

SPALDING COUNTY APPEALS BOARD
Regular Meeting
April 9, 2009

The Spalding County Appeals Board held its regular monthly meeting on April 9, 2009 at 7:00 P.M. in Room 108 of the Spalding County Courthouse Annex. Members present were: Charles Perdue, Vice-Chairman, presiding; Michelle Cannon; Bryan Clanton; Gail Hackbart; Richard Ingram and Allan McCallum. Doug Hardwick was not present.

Also present were: Cindy McDaniel, Planning Technician, Newton Galloway, Zoning Attorney and Yvonne Langford to record the minutes. Chuck Taylor, Community Development Director was not present.

Mr. Perdue 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 #09-02V: Lift from the table – T. D. Baxter, Owner – 137 School Road (1.72 acres located in Land Lot 107 of the 3rd Land District) – requesting a Variance from minimum lot area, front yard setback, side yard setback and rear yard setback in the C-1B District.

MOTION

Ms. Cannon made a motion to lift Application #09-02V from the table. The motion carried on a second by Mr. McCallum with Ms. Cannon, Mr. Clanton, Ms. Hackbart, Mr. Ingram, Mr. Perdue, and Mr. McCallum voting for the motion.

Thomas Baxter – 1500 Tara Place – Hampton, Georgia

Mr. Baxter said he had some new information that he wanted to present. He reviewed the history of the application. Approximately six months ago he attended a Planning Commission meeting and explained to them why he wanted the zoning change, and they recommended denial of the zoning change. Then he attended the Appeals Board meeting requesting the variance. The Appeals Board did not want to vote on the variance until the County Commission had voted on the zoning change and it was tabled. The County Commission felt the zoning change was appropriate to allow him to rent the building, and they voted 5-0 to approve the zoning change. When he returned to the Appeals Board his request was denied, which he did not understand. He visited his Commissioner, Mr. Goss and he was confused. He then visited Commissioner Phillips and he did not understand either and talked he talked to some of the members of the Appeals Board. It was decided that he would be allowed to appeal again without having to pay the fee again. That is going to be his next appeal regarding why people have to pay \$500 to appeal. That will be next month. When he returned to the Appeals Board, it was tabled again to allow the members an opportunity to discuss this with their County Commissioner.

Mr. Baxter gave an overview of his project and the application as presented at the previous meetings. He said Mr. Ingram had some concern regarding the structural integrity of the building. He had an engineer to make certain the facility was sound. He furnished information from the engineer verifying that the structure was sound. He is not asking for a permit to increase the size of the building. The additional information he had was regarding a tract of land across Highway 19/41 from his office behind the Sunnyside Post Office. This tract is .86 acres and has five businesses on the site. He just wants to have two businesses on his lot which is .87 acres. He is not complaining about their business, but he is hoping the Board will see that he is trying to

save his business. He is trying to add value and provide a facility for another business to come into the County. He does not want to add anything and he has done everything the Commissioners asked him to do.

Mr. Galloway said the Appeals Board is already very familiar with this and the Staff recommendation has not changed. He did want to address two points. Mr. Baxter raised the issue regarding the fee. That fee is set to cover the expense involved with getting the sign placed, to cover the staff cost involved, expense of the Appeals Board and the expense of the notice being published in the paper. Mr. Galloway said he is not familiar with the businesses behind the Sunnyside Post Office, but he does know that the property is in the City of Sunnyside and is in their jurisdiction. The decision regarding the application now rests with the Appeals Board.

Ms. Cannon said she does know what decision the Board will make regarding this application, but she would like to make a comment. Mr. Baxter said if he is given this variance, he will be a good steward of the property. Ms. Cannon said she does not doubt that Mr. Baxter is a person of integrity and would do what he says, but the variance does not rest with Mr. Baxter, it rests with the property. It is not about Mr. Baxter, it will exist beyond him. It is something that once it is granted it can no longer be controlled. If it is denied, it will not be Mr. Baxter that is being denied but the "dirt".

Mr. Perdue said he feels Mr. Baxter is a very nice person and this is nothing personal but this decision is for the whole county. His concern is the size of the property with two businesses.

Mr. Ingram said he has done a good job presenting the case and it is not personal.

Mr. Baxter said he does not understand why the Board wanted to wait until the Commissioners had voted to make a decision and now they are against the variance.

Ms. Cannon said there was a zoning application that the Commissioners had to consider. If the Commissioners denied the zoning request, there was only one variance and that was lot size. When the Commissioners approved the zoning request, it created four variances.

Mr. Baxter asked what the purpose of the ordinance was.

