

After Agenda

Board of Commissioners of Spalding County
Zoning Public Hearing
Monday, May 28, 2020
6:00 PM
Room 108, Annex Building

The Spalding County Board of Commissioners held a Zoning Public Hearing in Room 108 of the Spalding County Annex on Thursday, May 28, 2020, beginning at 6:00 p.m. with Chairperson Gwen Flowers-Taylor presiding. Commissioners James Dutton, Rita Johnson 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., Zoning Attorney, Newton Galloway, Community Development Director, Debbie Bell, Citizen Engagement Specialist, Rachel Conort, and Kathy Gibson, Executive Secretary to record the minutes.

I. OPENING (CALL TO ORDER) by Chairperson Gwen Flowers-Taylor.

PLEASE SILENCE YOUR CELL PHONES AND ALL OTHER ELECTRONIC DEVICES.

II. INVOCATION

Commissioner Rita Johnson, District #3 delivered the Invocation.

III. PLEDGE TO FLAG

Commissioner James Dutton, District #2, led the pledge to the flag.

IV. PUBLIC HEARINGS

Note: Persons desiring to speak must sign in for the appropriate application. When called, speakers must state their names and addresses and direct all comments to the Board only. Speakers will be allotted three (3) minutes to speak on their chosen topics as they relate to matters being considered by the Board of Commissioners on this Agenda. No questions will be asked by any of the commissioners during citizen comments. Outbursts from the audience will not be tolerated. Common courtesy and civility are expected at all times during the meeting.

V. NEW BUSINESS

- 1. Application #20-04Z: Lift from the table** - William A.B. Solomon & Janice M. Solomon, Owners - 3870 West Ellis Road (30 acres, more or less, located in Land Lot(s) 22 & 23 of the 4th Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to R-4, Single Family Residential.

Spoke in favor of the zoning request:

William Solomon, 215 Woodcreek Lane, Fayetteville, Ga.
Alexandra Solomon, 117 Barberry Lane, Peachtree City, Ga.
Alicia Solomon, 13 Hampton Place, Newnan, Ga.

Amber Solomon, 215 Woodcreek Lane, Fayetteville, Ga.

Spoke against the rezoning:

Angela Stalaus, 170 Crabtree Road, Griffin, Ga.

Craig French, 170 Crabtree Road, Griffin, Ga.

Tom Moyer, 106 Woolman Lane, Griffin, Ga.

Newton Galloway, Zoning Attorney, stated that they have worked on this extensively since it came before the Board in March. The discussions with Dr. & Mrs. Solomon are documented in the revised staff report. Additionally, Dr. Solomon's response to these meetings is included in the back up documentation for this agenda item.

Mr. Galloway stated that staff does not question anything that Dr. Solomon has presented as his intent for the property and the goal in discussions with the Solomon's was to find a way to allow them to do what they want to do with the least impact on other properties and with the least impact on the precedent set in area on zoning policy.

Mr. Galloway then stated that staff had gone back to the original application to review what was requested and they looked at the actions undertaken at the Planning Commission in February and the recommendation this evening is tied to the original application.

Mr. Galloway then advised that staff is recommending approval of the application not to R4, but to R2 which would require a 1750 square foot minimum, which is consistent with the application received that stated the houses would range from 1800 square feet to 2900 square feet. Staff recommends that the rezoning to R-2 be conditioned to limit the number of lots to 4 as shown on the proposed development plan that Dr. Solomon has presented and that the development plan also be a condition of rezoning.

Mr. Galloway stated that the conditions would suggest establishing restrictions for the 26-acre parcel if somebody wanted to come in and purchase that property to develop a subdivision. They would not have the ability to do it as a matter of right, they would have to come to the Board and make an application to have that condition changed in order to allow for 1 acre lot density.

Mr. Galloway stated that for the clarification of the neighbors, this is not a multi-family development class. It is a single-family class with a minimum lot size of roughly one acre if you have public water. This zoning would be limited to 4 lots and then anybody who purchased them at a subsequent time and may want to develop a subdivision would have to come back to the Board and that would be analyzed with the development trends that are in place in that area at that time.

