



**Board of Commissioners of Spalding County
Zoning Public Hearing
July 25, 2019
6:00 PM
119 E. Solomon St., Meeting Room 108**

The Spalding County Board of Commissioners held a Zoning Public Hearing in Room 108 of the Spalding County Annex on Thursday, July 25, 2019, beginning at 6:00 p.m. with Chairperson Rita Johnson presiding. Commissioners James Dutton, Gwen Flowers-Taylor and Bart Miller were present for the meeting. Commissioner Donald Hawbaker was absent from the meeting. Also present were County Manager, William P. Wilson Jr., Assistant County Manager, Michelle Irizarry, County Zoning Attorney, Steven Jones, Community Development Director, Chad Jacobs and Executive Secretary Kathy Gibson to record the minutes.

A. Opening (Call to Order) by Chairperson Rita Johnson.

PLEASE SILENCE YOUR CELL PHONES AND ALL OTHER ELECTRONIC DEVICES.

B. Invocation led by Commissioner James Dutton, District #2.

C. Pledge to Flag led by Commissioner Bart Miller, District #4.

At this time, I will recognize those citizens who have signed up to address the Board. Once your name is called, come to the podium, state your name and address for the record and make your comments. All speakers who are recognized will be allotted three minutes. No speaker will be permitted to speak more than three minutes unless the Board votes to suspend this rule.

Please direct your remarks to the Board and not to individual Commissioners or to the audience. Personal disagreements with individual Commissioners or County employees are not a matter of public concern and personal attacks will not be tolerated. The Chairman has the right to limit your comments in the interest of disposing of the County's business in an efficient and respectable manner.

D. New Business

Chad Jacobs, Community Services Director, asked that items #1 and #2 be read together and then voted on separately.

- 1. Application #19-01Z: Lift from the table** - 3981 North Expressway, LLC, Owner - Raymond Ray, Agent - 3981 North Expressway (.51 acre located in Land Lot 107 of the 3rd Land District) - requesting a rezoning from C-1, Highway Commercial, to C-1B, Heavy Commercial.
- 2. Application #19-01AZ: Lift from the table** - 4021 Hwy 19 and 41, LLC, Owner - Raymond Ray, Agent - 4019 Highway 19/41 (.42 acre located in Land Lot 107 of the 3rd Land District) - requesting a rezoning from C-1, Highway Commercial, to C-1B, Heavy Commercial.

Steven Jones, Zoning Attorney then requested that items #1 and #2 not be lifted as the Sunny Side de-annexation hearing needs to take place before the zoning on these to applications be considered by the Board. He then asked that

the two applications remain tabled until the next meeting. This will allow the City of Sunny Side to consider the de-annexation on August 20th and should the City of Sunny Side vote to de-annex then the entire property that is the subject of the applications can be considered at the hearing on August 2019.

The items were currently tabled, and consensus of the board was that the items remained tabled until the Zoning Public Hearing in August 2019.

3. **Application #19-05Z:** Marshall Grant Henry, Owner - Cecil Jackson Road (43.679 acres located in Land Lot(s) 230 & 251 of the 3rd Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to A-T, Agriculture-Tourism.

Mr. Jacobs advised that this request has uses that are part of the rezoning application that fall under the Special Exception guidelines and that application has been filed, but has yet to be heard by the Board of Appeals. The Planning Commission has already heard the rezoning portion, the Board of Appeals has yet to hear the Special Exception portion which will be heard on August 8th. Mr. Jacobs asked that this item be tabled until the end of August so that both applications can be considered at one time. This way both applications can be heard at the same time and voted on separately.

Motion/Second by Miller/Dutton to table Application #10-05Z until the August meeting.

Mr. Wilson stated that he knows there is no discussion once a motion has been entered to table; however, there are people who have signed up to speak on this application, do we hold it to the next meeting.

Commissioner Flowers-Taylor then stated that if people showed up to speak then we need to let them say what they have to say and if we still need to table the matter, we can table it.

Steven Jones stated that you are only required to have one Public Hearing, this Public Hearing has been advertised and you can allow those who have shown up to speak tonight. This will satisfy the requirement under the Zoning Procedures Law to hold a Public Hearing and then should you so choose you can simply vote on it at the next meeting, or if you so choose, you can open the floor for public comment again at the next meeting.

