



APPEAL OF DECISION OF ADMINISTRATIVE OFFICER
TO THE BOARD OF APPEALS
APPLICATION NO. _____

AGENT/DEVELOPER/CITIZEN
INFORMATION

(If not owner)

McLeRoy Rentals, LLC c/o Kirk R. Fjelstul -
Name: Smith, Gambrell & Russell, LLP

Address: _____

City: _____

State: _____ Zip: _____

Contact Person: _____

Phone: _____

Email: _____

PROPERTY OWNER INFORMATION

McLeRoy Rentals, LLC c/o Kirk R. Fjelstul -
Name: Smith, Gambrell & Russell, LLP

Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

Email: _____

APPLICANT IS THE:

Owner's Agent

Property Owner

Developer

Acreage: ±82.69

Address of Property: 1279 Maloy Rd & 2831 Williamson Rd & 2833 Williamson Rd - Griffin, GA 30224

Ordinance Section 410 provides that the Board of Zoning Appeals has jurisdiction to hear Appeals from the Administrative Officer or Building Official. Identify the decision you wish to Appeal (include name)

Demolition permit application: 2025-390

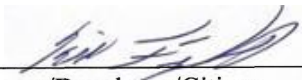
See attached statement

*Demolition Permit Applicant was Quality Construction by McLeRoy, INC

Your application to Appeal a decision of the Administrative Officer or Building Official must be filed with the Administrative Officer within thirty (30) days of the date of the decision. Please identify the date the decision was made by the Administrative Officer or Building Official and state how the decision made by the Administrative Officer or Building Official you wish to appeal will affect you.

See attached statement

Signature(s):



Agent/Developer/Citizen
Kirk R. Fjelstul - Smith, Gambrell & Russell, LLP

Property Owner Dee B McLeRoy - McLeRoy Rentals, LLC

7/2/2025

Date

Date

Spalding County Fee Schedule:

Appeal from Action of Administrative Officer: \$ 300.00

Variance: \$ 300.00

Special Exception: \$ 500.00

Multiple Parcel Rezoning: Multiple parcel rezoning of contiguous tracts will be allowed so long as all tracts are to be rezoned to the same zoning classification. All applicants owning property which is subject to the application are deemed to consent to rezoning of their property and to rezoning of any and all other tracts included within the Application. The following fees shall apply to multiple parcel rezoning applications: (#A-99-08 – 09/07/99; #A-00-11 - 07/17/00)

A. Parcel 1 - \$750.00

B. Parcel 2-5 - \$150.00 each, in addition to the fees stated in A; and

C. Parcels 6+ - \$100.00 each, in addition to the fees stated in A and B.

OFFICE USE ONLY

Present Zoning District(s): _____

Land District(s): _____ Land Lot(s): _____

Commissioner District: _____

Overly District (If applicable): _____

Date Received: _____ Amount of Fee: _____

Received By: _____ Receipt Number: _____

Application Signed off by Planning Technician: ___/___/___ Initial: _____

Application Signed off by Planner: ___/___/___ Initial: _____

LETTER OF INTENT

STATEMENT FOR APPEALS

Appeal refusal to issue a Demolition Permit for Application 2025-390 on June 3, 2025

and

Appeal of refusal to issue Recombination Plat on June 2, 2025, said Plat being dated May 22, 2025, and prepared by Terra Services Company, Inc.

Property Owner- McLeRoy Rentals, LLC .

for

±12.5 Acres of Land Located at

Plat 27 5 01010: 1279 Maloy Rd. Griffin, GA 30224, Plat 234 04002:
2831 Williamson Rd, Griffin. GA 30224, and Plat 234 04002B: 2833 Williamson Rd,
Griffin, GA 30224

Submitted for Applicant and Owner by:

I. INTRODUCTION

There are two appeals, the refusal by David Allen to issue a plat on June 2, 2025, and the refusal by David Allen to issue a demolition permit on June 3, 2025. The plat is classified as an exception to Spalding County's Subdivision Ordinance because it simply re-draws property lines but does not create new lots. It is a recombination plat, not a subdivision plat. So long as the plat does not create additional lots and is a legal lot in terms of the current (AR-1) zoning, it must be approved. Those requirements are met in this case. Mr. Allen refuses to approve the plat until a proposed rezoning for a portion of the property has been acted on by the Board of Commissioners. He does not have that discretion and the plat must be issued.

As for the demolition permit application, it is for the purpose of removing one house with a crawl space. Mr. Allen has commented on the application by requiring a soil erosion and control plan solely on the incorrect basis that removing the house and "out buildings" are spread out. He is wrong, the application is very clear that only the house is to be removed, not the outbuildings. Even the County's expert, the consulting company hired to serve as the third-party building official has approved the application. A soil and erosion control plan is only required for projects of more than one acre. The permit must be approved.

