

**IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA**

TINY HOUSE HAND UP, INC.,

Plaintiff/Petitioner,

v.

CITY OF CALHOUN, GEORGIA, JAMES
F. PALMER, individually and in his official
capacity as mayor of Calhoun, CALHOUN
CITY COUNCIL, and ED MOYER, RAY
DENMON, AL EDWARDS, and
JACQUELINE PALAZZOLO, individually
and in their official capacities as members of
the Calhoun City Council,

Defendants/Respondents.

Civil Action File

No. 21-CV-71784

 **FILED IN OFFICE**
CLERK OF SUPERIOR COURT
GORDON COUNTY, GEORGIA

21CV71784

SEP 11, 2025 09:38 AM


Grant Walraven, Clerk
Gordon County, Georgia

ORDER

This matter is before the Court on Plaintiff Tiny House Hand Up, Inc.'s Motion for Summary Judgment; Defendants' Amended and Renewed Motion to Dismiss; and Defendants' Motion for Leave to File Supplemental Brief in Response to Plaintiff's Reply Motion for Summary Judgment. The Court heard oral argument on the pending motions on August 7, 2025. For the reasons that follow, Defendants' motion for leave is granted, Defendants' motion to dismiss is denied, and Plaintiff's motion for summary judgment is granted.

BACKGROUND

Tiny House Hand Up is a local nonprofit that seeks to alleviate the affordable housing crisis by building smaller single-family homes that will be more affordable for workers with lower and working-class incomes. It owns 7.9 acres of land in the City of Calhoun at the corner of Harris Beamer Road and Beamer Road (the "King Corner" property), which was donated to Tiny House Hand Up in November 2019 for the express purpose of building smaller, affordable

single-family homes. Tiny House Hand Up wants to build a community of cottage homes of between 540 and 600 square feet each at the King Corner property.

Tiny House Hand Up needed to have the King Corner property rezoned, because at the time of the donation the land was zoned for industrial uses, such as truck terminals, warehouses, and lumberyards. In response to a query from Tiny House Hand Up, the Calhoun City Administrator explained to Tiny House Hand Up in an August 26, 2020 email that homes smaller than 1,150 square feet were not permitted in Planned Residential Development (PRD) districts, a classification that gives the City Council discretion to allow different arrangements of homes, multifamily dwellings, and other buildings. He also said that allowing smaller homes in PRD districts would require amending the zoning code and that the City Council was not willing to amend the code at that time. Based on those statements, Tiny House Hand Up had the King Corner property rezoned in June 2021 under the least restrictive zoning classification for single-family homes, R-1B. That district also prohibits homes smaller than 1,150 square feet, but other districts mandate even larger homes, so the R-1B district was the closest fit for Tiny House Hand Up's plans.

Tiny House Hand Up then requested a variance to build homes smaller than 1,150 square feet on the King Corner property, while also complying with all other R-1B requirements. After Defendants denied that variance request in an October 11, 2021 City Council hearing, and imposed a moratorium on any new PRD applications in that same hearing, Tiny House Hand Up filed this lawsuit against the City, the City Council, and the mayor and councilmembers, claiming that the minimum floor area requirement in Section 7.3.3 of the Calhoun Zoning Code violates the Due Process Clause of the Georgia Constitution. Ga. Const. art. I, § I, ¶ I.

DISCUSSION

I. DEFENDANTS' MOTION FOR LEAVE

On August 6, 2025, Defendants moved for leave to file a Supplemental Brief in Response to Plaintiff's Motion for Summary Judgment, which they attached to the motion for leave. In the motion, Defendants acknowledge that, due to faulty reliance on artificial intelligence software, their recent filings contained "serious citation errors including fabricated case citations and mischaracterized authorities," which "were inexcusable and require correction to ensure the Court has accurate legal authorities." Defs.' Mot. for Leave to File Suppl. Br. 1 (Aug. 6, 2025).