Spoke Against the Rezoning:

Rebecca Chambers, 35 Edgewater Drive, stated that the location was off a dirt road and the additional traffic on the road would be detrimental to the conditions of the roadway and the residents would have to deal with the deterioration of the roadway. At the last get together, at this location, there were cars parked along the dirt road, first responders would never have been able to access the property.

Rudy Mendias, Jr. 60 Edgewater Drive, expressed his concerns regarding the dirt road. He stated that his main concern is if this were to become an event center and there is only supposed to be 30 cars, what happens when it becomes more, will they have to report this to the authorities? The County isn't going to come out at 10:30 – 11 o'clock at night and count cars. He advised that he would be doing some more research and when this comes around, he hopes the Board will allow them to speak again.

Spoke in Favor of the Rezoning:

Marshall Grant Henry, the Applicant, 1357 Grant Street, Atlanta, GA advised that the reason he purchased this property two years ago was because of the seclusion and serenity of the old Girl Scout Camp. There were 6 cabins on the property, a lodge and a couple of houses. He advised that he grew up at a YMCA Camp in Florida and he feel in love with the property. It is 44 acres and he has been working with zoning for the past year and he recently had to purchase another 5 acres to have road frontage to be able to do something on the road.

He advised that he is not looking for any type of signage, he is not planning for any type of retail, he is not looking for anyone to drive up to the property and say, "hey what is this can I rent it out?" It is only going to be for groups like riding retreats or yoga retreats. He hopes to have weddings at the location. It is zoned Agriculture and the new zoning will be Agriculture/Tourism.

He advised that one of his staff members had a wedding at the location, which is the only event that has been on the property at night with any type of music. He stated that he found out after the fact that there is an outside permit process and he should have handled the event better. So, now they have a new process and if and when it is rezoned that process will be followed. There were only two cars that were outside of his property line that date.

Mr. Henry stated that part of the appeal when he first visited the property was the dirt road. He doesn't want to change it, he would prefer that it remain dirt. He likes the fact that it is a tree lined street that is gravel and dirt.

Motion/Second by Miller/Dutton to table Application #19-05Z: Marshall Grant Henry, Owner - Cecil Jackson Road (43.679 acres located in Land Lot(s) 230 & 251 of the 3rd Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to A-T, Agriculture-Tourism until the August Zoning Public Hearing. Motion carried 3-1 (Flowers-Taylor).

- 4. Application #19-04Z:** Fatima G. Inc., Owner - 4301 Newnan Road (2.491 acres located in land Lot 29 of the 1st Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to C-1, Highway Commercial.

Chad Jacobs advised this is a request at the intersection of SR 16 and Vaughn Road, there was a one time a convenience store at this location and when the intersection improvements were done, that store was taken as a result of the widening of the road. That GDOT project was completed in 2013. The applicant has since opened a small convenience store which was converted from an Italian Restaurant approximately 500 feet west of the original location 8 years ago.

The property in question is currently sandwiched in between two tracts that are currently zoned C-1. This intersection, under the new Comp Plan is one of the community crossroads designations, so the request is consistent with the Comprehensive Plan and the Future Land Use Map. What the applicant is proposing to do is rezone a portion of the AR1 tract that is sandwiched in between the two C-1 tracts and combine the three tracts and then develop a convenience store which would consist of 3000 square foot of convenience store and 2-1000 square foot retail spaces.

Staff has recommended conditional approval of the request as it is compliant with the Comprehensive Plan and the Future Land Use Map, the request is consistent with existing zoning in the area. They are recommending the following conditions:

- A revised plat combining all tracts involved with respect to the new convenience store shall be recorded prior to civil plan submittal.
- The existing convenience store located at 4319 Newnan Road shall be demolished before issuance of a Certificate of Occupancy on the proposed convenience store site.
- Acceleration/Deceleration lanes shall be provided pursuant to GDOT recommendations; and,
- All site lighting to be designed so as not to glare onto adjacent properties or right-of-way.

Mr. Jacobs then advised that the information that had been provided to him from the onset was that with the development of the new convenience store, the old convenience store would “go away.” That is why it has been included as a condition in his staff recommendation.

Mr. Jacobs stated that at the Planning Commission Meeting on June 25th, the Planning Commission recommended approval with the same conditions by a vote of 4-0. After that meeting, the applicant expressed a concern regarding the requirement regarding the existing convenience store. He would like to retain that store. Mr. Jacobs advised that the applicant is on board with building the new store, but he would like to keep the existing structure and in the future turn that into another business.

