

# **Appeal of Administrative Decision**

**JAM-2014-001**

**CITY OF SUWANEE  
APPEAL OF ADMINISTRATIVE DECISION**

CASE NUMBER: **JAM-2014-001**  
LOCATION: 3741 MARTIN FARM ROAD  
DISTRICT/LAND LOT: 7-211-106  
ZONING: R-140 (SINGLE FAMILY RESIDENTIAL)  
DEVELOPMENT: SINGLE FAMILY RESIDENTIAL

APPLICANT/OWNER: RJ MAGALDI  
3741 MARTIN FARM ROAD  
SUWANEE, GA 30024

CONTACT: RJ MAGALDI

PHONE: 678-471-5879

**HISTORY:**

The applicant is appealing an administrative decision made by the Planning Department to allow for the keeping of chickens in the R-140 (Single Family Residential) Zoning District. According to the City's Zoning Ordinance, an appeal of an administrative decision is "a procedure designed to resolve conflicts created by an administrative decision of an official which appears to a property owner to be fairly disputable, unfair, arbitrary, capricious or in excess of the official's power or authority under this Ordinance." Section 2007 of the Zoning Ordinance grants the Zoning Board of Appeals the authority to hear appeals of administrative decisions as follows:

"Section 2007 Appeals of Administrative Decision.

Appeals of Administrative Decision to the Board may be taken by any person aggrieved by any officer, department, board or bureau of the City affected by a decision of the director. Such appeal shall be filed within 15 days of such decision, by filing with the director and with the secretary of the Board an appeal specifying the grounds thereof. The director shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was filed.

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the director certifies to the Board after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life and property. In such case, proceedings may be stayed by a restraining order granted by the City of Suwanee Zoning Board of Appeals or by a court of competent jurisdiction on application, on notice to the officer from whom the appeal is taken, and on good cause shown."

Unlike in the case of a variance, the board will not be attempting to discern if there is a hardship. Instead, with an appeal, the board will be looking at the interpretation of the ordinance prepared by staff and determining whether staff has interpreted the ordinance correctly. The board will be deciding to either uphold the interpretation of staff or reverse the interpretation.

Another key difference between a variance and an appeal of an administrative decision is how they are applied. A variance applies to the affected property only. Depending upon the facts of the case, an appeal may apply broadly across the city. In other words, if the interpretation is upheld it is upheld for the City, but if it is reversed then it is reversed for the entire City. In this case the applicant is appealing to reverse staff's interpretation of livestock and its application in the R-140 Residential Single-Family District.

## BACKGROUND

In May, the City of Suwanee received an inquiry from the applicant regarding the keeping of chickens in the R-140 zoning district. The applicant was informed that chickens are considered livestock and are allowed in the R-140 district subject to certain requirements. These requirements include a minimum lot size of 4 acres (2 acres with a special use permit) and that structures used to house livestock must be 50 feet from any property line and 100 feet from any neighboring house. The applicant's property is approximately 0.49 acres which is less than the minimum required size for keeping livestock. The applicant recently constructed a structure intended to house chickens. Provided the structure does not house any chickens, it meets the requirements for an accessory structure. However, if it does house chickens then it is subject to the setback requirements listed above. It currently does not meet these setback requirements.

## ADMINISTRATIVE DECISION APPEAL

Section 500.A of the zoning ordinance lists the permitted uses in the R-140 Residential Single-Family District. Among other permitted uses in the R-140 District, the City permits livestock to be kept provided certain conditions are met. Certain general conditions apply broadly to all livestock, while other conditions apply specifically to horses, cows and goats. The conditions are as follows:

Per Section 500.A.9

9. Livestock - Cows, Goats and Horses., provided:
  - a. The lot is at least 4 acres in size.
  - b. All structures, pens or corrals housing the animals are located at least 50 feet from any property line.
  - c. All structures, pens or corrals housing the animals are located at least 100 feet from an adjoining property's principal dwelling.
  - d. No more than 2 horses or cows per acre shall be kept on the lot.
  - e. No more than 4 goats per acre shall be kept on the lot.

