

Project Narrative for Wilbanks Tract

LOCATION – 4676 Shirley Road, Gainesville, Georgia 30506

ACREAGE – 22.045 acres +/-

APPLICANT – Rochester | DCCM

Summary

The accompanying application seeks a conditional use permit for a 6-lot (Minor) Subdivision in the existing VC zoning district. The site includes an existing 22.045 acre parcel located on Shirley Road in north Hall approximately 1.3 miles southeast of Mount Vernon Road (SR 283). The intent is to subdivide 6 lots of lake front property, with an average lot size of 3.6 acres, for high end residential homes. The proposed use is consistent with the Hall County Comprehensive Plan for “residential” use and appropriate for Hall County’s Planned Residential Development (PRD) District and for this location. Completion of development is anticipated by 2025.

Site Description

The site has approximately 595 LF of frontage along Shirley Road. The site is rectangular in shape with an average depth of 1,500 LF and average width of 600 LF. One Ephemeral Stream is located near the northwest side of the site. The site has approximately 1,900 LF of Lake Frontage on the northwestern boundary. Domestic water provided by the City of Gainesville and is located in the Shirley Road right-of-way. Individual, on-site sewage management systems will handle wastewater disposal. All other dry utilities are located within a reasonable distance for service extensions. There are no known impediments to the site’s successful development for the purposes intended.

Adjacencies

The property is surrounded by residential zonings (PRD, AR-III & VC) to the north, east and south.

Access

Access to the property is proposed as a common, private driveway entrance onto Shirley Road with shared use between 5 lot owners. The common driveway easement is proposed in the location shown on the conceptual site plan. Lot #6 would be served with an individual driveway directly to Shirley Road. Ownership and maintenance of the drive will be through a mandatory homeowner’s association. Each lot that contains a portion of the common drive will grant an access easement in favor of all the other lot owners. Concurrent with the Conditional Use Permit request, we are also requesting a variance from the minimum lot frontage of 150’ to 50’.

Aerial View



REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE

Georgia law and the procedures of Hall County requires the Applicant to raise Federal and State constitutional objections during the conditional use permit application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, the following constitutional objections are stated:

The portions of the Hall County Development Code, facially and as applied to the Property, which restrict the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Hall County Development Code, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the Hall County Board of Commissioners to approve the zoning conditions as requested would constitute a taking of the Applicant's property.

A denial of this Application would constitute an arbitrary and capricious act by the Hall County Board of Commissioners without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth

Amendment to the Constitution of the United States. A refusal to grant the conditional use request would lack objective justification and would result only from neighborhood opposition, which would constitute an unlawful delegation of the zoning power to non-legislative bodies in violation of the Georgia Constitution, Article IX, Section II, Paragraph 4.

A refusal by the Hall County Board of Commissioners to approve this Application for the Property in accordance with the criteria as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

I. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this conditional use permit application be granted as requested by the Applicant. If there are any questions about this request, you may contact:

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