE.
NEWREZ LLC D/B/A
SHELLPOINT MORTGAGE
SERVICING, as Attorney-in-
Fact for
MICHAEL MCGOLDRICK
AND JENNIFER PARKER-
MCGOLDRICK
Robertson, Anschutz,
Schneid, Crane & Partners,
PLLC 10700 Abbott's Bridge
Road Suite 170 Duluth, GA
30097 Phone: 470.321.7112
Firm File No. 20-074582
103235 1/5,12,19,26

Miscellaneous



NEW SEX OFFENDER TO
HALL COUNTY
NAME: MATTHEW SCOTT
WHELCHHEL
ADDRESS: 766 JESSE JEWEL
PKWY #368 Gainesville GA
30501
DATE OF OFFENSE:
04/06/2002
OFFENSE: Statutory Rape
(F)
COURT OF CONVICTION:
Forsyth County
WEBSITE: <https://gbi.georgia.gov/georgia-sex-offender-registry>
103609 1/19

ABANDONED MOTOR
VEHICLE PETITION
ADVERTISEMENT
Vehicle make: CADILLAC
Year: 1987 Model: DEVILLE
Vehicle ID#
1G6CD1180H4202520
Vehicle License#: TCF8493
State: GA
Magistrate Court Case No.:
22-L-00101
present location of vehicle:
344 Kathleen Dr. SE.
Marietta, GA 30067
You are hereby notified that
petition was filed in the
Magistrate Court of Cobb
County to foreclose a lien
for all amounts owed. If the
lien is foreclosed, a court
shall order the sale of the
vehicle to satisfy the debt.
Anyone with an ownership
interest in this vehicle
may file an answer to the
petition on or before:
2/11/2022.
Answer forms may be found
in the Magistrate Court
Clerk's office located at: 32
Waddell St SE, Marietta, GA
30090.
Forms may also be
obtained online at www.georgiamagistratecourt.com
103691 1/19,26
IN THE SUPERIOR COURT
OF HALL COUNTY STATE OF

on ongoing research, it is
possible that members of
the Godfrey Luther and
Ervin (Irvine) Strickland, Sr.
families were interred at this
place. The subject property
was owned by descendants
of the Stricklands (two
Bagwell families) into the
20th century. Members
of other families may be
buried here as well. If
you are a descendant of
individuals buried in the
subject cemetery or if you
know someone who may
be, please contact Mr. Neil
Bowen at: 770 345 0706; by
e mail at: nbowen.rswa@gmail.com; or by mail at:
R.S. Webb & Associates, P.O.
Drawer 1319, Holly Springs,
Ga., 30142.
103434 1/12, 19,26,2/2

NOTICE:
Interest in 5436 Clarks
Bridge Road, Gainesville,
GA 30506
IN THE SUPERIOR COURT OF
HALL COUNTY
STATE OF GEORGIA
TAW Investments, LLC,
Petitioner,
v.
CIVIL ACTION FILE NO.:
2021CV1500W
Thester Lynn Satterfield
and James Browning, The
Property Commonly Known
as 5436 Clarks Bridge Rd.,
Tax Parcel: 12054 000003
Hall County, Georgia, and
all persons who claim or
might claim adversely to
Petitioner's title
Respondents.

To: All parties who claim
or may claim an adverse
possessory title right to the
property known as 5436
Clarks Bridge Road, Tax
Parcel 12054 000003, Hall
County
You are hereby notified that
the above-styled, action
seeking to establish title
to the below described
property against all
the world was filed on
August 24, 2021 in the
Superior Court of Hall
County, Georgia, Case No.
2021CV1500W, and that by
reason of Order for Service
by Publication issued by
said Court on the 29th day
of December, 2021, you are
hereby commanded to be
and appear at said Court
within thirty (30) days of
the date of the Order for
Service by Publication to
answer said Petition and
file in accordance with the
Court. The property is more
particularly described as
follows:
All the following described
property, to-wit: Two lots
in the town of Brookton,
Ga. Lots Nos. 68 and
69 of the Survey of J.F.
Moorefield made Jan. 30th,
1913. Beginning at the
Northwest corner of No.
102, thence Ease Course to
the Gainesville and North-
western Railroad right of
way; thence North said
right of way 100 feet to
Southeast corner of Lot
No. 70, thence West course

