

HALL COUNTY PLANNING COMMISSION
RECOMMENDATION REPORT

Applicant Robert Murillo

Request **(A) Use Subject to Planning Commission Approval**
| [17.340](#) expansion of a non-conforming use
(B) Variance | [17.240.010](#) to reduce the front-
yard setback from 55 feet to 14 feet from the
centerline of Conner Street.

Proposed Use (A) Expansion of a non-conforming use
(B) Residential addition - **APPEALED to BOC**

Size 0.25± acres

Zoning Highway Business (H-B, [17.150](#))

Location **812 Atlanta Highway** | Tax Parcel 00127 002001

Commission District Four

Planning Commission Date October 2, 2023

Staff Recommendation **(A) Use Subject to Planning Commission Approval**
| **Approval**, as the request meets hardship criteria
A, B, C, D, E, and F of criteria [17.340.020](#).

(B) Variance | Denial, as the applicant has failed
to demonstrate that hardship exist pursuant to
the criteria of [2.60.030](#).- **APPEALED to BOC**

Planning Commission Decision.....**(B) Denial**
Vote: 3-2 (Braswell & Hunt opposed)

Public Forum:

There were no comments in support or opposition.

Summary Analysis

The applicant is requesting to **(A)** expand the area of a non-conforming use ([17.340](#)) of a residential dwelling within a commercial zoning district on 0.25± acres zoned Highway Business (H-B, [17.150](#)) and the Gateway Corridors Overlay District (GCOD, [17.420](#)). The expansion of the residential use by way of an addition onto

the existing structure would **(B)** place the dwelling within 14 feet of the centerline of Conner Street, running along the southern boundary of the lot.

The submitted site plan shows the 519-square foot building addition being added to the western end of the home, bringing it as near as 2.5 feet to the property line and within 14-feet of the centerline of the Conner Street right-of-way. The narrative states that, along with a proposed wooden deck and staircase shown on the site plan, these modifications will allow for the addition of an in-law suite and bonus room area. Concurrent with these plans, the applicant also identifies the intention to incorporate a tie-in to a Gainesville City sewer line to supplement a strained septic system. It is unclear based on the narrative and submitted documentation whether the “prop. 1,500 gal. septic tank” on the subject property and adjacent lot are existing or proposed as a scope of this work since the same structures are noted on the site survey.

The principal structure on this property, a 1,762 square foot single-family dwelling, was constructed in 1920. The proposed home expansions will not further reduce the setback to Atlanta Highway, only to Conner Street.

The front yard setback requirement is 55 feet from centerline of road as found in table [17.240.010](#) for the Highway Business district (H-B, [17.150](#)). The existing structure currently encroaches to within 15.5 feet of the centerline of Conner Street. The proposed addition necessitates the request for one (1) **variance** to allow the addition to encroach beyond the existing plane of the house, as close as 14 feet from the centerline of Conner Street.

One (1) **variance** related to setback requirements will be necessary if the site plan, as presented, is approved because the proposal does not meet the requirements.

- Front yard setback requirement of 55 feet from centerline of road as found Table [17.240.010](#) for the Highway Business (H-B, [17.150](#)) district.

Zoning Analysis

Per Planning Commission and Hall County Commission, consideration and decision ([17.340](#)), the Planning Commission shall study the need and justification for the change based on a determination of the facts applicable to the particular case, and the following general lines of inquiry shall be considered, to wit:

(A) Use Subject to Planning Commission Approval | [17.340](#) expansion of a non-conforming use.

17.340.020 Continuation of nonconforming use in hardship cases

The planning commission may grant, with the exception of slow rate land treatment systems ([see definition in] [chapter 17.20](#)), which require county commission approval as a use subject to approval of the county commission ([chapter 17.380](#)), the change, re-establishment or enlargement of a nonconforming use or the enlargement, rebuilding, alteration, repair or replacement of a nonconforming structure upon the following findings:

A. The change, re-establishment, enlargement, rebuilding, alteration, repair or replacement would be no more detrimental to the surrounding area than the existing or previous use. **The addition to the home will affect the expansion of a non-conforming residential use in a commercial zoning district. It is unlikely this expansion would cause detriment to the surrounding area.**

B. The structure cannot economically be modified so as to be suitable for uses permitted in the district. **The applicant has not identified any intention to modify the existing nonconforming use so that it is compliant with the underlying zoning district. Instead, the applicant seeks to expand the area of the nonconforming use by way of this request.**

C. The structure would have to be removed to permit development of the property for conforming uses. **Staff is unable to determine if the current structure can reasonably support a conforming use.**

D. The structure has such value that removal to permit development of conforming uses would cause economic hardship to the owner. **The owner purchased the home in 2022; however, the owner has not expressed concerns of economic hardship.**

E. The proposed change, re-establishment, enlargement, rebuilding, alteration, repair or replacement would not cause substantial detriment to the public good or impair the purposes and intent of this title. . **Any proposed land use would be limited by the use, bulk, and density regulations applied to the property based on the designated zoning district. Despite the fact that the current and proposed use does not conform to Highway Business district standards, (H-B, [17.150](#)), staff does not find that there will be any substantial detriment to the public good, if relief is granted from [17.340](#).**

F. The requirements of this title for rezoning would prevent the current zoning from being changed to a classification that would allow the proposed change, re-establishment, enlargement, rebuilding, alteration, repair or replacement. **The residential use exists within a Highway-Business district (H-B, [17.150](#)), a commercial district that does not permit non-commercial uses by-right. At around 10,890 square feet, this property falls short of minimum lot requirement for all residential districts per table [17.240.010](#); therefore, any alternative request to bring the property into compliance from a use perspective would have additional deficiencies to reconcile.**

(B) Variance | [17.240.010](#) to reduce the front-yard setback from 55 feet to 14 feet from the centerline of Conner Street.

