

**HALL COUNTY PLANNING COMMISSION
RECOMMENDATION REPORT**

Applicant Nabeel Group of Companies, Inc

Request Use Subject to County Commission Approval |
Amend Conditions of Zoning for a Gas station
and convenience store

Proposed Use Gas station and convenience store

Size 3.57± acres

Zoning Highway Business (H-B, 17.150)

Location **5820 McEver Road** | Tax Parcels 08119 000003

Commission District Two

Planning Commission Date August 5, 2024

Staff Recommendation **Approval, with conditions**, as the proposed use
is consistent with the previous approval.

Record Number.....HZCU24-0022

Planning Commission Recommendation.....**Approval, with conditions**

Vote: 4-0 (Varner absent)

Planning Commission Conditions:

1. The property shall be developed in accordance with the site plan received June 14, 2024, and as described in the project narrative dated June 14, 2024, modified as necessary for compliance with conditions herein and development standards enforced at the time of site plan approval.
2. The development shall be served by sewer provided by the City of Flowery Branch.
3. A fence, a minimum of 8 feet in height with barbed wire on top, shall be constructed on a berm, a minimum of 3 feet in height, along the entirety of the rear property line adjacent to Silverthorn Subdivision. The property buffer shall be 50 feet. Landscaping shall be a minimum of 8-foot-tall evergreens staggered in two rows on four-foot centers and shall not be disturbed during construction.
4. The fence shall not be constructed of wood. It shall be opaque and constructed out of PVC, vinyl chain link, or a similar material.

5. The applicant shall continue the screening behind the proposed convenience store with fast-growing evergreens from the northeastern corner and following the proposed driveway to the western boundary line.
6. All development shall adhere to the Gateway Corridor standards and all building materials and color shall be submitted to and approved by the Hall County Director of Planning and Zoning.
7. The convenience store shall close at 10:00 p.m. and no deliveries shall take place after 10:00 p.m.
8. The developer shall coordinate with the Hall County Engineering Department to provide a sidewalk adjacent to both McEver Road and Lights Ferry Road rights-of-way. Sidewalk width and design shall align with future road improvement plans.
9. Access to the development shall be approved by the Hall County Engineering Department and all traffic engineering standards shall be met.
10. The access along McEver Road shall be located such that it allows tax parcel 08119 000003A clear ingress and egress from that parcel's residential driveway.
11. No variances or development exceptions are granted as part of this request that are not explicitly granted by board approval. The development shall be compliant with the Official Code of Hall County, as well as any other agencies or reviewing departments, including, but not limited to Environmental Health, Fire Marshal, and Hall County Engineering.
12. All conditions of zoning shall be made a part of any plats or construction plans created for the project.

Excerpts from the minutes of the August 5, 2024 meeting

Applicant's Presentation:

Katie Greenway, Planning and Zoning Administrator, presented a summary of the request.

Chuck Ross, 10 Lumpkin Street, Lawrenceville, presented the request.

Public Forum:

Cliff McGlamry, 6353 Lights Ferry Road, Flowery Branch, spoke in opposition. He stated that there are plenty of existing gas stations for this community and that he has concerns regarding the hours of operations, and the fast traveling traffic.

Win Fletcher, 5913 Thornhill Place, Flowery Branch, spoke in opposition. Concerns include the proposed turn lane on McEver Road, the line of sight from the Silverthorn subdivision, the roundabout that will keep traffic flowing past their subdivision entrance, and traffic safety.

Timothy Gail, 5918 Terrace Lakee Point, Flowery Branch, spoke in opposition. Concerns are pedestrian safety, the future land use designation not supporting this use, hours of operation, and noises.

Lila Weaver, 5806 Silverthorn Drive, Flowery Branch, spoke in opposition. Concerns are the continued growth on McEver Road, safety due to the sun blinding drivers in the morning coming out of the Silverthorn subdivision, increased traffic, and the speed limit on McEver Road.

Shelly Andrews, 5913 Thornhills Place, Flowery Branch, spoke in opposition. Concerns are inconsistency in the submitted site plan and changes in the conditions of zoning, the safety of the intersection at McEver and Lightsferry, general traffic safety, and the proposed diesel station shown on the site plan.

Jay Kelley, 6023 Terrace Lake Pointe, Flowery Branch, spoke in opposition. Concerns are changing the conditions that were previously approved for this property such as the berm, trees, fence and barbed wire.

