

**GAINESVILLE PLANNING AND APPEALS BOARD
MINUTES OF MEETING
AUGUST 11, 2015**

CALL TO ORDER Chairman @ 5:35 p.m.

Members Present: Chairman Doyle Johnson, Vice-Chair Jane Fleming and Board Members Connie Rucker, George Hokayem, Eddie Martin, Sr., Zack Thompson and Carmen Delgado

Members Absent: None

Staff Present: Community Development Director Rusty Ligon, Planning Manager Matt Tate and Recording Secretary Judy Foster

Others Present: Council Members George Wangemann and Myrtle Figueras

MINUTES OF JULY 14, 2015

There was a motion to approve the minutes as presented.

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

NEW BUSINESS

A. Rezoning Request

- 1) Request from **Jose Valerio** to rezone a 0.28± acre tract located on the north side of Myrtle Street, northeast of its intersection with Airport Drive and Ralston Street (a/k/a **1230 Myrtle Street SW**), from General Business (G-B) to Residential-II (R-II).
Ward Number: Four
Tax Parcel Number(s): 00-125-002-004A
Request: Two-family residence

Staff Presentation: Planning Manager Matt Tate gave the following staff presentation:

The applicant is proposing to rezone a 0.28± acre property from General Business (G-B) to Residential-II (R-II). The subject property was previously one of the 115 island properties annexed in 2013. At that time, the property was zoned Highway Business (H-B) within Hall County and was annexed with a comparable zoning of General Business (G-B). Therefore, the residence is considered a legal nonconforming use, as the existing zoning does not permit single-family or two-family housing.

The purpose of the rezoning request is to expand an existing single-family residence into a two-family residence. The renovation includes an addition of two bedrooms, one bathroom and a kitchen to the rear of the existing residence totaling 850 square feet. According to tax records, the existing home is 950 square feet in size and was originally constructed in 1948. Water, sewer and solid waste pick-up services are currently provided to the property by the City of Gainesville. According to the

Gainesville Public Works Department, the existing home already pays solid waste fees for one unit. An additional fee will be required for the proposed second unit. There were no other departmental comments regarding this request.

The Future Development Map of the Comprehensive Plan places the subject tract within the *Retail Commercial* land use category which supports commercial service activities such as grocery stores, banks, restaurants, theatres, hotels, and automotive related businesses. According to the Character Area map of the Comprehensive Plan, the subject property is located within the *West Side* character area which supports medium-density residential, multi-family residential, mixed-use, commercial, public / institutional, and parks / recreation / conservation uses.

While the long term use of the property is designated for commercial purposes, the property has always been occupied as single-family residential. It appears the property could be developed for either use given its proximity to both commercial and residential properties.

Planning Division staff is recommending approval of this rezoning request with the following two conditions based on the existing use of the property and the adjacent and nearby residential uses:

1. Prior to a Certificate of Occupancy being issued for the proposed residential addition, the front, side and rear yards of the subject property shall be stabilized with new vegetation acceptable to the Community Development Department Director. This may include the addition of grass, shrubs, mulch and other landscape materials.
2. There shall be no yard parking for any motor vehicles within the subject property. All vehicles shall be parked on a hard surface which may include concrete, asphalt or an approved pervious surface material acceptable to the Community Development Department Director.

Applicant Presentation: The applicant was not present.

FAVOR: None

OPPOSE: None

Planning and Appeals Board Comments: Board Member Martin asked if the applicant will have to bring the house up to code when they build the addition. Planning Manager Matt Tate stated that he was not aware if a site inspection had been completed for this house, however, any safety issues would be addressed when the inspectors visit the property after a building permit is issued.

Vice-Chair Fleming asked if a parking pad is required for the property. Planning Manager Matt Tate stated yes, staff normally would work with the applicant to make sure there is not any parking in the yard creating an erosion issue, noting there is some gravel there but they are currently parking everywhere on the property and they need to park on a hard surface.

Board Member Thompson asked if the applicant applied in person or did he have a representative. Mr. Tate stated he applied in person.

Board Member Rucker asked if the applicant knew he needed to be present for this meeting. Mr. Tate stated yes, he received notice letters and staff has attempted to call him but have not had a response. He stated that this has happened in the past, when an applicant was not present, and the Board can choose to move forward and take action on the request or table the request.

