

INFORMATION SHEET FOR REZONING REQUESTS

Application # 219-01 DATE OF READING 4-16-19

REZONE FROM A-1 TO R-6

APPLICANT Brian Baxter

OWNER _____

LOCATION OF PROPERTY Trimble Hollow Rd.

Adairsville, GA.

DESCRIPTION OF PROPERTY

4.29 ACRES

THIS REQUEST COMES TO THE BOARD OF COMMISSIONERS FROM
THE PLANNING COMMISSION WITH THEIR RECOMMENDATIONS FOR:

1. Denial

STIPULATIONS:

LAW OFFICES
MCCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP

POST OFFICE BOX 1105
DALTON, GEORGIA 30722-1105

March 26, 2019

JAMES T. FORDHAM
DANIEL T. STRAIN, JR.
STEPHEN A. WILLIAMS
ROBERT H. SMALLEY, III (GA. & TENN.)
SAMUEL L. SANDERS
NATHAN D. LOCK

CARLTON C. MCCAMY
(1910 - 1993)

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(RETIRED)

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Mr. James Ledbetter
Gordon County Administrator/Attorney
200 S. Wall Street
Calhoun, GA 30701

jledbetter@gordoncounty.org

RE: Rezoning Application #Z19-01, Brian Baxter

Dear Jim:

I write to you on behalf of my clients, Mr. and Mrs. Doug Mittleider, who are residents of unincorporated Gordon County and who believe that Gordon County failed to follow the procedures set forth in its Uniform Land Development Code ("ULDC") with respect to the above zoning decision. My clients reside at 1673 Trimble Hollow Road, Adairsville, GA. 30103, which, depending upon how measurement is made per Gordon County GIS, is approximately 460 feet from the property of Mr. Baxter involved in this request.

Section 10.00.07 (D)(2) of Gordon County's ULDC requires as follows:

All applicants requesting a zoning change or variance request shall provide a copy of the application for zoning change or variance request by certificate of mailing. Notice shall be provided for: [...] Applicants requesting a zoning change shall also provide notice for all properties within one thousand (1,000) feet of the property for which the change in zoning is sought.

Because the county failed to ensure that the Applicant provided written notice on the form created by the county to my clients, who reside less than 1,000 feet from the property for which the zoning decision was sought, the February 26, 2019 decision of the Gordon County Board of Commissioners approving this requested zoning map change is defective and void and subject to challenge in the future.

The documents indicate that the application by Mr. Baxter was filed on or about January 2, 2019 requesting a change from A-1 Agricultural zoning to R-6 Manufactured House. The file further reflects that the county posted the property and ran notice in the newspaper for the public hearing before the Planning Commission. This public hearing took place February 11, 2019. Because of the large number of attendees at the meeting,

Mr. James Ledbetter

March 26, 2019

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they were notified that they could leave the meeting after the Planning Commission recommended denial of the request, but before the conclusion of the Planning Commission meeting. This fact turns out to have been important because several persons who should have been provided the notice of when the matter would come before the Board of Commissioners left the Planning Commission meeting believing the matter had been determined. Had my clients received the required notice, they would have known when the matter would subsequently come before the Board of Commissioners. Without the required notice, they were unaware that the Board of Commissioners would subsequently consider the request on February 26, 2019.

On behalf of my clients, we request that you provide assurance that the matter will be placed upon the agenda before the Board of Commissioners at its next regular meeting, which I believe will be April 16, 2019, at which time you will advise that because of the procedural deficiency in notice, the board must rescind the prior, ineffective approval, and reconsider the matter as if the prior action had not occurred. If you will agree to that process, my clients will waive this failure to provide notice on the record at the meeting, which will allow for the zoning decision to be made.

