

**SPALDING COUNTY APPEALS BOARD**  
**MINUTES**  
**August 11, 2005**

The Spalding County Appeals Board held its regular monthly meeting in room 108 of the Spalding County Courthouse Annex on August 11, 2005. Members present were: Jon Baird, Vice-chairman, presiding, Keith Dryden, Allan McCallum, Charles Perdue, and JoAnne Phinazee. Doug Hardwick and Dennis Richardson were not present.

Also present were: Charles Taylor, Community Development Director, Newton Galloway, Attorney, and Yvonne Langford to record the minutes.

Mr. Baird called the meeting to order, introduced the members of the Appeals Board and requested anyone present wishing to address comments to the Appeals Board regarding any of the applications to come forward and sign-in on the appropriate form.

**Application #05-17V: Lift from the table** – Brea Homes, LLC, Owner – 15 Liberty Hill Road (1.206 acres located in Land Lot 57 of the 3<sup>rd</sup> Land District ) – requesting a Variance from minimum front yard setback and minimum lot area in the AR-1 District.

Mr. Taylor said the applicant had requested this application be held until the next meeting. Some citizens were present and wanted to discuss the application. Mr. Baird advised them that no discussion would be held. He advised them that it would be on the agenda at the next meeting.

**Application #05-21V: Lift from the table** – Steve Reeves Homes, Inc., Owner – 45 Shamrock Circle (0.656 acres located in Land Lot 222 of the 3<sup>rd</sup> Land District) – requesting a Variance from minimum lot area of 1-acre in the R-2 District.

**MOTION**

Mr. Dryden made a motion, seconded by Ms. Phinazee, to lift Application #05-21V from the table. The motion passed with Mr. Baird, Mr. Dryden, Mr. McCallum, Mr. Perdue, and Ms. Phinazee voting for the motion.

Kyle Greene – 300 Park Brooke Place – Woodstock, Georgia

Mr. Green said he was an attorney and was present to speak on behalf of this application. This property is located on Shamrock Circle. Mr. Reeves is requesting a variance from the one acre minimum. They have reviewed the staff recommendation, and it is for denial. They have information that will come to bear on the staff recommendations. This subdivision was originally platted in 1972. The requirements, at that time, did not require a one acre minimum. A substantial number of the lots in the subdivision are less than one-acre. This property was originally purchased by Oscar Stokes in 1987. He owned the property until 1996 unchanged. At that time, he sold a portion of the property on the eastern border to Harvey Booker. The reason the property was sold to Mr. Booker was to allow him to develop his property. This was to accommodate the septic system for Mr. Booker. The property remained unchanged until March of 2005 when Mr. Reeves and

Steve Reeves Homes contracted with Mr. Stokes to purchase lot 45. At that time, both parties to the sale were under the impression that there was still one acre of property. The property closed in March of 2005. The title exam did not reveal that the property was less than one-acre. Mr. Reeves purchased the property without knowledge that there was less than one-acre. 41 of the 71 lots are less than one-acre. He showed a copy of the current tax map identifying this property. The county records do show the sale of a portion of lot 45 to Mr. Booker in 1996. However, just above the notation for lot 45 it is still noted at one-acre. Anyone examining the county maps would be under the impression that there was still one-acre. Prior to the purchase, Mr. Reeves conducted some soil tests in anticipation of the purchase. Shortly after his purchase, permits were issued by the county including building permits, septic permits, and water hook-up, all of which allowed Mr. Reeves to begin construction. Construction went on for six weeks when this issue was brought to his attention. That was the first notice that he had. It is incorrect that this is a self-created issue on the part of Mr. Reeves. The county records still reflect that this is a one acre lot. The sale of a portion of the tract is on the record, but the map does not show that it is less than one-acre. The property has been taxed as one acre since 1996. After six weeks of work on the property to include clearing and digging for a foundation, the complaints were made, and the work ceased. This is not a situation where Mr. Reeves or anyone from his company was trying to deceive the county. This property was purchased with the expectation that the property could be developed and the permits issued. Granting the variance will have virtually no impact on the adjoining property owners from a public health and safety standpoint, nor from a property value standpoint. The entire course of development in this subdivision reflects that there are numerous lots that are less than one acre that have been there for a substantial period of time. Several have been developed since this ordinance has been in effect. It is difficult to believe that anyone would come before this board tonight and say that they have any expectation that this property will not eventually be developed. There are existing lots in the subdivision that have been there since 1972 and have not been developed. The first 11 lots in the subdivision are 4/10 of an acre. Any argument that the development of this lot, by virtue of it being less than one acre, would devalue the adjoining property simply will not "hold water". He went over the requirements for a variance and addressed the issues with the lot in question. To deny the variance will create a substantial hardship for Mr. Reeves. He has acted in good faith in purchasing the lot. He has a construction loan and has begun construction and has made draws on the loan. He is accruing interest. He has a purchaser who has the property under contract. He is ready to move forward and is ready to sell the lot. Reasonable use of the land is not possible under the current restrictions. Denying the variance ensures that there is a piece of property in the neighborhood that cannot be developed.