Mr. Jacobs advised that staff is standing by their recommendation with the conditions proposed with whatever direction the Board would give regarding the second condition.

Sandru Ali, property owner and Joy Scanlon, project engineer were present to speak. Mr. Scanlon, 221 E. Bank Street, advised that Mr. Ali is his client and he is representing him doing the Civil Engineering and Survey work for this project. He has been with it since the beginning trying to get it to this point. Mr. Scanlon agreed with Mr. Jacobs’ presentation.

Mr. Scanlon stated that per the Future Land Use Map, this property is designated as Highway Commercial. There is an oddity in the current zoning with the AR1

area fronting on SR16 and sandwiched by the two C-1 lots. What they would like to do is to bring all three properties under C-1 to complete the C-1 characteristic of this corner.

The zoning request doesn't give us permission to build anything at this point it is simply saying that this property is zoned C-1. Then if it is zoned C-1 we will work with staff to come up with a concept plan and civil engineering plans that will work within the zoning ordinance and development regulations.

Mr. Ali currently owns the three properties listed in the Application this evening, when we originally approached Mr. Jacobs, we thought it might be financially advantageous to combine all three tracts; however, at this time, we would like to leave the third tract as a stand alone tract that is already zoned and not part of this development. He advised that they are willing to work toward providing better access to this tract as part of the proposed development, but at this time they would like for that parcel to be removed from consideration.

Mr. Scanlon clarified that what they are requesting is that the two parcels under consideration be zoned C-1 and the proposed property will be developed within the zoning and building regulations. Their plan is to build the convenience store and driveway improvements on these two lots.

Commissioner Flowers-Taylor stated that in 2013 the property across SR16 from this property wanted to do the same thing that your client is talking about doing.

Mr. Jacobs then advised that there are plans in his office to be signed for the location across the road from this proposed convenience store. He then stated that assuming an approval recommendation from the Board, if they want to leave out the parcel with the existing building, he would advise amending the first condition to state, "revised plat combining tracts b1 and b3 per boundaries survey involved with respect to the new convenience store shall be recorded prior to civil plan submittal." Their meets and bounds description are tied to what has been submitted within our request, so what you saw in the zoning map corresponds with what the applicant had done with their boundary survey. The portion of AR that would go from AR-1 to C-1 would change on the zoning map. Then the two parcels would be combined, and they would have to do that pursuant to zoning prior to submission of civil drawings and then like with any other project we would be "off and running" with the civil design and review process. Mr. Jacobs then advised that should the request fail, then it would stay the same.

Commissioner Flowers-Taylor stated that when you look at the Future Land Use Map it shows that you have two corners that are already commercial, she is wondering why we don't just go ahead and rezone the other corner, since we have already said that we want to make the whole intersection commercial.

Mr. Jacobs advised that we should let the market take care of that in this instance as the corner being discussed currently has a house on it and he doesn't feel that the property owner would want to see their residential property be rezoned to commercial, their property taxes would probably go up significantly

Mr. Jacobs then advised that the Future Land Use Map does have the property as C-1 Highway Commercial, but the actual zoning is residential. The Future Land Use Map has that intersection designated as a Commercial Crossroads. So, 10-20 years down the road the inhabitants of the property decide they don't want to live there anymore, they want to sell the property, then the market would take care of that piece of property.

Commissioner Dutton then asked if the request was to make the entire b-1 parcel commercial, or just a portion of the b-1 parcel.

Mr. Jacobs stated that they are going to take a portion of the b-1 tract. Out of that 4.2-acre tract there will be 2.4 acres that is officially being rezoned. The remainder will be AR and will be its own separate tract.

Commissioner Flowers-Taylor stated that doesn't have a problem with the request, she doesn't feel that the request should involve the tract they are asking to be excluded. We go beyond what we are required to do when we start telling people they must tear a viable building down that is of value to them. That piece of property really has nothing to do with what we are talking about.

Commissioner Dutton disagreed with Commissioner Flowers-Taylor. He stated that builders come in and say they are going to do all this great stuff, and, in this instance, we are going to destroy the current one and we are going to build a new one and now that we are this far, we are going to keep our old store too. He has a problem with that. He has no problem with the applicant wanting to go in and build a new commercial facility that is larger and nicer than the current one, but he does have a problem with them coming in at this point in time and saying they want to keep the old "ratty one" and have a new one.

