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LITIGATION AND REGULATORY LAW

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January 16, 2026

Hall County Board of Commissioners
c/o Jennifer Rivera
Commission Clerk
Hall County, Georgia
2875 Browns Bridge Road
Gainesville, GA 30504
jrivera@hallcounty.org
VIA: *Electronic Mail*

Re: Opposition to Special Use and Variance Application for 5773 & 5769 Conner Road (Record Numbers HZCU25-0057, HVAR25-0070)

Dear Chairman Gibbs and Commissioners Cooper, Powell, Poole, and Stowe:

We represent Ms. Sheila Humberstone, a resident of Hall County. Ms. Humberstone lives less than a mile from the two properties being considered for zoning changes at the January 22, 2026, meeting of the Hall County Board of Commissioners (the “Board”): 5769 and 5773 Conner Road, Flowery Branch, Hall County, Georgia 30542 (collectively, the “Properties”). To access her residence, Ms. Humberstone must use Conner Road and pass the Properties. Our client, along with several of her neighbors, **oppose** the applications submitted by Mr. Dwane Bradley Walton (the “Applicant”) for (1) a special use designation to host an agri-entertainment events on the Properties; and (2) two variances from the use standards required of agri-entertainment properties (the “Applications”).

Ms. Humberstone is right to do so. The Hall County Unified Development Code (the “UDC”) governs the Applications, and it leaves little room for doubt that the Applications must fail—both on their face and on the merits. Respectfully, it is not even a close call. On their face, the Applications are neither properly before the Board nor complete. Beyond this, the Applications offer the Board no evidence to satisfy allow the Board to make the required factual findings on “each factor necessary to receive approval of the Board of Commissioners.”¹

This is not the first time the Applicant sought approval from Hall County to operate agri-entertainment events, nor is it the first time the Applicant failed to satisfy the

¹ Hall County, Ga., Code § 11.2.6(J)(4).

burdens imposed by the UDC. In 2017, the Applicant sought approval for a special use to allow an agri-entertainment venue on the Properties.² Then, as now, surrounding residents opposed the applications. Then, as now, they cited the same concerns of diminished safety, property values, and enjoyment of property that would follow an approval of the Applicant's request.³ At that time, the Hall County Planning Commission recommended denying the 2017 applications, and the Applicant "pulled the request in the face of likely rejection" by the Board.⁴ This Board approved the withdrawal.⁵

The Planning Commission got it right in 2017. Ms. Humberstone joins her neighbors and respectfully asks this Board to deny the Applications on January 22. On their face, the Applications are neither timely before the Board nor complete. Beyond these fatal flaws, the Applications come nowhere close to satisfying the Applicant's burden of proof needed to authorize a special use or a variance.

BACKGROUND

The Applicant submitted the Applications on October 22, 2025. Application HZCU25-0057 (the "Special Use Request") seeks a special use designation to allow the Properties to operate as an agri-entertainment venue as described in Hall County Ordinance Section 7.7.3. Application HVAR25-0070 (the "Variance Request") seeks a variance from the same section of the UDC to allow for a reduction in the minimum setback for the existing primary structure and parking area. Specifically, the Applications request a 100-foot reduction of the setback for the event space (from the required 300 feet buffer to 200 feet), and a reduction of the minimum setback area for the parking area from 200 feet to 34 feet.

The Properties are currently zoned AR-1. Ms. Humberstone's property (and the property of other opponents) is classified as residential. Doing business as Flowery Branch Winery and Vineyard, the Applicant has operated as a farm winery since planting grapes in 2017, and it constructed and then opened a tasting room (within the 300-foot buffer required of agri-business events) in February 2025. The winery is located on Conner Road, and that street provides the only means of access to Ms. Humberstone's home as well. As you may know, Conner Road is narrow. Indeed, based on the site plan attached to the Applications, it appears that Conner Road is only 18 feet wide. There are no sidewalks along much of Conner Road.

² Hall County Planning Commission, Meeting Minutes (Mar. 6, 2017). A true and accurate copy of the Planning Commission's meeting minutes are attached as "Exhibit 1."

³ *Id.* at 1-2.