Mr. Galloway stated that they had discovered an error in the earlier staff report. Both the R-2 District and the R-4 District both require a minimum lot width at the building line of 125', the plat shows 110' both in road frontage and at the building line. This was staffs' error and it will require a variance, but staff would ask if the board moves to approve the rezoning that it

additionally be conditioned upon granting a variance on the lot width requirement in the R-2 district from 125' to 110' and since it is the County's error staff asks that the Board direct that the variance be processed with a waiver of the variance application fee.

Chairperson Flowers-Taylor stated that the original request to the board from the Solomon's was for R-4 and the recommendation was for R-4. She is confused by the amended paperwork recommending an R-2 designation. The next thing she is concerned about is the applicant advised that the information on the plat is incorrect.

Mr. Galloway then advised that the road frontage, cumulatively is accurate on the plat is consistent with what has been stated. The minimum road frontage in both R-4 and R-2 is 75', but the minimum lot width is measured at the building line, which is at the setback and that requires 125'. So, you can have a lot that is smaller on the road frontage and could flare out somewhat to meet the 125' at the building line and it would be fine.

Mr. Galloway then stated that the lots, as laid out makes sense for what they want to do and as a general rule a variance of 10-15' is not controversial and it would make these lots comply as shown on the plat. Mr. Galloway stated that the Board could condition the approval with direction to Dr. and Mrs. Solomon to come back with a plat that is consistent with the requirements, or we could send them through for a variance for the 15' on the three front lots.

Mr. Galloway stated that staff viewed the variance application as a "clean-up" to allow Dr. Solomon's plat, as presented, to go through as initially proposed and that can be done without having to go have a new plat developed and can be completed in the next 30-45 days. Dr. Solomon has stated that they hope to be building by the summer and this can be approved within that period of time.

Mr. Galloway stated that staff is trying to take what he wanted to do in the original application and get that approved. Mr. Galloway stated that staff views Dr. Solomon's current design as being better, it is a coherent design that makes everything equal for the three lots involved and staff recommends approval as presented and offers a sincere apology that this was not caught. Dr. Solomon is better served to have the lots that are shown on this plat approved by means of a variance and then the design that was tendered with the original application is approved. The lots would be legal and there would be no risk that a permit would be subject to challenge because the lots did not meet a certain criteria of the zoning ordinance.

Mr. Galloway then advised that the original request presented by Dr. Solomon was for houses in the 1800 – 2900 square foot range. He discussed with Chad Jacobs the need to change the designation to R-2 due to the house size being proposed. He further stated that at the Planning Commission meeting, the designation of R-2 was discussed and the Planning Commission and Dr. Solomon agreed at that time the designation could be changed to R-2 because of the house size. That is why R-2 is being

recommended in the current staff report. If you review the minutes from the Planning and Zoning Commission meeting at March, it indicates that a designation of R-2 was agreeable with everyone.

Mr. Galloway stated that the only difference between an R-2 zoning and an R-4 zoning is the minimum square footage for a home is 1500 square foot for R-4 versus 1750 square foot for R-2. Mr. Galloway then advised if the Board wishes to rezone the property to R-4, that they take the staff recommendations and change the R-2 designation to R-4. Mr. Galloway then stated that R-2 is consistent with the elevations of the houses that were presented and is consistent with the other houses in the area which are tending to be R-2 or greater in square footage.

Mr. Galloway then advised that the condition that ties the rezoning to Dr. Solomon's site plan, would require anybody who wanted to look at this property for a speculative subdivision to come back and explain to the Board why the character of the neighborhood is consistent with one acre lots and that size of square footage house. He further stated that the better protection for the neighborhood is tied to the lot restriction, rather than the size of the house.

Dr. Solomon stated he wanted to clarify a few things with the dimension of the lots, they will not need a variance by any means. Again, the plat that was submitted was a preliminary plat, because each time you go back to the surveyor for a minor tweak, it costs, so Mr. Jacobs asked that they submit a preliminary plat of 110' and after the Board has decided, then they could make the final changes. He stated that there is enough road frontage to changes the lots to 125' feet and meet the requirements without a variance.

Motion/Second by Dutton/Johnson to approve Application #20-04Z: William and Janice M. Solomon, Owners-3870 West Ellis Road (30 acres, more or less located in Land Lot(s) 22 & 23 of the 4th Land District) requesting a rezoning from AR-1 Agricultural and Residential to R-2 as recommended by staff with the conditions as recommended by staff.