Sally Marks, 5810 Silverthorn Drive, Flowery Branch, spoke in opposition. Concerns are the US EPA recommending 1,000 feet prior to being in close proximity of a sensitive area such as the pool for safety. She also spoke about her concern of bringing in human trafficking with the proposed gas station and convenience store.

Rebuttal

The applicant stated that the roundabout construction is to begin around July of next year, that the conditions require that the hours of operation end at 10pm every day, and that all EPA regulations will be followed. The applicant also stated that he was under the impression that the speed limit will decrease to 45 mph once the roundabout is prepared and that removing the requested condition will let them proceed with permitting, but it is subject to the board's approval.

Planning Commission Comments:

Mr. Braswell stated that there were comments in opposition submitted by Shawn Fields, Ron Cholaj, Alic Cholaj, and Donna Cash prior to the meeting. Ms. Garmon stated that the request was initiated by the applicants, not the county. Mr. Braswell stated that it is the right of the applicant to make the request and the applicant will cover the cost of this change. Mr. Hunt stated that approval of this amended condition will send them to the County Engineering Department for approval. Mr. Braswell stated that the site plan needs to have a revised date and conditions need to be added to the plan before going in front of the Board of Commissioners.

Motion: A motion to approve, with conditions was made by Mr. Hunt and seconded by Mr. Sosebee. Vote: 4-0 (Varner absent)

Conditions:

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2. The development shall be served by sewer provided by the City of Flowery Branch.

3. A fence, a minimum of 8 feet in height with barbed wire on top, shall be constructed on a berm, a minimum of 3 feet in height, along the entirety of the rear property line adjacent to Silverthorn Subdivision. The property buffer shall be 50 feet. Landscaping shall be a minimum of 8 foot tall evergreens staggered in two rows on four foot centers and shall not be disturbed during construction.
4. The fence shall not be constructed of wood. It shall be opaque and constructed out of PVC, vinyl chain link, or a similar material.
5. The applicant shall continue the screening behind the proposed convenience store with fast-growing evergreens from the northeastern corner and following the proposed driveway to the western boundary line.
6. All development shall adhere to the Gateway Corridor standards and all building materials and color shall be submitted to and approved by the Hall County Director of Planning and Zoning.
7. The convenience store shall close at 10:00 p.m. and no deliveries shall take place after 10:00 p.m.
8. The developer shall coordinate with the Hall County Engineering Department to provide a sidewalk adjacent to both McEver Road and Lights Ferry Road rights-of-way. Sidewalk width and design shall align with future road improvement plans.
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11. No variances or development exceptions are granted as part of this request that are not explicitly granted by board approval. The development shall be compliant with the Official Code of Hall County, as well as any other agencies or reviewing departments, including, but not limited to Environmental Health, Fire Marshal, and Hall County Engineering.
12. All conditions of zoning shall be made a part of any plats or construction plans created for the project.

Staff Recommended Conditions:

1. The property shall be developed in accordance with the site plan dated June 24, 2022 and as described in the project narrative dated June 14, 2024, modified as necessary for compliance with conditions herein and development standards enforced at the time of site plan approval.
2. The development shall be served by sewer provided by the City of Flowery Branch.
3. A fence, a minimum of 8 feet in height with barbed wire on top, shall be constructed on a berm, a minimum of 3 feet in height, along the entirety of the rear property line adjacent to Silverthorn Subdivision. The property buffer shall be 50 feet. Landscaping shall be a minimum of 8-foot-tall evergreens staggered in two rows on four foot centers and shall not be disturbed during construction.

4. The fence shall not be constructed of wood. It shall be opaque and constructed out of PVC, vinyl chain link, or a similar material.
5. The applicant shall continue the screening behind the proposed convenience store with fast-growing evergreens from the northeastern corner and following the proposed driveway to the western boundary line.
6. All development shall adhere to the Gateway Corridor standards and all building materials and color shall be submitted to and approved by the Hall County Director of Planning and Zoning.
7. The convenience store shall close at 10:00 p.m. and no deliveries shall take place after 10:00 p.m.
8. The Developer shall coordinate with the Hall County Engineering Department to provide a sidewalk adjacent to both McEver Road and Lights Ferry Road rights-of-way. Sidewalk width and design shall align with future road improvement plans.
9. Access to the development shall be approved by the Hall County Engineering Department and all traffic engineering standards shall be met.
10. The access along McEver Road shall be located such that it allows tax parcel 08119 000003A clear ingress and egress from that parcel's residential driveway.
11. No variances or development exceptions are granted as part of this request that are not explicitly granted by board approval. The development shall be compliant with the Official Code of Hall County, as well as any other agencies or reviewing departments, including, but not limited to Environmental Health, Fire Marshal, and Hall County Engineering.
12. All conditions of zoning shall be made a part of any plats or construction plans created for the subdivision.