Although this section of the zoning ordinance explicitly names cows, goats and horses it also says “livestock”. Article III of the zoning ordinance defines terms found within the zoning ordinance. It provides a definition of Livestock that reads as follows:

Livestock. The term “livestock” as used herein shall mean and include cattle, horses, goats, sheep, swine and other hoofed animals; poultry, ducks, geese and other live fowl; and mink, foxes, and other fur or hide-bearing animals customarily bred or raised in captivity for the harvesting of their skins; whether owned or kept for pleasure, utility or sale.

Conditions a, b, and c above apply to all livestock, including chickens, as defined by the zoning ordinance. The zoning ordinance further regulates the keeping of horses, cows and goats through conditions d and e. The applicant is appealing the staff’s interpretation that chickens are livestock because they are not specifically listed in section 500.A.9, while cows, goats and horses are.

### CONCLUSION

It is ultimately the responsibility of the board to offer a final interpretation of the City of Suwanee Zoning Ordinance. Attached is a copy of the applicant’s “Application for Appeal of Administrative Decision”, a letter from the applicant stating the basis for their appeal, and the Planning Director’s official interpretation which was provided to the applicant.

**APPLICATION FOR AN APPEAL OF AN ADMINSTRATIVE DECISION  
FROM THE CITY OF SUWANEE ZONING BOARD OF APPEALS**

Please complete this application and submit with all necessary attachments as stated on the Appeal of an Administrative Decision Information Form (please type or print)

**APPLICANT INFORMATION**

Name: RJ MAGALDI  
Address: 3741 MARTIN FARM RD.  
City: SUWANEE  
State: GA  
Phone: 678-478-5879 or  
678-471-7509  
CONTACT PERSON: STEPHANIE <sup>COTTE</sup>

**OWNER INFORMATION**

Name: RJ MAGALDI  
Address: 3741 MARTIN FARM RD.  
City: SUWANEE  
State: GA  
Phone: 678-478-5879  
PHONE: 678-471-7509

ADDRESS OF PROPERTY 3741 MARTIN FARM RD. SUWANEE GA 30021

LAND DISTRICT 7 LAND LOT 211 PARCEL 106 LOT \_\_\_\_\_

SUBDIVISION OR PROJECT NAME (IF APPLICABLE) \_\_\_\_\_

ZONING R-140

APPLICABLE CODE SECTION SECTION 500

APPLICANT INTERPRETATION Included

\*\*\*The property owner, applicant and /or a representative thereof shall be present at all meetings of the Zoning Board of Appeals, Planning Commission and/or Mayor and Council at which official action is requested on any variance or application for amendment. The failure of the property owner, applicant and/or a representative to attend such meetings shall result in the denial of said variance or application for amendment.

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JUNE 13, 2014

LETTER OF INTERPRETATION  
ATTN: DEPT. OF PLANNING & INSPECTIONS  
RE: POULTRY @ 3741 MARTIN FARM RD  
(RJ MAGALDI)

ON MEMORIAL DAY (MONDAY MAY 26<sup>TH</sup>, 2014), I (RJ MAGALDI) CONSTRUCTED A CHICKEN COOP IN MY BACKYARD. ABOUT MID-DAY, I WAS CONFRONTED BY MY NEIGHBOR. (DANIEL PRESNELL, 3733 MARTIN FARM RD). HE ASKED WHAT I WAS DOING. I EXPLAINED THAT I WAS CONSTRUCTING A CHICKEN COOP FOR THE PURPOSE OF HARVESTING FRESH EGGS. I ALSO EXPLAINED TO HIM (DANIEL PRESNELL) THAT WE WOULD NOT BE KEEPING A ROOSTER AND THAT WE WOULD ONLY HAVE 4-6 HENS. HE WAS, "VERY EXCITED FOR US." HE ALSO TOLD ME TO "KNOCK ON HIS DOOR WHEN WE STARTED TO GET FRESH EGGS, SO THAT HIM AND HIS WIFE COULD ENJOY THEM. "I WENT BACK TO WORK IN THE YARD AND HE RETURNED TO HIS HOME.