CHANGE NAME OF ADULT
Ali Sam Shaneheche Filed
a Petition in the Superior
Court of Hall County on the
28th day of December 2021
to change name from Ali
Sam Shaneheche to
Aria Enzo Di Vaio
Any interested party has
the right to appear in this
case and file objections
within 30 days after the
Petition was filed.
Dated 12/28/2021
/s/ Ali Sam Shaneheche
103280 1/5,12,19,26

SUPERIOR COURT OF HALL
COUNTY
STATE OF GEORGIA
In re the Name Change of
William Lamar Fayson
Petitioner
Civil Action Case Number
21CV217BJ
NOTICE OF PETITION TO
CHANGE NAME OF ADULT
William Lamar Fayson filed
a petition in the Superior
Court of Hall County
on December 6, 2021 to
change the name from
William Lamar Fayson to
William Lamar Newton Any
interested party has the
right to appear in this case
and file objections within
30 days after the petition
was filed.
Dated 12/6/2021
/s/William Lamar Fayson
Petitioner Pro se
103646 1/19,26,2/2,9

Public Hearings

NOTICE is hereby given that
the Hall County Planning
Commission shall conduct
a public hearing at the
Gainesville Civic Center,
830 Green Street NE,
Gainesville, Georgia, at 5:15
p.m. on Monday, February
7, 2022 to consider the
following:
1. Application of Travis
Little for a front yard
setback variance from 65
feet to 30 feet from the
centerline of road on a
1.80± acre tract located on
the north side of Guth Road
approximately 695 feet
from its intersection with
J M Turk Road; a.k.a. 4611
Guth Road; Zoned AR-III;
Tax Parcel 15043 000201.
Proposed Use: addition
to existing home and
construct detached garage.
* Commission District 1.
2. Application of Jacob
Thornton for a right yard
setback variance from
15 feet to 7.5 feet from
property line and a left
side yard setback variance
from 15 feet to 10 feet
from property line on a
1.17± acre tract located on
the east side of Whites Mill
Road approximately 63 feet
from its intersection with
Stephens Road; a.k.a. 4910
Whites Mill Road; Zoned
AR-III; Tax Parcel 08054
003001A. Proposed Use:
construct a residence. *
Commission District 2.
3. Application of Viktor Vlad
for a road frontage variance

NOTICE OF PLANNING AND
APPEALS BOARD PUBLIC
HEARING
Notice is hereby given that
the Gainesville Planning
and Appeals Board will
conduct a public hearing
on Tuesday, February 8,
2022 at 5:30 p.m. in the
Gainesville Justice Center
(Municipal Courtroom at
the Public Safety Complex),
701 Queen City Parkway in
midtown Gainesville on the
following requests:
1) Request from Daniel
J. Peck to vary the
illumination requirements
for a monument sign and
wall sign on a 0.62± acre
tract located on the east
side of South Enota Drive,
north of Downey Boulevard
(a/k/a 440 South Enota
Drive, NE), having a zoning
of Office and Institutional
(O-I).
Ward Number: Three
Tax Parcel Number(s):
01-064-002-036
Request: Monument sign
and wall sign
2) Request from Phillip R.
Brown for an appeal of an
administrative decision to
disallow use for lodging
services on a 3.5± acres
tract located at the
terminus of Mountain View
Circle, west of Honeysuckle
Road (a/k/a 725 Mountain
View Circle, NW), having a
zoning of Residential-I (R-
I).
Ward Number: One
Tax Parcel Number(s):
01-111-001-011
Request: Reverse
administrative decision
3) Request from McKinley
Homes US, LLC for a special
use on a 7.74± acres tract
located on the west side
of Florence Drive, across
from its intersection with
Bentley Park Circle (a/k/a
2920 Florence Drive, SW),
having a zoning of Office
and Institutional (O-I).
Ward Number: Four
Tax Parcel Number(s):
08-015-005-029
Request: Residential
townhomes
4) Request from the
City of Gainesville to
amend the Unified Land
Development Code for
the City of Gainesville,
Georgia to amend Table
9-5-1 of Article 9-5 entitled
"Permitted and Special
Uses for Residential Zoning
Districts"; to amend Table
9-6-1 of Article 9-6 entitled
"Permitted and Special
Uses for Nonresidential
Zoning Districts"; to amend
Section 9-10-2-5 entitled
"Single-Family Attached
Dwelling (Fee-Simple
Townhouse); to amend
Section 9-10-3-5 entitled
"Private Swimming Pools";
to amend subsection (b) of
Section 9-18-6-6 entitled
"Changeable Copy"; to
amend subsection (c) of
Section 9-21-1-12 entitled
"Powers and Duties"; to
amend subsection (d) of
Section 9-22-2-18 entitled