The Court grants the motion for leave and deems the supplemental brief attached to the motion to have been filed as of August 6, 2025. The Court further strikes Defendants' April 21, 2025, filings that contain the erroneous citations and orders that those filings be excluded from the record on appeal, if any.

II. DEFENDANTS' MOTION TO DISMISS

Defendants have filed an amended and renewed motion to dismiss, arguing that this action does not comply with the requirements that apply to "[a]ctions filed pursuant to" Article I, Section II, Paragraph V(b) of the Georgia Constitution ("Paragraph V"). Paragraph V supplies a limited waiver of sovereign immunity for certain actions seeking declaratory relief against unlawful or unconstitutional acts by the government or its officers and employees. *See State v. SASS Grp., LLC*, 315 Ga. 893, 903, 885 S.E.2d 761, 770 (2023). "But if a plaintiff wants to avail himself of the limited waiver provided by Paragraph V, then he must bring the action 'exclusively against the state [or local government] and in the name of the State [or local government].'" *Id.* (quoting Ga. Const. art. I, § II, ¶ V(b)(2)).

Defendants argue that this lawsuit does not comply with Paragraph V's naming requirement. But the naming requirement only applies to "[a]ctions filed pursuant to" that

provision. Ga. Const. art. I, § II, ¶ V(b)(2). Here, the pleadings, record, and arguments of counsel show that Tiny House Hand Up has not invoked Paragraph V as the basis for waiving sovereign immunity in this case. Instead, it relies on different statutory waivers of sovereign immunity, which Defendants previously acknowledged are the applicable waivers in this case. *See, e.g., City of Hapeville v. Sylvan Airport Parking, LLC*, 359 Ga. App. 448, 450, 858 S.E.2d 538, 541 (2021) (recognizing statutory waiver of municipality’s sovereign immunity under O.C.G.A. § 9-4-7(b)); Defs.’ Reply Supp. Mots. Dismiss 12 (Jan. 10, 2022) (recognizing *Sylvan Airport Parking* as a “controlling authority” for sovereign immunity in this case). Because Tiny House Hand Up is not proceeding under Paragraph V, it is not applicable to this case. Defendants’ motion to dismiss is therefore denied.¹

The Court, however, has determined on its own motion that it is appropriate to dismiss the mayor and councilmembers from this action without prejudice, because their presence in this action is unnecessary and duplicative. As officials with Defendant City of Calhoun, they and other officials, agents, and employees of the City are already subject to any judgment against the City in this action. And as members of Defendant Calhoun City Council, they will already be subject to any judgment against that entity. The dismissal is without prejudice, so if the dismissed defendants do not comply with the judgment or otherwise seek to frustrate or evade its effect, Plaintiff may seek to amend the judgment or seek other appropriate relief from the Court.

¹ On March 4, 2025, the Georgia Supreme Court decided *Warbler Investments, LLC v. City of Social Circle*, 321 Ga. 125, which held that Paragraph V naming violations may be cured by dropping parties under O.C.G.A. § 9-11-21. Because Tiny House Hand Up is not proceeding under Paragraph V, the Court need not address whether such an amendment would be appropriate here. *See* Pl.’s Resp. to Defs.’ Mot. to Dismiss 21 n.13 (Mar. 10, 2025) (requesting leave to amend if the Court concludes that Paragraph V applies to this case).

III. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Finally, Plaintiff Tiny House Hand Up has moved for summary judgment on its claim that the City's minimum floor area requirement of 1,150 square feet violates the Georgia Constitution's protections for substantive due process. Courts must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." O.C.G.A. § 9-11-56(c).

