

SPALDING COUNTY APPEALS BOARD
Regular Meeting
March 13, 2003

The Spalding County Appeals Board held its regular monthly meeting on March 13, 2003 at 7:00 P.M. in Room 108 of the Spalding County Courthouse Annex. Members present were Dennis Richardson, Chairman, presiding, Jon Baird, Ray Browning, Keith Dryden, Bobby Hart, and Greg Pruitt. Charles Heggie and Mose Stogner were not present.

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

Mr. Richardson called the meeting to order and introduced the members of the Appeals Board. He 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 #03-03A: Elzie C. Whitehurst, Owner – Jack L. Park, Jr., Agent – 452 Kilgore Road (5.333) acres located in Land Lot 124 of the 3rd Land District) – appealing the decision of Administrative Officer not allowing horses in the R-2 District.

Mr. Jack L. Park was present to address the Board regarding this application. He came forward, was sworn, stated his name and gave his address as Molena, Georgia.

Mr. Park said the decision by the Senior Planner will cause the owner to have to remove her pets. The zoning ordinance, as applied in this situation, deprives the property owner of equal protection of the law under the United States and Georgia Constitutions. Her pets do not fall within the meaning of livestock just as a dog or cat does not. The zoning ordinance would prevent a fishpond in the R-2 zoning which is an agricultural use of the property. The ordinance also permits retail selling of agricultural products; however, the ordinance prohibits the keeping of a miniature horse as a pet because horses are interpreted as livestock. There is no a rational basis for distinguishing between the uses of an agricultural fishpond, selling agricultural products, and having these miniatures as pets. The owner's pets fit within the definition of a domestic animal. It is their custom to live in and about the habitat of humans. The only reason such pets do not fit the definition of a domestic animal is the Senior Planners reliance of the second sentence defining domestic animals which excludes livestock. The owner's pets do not fall within the definition of livestock as such animals are not raised for food. He read the definition of livestock from the UDO. Ms. Whitehurst's animals are raised to be pets. The reasons for prohibiting livestock in the R-2 District do not apply in this particular case. They do

not attract flies or other insects and they do not produce pungent odors generally associated with livestock. Mr. Park presented petitions from neighbors and property owners that did not object to these animals. He also presented pictures of the animals. Ms. Whitehurst has 5.33 acres of land with 200 feet of road frontage. Subsequent to being notified that she was in violation of the ordinance she has completed a fence in the back of the property and the horses are not visible from the road in that area. She intends to keep the horses in this area. These horses are not larger than a German Shepard dog. They are small and they are full grown. They are bred to be small. These are pets.

The following are comments from people present to address the Board regarding this application. They each came forward and were sworn.

Robert Bailes – 17025 Wildwood Road

He has raised miniature horses for 15 years. They are pets. It is not like large horses that can be a nuisance. Most average sized dogs are larger than these animals. The County allows them to run loose and has no problem with them running loose. These miniature horses are confined and cared for. They have shelter and are not a nuisance to the neighborhood. They do not bark, do not dig out, do not bite anyone and do not chase cars. They are a pet. He has had 100 of them and has never considered them livestock rather than a pet. He presented pictures of miniature horses with children. They can be trained to be a “guide dog” and have been allowed in a store as a guide dog. That makes it a pet. They weigh approximately 150 pound, full grown. Most of the ones that he is familiar with are in Florida and in the New York area.

Mr. Hart said the American miniature horse association does not have anything about them being “guide dogs” on the website.

Mr. Bailes said they do not because this is a recent program. The association has not developed that as part of their program. They work more toward the exhibiting and education about the animal, putting on shows. In the website you will see many instances where they are using them for rehabilitation for elderly people and children. It is a pet. They are using these animals to help people.

Chad Riegel – 2431 Old Atlanta Road

He said his children are in the pictures that Mr. Bailes has just shown. He trusts his children with the miniature horses as pets more than most large dogs. He lives across the road from Mrs. Whitehurst and has no problems with the pets in his yard. There are more problems with dogs in the neighborhood.

