



# SMITH GILLIAM WILLIAMS & MILES

12.2.2024 - Item 6  
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Gainesville, GA 30503

Kristie Turner, Principal Planner  
Hall County Community Development and Infrastructure  
[kturner@hallcounty.org](mailto:kturner@hallcounty.org)

Re: 5079 Old Winder Highway Conditional Use and 5111 Old Winder Highway Rezoning

Dear Kristie,

Cameron Henderson, Amanda Graham, and I appreciate you, Katie, and Beth meeting with us on Wednesday, October 16, 2024, to discuss our open applications. As discussed, this letter is to request that the 5079 Old Winder Highway Conditional Use Application and the 5111 Rezoning Application, currently scheduled for the November 04, 2024, Planning Commission Public Hearing date, be tabled to the Planning Commission Hearing scheduled for December 02, 2024, with the coinciding Hall County Board of Commissioners Hearing on January 09, 2024.

Please let me know if you need anything further to allow for the rescheduling. Thank you for your consideration.

With cordial regards, I remain

Sincerely,

Steven P. Gilliam

Cc: Cameron Henderson, Contact  
Katie Greenway, Planning and Zoning Administrator  
Beth Garmon, Director of Planning and Zoning

Street Address:  
Smith Gilliam Williams & Miles, P.A.  
340 Jesse Jewell Parkway, Suite 300  
Gainesville, GA 30501

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## Conditional Use Project Narrative for 5079 Old Winder Highway – 20.00 Acres

Second Revised 10/18/2024

**LOCATION** – 5079 Old Winder Highway (Hwy 211)

Braselton, GA 30517

**APPLICANT** – Steven P. Gilliam, Attorney

**CURRENT ZONING** – PRD

**PROPOSED ZONING** – PRD with Condition

### SUMMARY

The accompanying Application seeks a Conditional Use to PRD for 20.00 acres of undeveloped property located at 5079 Old Winder Highway in Braselton, Hall County, to add the adjoining 10-acre tract that is located at 5111 Old Winder Highway. The intent is to develop 120 townhome units (82 on the existing 20.0-acre approved PRD and 38 on the adjoining 10.0-acre tract where applicant seeks a PRD rezoning) of quality, 24' wide traditional single-family fee simple townhomes with amenity areas and above the required minimum of 30% open space. 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 for this location, which is residential and mixed-use corridor.

### SITE DESCRIPTION

The overall tract has approximately 80 ft of frontage along GA Highway 211. The water is provided by the City of Gainesville, and Hall County will provide sewer. There are no known impediments to its successful development for the purposes intended. All roadways within the development shall be designed and constructed to Hall County standards and dedicated to the county for public use. Thereafter, Hall County will maintain the roads.

### ADJACENCIES & ACCESS

The property is surrounded by residential zonings (AR-IV) to the north, to the east, and to the south. Access to the property is from Old Winder Highway (SR 211), a two lane, paved and state-maintained roadway that connects to Winder Highway (SR 53).

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**CURRENT ZONING**

The current zoning is a PRD with Conditions (See attached Approval Letter listing the conditions dated July 22, 2024).

**PROJECT DIMENSIONAL STANDARDS****Updated Project Dimensional Standards Chart**

	<b>5079 Old Winder Highway</b>	<b>Proposed Conditional Use: The Addition of 5111 Old Winder Highway</b>
<b>Parcel Size</b>	20.0 Acres	30.0 Acres (The addition of 5111 Old Winder Hwy - 10.0 Acres)
<b>Proposed Number of Lots</b>	82	120 (The addition of 38 new lots on 5111 Old Winder Hwy)
<b>Proposed Density</b>	4.10 U/A	4.10 U/A
<b>Proposed Open Space</b>	11.20 Acres (40%)	15.6 (52%)
<b>Streets</b>	Public	Public
<b>Water and Sewer Provider</b>	Gainesville City Water and Hall County Sewer	Gainesville City Water and Hall County Sewer
<b>Minimum Lot Size</b>	2,088 sq ft	2,088 sq ft
<b>Amenities</b>	Dog Park, Pavilion, and Mail Kiosk	4 Parks, Pavilion, and Mail Kiosk
<b>Storm Water Management Areas</b>	1	2
<b>Minimum Lot Width</b>	24 ft	24 ft
<b>Minimum Setback from Sidewalk</b>	22 ft from garage door to back of sidewalk	22 ft from garage door to back of sidewalk
<b>Internal Side Setback</b>	0 ft	0 ft
<b>Minimum Rear Yard Setback from Property Line</b>	0 ft	0 ft
<b>Sidewalks – Both Sides of the Road</b>	5 ft	5 ft