"[A] zoning classification may only be justified if it bears a substantial relation to the public health, safety, morality, or general welfare." *Avant v. Douglas County*, 253 Ga. 225, 226, 319 S.E.2d 442, 443 (1984) (citation omitted). Tiny House Hand Up argues that the minimum floor area requirement is insubstantially related to any public interest. Defendants argue in response that "[t]here's no harm here" and that the minimum floor area requirement does not impose a "significant detriment" on Tiny House Hand Up because it can still build larger, more expensive single-family homes on its land. H'rg Tr. 38:19–24 ("And if you don't ... satisfy that first [significant-detriment] prong, you don't get to the second [substantial relation] prong. They beat me to death at the second prong. I mean. I'm not conceding that, but you see their briefing."). Tiny House Hand Up responds that the significant-detriment inquiry applies to takings claims, not its substantive-due-process claim, and that, in any event, the City's ban on smaller homes is a significant detriment. Defendants counter that there is no detriment because Tiny House Hand Up could have built the desired smaller homes by applying to rezone their property as a PRD district, which previously did not prohibit smaller homes.

The Calhoun City Administrator, however, expressly told Tiny House Hand Up's executive director in an August 26, 2020 email that the PRD district does not permit homes smaller than 1,150 square feet. Based on that statement, Tiny House Hand Up sought and

obtained the least restrictive single-family-home residential zoning available, R-1B, in June 2021. The City then issued a moratorium on new PRD applications in October 2021, which remained in effect when this case was filed. Soon after, the City amended its zoning code to expressly forbid homes smaller than 1,150 square feet in PRD districts, forever blocking that path for building smaller homes.

That is a procedural due process violation. The government may not mislead parties to their detriment. It is therefore unnecessary to analyze whether and what kind of detriment exists. As the Court ruled from the bench on August 7, 2025, the undisputed facts show that City officials affirmatively misrepresented the requirements of the PRD zoning district to Plaintiff's detriment, establishing grounds for equitable estoppel.

The Court therefore holds that Defendants are estopped from applying the minimum floor area as applied to Plaintiff's King Corner property. "A municipality is subject to the rules of estoppel in those cases wherein equity and justice require their application[.]" *City of Atlanta v. Black*, 265 Ga. 425, 428–29, 457 S.E.2d 551, 554 (1995) (quoting *City of Summerville v. Georgia Power Co.*, 205 Ga. 843, 845–846, 55 S.E.2d 540, 543 (1949)). In response to an inquiry from Plaintiff, the City Administrator represented to Plaintiff that the PRD district did not permit homes smaller than 1,150 square feet. Plaintiff relied on that representation to its detriment. On that basis, the Court grants Plaintiff's Motion for Summary Judgment.

CONCLUSION

For these reasons, the Court **ORDERS** the following:

1. Defendants' Motion for Leave to File Supplemental Brief in Response to Plaintiff's Reply Motion for Summary Judgment is **GRANTED**. The Court accepts the brief filed as an exhibit to that motion and deems it filed as of August 6, 2025. The Court further **STRIKES** the following April 21, 2025, filings and **ORDERS** that they be excluded from the

record on appeal, if any: (1) Respondents' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment; (2) Respondents' Statement of Material Facts as to Which There Exists a Genuine Issue to be Tried; and (3) Reply in Support of Defendants'/Respondents' Amended and Renewed Motion to Dismiss.

2. Defendants' Amended and Renewed Motion to Dismiss is **DENIED**. But Defendants James F. Palmer, Ed Moyer, Ray Denmon, Al Edwards, and Jacqueline Palazzolo are **DISMISSED WITHOUT PREJUDICE**.

3. Plaintiff Tiny House Hand Up, Inc.'s Motion for Summary Judgment is **GRANTED**. Based on Article I, Section I, Paragraph I of the Georgia Constitution and equitable estoppel principles, as applied to the facts of this case, the Court declares that Defendants City of Calhoun and the Calhoun City Council are estopped from applying the minimum floor area requirement to Plaintiff Tiny House Hand Up's King Corner property. The Court will issue final judgment in conformance with this order.

So ORDERED this 11th day of September, 2025.



Judge Walter J. Matthews, Senior Judge
State of Georgia

Walter J. Matthews, Senior Judge
Superior Courts of Georgia

Agreed to as to form by:
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