He stated that it seems that there is nothing that will lock them into a convenience store/gas station especially if there is going to be another one across the street. Going from zero to two convenience store/gas stations, he isn't sure that the market in the area will take 2 convenience store/gas stations and them both be profitable. It seems like a good opportunity to zone the larger area; however, after this is okayed, they want to say "Actually, you know what? A Dollar General should go here and that's not a gas station, we'll let the gas station be across the street and since we have this room, we can do that now."

Mr. Jacobs stated that the Board can add a condition where you can condition the approval to the conceptual plan submitted, so if there is a deviation from the plan submitted, they have to come back before this body. So, if they want to change the plan from a gas station to a Dollar General, they would have to come back to the Board of Commissioners to rezone that condition.

Commissioner Flowers-Taylor then asked if these types of requirements were placed on the zoning across the street five years ago? If we didn't, what is going to be the difference in how we treat this applicant, as opposed to how we treated the people who were zoned across the street.

Commissioner James Dutton advised that the difference is if the people want one project, but they don't want another project, we get to point at that and say, "the people here don't want it." We can choose an arbitrary reason to not approve the

zoning, but if we get a groundswell of people who come out and say, we don't want this, we can point to that and say this is why we didn't approve it.

Commissioner Flowers-Taylor stated that what she is trying to say is if you look at what we have done in the past with this same type of zoning, why are we going to put a stipulation on someone coming to us to actually make the zoning what we said the area is going to be, that we didn't place on anyone else. The people on the opposite side of the street may come to us with a permit for a gas station, but if Dollar General came in tomorrow and advised they have the money and they want to put a store at the location, they have a right to get the highest and best use out of their property. That is why she opposed to the Board having anything to do with a building they have there. We may not like what it looks like, Spalding County has a lot of buildings that are not up to code, but it is inhabitable, he is operating a licensed business out of the location so that building shouldn't bear on a new development that would be next door.

Commissioner Flowers-Taylor advised that if the Board starts picking and choosing, they are going to set themselves up for a suit. As long as the Board follows the same criteria as was followed when the people on the opposite side of the highway came with the same request.

Mr. Jones then stated that the applicant has submitted a site plan along with their request indicating their intent for this rezoning and that development. The Board could ask the applicant if they would consent to limiting the development to the site plan as proposed, that would then absolve any concerns the Board may have regarding a future objection to that condition.

Mr. Jones advised that the condition would become part of the zoning and part of the zoning ordinance, so in the future if they should decide to change any condition you may choose to impose, it is a zoning decision just like any other and it is a rezoning just like any other.

Mr. Ali, 3788 Sutton Place, Tucker, GA, advised that he is a mechanical engineer, he moved in 2000 from New York to Georgia and purchased the property at the corner of Vaughn Road and SR 16. The traffic was heavy, and the State shut down his establishment in 2013 and he was out of business for several years. He then came back, and he purchased the property with the current building on it for \$300,000 in October of last year.

Mr. Ali stated that he is going to build the store whether they give him the zoning or not, the building will simply be position on the current C-1 property. He will be spending \$1.5 million at this location and the existing building he wants to keep because he spent \$300,00 on the building.

Spoke Against the Proposed Rezoning

Opal "Elaine" Canup, 4086 Newnan Road
Wess Walden, 124 Briarcliff Road

Mr. Jacobs then stated that if the Board is in agreement with conditions 3 and 4 then condition 2 can be tailored to the concept plan as submitted and you can revise condition one instead of combining all tracts it would be the combination of tracts b-1 and b-3 pursuant to the boundary survey submitted prior to the civil plans.

Commissioner Flowers-Taylor then stated that the zoning tonight would only approve the rezoning with the stipulations that they follow through with GDOT requirements for accel/decel lane, that tract b-2 be excluded the combination of the property and that the development shall be in substantial compliance with the site plan submitted. Commissioner Flowers-Taylor stated that she feels that we need to be fair in just in how we administer these zoning practices.

Mr. Jones then asked Commissioner Flowers-Taylor to present to the applicant the proposed condition.

Commissioner Miller then stated that the staff recommendation calls for the existing store to be demolished.

Commissioner Dutton stated that the request before us has all of the properties combined.

