

ZONING PUBLIC HEARING

A public hearing was held by the Spalding County Board of Commissioners in Room 108 in the Courthouse Annex, Thursday, February 26, 2009 beginning at 6:00 o'clock p.m., with Commission Chairman Edward Goss, Jr. presiding and Commissioners David Phillips, Gwen Flowers-Taylor, Eddie Freeman, and Bob Gilreath present. Also present were Assistant to the County Manager Paul Van Haute, Zoning Attorney Newton M. Galloway, Community Development Director Chuck Taylor and Teresa Watson to record minutes.

A. Call to Order.

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. Time allotted to speakers will be five minutes each, unless otherwise noted at the Board's discretion. No speakers will be allowed to readdress the Board without express consent from a Board member. Outbursts from the audience will not be tolerated. Common courtesy and civility are expected at all times.

B. New Business:

Commissioner Flowers-Taylor moved to amend the agenda to add after the second item of New Business a Closed Session to discuss pending/potential litigation, seconded by Commissioner Freeman. Motion carried by a 5-0 vote.

- 1. Application #09-01S:** Sharon D. Whitehead, Executor for the Estate of Michael Anthony Lloyd, Sr., Owner – Michael A. Lloyd, Jr., Agent – 97 Westwood Drive (5.11 acres, more or less, located in Land Lot 14 of the 4th Land District) – requesting a Special Exception to allow a certified medical hardship in the AR-1 District.

Mr. Taylor said the applicant requests a Special Exception to allow a manufactured home to remain on the property for a medical hardship. A statement from the applicant's doctor is included in the application. Staff recommends approval since it meets the criteria set out in the UDO, and the Board of Appeals recommends approval of the request, as well.

Motion/second was made to approve by Commissioners Phillips and Freeman. Motion/second was withdrawn subsequently to allow for protocol.

No speakers were signed for the application.

Michael A. Lloyd, Jr., 97 Westwood Drive, Griffin, Georgia

Mr. Lloyd responded to Commissioner Freeman that his grandmother who had previously lived in East Point was coming to live near him. He responded to Commissioner Flowers-Taylor that he does drive even though he has only one leg since the vehicle has an automatic transmission. Commissioner Flowers-Taylor said she had read the doctor's statement but he was obviously ambulatory, and the letter really didn't provide much information. He did not appear to her to have critical issues that require this Board to entertain this request. Mr. Lloyd responded he and his grandmother actually help each other. She asked where the hardship was in this scenario. Some discussion followed on the application that was considered awhile back for a gentleman on West Ellis Road which was declined, and in her opinion the information provided clearly indicated she could not take care of herself. She really felt that circumstance was a true hardship. She wondered where these type requests would stop; some who come are on oxygen and cannot walk more than 15-20 feet yet get denied. She has a concern over Mr. Lloyd who is 44 or 45 years old, so this hardship could remain in place for quite some time if he lives to an old age. She did not see the hardship.

Commissioner Freeman shared his feelings regarding the situation on West Ellis Road, and he knew the lady never did live on the property in the mobile home. He felt the Board was deceived on their information to begin with since he felt the property owner never intended for his mother to live there. That is not true in Mr. Lloyd's instance.

Commissioner Phillips said he would always rather err on the side of caution and not create even more of a hardship. Since Staff and the Board of Appeals both recommend approval, he was comfortable with the process.

Commissioner Flowers-Taylor felt that perhaps the process needs to be better defined if all that is necessary is to come before the Board and bring a doctor's statement. She questioned if anyone who has a disability is considered to have a hardship. There are people with no legs who get around fine and are able to do what they need satisfactorily. There are people with much greater disabilities, in her opinion, such as those with impaired respiratory function. She suggested better defining the criteria that must be met.

