

SPALDING COUNTY APPEALS BOARD
Regular Meeting
May 8, 2008

The Spalding County Appeals Board held its regular monthly meeting on May 8, 2008 at 7:00 P.M. in Room 108 of the Spalding County Courthouse Annex. Members present were: Doug Hardwick, Chairman, presiding; Michelle Cannon; Charles Perdue and JoAnne Phinazee. Shawn Cain, Richard Ingram and Allan McCallum were not present.

Also present were: Charles Taylor, Community Development Director; Newton Galloway, Attorney and Yvonne Langford to record the minutes. Chad Jacobs, Senior Planner, was not present at the meeting.

Mr. Hardwick called the meeting to order and invited anyone present that was not the applicant and wanted to address the Board on any of the applications to come forward and sign the request form.

Application #08-07S: Reginal Lindsey, Owner – 1776 West Ellis Road (4 acres located in Land Lots 1 and 2 of the 3rd Land District) – requesting a Special Exception to allow a certified medical hardship in the AR-1 District.

All of the people addressing the Board regarding this matter were sworn.

Reginal Lindsey 1776 B West Ellis Road

Mr. Lindsey said this application is concerning his mother who is a cancer patient. She is very sick. He had to take her to Gwinnett Hospital the other night because she was bleeding. Her condition cannot be fixed. It is something that she will have to deal with the rest of her life. Frequently she gets real sick and he has to rush her to Gwinnett like he had to the other night. He is trying to keep her close to him and do the best he can as a son until her time is gone. Whenever she needs medical assistance, he can be right there. The doctor has said she will never recover and live a normal life again. He is trying to get her taken care of until that time.

Mr. Lindsey responded to questions. He has lived at this address for six months. His mother has been ill since 1985. They diagnosed her with cancer. She used to work at the school, and when they diagnosed her with cancer, she retired. She has been a fighter but it, slowly but surely, is catching up. She is 63 years old. She has been deteriorating faster.

Charlie Watts – 1766 West Ellis Road

Mr. Watts said he wanted to express his sympathy, and they have compassion for Ms. Lindsey's condition, but on the other hand, it seems the zoning code is being violated. Mr. Lindsey bought this property knowing there was an existing home on the land. He was issued a permit to build the house without any kind of stipulation, I guess, I don't know, and that the trailer should have been moved. Everything that is happening is after the fact. In all the research, this thing says that they have to be totally disabled and 65 years old. Their problem is that a precedent is being set for AR-1 zoning. They do not understand how it got by and how it got this far and this petition for a hardship is after the fact. This is the biggest problem. It should have been researched and should have been known that this thing was there. With all the technology, it would take two clicks of a computer to find this information. They have compassion for Ms. Lindsey but this is one thing they disagree with. It has been there 22 years and it was occupied until Mr. and Mrs. Kaufhold died.

Kay Jackson – 1760 Wes Ellis Road

Ms. Jackson said she is a neutral party. She is not for this exemption or against this exemption. She understands someone wanting to care for their mother. The only thing she wants the Board to consider is that the rules and requirements are followed for a special exemption. If you have to bend a little here or this requirement is not exactly in the zoning requirements, then you are setting a precedent for future special exemptions that can destroy the purpose of AR-1 zoning. The whole part of it is to keep it pristine and aesthetic and have lots bigger than subdivisions, everybody all up against each other and having mixed things for the purpose of bringing in new homes and it could possibly affect new buyers or new buildings if we continue down this path. People say they got the special exemption and they did not quite follow the rules then I am going to get one and before you know it AR-1 has trailers and nice houses and everything else.

James E. Fox II – 1832 West Ellis Road

Mr. Fox said he wanted to find out how they were able to put a home on a property of four acres and there's a home already in existence. He purchased 12 acres adjacent to this property four years ago. The trailer was there. As he built his house, apparently the lady died and Mr. Lindsey and his wife purchased the property. How were they able to build this house on four acres when the county code says to have to have three acres with a minimum of 200' of road frontage? He already has one house on it. How did he build another house on those four acres of property? He is violating the code as it stands. He understands the situation with his mother. They have two houses and obstruct the code as it is. Something is in violation.

Mr. Hardwick said the history of this situation will be addressed when the public comments are complete.

Pamela S. Ward – 1776 A West Ellis Road

Ms. Ward said she owns the property behind Mr. Lindsey. When they first purchased the property, there was a mobile home where they lived for ten years. When they got the permit to build their home, they were advised they would have to move the trailer. As soon as the home was built, they moved the trailer. She has deep sympathy that Mr. Lindsey's mother is ill but she also has ill parents. Her father was in the hospital recently and her mother was bedridden for a month. Would she have the opportunity to bring a mobile home onto her property for them to live or would she take them into her own home where she could care for them? The rules are that it is a single dwelling lot and she would like to see it upheld.

