

**HALL COUNTY PLANNING COMMISSION
RECOMMENDATION REPORT**

Applicant Friends to the Forlorn Pitbull Rescue, Inc.

Request Rezone from Agricultural Residential-IV (AR-IV) to Planned Residential Development (PRD)

Proposed Use Animal rescue with residential uses

Size 38.399± acres

Zoning AR-IV

Location On the west side of Will Wheeler Road
approximately 397 feet from its intersection
with Ben Lee Road; a.k.a. 5473 and 5453 Will
Wheeler Road; Tax Parcels 11030 000030
and 11030 000032

Commission District Three

County Commission Date October 14, 2021

Staff Recommendation **Approval, with conditions**

Planning Commission Recommendation – Denial
Vote: 3-1 (Mr. Braswell voting against the denial, Mr. Varner absent)

Applicant Proposal

The applicant is requesting to rezone a 38.399± acre property from Agricultural-Residential-IV (AR-IV) to Planned Residential Development (PRD) for an animal rescue organization as well as residential use. The applicant, Friends to the Forlorn Pitbull Rescue, Inc. is a 501(c)3 nonprofit organization which rescues dogs in need and provides community outreach through volunteers.

The applicant intends to utilize the existing buildings on the property, with some modifications. According to the narrative, the large area with kennels is not secure; these kennels will be fortified and secured and/or removed to provide an exercise area for the dogs. The dog runs/pens attached to the dog cottages will be fortified for the rescue's use as well; however, no dogs will be left in kennels or runs unsupervised. Dogs will be housed in enclosed kennels located in the main house and in "stalls" located underneath the red barn. The area outside of the red barn will be expanded and fortified for use as an exercise area.

The organization is considering potentially constructing an additional building for kennels and/or dog runs in the future. This building will match or exceed in quality those buildings already on the property. The applicant submitted renderings and schematics for a building they had previously considered constructing in Paulding County. Those images and plans may be viewed as part of the application materials. There is also a possibility of enclosing and securing the covered arena that currently exists on the property.

The rescue will reinforce or replace kennel fencing in order to improve the security and safety of the dogs. The proposed fencing will be eight-foot high, 9-gauge chain-link fencing with a two-foot deep buried section to prevent digging. The existing wood fence surrounding the dog cottages will be reinforced with sheet metal to create a non-penetrable surface that cannot be chewed or scratched.

There are no plans for additional residential buildings. The applicant intends to utilize the main house for offices, guest reception, and living quarters for key staff.

The organization was founded in 2009 and has operated in Paulding County as well as across Georgia. In addition to rescuing animals, the applicants have facilitated vaccination and spay/neuter programs around the State of Georgia.

History and Existing Land Uses

The subject property consists of two parcels totaling approximately 38.399± acres, zoned Agricultural-Residential-IV (AR-IV). The surround properties are also zoned AR-IV and consist of low-density single-family homes and agricultural uses.

In 2020, the current property owners, Brett and Elizabeth Hayes, submitted an application for a commercial kennel (use subject to county commission approval) on 9.94 acres to bring the property into compliance with Hall County business license, engineering, and zoning regulations. The proposal sought to bring into compliance unpermitted structures and the commercial use of the property without property licensing. The applicants ultimately requested to withdraw the application during the September 8, 2020 Planning Commission Meeting. The Planning Commission approved their request to withdraw.

In July 2019, the Hayes' submitted for electrical service to 15 outbuildings/kennels to the Planning Department. The kennels were determined to fall below the minimum requirements for a building permit, as they are approximately 10 feet by 12 feet in size. The International Residential Building Code does not require a building permit for any accessory structure less than 200 square feet in size. When the need for so many kennels was questioned, the property owners insisted that these would be for their own personal pets and were not to be used as part of a business. As part of the approval for the electrical service to the kennels, the following statement was added to the permit, and was signed by Brett Hayse on August 19, 2019:

"Owner acknowledges the following:

The kennels shall be used only for the keeping of personal pets and not for commercial activity (including animals kept for the purpose of sale, boarding, care, breeding or training and for which any fee is charged). All facilities utilized in any future commercial operations will be subject to stormwater regulations."

Earlier 2019, the Hayes' submitted an application for a commercial kennel (use subject to county commission approval) on the adjacent 28.40 acre tract, which is also in their ownership. The proposal was similar in nature to the 2020 request. The applicants ultimately requested to withdraw the application during the March 4, 2019 Planning Commission Meeting. The Planning Commission approved their request to withdraw.