THE FOLLOWING AFTERNOON (TUESDAY MAY 27<sup>TH</sup>) WHEN I CAME HOME FROM WORK, I NOTICED A NOTE ON MY DOOR TO CONTACT MR. PRESNELLS' WIFE, DEANN . WHEN I CALLED HER, SHE BEGAN TO INTERROGATE ME REGARDING THE CHICKENS AND WHAT I KNEW ABOUT ZONING /CITY ORDINANCES IN A VERY AGGRESSIVE TONE. I EXPLAINED THAT I WAS NOT 100 % CLEAR, BUT THAT I BELIEVED I WAS FAR ENOUGH AWAY FROM THE ROAD (PROPERTY LINES.) SHE CONTINUED BY SAYING THAT THE HENS WOULD BE LOUD AND SMELLY. I EXPLAINED THAT WE ONLY HAD 6 HENS AND THAT I AND MY GIRLFRIEND (STEPHANIE COTTLE) WOULD DO WHATEVER IT TOOK TO KEEP THE COOP AND RUN VERY CLEAN AND NOT SMELLY WHATSOEVER. I ALSO TOLD HER THAT THERE WERE AT LEAST 6 HOUSES WITHIN OUR 1/4 MILE STRETCH OF ROAD WHICH HOUSED/RAISED 10+ CHICKENS AND THAT NO ONE WAS HAVING ANY CURRENT ISSUES WITH NOISE OR SMELL. SHE THEN BEGAN TO PERSONALLY ATTACK ME AND CALL MY GIRLFRIEND AND I NAMES. SHE WENT ON TO SAY THAT WE WERE "YUPPIES" AND SHE "DIDN'T NEED US MOVING INTO HER NEIGHBORHOOD TRYING TO SAVE THE WORLD." SHE ALSO TOLD ME THAT SHE WAS "FRIENDS WITH THE MAYOR OF SUWANEE" AND THAT "HE WAS NOT FOR CHICKEN RAISING WHATSOEVER." AT THIS POINT I BECAME ANGRY AND TOLD HER IT WOULD HAVE BEEN A NICE

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NEIGHBORLY THING TO CALL OR SPEAK WITH ME ABOUT HER CONCERNS THE DAY PRIOR WHEN HER HUSBAND ASKED ME WHAT I WAS DOING IN MY BACKYARD. AT THIS POINT THE COOP/RUN WAS ROUGHLY 95% COMPLETE. I TOLD HER TO HAVE A NICE DAY AND HUNG UP THE PHONE.

THE FOLLOWING DAY (WEDNESDAY MAY 28<sup>TH</sup>), MY GIRLFRIEND STEPHANIE CALLED AND LEFT MRS. PRESNELL A VOICEMAIL INDICATING THAT SHE WOULD LIKE TO DISCUSS THE CHICKENS AND ANY ISSUES SHE MAY HAVE WITH THEM. SHE WENT ON TO EXPLAIN THAT SHE WOULD LIKE TO DO WHATEVER WE NEEDED TO APPEASE HER AND MAKE HER FEEL COMFORTABLE WITH THE CHICKENS. THERE WAS NO CALL BACK, SO STEPHANIE ATTEMPTED TO REACH HER AT THE DOOR. MRS. PRESNELL NEVER ANSWERED THE DOOR, NOR RETURNED ANY OF MY GIRLFRIEND'S CALLS.