Bill Ward – 1776 A West Ellis Road

Mr. Ward said they moved on this piece of property 30 years ago. The trailer in question was there then. They lived in their trailer for 10 years, and when they applied for a building permit, they were told their trailer would have to be moved when they received their CO. When they received their CO, they were again told the trailer would have to be moved. Fortunately, they were able to sell the trailer very quickly. They had the trailer moved within two months of receiving their CO. At that time, it was a hardship to get the trailer ready to move but it was what they felt they had to do because it was County regulations. He would have liked to keep the trailer because it would have been nice to do other things to it before he sold it but he did not have time. This has gone on a long time already. The County has let this drag out and he would like to see the County do something about it.

Mr. Charles Watts was allowed to make additional comments. Mr. Watts said when he got a permit for his daughter to build on his property behind him, the first thing they told him was that he had to get a variance. He has a lot more than four acres. He has 45 acres, and they told him he

could not have two homes on one tract. It seems that circumstances are being turned around and we are not being treated the same.

Mr. Galloway advised Ms. Ward that the code allows for someone to apply for a medical hardship to have an elderly relative or a sick relative close by in a manufactured home. There is a specific procedure and that is being followed by Mr. Lindsey. If anyone had the same circumstance arise, they would follow the same procedure.

Mr. Galloway reviewed the incident of Mr. Lindsey's permit. Mr. Lindsey acquired the property and made an application to build a house through his builder. The lot had the existing manufactured home on the lot which had been there for years. When the builder submits his plan, the builder is required to tender a site plan for the construction site. When this builder tendered the site plan, he identified the four-bedroom plan for the new house. The builder did not identify any existing structure on the property. The County issued the permit under the pretext there was not an existing structure on the property. What happened with the Wards is standard procedure. The owner/builder identifies the site plan and the existing structure is identified and the new structure is identified and the permit is issued with the condition that the existing manufactured home has to be removed within a certain period of time after construction is completed and a certificate of occupancy is issued. In this case, the permit was not designated with that notation regarding the removal of the manufactured home because the information received at the time did not show a manufactured home. During the period of construction, the standard inspections were done on the new home and during those inspections, the new home was approved at various stages of inspection. The inspectors say they reported the mobile home to the appropriate County clerk and the clerk does not remember getting that information. What they do know is that there is no written information of the existence of the manufactured home on the lot at anytime during the inspection process. At no point during the inspections was anything done to note on the file that there was an existing home that needed to be removed when construction was complete. The house was completed and a certificate of occupancy was issued to allow Mr. Lindsey to move into the house. As a result of information from the neighbors, the County was advised that there were two structures on the property. Mr. Taylor sent letters to the owner which resulted in a citation issued in Magistrate Court with a hearing scheduled for March 12, 2008. Mr. Lindsey retained counsel, Mr. Charles Lee, with Deming, Parker, Hoffman, Green, Campbell and Dailey in Norcross. Mr. Lindsey and Mr. Lee met with Mr. Taylor, Mr. Wilson, Mr. Jacobs and Mr. Galloway to discuss what he wanted to do with the property. They were advised that his initial intent had been for the manufactured home to remain for his mother. Mr. Lindsey was advised that a building permit issued in error vests no right to have the structure remain. If the builder did not report the information correctly and the permit was issued without the appropriate notation, he had no vested right to maintain the home. Without a vested right to maintain the manufactured home he has chosen to keep the manufactured home by the only means available, application for a special exception for a medical hardship. He was instructed that when the medical hardship ceased the manufactured home has to be removed. They offered him the option to proceed with the medical hardship special exception or to proceed to Magistrate Court for a hearing to deal with the citation. Mr. Lindsey made the decision to apply for the special exception. An agreement was reached to stay the Magistrate Court action by means of a consent order pending his application for a special exception prior to April 3, 2008 which he filed. No representation was made to him that the application would be approved.

Discussion was held regarding the information that had been furnished. The site plan was furnished to the Board members indicating that there was no existing trailer on the property. The trailer was visible on the property. Mr. Taylor said the normal procedure is that the mobile home is allowed to be on the property up until 30 days after completion of the new home. This fact is

normally noted on the permit and is a condition of the permit and the certificate of occupancy. This is the first error of this type that has ever been reported. Due to this particular situation, procedures have been modified so that tax records are researched to determine that the information furnished by the builder/owner is accurate. In the past, the information was taken to be truthful. No representation is made regarding the intent of the application.