The subject property is developed with a 3,820 square foot single-family home, a 36 foot by 40 foot barn, and a 30 foot by 100 foot pavilion, as well as approximately 15+ individual kennels known as "pet cottages" with attached runs. There may be other structures, runs, and pens on the property that are not depicted on the as-built survey.

The property is located in the northwest portion of Hall County where the development pattern is predominately large tract agricultural properties and rural residential uses. Further north on Will Wheeler Road is a Wheeler Plantation, an 18 lot Residential-I (R-I) subdivision developed in 2007. Additionally, adjacent and to the southwest of the property is a 25 acre property which was approved in 2018 to be rezoned to R-I for a 23 lot subdivision.

Comprehensive Plan Land Use Designation

The subject property is located within the "Rural Residential" future land use designation. This land use category is characterized by low-density single-family residential uses with deep setbacks from the road, agriculture uses, and greenways and trails.

The request is consistent with the Comprehensive Plan; the PRD zoning district allows for more flexibility in the design and development of the property. This provides for a mixture of housing types and allows for limited non-residential uses.

Development Support and Constraints

Hall County Environmental Health

In an email dated September 7, Emily McGahee stated, "Must meet all Environmental Health commercial septic system permitting requirements. 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. Additional items, including, but not limited to: recorded plat, soil evaluation, existing septic

system evaluation, and septic system installation/modification may be required after review of business plan.”

Hall County Fire Services

The subject parcel is located approximately 5.4 miles from Hall County Fire Station #11, located at 5625 Bark Camp Road. The nearest fire hydrant is located approximately 1,428 feet from the northeast corner of the subject property along Wheeler Plantation Drive.

Hall County Public Works and Utilities

In a memorandum from the Director of Public Works and Utilities on September 7, 2021, Srikanth Yamala stated the following:

Engineering

Site appears to be a commercial kennel. No permits have ever been issued to this site for the commercial site work. Permits were issued for electrical panels. This site is a commercial development and must address all stormwater issues. This site will require a stormwater management report since the site currently meets stormwater threshold for impervious surfaces and/or disturbed acreage. See attachments. [Photos and reports are included with departmental comments.]

Traffic

No traffic comments

Utilities

No comment

Hall County Tax Assessors

No comments were provided.

Gainesville Water Resources

The Hall County GIS shows that public water is available to the subject property along Will Wheeler Road.

Georgia Department of Transportation

In an email dated September 1, 2021, Jason Dykes, P.E., District Traffic Engineer for the Georgia Department of Transportation, stated that this project will not require GDOT coordination.

Zoning Analysis

- The PRD request is consistent with the Comprehensive Plan.
 - A PRD allows for more flexibility in the design and development of the property. This provides for a mixture of housing types and encourages maximum use of natural features, through proper site planning measures. The development should conform to the existing character and development pattern of the surrounding area.
 - The recommended residential density for the Rural Residential land use classification is one (1) unit per acre. The proposed development includes one residence and associated dog rescue facility on 38.399 acres.

- The applicant is proposing to take a non-compliant property and bring it into compliance with Hall County regulations. The proposed use of the property will utilize existing structures and facilities, modified to be compliant with Hall County regulations and necessary safety improvements.
 - According to the applicant's narrative, the large area with kennels is not secure; these kennels will be fortified and secured and/or removed to provide an exercise area for the dogs. The dog runs/pens attached to the dog cottages will also be fortified for the rescue's use.
 - No dogs will be left in kennels or runs unsupervised. Dogs will be housed in enclosed kennels located in the main house and in "stalls" located underneath the red barn.
 - The area outside of the red barn will be expanded and fortified for use as an exercise area.
- The applicants narrative describes a future expansion with the construction of a 10,000 – 12,000 square foot facility which would use as additional space for dogs and their care, including additional kennels, runs, and veterinary area.
 - The addition of this structure would not be immediate, instead the rescue will retrofit the existing facilities for their use.
- According to the Hall County Engineering Department, the site will require a stormwater management report as the existing site development likely exceeds stormwater threshold for impervious surfaces and/or disturbed acreage for non-residential uses.
- The project will be required to meet all Environmental Health commercial septic regulations in addition to all other regulations required by Hall County Planning, Public Works, Building Inspections, and Business Licenses.
- The applicant has not indicated a maximum number of dogs to be accommodated by the facility.

