

SPALDING COUNTY APPEALS BOARD
Regular Meeting
January 10, 2013

The Spalding County Appeals Board held its regular monthly meeting on January 10, 2013 at 7:00 P.M. in Room 108 of the Spalding County Courthouse Annex. Members present were: Michelle Cannon, Vice-Chairman, presiding; Ed Brown; Curtis Keys; Robert Lattimore; Allan McCallum and Bill Slaughter.

Also present were: Chad Jacobs, Community Development Director; Newton Galloway, Zoning Attorney and Yvonne Langford to record the minutes.

Ms. Cannon called the meeting to order and invited anyone present that was not the applicant and wanted to address the Board on any of the applications to come forward and sign the request form.

ELECTION OF CHAIRMAN

Ms. Cannon called for nominations for a chairman.

Mr. McCallum nominated Michelle Cannon. Mr. Lattimore seconded the nomination.

There were no other nominations.

Mr. Brown made a motion to close the nominations and declare Ms. Cannon elected by acclamation. The motion passed on a second by Mr. McCallum with Mr. Brown, Mr. Keys, Mr. Lattimore, Mr. McCallum and Mr. Slaughter voting for the motion and Ms. Cannon abstaining.

ELECTION OF VICE-CHAIRMAN

Ms. Cannon called for nominations for a Vice-Chairman.

Ms. Cannon nominated Allan McCallum. Mr. Keys seconded the nomination.

There were no other nominations.

Mr. Brown made a motion to close the nominations and declare Mr. McCallum elected by acclamation. The motion passed on a second by Mr. Lattimore with Mr. Brown, Ms. Cannon, Mr. Keys, Mr. Lattimore, and Mr. Slaughter voting for the motion and Mr. McCallum abstaining.

Application #12-12A:– Donna Dollar Eubanks, Owner – 3441 Newnan Road (1 acre located in Land Lot 32 of the 1st Land district) – appealing decision of Administrative Officer to allow fowl in the R-2 District.

Sonny Eubanks – 3441 Newnan Road

Mr. Eubanks gave a history of their purchase of the property at 3441 Newnan Road in January 1980 and a history of the ownership. He declared the property to be rural and stated they feel they have a legal use for agriculture of their property by the 1988 zoning ordinance. He gave a zoning history of the property and what that zoning allowed. He further reviewed what his understanding of the usual process for changing the zoning of property. He also stated they have

had the chickens on their property continuously since the mid 80's. They have had no complaints regarding the chickens by anyone in 32 years until the complaint in October from a neighbor that is 3 houses away from their property. When those neighbors were told to remove their chickens, they filed a complaint about Mr. Eubank's chickens. Mr. Eubank's chickens have always been in completely enclosed pens and are pets. The 1988 zoning ordinance states that "accessory buildings and uses incidental to each dwelling when placed upon the same lot or parcel of land and not used or operated commercially". The key word is incidental. Their property is in a rural area and the chickens would be an incidental use with their dwelling or land. The section also has a subsection B listing prohibited uses. It does not list agriculture as a prohibited use. In the definitions in the ordinance of a non-conforming use, it states, "a non-conforming use is any building, structure, or use of land existing at the time of enactment of this article which does not conform to the regulations of the district in which it is located". Black's Law Dictionary defines incidental use as a use that is dependent on or affiliated with the land's primary use. The main use of their home is for their residence and the main use of the land has always been agriculture; gardening and chickens. They feel their use is grandfathered under the ordinance making it a legal grandfathered use. He feels the ordinances are not clearly defined and that they are ambiguous, confusing and conflicting. They feel, given the history of the property, and the vagueness and conflict of the 1988 zoning ordinance, they should be allowed to continue with chickens being allowed on their property as a grandfathered use that is legal. This decision would be fair and just.

Bill Worley – 2414 High Falls Road

Mr. Worley said he agrees with Mr. Eubanks on his reasons he is asking to be allowed to keep chickens on his property.

Jonathon Kurtz – 1120 Maple Drive

Mr. Kurtz said in the Spring of 1988, he and his wife were building a house on Brook Circle. Mr. Eubanks was helping them. Mr. Kurtz's son was born in 1984, and during this time, his wife was having a meeting at the house, and he took his son with him to visit Mr. Eubanks. At this time in 1988, Mr. Eubanks had chickens at his house.

Janet McMillan – 3455 Newnan Road

Ms. McMillan said they have been neighbors for 8 years. The chickens do not bother them. He has had chickens there ever since they have lived there. Her mother-in-law lived in the house in 1977 and there were chickens there when she lived there.