Ms. Phinazee asked the question regarding house size and was told that it will be 1500 SF. She additionally asked if the neighbors would be looking in the backdoor of this proposed home. She visited the location, and it appeared that the home was going to be smaller and that neighbors on either side would be looking at the back door.

Mr. Greene said he did not feel these issues were appropriate for denial of the application. He further stated that the house is not complete, and he felt certain that Mr.

Reeves would discuss the issues and would consider adjustments if those are the only objections. On question from Mr. Baird regarding title insurance, Mr. Green advised that the title insurance does not insure exact acreage or suitability for a particular purpose.

Barton D. Waits – McDonough, Georgia

Mr. Waits said he was with the applicant and had no comment at this time.

Brandalyn U. Ellis – 46 Camden

Ms. Ellis said she and her husband have just purchased their home. She was not aware at the time she purchased her home that there would be a house built on this lot. She did not know the lot size either. She wanted to know who advised Mr. Reeves that there was not sufficient acreage for a house. She had sent a letter to Mr. Taylor and hoped that it had been given to all the members of the Appeals Board. She is concerned about the square footage. Her questions have been answered. She still does not understand how he did not know that he did not have enough acreage to build a house and why he is asking for a variance. There are many lots in the area that are smaller but they were built before the ordinance was recorded for the lots in the area. Now it is one acre with 1200 SF. She is in total disagreement with this request and feels that he and his lawyers should have done more research.

Harvey Booker – 44 Shamrock Circle

Mr. Booker said he is right next door to the lot in question. Mr. Booker had a petition signed by almost every household in the community. The only ones he does not have are ones that he missed in going around the neighborhood. Some that he missed are present tonight. Every household that he talked to is definitely against this variance. They have not complained about other houses in the area. They did not complain about the house that Mr. Reeves built on Camden Road. Mr. Reeves has built 6 or 7 houses in the community. One of the houses he built was sold but is presently vacant and overgrown. Another around the corner is in the process of being vacated because the potential buyer has not been able to close and has been renting the house. His understanding is that the houses he built were intended for owner occupancy but he took them off the market and is building them for an investor for rental property. There are approximately two or three houses that are being rented. Mr. Stokes sold Mr. Booker 40 feet off of the lot. Mr. Reeves is a prudent investor. He is not an average person, he is an investor. Any prudent investor would get a good title search to assure that he is getting what he is supposed to be getting. The idea that he stumbled on the property being decreased in size does not “hold water” to him because as an investor you should know what you are doing. The community is definitely against granting a variance to Mr. Reeves.

Robert Banks and Matana Banks were signed, but it was determined this was not the application they want to address.

Mike Kendall - 59 Camden Road

Mr. Kendall said when you do a title search, this is exactly what you do a title search to find. He said he was not able to find a deed from Mr. Stokes to Mr. Reeves. It is obvious that whoever did the title work for Mr. Reeves did not go to the courthouse. He could not

find a closing. He wants to know how he could file an application without a deed. The property owner has to apply for a variance. It is apparent that whoever did this work for Mr. Reeves did not do what they were supposed to do. He has some legal issues with this application. This is a self-made problem. Had the person that did the title search just searched Mr. Stokes' name they would have seen this deed to Mr. Booker where Mr. Stokes sold off a portion of this site. When a portion was sold, it was no longer a grandfathered lot. The lot changed and made the new zoning ordinance applicable to that lot. This is a perfect case of a self-made problem. He questioned whether or not a title search was done and further questioned if a closing was ever done since there is no deed. The health department requires an acre for these lots. There is a reason for that. Mr. Booker had to purchase additional land for his house because there was not enough good land for the alternative septic tank system. He understands that Mr. Stokes thought there was not going to be a problem when he sold Mr. Booker the land. He said this application is not a candidate for a variance under the framework if the ordinance as drafted.

Mr. Greene said Mr. Reeves was notified on May 17 regarding the problems with this site. Telephone calls were made prior to sending the letter, but it was well into May before the notice was received. Having built on lots in the subdivision that were less than one acre he did not expect any problems with this lot. There is a sunset provision in the ordinance that extends certain lot requirements through October 31, 1997. Any change in the lot occurred in 1996 when the strip was conveyed. The lot was as it stands today prior to the sunset provision. There was a closing. The deed was recorded about May 23, 2005. There was some delay but the deed was ultimately recorded. The septic permit has been issued. If there were concerns with the percolation of the soil, the county would have never issued the permit.

Mr. Taylor said the staff recommendation is for denial because the lot does not have a lot of record status.

Mr. Galloway said when the lot was divided and the 40' was sold to Mr. Booker, the lot, at that time, became non-conforming so the sunset provision is not applicable to this application. As long as the house size satisfies the requirements of R-2 zoning, that is not a basis for denial of the variance. As long as the house sits on the lot in a manner that satisfies R-2 zoning, that is not a basis for denial. The only issue here is lot size and whether a variance should be issued for the lot based on the criteria as set out in the ordinance.

