

**HALL COUNTY BOARD OF COMMISSIONERS
STAFF REPORT**

Applicant Jay McNair

Request **Conditional Use** | expansion of a non-conforming use

Proposed Use Expansion of a non-conforming use

Size 0.66± acres

Zoning Highway Business (H-B)

Location **5 Ray Street** | Tax Parcel 00133A001003

Commission District Four

Commission Date December 11, 2025

Staff Recommendation **Approval**, as hardship exists pursuant to the criteria of 11.1.1.D.11

Record Number(s) HZCU25-0048

Staff recommends APPROVAL of the applicant's request with the following condition:

1. The proposed expansion of the non-conforming use is approved as generally shown on the site plan entitled "Andres Hernandez Sierra", dated 08/04/25, and described in the project narrative modified as necessary for compliance with development standards enforced at the time of site plan approval.
2. The expansion shall be compliant with any conditions related to the request.
3. A new plat must be submitted to Hall County Planning and Zoning for plat review reflecting the combination of Lots 44, 45, and 46 prior to the issuance of any building permits.

Summary Analysis

The applicant is requesting approval of the expansion of a non-conforming use of a residential dwelling within the Highway Business (H-B) zoning district on a tract measuring approximately 0.69± acres. The

proposed expansion of the non-conforming use includes constructing a detached Accessory Dwelling Unit (ADU) to be used by family members.

The subject property consists of 3 lots: Lots 44, 45, and 46 of the Bertie S. Keith subdivision, and have been consolidated into a single parcel for tax purposes. The primary dwelling measures approximately 1,172 square feet and was constructed in 1950, according to Hall County Tax Assessors records. The structure has been utilized as a residence since its construction.

The surrounding properties are zoned and developed as outlined below:

North:	Highway Business (H-B) – Developed with a single-family residence and general retail.
East:	Highway Business (H-B) – Developed with a gas station and a restaurant.
South:	Highway Business (H-B) – Developed with general retail and restaurant.
West:	Residential 1 (R-1) – Developed with single-family residences.

The septic system for the existing residential dwelling was repaired twice. The review of a proposed ADU to be added to the site resulted in a recommendation by the Environmental Health Department of a new septic system to be installed. On June 16, 2025, the department approved a 1,500 gallon septic tank for 3 bedrooms that consists of 2 bedrooms in the primary dwelling and 1 bedroom for the ADU. The approval of this permit does not constitute approval of the land use, which is subject to the Unified Development Code (UDC).

The submitted site plan shows the proposed 996 square foot ADU located 41 feet from the existing residential dwelling and approximately 12 feet from the rear property line.

The narrative states that the ADU will not be rented, as it is solely intended to temporarily accommodate family members. The narrative also notes that the property owner does not have any intention of selling the property or converting the property to a commercial use, and plans to continue using the property as a residence.

Zoning Analysis

Per the Hall County UDC, section 11.3.3, the 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:

11.3.3. Continuation of nonconforming use in hardship cases

The commission may grant, with the exception of slow rate land treatment systems ([see definition in] UDC 11.3.3.), which require county commission approval as a use subject to approval of the county commission, 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. **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 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 subject property in 2018; 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), staff does not anticipate any substantial detriment to the public good, if relief is granted from 11.3.3.**

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), a commercial district that does not permit non-commercial uses by-right. Based on the Comprehensive Plan, any alternative request to bring the property into compliance from a use perspective would not aligned with the appropriate zoning districts in this area.**

11.2.6.E. - 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 11.2 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 Board of Commissioners' public hearing.**
- 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 11.2. **The applicant has submitted a narrative; however, the applicant has not prepared a response to each of the criteria listed in 11.2.6.E.2.**
 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 scaled site plan.**

- C. For any application for a slow rate land treatment system (see chapter 7.6.9.D.1), the following additional requirements apply. **This standard is not applicable as the site will be served by an onsite septic system.**
- 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 October 2, 2025, Emily McGahee stated "Environmental Health issued a septic modification permit on June 16, 2025 for the construction of a 1 bedroom accessory dwelling. The proposed dwelling must meet required setbacks to the existing/proposed septic system."

Georgia Department of Transportation

In an email dated September 30, 2025, Christopher Hash, P.E., D1 Traffic Operations Supervisor, stated "Off-system, coordination not needed. "

Hall County Public Works and Utilities

In a memorandum from Public Works and Utilities dated October 3, 2025, Jason Skarda, Assistant Director of Public Works and Utilities provided the following comments:

Engineering:

No comment

Traffic:

No comment

Utilities:

Gainesville sewer service area. 12" sewer main on Atlanta Hwy (SR 13)

Hall County Fire Marshal

In an email dated September 29, 2025, John Hornick, NPQ Fire Service Plans Examiner 1, stated, "The Hall County Fire Marshal's Office has no comments as proposed."