David Allen is Spalding County's Community Development Director and the administrative officer over these two matters. McLeRoy Rentals, LLC is the property owner and aggrieved party. Section 410 of the Spalding County Zoning Ordinance and Section 411 of the Spalding County Subdivision Ordinance provide that "If the administrative officer or building official executes an action which the aggrieved party believes to be contrary to this ordinance, that action may be appealed. Such an appeal must be filed within thirty (30) days of the date on which the action by the administrative officer or building official was taken."

II. FACTS

McLeRoy Rentals, LLC is the owner (“Owner”) of approximately 82-acres of property at and near the intersection of Williamson Road, Maloy Road, and Rover Zetella Road. The property is more specifically identified as Plat 27 5 01010: 1279 Maloy Rd. Griffin, GA 30224, Plat 234 04002: 2831 Williamson Rd, Griffin. GA 30224, and Plat 234 04002B: 2833 Williamson Rd, Griffin, GA 30224 in Spalding County, Georgia (collectively “Subject Property”, **Exhibit 1- Plats**). The Subject Property is zoned Agricultural Residential (AR-1) and includes a house, known as the Old Gaissert Homeplace at 2831 Williamson Road, which has been designated on the National Register of Historic Places.

In 2024, the Owner applied to rezone approximately 32.9 acres of the Subject Property to a commercial C-1 designation for the purpose of developing a convenience store with gasoline and diesel sales. The application was subsequently changed and later placed on hold as a result of neighborhood objections. It was also substantially reduced in scale to approximately 12.5 acres (**Exhibit 3- Site Plan**).

David Allen is the Community Development Director for Spalding County. As such, he is the Administrative Officer over Licensing, Planning and Zoning, Building Permits, and Environmental Services (**Exhibit 4- Spalding County’s Community Development web page: <https://www.spaldingcounty.com/departments-services/community-development>**).

On May 2, 2025, the Owner requested that the rezoning application move forward and asked Mr. Allen to place the application on the May 27, 2025, Planning Commission agenda. On May 2, 2025, Mr. Allen responded that the agenda was full and application was placed on the agenda for June 24, 2025 (**Exhibit 5- May 2, 2025 emails**).

On May 14, 2025, Mr. Allen sent the Owner an “FYI” email and copied the County Attorney, County Manager, Assistant County Manager, and the County Commissioner for the district where the property lies. The FYI email had no substantive instructions or details, but included an agenda for the May 27, 2025, Planning Commission and a copy of a draft Historic Property Preservation Ordinance (“Draft Ordinance”). **(Exhibit 6- May 14, 2025 email)**.

The Draft Ordinance includes only to three properties in the entire County, those with homes that are on the National Register of Historic Places, including the Subject Property **(Exhibit 7- Draft Ordinance)**. The Owner saw the Draft Ordinance for the first time on May 14, 2025, when the fyi email was sent. The Draft Ordinance, if adopted, would cause damage to the Owner’s property interest in multiple different ways, not the least of which is stopping the proposed rezoning.

First, the Draft Ordinance regulates adjacent property, not just historic buildings. Section 110 includes a set of architectural standards for non-residential adjacent property. The 12.5 acres where the convenience store is to be located would be divided from the Subject Property and would become adjacent to property where the historic home is located. The architectural standards require proposed commercial buildings to look like the historic home, thereby stopping the proposed development. Section 110 is targeted to apply only to the proposed rezoning because it prevents a convenience store on what is intended to be adjacent property. It has nothing to do with historic preservation.

Second, the restrictions for dividing historic property in Section 107 of the Draft Ordinance are specifically designed to prevent construction of the convenience store that is the subject of the rezoning. Section 107 requires that if historic property is divided, the historic building must be on 10-acres, and the property line must be at least 300 feet from the historic

building. Those requirements would prevent the proposed rezoning because the proposed division of the property in the rezoning application is just under 250 feet from the Home.

It should be noted that these requirements appear to be directly related to the Subject Property and the proposed rezoning. The Draft Ordinance only applies to three properties in the entire County: Double Cabins, Old Gaissert Homeplace, and Mills House and Smokehouse. Mills House and Smokehouse is already less than ten acres according to the Draft Ordinance. Furthermore, there are properties less than 300 feet from one of the other historic homes, and the property adjacent to one of the historic homes includes a street with manufactured homes, which do not look like the historic home.