Staff Recommendation

Staff recommends **approval** of the applicant's request with the following conditions:

1. The proposed use shall be limited to the submitted narrative and site plan. The development shall occur in a phased manner as described herein:
 - a. The applicant shall work with the Hall County Planning Department to obtain the necessary permits to bring the existing structures into compliance with development regulations prior to the issuance of a business license for the rescue organization.
 - b. The proposed building expansion shall not be permitted until 3 years from the date of approval of the rezoning request. Prior to obtaining a building permit for the future building, the Planning Director shall provide the Board of Commissioners with a report on the status of the rescue over the previous three years. Upon the receipt of this report the Board of Commissioners may have the ability to deny the building permit request if there has been a confirmed history of violations for the rescue organization.
2. The proposed building shall appear residential in nature, with the architecture of the structure being consistent with those building already on the property. The building materials shall be reviewed and approved by the Planning Director prior to the issuance of the building permit.
3. All dogs shall be kept inside the existing residence or red barn. There shall be no dogs left unsupervised in outdoor runs or kennels.
4. There shall be quiet hours on the property between 11:00pm – 6:00am where no outdoor activity shall occur, with the exception of emergency situations.
5. Any and all breeding activities, boarding, training, and any other animal-related business services beyond the scope of the rescue work as described in applicant's narrative shall be prohibited.

6. There shall be no special events occurring at the property without Board of Commissioners approval, as required by Hall County Business License regulations.
7. Any future development of the property for the rescue use shall be subject to commercial development standards as required by state and local regulations. Additional accessory structures for the existing residential uses shall not be subject to these requirements so long as they are not to be utilized for uses associated with the rescue.
8. A stormwater management report shall be reviewed and approved by Hall County Engineering, with the results of that report being completed and inspected within one year of Board of Commissioner approval.
9. A landscape plan shall be submitted and reviewed by the Planning Department showing a transitional planted buffer along the driveway at the northern edge of the property.
10. All local and state licenses shall be obtained by the rescue.
11. All conditions of zoning shall be made part of any plats created for the development.

Excerpts from the minutes of the meeting of September 20, 2021

Applicant's Presentation:

Sarah McQuade, Planning Director, presented a summary of the request.

Jason Flatt, 182 Isabella Path, Dallas, presented the request. Mr. Flatt stated that he was the president and founder of Friends to the Forlorn Pitbull Rescue. He stated that this was a nonprofit organization that was founded in 2009 to rescue pitbulls and other animals. Mr. Flatt stated that they did not only rescue animals, but they did a lot for the community too. He stated that he was interested in purchasing the proposed property to use the facility that was already currently there to run his nonprofit. He stated that he would run a facility that would be very different from what the current property owner was operating. Mr. Flatt stated that it would be a turnkey operation and would give Friends to the Forlorn a jumpstart to where they ultimately wanted to be. Mr. Flatt stated that all animals would be kept inside; he had recommendations from animal control as well as a local county commission from where he was currently operating. He stated that barking had never been an issue, he had never had a dog be loose and animal control had never been called out. Mr. Flatt stated there would be 8 foot fencing, custom locks, and concrete under the fence to insure the dogs stay inside the fenced area when outside. He stated he would be making improvements to the property, as there were not any play areas for the dogs. He stated that unlike the current owners, there would not be any breeding and all his rescues would be spayed and neutered. Mr. Flatt stated he had held a community meeting the week before to meet with all of the neighbors. He stated the large concerns with the neighbors were property value and noise. He stated the property values should not be a concern. He stated the facility would not be open to the public and would remain a private operation. Mr. Flatt stated the noise would be reduced from what currently comes from the property, as his dogs would all be kept inside. He stated that all his rescues would have plenty of playtime and get proper exercise but that animals would never be left outside unattended. He stated currently in many areas the fencing was not secure, therefore updates and improvements would have to be made. He stated that he would like to have an additional building, the same size as the one currently there, with runs connected to it. This would be an additional step to insuring none of the dogs got loose and eliminates more opportunity for human error. Mr. Flatt reviewed a letter submitted from his current neighbor stating the neighbor had never experienced any problems with the rescue. Mr. Flatt stated that people are scared of what they do not know and only know of the stigma of pitbulls. Mr. Flatt stated that when compared to Golden Retrievers, pitbulls scored higher in the temperament testing. Mr. Braswell asked if Mr. Flatt had seen the staff recommendations. Mr. Flatt stated that they had and responded with possible changes to the conditions that he would like to be considered.