<b>Garage % of Front Façade</b>	70%	70%
<b>Minimum Lot Depth</b>	100 ft	87 ft
<b>PRD Buffer</b>	50 ft	50 ft
<b>Impervious Stream Buffer</b>	50 ft	50 ft
<b>Stream Setbacks</b>	75 ft	75 ft
<b>Mail Kiosk (CBU)</b>	1 with 4 additional parking spaces	1 with 6 additional parking spaces
<b>Minimum Heated Floor Area</b>	1,800 sq ft	1,800 sq ft
<b>Front Setback from Right of Way</b>	15 ft, 10 ft on corner streets	15 ft, 10 ft on corner streets
<b>Side Separation from Foundation to Foundation</b>	20 ft between buildings	20 ft between buildings
<b>Guest Parking</b>	49	1 Parking Space per every 4 Town Home Unit

### ARCHITECTURAL MATERIALS & SITE IMPROVEMENTS

All facades of all residences shall be finished with masonry (brick or stone), wood, or fiber cement/Hardi-plank type siding. The garage doors shall not exceed 70% of the front façade. The builder intends to build:

- Single Family Fee Simple attached dwellings with two-car garages (garage width not to exceed 70% of front building width)
- Front facades with a combination of masonry and fiber cement siding materials
- Side and rear facades with masonry, fiber cement siding, or shake siding
- Sodded yards (4 sides)
- Speed tables in coordination with Hall County Engineering
- Each building will be offset 4-5 feet from the neighboring buildings.
- No building contains more than six units.

## **INTERNAL SIGNAGE**

The Developer and/or builder shall be allowed to post permanent directional signs and monuments within the Community to direct traffic to sales and recreation centers and to identify differing residential areas. All permanent signage must be outside of any Right of Way or Utility Easement with a Landscape and Signage easement recorded on the Final Plat.

## **AMENITIES**

- 2 Parks
- Picnic area
- Mail Kiosk (CBU) with 6 additional parking spaces
- Guest Parking Spaces: 1 per every 4-townhome unit
  - The 24' townhome product has a 2-car garage and the same driveway as a single-family zoned home.

## **MODEL HOME PERMITS**

The development shall be limited to a maximum of one (1) building obtaining multiple units prior to approval and recording of the final plat. Model home permits may be issued prior to Final Plat recording provided that hard surface (crusher run) access is provided, and fire protection (functioning hydrant) is located within 500 feet of any structure under construction. No certificate of occupancy permit shall be issued prior to Final Plat recording.

## **ENTRY MONUMENT SIGNAGE**

Applicant is requesting permission for an entry monument type of sign with a natural stone base with a sign size (monument base and signage) totaling approximately 42 SF.

The entrance may include the following structural items:

- Masonry walls
- Wood or PVC fencing
- Illuminated Signage in accordance with the Hall County Sign Ordinance
- Ornamental Sculpture
- Landscaping and Irrigation

## **SALES AND CONSTRUCTION TRAILERS**

Applicant is requesting the ability to install one sales trailer and one construction trailer with associated parking areas in locations to be determined at the time of final plat approval.

## **CONCEPTUAL MASTER PLAN**

The development of the community shall be controlled by the Conceptual Master Plan (the "Plan") attached as exhibit "A". The plan is considered conceptual in nature, and as such, may require minor modifications during the engineering and development process. Modifications

to the locations and arrangement of lots, roads, amenities, and other improvements that do not conflict with specific standards and requirements of these conditions may be made by the Developer so long as such modifications do not change the land use, increase the overall density of the project or reduce any established exterior buffers or setbacks.

### **TRAFFIC IMPACT STUDY**

The following recommendation is from Southeastern Engineers dated February 22, 2024:

#### **SR 211 Atlas Drive**

- Atlas Drive should be full-access, stop-sign controlled.
- Atlas Drive should be two lanes, one entry and one exit lane.
- Install a northbound right-turn storage lane on SR 211. Lane dimensions should meet GDOT minimum requirements.
- Install a southbound left-turn storage lane on SR 211. Lane dimensions should meet GDOT minimum requirements.

No other roadway improvements are recommended for this development.

### **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 PRD master plan 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 PRD zoning 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 8 hereinabove.

Applicant / Owner reserves all due process rights granted to them under O.C.G.A. 36-66-5.1. et. seq, to petition the courts for review of a local government's exercise of zoning, administrative, or quasi-judicial powers, as set forth in those code sections and statutes.

### **Conclusion**

For the foregoing reasons, the Applicant respectfully requests that this requested Conditional Use to the existing PRD zoning be granted as requested by the Applicant. If there are any questions about this request, you may contact:

#### **Applicant**

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340 Jesse Jewell Parkway, Suite 300  
Gainesville, GA 30501  
770-536-3381  
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#### **Additional Contact**

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678-978-6782  
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