Holly Owens seeks
variances to reduce
setbacks as follows:
1) 5277 Old Cornelia Hwy.
a) reduce front setback
from 100 feet to 50 feet;
b) reduce north side
setback from 25 feet to 9
feet; and
c) reduce south side setback
from 25 feet to 15 feet.
2) 5281 Old Cornelia Hwy.
a) reduce front setback
from 100 feet to 50 feet;
b) reduce north side
setback from 25 feet to 16
feet; and
c) reduce south side setback
from 25 feet to 15 feet.
All interested parties are
invited to attend and be
heard.
If you have questions or
comments regarding this
application or need special
accommodations, then
please contact Dennis
Bergin, City Manager, at
City Hall.
If you speak regarding
this application, then
you must complete a
Campaign Disclosure
form if you have made
campaign contributions in
the amount of \$250.00 or
more to any member of the
Council within two years
of the date of the public
hearing.
103732 1/19,26

Public Sales/Auctions

Notice of Public Auction:
Boardwalk Storage-
Cleveland Hwy pursuant to
the "TITLE 10. COMMERCE
AND TRADE CHAPTER 4.
WAREHOUSEMEN ARTICLE
5. SELF-SERVICE STORAGE
FACILITIES GEORGIA CODE
O.C.G.A. § 10-4-210 hereby
gives Notice of Sale under
said act, to wit.
Will be holding a public
auction online at Lockerfox.
com
On February 10, 2022 @
11:30AM
Only Bank Checks will be
accepted.
All sales are final & the
units must be cleaned out
completely & broom swept
in 48 hours.
a 100.00 CASH cleaning
deposit is required. This
will be refunded upon unit
inspection.
Clermont location -6720
Cleveland Hwy, Clermont,
GA 30527 770-983-5453
Unit-C19 Nicholson, J
Unit-CC24 Mann, D
Unit-D02 Daniel, J
Unit-D05 Ramey, J
Unit-D10 Mann, D,
Unit-F08 Greene, L
Unit-A03 Martin, E
103579 1/19,26
NOTICE SALE
This unit will be sold at
public auction to the
highest bidder for cash, at
Double Eagle Self Storage
3558 Atlanta Hwy., Flowery
Branch, Ga. 30542 on
Tuesday, January 24, 2022
at 3:30pm. To foreclose and
satisfy warehouseman's
lien covering storage as

place as lawfully within the legal ile, on February he property in ity Deed and s follows:
ACT OR PARCEL ING AND BEING DGM DISTRICT, INTY, GEORGIA, 53, RIVERSTONE DIVISION, UNIT 1, AS PER PLAT IN PLAT BOOK GES 186-195, INTY, GEORGIA WHICH PLAT IS ATED HEREIN BY AND MADE A IIS DESCRIPTION. rty being known EXINGTON WAY, N, GA 30517
best of the ed's knowledge, y, or parties ssion of said is/are MICHAEL ICK AND PARKER- ICK or tenant(s). secured by said ed has been and eclared due and eause of, among isible events of ilure to pay the ess as provided Note and said Deed. The debt in default, this e made for the f paying the same xpenses of sale, attorney's fees intent to collect fees having been
erty will be sold o the following: outstanding ad taxes (including ich are a lien, r not yet due and n of any taxing (3) any matters ght be disclosed urate survey and 1 of the property; any assessments, encumbrances, ordinances, is, covenants, and if record superior ecurity Deed first ove.
will be conducted o the following: (1) ion that the sale ibited under the ruptcy Code; and confirmation and the status of the the holder of the