On May 27, 2025, the day of the Planning Commission meeting, and solely to protect the rights of the Owner against the harm that would be caused by the Draft Ordinance, the Owner submitted 1) Constitutional Objections explaining why the Draft Ordinance violates the Owner's constitutional rights (**Exhibit 8**), 2) a proposed division and recombination plat, dated May 22, 2025 and prepared by Terra Services Company, Inc., of the 82-acres (**Exhibit 9- "Proposed Plat"**), and 3) an application for a demolition permit to remove the historic house on the Subject Property. The application is designated by the County with application number 2025-390 (**Exhibit 10-**). The County then cancelled the Planning Commission meeting (weather was the reason given, **Exhibit 11**).

The combined 82-acres of the Subject Property currently exists as three lots (**Exhibit 1**). On May 27, the morning of the Planning Commission meeting, the Owner submitted a request to divide and recombine the Subject Property into three different lots of approximately sixty-five, thirteen, and 3.3 acres (**Exhibit 9**). The Proposed Plat consists of the same number of lots as

currently exist and all three lots comply with the current AR-1 zoning (see discussion below regarding AR-1 requirements).

On June 2, 2025, Mr. Allen responded to the submission of the Proposed Plat, stating that it would not be approved because of the pending rezoning application:

[T]his plat cannot be approved until the pending rezoning application related to these same parcels is resolved as the new configuration of these lots is directly tied to the rezoning proposal and the amount of space needed to accommodate the proposed use. If the rezoning is approved, then that means the proposed lot configuration shown on the rezoning plan is approved and then the plat can be recorded.

(Exhibit 12- June 2 and June 3 emails regarding the Proposed Plat). The Owner responded to Mr. Allen and explained that there is no discretion and the Proposed Plat must be approved:

What was submitted is an exception to the definition of subdivision, based on the Spalding County Subdivision Ordinance and we request approval today. There is no discretion. The division of land does not increase the number of resulting lots and the lots meet the requirements of the current zoning (although not relevant, they also meet the requirements of the proposed zoning).

(Exhibit 12). Mr. Allen still refused to approve the Proposed Plat:

The parcels combined along the curve correspond to the same layout as the C-store concept plan. Approving this plat is effectively me endorsing the new parcel in the rezoning application before the fact (which I am not comfortable doing). The Commissioners may or may not go along with the combined parcel exceeding the area of the two parcels and borrowing from the large parcel to the northwest (approximately 3.48 acres of it) . Based on that, and unless directed otherwise by my superiors, I will await any approval of the proposed rezoning and subsequent size and shape of the parcel to be rezoned by the Commissioners.

With respect to the demolition permit application, on June 3, 2025, Mr. Allen issued a comment in the County's permit portal refusing to issue a demolition permit: "Per Section 408 N of the Code, need erosion control plan for demolition site before permit can be approved, since house and outbuildings are spread out. **(Exhibit 13- screen shot showing Mr. Allen's comment)**. However, a screen shot from the portal shows that on May 27, 2025, the Owner requested a demolition permit for the home, not the outbuildings: "[E]xisting two story single

family residential home. This is a stick built home on a crawl space with porches on the front side and rear of the home” (**Exhibit 10- screen shot showing application status**). Immediately after receiving the comment, the Owner responded that “[a] soil and erosion and control plan is not required. The permit request is only for the residential structure” (**Exhibit 13**).

Nevertheless, Mr. Allen took no further action. In fact, when the Owner inquired by phone to the County’s building official, an expert consulting company, a representative of the consultant stated that they had approved the permit, but Mr. Allen would not. That call was later confirmed in an email from the County’s expert (**Exhibit 14- June 3 emails with Charles Abbott and Associates**). In other words, the County’s expert approved the permit, but Mr. Allen refused.

III. GROUNDS FOR APPEAL

A. Mr. Allen is required to approve the Proposed Plat

Mr. Allen erred when he refused to approve the May 27, 2025, Proposed Plat because it meets the requirements of the subdivision exception to the Subdivision Ordinance. There is no discretion. The division of land in Spalding County is governed by the Appendix A of the Spalding County Code of Ordinances, entitled “Spalding County Subdivision Ordinance” (“Subdivision Ordinance”). The purpose of the ordinance is, among other things, to define terms used in the Subdivision Ordinance, to provide minimum standards for lots, and to provide procedures for administration of the Subdivision Ordinance (Sections 105A, B, and C).

The Subdivision Ordinance sets out the procedures and requirements for review and approval of “subdivision” plats, which are generally described in Section 403A:

Introduction: The procedure for the formal review and approval of a subdivision plat consists of one (1) recommended stage and four (4) required stages. These are as follows:

1. Preliminary plat stage.
2. Construction plan stage.

3. Final plat stage.
4. Recording and dedication stage.

A preliminary subdivision plat is approved by the Planning Commission and the final plat is approved by the Board of Commissioners (Section 403D). A minor subdivision plat, as defined by the Subdivision Ordinance, only requires submission of a final plat for approval by the Board of Commissioners prior to recording, effectively skipping the first two steps . (Section 403F).