Public Forum:

Ron Davis, 31 Davis Mill Road, Dallas, spoke in favor of the request. Mr. Davis stated that he had previously served on the Paulding County Board of Commissioners and knew Mr. Flatt well. Mr. Davis stated that he could confirm that there had never been any animal control calls or problems with the rescue. Mr. Davis stated that Mr. Flatt not only helps animals, but he helps the entire community.

Bo Wagner, 3750 Honey Pot Way, Marietta, spoke in favor of the request. Mr. Wagner stated that he accompanied Mr. Flatt at the community meeting and stated the three major concerns were property value, noise, and safety. Mr. Wagner stated safety was the rescue's number one priority; the dogs would not be kept outside so noise would not be an issue, and the property values have continued to rise. Mr. Wagner stated the rescue would be a better neighbor than the current owners.

Robin Dimaria, 1965 Midway Road, Douglasville, spoke in favor of the request. Ms. Dimaria stated that she was a realtor and had pulled property values for neighboring properties over that last few years and none of them had lost value and that decreases related to the rescue were unlikely.

Kerstin Liberty, 340 James Wix Road, Dallas, spoke in favor of the request. Ms. Liberty stated Mr. Flatt would make a difference in the community, as well as be an asset to the community. She stated that all the animals were well cared for and this was truly a rescue and not a breeder.

Haynes Thomas, 5796 Ben Lee Road, Murrayville, spoke in opposition of the request. Mr. Thomas stated that he did not have a problem with the applicant or what he was trying to do. However, the current owner of the property, ruined farmland illegally to build his breeding facility and it should not be used as a turnkey property. Mr. Thomas stated the neighborhood was not the correct location for a dog rescue.

Amanda Watson, 5757 Ben Lee Road, Murrayville, spoke in opposition of the request. Ms. Watson stated the structures that would be built must look like residential structures, but they were kennels and doghouses. Ms. Watson stated she was not okay with 100 pitbulls living there at a single time and noted how dangerous they were. She stated that the road would no longer be safe for kids and families to walk up and down. Ms. Marshall also stated that she did not want the cottages to be used for the housing of pitbulls.

Jerry Young, 5403 Will Wheeler Road, Murrayville, spoke in opposition of the request. Mr. Young stated he owned the property adjacent to the proposed property and he would not want to live next to a rescue if he was moving to the area. He stated there were cross-country teams that run up and down the road and now it could potentially be dangerous for them. Mr. Young stated that his tenants in his rental homes did not like the barking.

Allison Marshall, 6001 Bethel Road, Murrayville, spoke in opposition of the request. Ms. Marshall stated that she experienced a traumatic experience when another dog escaped from a neighbor's house and killed her own dog. She stated that these pitbulls could get out of the rescue and harm other animals.

Tim Watson, 5757 Ben Lee Road, Murrayville, spoke in opposition of the request. Mr. Watson stated that he was concerned about how late the information became available. He stated that a 13 year study showed that of 54 dog attacks, 63% were pitbulls. He stated that there must be a reason that pitbulls need to be rescued.

Jack Smith, 5572 Will Wheeler Road, Murrayville, spoke in opposition of the request. Mr. Smith stated that he and his wife did not want this request to be approved. He stated that Golden

Retrievers were bred to fetch and pitbulls were bred to fight. Mr. Smith stated that he would not want a pitbull to attack someone walking or running down the street.

George Marshall, 6001 Bethel Road, Murrayville, spoke in opposition of the request. Mr. Marshall stated that there is a human factor to this request. He stated that he did not believe that having that type of organization in their neighborhood would increase their property values. Mr. Marshall stated that he was concerned with the excess of safety measures that were going to be needed in order to contain the dogs.