IN THE SUPERIOR COURT OF HALL COUNTY STATE OF GEORGIA
JANUARY TERM, 2022 TERM OF GRAND JURY
The attached list represents the indictments presented to the Grand Jury and taken to Judge C. Andrew Fuller in open court is date, January 12, 2022.
I received this list along with the envelope containing the indictments in open court on this date, January 12, 2022. The Courtroom was open to the public at the time of the presentation to me of the envelope containing indictments and the list of indictments as shown on Exhibit "A," attached hereto.
C. ANDREW FULLER
JUDGE, HALL COUNTY SUPERIOR COURT
1-11-22 DATE
3:04PMTIME
CASES PRESENTED TO GRAND JURY ON JANUARY 12, 2022.
Defendant and Charges
J A Simpson Aggravated ssault criminal damage prop etc
NT Couch terroristic threats etc
MD Higgins rape etc
Dt Powell possession schll controlled sub etc
L Mendoza battery FV etc
SM Jowers aggravated batter etc
CL Stott serious injury by vehicle etc
OS Griffin theft by shoplifting
JJ Chummar possession con substance etc
Lunch Break
MB Schoolcraft aggravated assault etc
TB Yopp criminal attempt to commit a F etc
GL Fricks homicide by vehicle etc
AH Moore possession synthetic cannabinoid etc
ST Hogan aggravated assault etc
AV Sfta terroristic threats etc
HR Day trafficking methamphetamine etc
DT Jones habitual violator DUI etc
JH Whitt criminal damage to property etc
SD McCrary aggravated assault
January 12, 2022
103757 1/19
LEGAL AND PUBLIC NOTICE:
Chafin Land Development,

Southwest corner of Lot No. 70; thence West course along line of Lot No. 70 to Main Street; thence South Main Street 100 feet to beginning corner. Including improvements on said property being three room frame dwelling. This being the same property described in deed from Mrs. Lucretia Wilson Little et al. to W.S. Edge, recorded in Book 122, page 540, Clerk's Office, Hall Superior Court. Appearance may be made by filing a written response with the Clerk of the Court in the above-styled action.
WITNESSETH
The Honorable Clint G. Bearden, Judge of the Superior Court of Hall County,
T W R / m m k / 1 5 2 1 7 / W260623
103289 1/5,12,19,26

Name Changes

SUPERIOR COURT HALL COUNTY
STATE OF GEORGIA
In re the name change of Melissa Anne Bennett
Petitioner
Civil Action Case Number 2021CV2144W
NOTICE OF PETITION TO CHANGE NAME
Melissa Anne Bennett filed a petition in the Superior Court of Hall County on December 1 2021, to change the name from Melissa Anne Woolston
Any interested party has the right to appear in this case and file objections within 30 days after the Petition was filed.
Dated 12/1/2021
/s/ Melissa Anne Bennett
Petitioner Pro se
103600 1/19,26,2/2,9

SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA
In re the Name Change of Gwendolyn Frances Gabbard
Petitioner
Civil Action Case Number 2021CV2076C
NOTICE OF PETITION TO CHANGE NAME OF ADULT
Gwendolyn Frances Gabbard filed a petition in the Superior Court of Hall County on November 19 2021 to change the name from Gwendolyn Frances Gabbard to Zachariah