The Proposed Plat, however, does not follow these procedures because it falls within a defined exception. It is a recombination plat, not a subdivision plat. This exception is for plats where lines are simply redrawn, but the number of lots does not change. Section 202 of the Subdivision Ordinance includes definitions and “subdivision” is defined as “[t]he division of a lot of record at the time of enactment of this ordinance into five (5) or more lots, building sites, or other divisions for the purpose—whether immediate or future—of sale, legacy or building development.”

There are, however, explicit exceptions of the definition of subdivision:

This definition does not include the following: a. **“The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resulting lots are at least equal to standards set forth in this ordinance”** b. The division of land among heirs by judicial decree.

(Section 202, definition QQ, emphasis supplied). The only requirements for a plat under Section 202QQ(2)(a) are that the lots were previously platted, that the recombination of lots does not result in an increase in the number of lots, and that the lots are effectively legal lots under the current zoning (AR-1).

The Proposed Plat complies with the exception to the Subdivision Ordinance. The existing three lots are all platted as identified previously, the resulting three lots in the Proposed Plat is not an increase in the number of lots, and the lots in the Proposed Plat meets the AR-1 lot

requirements (minimum three-acres, minimum width of 200 feet, depth of 100 feet, and rear/side yard depth of 25 feet, see Zoning Ordinance Section 504).

Contrary to the explicit requirements of the exception, Mr. Allen has refused to approve the Proposed Plat and on the grounds that there is a pending rezoning of 12.5-acres of the Subject Property. Alternatively, he suggests that he will not approve the plat unless directed by the County Commissioners. The plat's purpose is irrelevant and waiting for the outcome of a rezoning is not authorized (although not relevant, the Proposed Plat also meets the requirements of the C-1 zoning for the portion of the Subject Property that is part of the rezoning). Similarly, having the Board of Commissioners direct Mr. Allen to approve the Proposed Plat is not part of the process in this case. Refusing to approve the Proposed Plat is contrary to the Subdivision Ordinance and the Owner is entitled to have it approved.

B. Mr. Allen is required to approve the Demolition Permit

Mr. Allen erred in denying or refusing to issue a demolition permit because a soil and erosion control plan is not required. The demolition permit application is for removal of an “existing two story single family residential home. This is a stick built home on a crawl space with porches on the front side and rear of the home” (**Exhibit 10**). The application is only for the removal of one home on a crawl space. Mr. Allen's refusal to issue the permit is based solely his incorrect comment that a soil erosion and control plan is required “[p]er Section 408 N of the Code, need erosion control plan for demolition site before permit can be approved, **since house and outbuildings are spread out**” (**Exhibit 13, emphasis supplied**). The statement is contrary to the application, which is only for the removal a single building on a crawl space, not multiple buildings. Even the third-party expert building official approved the permit (**Exhibit 14**). A soil

erosion and control plan is only required for projects in excess of one-acre. The Owner has complied with the requirements for a demolition permit and is entitled to have it approved.

IV. NOTICE OF CONSTITUTIONAL CHALLENGE AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant and Owner respectfully submit that the denial of the Proposed Plat and the demolition permit is unconstitutional and the rules, ordinances, and administration of Subject Property owner's right to use the Subject Property, in the event of denial, constitutes an arbitrary, irrational abuse of discretion in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. The Applicant and Owner further object on those same due process and equal protection grounds to the extent opponents make statements that are unsupported by objective evidence, and evidence that is submitted without adequate notice and opportunity to respond.

Further, the failure to approve these requests would constitute a taking of private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The failure to approve these requests would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's Applicant and owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the

Fourteenth Amendment of the Constitution of the United States. A refusal to approve these requests would be invalid if it is later determined to be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

This proceeding is quasi-judicial in nature. As such, the Applicant and Owner object on the grounds that there are not clear criteria for evaluating the appeal and there are inadequate procedures for the conduct of the hearing of which the parties require notice. Furthermore, these parties object if it is determined that they did not have notice of all of the arguments and all of the evidence in advance of the proceedings so that there is an adequate opportunity to prepare and to confront witnesses or rebut evidence. Finally, these parties object to the proceedings because they are not impartial. The staff that supports and advises the body charged with making the decision is the same staff that could advocate for a position and could also present information after the hearing is closed. Moreover, a quasi-judicial proceeding is not the forum to allow subjective comments from the public and these parties object to the extent public comment is allowed. The adverse party is the County or the administrative officer rather than the public. Members of the public lack standing to comment in this proceeding.

This 2nd day of July 2025.

Respectfully submitted,