If you are unable to agree to our request, we will be forced to file a Petition for Mandamus in the Gordon County Superior Court on or before the thirtieth day following the zoning decision seeking an order of the court that the governing authority abide by its own rules. In that unfortunate instance, we will of course seek attorney's fees and costs. I find no reference to any requirement in the ULDC that such a challenge must be brought by Writ of Certiorari, so Mandamus would appear to be the proper avenue in the absence of another directive. If you believe otherwise, please advise.

Given the timeline confronting us, I would request that you let me know of the county's position in this regard by mid-day tomorrow, Wednesday, March 27, 2019. I have copied Greg Kinnamon with this letter as I am informed that he represents another land owner with respect to this request.

I am happy to discuss further with you if helpful and you may certainly call my mobile telephone after hours if needed at 706-260-5579. Best personal regards.

Very Truly Yours,

MCCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP



Robert H. Smalley, III

Cc: Greg Kinnamon, via email
Doug Mittleider, via email

**GORDON COUNTY PLANNING COMMISSION
PUBLIC HEARING
FEBRUARY 11, 2019**

The Gordon County Planning Commission held a Public Hearing on Monday, February 11, 2019 at 6:00 p.m. in the Conference Room of the Gordon County Administration Building for the purpose of hearing variance and zoning change requests. Members present were:

Randy Rule	Butch Layson
Jerry Lovelace	Nathan Serritt
Eddie Smith	

Randy Rule called the meeting to order and advised all present of the sign-up sheets available for those who wish to address the Planning Commission on any of the zoning or variance change applications.

APPROVAL OF MINUTES

A motion was made by Eddie Smith to approve the minutes of the previous meeting of January 14, 2019. Jerry Lovelace seconded the motion. All voted aye. The minutes were approved as written.

ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Ursula Richardson, Zoning Administrator for Gordon County, opened the floor for nominations for the 2019 Chairman and Vice-Chairman Positions for the Planning Commission. Butch Layson stated he wished to not be considered. Butch Layson made a motion to keep Randy Rule as the Chairman. Jerry Lovelace seconded the motion. All voted aye. Nathan Serritt made a motion to nominate Jerry Lovelace as the Vice-Chairman. Eddie Smith seconded the motion. All voted aye. Randy Rule will remain the Chairman and Jerry Lovelace will be the Vice-Chairman in 2019 for the Gordon County Planning Commission.

REZONING APPLICATION #Z19-01, BRIAN BAXTER

Chairman Rule read rezoning application #Z19-01, Brian Baxter, requesting to rezone a 4.29 acre tract located at 1776, 1780, 1784, and 1788 Trimble Hollow Road, Adairsville from A-1 to R-6. Brock Baxter represented the request for his brother explaining that the property had been reconfigured into 4 lots to place 2 more mobile homes. Area and adjoining property owners spoke in opposition to this request with concerns such as the past criminal activity of drugs and gun fire that had occurred with the existing mobile home that is a rental, children's safety, deterring future homes and developments, the wells in the area with that many more wells being drilled, and the fact that most of the area home sites are 5-10 acres or more in size. Those speaking in opposition were Tim Massey, Jimmy Doyle, Karl Hodrow, Ralph Vernon, Doug Mittlieder, Kenneth Mittlieder, and Renie Hodrow. All adjoining property owners had been notified

Butch Layson made the motion to deny the rezoning application identified as #Z19-01 from A-1 to R-6. Jerry Lovelace seconded the motion. All voted aye. The recommendation for denial was sent to the Board of Commissioners.

VARIANCE APPLICATION #V19-03, WARREN DAHL

Chairman Rule read variance application #V19-03, Warren Dahl, requesting a variance for a 3.619 acre tract located at 320 Thomason Dr., Adairsville. Mr. Dahl along with his real estate agent Becky White represented the request explaining that he had just purchased this property with an existing 2000 square foot metal structure and he had discovered that it had never been permitted prior to building and he wants to correct this and is asking for a 1500 square foot variance. All adjoining property owners had been notified.