Board Member Thompson asked if the immediate adjacent properties were zoned residential. Mr. Tate reviewed the location map and confirmed that three adjacent sides of the subject property are zoned General Business and the property across Myrtle Street which is located in unincorporated Hall County is zoned Residential-II.

Board Member Martin asked if it will be commercial on both sides of the subject property. Mr. Tate stated that the actual uses are residential except for the Bojangles' restaurant to the north and the parking lot to the west of the subject property which are commercial uses.

Board Member Hokayem asked if the request was tabled, could the applicant come back before the Board. Mr. Tate stated that the Board would need to table it until a date certain such as the next meeting.

Board Member Thompson asked if the Board can require the applicant to attend the meeting. Mr. Tate stated that if the Board had reservations and questions for the applicant, they could table the matter until the next meeting and staff will try to contact him to attend the next meeting. Mr. Thompson felt it was not important enough to the applicant to attend the meeting or return phone calls from staff.

Vice-Chair Fleming agreed and said there should be accountability.

Chairman Johnson asked about the applicant's English. Mr. Tate stated that although he did not take in the application himself, he was aware that the applicant came in to make application with a translator. Again, he stated that any attempts staff has made to contact him via phone or mail have not been successful.

Board Member Martin asked if this rezoning would create a problem for the property owner to the right of the subject property if they want to develop their property as commercial. Mr. Tate stated that all of the adjoining lots are narrow and it would probably be difficult to develop as commercial without combining some of the lots. He stated that staff foresees in the long term that a block of the lots would be combined to be developed as commercial, but right now it still has a residential feel.

Board Member Thompson asked if the applicant can continue to live on the property if it is not rezoned. Mr. Tate stated yes, it would remain a legal nonconforming use. However, the applicant could not expand to a two-family home. Mr. Thompson asked if the expansion was for his own family or an investment. Mr. Tate stated it was his understanding that the applicant would continue to live there and lease out the back portion of the home.

Board Member Rucker asked if the applicant was in agreement with the conditions as presented by staff. Mr. Tate stated that since staff has been unable to contact the

applicant, he did not know if Mr. Valerio would be in agreement. Mr. Tate stated that the proposed conditions are required by Code anyway but they were included to make them very clear to the applicant.

Board Member Martin asked if the rezoning would affect any existing commercial businesses along Browns Bridge Road. Mr. Tate stated not immediately, however, if they chose to expand their building there could be a potential impact since it would now backup to residential property where there is a greater buffer requirement. Mr. Tate didn't foresee a problem with the existing Bojangles' and Department of Agriculture since they are limited in terms of what they could do as far as expansion.

Community Development Director Rusty Ligon stated that if the Board has specific questions for the applicant, the request can be tabled, but if not, he wouldn't recommend the Board table the request simply because the applicant was not present.

There was a motion to recommend conditional approval of the request to rezone 1230 Myrtle Street SW from General Business (G-B) to Residential-II (R-II) with the following conditions:

- 1. Prior to a Certificate of Occupancy being issued for the proposed residential addition, the front, side and rear yards of the subject property shall be stabilized with new vegetation acceptable to the Community Development Department Director. This may include the addition of grass, shrubs, mulch and other landscape materials.**
- 2. There shall be no yard parking for any motor vehicles within the subject property. All vehicles shall be parked on a hard surface which may include concrete, asphalt or an approved pervious surface material acceptable to the Community Development Department Director.**

Motion made by Vice-Chair Fleming

Motion seconded by Board Member Rucker

Vote – 5 favor, 2 opposed (Martin, Thompson)

B. Code Amendment Request

- 1) Request from the **City of Gainesville** to amend the Unified Land Development Code for the City of Gainesville, Georgia. The proposed amendments are to amend Chapter 9-2-2, entitled "General Definitions" to provide for definitions of "Consumer Fireworks," "Consumer Fireworks Retail Sales Facility," and "Fireworks;" to amend table 9-6-1 entitled "Permitted and Special Uses for Nonresidential Zoning Districts" to specify Consumer Fireworks Retail Sales Facility as a permitted use within the Light Industrial (L-I) zoning district to provide for better clarity.