Mr. Lindsey was questioned as to whether or not the hardship truly existed or whether this was just a means to keep the trailer. Mr. Lindsey advised that the hardship did exist and his mother's health was failing. He said he understood the concern, and if he was a member of the Board, he would have the same concerns. There were further questions and Mr. Lindsey advised that he lived in the trailer during construction and his mother did not then nor does she now live with him nor does she live on the property. She presently resides in an apartment across town. He wants her to live in the trailer. At the present time, a friend of his is living in the trailer. If this exception is granted, the friend will move and his mother will move into the trailer. Mr. Lindsey said it would not be a harmonious situation if his mother were to move into the house with him and his wife. If his mother was not sick, he would remove the trailer. He advised that his mother would eventually become totally disabled.

Mr. Taylor advised that medical hardship applications are received from time to time. The code is quite clear that the medical hardship has to be documented in the application by a note from a physician. The temporary structure has to be removed from the property within 30 days of the hardship ceasing. The staff has reviewed the request and the application does contain the documentation from the physician. With that information, the recommendation is for approval of the application.

Discussion followed regarding the errors that were made by both parties. Mr. Taylor said he would not presume to judge if there was any intent to defraud when the application was made. A change has been made in procedure to verify the information that is furnished is correct. Ms. Phinazee asked whether or not this application would be considered if the mobile home was not on the property at the present time. Mr. Taylor said the application would be considered. Not many applications are made for a medical hardship and historically they are approved.

Ms. Jackson said she would like to ask a question of the Board. She was allowed to speak again. She asked if the Board members had a copy of the letter from the physician. The Board had been furnished copies to the letter. She said Mr. Lindsey said his mother has cancer, but there is no mention of that in the letter. She said she works in the medical field and notes that the word "syndrome" is misspelled. It could be a typographical error but there are two or three missing letters from that word. She has Osteopenia and she is fine. Her father has chronic pain, is 74 years old and works everyday. He also has hypertension. She wonders how far the Board investigates actual medical needs.

Mr. Hardwick said the Board is not an investigative board. They look at "face value" at the issue and what the ordinance says and whether or not someone does have a valid appeal against that. They are told they are to take a "common sense" approach to each issue that is given. They have to think about precedent, what they do for this person. They do not want someone to address what they have done for someone else. They have to be very careful not to get into that situation. This is a compassionate group and feels a concern for the mother in this situation but there are a lot of other issues regarding this application with questions to be asked. The Board does not investigate.

Ms. Jackson said she does have compassion. She took care of her in-laws before they passed away, and she will be there for her parents when they cannot take care of themselves. She does not want to set a precedent in this situation.

MOTION

Mr. Hardwick made a motion to deny Application #08-07S. Mr. Perdue seconded the motion.

Mr. Hardwick addressed the issues he had concerning this application. Mr. Lindsey said he would comply within 30 days if that were the law. He was issued a CO in October and was notified in the fall regarding the non-compliance. He did not move at all but started fighting to keep the trailer. Evidently he is presently renting the trailer to someone other than his mother. His defense is that he wants to put his mother in the trailer. His mother is still not there after 8 months. The issue with the whole thing is that the first mistake was an invalid site plan that was given to the County. He has feelings for the ailing mother but this appears to be an “after the fact” situation and the Appeals Board has been put between “a rock and a hard place”.

Ms. Cannon said she hears the concerns and she feels for both sides. It would be a much easier decision if his mother was in that place right now. That one particular point really shines like a neon sign. If it was that important that you are going to hire a lawyer to go after the County, then my mother would be in that location now.

Ms. Phinazee said with a special exception, the only thing the Appeals Board does is make a recommendation to the County Commission.

Mr. Hardwick said the motion on the table is for denial of Application #08-07S. He called for the vote.

The motion passed with Ms. Cannon, Mr. Hardwick and Mr. Perdue voting for the motion and Ms. Phinazee voting against.

Everyone present was advised that the Board of Commissioners would consider this application on May 22, 2008.

MINUTES

Ms. Cannon made a motion, seconded by Ms. Phinazee, to approve the minutes of the April 10, 2008 meeting. The motion passed with Ms. Cannon, Mr. Hardwick, Mr. Perdue and Ms. Phinazee voting for the motion.

ADJOURN

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

Doug Hardwick – Chairman

Yvonne M. Langford - Recorder