

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THOMAS HAWKINS, JASON ATKINS-  
TUFFS, VANESSA BURT, JON  
REHFUSS, SUZI RUMSEY, FURMAN  
WALLACE, LAUREN ATKINS, DOTTY  
FAIBISY, CAROLINE REHFUSS, AND  
TANA SILVA,

Appellants,

vs.

Case No. 18-5921

BLACKWATER INVESTMENTS, LLC, AND  
CITY OF GAINESVILLE,

Appellees.

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FINAL ORDER

The Appellants, Thomas Hawkins, Jason Atkins-Tuffs, Vanessa Burt, Jon Rehfuss, Suzi Rumsey, Furman Wallace, Lauren Atkins, Dotty Faibisy, Caroline Rehfuss, and Tana Silva (Appellants), appealed a development plan application filed by the Appellee, Blackwater Investments, LLC (Blackwater), administratively approved by the Appellee, City of Gainesville (City), on September 25, 2018. The Division of Administrative Hearings (DOAH), by contract with the City and pursuant to Section 30-3.57 of the City's Land Development Code (LDC), assigned Administrative Law Judge Francine M. Ffolkes to serve as Hearing Officer for the appeal. The parties submitted briefs on

December 10 and 14, 2018. Oral argument was presented on December 17, 2018.

APPEARANCES

For Appellants: W. Thomas Hawkins, Esquire  
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For Appellee Blackwater Investments, LLC:

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For Appellee City of Gainesville:

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STATEMENT OF THE ISSUES

The issues to be determined in this appeal are (1) whether the Appellants have standing to bring this appeal, and (2) whether the development plan application met the applicable criteria for approval under Section 30-3.46 of the City's LDC in light of the standard of review outlined in Section 30-3.57 of the City's LDC.

PRELIMINARY STATEMENT

On January 5, 2018, Blackwater submitted a development plan application for Pleasant Street Luxury Condos, which included three buildings with six dwelling units and associated parking,

stormwater facilities, and utility improvements. On September 25, 2018, the City approved the development plan application, and on October 22, 2018, the Appellants filed with the City a Notice of Appeal of Administrative Decision under Section 30-3.57 of the City's LDC. After referral to DOAH, an oral argument was scheduled for December 17, 2018.

On November 26, 2018, the Appellants filed a motion to dismiss Blackwater, which was denied on November 30, 2018. On November 30, 2018, the City filed a motion to dismiss certain Appellants, Jason Atkins-Tuffs, Lauren Atkins, Dotty Faibisy, Thomas Hawkins, Jon Rehfuss, Caroline Rehfuss, Tana Silva, and Furman Wallace, for lack of standing under the City's LDC. Blackwater followed up with its own request to dismiss those named Appellants on December 3, 2018. The Appellants filed a response on December 3, 2018.

In accordance with the Order Setting Briefing Schedule dated December 4, 2018, the City filed a stipulated Record on Appeal on December 7, 2018. The Appellants filed their Initial Brief and Motion to Supplement the Record on December 10, 2018, which was granted at the start of the oral argument on December 17, 2018. The City filed its Answer Brief and Blackwater filed a Response to Appellants' Initial Brief on December 14, 2018. Blackwater also filed a Motion to Supplement the Record on December 14, 2018, which was denied at the start of oral argument on

December 17, 2018. However, the exhibits attached to Appellee Blackwater's Response to Appellant's Initial Brief were admitted as additional evidence at the oral argument on December 17, 2018. The Appellants also provided the Hearing Officer with a tabbed binder containing excerpts from the record, copies of case law, and copies of portions of the City's LDC. A Transcript of the oral argument was filed with DOAH on January 3, 2019.

#### FINDINGS OF FACT

##### The Property

1. The property consists of approximately 0.50 acres located at 422 Northwest Third Avenue, Gainesville, Florida (the Property). The Property currently has a Residential Low-Density (RL) future land use (FLU) category under the City's Comprehensive Plan. The RL FLU category includes five implementing zoning districts, and the Property is in the Residential Conservation (RC) zoning district. The Property is not located within the boundaries of the Pleasant Street Historic District.

2. Blackwater owns the Property and submitted a minor development plan application, identified as AD-17-00143, for three buildings with six dwelling units and associated parking, stormwater facilities, and utility improvements. The three buildings have two dwelling units each, which is a use allowed by right in the RC zoning district. The use is described in

Section 30-4.16 of the City's LDC as "Multi-family, small scale (2-4 units per building)."