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 lot is relatively small at 0.25± acres, and it is a corner lot. These two factors combine to constrain the available land for infrastructure additions and improvements.**

2. The application of the requirements of this [Title 17](#) to this particular piece of property would create an unusual hardship; **The property is permitted to continue to be used and enjoyed as a nonconforming use without special permission. Staff has not identified an unusual hardship unique to this particular piece of property.**
3. Such conditions are peculiar to the particular piece of property involved and are not common to other properties in the neighborhood; **Many other properties along this corridor are not used for residential purposes, but this parcel is smaller than most others along this portion of Atlanta Highway.**
4. Such conditions are not the result of any actions of the property owner; **The property owner purchased this lot in 2022 with the current improvements and development constraints.**
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. Despite the fact that the current and proposed use does not conform to Highway Business district standards, (H-B, [17.150](#)), staff does not find that there will be any substantial detriment to the public good, if relief is granted from [17.340](#).**

[17.380.050](#) - Submission requirements

- A. Any person or persons requesting a change in the official zoning map or use subject to approval of the county commission shall file an application with a plat or map of the property attached thereto, together with payment of such fees set forth in [chapter 17.30](#) to cover administrative and advertising costs, in the planning department office. Such person or persons or their authorized agent shall appear in person at the public hearing held to consider the district change. **The proposal meets the requirement, and the applicant understands that someone must be present at the Hall County Planning Commission.**
- B. All applications for a change of zoning classification or use subject to approval of the county commission shall include:
 1. A narrative statement identifying the existing and proposed use of the property and addressing each of the criteria set forth in section [17.380.060.C](#) of this section [chapter]. **The applicant has submitted a narrative, but has not explicitly addressed the criteria listed in [17.380.060.C](#).**
 2. A site plan drawn to scale designating the area covered by the application and identifying existing and proposed buildings and uses, adjacent existing land uses, zoning on contiguous parcels, including those across an abutting public right-of-way, and any other significant site improvements proposed to accommodate the proposed use or buffer adjacent uses, etc., or a plat of the subject property where no specific land use is proposed. In cases where only a plat or map is provided and no land use is proposed, the planning commission and county commission shall evaluate the application based on the most intense possible land use permitted in the proposed district. **The applicant submitted a site plan. Staff noted potential inconsistencies with past versus proposed improvements on the plans in the Summary Analysis.**

- C. For any application for a slow rate land treatment system (see [chapter 17.20](#)), the following additional requirements apply. **This standard is not applicable as the site will be served by an onsite septic system and/or Gainesville Sewer.**
- D. For any application proposing the development of 100 or more residential dwelling units, a traffic impact study shall be submitted prior to consideration of the application by the planning commission. At the applicant's expense, the traffic impact study shall be prepared by a professional engineer in accordance with requirements established by the Hall County Engineering Department. The engineering department shall review the traffic impact study and forward any comments to the Hall County Planning Commission. **As there are not 100 or more residential dwelling units proposed, this criterion is not applicable.**

Development Support and Constraints

Hall County Environmental Health

In an email dated August 31, 2023, Emily McGahee stated “Connecting to public sewer. Any abandoned septic tank shall be pumped by a state certified plumber/hailed and crushed/filled.”

Hall County Fire Marshal

In an email dated August 29, 2023, John Hornick, NPQ Fire Inspector 1, Plans Review Lieutenant provided the following comments:

The Hall County Fire Marshal’s Office has no comments regarding A or B as proposed.

Hall County Public Works and Utilities

In a memo dated August 31, 2023, Bill Nash, Director of Public Works and Utilities, provided the following comments:

Engineering:

No comment.

Traffic:

No comment.

Utilities

No comment.

Georgia Department of Transportation

In an email dated August 25, 2023, Veronica Chavers, D1TO Civil Engineer 3, confirmed that the project will require GDOT coordination for any encroachment into the right-of-way.

➤ **Excerpts from the minutes of the October 2, 2023 meeting**

Applicant’s Presentation:

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

Robert Murillo, 535 Dixon Drive, Gainesville, presented the request. The applicant stated that they would like to purchase the property as a residential home and have an in-law suite.

Public Forum:

There were no comments in support or opposition.

Planning Commission Comments:

Mr. Braswell questioned if the neighboring property is also owned by the family. The applicant stated it is his families and that the subject property is the home of his mother’s boyfriend. Mr. Braswell asked if the addition had already been constructed. The applicant stated that it has.

A

Motion: A motion to approve, with conditions was made by Mr. Varner and seconded by Mr. Hunt. Vote: 5-0

Conditions:

1. The proposed expansion of the non-conforming use is approved for lots as generally shown on the site plan entitled “962 Conner Street Sewer Connection”, dated July 25, 2023, and described in the project narrative modified as necessary for compliance with development standards enforced at the time of site plan approval.

B

Motion: A motion to deny was made by Mr. Varner and seconded by Ms. Pilcher. Vote: 3-2 (Braswell & Hunt opposed)