Staff Presentation: Planning Manager Matt Tate stated that the General Assembly of Georgia adopted House Bill 110 regarding the sale of consumer fireworks which became effective on July 1, 2015. Basically, the law states that local governments cannot ban or restrict firework sales, but are allowed to regulate where fireworks can be sold through local zoning regulations. In addition, local governments are not allowed to enact additional regulations related to the sale, use or explosion of fireworks, except as provided by state law.

Mr. Tate felt the state law was very confusing and contradictory which has led to much internal discussions with staff and the City Attorneys over the past few months. It was decided that it would be appropriate at this time to adopt an ordinance that would provide some clarity for the City. The proposed ordinance would not prevent the sale of fireworks but would limit consumer firework retail sales facilities to the Light Industrial (L-I) zoning district. The proposed ordinance does not prevent Wal-Mart and/or Kroger for example, which is considered a general mercantile use, from selling fireworks along with other merchandise. The amendment will provide for the definition of Fireworks, Consumer Fireworks, and Consumer Fireworks Retail Sales Facility. Specifically, the fireworks store on Riverside Drive located in the former Subway restaurant building can continue to do business there as it is a general mercantile use which sells sparklers and other fireworks which are considered "safe and sane" fireworks which fall under a general mercantile use. The Fire Marshal and City Marshall are burdened with insuring the state regulations are met.

Community Development Director Rusty Ligon stated that the fireworks being sold in tents set up in parking lots are not really considered fireworks but are called "safe and sane" items which do not leave the ground or if they do, they do not go very high. The difference being consumer fireworks are the explosive ones that go high into the air such as bottle rockets.

Mr. Tate provided a handout to the Board from the Georgia Municipal Association which summarizes HB 110 and how it impacts local jurisdictions. No fireworks can be exploded between midnight and 10am except for December 31st, January 1st, July 3rd and July 4th when the hours are extended until 2am. State law prohibits the sale of fireworks for consumers under the age of 18 and there are some additional state regulations regarding retail sales within temporary buildings.

Mr. Tate stated that the proposed ordinance will designate where stand alone, larger consumer fireworks retail sales facilities can be located within the City, noting if the store sells 51% or more of general mercantile items, they are not considered a consumer fireworks retail sales facility.

Mr. Ligon stated that storing large amounts of consumer fireworks in a building should be in an industrial area for safety reasons.

Vice-Chair Fleming asked how the 51% sales would be determined. Mr. Tate stated that this was discussed internally and it would involve the Fire Marshal and City Marshall making inspections. Staff does not feel there will be a large number of consumer fireworks retail sales facilities within the city limits.

Mr. Ligon stated that after January 1st of 2016, businesses can also sell consumer fireworks out of tents.

Vice-Chair Fleming asked if that could be prohibited in Gainesville. Mr. Ligon stated no, we cannot prohibit the sale of consumer fireworks, but the tents will be inspected and regulated to make sure they are safe.

Mr. Tate stated that there are a lot of fire safety requirements regarding the storage of consumer fireworks such as they have to be within a certain distance of a fire hydrant. He stated that there may be some changes to the state law in the future because of difficulty to understand, which would prompt changes to our ordinance as well.

FAVOR: None

OPPOSE: None

Planning and Appeals Board Comments: None

There was a motion to recommend approval of the code amendment request as presented by staff.

Motion made by Vice-Chair Fleming
Motion seconded by Board Member Martin
Vote – 7 favor

MISCELLANEOUS

Carmen Delgado

Chairman Johnson welcomed the newest member to the Planning and Appeals Board, Carmen Delgado. She has offered to help with translation if needed during the public hearings. Community Development Director Rusty Ligon stated he has known Mrs. Delgado for 10 years and he appreciated her willingness to serve on what he believed to be the toughest Board to serve.

Zack Thompson

Chairman Johnson stated that Zack Thompson is resigning from the Board and thanked him for his service to the City. Board Member Thompson thanked staff for helping him during his seven months tenure, noting they are true professionals with whom he hopes to work with again in the future.

ADJOURNMENT

There was a motion to adjourn the meeting at 6:03 PM.

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

Respectfully submitted,

Doyle Johnson, Chairman

Judy Foster, Recording Secretary