

**APPENDIX C**

**Ordinance Establishing Board of Appeals\***

**Section I.** There is hereby created a Board of Appeals, which shall be known and designated as the "Board of Appeals of Spalding County."

**Section II.** (#A-03-21 – 08/04/03)

- a. The Board of Appeals shall consist of seven (7) members, each member shall be at least twenty-five (25) years of age and registered in Spalding County as an elector for a period of at least two (2) years next preceding his (her) appointment.
- b. Five (5) of the member shall be nominated, respectively, by one of the five (5) Commissioners on the Board of Commissioners of Spalding County.
- c. The sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) members of the Board of Appeals shall be nominated and approved by majority vote by the Board of Commissioners.

**Section III.** The office of each member nominated by one of the members of the Board of Commissioners shall be numbered and designated, respectively, by the first five (5) posts (or offices) as hereinafter set out. The initial five (5) members of the Board of Appeals shall consist of the five (5) members of the Board of Appeals in existence as of March 1, 1994, each of whom held the post for the term beginning March 1, 1994, respectively, as follows:

<u>Post No.</u>	<u>Name</u>	<u>Expiration of Original Term</u>
1	Margaret Bentley	12-31-95
2	B. Frank Harris, Jr.	12-31-94
3	Johnie McDaniel	12-31-96
4	Preston Newton	12-31-96
5	Dennis Richardson	12-31-97

The terms for Post 6 and Post 7, selected by a majority vote of the Board of Commissioners shall be numbered and designated as such, respectively, and shall serve for a period of four (4) years from the date of their appointment. (#A-03-21 – 08/04/03)

**Section IIIA.** Upon the expiration of the current term for any member or upon the vacancy in any office, the member of the Board of Commissioners representing the Spalding County Commission District that has the same number as the above designated post of the Board of Appeals member, shall nominate a person, not excluding the incumbent Board of Appeals member, for consideration by the Board of Commissioners for appointment to the Board of Appeals. Such nominee shall be appointed to the Board of Appeals by the Board of Commissioners unless at least three (3) of the other members of the Board of Commissioners decline to confirm such nomination, in which event the nominating Commissioner shall nominate another person for the Post. Post 6 and Post 7 shall be filled by nomination and majority vote of the Board of Commissioners, as set out above.

After expiration of the term for the Board of Appeals Posts 1-7, all succeeding terms of each member of the Board of Appeals shall be for four (4) or less years and, as to Posts 1-5 shall coincide with the term of office of the Commissioner making such nomination. Any vacancy in Posts 1-7 of the Board of Appeals shall be filled, respectively, pursuant to the foregoing provisions for the unexpired term. Members of the Board of Appeals shall be removable for cause by the appointing authority upon written charges and after public hearing before the Board of Commissioners. The Board of Commissioners shall, from time to time, determine the amount of compensation, if any, to be paid to the members of the Board of Appeals. None of the members shall hold any other public office or position in the County, except as authorized by Section I.

**Section IV.** For the purpose of Section III of this Board of Appeals Ordinance any one or more of the following shall constitute a reason for removing an Appeals Board Member "for cause."

1. Participating as an Appeals Board Member at any regular or called meeting of Board of Appeals under the influence of intoxicants, alcohol, or un-prescribed or illegal drugs or using, possessing or for selling the same.
2. Charge and accusation for a misdemeanor which would adversely affect performance of duties as Appeals Board Member.
3. Conduct unbecoming an Appeals Board Member including, but not limited to, demeaning conduct or use of profanity or vulgar language during any open public meeting of The Board of Appeals.
4. Indictment of a felony.
5. Unauthorized use of County property, County telephones or other County communication equipment.
6. Filing false expense reports.
7. Three consecutive absences from Appeals Board Meetings without obtaining prior approval of the Appeals Board.
8. Discourteous treatment of members of the public during Appeals Board Meetings.

Charges for "removable for cause" may be made by any County Commissioner, any Appeals Board Member or by any Citizen. Any such charges must be made in writing, dated, signed and delivered to the Appointing Authority. A copy of any such charge must be mailed to the person making the charge to the Appeals Board Member against whom the charge is directed. Upon receipt of any such charge the Appointing Authority will then set a date and time for a public hearing. The County Manager will notify both the party making the charge and the Appeals Board Member against whom the charges are directed of the date, time and place of the public hearing. The Appeals Board Member against whom charges are made shall have at least two weeks' notice prior to the date set for the public hearing to prepare for the public hearing.

In the event after the public hearing, the Appointing Authority, by majority vote, removes the Appeals Board Member the Appointing Authority will then proceed to fill the vacancy for the unexpired term pursuant to the foregoing provisions of this Ordinance. The filing of each such vacancy shall require approval of at least three (3) of the other members of the Board of Commissioners as provided in Section IV of this Ordinance.

**Section V.** The Board of Appeals shall elect one (1) of its members as chairman, who shall serve for one (1) year or until he is reelected or his successor is elected. The Board of Appeals may adopt its own

rules of order and rules of procedure so long as they are not in conflict with any provisions of this article or other resolution of the Board of Commissioners. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

**Section VI.** An appeal to the Board of Appeals may be taken by any aggrieved party, who may have a substantial interest in such zoning matter, or by any officer, department, board or authority of the county affected by any decision of an administrative officer. Such appeal shall be taken within thirty (30) days after such decision has been made and issued by the administrative officer, as from time to time may be provided by the rules of the Board of Appeals, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall therewith transmit to the Board of Appeals all of the documents and evidence constituting the record upon which the action appealed from was taken.

**Section VII.** The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give notice thereof, as hereinafter provided and decide the same within a reasonable time. upon the hearing any party may appear in person or by agent or by attorney.

