

6-2-03

**BEFORE THE TALLAHASSEE-LEON COUNTY PLANNING COMMISSION**

DAN GILBERTSON,

Petitioner,

vs.

CITY OF TALLAHASSEE,

Respondent.

AT

DOAH Case No. 02-4236

WRP-Closed

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**FINAL ORDER**

On May 2, 2003, William R. Pfeiffer, Administrative Law Judge, entered his recommended order in the subject matter. Petitioner and Respondent both filed exceptions on May 15, 2003. A joint motion for extension of time to file exceptions was filed May 12, 2003. The motion requested until May 15, 2003 to file the exceptions. The motion is granted and the exceptions are being considered as part of the review of the recommended order. The Tallahassee-Leon County Planning Commission ("Commission") heard oral arguments on June 11, 2003.

I. Standard For Review

Article IX of part I of the Bylaws of the Commission provides the standard for review as follows:

"The Planning Commission shall adopt the recommended order, adopt the recommended order with changes, or direct staff to prepare a revised order. The Planning Commission shall not change any findings of fact reached by the Hearing Officer unless after review of the entire record, the Planning Commission finds there is no competent substantial evidence to support the Hearing Officer's findings. The Planning Commission may change conclusions of law if it is found that the Hearing Officer did not apply the correct law."

## II. Respondent's Exceptions

Respondent filed three exceptions as follows:

1. Finding #11 is deemed objectionable by Respondent because it asserts there is no competent, substantial evidence in the record to support the finding. A finding that is not supported by competent, substantial evidence cannot stand. Article XXIII, Section 23.3 of the Tallahassee Code of Ordinances, provides that the applicant shall have the burden of demonstrating through a preponderance of the evidence that all conditions necessary to granting the deviation have been met.

The provision at issue is the one requiring the applicant to demonstrate that the deviation will not be detrimental to the public good or to the surrounding properties. Much discussion appears in the record about police calls to the subject property and noise problems. The Administrative Law Judge weighed the evidence and determined that the deviation will not be detrimental to the public good because the frequency of the complaints has significantly declined and Petitioner employs significant private security to curtail adverse incidents.

Competent, substantial evidence exists in the record to support the determination that complaints have significantly declined and that Petitioner employs significant private security. Petitioner met its prima facie burden. Having met that burden, the Administrative Law Judge determined that Respondent failed to show that the expansion will be detrimental to the public good or to the surrounding properties. The Planning Commission cannot reweigh the evidence. Respondent's first exception is denied.

2. Finding #13 is objectionable to Respondent because it is alleged to create a new standard for review of site plans and deviations. The sentence which is deemed

objectionable by Respondent reads as follows: “While the structures preceded the setback requirements, Petitioner has comported with the intent of the Tallahassee Code and Comprehensive Plan by enhancing vehicular and pedestrian access to the premises and improving their visual aesthetics.” Respondent further asserts that there is no competent, substantial evidence in the record to support this finding.

We do not interpret this finding as a new standard for review. Competent, substantial evidence exists in the record to support the finding. Accordingly, this exception is rejected.

3. Finding #15 is objectionable to Respondent because no competent, substantial evidence is alleged to exist to support the finding. We disagree and reject the exception.

Respondent requests, in the alternative, that the following conditions be added to the Final Order as necessary for the project to comply with the land development regulations:

1. Pursuant to Section 21.7.B (Submittal Requirements) of the Zoning Code, at Type A Site Plan Submittal, Gilbertson shall be required to submit the following:

An accurate Existing Conditions Map drawn to appropriate engineering scale depicting all physical conditions of the site;

A Site Plan (also to appropriate engineering scale) showing all the requirements of Section 10.3.0.2 (DI minimum development standards) and Section 21.7.B.3, to include all statistical information for pre- and post-development conditions;

A Utility Service Plan, if applicable;

A Concept Landscape Plan (reflecting the visual aesthetics indicated by the Petitioner in the ~~Order~~<sup>hearing</sup>); and a Grading Plan (if applicable).

2. The proposed site plan shall be revised to reflect the proposed new location of the dumpster on-site, as recommended by the Administrative Law Judge.
3. Petitioner shall be required to obtain approval from the Solid Waste Management Department of the proposed new dumpster location and shall submit written documentation (with plans) to the Growth Management Department reflecting the approval.

The requested conditions are consistent with and carry forward the requirements of the land development regulations and the recommended order. They are hereby adopted as part of this final order.

### III. Petitioner's Exceptions

Petitioner objects to Finding #29 and to the recommendation regarding relocation of the dumpster. As previously stated, we cannot reweigh the evidence. The Administrative Law Judge's recommendation was based on relocation of the dumpster. <sup>safe and acceptable</sup>

The exception is denied.

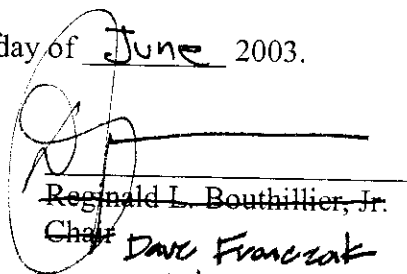
### IV. Conclusion

The Administrative Law Judge's recommendation is adopted for the reasons stated above. Accordingly, the requested deviations and site plan are approved with the conditions stated above.

The Florida Land Use and Environmental Dispute Resolution Act provides an opportunity for an owner of property who believes that a development order is unreasonable or unfairly burdens the use of his real property to apply for a special master


proceeding. An owner who believes that a development order, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, is unreasonable or unfairly burdens the use of his real property, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this Act. Owners of real property contiguous to the site will be provided a copy of any such request filed with the Planning Department. Any substantially affected party who submits oral or written testimony of a substantive nature which states with particularity objections to or support for any development order at issue may also receive a copy of any request for relief filed under the Florida Land Use and Environmental Dispute Resolution Act by filing a written request for such copy with Wayne Tedder, Planning Commission Clerk, Tallahassee-Leon County Planning Department, City Hall, 300 South Adams Street, Tallahassee, Florida 32301.

**APPROVED** by the Commission on the 11<sup>th</sup> day of June 2003.

  
~~Reginald L. Bouthillier, Jr.~~  
~~Chair~~ *Dave Franczak*  
*Office Chair*

**CERTIFICATE OF SERVICE**

I certify that a copy of this document has been furnished to Linda Hurst, Assistant City Attorney, City Attorney's Office, City Hall, 300 S. Adams Street, Tallahassee, Florida 32301 and Dan Gilbertson, 459 West College Avenue, Tallahassee, FL 32301, by U.S. Mail on this 11<sup>th</sup> day of JUNE, 2003.

  
David W. Tedder  
Planning Commission Clerk