

RESOLUTION 2021 – 164
Public Hearing October 18th, 2021 – Tabled
Public Hearing November 1st, 2021

A RESOLUTION FORMALLY REMOVING ANY NO ACCESS RESTRICTION THAT MAY EXIST ON COUNTRY WALK DRIVE AT PARCEL 19-075300970; AUTHORIZING A PLAT AMENDMENT TO REFLECT THAT ACCESS TO PARCEL IS NOT RESTRICTED; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Powder Springs (the “City”) previously received a request for a driveway or curb cut access on Country Walk Drive to parcel 19-075300970; and

WHEREAS, the City determined that the owner could apply for a curb cut access as long as it complied with sight distance requirements and it was approved by the Country Walk Estates HOA; and

WHEREAS, the HOA denied approval of the curb cut to the parcel;

WHEREAS, In the documents filed by the developer (subdivision plat and a quit claim deed conveying certain common area to the HOA), the area is identified as a "landscape easement". Although there are apparent scrivener's errors in the deed (db 10292, p. 529) from the developer to the association, it seems clear that the developer intended to convey the area in question to the HOA as a "landscape easement". The language of this conveyance provides that the property is to be held by the HOA "for scenic and natural area preservation...", and in two of the deeds leading up to the latest conveyance of the subject parcel, the area in question is identified as a “no access buffer”, which would appear to preclude use for access purposes as well as a corresponding responsibility on the part of the HOA to maintain the landscape strip/no access buffer; and

WHEREAS, the plat on file suggested that a no access landscape easement might exist preventing access to the parcel, and further research indicated that a variance was sought to add a landscape easement to the rear entrance of Country Walk to protect the aesthetic quality to the entrance of the community but the application was withdrawn although the plat was revised to include the landscape strip and the HOA did in fact maintain said landscaping until approximately 2020;

WHEREAS the HOA was cited for code violations in 2020 relating to landscape encroachment on the sidewalk in front of the parcel but the HOA stated that the landscape buffer did not belong to the HOA and was not their responsibility to maintain;

WHEREAS, the parcel owner fronting Country Walk Drive was thereafter cited for the landscape encroachment, and the property owner objected stating that the landscape strip belonged to the HOA who had been maintaining the landscaping but agreed to remove the encroachment but wanted assurance that the landscaping could be removed and that the no access buffer did not apply; and

WHEREAS, the property owner has renewed the request for access and acknowledged that under the City’s code as owner of the adjoining parcel the owner will maintain property to curb, including any encroachment or landscape growth onto the public sidewalk, and accordingly, has requested that the no access designation be formally removed,


WHEREAS, to the extent there was an intent to limit access from Country Walk Drive to Parcel 19-075300970 under the designated landscape strip/no access buffer, there appears to be nothing to suggest that there was an intent to subject the responsibility of upkeep and maintenance of said landscape strip on any entity other than the HOA for whose benefit the landscape strip/no access buffer would have existed;

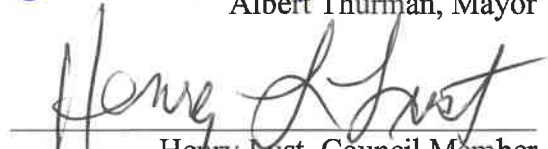
WHEREAS, the City desires to grant the parcel owner access to the parcel from Country Walk Drive in accordance with development standards established in the Unified Development Code;

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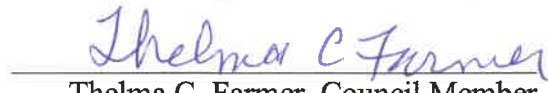
BE IT THEREFORE RESOLVED by the Council for the City of Powder Springs that it remove any no access restriction that might apply to parcel 19-075300970

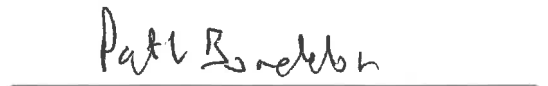
SO RESOLVED this 1st day of November, 2021.


Albert Thurman, Mayor


Henry Lust, Council Member

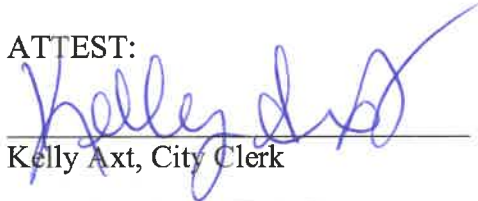

Doris Dawkins, Council Member


Thelma C. Farmer, Council Member


Patrick Bordelon, Council Member


Patricia Wisdom, Council Member

ATTEST:


Kelly Axt, City Clerk