⁴ Rachel Estes, "'Growing a legacy': Flowery Branch resident plans to open winery in homage to family roots," *The Times*, Gainesville, Ga. (Sept. 16, 2022) (available at: <https://finance.yahoo.com/news/growing-legacy-flowery-branch-resident-060300373.html>).

⁵ Hall County Board of Commissioners, Meeting Minutes (Apr. 13, 2017). A true and accurate copy of the Board's minutes from the April 13, 2017 minutes are attached as "Exhibit 2."

These facts mattered when the Planning Commission held a public hearing on the Applicant's first attempt for special use approval on March 16, 2017.⁶ At that time, the Applicant did not have a tasting room or many guests coming onto the Properties. Only the Applicant spoke in favor of his request.⁷ As they do today, many nearby homeowners opposed the project at the meeting. They expressed concerns about the safety of granting the Applicant's request in the light of how narrow Conner Road was then (and remains today).⁸ As today, neighboring residents argued that the type and frequency of events allowed by an agri-entertainment designation would lead to excess noise and traffic.⁹ And as today, opponents of the special use designation explained how Conner Road is insufficient to handle such demands, and that the proposed use of the Properties was inconsistent with the residential character of the surrounding neighborhoods.¹⁰ They were not alone. Mr. Charles Turner with the Hall County Engineering Department testified that the "Engineering department is not in favor of the application due to the narrow width of Conner Road."¹¹ The Planning Commission agreed. It unanimously recommended that the Board deny the application. When the issue came before this Board, and upon the Applicant's request, the Board approved a withdrawal of the application.¹²

THE BOARD OF COMMISSIONERS SHOULD DENY THE APPLICATIONS

Almost nine years later, the Applications still fall well short of satisfying the Applicant's burden of persuasion and for several reasons. On their face, the Applications are untimely and incomplete. Substantively, the Applications fail to provide the Board with any evidence, much less compelling evidence, to allow the Board to make the factual findings necessary to approve special use and variance requests. Put simply, the Applications should be denied on January 22, and this is not a close call.

1. The Applications Are Not Timely Before The Board

Hall County received the Applications on October 22, 2025. The UDC required the Planning Commission—and now the Board, which is acting as the Planning Commission—to have a public hearing on the Applications no more than 60 days later, or by December 21, 2025.¹³ The Board did not, and it is now too late for the Board to approve or deny the Applications.

⁶ Ex. 1 at 2.

⁷ March 5, 2017 Minutes, Hall County Planning Commission at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² Hall County Board of Commissioners, Meeting Minutes (Apr. 13, 2017).

¹³ Hall County, Ga., Code § 11.2.6(F)(1).

The Residents are aware of the resolution adopted by the Board on October 7, 2025, which suspended the Hall County Planning Commission, and substituted the Board in its place (the “Resolution”).¹⁴ The Resolution requires the Board to “assume and perform all powers, duties, and responsibilities of the Planning Commission, as set forth under the UDC”.¹⁵ One of the Planning Commission’s duties and responsibilities, which are now imposed on the Board, is that the Planning Commission “must hold the required public meeting not less than 30 days, nor more than 60 days, from the date of the filing of a complete application.”¹⁶ Binding judicial precedent establishes “that the word ‘must’ is synonymous with ‘shall,’ and that the use of such statutory language generally means that the legislature intended for the provision to be mandatory.”¹⁷ Further, Georgia courts have held that a local government’s failure to follow its own zoning procedures may invalidate a zoning decision.¹⁸

The January 22, 2026, meeting of the Board is 92 days after the submission of the Applications. Thus, no timely decision can be rendered, and the Applicant should be required to resubmit the Applications at a later date.

2. The Applications Are Facially Incomplete

The UDC also makes clear that any application for a special use of property “must include,” among other things, a “narrative statement identifying the existing and proposed use of the property and addressing each of the criteria set forth in [Section] 11.2.”¹⁹ Section 11.2.2(F)(3) identifies 17 criteria that must be addressed in an application for a special use.²⁰ The Applications fall short of these requirements, which means they must be denied.

Specifically, the Applications do not address at least four of the mandatory criteria imposed by the UDC. First, there is no discussion of whether “the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.”²¹ At best, it makes representations about noise, but nothing else is discussed. Second, the Applications fails to say anything about whether the proposal will result or

¹⁴ A true and accurate copy of the Resolution is attached as “Exhibit 3.”