Mr. Galloway reviewed the reasons that ordinances are enacted and addressed the position Mr. Baxter is in because he purchased a property that had two buildings. The previous owner used both facilities for one business, and Mr. Baxter only needs one building.

Mr. Ingram asked Mr. Baxter what business he wanted to put in the facility. He reviewed the businesses that had called him wanting to rent the facility. Mr. Ingram then asked what the building was being used for at the present time. Mr. Baxter said a friend of his was using the building for storage of vehicles. On question, he confirmed that he was being paid for the use of the building.

MOTION

Ms. Cannon made a motion to deny Application #09-02V. The motion passed on a second by Mr. McCallum with Ms. Cannon, Ms. Hackbart, Mr. Ingram, Mr. Perdue, and Mr. McCallum voting for the motion and Mr. Clanton voting against.

Application #09-03V: Shirley Hendrix, Executrix for the Estate of J. H. Hendrix, Owner – John P. Joiner, Agent – 34.34 acres on Beasley Road located in Land Lot 290 of the 3rd Land District – requesting a Variance from minimum frontage width in the AR-1 District.

John Joiner 1127 Pine Valley Road

Mr. Joiner said the subject property was owned by Mr. J. H. Hendrix from September 1954 until his death in 2008. His will was drawn several years ago prior to the current zoning ordinance. In the will, he left his wife, which was his second wife, two acres of land with the house with the balance of the property going to his son. The major problem arose because the tract of land which was approximately 37 to 38 acres only had 347 feet of road frontage which is not sufficient to have 2 tracts with 200 feet each of road frontage. If the will is followed, there would be two non-conforming lots; the house lot, which would only have two acres and the other lot without sufficient road frontage. In an effort to minimize the impact, the son has agreed to allow his step-mother to have three acres of land so it meets the minimum lot size. This leaves the road frontage issue. Mr. Joiner reviewed the property in the area identifying that they have the same issues and do not conform to the zoning ordinance. If this application is granted, it would not be out of character in the neighborhood. The heirs of the estate were faced with a big problem because the will was made prior to the current zoning. They have considered numerous possibilities to resolve the problem and this is the one they feel impacts the zoning ordinance the least. There are no plans to develop the property; they are trying to resolve the issues created by the will. He requested the Appeals Board to grant the application.

Discussion was held regarding the flood plain that covers a majority of the property. There were several options that were discussed. Mr. Joiner noted that the location of the well created the reason that she needs as much road frontage as has been given to her. The well is located a distance from the home, and the additional road frontage is needed to put the well on her property. Any less frontage would place the well on the stepson's property and create the need for her to have an easement for use of the well which she does not want. The son has respected her wishes.

Mr. Galloway said that Mr. Taylor had prepared the Staff Report and the recommendation is for denial noting that the variance request goes beyond the minimum necessary to afford relief and constitutes a grant of special privilege inconsistent with the limitations on other properties within the same zoning classification. That goes with the issue of whether or not the variance is greater than is actually needed. Mr. Taylor's opinion is probably that he feels the variance is more than she needs. He does not read Mr. Taylor's report to mean that some variance would be inappropriate. There are circumstances where variances have to be granted dealing with cases of divorce and property division based on wills. The variance that would be minimally required would have been 54'. Since it was beyond that, he interprets what Mr. Taylor wrote as that it should be denied. If the variance had been for 54', he is not certain that Mr. Taylor's opinion would have been the same.

Mr. Joiner was asked if there would be an objection to tabling until Mr. Taylor returns. Mr. Joiner responded that he did not have a serious objection but they would like to get this resolved if possible.

MOTION

Mr. Clanton made a motion to approve application #09-03V. The motion passed on a second by Mr. McCallum with Ms. Cannon, Mr. Clanton, Ms. Hackbart, Mr. Ingram, Mr. Perdue, and Mr. McCallum voting for the motion.

MINUTES

Mr. Clanton made a motion, seconded by Ms. Cannon, to approve the minutes of the March 12, 2009 meeting. The motion passed with Ms. Cannon, Mr. Clanton, Ms. Hackbart and Mr. Perdue voting for the motion and Mr. Ingram and Mr. McCallum abstaining because they were not present.

ADJOURN

The meeting was adjourned on a motion by Ms. Cannon and a second by Mr. Clanton with Ms. Cannon, Mr. Clanton, Ms. Hackbart, Mr. Ingram, Mr. Perdue, and Mr. McCallum voting for the motion.

Doug Hardwick – Chairman

Yvonne M. Langford - Recorder