Jerry Lovelace made the motion to approve the variance application identified as #V19-03 as requested to allow permitting of a 2000 square foot metal structure granting the 1500 square foot variance with the condition that they are in compliance with all issues with environmental health. Nathan Serritt seconded the motion. All voted aye. The variance was granted. The thirty-(30) day appeal period was explained.

VARIANCE APPLICATION #V19-04, DEON WOOTEN (owner: Buford Wilson)

Chairman Rule read variance application #V19-04, Deon Wooten, requesting a variance for a 1.50 acre tract located on Rome Road, Plainville. Mr. Wooten represented the request explaining that he had would like to build storage units at this site which is already zoned Commercial but needs a variance from the required 2 acres for Commercial zoning. All adjoining property owners had been notified.

Jerry Lovelace made the motion to approve the variance application identified as #V19-04 as requested to allow construction of storage units on the 1.50 acre site waving the required 2 acre minimum. Nathan Serritt seconded the motion. Butch Layson opposed the motion. The vote was 3-1 to approve. The variance was granted. The thirty-(30) day appeal period was explained.

VARIANCE APPLICATION #V19-05, DAVID & TERESA EVANS

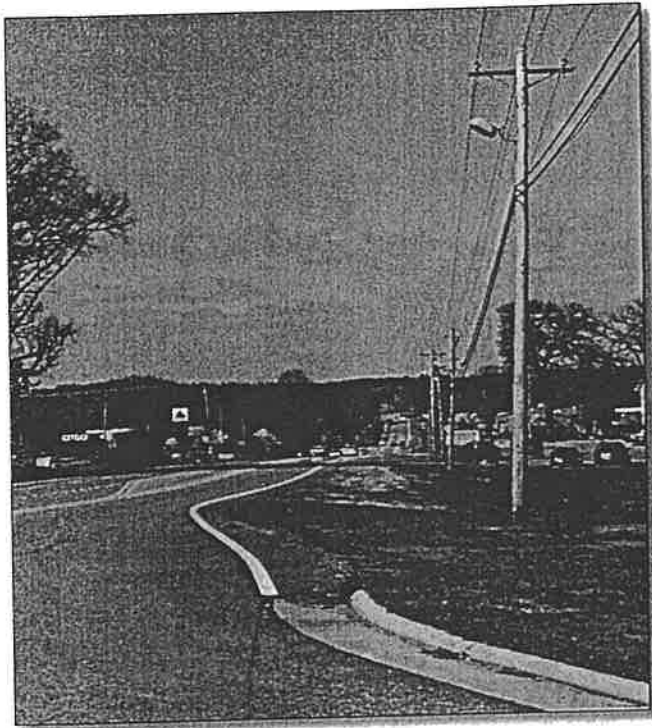
Chairman Rule read variance application #V19-05, David and Teresa Evans, requesting a variance for a 6.23 acre tract located at 1991 Cash Road., SE, Calhoun. John Roberts represented the request for his in-laws stating that they would like to build a 1600 square foot metal structure for storage of tractors, boats, etc., so they want to increase the size from the maximum 500 square feet and needs a variance of 1100 square feet. All adjoining property owners had been notified.

EMERGING MIXED USE

Description:

This type of development typically occurs along highways and other well-traveled roads, as well as around major intersections. Examples include the area along Georgia Highway 53, near the proposed southern bypass (southwest section of the county).

The Sonoraville area, along Georgia Highway 53, does include industrial properties including Pine Hall Brick, but future trends will favor dense suburban residential and commercial development. The area is



Highway 53, Sonoraville.

expected to continue to accommodate light industrial development, but buffers and other screening devices will have to be put in place to protect residential uses.

The US 411 Corridor is anticipated to go from agricultural to commercial and industrial uses, with the expansion of rail usage and the Appalachian Regional Port in Murray County as drivers.

Development Strategies/Policies:

- ❖ **Infrastructure:** Development pressure in these areas will result in an increased need for electricity, water, sewer and fiber optics.