¹⁵ *Id.*

¹⁶ Hall County, Ga., Code § 11.2.6(F)(1) (emphasis added).

¹⁷ *Rakusin v. Radiology Associates of Atlanta, P.C.*, 305 Ga. App. 175, 179 (2010). *See also Franzen v. City of Atlanta*, 359 Ga. App. 462, 467 (2021) (holding that rules of statutory construction apply to local ordinances).

¹⁸ *See Yost v. Fulton Cnty.*, 256 Ga. 324, 325 (1986) (failure to comply with ordinances’ notice and hearing requirements); *Harden v. Banks Cnty.*, 294 Ga. App. 327, 330 (2008) (application’s failure to include a site map).

¹⁹ Hall County, Ga., Code §§ 11.2.6(E)(2) and (E)(2)(a).

²⁰ As enacted, this provision of the UDC is to be considered by the Hall County Planning Commission first, but the Resolution empowers the Board to “assume and perform all powers, duties, and responsibilities of the Planning Commission.” Regardless of the Resolution, the Board “must consider the general lines of inquiry established under Sec. 11.2.6.F” as well. Hall County, Ga., Code § 11.2.6(J)(3).

²¹ Hall County, Ga., Code § 11.2.6(F)(3)(b).

potentially cause “an excessive or burdensome use of existing streets” or public services.²² In fact, the condition of Conner Road is not even mentioned. Nor do the Applications discuss any impact the proposal would have on property values of the surrounding areas.²³ The Applications also fail to provide any evidence or discussion of whether the “change requested is out of scale with the needs of the county as a whole or the immediate neighborhood.”²⁴

The Staff Report confirms this. On the Special Use Request, the Staff Report acknowledges that the Staff were “unable to determine the extent to which property values are diminished by the existing zoning restrictions,” and also “unable to comment on the impact of property values without a full market analysis.”²⁵ The same is true on the Variance Request, where the Staff explained that the Applicant “has not prepared a response to each of the criteria listed in 11.2.6.E.2.”²⁶ This kind of information is not just required by the text of the UDC, but by omitted the necessary information, the Applications “deprive[the Board] of key information relating to the propos[al]” that the Board must have to evaluate whether or not to grant the Applications.²⁷ Neither Ms. Humberstone, nor the other opponents of the proposal, nor the Staff have any obligation to fill the gaps left by the incomplete Application. The UDC imposes the burden of persuasion solely on the Applicant.²⁸

Under these circumstances, the Board should deny the Applications as being incomplete and failing to provide the Staff and the Board with information needed to evaluate the proposal. This determination should be made before considering the Applicant’s proffered justifications for the proposal.

3. The Applicant Has Not Satisfied His Burden of Persuasion

Even if the Board were to overlook the Applications’ fatal flaws, and respectfully, it should not, a consideration of the Applications’ substance leads to the same conclusion: they should be denied. The scant “evidence” provided by the Applications is woefully inadequate to satisfy the Applicant’s “burden of persuasion of each factor necessary to receive approval of the Board.”²⁹

First, the Application contains no evidence or even discussion of the mandatory requirement to show the proposal would be “suitable in view of the use [and] development ... of adjacent and nearby property,” or not “adversely affect the existing

²² Hall County, Ga., Code § 11.2.6(F)(3)(c).

²³ Hall County, Ga., Code § 11.2.6(F)(3)(d).

²⁴ Hall County, Ga., Code § 11.2.6(F)(3)(m).

²⁵ Staff Report at p. 4. A true and accurate copy of the Staff Report is attached as “Exhibit 4.”

²⁶ *Id.* at 6.

²⁷ *Harden*, 294 Ga. App. at 330.

²⁸ Hall County, Ga., Code § 11.2.2.J(4).

²⁹ Hall County, Ga., Code § 11.2.2.J(4).

use or usability of adjacent or nearby property.”³⁰ When considering these criteria, it is important to recognize that the Properties are bordered on the north and west by residential neighborhoods.³¹ Despite this, the Applications contain no information to show how the proposed use would be “suitable” for the neighborhoods, or how it would not lead to adverse effect, including those identified by the Planning Commission in 2017.

