

**BOARD OF APPEALS**  
**Regular Meeting**  
**Open Session**  
**March 14, 2002**

The Spalding County Board of Appeals held its regular meeting on March 14, 2002 at 7:00 p.m. in the County Commission Meeting Room #108, Spalding County Courthouse Annex. Members present were: Chairman Margaret Palmer, presiding, Keith Dryden, Charles Heggie, Mose Stogner, Frank Harris, and Delores Phillips.

Also, present were Assistant County Manager Michael E. Sabine, Zoning Attorney Newton Galloway, and Cindy McDaniel to record the minutes.

Ms. Palmer called the meeting to order, introduced the members of the Appeals Board, and gave the procedure for handling the applications.

**Application #02-01S: Lift from the table** - Billy Duncan, Owner – 3.877 acres on School Road located in Land Lot 43 of the 3<sup>rd</sup> Land District – requesting a Special Exception to allow a Class A Manufactured Home in the AR-1 District.

**MOTION**

Keith Dryden made a motion to lift from the table Application #02-01S. The motion passed on a second by Delores Phillips with Margaret Palmer, Keith Dryden, Mose Stogner, Frank Harris, and Delores Phillips.

Billy Duncan came forward, stated his name, and gave his address as 1185 School Road.

Mr. Duncan stated he would like to place a manufactured home on his property. The home would be located in the woods, and would not be seen from the road. Mr. Duncan stated he owns the property on both sides where the home would be located. Mr. Duncan stated he had spoken with several of his neighbors, and they had objections with putting the manufactured home on the property. Mr. Duncan stated the home was for one of his grandchildren would reside in home.

Mr. Dryden stated with the information provided by the County, the trend in the area was for conventional site built homes. Mr. Harris and Mrs. Phillips agreed with Mr. Dryden on the trend in the area.

Ms. Palmer stated the manufactured home would be located back in the wood, and no one would be able to see the home from the road. Ms. Palmer stated there are other manufactured homes around this property, and based on the information provided by the Community Development office, the manufactured homes appeared to be older homes, because the values are really low. Ms. Palmer stated it appears that a lot of the older manufactured homes could possibly be replaced by another manufactured home or a stick built home. Ms. Palmer stated the trend in the area is for conventional site built homes.

## **MOTION**

Keith Dryden made a motion to deny Application #02-01S. The motion passed on a second by Frank Harris with Margaret Palmer, Keith Dryden, Frank Harris, Mose Stogner and Delores Phillips voting for the motion.

Ms. Palmer advised Mr. Duncan that the Board of Appeals has recommended unanimous denial for the application, and the Board of Commissioners will consider the application on March 28, 2002 meeting at 6:00 p.m.

**Application #02-03V:** Myrtle Gilbert, Owner – 1886 Carver Road (1.291 acres located in Land Lot 87 of the 2<sup>nd</sup> Land District) – requesting a Variance from front yard setback in the R-1 District.

Gene James came forward, stated his name, and gave his address as 217 Adams Road, Meansville, Georgia.

Mr. James stated he is the son of Myrtle Gilbert. Mr. James stated Mrs. Gilbert is asking for a variance from the front yard setback of 100 feet to 70 feet due to a lake located on the property. Mr. James stated Mrs. Gilbert would like the home located away from the lake as much as possible, and by allowing the 70-foot front yard setback, this would allow Mrs. Gilbert to do so.

Mr. James stated Ms. Shirey purchased 2 lots a little over a year ago. Mr. James stated each lot was a little over 2 acres each. Mr. James stated after Ms. Shirey moved onto the property, Mrs. Gilbert and Ms. Shirey decided the two would like to move closer together. Mr. James stated his aunt, Ms. Shirey, decided to sell Mrs. Gilbert a 1-acre lot. Mr. James stated when he first started talking with the County on what Mrs. Gilbert wanted to do, there did not seem to be an issue. Mr. James stated he was told all he would need to do was line the home up with the existing homes in the area. Mr. James stated his aunt's home sets 60-foot from the property line, and the one next to that one, which is lot 27, is approximately 75 feet from the property line. Mr. James stated that Lot 24 sets back approximately 150 feet from the property line.

Mr. James stated he has a building permit, septic tank permit, and a site plan for the septic tank system. Mr. James stated as he started into the process, he decided he needed to make sure, instead of just verbally being told to line up with existing homes in the area, he needed to get something in writing in case there was an issue that arose later. Mr. James stated when he requested this in writing, he was told there was a 100-foot front setback requirement. Mr. James stated at the 100-foot front setback, this would put the home real close to the lake. Mr. James stated he would like to keep the home away from the lake as much as possible. Mr. James stated he is requesting the 70-foot front setback to keep in line with existing homes in the area.