3. The Property was conveyed to Blackwater by a warranty deed recorded January 15, 2014. The warranty deed describes parcel 14518-002-000 as the east one-half of lot 7 and all of lots 8 and 9 in the south half of block 27 of "Brush's Addition to Gainesville," according to the Plat recorded in "Plat Book 'A,' Page 88 of the Public Records of Alachua County, Florida."

#### Issues on Appeal

4. The Appellants raised and argued four issues in this appeal.

A. Whether the Property is a parcel or lot that can be developed under the City's LDC.

5. The Appellants argue that the Property is not a "parcel" and also not a "lot" under the City's LDC. The LDC definitions are found in Section 30-2.1 of the City's LDC, which states:

**Parcel** means a unit of land within legally established property lines. Legally established property lines means those lines created by a recorded plat, minor plat or lot split, those units of land recognized as lots formed prior to 1961 as recorded on a map kept by the building division, and those lots recognized by the county code enforcement department at the time of any annexation.

**Lot** means a parcel of land contained within property lines of a specific area, including land within easements and building setback

lines of the area, but excluding any land within street right-of-way.

6. The Appellants contend that the Plat of Brush's Addition to Gainesville (the Plat) legally established property lines. The Appellants further contend the definitions mean that only the lots created by the Plat are parcels. In other words, the "unit of land within legally established lines" cannot consist of more than one of the originally platted lots.

7. This is not the City's interpretation of its own LDC. The Property, as described by the warranty deed, is a parcel within the property lines first established on the Plat. As argued by the City and Blackwater during oral argument, the Appellants' interpretation is not reasonable and "could stop all multifamily development in the [C]ity."

8. The City's interpretation of its own LDC is not clearly erroneous and has foundation in reason. Also, approval of the development plan was not an ultra vires act since the City was required to make a decision on the development plan application in accordance with the provisions of its LDC.

B. Whether the Property meets minimum lot width standards under the City's LDC.

9. The Appellants' second argument is that the development plan fails to meet the required minimum lot width standard under Section 30-4.17 of the City's LDC. The Appellants argue that since Lots 8 and 9 on the Plat are each 50 feet wide, then the

permitted use should be "single-family," which has a minimum lot width of 35 feet.

10. Based on the above finding, the Property is a parcel or lot that may be developed under the City's LDC. The Property's lot width is 125 feet, which meets the minimum width standard for the proposed "multi-family, small scale (2-4 units per building)" use.

C. Whether the requirements for a masonry wall and Type B landscape buffer apply to the Property and the development plan.

11. Section 30-4.8.D.2.e of the City's LDC provides:

A decorative masonry wall (or equivalent material in noise attenuation and visual screening) with a minimum height of six feet and a maximum height of eight feet plus a Type B landscape buffer shall separate multi-family residential development from properties designated single-family residential.

The Appellants argue that the development plan should be required to meet this buffer standard because the RC zoning district is residential, and the Property abuts single-family dwellings.

12. Under the LDC provision, the buffer is required to separate multi-family developments from properties "designated single-family residential." The City argues that designations refer to a property's FLU category as designated in the City's Comprehensive Plan. The Appellants argue that "designated single-family residential" simply refers to a single-family dwelling.

13. Policy 4.1.1 of the City's Comprehensive Plan describes certain FLU categories such as Single-Family (SF). Policy 4.1.4 of the City's Comprehensive Plan provides that the City can amend land use "designations" under certain circumstances. Policy 4.2.1 of the City's Comprehensive Plan provides that the City shall adopt regulations that separate uses with performance measures, such as "buffering of adjacent uses by landscape."

14. Based on the language of the City's Comprehensive Plan, it is a reasonable interpretation that use of the term "designated" refers to the FLU category. The Property and the abutting single-family dwellings have the same FLU category designation of RL. Thus, the masonry wall and Type B buffer requirements of Section 30-4.8 of the City's LDC do not apply to this development plan.

D. Whether the Property's development plan meets applicable parking standards under the City's LDC.

15. The Appellants argue that the development plan must provide 13 parking spaces, and it only provides nine parking spaces, which does not meet the parking standards of Sections 30-7.2 and 30-7.5 of the City's LDC. In addition, the Appellants argue that the parking must be paved because the City's LDC only allows gravel parking areas with ten or fewer parking spaces.

16. Under Section 30-7.5 of the City's LDC, the development plan must provide 13 parking spaces. The development plan



provides nine parking spaces on the Property and four on-street spaces approved by the City, for a total of 13 parking spaces. The nine parking spaces on the Property satisfy the requirement of allowing gravel parking areas with ten or fewer parking spaces.