for a road frontage variance from 150 feet to 125 feet on a 5.02± acre tract located at the intersection of Union Church Road and Oliver Road; a.k.a. 5630 Union Church Road; Zoned AR-IV; Tax Parcel 15039 000067. Proposed Use: 5 lot subdivision. ** Commission District 1.
4. Application of Viktor Vlad to rezone from Agricultural Residential-IV (AR-IV) to Residential-I (R-I) on a 5.02± acre tract located at the intersection of Union Church Road and Oliver Road; a.k.a. 5630 Union Church Road; Zoned AR-IV; Tax Parcel 15039 000067. Proposed Use: 5 lot subdivision. ** Commission District 1.
5. Application of Friendship 24, LLC to rezone from Agricultural Residential-IV (AR-IV) to Planned Commercial Development (PCD) on a 24.23± acre tract located on the north side of Friendship Road approximately 3,111 feet from its intersection with Deaton Creek Parkway; a.k.a. 1639 Friendship Road; Zoned AR-IV; Tax Parcel 15039 000012B. Proposed Use: self-storage, boat/RV/box truck parking. ** Commission District 1.
NOTE: In accordance with Georgia law, anyone who (a) wishes to express opposition to the proposed rezoning and (b) has made, within two years immediately preceding the filing of the proposed rezoning, campaign contributions aggregating \$250 or more to a member of the County Commission shall file a disclosure of contributions with the Planning Department at least five (5) days prior to the first hearing of the proposed rezoning by the County Commission. (OCGA § 36-67A-3(C)).
*The Planning Commission's decision will be the final action taken unless appealed to the Board of Commissioners. To do so, file an application with the Planning Department within five working days of the Planning Commission's decision.
The Hall County Board of Commissioners will hear

Section 9-22-2-18 entitled "Action by Governing Body".
NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE GAINESVILLE ZONING MAP
Notice is hereby given that the Gainesville City Council will conduct a public hearing on Tuesday, March 1, 2022 at 5:30 p.m. in the Gainesville Justice Center (Municipal Courtroom at the Public Safety Complex), 701 Queen City Parkway in midtown Gainesville on the following requests:
1) Request from McKinley Homes US, LLC for a special use on a 7.74± acres tract located on the west side of Florence Drive, across from its intersection with Bentley Park Circle (a/k/a 2920 Florence Drive, SW), having a zoning of Office and Institutional (O-I). Ward Number: Four
Tax Parcel Number(s): 08-015-005-029
Request: Residential townhomes
2) Request from the City of Gainesville to amend the Unified Land Development Code for the City of Gainesville, Georgia to amend Table 9-5-1 of Article 9-5 entitled "Permitted and Special Uses for Residential Zoning Districts"; to amend Table 9-6-1 of Article 9-6 entitled "Permitted and Special Uses for Nonresidential Zoning Districts"; to amend Section 9-10-2-5 entitled "Single-Family Attached Dwelling (Fee-Simple Townhouse); to amend Section 9-10-3-5 entitled "Private Swimming Pools"; to amend subsection (b) of Section 9-18-6-6 entitled "Changeable Copy"; to amend subsection (c) of Section 9-21-1-12 entitled "Powers and Duties"; to amend subsection (d) of Section 9-22-2-18' entitled "Action by Governing Body".
Additional information is available from the Community and Economic Development Department, Planning Division, by calling 770-531-6570
103727 1/19

PUBLIC NOTICE

The Planning Commission of the City of Lula will hear

lien covering storage, as indicated on the personal and household goods of the following:
#527 John Pierce
103511 1/12,15,19

Probate Notices

CITATION COURT OF HALL COUNTY RE: ESTATE OF MARCUS BRYON HOLMBERG (FORMER) WARD
Date of Publication, if any: January 19, 2022
TO WHOM IT MAY CONCERN:
The conservator of the above estate, has applied for Discharge from said trust. This is to notify the above interested parties to show cause, if any they can, why said conservator should not be discharged from office and liability. All objections must be in writing, setting forth the grounds of any such objections, and filed with the above Probate Court, at 116 Spring Street, First Floor, Gainesville, Georgia 30501 on or before 10:00 A.M. March 7, 2022, said date being more than 30 days from the date of publication, or if personally served, then 10 days from the date of such service. All pleadings must be signed before a notary public or probate court clerk, and filing fees must be tendered with your pleadings, unless you qualify to file as an indigent party. Contact probate court personnel at the below address/telephone number for the required amount of filing fees.
If any objections are filed, a hearing will be scheduled for a later date. If no objections are filed, the petition may be granted without a hearing.
PATTY WALTERS LAINE
PROBATE JUDGE
By: DENISE GARCIA
PROBATE CLERK
116 SPRING STREET, FIRST FLOOR ADDRESS
GAINESVILLE, GEORGIA 30501
770-531-6925
102996 1/19

CITATION
PROBATE COURT OF HALL