**Section VII'.** Applicant may request, in writing, a continuance of any matter before the Board. The Zoning Administrator shall then administratively grant the continuance provided no previous continuance has been granted to the applicant on the same matter. Any subsequent request for a continuance must be made in writing to the Zoning Administrator and approved by the Board of Appeals. No additional fee shall be required from the Applicant for any continuance granted by the Zoning Administrator. Upon the granting of any subsequent continuance by the Board of Appeals, the applicant shall pay a fee of \$100.00 to cover all costs incurred to republish the date of hearing and re-notify the affected parties.

**Section VIII.** The Board of Appeals shall have the following powers:

- a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any ordinance or resolution adopted pursuant to this ordinance.
- b. To hear and decide special exceptions to the terms of this ordinance upon which such Board is authorized or required to consider and rule upon under this ordinance; provided, however, that no use of real property, that is not permitted in the district in which such property is located, may be authorized or granted by the Board of Appeals, all as set out in this ordinance.
- c. To elect a chairman and a secretary and such other officers of said Board as its members may deem necessary and proper and to prescribe and define their duties and powers, which shall not be inconsistent or in conflict with the provisions of this ordinance.
- d. To adopt and enforce such rules and regulations, not inconsistent herewith, as such Board may deem proper or convenient and to provide rules of order for its meetings, and rules or procedure for its hearings, and to prescribe application forms for appeals to such Board requiring such data, information, maps or drawings as said Board shall deem necessary, proper or convenient to efficiently exercise its powers and perform its duties; and a majority of the members of the Board of Appeals shall constitute a quorum at all

meetings, and any business authorized to be conducted by said Board of Appeals may be transacted at any meeting of said Board at which a quorum is present.

- e. To authorize upon appeal or direct application for a variance, in specific cases, such variances from the terms of this Ordinance as will not be contrary to the public interest pursuant to the requirements of the Zoning Ordinance of Spalding County, Section 411(A). (#A-05-06, 06-20-05)

**Section IX.** In exercising the above stated powers, the Board of Appeals may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, decision, determination, requirement or provision of this ordinance, and to that end shall have all the powers of the officer from whom the appeal was taken, or the powers of the building inspector if it is an application for a variance, and may issue or direct the issuance of a permit.

**Section X.** Each appeal, application for a variance, and application for a special exception shall be filed with the Board of Appeals in writing and in the manner and with the supporting data, as provided by the Board of Appeals, with a copy thereof being delivered to the officer from whom the appeal is taken, or to the building inspector if it is a direct application for a variance, at least twenty (20) days prior to the meeting of such board at which such appeal, or such application, is to be heard. Each such appeal or application shall be accompanied by an accurately drawn plat, containing the following information:

- a. All property lines with dimensions;
- b. Location of the buildings and other structures, creeks, easements, adjacent roads and other pertinent data; and
- c. North arrow and land district and land lot in which the property is located.

**Section XI.** Each appeal, application for a variance, or application for a special exception, made to the Board of Appeals, shall be accompanied by a receipt from the Administrative Officer acknowledging payment by the appellant(s) or applicant(s) of a fee, which such fee will be established from time to time by the Board of Commissioners. Such fee is to cover the cost of giving notice and conducting investigations and of other administrative expenses incurred in the processing of appeals or applications.

**Section XII.** Upon receipt of an appeal from a decision of the Administrative Officer or Building Official, an application for a variance, or application for a special exception, accompanied by the applicable fee, the Board of Appeals shall hold a public hearing thereon and shall give notice thereof, all as provided by law, by:

- a. Publication thereof in the official organ of Spalding County at least fifteen (15), but not more than forty-five (45) days prior to the hearing date before the Board of Appeals; and
- b. Posting a notice or sign, as provided by law, not less than 15 days prior to the date of the hearing, in a conspicuous place or places on the property affected, and each such notice or sign shall contain information as to the variance requested and the date and time of the hearing before the Board of Appeals.

**Section XIII.** Any public hearing before the Board of Appeals may be electronically recorded or transcribed by a stenographer or court reporter, all as the Board of Appeals may from time to time authorize and direct; and no video or sound recording or other transcription of any such hearing shall be made unless authorized and permitted by a majority of the members of the Board of Appeals conducting the hearing.

**Section XIV.** All decisions and findings rendered by the Board of Appeals on appeals, including those appeals or applications seeking variances, shall in each such instance be a final administrative decision.

**Section XV.** Any aggrieved party or parties who may have a substantial interest in any decision rendered by the Board of Appeals on any matter, other than a recommendation of the Board of Appeals on a special exception as provided in Section 413 of the Zoning Ordinance of Spalding County, may appeal such decision to the Superior Court of Spalding County, Georgia, by filing with the clerk of such court a petition in writing, with a copy thereof served, at or before such filing, upon the Building Inspector, setting forth plainly, fully and distinctly wherein such decision is contrary to law. Each such appeal shall be filed, as provided by law, within thirty (30) days after such decision is entered by the Board of Appeals. The Board of Appeals shall therewith transmit to the Clerk of Spalding Superior Court all of the papers constituting the record upon which the action appealed from was taken.

**Section XVI.** An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals, after the notice of appeal shall have been filed within, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

\*See: Section 2405 of the Zoning Ordinance of Spalding County.

**Section XVII.** This Appendix C shall be effective March 15, 1994, the date of its adoption.

**Adopted at First Reading on March 1, 1994.**

**Adopted at Second Reading on March 15, 1994.**

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Chairman  
Spalding County Board of Commissioners  
Spalding County, Georgia

Approved As To Legal Sufficiency:

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County Attorney  
Spalding County, Georgia

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County Clerk  
Spalding County, Georgia