Commissioner Gilreath asked for a legal definition of hardship, and Zoning Attorney Galloway read the definition of hardship in the UDO, noting that the County has always been very liberal in its interpretation and application of the ordinance to people requesting medical hardships. He cited the requirement for relationship between the occupants of primary and secondary residences on the property in question. Staff has always applied liberal application to this process, as well. Additionally, they operate under the assumption that statements obtained in the process as far as medical statements and affidavits are accurate. They do follow up to determine if a hardship has ended or is continuing. Ultimately, it is based on a medical determination which is reviewed by Staff to ensure it meets criteria of the code. He read provisions of the code regarding requirements for a medical hardship, and he noted for Commissioner Gilreath that determination is fundamentally based on the medical statement. The County's ordinances favor allowing assistance to citizens who are elderly or infirmed, and they do not have to be both, when deciding on whether to allow the second residence on the property. Mr. Galloway responded to Commissioner Flowers-Taylor that this Special Exception situation is designed to be temporary for as long as the qualifying disability or condition exists. When the hardship ceases, the second structure must be removed.

Commissioner Phillips felt it was stupid for the Board to be arguing over this situation with an 89-year-old grandmother and a one-legged man. More discussion followed. While the Board may want to argue the points of its required criteria at a later time, as noted by Commissioners Flowers-Taylor and Gilreath, the issue before them tonight is for Mr. Lloyd's application. He did not feel this was the time or place to have that deliberation; the retreat would have been an ideal venue for that discussion. To make this man wait while commissioners debate the ordinance's fine points is not fair in his opinion, constituting a poor excuse for government.

Commissioner Flowers-Taylor wondered just who the hardship was for ... Mr. Lloyd or his grandmother. Mr. Taylor responded the doctor's note was for Mr. Lloyd, so Commissioner Flowers-Taylor surmised this hardship could conceivably exist for many years. She wondered if that meant someone else would move in to assist him.

Commissioner Gilreath said his major problem was that the ordinance was not plain. An ordinance that is too vague makes the commissioners' responsibilities more difficult. The code needs to be revamped so the Board can be assured it is acting correctly.

Mr. Galloway said this type Special Exception had seemed to be more problematic over just the past couple of years. He realized that in some cases, the applicants were merely trying to circumvent the restriction on having two residences on one tract, but that is not usually the case. Some have warranted more scrutiny than others.

Motion/second by Commissioners Freeman and Goss to approve Application #09-01S carried by a vote of 5-0.

2. **Amendment to UDO #A-09-01:** Article 2. Definitions of Terms Used – Section 202:H' & HH' – amend to add definition of bathroom.

Mr. Taylor advised this text amendment was developed as a result of the last round of changes made to the Personal Care Home ordinance. The addition of a definition for bathroom is simply trying to anticipate issues down the road and, while developed due to the Personal Care Home ordinance, it will have general application. Commissioner Flowers-Taylor wanted to see the verbiage enhanced to reflect that the bathroom door should have the capability of closing and locking.

Motion/second by Commissioners Flowers-Taylor and Freeman to approve Amendment to UDO #A-09-01 with the provision that it include verbiage to specify that the bathroom room should be able to close and lock.

Motion/second by Commissioners Flowers-Taylor and Freeman at 6:35 p.m. to enter Closed Session for the purpose of discussion potential/pending litigation carried 5-0.

CLOSED MEETING AFFIDAVIT

[A copy of the affidavit must be filed with the minutes of the meeting]

STATE OF GEORGIA
COUNTY OF SPALDING
AFFIDAVIT OF CHAIRMAN

Members of the Spalding County Board of Commissioners, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1.

The Spalding County Board of Commissioners met in a duly advertised meeting February 26, 2009.

2.

During such meeting, the Board voted to go into closed session.

3.

The executive session was called to order at 6:15 p.m.

4.