Mr. Galloway entered the meeting at this time.

David Duncan came forward, gave his name, and his address as 310 Maxwell Drive, Griffin.

Mr. Duncan stated his property is on the pond, and he is part owner in the pond. Mr. Duncan stated part of his concern is with the size of the lot. Mr. Duncan stated he did not know how much of this lot not in the water. Mr. Duncan stated he has 4½ acres with 3 acres not under water. Mr. Duncan stated if the lot is only 1¼ acre, how much is not under water. Mr. Duncan asked how much land is available to build the house on. Mr. Duncan stated the lake is currently real low. Mr. Duncan stated there was a problem with the drainpipe last year. The drainpipe had to be replaced, and has not filled up as of yet. Mr. Duncan stated a lot of people would be surprised where the water line comes to when the lake is full. Mr. Duncan stated his concern is with the septic system, and the lake being full with the size lot it is, what are the considerations for pollution into the lake from the septic system. Mr. Duncan stated originally when the whole area was developed and these lots were drawn off, the smallest lots in the area were just over 2 acres. The original covenant, which has now expired, did not allow the owner to divide a lot.

Mr. Sabine asked Mr. Duncan if the covenant was incorporated into the deed when the property was purchased, or issued separately. Mr. Duncan stated he thought it was a separate document.

William Johnston came forward, stated his name, and gave his address as 124 North Hill Street, Griffin.

Mr. Johnston stated he was representing Gary and Kathy Harper, who live on Lot 24 next to property in question tonight. Mr. Johnston stated the original lot was 200 feet wide. Mr. Johnston stated Ms. Shirey bought Lots 25 and 26, and built her house on one of the lots. Mr. Johnston stated the lot is just a little over an acre, but 1/2 to 5/8 of the lot is under water. Mr. Johnston stated there are some serious concerns about a septic system on the property. Mr. Johnston stated if Ms. Gilbert's home were located at 70 feet, Mr. and Mrs. Harper would be looking in Ms. Gilbert's backyard.

Mr. Johnston stated if the entire lot was sold, he didn't think there would be anything anybody could argue about, because of the way the zoning ordinance reads. Mr. Johnston stated in order to have a variance approved, one would have to have a hardship, and a hardship cannot be self-created. Mr. Johnston stated this hardship was self-created because everyone knows about the ordinance, whether one actually knows about it or not, the laws states you know about it if it is published and has been adopted. Mr. Johnston stated Mrs. Gilbert knew what was required. Mr. Johnston stated when the lot was divided, Mrs. Gilbert created the hardship herself and would not be entitled to the variance approval.

Mr. Johnston stated he was, also, concerned with the lot size. Mr. Johnston stated a lot is defined as a parcel of land, not a parcel of real property, under single ownership occupied or capable of being occupied by one or more buildings. Mr. Johnston stated the property is not an acre of land. Mr. Johnston stated Mrs. Gilbert is being allowed to build on property that is less than an acre of land. Mr. Johnston stated land means actual dirt, and doesn't mean a lake. Real property would be a lake. Mr. Johnston stated Mr. and Mrs. Harper does not want the variance granted, and feels the variance cannot be granted because the hardship is self-created. Mr. Johnston stated he doesn't feel a house could be

put on the property anywhere because the lot was not a lawfully existing lot at the time the ordinance was adopted.

Mr. Johnston stated under Section 411(B), the variance must not cause substantial detriment to the public good. Mr. Johnston stated detriment would be done, because of possible contamination of the lake.

Ray Lisle came forward, stated his name, and gave his address as 1611 Beville Drive.

Mr. Lisle stated he moved into the area in 1973. Mr. Lisle stated he takes care of the lake for the neighbors. Mr. Lisle stated he has a concern of the lake becoming contaminated.

Donna Lawson came forward, stated her name, and gave her address as 308 Maxwell Drive.

Ms. Lawson stated she has 3 concerns: 1) property values, 2) contamination of the lake, and 3) her dad was the one who developed the subdivision, and cut into large lots for privacy of the neighbors.

Mr. James stated nothing would be done to contaminate the lake. Mr. James stated the site plan and perk test has been completed. Mr. James stated he has tried his best to conform this lot and make this lot work for everyone. Mr. James stated if the home sets back at the 100-foot setback, the home would be about 15 feet from the lake. This is the reason Ms. Gilbert is asking for the variance.

Tony Head came forward, stated his name, and gave his address as 1613 Beville Drive.

Mr. Head stated he is here tonight to show support for his neighbors. Mr. Head stated he has a concern with the contamination of the lake, and where the septic system would be located on the property.