THAT THURSDAY, (THURSDAY MAY 29<sup>TH</sup>) MY GIRLFRIEND STEPHANIE ATTEMPTED TO REACH HER AGAIN AFTER VISITING CITY HALL TO FIND OUT WHAT THE RULES ACTUALLY WERE. THERE WAS NO RETURN CALL. LATER THAT DAY, STEPHANIE AND I WERE OUTSIDE IN THE YARD AND MR. PRESNELL CAME OUTSIDE. STEPHANIE APPROACHED HIM AND THEY SPOKE FOR ROUGHLY 20 MINUTES WHILE I WORKED IN THE BACKYARD. HE EXPLAINED TO HER THAT HE AND HIS WIFE WERE "THANKFUL" THAT WE MOVED IN AND THEY WERE VERY "HAPPY" WE WERE NEIGHBORS. HE WAS STILL SPEAKING ON BEING EXCITED ABOUT CHICKENS AND FRESH EGGS AND WE SHOULD TRY TO SELL THE EGGS AT THE DOWNTOWN SUWANEE MARKET.

THE NEXT DAY, (FRIDAY MAY 30<sup>TH</sup>), WE WERE VISITED BY THE BUILDING OFFICIAL, SUSAN CARPENTER. MY GIRLFRIEND AND THE OFFICIAL SPOKE ABOUT THE CHICKENS. STEPHANIE WAS ADVISED THAT THE ACTUAL STRUCTURE OF THE COOP WAS WITHIN GUIDELINES BUT THAT WE WOULD NEED TO SUCCESSFULLY WIN A FILED APPEAL BEFORE WE COULD PUT THE CHICKENS OUTSIDE.

LOOKING THROUGH THE AMENDED ZONING ORDINANCE OF THE CITY OF SUWANEE AT SECTION 500, #6 (LIVESTOCK) WE FOUND THAT "LIVESTOCK" IS ONLY DEFINED AS COWS, GOATS, AND HORSES. IT DOES NOT APPEAR THAT THERE ARE ANY SPECIFIC GUIDELINES PERTAINING TO POULTRY. THIS IS BASED ON THE (3) PAGES) PROVIDED TO ME BY CITY HALL.

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WHEN RESEARCHING ONLINE FOR THE REMAINING INFO ON THE 244 PAGES OF THE ZONING LAWS, I FOUND THAT THE FULL UPDATED RULES, WHICH WERE AMENDED AS OF APRIL 22, 2014, ARE NOT ACCURATE(CURRENT). THEY ARE LISTED AS BEING CURRENT AS OF 2012. IT IS STILL VERY UNCLEAR AS TO WHAT THE SPECIFIC RULES ARE PERTAINING TO POULTRY IN THE CITY OF SUWANEE.

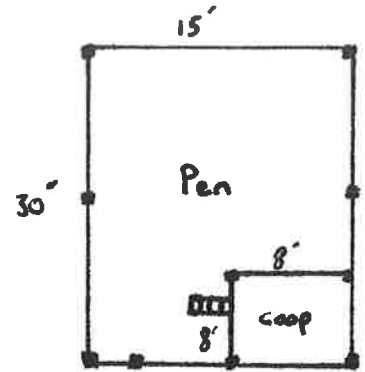
WE ARE STILL "BROODING" THE CHICKENS INSIDE OUR HOME AND WILL BE DELIVERING THEM TO A NEW HOME IN THE NEXT WEEK OR TWO. WE WOULD STILL LIKE TO AND BELIEVE IT IS OUR RIGHT, TO HAVE THE OPPORTUNITY TO RAISE A SMALL NUMBER OF CHICKENS IN OUR YARD AND BE ABLE TO USE THE ALREADY CONSTRUCTED COOP. WE HAVE INVESTED A LOT OF TIME AND MONEY INTO THIS PROJECT AND BELIEVE OURSELVES TO BE VERY COMPETENT, CARING HOMEOWNERS AND PET OWNERS.