Nevertheless, the Staff Report suggests that the proposed use is “suitable,” and that adverse effects are “not anticipated.”³² Given the lack of evidence submitted by the Applicant, the Staff’s conclusions must be deemed speculative at best. By contrast, the letters submitted by Ms. Humberstone and her neighbors (collectively, the “Residents”) identify significant flaws with the Applications’ approach and representations, including concerns about safety, noise, traffic, property values, and other detriments that the Applications fail to address.³³

The narrative does at least attempt to address issues of noise and parking but only by pledging to comply with the UDC. The Board should afford the representations in the Applications little weight. In the months since the winery opened, the Applicant has failed to comply with the existing obligations imposed on farm wineries, including a requirements that: (1) parking areas be “screened from roads and adjacent properties;” (2) amplified sound not be utilized outside of an enclosed structure; and (3) visitors to the Properties not park on the shoulder of Conner Road, which is already too narrow.³⁴ And, as noted by Hall County Fire Rescue Lieutenant John Hornic, “existing access to venue does not appear to meet ... fire code requirement[s].”³⁵

In other words, the evidence before the Board precludes a finding that the Applications satisfy two mandatory requirements of the UDC. On the one hand, the Application contains either no information, or it simply asserts that compliance with noise and parking regulations will be satisfied. On the other hand, those opposing the Applications have provided the *only evidence* on property values, safety, and compliance. Under these circumstances, the Applicant has fallen well short of satisfying the burden of persuasion needed to approve the Applications.

Second, the Applications contain no answer to the mandatory question of whether the proposal will “result in a use which will or could cause an excessive or burdensome use of existing streets.”³⁶ The Staff Report said those harms are “not

³⁰ Hall County, Ga., Code §§ 11.2.2.(F)(3)(a) and (b).

³¹ See Staff Report.

³² Staff Report at 4.

³³ Ms. Humberstone’s letter has been submitted to the Board, and it is attached as “Exhibit 5.”

³⁴ A few pictures demonstrating these conditions, as well as the narrow width of Conner Road are attached as “Exhibit 6.”

³⁵ Staff Report at 7.

³⁶ Hall County, Ga., Code § 11.2.6(F)(d).

anticipated,” but the Applicant provided the Staff with no factual basis to reach this conclusion.³⁷

The Residents’ letters demonstrate that the Staff’s optimism, while well-intentioned, is unsupported. Like the testimony provided to the Planning Commission in 2017, the Residents’ letters speak of existing problems caused by Conner Road’s narrow width. They show the harms caused by existing use of the road and visitors’ parking. The Residents’ concerns are confirmed by the Applications themselves.

Specifically, the site plan attached to the Applications appears to describe Conner Road—at the very location where the Applicant currently provides for egress and ingress onto the Properties—as being only 18 feet wide. In 2017, this led the Hall County Engineering Department to oppose the Applicant’s same request.³⁸ Lieutenant Hornick of Hall County Fire and Rescue echoes those same concerns today. The Staff Report contains his finding that the Properties’ existing driveway—the same one it proposes for agri-entertainment events—does not comply with the International Fire Code (“IFC”), which is adopted and made part of Hall County’s Code of Ordinances.³⁹ Specifically, the IFC defines “fire apparatus access roads” broadly to include not just driveways like the one identified by Lieutenant Hornick, but also any “road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, *public street*, private street, parking lot lane and access roadway.”⁴⁰ Accordingly, Conner Road is also a fire apparatus access road. And, it is already out of compliance with the IFC’s width requirement that all apparatus access roads “*shall* have an unobstructed width of not less than 20 feet.”⁴¹

GDOT’s Design Policy Manual is similar. As demonstrated by the image below, GDOT describes the minimum desirable width of lanes on local roads as 11-12 feet, which means Conner Road should be 22-24 feet wide and not 18 feet.⁴²

³⁷ Staff Report at 4.

³⁸ Hall County Planning Commission, meeting minutes at 3 (Mar. 6, 2017).