Mr. Sabine stated the staff report is located inside meeting packet. Mr. Sabine stated Jennifer Reynolds handled the staff report prior to her departure. Mr. Sabine stated after reviewing the file, he does believe the variance, if granted, would indeed cause substantial detriment to the public good of the neighborhood. Mr. Sabine stated due to the fact that the granting of the variance would cause substantial detriment, as indicated by the neighbors and Attorney Johnston, that denial would be in order based on the criteria established under Section 411 of the UDO.

Mr. Galloway stated this lot was first brought to his attention when the lot was going through platting. Mr. Galloway stated Ms. Reynolds report deals with the platting of the lot and the underwater acreage of the lot. Mr. Galloway stated Ms. Reynolds report accurately details what occurred at the time, and what the applicant was told. Mr. Galloway stated Ms. Reynolds recommendation, at the bottom of the staff report, deals with whether this was a self-created hardship. Mr. Galloway stated the ordinance defines

a lot as stated by Mr. Johnston. Mr. Galloway stated a lot does have to consist land, which can support a structure.

Mr. Harris stated the process for allowing variances are, in fact, set up to take care of people who do have unforeseen problems. Mr. Harris stated as much as this variance would be helpful to the petitioner, this is a self-created hardship. Mr. Harris stated he could not see how the Board of Appeals could remotely entertain granting the variance if the Board of Appeals follows what constitutes the reason to grant a variance. Mr. Harris stated if a self-created variance were approved, this would set a precedent for other self-created hardships.

Ms. Palmer stated if the variance is granted at 70 feet, Ms. Shirey's sister would still be 10 feet behind the beginning of her sisters house. Ms. Palmer stated Mrs. Gilbert would be in front of Mr. Harper's house even if Mrs. Gilbert's house would be at 70 feet or at 100 feet. Ms. Palmer stated if the lot is a buildable lot, and Mrs. Gilbert would like to put a 1,750 plus square foot house, Spalding County should be thankful. Most of the houses coming before Spalding County are 1,100, 1,200, and 1,300 square feet with no garage/carport. Ms. Palmer stated if the house is allowed to be built at 70 feet, there would still be a good bit of land before the land starts falling off into the lake. Ms. Palmer stated if the house were to be built at 100 feet, the house would be back in to the lake. Ms. Palmer stated Ms. Gilbert's porch would actually be over into the lake. Ms. Palmer stated setting the house at the 100-foot setback would not be satisfactory especially with having to work a septic tank and a 1,750 plus square foot house onto the property. Ms. Palmer stated if a house were to be built on the property, then allow the variance to come up to the 70 feet to keep Mrs. Gilbert's house away from the lake. Ms. Palmer stated she did not feel a variance for the setback would be a problem due to other houses that are staggered in the area. Ms. Palmer stated by not granting Mrs. Gilbert a variance, Spalding County may be putting Mrs. Gilbert in the lake and causing the pollution the neighborhood was concerned about.

Mr. Dryden asked Mr. James if he had to specifically show on the site plan where the home would be located. Mr. James stated yes. Mr. James stated he asked the question on a buildable lot how much property actually had to be dried. Mr. James stated he was told all he had to do was line the home up in the front with existing houses.

Charles Heggie entered the meeting at this time.

Mr. Dryden stated he did not feel that the issue of the septic tank is valuable. Mr. Dryden stated the County wouldn't let anyone put septic lines right at a lake. Mr. Dryden stated he agrees with Mr. Harris as far as the precedent setting, whether or not this was knowledge prior to the purchase. Mr. Dryden stated Ms. Palmer brings out a valid point of other homes in the area that are closer to the road. Mr. Dryden stated he completely throws out the issue on contamination of the lake.

Mr. Johnston stated a variance is a permit, issued by the Board of Appeals, which allows use of a parcel of land in a way that varies from requirements for the district in which the

property is located. A Variance may be granted *only* in an individual case where a hardship would result if all of the requirements of this Ordinance were applied stringently to a particular piece of property. A hardship means that reasonable use of the land is not possible if all of the requirements of this Ordinance are to be met. The hardship cannot be self-created such as: 1) a lot purchased with the knowledge of an existing restriction.

Mr. Johnston stated this was a lot already 200 feet wide. Mr. Johnson stated he did not know why Ms. Shirey decided to subdivide the lot in half, but she can't do that. Mr. Johnson stated there is no question that a variance can be approved for this request. Mr. Johnston stated an injunction would be filed with the Board of Health and Spalding County if a permit and a variance is granted. Mr. Johnston stated he did not feel a variance could be granted since the request is a self-created problem.

