

HALL COUNTY BOARD OF COMMISSIONERS
STAFF REPORT

Applicant Marcial Mosqueda

Request **Variance to section 3.2** | to reduce the minimum yards

Proposed Use To bring an existing structure into compliance

Size 0.16± acres

Zoning Agricultural Residential 1 (AR-1)

Location **3610 Mountain View Road** | Tax Parcel 08031 003013

Commission District Four

Commission Date January 22, 2026

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

Record Number HVAR25-0065

Staff recommends APPROVAL of the applicant's request.

Summary Analysis

The applicant is requesting a variance to section 3.2 to reduce the side yard setbacks from 15 feet to 11 feet for 4 covered porches on a tract measuring approximately 0.16± acres zoned Agricultural Residential 1 (AR-1). The property is currently developed with a single-family residence and an attached accessory dwelling unit.

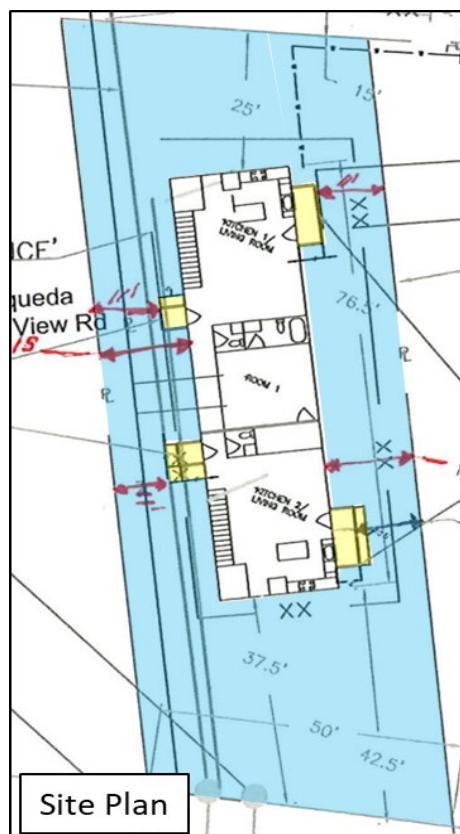
The surrounding properties are zoned and developed as outlined below:

- North: Agricultural Residential 1 (R-1) – Developed with single-family residences.
- East: Agricultural Residential 1 (R-1) – Vacant.
- South: City of Gainesville Planned Unit Development (PUD) – Developed single-family residential subdivision.

West: Agricultural Residential 1 (R-1) – Developed with single-family residence.



On September 4, 2025, the applicant was approved for a building permit consisting of a 2 story single-family residence with an attached accessory dwelling unit, not including covered porches (HRNEW25-1111). The front entrance for both the single-family residence and the attached accessory dwelling unit is oriented toward the eastern side property line and the rear entrance is oriented toward the western side property line. During a site inspection, it was observed that 4 covered porches (shown in yellow) were constructed and encroach into the side yard setbacks. The applicant was promptly informed of the encroachment and has subsequently submitted a variance request to address the encroachment. The elevations submitted by the applicant reflect the current appearance of the single-family dwelling, the attached accessory dwelling unit, and the covered porches.



The subject property was created in October 1956, prior to the establishment of zoning regulations in 1978, and its original zoning designation is Agricultural Residential 1 (AR-1). The minimum lot size within the AR-1 district is 1 acre when serviced by public water. The AR-1 district has greater setback requirements than what is permitted in the smaller lot zoning district of Residential 1 (R-1) or Vacation Cottage (V-C). AR-1 requires 15 foot side yard setbacks compared to 10 foot in R-1 or V-C. At $0.16\pm$ acres, and served by both public water and sewer, the subject property, is much smaller in size than the allowed minimum R-1 lot size of 0.5 acres when serviced by public sewer. The requested 11-foot side yard setbacks are consistent with development standards typically applied to smaller residential lots.



Front Elevation



Rear Elevation

Per the Statement of Hardship, the original subdivision plat established narrow lot sizes which have made it challenging to accommodate a standard-sized house.

Two (2) **variances** related to both side yard setbacks will be required if the site plan, as presented, is approved.

- Side yard setback requirement of 15 feet from the property line as found in Table 3.2 for Agricultural Residential 1 (AR-1) zoning district.
 - A side yard setback of 11 feet from the western and eastern property line is proposed for the covered porches.

Zoning Analysis

The Commission may grant variances in individual cases of unnecessary hardship upon a finding of the board that:

1. There are extraordinary and exceptional conditions pertaining to the 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 subject property exhibits extraordinary and exceptional conditions due to its unusually small lot size relative to its historical AR-1 zoning designation and the development standards of comparable residential districts. Created in 1956, prior to the adoption of zoning regulations, the lot is approximately 0.16 acres—significantly smaller than the 1-acre minimum lot size required in the AR-1 district and even below the 0.5-acre minimum required in the R-1 district on sewer. These dimensional constraints are inherent to the physical character of the lot and not the result of personal or economic circumstances.**

2. The application of the requirements of this UDC to this particular piece of property would create an unusual hardship; **Strict application of the setback requirements would create an unusual hardship for this property due to its significantly substandard lot size. Because the lot was created prior to the establishment of zoning regulations, it cannot reasonably be brought into compliance with current dimensional standards. As a result, meeting the required AR-1 setbacks limits the buildable area of the property.**
3. Such conditions are peculiar to the particular piece of property involved and are not common to other properties in the neighborhood; **While several adjacent properties along Whiting Road have the same zoning and similar size limitations, the conditions present on the subject property are not common to AR-1 zoned properties overall. The lot was created in 1956, prior to the establishment of zoning regulations, resulting in a parcel that is approximately 0.16 acres—substantially smaller than the minimum lot sizes required in both the AR-1 and R-1 zoning districts. The subject property's unusually small size, combined with its original AR-1 zoning designation, creates a unique physical condition that is not common to other lots within the AR-1 zoning district.**
4. Such conditions are not the result of any actions of the property owner; **The location of the existing single-family residence and the covered porches are a direct action of the property owner. However, the conditions affecting the subject property are not the result of any actions taken by the current property owner. The lot was created in 1956, before zoning regulations were established in 1978, and the strict application of the setback requirements of the AR-1 zoning district, which zoning district is not intended for parcels of this size, significantly limits reasonable buildable area.**
5. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this UDC; provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by this UDC or for a Conditional Use Permit which has been denied by the Planning Commission; **Approval of the requested variance would not negatively affect the public good, nor would it compromise the intent of the UDC. The applicant requests setbacks consistent with development patterns typically associated with smaller residential lots and does not authorize any prohibited or previously denied use.**

Development Support and Constraints

Hall County Environmental Health

In an email dated December 16, 2025, Emily McGahee stated “No comment. Public sewer.”

Georgia Department of Transportation

In an email dated December 11, 2025, Christopher Hash, D1 Traffic Operations Supervisor, stated “Off system, no impacts to the state route expected.”

Hall County Public Works and Utilities

In a memorandum from Public Works and Utilities dated December 17, 2025, Assistant Director Jason Skarda stated the following:

Engineering:

No comment

Traffic:

No comment

Utilities:

Gainesville Sewer on the south side of Mt. View Road.

Hall County Fire Marshal

In an email dated December 11, 2025, John Hornick, NPQ Fire Service Plans Examiner 1, stated, “The Hall County Fire Marshal’s Office has no comments as proposed.”