Rebuttal

Mr. Flatt addressed Ms. Watson's concern about the cottage use. He stated that there would not be dogs kept in the cottages, but they would fortify them and use them for daytime, outdoor areas for the dogs to play. Mr. Flatt stated that all the dogs would kept inside at all other times. Mr. Flatt addressed the concerns with the cross-country team using the road to run on. He stated that the current owns had 160, 100-130 pound dogs on the property with insecure fencing and there had never been an attack. Mr. Flatt stated that he would be modifying the fencing because he is a pitbull rescue and he was aware of the entire stigma that comes with that and that he would need to be at his best to keep the dogs and community safe. Mr. Flatt stated that in the nine years he had been rescuing dogs, he had never had one escape. He stated that he wanted to be a good neighbor and would be investing into the entire community. Mr. Braswell asked how many dogs would be there at one time. Mr. Flatt stated that the maximum number of dogs there would be 100. Mr. Hunt asked if the 100 dogs would be there before the new building was constructed. Mr. Flatt stated that there would only be 40 dogs there prior to construction of the new building. He stated that their goal was to take in sick dogs and get them ready for a foster home. After they are acclimated to home living, they would be put up for adoption. Mr. Flatt stated that is was not the goal to warehouse the rescued dogs. Mr. Hunt asked how large the staff was. Mr. Flatt stated there were currently five employees, including himself. Mr. Hunt asked why Mr. Flatt was leaving Paulding County. Mr. Flatt stated that he loved Paulding County, but the potential to not have to start and build from the ground up with the proposed property would be great for his organization. Mr. Flatt stated that the opportunity that the property holds would be ideal and would be a good financial decision. Mr. Hunt asked if he had to funding for the project. Mr. Flatt stated that they did and would ready to go as soon as they were able to be approved. Ms. Pilcher stated that she was concerned with the property being illegally used by the current owner. She stated that she had a moral issue with allowing someone else to benefit from an illegal use. Mr. Wagner asked Ms. Pilcher what a good use for the property would be if no one was going to be allowed to use what is currently there. Ms. Pilcher stated that she believed that it needed to go back to agricultural uses. Mr. Hunt asked staff why this would be rezoned to a PRD zoning and if the moratorium on commercial kennels was still active. Ms. McQuade stated that the moratorium was still active but this request did not classify as a commercial kennel due to it being a nonprofit organization. Mr. Hunt asked about the number of dogs. Ms. McQuade stated that the county did not have any restrictions on the number of animals allowed to be on a piece of property. Ms. McQuade addressed Ms. Pilcher's concerns and stated that the buildings on the property had been retroactively permitted all of the buildings that are currently on the property and they meet all of Hall County's code. She stated that at this point, the county would have to enter into litigation with current property owners to revert the property back to what it was previously. Mr. Braswell asked if the buildings would stay with the property, regardless of who owns it. Ms. McQuade stated that was correct. Staff supplied the Planning Commission a copy of the amended conditions that the applicant was proposing. Mr. Hunt asked if staff agreed with the amended conditions. Ms. McQuade stated that most were made clearer, but two had significant changes from staff recommendations. One of the changes was to reduce the time of the future building expansion and another requesting to be able to hold quarterly events for volunteers and staff. Mr. Flatt stated that the events would not be open to the public. Mr. Bell asked why there was a moratorium. Ms. McQuade stated that after the current owner's application was denied, the county wanted to look at the commercial kennel section of the code. Mr. Bell asked if the property remained an agricultural use, the applicant would not be able to pursue the request. Ms. McQuade stated that

technically, they probably could because there is not a limit on the number of animals that could be kept on a piece of property. Mr. Bell asked the PRD was being used because there was not another appropriate zoning. Ms. McQuade stated that was correct. Mr. Braswell stated that the PRD allowed the county to have some type of control of what they can and cannot do. Mr. Hunt stated that he agreed with Ms. Pilcher about the current use being illegal. Ms. McQuade reviewed the history of the current property owners and stated that the Board of Commissioners ultimately denied them, however the building permits could not be denied because they met the Hall County code standards. Mr. Hunt asked if the moratorium was not in place, would PRD still be the requested zoning. Ms. McQuade stated that was correct. Mr. Hunt stated that he is struggling with the peace of mind of the neighbors. Mr. Braswell stated that he did not have an issue with putting this type of use on the property, but he would want the applicant to agree with the staff recommendations that were originally proposed in the staff report. Mr. Braswell stated that he would like to add an additional condition regarding the maximum number of dogs allowed.

Motion: *Mr. Hunt made a motion to recommend denial, with a second from Ms. Pilcher and the motion passed by a 3-1 vote. (Mr. Braswell voting against the denial, Mr. Varner absent)*