- ❖ **Transportation Planning:** This type of development will undoubtedly lead to an increase in vehicular traffic. Intersection upgrades or road-widenings should be prepared for in advance in an effort to avoid traffic congestion. Consider roundabouts as

opposed to traffic lights in an effort to keep traffic moving. Sidewalks and pedestrian facilities should also be

- incorporated into transportation improvement plans.
- ❖ **Zoning:** Developing business, mixed use residential, or commercial properties in this area instantly becomes more appealing if the area is already zoned for such use.
- ❖ **Walkability:** Ordinances can be developed to ensure that future development will include quality sidewalks, installed by developers, as opposed to being taxpayer funded. These are particularly important to low income residents, the elderly, and others who might not drive.

Land Uses:

Commercial (40%), multi-family residential (40%), light industrial (20%)

**Planning Staff Report
To the
Gordon County Planning Commission**

Rezoning Proposal

Date of Report: January 25, 2019

Application # Z19-01

Applicant/Property Owner: Brian Baxter

Location of Property: 1776, 1780, 1784 & 1788 Trimble Hollow Rd., Adairsville, GA 30103

Property Frontage: 586.65 Lot Feet Tract Size: 4.29 acres

Proposed Action: Rezone from A-1, Agricultural District to R-6, Manufactured Housing.

Reasons for Proposed Action: Configured parcel's of property for new subdivision to place two (2) more mobile homes.

Future Development Map Classification: Emerging Mixed-Use Community

Departmental Reviews

It shall be understood that the following Departmental Review requirements, if any, shall be satisfied by the Applicant in addition to all standard County zoning, building, and development codes prior to the issuance of any land disturbance permit, building permit and/or certificate of occupancy, as deemed applicable by the County building official relating to the subject proposal if said proposal is approved by the Gordon County governing authority.

- * ***Environmental Health Services:*** Both existing mobile home's field lines cross new proposed property lines. New field lines would be required for these 2 existing MHs. Each lot will have to meet all setback requirements for wells. New parcels (2 & 3) would require a level 3 soil study, new septic systems, new wells and new addresses.
- ***Building Department:*** N/A
- * ***Fire Department:*** O.K.
- * ***Gordon County School System:*** N/A
- * ***Road Department:*** All these locations will require permits for crossing county right of way.
- * ***Georgia Dept. of Transportation:*** N/A.
- * ***Water & Sewer (City of Calhoun):*** No City water service in this area. No City sewer service in this area.
- * ***Zoning Division:*** A Notice of Public Hearing has been properly advertised in the local newspaper, zoning application fees have been paid and Applicant has been advised to post a Notice of Public Hearing on the subject property.

Planning Staff Findings & Recommendations

The following standards from Section 10.03.0212.6 of the Gordon County Unified Land Development Code (ULDC), in addition to the Departmental Reviews above, have been considered in the findings and recommendations of the planning staff:

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The proposed property is located in a very rural setting with several mobile homes and homes on small and large tracts of land with A-1, Agricultural zoning, across from the inactive Downing & Clark facility.

2. Whether the proposed zoning will adversely affect the existing use or usability of adjacent or nearby property.

The proposed zoning will not adversely affect the existing use or usability of adjacent or nearby property.

3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

The subject property cannot be further developed as currently zoned because it is less than the minimum five (5) acre lot size requirements for A-1 zoning.

4. Whether the proposed zoning will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The proposed zoning will not generate additional vehicular traffic and/or impede on traffic flow.

5. Whether the zoning proposal is in conformity with the policy and intent of the Future Development Map and Comprehensive Plan.

The subject property is classified as Emerging Mixed Use on the Gordon County Future Development Map. This classification supports land uses intended for Commercial (40%), Multi-family Residential (40%) and Light Industrial (20%).

6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approved or disapproved of the zoning proposal.

The proposed zoning is not in compliance with the Future Land Development Map but is suitable with the area.