#### Standing

17. Appellants Vanessa Burt and Suzi Rumsey are the only residents who own property within 400 feet of the Property.

18. Appellants Jason Atkins-Tuffs and Lauren Atkins are recent new home buyers in the Pleasant Street Neighborhood. Mr. Atkins-Tuffs is concerned that the development plan would not be a "good fit for our growing historic downtown family neighborhood."

19. Appellant Dotty Faibisy is an almost 20-year resident and is concerned that the development plan "is a poor fit for the Historic Pleasant Street Neighborhood."

20. Appellants John Rehfuss and Caroline Rehfuss are residents since 2013 in the Pleasant Street Historic District and are concerned that the development plan "is going to be a poor fit, both aesthetically and functionally, for our neighborhood."

21. Appellant Tan Silva is a 23-year resident, who lives outside of but "on the edge" of the Pleasant Street Historic District and feels that compatible development should be maintained.

22. Appellant Furman Wallace is an 84-year resident of the Pleasant Street Neighborhood. He is concerned with the character and type of buildings in the Pleasant Street Neighborhood.

23. Appellant Thomas Hawkins was a 12-year resident of the Pleasant Street Neighborhood and is currently building a new home in the neighborhood. Mr. Hawkins is concerned that the development plan does "not compliment the neighborhood's historic architecture" and is not consistent with the City's LDC requirements.

#### CONCLUSIONS OF LAW

##### Standing

24. Section 30-3.57 of the City's LDC governs standing to appeal administrative decisions and provides:

*Decisions relating to particular property.*

The following persons shall have standing to appeal an administrative decision that is not of general applicability and that is specifically related to a particular project or parcel of real property:

\* \* \*

c. All owners of real property that lies within 400 feet of the property that is the subject of the decision.

d. Any resident, landowner, or person having a contractual interest in land in the city who demonstrates a direct adverse impact from the decision that exceeds in degree the general interest in community good shared by all persons. (Emphasis added).

25. The record supports standing to appeal for Appellants Vanessa Burt and Suzi Rumsey. The record does not support standing to appeal for Appellants Jason Atkins-Tuffs, Lauren Atkins, Dotty Faibisy, Thomas Hawkins, Jon Rehfuss, Caroline Rehfuss, Tana Silva, and Furman Wallace.

Burden of Proof

26. The Appellants who are challenging the administrative decision shall have the burden to prove that the City approved the development plan application in violation of the applicable administrative review criteria in Section 30-3.46 of the City's LDC.

27. Section 30-3.46 of the City's LDC provides that an application may be approved if "proposed development is consistent with the Comprehensive Plan and complies with the Comprehensive Plan, the Land Development Code, and other applicable regulations."

28. Based on the above Findings of Fact, the development plan application is consistent with the City's Comprehensive Plan and complies with the City's Comprehensive Plan and LDC.

29. The Appellants did not carry their burden to show that the City approved the development plan application in violation of Section 30-3.46 of the City's LDC.

Appeal Criteria

30. Section 30-3.57 of the City's LDC sets forth the appeal criteria that govern a Hearing Officer's decision:

The Hearing Officer shall give deference to the administrative official's final decision, order, requirement, interpretation, determination, or action, and may only reverse or modify such when the Hearing Officer finds that the administrative official's final decision, order, requirement, interpretation, determination, or action:

1. Was clearly erroneous or patently unreasonable and will result in a miscarriage of justice;
2. Has no foundation in reason, meaning the absence of a situation where reasonable minds could disagree, and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, morals, safety, or welfare; or
3. Was an ultra vires act, meaning the administrative official clearly lacked the authority to take the action under statute or the City of Gainesville Charter Laws or Code of Ordinances.

31. Based on the above Findings of Fact, the City's administrative decision approving the development plan application for the Property was proper and did not violate any of the appeal criteria that would justify reversal or modification by the Hearing Officer.

DETERMINATION

Based upon the foregoing Findings of Fact and Conclusions of Law, Appellants Jason Atkins-Tuffs, Lauren Atkins, Dotty Faibisy,

Thomas Hawkins, Jon Rehfuss, Caroline Rehfuss, Tana Silva, and Furman Wallace are DISMISSED, and the administrative approval of the City is AFFIRMED.

DONE AND ORDERED this 24th day of January, 2019, in Tallahassee, Leon County, Florida.



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FRANCINE M. FFOLKES  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 24th day of January, 2019.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Section 30-3.57 of the City of Gainesville Land Development Code, this decision shall be final, and may be subject to judicial review as provided in law.