Jimmy R. Rainey - 204 Ashford Drive

He is the adjoining property owner. He was not aware of the horses being there until he got the letter. There are bigger dogs in the neighborhood that give more problems than the horses. They are out of sight and out of mind. He has no problem with them.

Elzie Carolyn Whitehurst – 452 Kilgore Road

Ms. Whitehurst is the applicant. There was a miniature horse that was a guide horse from North Carolina that was brought to Atlanta as part of his training and rode Marta. She had pictures showing them in shopping malls and escalators. They are doing everything that guide dogs do. She enjoys her animals.

Kimberly Smarr – 478 Kilgore Road Apartment A

The horses are right out her back door. She does not have a problem with the horses and her children like to watch and play with them all the time.

Mr. Dryden asked Ms. Whitehurst how long she had owned the horses and if she had checked into the zoning before she purchased the land.

Ms. Whitehurst said she had not had the horses long because she just moved into the area in September and got the horses then. She had purchased the land to use for full size horses and they died. She became interested in the miniatures when she saw them on television. They are wonderful. She did not check the zoning. She had no idea they were not permitted.

Mr. Hart said he had talked to a vet and he advised that they were taught that dogs and cats were companion animals and all other domesticated animals were farm animals. He studied the website of the American Miniature Horse Association and the International Miniature Horse Association and both classify them as equines. The dictionary defines them as resembling a horse and as a horse. The American Association of Equine Practitioners treats every kind of animal from a small horse to the big horses and do not differentiate between them because they consider them all as horses.

Discussion was held and it was noted that the only issue regarding this application is whether or not these animals are considered horses. It was determined that these were horses no matter what size they are.

MOTION

Mr. Hart made a motion to deny Application #03-03A. The motion passed on a second by Mr. Dryden with Mr. Baird, Mr. Browning, Mr. Dryden, Mr. Hart, Mr. Pruitt, and Mr. Richardson, voting for the motion.

Mr. Richardson advised the applicant that the appeal had been denied and the Board supported the decision of the administrative officer.

Application #03-05V: Sam Smith Homes, Inc. Owner – 104 Pecan Point (1.19 acres located in Land Lot 119 of the 2nd Land District) – requesting a Variance from minimum lot width in the R-1 District.

Sam Smith – 200 St. Gabriel Way – Fayetteville, Georgia – was sworn
Mr. Smith presented a plat of 19-lots in The Orchards Subdivision. He requested a variance on lot #17. The houses sell for between \$145,000 and \$180,000. The lots are all 1 acre or larger. Lot 17 is 1.19 acres with 95.5’ on the curb. Lots 16 and 18 are on a 50-foot setback. If he puts lot 17 on the 125’ then this house would be looking at the back of the houses on lots 16 and 18. He is requesting a 50’ setback for the building line. It will keep it in line with the other houses in the subdivision. He will be able to maintain the property side yard setbacks.

MOTION

Mr. Dryden made a motion to approve Application #03-05V. The motion passed on a second by Mr. Hart with Mr. Baird, Mr. Browning, Mr. Dryden, Mr. Hart, Mr. Pruitt, and Mr. Richardson, voting for the motion.

MOTION

Mr. Baird made a motion to approve the minutes of the February 13, 2003 meeting. The motion passed on a second by Mr. Pruitt with Mr. Baird, Mr. Browning, Mr. Dryden, Mr. Hart, Mr. Pruitt, and Mr. Richardson, voting for the motion.

MOTION

The meeting was adjourned on a motion by Mr. Pruitt and a second by Mr. Hart with Mr. Baird, Mr. Browning, Mr. Dryden, Mr. Hart, Mr. Pruitt, and Mr. Richardson, voting for the motion.

Dennis Richardson – Chairman

Yvonne M. Langford - Recorder