

**HALL COUNTY BOARD OF COMMISSIONERS  
RECOMMENDATION REPORT**

**Applicant** ..... Kathryn Askew

**Request** ..... Appeal of Planning Commission decision for  
Variance | road frontage variance from 50 feet to  
0 feet

**Proposed Use** ..... Subdivide property

**Size** ..... 9.50± acres

**Zoning** ..... Agricultural Residential IV (AR-IV, [17.120](#))

**Location** ..... **8730 Forrester Road** | Tax Parcel 12128 000009

**Commission District** ..... Three

**Board of Commissioner’s Date** ..... April 25, 2023

**Staff Recommendation** ..... Staff does not make recommendations for appeals  
of Planning Commission decisions

**Planning Commission Recommendation**..... **Approval, with conditions**  
**Vote: 3-2 (Pilcher & Sosebee Opposed)**

**Planning Commission Conditions:**

1. No further subdivision of the two newly created parcels shall be allowed.
2. No expansion of the commercial kennel or its services shall be allowed. If expansion has occurred that is not included in the 2007 approval, the applicant shall submit a conditional use request to bring the commercial kennel operations into compliance.
3. No residential dwelling may be added to the tract containing the commercial kennel.
4. The following note shall be placed on the plat of record:  
"Purchaser understands that to the extent that the property is accessed through the current common access driveway, and non-exclusive perpetual easement, the current common access driveway is not maintained by Hall County, does not meet Hall County’s common driveway standards, and may not be accessible to emergency vehicles."
5. The following statement regarding the potential impacts of agricultural operations in the area shall be made a part of any plat recorded on the property:  
"Owners, occupants, and users of property shown on this plat are hereby informed of the impacts associated with normal farming practices which may take place on adjacent and nearby property including, but not limited to, noise, odors, dust, the operation of machinery of any kind, the storage and disposal of manure, and the application of fertilizers, herbicides, and pesticides. Therefore, owners, occupants, and users of the property shown on this plat should be prepared to expect the effects of such practices."

6. Standard Hall County Platting procedures shall be followed to include the plat by Patton Land Surveying, LLC dated March 1, 2023.
7. All conditions of approval shall be included on any plat created for the property.

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Ms. Askew is appealing the decision of the Planning Commission and requests that the Board of Commissioners overturn the Planning Commission's April 17<sup>th</sup> decision and deny the requested variance. The Commission should be aware that should the variance be denied, the property's use as a commercial kennel would not change. Any issues regarding the use as a commercial kennel and whether the use has expanded beyond its original approval should be addressed separately. Should it be determined that additional approvals are required for operating the kennel and the ancillary uses, a separate application process and public hearings would be required.

The lot is a lot of record with no frontage and was such in 1999 when the home was constructed. A plat stamped for recording by the Hall County Planning office was included in the 2007 conditional use application.

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**April 17, 2023 Planning Commission Public Forum:**

**Patty Gilmer, 8856 Forrester Road, Lula**, spoke in support. Stated she supports dividing the property to sell.

**Virginia Martin, 5535 Elliot Crossing, Gainesville**, spoke in opposition. Concerns were the application, building approvals, and driveway easement.

**Kathryn Askew, 8720 Forrester Road, Lula**, spoke in opposition. Concerns were buildings, easement, commercial use, and traffic.

**Staff report presented to the Planning Commission on 4-17-2023 is below**

**Summary Analysis**

The applicant is requesting to subdivide an existing 9.50± acre parcel into two (2) tracts. One tract will include an existing home and accessory structures and will consist of 3.93± acres; the other will include a commercial kennel approved by the Hall County Board of Commissioners in 2007 (ZON2007-00113) and will consist of +/- 5.57 acres. Per the submitted narrative, the property is a landlocked lot of record, being created prior to the adoption of the zoning regulations which require road frontage on a public right-of-way. Access to the property is provided via a 50 foot wide easement, which serves four (4) tax parcels, two of which are landlocked. The ZON2007-00113 includes a copy of a recorded plat and the historical zoning maps indicate that the property was a lot of record since 1965.

Per the requirements of [17.240.130.A](#), street frontage requirements, no principal building shall be placed or erected on a parcel not abutting a street or a public way not maintained by the county. Exemptions are provided to landlocked parcels deemed lots of record, which permitted the development of the tract for both the residential use and the commercial kennel. However, as the parcel is landlocked, no further subdivision can occur until the required frontage is obtained.

Per [17.240.105](#), modification of lots of record, a lot that is non-conforming in one dimensional criteria, but conforming to other criteria, may be modified such that no conforming dimension is made non-conforming,

and the non-conforming dimension is not made non-conforming to a greater extent. Because the subject property is landlocked, it cannot be further subdivided unless the required road frontage of 50 feet for the Agricultural-Residential-IV (AR-IV, [17.120](#)) zoning district is met for both of the proposed new parcels.

Additionally, [17.20.720](#) defines a minor subdivision to mean the subdivision of land into a total of no more than six conforming lots, parcels, tracts, or building sites during a 12-month period. The resultant lots must meet all of the requirements (lot size, frontage, access, etc.) of the zoning district in which they are classified and the requirements of the county subdivision regulations.

Finally, [16.50.040](#), requires access to every subdivision lot shall be provided over a public road or over a common access driveway which meets minimum standards ([12.40.220](#)). The existing easement exceeds the easement width requirement for a common access of 30 feet, but the pavement width of the driveway is less than the required 16 feet.

The Planning Commission and Board of Commissioners approved the construction of a commercial kennel (ZON2007-00113) on August 23, 2007 and a variance to the rear setback for the kennel (ZON2007-00153) on November 5, 2007. Additional permits were administratively approved for a house (RES1999-00155), a barn (MIS2007-00443), a swimming pool (MIS2020-00072), and a kitchen remodel in 2019.