WE WOULD LIKE TO HELP THE CITIZENS WITHIN SUWANEE CITY LIMITS, GAIN THE FREEDOM TO KEEP CHICKENS AS PETS OR FOR PERSONAL USE ON THEIR PROPERTY, REGARDLESS OF PROPERTY SIZE. (CONDITIONS OF CARE, TREATMENT AND NUMBER OF CHICKENS TO BE SPECIFIED IN ORDINANCE AMENDMENT) NEARBY CITIES ALLOW CHICKENS TO BE KEPT ON LANDOWNERS PROPERTY FOR PERSONAL USE. OUR CITY SHOULD NOT BE EXEMPT FROM THE PERSONAL FREEDOMS OF SUSTAINABILITY, PERSONAL ENDEAVOR, AND RESPONSIBILITY. CHICKENS ARE SMALL, QUIET CREATURES THAT INCREASE SOIL FERTILITY WITH THEIR MANURE, LAY HEALTHY EGGS FOR THEIR OWNERS AND PROVIDE ENTERTAINMENT AND COMPANIONSHIP AS PETS. ALLOWING PEOPLE TO KEEP BACKYARD CHICKENS ON SMALL, WELL CARED FOR LOTS, GIVE PEOPLE THE FREEDOM TO PROVIDE FOR THEMSELVES AND THEIR FAMILIES, ENRICH THEIR GARDENS AND BE PART OF A LARGE COMMUNITY OF OTHERS WHO ALSO TEND TO THESE ANIMALS. WELL CARED FOR CHICKENS DO NOT HAVE AN UNPLEASANT ODOR, AND THEIR SOUNDS ARE QUIETER THAN A DOG'S BARK. TWO YEARS AGO IN APRIL, A SUWANEE PATCH ARTICLE DISCUSSED USE OF CHICKENS IN SUWANEE. EVEN THE MAYOR OF SUWANEE, JIMMY BURNETTE, IS QUOTED IN THIS ARTICLE EXPLAINING THAT A ROOSTER KEPT BY HIS NEIGHBOR TO THE REAR WAS, "BETTER THAN A DOG BARKING." EVERYONE IN THE CITY OF SUWANEE SHOULD HAVE AN EQUAL OPPORTUNITY TO RAISE CHICKENS, NOT JUST THOSE WITH LARGE PROPERTY.

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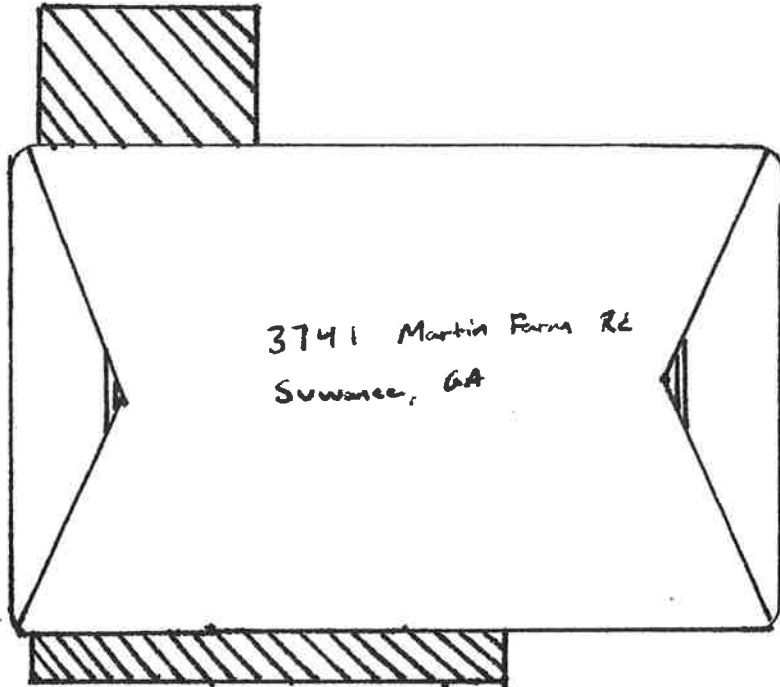


- Fence 5' high
- Pen 15' x 30'
- Coop 8' x 8' x 5'