John McMillan – 3455 Newnan Road

Mr. McMillan said his parents built their home in 1977. They have known the Eubanks since they moved there in the 80's. Through his parents, they have always known the chickens were there. He was raised on a farm in South Georgia and chickens do not bother him. No animals bother him. He has never been attacked by a chicken. He feels they should be allowed to have chickens. He knows there are horses a mile closer to town and he feels if they can have horses then they should be able to have chickens.

Mr. Jacobs said the report from the staff does not include a recommendation because this is an appeal of staff action. Mr. Eubanks' historical information is accurate. This property was zoned M-1 prior to the 1970 rezoning. In the early 70's, essentially all the state highway 500' corridors on both sides of the road were zoned R-2. They received a complaint regarding the chickens on October 4, 2012. The County operates on a complaint basis, and when a complaint is filed, they have to investigate. This issue started approximately 3 lots up where a similar complaint was

filed on a similar sized property. They investigated and found the complaint to be valid and they sent a letter noting the code violation. The owner of that property filed a complaint on this property. Staff sent a notice to the Eubanks regarding their code violation and they filed an appeal. He reviewed the reasons the staff considers this property does not qualify to be grandfathered.

Mr. Galloway said this is the first appeal that has been filed in the last 7 to 8 years. He reviewed the process the county uses to investigate complaints for the benefit of the new members on the Board. The county operates on a complaint made basis. In this particular case, a neighbor complained about Mr. Eubanks when someone filed a complaint against the neighbor. In 1962 Spalding County adopted its first zoning ordinance. The rural part of the county was zoned M-1 which allowed for a residence or a “toxic waste facility”. The 1962 ordinance was 10 pages long and had three zoning classes, R-1, R-2 and R-3. Mr. Eubanks’ property was zoned when speculators/developers were “fishing” for rights to develop duplexes on the state roads. If a use in a zoning ordinance is not permitted, it is prohibited. When the Eubanks’ property was zoned to R-2, agriculture uses were eliminated. In 1970, the state zoning procedure’s law was not in place which requires notice to the property owners. It was possible to rezone property without the owner ever knowing. He feels Mr. Jacobs has made the correct decision regarding this property. Mr. Galloway said there is no issue regarding the fact that the Eubanks have had chickens since they purchased the property.

A lengthy discussion was held regarding issues Mr. Eubanks raised about his belief that the ordinance does not prohibit his use and that he is losing some of his rights. It was noted that if this appeal is denied there is very little recourse for the Eubanks.

MOTION

Mr. McCallum made a motion to uphold the decision of the administrative officer regarding Application #12-12A. The motion passed on a second by Lattimore with Mr. Brown, Ms. Cannon, Mr. Keys, Mr. Lattimore, Mr. McCallum and Mr. Slaughter voting for the motion.

Application #12-14V: David A. and Wanda D. Wood, Owners – Pilkenton Construction, Agent – 290 Sidney Drive (5.28 acres located in Land Lot 7 of the 3rd Land District) – requesting a Variance from Mother-in-law suite development standards in the AR-1 District.

Jody Pilkenton – 1284 McKinley Road – Zebulon, Georgia

Mr. Pilkenton displayed a drawing of the current plat of this property. He stated they were requesting an exception requiring that the mother-in-law suite be behind the current property. They want to be able to tie the new construction into the driveway without driving around to the back of the property. Additionally, they have plans for a pool in the back yard and this mother-in-law suite would interfere with those plans. This tract is 5+ acres and to allow this addition in the proposed location will not interfere with adjacent properties. They are additionally requesting they be allowed to increase the maximum square footage from 750 SF to 922 SF. They want to have additional living space. The square footage of the main house on the property is 3700 SF.

Mr. Jacobs said the staff recommendation is to approve the application for the relocation of the mother-in-law suite but to deny the increase in size.

MOTION

Mr. McCallum made a motion to approve application #12-14V. The motion passed on a second by Mr. Keys with Mr. Brown, Mr. Keys, Mr. McCallum and Mr. Slaughter voting for the motion Mr. Lattimore voting against and Ms. Cannon abstaining.

MINUTES

Ms. Cannon made a motion, seconded by Mr. McCallum, to approve the minutes of the October 11, 2012 meeting. The motion passed with Ms. Cannon, Mr. Lattimore, Mr. McCallum and Mr. Slaughter voting for the motion and Mr. Brown and abstaining because he was not present.

Ms. Cannon recognized Mr. Ed Brown as a new member of the Board.

ADJOURN

The meeting was adjourned on a motion by Mr. McCallum and a second by Mr. Keys with Mr. Brown, Ms. Cannon, Mr. Keys, Mr. Lattimore, Mr. McCallum and Mr. Slaughter voting for the motion.

Michelle Cannon – Chairman

Yvonne M. Langford - Recorder