Commissioner Dutton stated that this would give the Solomons' the opportunity to develop their compound as they are proposing and alleviate the concerns of the community.

Motion failed for lack of a majority.

Motion/Second by Johnson/Flowers-Taylor to approve Application #20-04Z: William and Janice M. Solomon, Owners-3870 West Ellis Road (30 acres, more or less located in Land Lot(s) 22 & 23 of the 4th Land District) requesting a rezoning from AR-1 Agricultural and Residential to R-4 as originally requested by the applicant with staff condition: "That the rezoning of the Subject property in R-4 be conditioned to limit the number of lots to four (4). Applicant is to submit a new plat that meets current specifications for R-4.

Commissioner Dutton stated that he feels zoning in this area to R-4 sets a bad precedent for the surrounding neighborhoods, surrounding land and surrounding landowners.

Motion carried by a vote of 3-1 (Dutton).

2. **Application #20-05Z:** Haskell Sears Ward and Leah Ward Sears, Owners - Tony L. Jones, Agent - 591 Lakewood Drive (4.60 acres, more or less, located in Land Lot 158 of the 3rd Land District) - requesting a rezoning from C-1, Highway Commercial, to R-4, Single Family Residential.

Tony Jones, 1739 Honey Bee Creek Drive, Griffin, stated that this is a piece of property he is selling for the owner. Approximately 30-35 years ago someone had the property rezoned to C-1. This property is sitting in the middle of a residential neighborhood off of N. Hill Street. He then advised that it was his understanding that originally the property backing up to this lot was to be a cemetery and the plan was to have an office on this lot. It is currently spot zoned; it is a residential area with no commercial development around it. The reason for the rezoning is to place the property on the market so that someone can purchase it and place a house on it.

Mr. Galloway stated that everything that Mr. Jones presented is accurate, it is currently a spot zone and it is more appropriate to be zoned to a residential class. The staff recommendation is approval without conditions to R-4 as requested.

Commissioner Dutton then inquired as to the current zoning for the area.

Mr. Galloway advised that the current zoning on the properties around this parcel are zoned R-1, but the development in the area is consistent with an R-4 zoning.

Motion/Second by Johnson/Miller to approve Application #20-05Z: Haskell Sears Ward and Leah Ward Sears, Owners - Tony L. Jones, Agent - 591 Lakewood Drive (4.60 acres, more or less, located in Land Lot 158 of the 3rd Land District) - requesting a rezoning from C-1, Highway Commercial, to R-4, Single Family Residential. Motion carried 3-1 (Dutton).

3. **Amendment to UDO #A-20-01:** Article 2. Definitions of Terms Used - amend definition of Antenna and add definition of Wireless facility, small.

Mr. Galloway asked that the board consolidate the discussion on A-20-01 and A-20-02 and then vote on them separately.

Mr. Galloway stated that there are two ordinances for consideration. Amendment #A-20-01 changes the definition for antenna and adds a definition for wireless facility small into the UDO. Then you have Amendment #A-20-02 which provides standards for those facilities in Appendix I which is the tower ordinance.

Mr. Galloway then advised that the Georgia Legislature passed a statute to facilitate the deployment of 5G technology and that ordinance is called the Georgia Streamlining Wireless Facilities and Antennas Act and it is codified at OCGA 36-66C-1.

Mr. Galloway stated that 5G is intended to allow the user to download and have access to additional data. Data usage has dramatically increased since the time the Board approved the original cell towers. To get that done, and to allow the users to have that access, the technology has changed so you can have a smaller tower and antenna, but they have to be spaced much closer together.

Mr. Galloway then advised that the Georgia Streamlining Wireless Facilities and Antennas Act was Georgia's preparatory legislation. What they did was develop a new definition for a small antenna that is the reason it is called a wireless antenna small and they pre-empted a lot of the local government's authority to approve or disapprove, but still allow the County to get permit fees and to review plans and to make certain there are no problems with public safety and public works.

Mr. Galloway then stated that what is being presented this evening is an amendment to our tower ordinance which does the following:

- It segments the tower ordinance between the traditional cell towers which we can still approve and then it adds to that cell tower appendix a new section for the 5G wireless facilities.
- The definitions and provisions that are in Amendment #A-20-02 track the requirements of the Georgia Statute.