Mr. Galloway stated the Board of Appeals decides on what constitutes a variance and what constitutes a hardship. Mr. Galloway stated the code, in the UDO, sets up the factors for a granting a variance. Mr. Galloway stated if the Board of Appeals makes an error or Mr. Johnston feels the Board of Appeals has made an error, the Board of Appeals is subject to be taken up on an appeal. Mr. Galloway stated there is a procedure for filing an appeal.

#### **MOTION**

Frank Harris made a motion to deny Application #02-03V. The motion passed on a second by Mose Stogner with Mose Stogner, Frank Harris, and Delores Phillips voting for the motion, and Keith Dryden and Margaret Palmer voted against the motion with Charles Heggie abstaining.

Ms. Palmer advised Ms. Gilbert that the Board of Appeals had denied her variance application, and she would be receiving a letter from the Community Development office.

**Application #02-04V:** Village Partners, Inc., Owner – 1328 Cowan Road (0.79 acre located in Land Lot 98 of the 3<sup>rd</sup> Land District)- requesting a Variance from front yard setback in the R-4 District.

John Mills came forward, was sworn, stated his name, and gave his address as 118 Shato Terrace, McDonough, Georgia.

Mr. Mills stated he is applying for a 50-foot setback instead of a 70-foot setback on Cowan Road in the Sherbrooke Woods Subdivision on Lot 130. Mr. Mill stated the reason for the request is that the 100-year flood plain encroaches the back of the property where the house would be sitting. Mr. Mills stated by moving the house forward 20 feet, this would allow ample room to build the type of house without having to downgrade. Mr. Mills stated if the house is moved to the left too far, there is a sewer easement, and if the house is moved to the right, encroachment of the 100-year flood plain is more.

Mr. Sabine stated he wished to briefly recount the history of this development to differentiate between this application and the last application. Mr. Sabine stated the lots were platted back in the 1980's. The current flood maps date back to 1991, so the platting of the lots would have pre-dated the current flood maps. Mr. Sabine stated he is not aware of any flood maps that were before that time that involved Spalding County. Mr. Sabine stated it is indeed correct that the lot was recorded prior to the production of the flood plain map series by the Federal Government. Mr. Sabine stated at the time these lots were platted, there was no subdivision ordinance in the unincorporated Spalding County. This subdivision, also, pre-dates the subdivision ordinance. Mr. Sabine stated both of those factors should be taken into consideration in receiving the application.

### **MOTION**

Keith Dryden made a motion to approve Application #02-04V. The motion passed on a second by Frank Harris with Margaret Palmer, Keith Dryden, Charles Heggie, Frank Harris, Mose Stogner and Delores Phillips voting for the motion.

Ms. Palmer advised Mr. Mills that the Board of Appeals has unanimously approved his variance application, and he would be receiving a letter from the Community Development office.

**Application #02-05V:** Matthew L. Garrett, Owner – 279A Wilson Road (4.88 acres located in Land Lot(s) 206 & 211 of the 2<sup>nd</sup> Land District) – requesting a Variance to expand a non-conforming use in the AR-1 and R-2 District.

Matthew L. Garrett came forward, was sworn, stated his name, and gave his address as 279A Wilson Road.

Mr. Garrett stated he has a small business next door to his home. Mr. Garrett stated he seeking a variance to add another shop building on the property. Mr. Garrett stated woods surround the property completely. Mr. Garrett stated he has been on the property since 1980.

Mr. Sabine stated this property is not within the Arthur K. Bolton Overlay Zone. Mr. Sabine stated staff is recommending approval of this variance. Mr. Sabine stated he had been out to the site, along with one of the County Commissioners, and feels everything is in good order, and the staff recommendation speaks for itself.

### **MOTION**

Keith Dryden made a motion to approve Application #02-05V. The motion passed on a second by Frank Harris with Margaret Palmer, Keith Dryden, Charles Heggie, Frank Harris, Mose Stogner, and Delores Phillips voting for the motion.

Ms. Palmer advised Mr. Garrett that the Board of Appeals has unanimously approved his variance application, and he would be receiving a letter from the Community Development office.

**MINUTES**

The minutes of the February 14, 2002 meeting were approved on a motion by Keith Dryden and second by Frank Harris with Margaret Palmer, Keith Dryden, and Frank Harris voting for the motion with Delores Phillips, Charles Heggie, and Mose Stogner abstaining since they were not at the meeting.

**ADJOURNMENT**

Frank Harris made a motion, seconded by Keith Dryden, to adjourn the meeting. The motion passed with Margaret Palmer, Keith Dryden, Charles Heggie, Frank Harris, Mose Stogner, and Delores Phillips voting for the motion.

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Margaret Palmer – Chairman

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Cindy L. McDaniel - Recorder