Property line

Property line



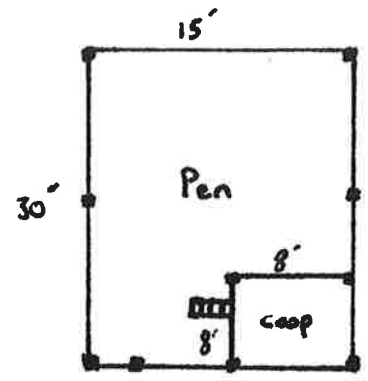
3741 Martin Farm Rd  
Swanton, GA

Driveway

Fence

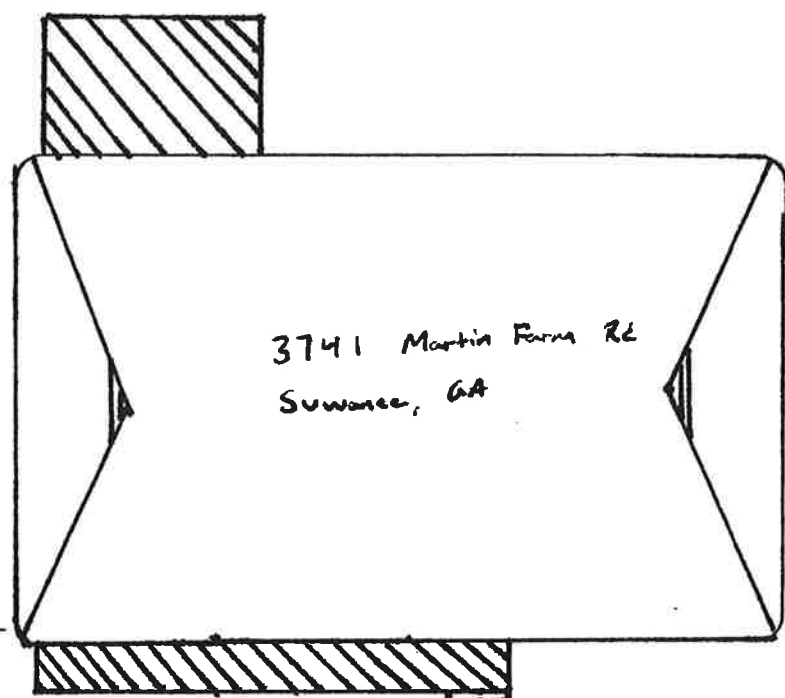
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Property line

Property line



3741 Martin Farm Rd  
Suwanee, GA

Driveway

Fence

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June 16, 2014

Re: Livestock in the R-140 Zoning District

Richard J. Magaldi  
3741 Martin Farm Road  
Suwanee, Georgia 30024

Dear Mr. Magaldi:

The keeping of livestock is permitted in the R-140 Residential Single-Family Zoning District per Section 500.A.9 provided certain conditions are met. Certain general conditions apply broadly to all livestock, while other conditions apply specifically to horses, cows and goats. The conditions are as follows:

- a. The lot is at least 4 acres in size.
- b. All structures, pens or corrals housing the animals are located at least 50 feet from any property line.
- c. All structures, pens or corrals housing the animals are located at least 100 feet from an adjoining property's principal dwelling.
- d. No more than 2 horses or cows per acre shall be kept on the lot.
- e. No more than 4 goats per acre shall be kept on the lot.

According to Article III of the zoning ordinance, livestock includes cattle, horses, goats, sheep, swine and other hoofed animals; poultry, ducks, geese and other live fowl; and mink, foxes, and other fur or hide-bearing animals customarily bred or raised in captivity for the harvesting of their skins; whether owned or kept for pleasure, utility or sale. Conditions a, b and c above apply to all livestock, including chickens, as defined by the zoning ordinance. The zoning ordinance further regulates the keeping of horses, cows and goats through conditions d and e.

According to our records your lot is approximately .49 acres which is far below the four acres required for the keeping of livestock in R-140. As such, the keeping of chickens at 3741 Martin Farm Road is not allowed. Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "JC", is written over the typed name "Josh Campbell".

Josh Campbell  
Planning and Inspections Director  
770-945-8996

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