Mr. McCallum said it is incumbent on the purchaser to know exactly what he is purchasing. The applicant said he acted in good faith but he did not have a survey done.

Mr. Baird said he has purchased land without a survey but you do need to confirm that you have an acre if it is required.

**MOTION**

Mr. Dryden made a motion to deny Application #05-21V. The motion passed on a second by Mr. McCallum with Mr. Baird, Mr. Dryden, Mr. McCallum, Mr. Perdue, and Ms. Phinazee voting for the motion.

**Application #05-26S:** Steve Minyard and Tracy Minyard, Owners – 159 Wisso Road (4.74 acres located in Land Lot 52 of the 2<sup>nd</sup> Land District) – requesting a Special Exception to allow a Class A Manufactured Home in the AR-1 District.

Steve Minyard – 159 Wisso Road

Mr. Minyard said they purchased a mobile home in 1991 and over the years they have “worn it out”. They want to replace it with a nicer home. They are financially better and want to upgrade. They will trade in the old home on the new home.

Mr. Taylor said the recommendation is for approval. There is no trend in the area and the request satisfies the criteria.

**MOTION**

Mr. McCallum made a motion to approve Application #05-26S. The motion passed on a second by Ms. Phinazee with Mr. Baird, Mr. Dryden, Mr. McCallum, Mr. Perdue, and Ms. Phinazee voting for the motion.

**Application #05-27V:** Robert H. Glover, Owner – Lenox Circle (13.605 acres located in Land Lot 53 of the 2<sup>nd</sup> land District) – requesting a Variance from minimum lot width and minimum road frontage in the AR-1 District.

Robert Glover – 113 Everee Inn Road

A plat of the property was available for the Appeals Board to review. Mr. Glover said he purchased this tract of land in 1980, and it had a house that was partially completed, and he finished the house as rental property. The balance of the property was in pecan trees. He cleaned it and it is a pretty piece of property. He has kept the property all this time with the initial intent to cut a road into the property for development. He had it platted at one time but never began the work. About 10 years ago, Mr. and Mrs. Banks rented the house from him and have been there since then. They have taken meticulous care of the property. Mr. Banks has done some maintenance of the adjoining acreage. They approached him with the request to purchase a portion of the property. Their family has increased, and they have three young children and want to build their own house. Any thought of subdividing has long since gone and with age he does not feel like taking care of this site. He has agreed to sell them part of the property. AR-1 zoning has changed from 125’ frontage to 200’ with three acres. He talked with Mr. and Mrs. Banks, and they agreed that if they could get a variance he wants to purchase 10.4 acres and build one house. He is satisfied with the road frontage. They plan to make a gated entrance. The property can be divided giving one site 125’ and the other will be 184’. Neither of the lots will meet the 200’ road frontage requirement. The smaller lot will be 3.2 acres with a house and the other will be 10.4 acres with one house. The staff has a problem with this proposal, because this will be two lots that are non-compliant. Mr. Banks does

not have a problem regarding the frontage and they are willing to make one lot compliant and get a variance on the other. The proposed division seemed to be the better plan. The staff recommendation is for denial. He got a tax map to determine the number of lots in the area that do not comply with the road frontage and acreage requirements. Almost every lot that has been built does not meet the 3 acre and 200' requirement. Most of the lots are 125' and to require 200' of him is requiring a lot. Based on what it in the area the variance is appropriate. He went over the lot sizes in the area. On question, Mr. Glover said he would not mind a restriction to limit the 10.3 acres to one house.

Robert Banks – 438 Lenox Circle

Mr. Banks said he has lived on this property for over 10 years. A lot of the neighbors thought there was going to be a subdivision but there is only going to be one house. He and his wife have three children. He takes good care of this property. All he wants to do is build one home.

Matana Banks – 438 Lenox Circle

Ms. Banks did not address this application.

Mr. Taylor said, in reviewing the area, the applicant made a good case for the variance. In granting a variance, one of the criteria that has been adopted is that it shall not be based on the existing non-conforming properties. The staff recommends denial of the application, because it will set a precedent for other applications that do not have the property road frontage. They feel rezoning the property is a better way to approach this tract.

#### **MOTION**

Mr. Dryden made a motion to approve Application #05-27V conditioned on only one house on the 10.3 acres. The motion passed on a second by Mr. Perdue with Mr. Baird, Mr. Dryden, Mr. McCallum, Mr. Perdue, and Ms. Phinazee voting for the motion.

#### **MINUTES**

The minutes of the July 14, 2005 meeting were approved on a motion by Ms. Phinazee and a second by Mr. Perdue with Mr. Baird, Mr. McCallum, Mr. Perdue, and Ms. Phinazee voting for the motion and Mr. Dryden abstaining because he was not present.

#### **ADJOURN**

The meeting was adjourned on a motion by Mr. Dryden and a second by Mr. McCallum with Mr. Baird, Mr. Dryden, Mr. McCallum, Mr. Perdue and Ms Phinazee voting for the motion.

---

Jon Baird – Vice-chairman

---

Yvonne M Langford - Recorder