Planning Staff's Recommendation:

The rezoning request identified as Application #Z19-01 is recommended for approval.

This report is a part of the official record of the subject application

Application Number: 219-01

Proposal Information (cont.)

If proposing a **Future Development Map** amendment, please provide the following information:

Present Map classification: A1

Proposed classification: R6

Present Map classifications of abutting property to the subject property:

C4, V5, V4, A5, R3, R4

Reason for the Map amendment: I WANT TO PUT TWO MORE MANUFACTURED homes ON PROPERTY

If proposing an **Official Zoning Map** amendment (*rezoning of property*), please provide the following information:

Present zoning district: A1, Agricultural

Proposed zoning district: R6, Manufactured House

Future Development Map classification: Emerging Mixed-use Community

Reason for the Zoning Map amendment: Subdivided property to place 2 more mobile homes.

Brian Bayth
Applicant's Signature

1/2/19
Date

Property Owner's Signature (If different)

Date

Signed and sealed in the presence of:

Ursula Richards

1/2/19



Commission Expires

DEPARTMENTAL REVIEW – ENVIRONMENTAL HEALTH

Application # 219-01 Baxter Variance

Date: 1-28-19

Reviewed by: Christy Blair

ENVIRONMENTAL HEALTH

Comments, recommendation, or any condition of approval to serve proposed rezoning or variance with Environmental Health services:

Both existing mobile home's field lines cross new proposed property lines. New field lines would be required for these 2 existing MHs. Each lot will have to meet all setback requirements for wells.

New parcels (2 & 3) would require a level 3 soil study, new septic systems, new wells and new addresses.

DEPARTMENTAL REVIEW – FIRE DEPARTMENT

Application # 219-01 Baxter Variance

Date: 1/22/19

Reviewed by: JOEY JORDAN

FIRE DEPARTMENT

Comments, recommendation, or any condition of approval to serve proposed rezoning or variance with Fire Department services:

O.K.

1/22/19

DEPARTMENTAL REVIEW – PUBLIC WORKS DEPARTMENT

Application # 219-01 Baxter A-1 to R-6

Date: 1-15-19

Reviewed by: Steve Parris

PUBLIC WORKS DEPARTMENT

Comments, recommendation, or any condition of approval to serve proposed rezoning or variance with Public Works Department services:

All these locations will require permit
for crossing county right of way



CITY OF CALHOUN
WATER AND SEWER DEPARTMENTAL REVIEW

APPLICATION NUMBER: z19-01
APPLICATION NAME Brian Baxter
TYPE OF ZONING: A-1 to R-6
DATE: 1/16/2019
REVIEWED BY: Mark Williamson

WATER COMMENTS:

No City water service in this area.

SEWER COMMENTS:

No City sewer service in this area.

THE INFORMATION IN THIS REPORT WAS OBTAINED USING MAPS AND RECORDS THAT MAY NOT BE ENTIRELY ACCURATE. THIS INFORMATION CANNOT BE CONSIDERED ACCURATE UNTIL A FEILD SURVEY HAS BEEN COMPLETED.

219-01

Recorded 12/30/2016 4:45
Doc: WD Rct#: 316970
TRANSFER TAX: 94.50
TRANSFER TAX ID: 0642016002330
Grant Malraven, C.S.C.
GORDON County, Ga
DEED Bk: 2049 Pgs: 102-103

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Brunlow, Corwin & Delashmit, P.C.
1287 Curtis Parkway SE
P.O. Box 2500
Calhoun, GA 30703
File #1216G411

STATE OF GEORGIA
COUNTY OF GORDON

WARRANTY DEED

This Indenture made this 21st day of December, 2016 between JAMES GREGORY PASLEY, of the County of Gordon, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and BRIAN BAXTER, as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

See Exhibit A attached hereto and made a part hereof.


This Deed is given subject to all easements and restrictions of record, if any.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in **FEE SIMPLE**.


AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this day and year first above written.

Signed, sealed and delivered in the presence of:



Witness



JAMES GREGORY PASLEY (Seal)

Notary Public



219-01

9.6 ACRES

1 of 2

Exhibit A

2 AC.

Tract I: ALL THAT TRACT OR PARCEL of land lying and being in Land Lot 203 of the 15th District and 3rd Section of Gordon County, Georgia and being more particularly described as 2.0 acres. Point of Beginning being at an iron pin 1,137.38 feet North 83 degrees and 55 minutes East from the intersection of center lines of I-75 and Trimble Hollow Road; thence North 38 degrees and 37 minutes East for 239.64 feet to an iron pin; thence South 26 degrees 50.46 minutes East for 523.55 feet to an iron pin; thence North 889.01 minutes West for 236.5 feet to an iron pin ; thence North 27 degrees and 11 minutes West for 286.72 feet to a point; thence North 48 degrees and 15 minutes West for 25 feet back to Beginning Point.

TR. 1
ON PLAT

5.6 AC.

Tract II: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 203 of the 15th District and 3rd Section of Gordon County, Georgia; and being Tract 1 containing 5.603 acres as per plat recorded in Plat Book 37, Page 195, Gordon County, Georgia Records, which plat by reference is incorporated herein and made a part hereof.

Tract III: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 203 of the 15th District and 3rd Section of Gordon County, Georgia; and being more particularly described as follows: to find the Point of Beginning start at an iron pin on the Southeast side of Trimble Hollow Road that is South 76 degrees 29 minutes 08 seconds East a distance of 1317.00 feet from the centerline of intersection of Interstate I-75 and Trimble Hollow Road; thence North 47 degrees 10 minutes 58 seconds East a distance of 153.40 feet to a point; thence North 53 degrees 53 minutes 21 seconds East a distance of 56.60 feet to the Point of Beginning; thence running along the Southeast side of Trimble Hollow Road North 53 degrees 53 minutes 21 seconds East a distance of 51.54 feet to a point; thence running North 60 degrees 28 minutes 14 seconds East a distance of 74.97 feet to an iron pin corner; thence running South 70 degrees 11 minutes 4 seconds East a distance of 27.84 feet to a point; thence running South 38 degrees 10 minutes 07 seconds East a distance of 249.04 feet to an iron pin corner; thence running South 63 degrees 09 minutes 14 seconds West a distance of 193.76 feet to an iron pin corner; thence running North 26 degrees 50 minutes 46 seconds West a distance of 15.24 feet to a point; thence running North 26 degrees 50 minutes 46 seconds West a distance of 237.39 feet to the Point of Beginning. The above described property being designated as Tract No. 2 containing 1.000 acres according to plat prepared for "James Gregory Pasley" by Allen Dale Hall, Surveyor, dated 04/13/1998.

1 AC.

Tract IV:
ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 203 of the 15th District and 3rd Section of Gordon County, Georgia; and being more particularly described as follows: Beginning at an iron pin on the Southeast side of Trimble Hollow Road that is South 76 degrees 29 minutes 08 seconds East a distance of 1317.00 feet from the centerline of intersection of Interstate I-75 and Trimble Hollow Road; thence North 47 degrees 10 minutes 58 seconds East a distance of 153.40 feet to a point; thence North 53 degrees 53 minutes 21 seconds East a distance of 56.60 feet to an iron pin corner; thence running South 26 degrees 50 minutes 46 seconds East a distance of 237.39 feet to an iron pin corner; thence running South 63 degrees 09 minutes 14 seconds West a distance of 203.34 feet to an iron pin corner; thence running North 26 degrees 50 minutes 46 seconds West a distance of 186.07 feet to the Point of Beginning. The above described property being designated as Tract No. 1 containing 1.000 acres according to plat prepared for "James Gregory Pasley" by Allen Dale Hall, Surveyor, dated 04/13/1998.

1 AC.