Summary Analysis

The applicant is requesting to amend zoning conditions on a 3.57± acre tract, currently zoned Highway-Business (H-B, 17.150), to allow for the implementation of one full access drive with a deceleration lane and left turn lane off McEver Road, and for one full access drive that does not include a deceleration lane or a left turn lane off Lights Ferry Road. The property is currently undeveloped.

The subject property was originally rezoned from Agricultural Residential-III (AR-III, 17.110) to Highway-Business (H-B, 17.150) on November 30, 2021, for the development of a gas station and convenience store with the following 9 conditions (ZON2021-0007):

1. The development shall be served by sewer provided by the City of Flowery Branch.

2. A fence, a minimum of 8 feet in height with barbed wire on top, shall be constructed on a berm, a minimum of 3 feet in height, along the entirety of the rear property line adjacent to Silverthorn Subdivision. The property buffer shall be 50 feet. Landscaping shall be a minimum of 8 foot tall evergreens staggered in two rows on four foot centers and shall not be disturbed during construction.
3. The fence shall not be constructed of wood. It shall be opaque and constructed out of PVC, vinyl chain link, or a similar material.
4. The applicant shall continue the screening behind the proposed convenience store with fast-growing evergreens from the northeastern corner following the proposed driveway to the western boundary line.
5. McEver Road shall be a right turn exit only and with the location determined by Hall County Traffic Engineering. The entrance shall be placed in a location that will allow Ms. Cash to access her own driveway.
6. All development shall adhere to the Gateway Corridor standards and all building materials and color shall be submitted to and approved by the Hall County Planning Director.
7. Applicant shall provide a topographic map and an updated site plan to the Board of Commissioners in advance of their meeting on October 28, 2021, so that staff may have time to review and comment.
8. The convenience store shall close at 10:00 p.m. and no deliveries shall take place after 10:00 p.m.
9. Sidewalks shall be required.

The applicant is requesting to amend the conditions of the Highway Business (H-B) zoning to allow for a full access drive and deceleration lane off McEver Road as well as a full access drive with no deceleration lane and no left turn lane off of Lights Ferry Road. Per the narrative, the applicant states that these modifications will optimize traffic flow and improve accessibility for the site.

The submitted site plan appears to be consistent with the previous application, with the distinction that the new site plan reflects the addition of a second fuel canopy with 3 diesel gas pumps. The narrative states that an 8 foot high fence constructed on a minimum 3 foot high berm will be installed; however, the narrative does not include the barbed wire on top as per Condition #2, nor is the fence or berm reflected on the site plan. Also, the site plan does not reflect the location of sidewalks as required by Condition #9.

Water services will be provided by the City of Gainesville Department of Water Resources with service confirmed in an email dated June 13, 2024. As the property falls within the Flowery Branch sewer district, a letter from the City of Flowery Branch dated June 13, 2024 states that the project could be served by sewer dependent on the following: "...expected sewer plant modifications and new plant are completed, [and] approval from city council and supporting departments [is granted]." If public sewer is not available, the Environmental Health Department will require the development to meet all commercial septic system permitting requirements.

Zoning Analysis

When considering a zoning amendment to the zoning maps, the following items must be considered:

1. Whether the zoning proposal will permit a use that is suitable in view of the use, development and zoning of adjacent and nearby property; **The requested use is consistent with the previous approval for the rezoning of the property on November 30, 2021.**