Mr. Jacobs stated that is why in the beginning he advised the Board that condition #2 would need to be talked about. What the applicant is proposing is to leave the existing convenience store out of the consideration and the combination would then be with b-3 and b-1. Ultimately, this is up to the Board if you want to go with the conditions pursuant to the staff report.

Mr. Wilson then asked what had been recommended by the Planning Commission.

Mr. Jacobs advised that the Planning Commission's recommendation was what had been submitted.

Chairperson Johnson stated that if we are in the position where we are making improvements to the area, why would we not go ahead and make the improvement all around. If it is somewhat of an eyesore, now would be the time to make the change.

Mr. Jacobs stated that part of the condition was that a Certificate of Occupancy would not be issued until the older business is demolished.

Mr. Jones added that he does have some concerns about a condition that imposes any sort of requirement on the parcel that is not the subject of the rezoning simply because the parcel is under the same ownership; however, if the applicant consented to that condition, it would be a different story.

Mr. Jacobs stated that when the request was received it included the three parcels and the thought process and the drafting of the condition was in combing all three of the parcels and building a new convenience store, there is no need to have two convenience stores sitting on the same parcel. That is why he advised at the beginning of the meeting that the second condition may be a problem because the Applicant advised that they would like to drop that parcel out of consideration.

Mr. Jones then stated that Mr. Jacobs had drafted the condition in the way he did because he thought he had the consent of the Applicant to a condition. Mr. Jones then advised that he felt it would make the process easier if they open the floor to the applicant and asked him if he consented to the two conditions. If he does, then that makes your decision for making a motion a lot easier.

Mr. Jones then stated the conditions would read as follows:

- A revised plat combining tracts b-1 and b-3 per the submitted boundary survey with respect to the new convenience store shall be recorded prior to civil plan submittal.
- The existing convenience store located at 4319 Newnan Road shall be demolished before issuance of Certificate of Occupancy on the proposed convenience store.
- Development shall be in substantial compliance with the submitted site plan.
- Acel/Decel lanes shall be provided pursuant to GDOT recommendations.
- All site lighting shall be designed as to not glare onto adjacent properties or onto rights-of-way.

Mr. Jones advised that these are the conditions the Board has been discussing, he then suggested that they turn this back over to the Applicant to see if he would consent to these conditions to make the Board's job easier.

Mr. Scanlon asked that the conditions be repeated one item at a time:

- A revised plat combining tracts b-1 and b-3 per the submitted boundary survey with respect to the new convenience store shall be recorded prior to civil plan submittal.

The Applicant consents to this item.

- The existing convenience store located at 4319 Newnan Road shall be demolished before issuance of Certificate of Occupancy on the proposed convenience store.

Mr. Ali does not consent to this condition.

Mr. Scanlon stated that the reason they wanted to combine the parcels was because they felt it would be easier to clean up the access to the parcels, if it was one piece. Mr. Scanlon then advised that Mr. Ali's plan is to reface that building, because he wants the character of the buildings to compliment one another. The parcels were being combined to make the access better and to make the landscaping look consistent and to look good.

- Development shall be in substantial compliance with the submitted site plan.

Yes, they will retain the character of the site plan. They won't be asking for any more square footage, any more gas pumps, any more driveways, but they may need to turn the building to accommodate.

- Acel/decels lanes shall be provided pursuant to GDOT recommendations.
- All site lighting shall be designed as to not glare onto adjacent properties or onto rights-of-way.

Motion/Second by Flowers-Taylor/Johnson to include conditions 1, 3, 4 and 5 as outlined by the County Zoning Attorney.

Commissioner Miller then asked what would be done parcel #2, is it going to be liquor store?

Commissioner Flowers-Taylor stated if it is a commercial zoning you can start telling people what they can and cannot put there.

Motion failed 1-3 (Johnson/Dutton/Miller).

Mr. Jones then advised that they would prefer an affirmative action by a majority vote of the commission on any application. In other words, a failed motion to approve does not constitute a motion to deny.

Motion/second by Dutton/Johnson to deny Application #19-04Z: Fatima G. Inc., Owner - 4301 Newnan Road (2.491 acres located in land Lot 29 of the 1st Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to C-1, Highway Commercial. Motion carried 3-1 (Flowers-Taylor).

E. Other Business – None.

F. Closed Meeting – None.

XIV. Adjournment

Motion/Second by Dutton/Johnson to adjourn the meeting at 7:29 p.m. Motion carried unanimously by all.