The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:

Yes Consultation with the county attorney, or other legal counsel, 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);

No Discussion of tax matters made confidential by state law as provided by O.C.G.A. § 50-14-2(2) and _____(insert the citation to the legal authority making the tax matter confidential);

No Discussion of the future acquisition of real estate as provided by O.C.G.A. § 50-14-3(4);

No Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. § 50-14-3(6);

No Other (describe the exemption to the open meetings law): _____ as provided in _____(insert the citation to the legal authority exempting the topic).

This the 26th day of February 2009. Spalding County Board of Commissioners

Sworn to and subscribed
Before me this 26th day of February 2009
Notary Public – Teresa A. Watson

Edward Goss, Jr.
Bob Gilreath
Eddie L. Freeman
Gwen Flowers-Taylor
David Phillips

My commission expires:
March 1, 2011

Motion/second by Commissioners Freeman and Flowers-Taylor to adjourn Closed Session and reconvene to Open Meeting at 7:42 carried 5-0.

3. **Amendment to UDO #A-09-02:** Article 5. AR-1, Agricultural and Residential – Section 503:C(8), Article 6. AR-2, Rural Reserve – Section 603:C(7), Article 7. R-1 Single Family Residential – Section 703:C(8), Article 7A. R-1A, Single Family Residential – Section 703A:C(8), Article 8. R-2, Single Family Residential – Section 803:C(8), Article 8A. R-2A, Single Family and Two Family Residential – Section 803A:C(8), Article 9. R-3, Multiple Family District – Section 903:C(8), Article 10. R-4, Single Family Residential – Section 1003:C(8), Article 11. R-5, Single Family Residential – Section 1103:C(8), Article 11A. R-6, Planned Residential Community District – Section 1103A:C(8), Article 17B. AAR, Active Adult Residential – Section 1703B:D(5) and Article 19. O & I, Office and Residential District – Section 1903:C(7) – amend to delete fence, wall, exterior lighting fixture, or other general landscaping and site development facility as accessory structures.

Motion/second by Commissioners Phillips and Flowers-Taylor to combine, for the purposes of discussion, Item #3 Amendment to UDO #A-09-02 and Item #5 Amendment to UDO #A-09-04 with direction to Staff to continue their investigatory research into the 277 violations that were complained about with photographic evidence, and return to the Board for action as so determined by the Board. These were violations brought to light before this amendment on the agenda tonight, thereby predating this change.

Motion/second by Phillips and Freeman to approve Amendment to UDO #A-09-02 carried by a vote of 4-1 with Commissioner Gilreath opposing.

4. **Amendment to UDO #A-09-03:** Article 4. General Procedures – Section 408 – Building Permits Required – amend requirements to obtain building permits and clarify cost.

Mr. Taylor advised the current ordinance allows someone with less than \$1000 in cost for construction to avert getting a building permit. This results in instances whereby some claim that materials/supplies might have been given, thereby allowing them to come in under the threshold. Also, Staff realized that there currently does not exist any permit procedure in place for demolition of a building. These text amendments rectify these situations. General discussion followed.

Commissioner Phillips moved to table Amendment to UDO #A-09-03 until more information can be provided, but the motion died for lack of a second.

More discussion was held regarding using cost as a threshold for requiring a permit, some desiring to see size of the building used instead. Also, commissioners were concerned about closing the loophole for inspecting to verify documentation provided by the applicant.

Motion/second by Commissioners Flowers-Taylor and Phillips to table for further information and to allow Staff to incorporate the concerns noted, i.e. closing the loophole and using size rather than a monetary amount of the building carried 5-0.

5. **Amendment to UDO #A-09-04:** Article 4. General Procedures – Section 404: Height of Fences and Walls in a Residential Zoning District – amend fence requirements and Section 202: Definitions of Terms Used – amend to add definition for fence.

Motion/second by Commissioners Phillips and Freeman to approve Amendment to UDO #A-09-04 carried 4-1 with Commissioner Gilreath opposing.

C. **Other Business:**

D. **Adjournment.**

Motion/second by Phillips and Freeman to adjourn at 8:15 p.m. carried 5-0.

Chairman

County Clerk

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