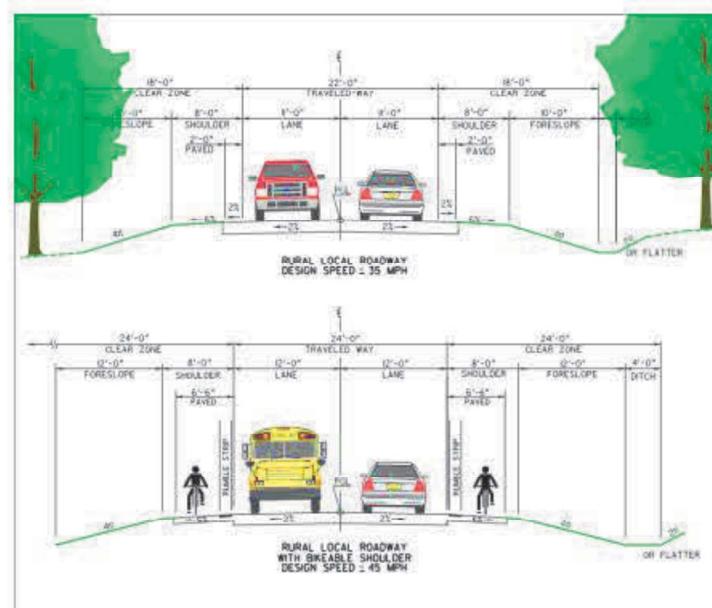
³⁹ Staff Report at 7. *See also* Hall County, Ga., Code § 15.10.020(A)(8) (adopting International Fire Code).

⁴⁰ Int’l Fire Code § 202 (emphasis added).

⁴¹ Int’l Fire Code § 503.2.1 (emphasis added).

⁴² GDOT Design Policy Manual Table 6.4. The Manual is available online at <https://www.dot.ga.gov/PartnerSmart/DesignManuals/DesignPolicy/GDOT-DPM.pdf>

Design Policy Manual



Thus, the current state of Conner Road provides another reason to deny the Applications.⁴³ As shown, Conner Road and the Properties' access road already cannot comply with the use standard that properties approved for agri-entertainment events "must provide adequate access and egress for emergency vehicles."⁴⁴ The narrative included in the Applications promises to make matters worse. The Applications represent that maximum attendance would be "capped at 50 cars / 100 guests," but it provides no description of how the Applicant would enforce this requirement. Notably, the Applications do not suggest that the Applicant will widen Conner Road, even though the Staff Report recommends adding a condition that at least the driveway be brought into compliance with the IFC.

But even if the Applications' promise of compliance were accepted at face value, the fact remains that the proposed use imposes unsafe and material strains on Conner Road and the Residents. Common sense dictates that harms caused by a narrow road are worsened by increasing the frequency and volume of traffic, especially to events centered around consuming wine. In sum, residents who must traverse along Conner Road currently face safety risks caused by the inadequate width of Conner Road, and approving the Applications would materially exacerbate the risks faced by the Residents.

Third, as the Staff Report recognizes, the Applications contain no evidence (or even assertions) from which the Board could evaluate or find, that the proposal will not

⁴³ See Hall County, Ga., Code § 11.2.6(F)(3)(d).

⁴⁴ Hall County, Ga., Code § 7.7.3(B)(13).

impair property values.⁴⁵ The letter submitted to the Board by Mrs. Sharon Leonard, a licensed realtor, indicates that the Residents' property values will decrease if the Applications are granted. Thus, the *only* evidence before the Board weighs strongly against approval.

Fourth, the Application fails to carry the burden of persuasion on the criteria set forth in UDC Section 11.2.6(F)(3)(m): "Whether the change requested is out of scale with the needs of the county as a whole or the immediate neighborhood." The Staff Report concludes that the request complies with this requirement, but it does not explain how the Staff reached this conclusion, and the Applications do not even address the issue. As the Residents' letters plainly show, and for each of the reasons discussed above, allowing agri-entertainment events on the Properties well exceeds the needs of the immediate neighborhood. Even if the Board presumed the Applicant would comply with the use standards for agri-entertainment events, he suggests that 100 people or 50 cars could enter and exit the Properties everyday. On Sundays through Thursdays, events could run until 10:00 p.m., and until midnight on Fridays and Saturdays.⁴⁶ This kind of commercial activity is well "out of scale" with the needs of the Residents.