The adjacent properties to the east, west, and south are also zoned Agricultural-Residential-IV (AR-IV, [17.120](#)) and are either undeveloped or contain single-family dwellings. The property to the north has a zoning designation of Planned Commercial Farm District (PCFD, [17.180.100](#)).

Relief from the following sections of [The Official Code of Hall County](#) will be required if the subdivision, as presented, is approved:

- Access, [16.50.040](#), access to every subdivision lot shall be provided over a public road or over a common access driveway which meets the standards set forth in the driveway regulations.
  - The subject parcel is landlocked and as such does not meet the above criteria.
  - Additionally, as the easement does not meet all the standards for a common access drive ([12.40.220](#)), the driveway will need to be improved or relief from those standards granted.
- Minimum lot area, setbacks, and height requirements, ([17.240.010](#)), which requires 50 feet of road frontage for properties zoned Agricultural-Residential-IV (AR-IV, [17.120](#)).
  - The subject parcel is landlocked and as such does not meet the above criteria.
- Street frontage requirements, [17.240.130.A](#), which requires no principal building shall be placed or erected on a parcel not abutting a street or a public way not maintained by the county
  - The subject parcel is landlocked and as such does not meet the above criteria.

Should the Planning Commissioners grant this variance request, the applicant must follow the standard Hall County platting procedures.

### Zoning Analysis

The Planning Commission is hereby authorized to grant variances from the strict application of this Resolution upon proof by a preponderance of the evidence that [2.60.030.J](#) provided the request meets the criteria set forth in [2.60.030.K](#).

1. There are extraordinary and exceptional conditions pertaining to the particular lot 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); **The subject parcel is a non-conforming lot of record, having existed in its current configuration since the mid 1960's. The total area of the subject property makes up more than enough land area required to configure two lots in the Agricultural Residential IV (AR-IV, [17.120](#)) district. Likewise, the envisioned density in the Rural Residential Character area of the Comprehensive Plan is limited to 1 dwelling units for every 1 – 1.5 acres. The lack of road frontage prevents the subdivision of the tract without relief from the road frontage requirements of [The Official Code of Hall County](#).**
2. The application of the requirements of this [Title 17](#) to this particular piece of property would create an unusual hardship; **The subject property can continue to be utilized as currently zoned, though no further subdivision of the property will be possible, without relief from the road frontage requirements of [The Official Code of Hall County](#) or the applicant obtaining additional frontage from an adjacent parcel.**
3. Such conditions are peculiar to the particular piece of property involved and are not common to other properties in the neighborhood; **The subject property is landlocked, which is less common as there has been a requirement for road frontage within the county since [The Official Code of Hall County](#) was adopted on August 28, 1978. Immediately adjacent to the west is another landlocked property, tax parcel [12128 000007](#), which is undeveloped.**
4. Such conditions are not the result of any actions of the property owner; **The applicant is proposing the lot configuration. Any subdivision of this lot will require relief from the road frontage requirements of [The Official Code of Hall County](#).**
5. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of [Title 17](#); provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by [Title 17](#) or for a conditional use which has been denied by the county planning commission. **Any proposed land use would be limited by the use, bulk, and density regulations applied to the property based on the designated zoning district. The applicant is not proposing any uses not allowable within the Agricultural Residential IV (AR-IV, [17.120](#)) district, and staff does not find that there will be any substantial detriment to the public good, if approved.**

### Development Support and Constraints –Departmental /agency comments

#### **Hall County Environmental Health**

In an email dated March 29, 2023, Emily McGahee states “All proposed lots must meet Hall County Board of Health Lot Size Resolution requirements.”

### **Hall County Fire Marshal**

An email dated March 31, 2023 John Hornick, NPQ Fire Inspector 1, Plans Review Lieutenant states, "The Hall County Fire Marshal's Office has no comments regarding the subdivision as proposed."

### **Hall County Public Works and Utilities**

In a memorandum from Public Works and Utilities dated April 1, 2023, Bill Nash, Director, states the following:

**Engineering:**

The site may require a stormwater management report should the site plan indicate the proposed development meets stormwater thresholds for impervious surfaces and/or disturbed acreage.

**Traffic:**

No comment.

**Utilities:**

No comment.

### **Georgia Department of Transportation**

In an email dated March 24, 2023, Parker Niebauer, D1TO Traffic Operations Supervisor, indicates GDOT coordination would not be required.

➤ **Excerpts from the minutes of the April 17, 2023 meeting**

**Applicant's Presentation:**

**Randi Doveton, Planning Director**, presented a summary of the request.

**Steve Gilliam, 340 Jesse Jewell Parkway, Gainesville**, presented the request. The applicant stated that the current owners are seeking to sell their home and business to separate buyers which is why the variance is required. The applicant discussed the history of the property. The applicant requested amending the staff condition stating to sell both properties to one owner or entity without selling separately because the purpose of the variance is to sell to two different owners.

*Rebuttal*

The applicant stated that there was an amended narrative submitted to redact that there would only be one buyer. The applicant stated that the easement didn't have an exclusive use.

**Public Forum:**

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**Virginia Martin, 5535 Elliot Crossing, Gainesville**, spoke in opposition. Concerns were the application, building approvals, and driveway easement.

**Kathryn Asku, 8720 Forrester Road, Lula,** spoke in opposition. Concerns were buildings, easement, commercial use, and traffic.

**Planning Commission Comments:**

Mr. Braswell stated that the board could only take action on the road frontage variance.

**Motion: A motion to approve, with conditions was made by Mr. Hunt and seconded by Mr. Varner. Vote: 3-2 (Pilcher & Sosebee opposed)**

*Conditions:*

1. *No further subdivision of the two newly created parcels shall be allowed.*
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