The bottom line is they still support co-location, they still support the use of existing facilities, which can include existing poles because the antenna is much smaller. They are allowed by the statute to locate in the right-of-way, but subject to a permit process and a review process which has been set up in this text to go through Community Development and you are able to secure compensation for the use of that right-of-way through permit fees.

Mr. Galloway stated that the County really doesn't have much discretion except to adopt an Ordinance that allows us to engage in permitting, to impose those fees and to allow us to go in if there is a problem with the tower or if there is a problem with a pole to go in and force them to correct it because it is on the right-of-way and because there is specific criteria for it.

Mr. Galloway stated that when you read through the legislation you will find that the County is not permitted to make distinctions on zoning districts, we are not permitted to make distinctions to place them outside of the right-of-way, as a general rule if there are conflicts with construction or if there are conflicts with other public facilities, we can't get them to move it. This will allow us to know who has facilities where in the County.

Commissioner Dutton then stated that what Mr. Galloway is saying is the wireless company has got the State to approve a law that forces local

communities to allow, instead of them having to lease land and pay local land owners a fee, they can just put it on the right-of-ways and not have to pay lease fees?

Mr. Galloway stated that is correct. He went on to add that under the telecom act of 1996, which was the authority to allow the cell tower facilities. Local governments were given the authority to approve or deny cell towers with more discretion than you have now.

The cell service companies began to object because people would come in and the governments would deny the applications. So, the cell companies went to the FCC and the FCC implemented policies that imposed significant limitations on the counties authority to approve or deny and this has been true across administrations irrespective of party. It has been a consistent erosion of government rights and what you see with 5G is opposed to going to the FCC they went to the State. These bills cropped up all over the country and as a result, in order to preserve the rights that you do have, we're having to implement these ordinances to at least give the county some mechanism for some local involvement in the decision making process.

Mr. Galloway then stated that one of the great ironies he has seen in doing telecom and electricity is the erosion of the premise that the local government closest to the deployment has the greatest interest and the best ability to determine what policy is appropriate for that jurisdiction. We use to call this federalism, but what has happened is these companies have desired to have uniform deployment and to eliminate the authority of the local government and both the FCC and the State Legislatures are generally in agreement. So, we are doing an ordinance that allows the county to have the authority that the State statute say the county can have.

Motion/Second by Johnson/Miller to approve UDO #A-20-01: Article 2. Definitions of Terms Used - amend definition of Antenna and add definition of Wireless facility, small. Motion carried 3-1 (Dutton).

4. **Amendment to UDO #A-20-02:** Appendix I. Ordinance to Establish Standards for Telecommunications Antennas and Towers - amend definition of Antenna, add definition of Wireless facility, small and add Provisions Applicable to Facilities Other than Wireless Facilities, Small.

Motion/Second by Johnson/Miller to approve Amendment to UDO #A-20-02: Appendix I. Ordinance to Establish Standards for Telecommunications Antennas and Towers - amend definition of Antenna, add definition of Wireless facility, small and add Provisions Applicable to Facilities Other than Wireless Facilities, Small. Motion carried 3-1 (Dutton).

5. **Amendment to UDO #A-20-03:** Appendix A. Subdivision Ordinance - Section 502:G(22) - delete private road Sunset Strip and add as "Reserved."

Mr. Galloway stated that years ago the County listed out private roads that were in existent in the County and it was determined by Mr. Wilson's office

that Sunset Strip has been dedicated and has been maintained by the County.

Motion/Second by Miller/Johnson to approve Amendment to UDO #A-20-03: Appendix A. Subdivision Ordinance - Section 502:G(22) - delete private road Sunset Strip and add as "Reserved." Motion carried unanimously by all.

VI. OTHER BUSINESS:

VII. CLOSED MEETING

Motion/Second by Johnson/Dutton to enter into an Executive Session at 7:33 p.m. Motion carried unanimously by all.

County Zoning Attorney requests an Executive Session to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. § 50-14-2(1).

Motion/Second by Miller/Johnson to close the Executive Session at 7:44 p.m. Motion carried 3-0 (Commissioner Dutton had not returned to the meeting room).

VIII. ADJOURNMENT

Motion/Second by Miller/Johnson adjourn the meeting at 7:45 p.m. Motion carried 3-0 (Commissioner Dutton had not returned to the meeting room).