Fifth, the Staff Report correctly recommends denying the Variance Request. Under normal circumstances, the Planning Commission may recommend approving requests for variances only "upon a finding" that, among other things, the alleged hardships are neither "the result of any actions of the property owner; and [r]elief, if granted, would not cause a detriment to the public good."⁴⁷ These findings can be made only when warranted by a "preponderance of the evidence."⁴⁸ Because the Board has assumed all "responsibilities of the Planning Commission," that same standard applies to the presentation at the January 22 meeting.⁴⁹

Here, such evidence is plainly lacking from the Applications. They assert that the current placement of the existing metal building, within the minimum setback, creates an unnecessary hardship of having to tear down and rebuild the facility to comply with the UDC. Specifically, the existing use standards for agri-entertainment events require facilities at agri-entertainment events to be "at least 300 feet from any property line," but the existing structure is only 200 feet from the property line.⁵⁰ The Applications also ask the Board to approve a variance to allow the current parking area to be within 34 feet from the property line, because the Hall County Code requires a 100-foot setback.⁵¹

⁴⁵ See Staff Report at 4.

⁴⁶ Hall County, Ga., Code § 7.7.3.(B)(11).

⁴⁷ Hall County, Ga., Code § 11.1.1(D)(11)(d) and (e).

⁴⁸ Hall County, Ga., Code § 11.1.1(J).

⁴⁹ See Resolution, Section 2.

⁵⁰ Hall County, Ga. Code § 7.7.3(B)(3).

⁵¹ Hall County, Ga. Code § 7.7.3(B)(5).

As the Staff correctly recognized, these conditions are not “undue hardships” that would authorize granting variances. Rather, the problems created by the existing facility and parking are entirely of the Applicant’s own making based on decisions made to place the facility and parking within the setbacks required of agri-entertainment events *after* the Planning Commission recommended denying the same request in 2017. The Staff Report explains that the Applicant constructed the metal building in 2023, six years after he presumably familiarized himself with the requirements of agri-entertainment events in 2017.⁵² The same is true of the parking setback requirements. Nevertheless, the Applicant placed the facility and parking within the space allowed for farm wineries but not agri-entertainment event locations anyway. For these reasons, the Applications do not qualify for a variance because the identified conditions were caused solely by decisions of the Applicant. This ends the inquiry. The UDC authorizes granting variances only if each of the criteria described in UDC Section 11.1.1(D)(11) are satisfied, and one is that the “conditions are not the result of any actions of the property owner.” Put differently, the Board lacks discretion to grant a variance when a mandatory condition is not satisfied, and the Board need not consider any other factor.

To be sure, the Applications fall short of an additional requirement, namely a showing that granting a variance “would not cause substantial detriment to the public good.”⁵³ The Staff reached a different conclusion, but we urge the Board to disagree. First, the Applications do not address this criterion at all. Consequently, neither the Staff nor the Board have any evidentiary basis to grant the Variance Request. Second, each of the Residents’ letters show how existing noise and traffic, particularly in the light of the Applicant’s failure to comply with existing obligations, have caused them significant injury. Granting Variance Requests would only increase the frequency and severity of these harms, which the UDC does not allow.

CONCLUSION

Ms. Humberstone does not join her neighbors’ opposition lightly. She seeks to be good neighbors to the winery. In the light of all the circumstances and issues identified in this and the Residents’ letters, she is compelled to explain the multitude of reasons why the Applications have fallen well short satisfying the “burden of persuasion of each factor necessary to receive approval of the Board.”⁵⁴ The Planning Commission properly recommended denying the same request in 2017, and the Applicant appropriately withdrew the applications before the Board could affirm. Nothing has changed since then, and if anything, the Board has been presented with additional facts to have even greater concerns today, including the safety of anyone who travels on Conner Road, of approving the Application. We respectfully ask you to deny both Applications.

Should you or the Staff have any questions, please do not hesitate to contact me.

⁵² Staff Report at 3.

⁵³ Hall County, Ga., Code § 11.1.1(D)(11)(e).

⁵⁴ Hall County, Ga., Code § 11.2.6(J)(4).

Best regards,



JB

Josh Belinfante

cc: Carey Miller, Robbins Firm