2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property; **No, it is not anticipated that the proposed development will adversely affect adjacent properties. Coordination with and approval from Hall County Traffic Engineering is required to ensure all regulations are met.**
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned; **The property has reasonable economic use as currently zoned Highway Business (H-B, 17.150).**
4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, or utilities; **It is not anticipated that the proposed zoning use will result in an excessive or burdensome use of existing infrastructure. The proposal has received availability letters for both water and sewer to serve this development.**
5. Whether the zoning proposal is in conformity with the policy and intent of the future land use plan for the physical development of the area; **The zoning designation has been established by previous board action with the original approval of the development. The requested modification does not significantly impact the designated future land use of the area.**
6. The extent to which property values are diminished by the existing zoning restrictions; **Staff is unable to determine the extent to which property values are diminished by the existing zoning restrictions.**
7. The extent to which the destruction of the subject property's value under the existing zoning promotes the health, safety, morals or general welfare of the public; **Staff is unable to comment on the impact of property values without a full market analysis. Multiple factors impact property value including construction types, proposed uses, and maintenance. Often it is difficult to determine the effect of a development on adjacent properties until the development is completed.**
8. The relative gain to the public as compared to the hardship imposed upon the individual property owner; **Staff has not identified a hardship imposed on the property owner as the property is currently zoned.**
9. The length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the property; **The property is undeveloped, and satellite imagery indicates that no development has existed on the property since 1999. Additionally, there are no records of building permits or land disturbance permits for the property.**
10. Whether there are other existing or changing conditions affecting the use or development of the property which give supporting grounds for either approval or disapproval of the zoning proposal; **Hall County Engineering currently has a planned project for the intersection of McEver Road and Lights Ferry Road which will incorporate a roundabout and realignment of Lights Ferry Road. These changes may or may not affect the use and development of the property.**

11. Whether the change would create an isolated district unrelated to the surrounding districts; **The current request to amend zoning conditions of the Highway Business (H-B, 17.150) zoning will not create an isolated district.**
12. Whether the present zoning district boundaries are illogically drawn in relation to existing conditions in the area; **There is no evidence that the present zoning district boundaries are illogically drawn.**
13. Whether the change requested is out of scale with the needs of the county as a whole or the immediate neighborhood; **The request is not out of scale with the needs of the immediate neighborhood or the county as a whole.**
14. Whether it is impossible to find adequate sites for the proposed use in districts permitting such use and already appropriately zoned; **The existing zoning of the subject site supports the proposed use; however, the proposal of a full access drive to the development from McEver Road requires the amendment of the existing zoning conditions.**
15. Whether the need for rezoning could be handled instead by a variance request to the zoning board of adjustment; **The request could not be handled alternatively as a variance.**
16. Whether there would be an ecological or pollution impact resulting from major modifications to the land if the request is granted; **Any land disturbance activities on the property shall be required to go through the land development permitting process, and as a result are subject to local, state, and federal regulations. As a result, there are no anticipated ecological or pollution impacts resulting from any modification to the land if the request is granted.**
17. Whether there is reasonable evidence based upon existing and anticipated land use that would indicate a mistake was made in the original zoning of the property; **There is no indication that a mistake was made in the original zoning.**

The **Highway Business (H-B, 17.150) zoning district** allows for a variety of commercial uses to meet residents' needs. Development should conform to the existing character and development pattern of the surrounding area. The proposed use of a gas station and convenience store is consistent with the surrounding development pattern.

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. The applicant has paid the appropriate fees and understands that someone must be present at both the Hall County Planning Commission meeting and the voting meeting of the Hall County Board of Commissioners.**

- 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]. **Proposal does provide a narrative outlining amendment of conditions requested; however, the applicant has not prepared a response to each of 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 proposal does meet the requirement. The applicant has provided a site plan and included much of the necessary information to properly assess the development. However, information about adjacent parcels is limited.**
- C. For any application for a slow rate land treatment system (see chapter 17.20), the following additional requirements apply. **The proposed development intends to utilize public sewer and water; as such, this is not applicable. If public sewer is not available, the Environmental Health Department will require the development to meet all commercial septic system permitting requirements.**
- 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. **The proposed development does not contain any residential dwelling units, and as such is exempt from this requirement**

Development Support and Constraints

Hall County Environmental Health

In an email dated June 28, 2024, Emily McGahee stated “If public sewer not available, development must meet all Environmental Health commercial septic system permitting requirements if able to be permitted by Environmental Health. Wastewater treatment and disposal may be required to be permitted through EPD. Further determination will be made during the civil plan review process. A detailed business plan must be submitted to Hall County Environmental Health for review. Tourist Accommodation permit/plan review and/or Food Service permit/plan review may be required after review of business plan.”

Hall County Fire Marshal

In an email dated July 2, 2024, John Hornick, NPQ Fire Service Plans Examiner 1, stated the following:
“The Hall County Fire Marshal’s Office has no comments as proposed.”

Hall County Public Works and Utilities

In a memorandum from Public Works and Utilities dated July 05, 2024, Bill Nash, Director of Public Works, stated the following:

Engineering:

This 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:

Driveway to be reviewed during plan review.

Utilities:

No Hall County sewer in area.

Georgia Department of Transportation

In an email dated July 03, 2024, Veronica Chavers, D1TO Civil Engineer 3, stated that GDOT coordination is not required.