

**CALHOUN COUNTY BOARD OF COUNTY COMMISSIONERS
PLANNING COMMISSION MEETING
JANUARY 24, 2017**

PRESENT AND ACTING:

**DANNY RAY WISE, CHAIRMAN
GENE BAILEY, VICE-CHAIRMAN
DARRELL MCDUGALD
DENNIS JONES
JERAL HALL**

**MATT FUQUA, ATTORNEY
CARLA HAND, CLERK OF CIRCUIT COURT AND COUNTY COMPTROLLER
SARAH WILLIAMS, CLERK ADMINISTRATIVE ASSISTANT**

The workshop was called to order by Chairman Wise at 5:00 p.m., CT.

Attorney Fuqua stated a conditional use permit was approved for Charles Smith to open a machine shop on a piece of property on Highway 20, which adjoins land owned by Harold Pickron. Mr. Pickron maintains he did not receive proper notice for the meeting, and the Board decided to have another meeting for everyone to attend. Attorney Fuqua stated he mailed a letter by regular mail and certified mail, and emailed a copy of the letter to Mr. Smith, but the tracking information states the letter has never been picked up and there has been no correspondence from Mr. Smith on the email. The letter has been in Mr. Smith's mailbox since January 11, 2017. In the letter, he recommended Mr. Smith not make any improvements to the property and to do so would be at his own risk, until the Board has made a determination on the issue. There was further discussion about Mr. Smith being notified about the Planning Commission meeting. Attorney Fuqua stated he has done research on this issue, but has not been able to find a similar case. Attorney Fuqua stated the Comprehensive Plan states if a person is unhappy with the decision of a Planning Commission, further appeals shall be directed to the Circuit/County Court System. Attorney Fuqua stated this would be an option for Mr. Pickron, but it was discussed in the previous Board meeting Mr. Pickron may be satisfied if Mr. Smith were to place a gutter on the building. Mr. Snowden stated he sent an email to the Board about general conditions for granting variances the night before. Commissioner McDougald stated he was undecided if Mr. Smith was duly notified of the meeting. Attorney Fuqua stated the letter to Mr. Smith was mailed and emailed on December 29, 2016. There was further discussion about correspondence and Planning Commission meetings. Attorney Fuqua asked what the date of the initial planning meeting was when the variance was approved. Mr. Pickron stated the meeting was on December 13, 2016. Attorney Fuqua stated the certified letter for Mr. Pickron notifying him of the meeting was returned, but was attempted to be delivered on December 7, 2016, December 12, 2016, January 3, 2017, January 8, 2017 and January 18, 2017 but no one accepted the letter. Mr. Snowden stated some of the dates were after the meeting, but the first two attempts were made before the planning meeting on December 13. The letter to Mr. Pickron and the tracking information for Mr. Smith's letter were passed to the Board for their review. Chairman Wise asked Mr. Pickron to address the Board with his concerns.

Mr. Pickron stated the Board was informed by Attorney Fuqua at the December 13 Planning Commission meeting there was a previous action on this issue which was denied based on the fact there were no legal grounds to grant the variance. Mr. Pickron stated that at the time of the first denial of the variance, Mr. Smith acknowledged he would move the building to comply with the 10-foot setback rule. Commissioner McDougald stated this was information the Board was not made aware of at the December Planning Commission meeting. Mr. Pickron presented the Board with pictures from this past weekend of the rain and water on his property coming off Mr. Smith's roof. Mr. Pickron stated he recorded (5) inches of rain, but he got double the amount of water on his property because of the runoff from Mr. Smith's building, and the water flooded into one side of his shop. Mr. Pickron showed (did not provide a copy for the record) the Board a copy of a City of Blountstown work order (11-23-2010) requesting electricity be disconnected from the building; there was a notation on the work order "DEMO". Mr. Pickron inferred Ms. Boris intended to demolish the building based on the notation on the work order. Mr. Pickron stated there is no electrical service in the building and since a business has not been operational in the building (within one year of the original disconnect date), the building is subject to current standards and cannot be grandfathered into compliance. Mr. Pickron stated he also acquired a copy of the temporary electrical permit issued by the County to Mr. Smith. A temporary permit is good for one year, but the power has been connected for two years. Mr. Pickron stated Mr. Smith has not applied for any further permits since then. Mr. Pickron stated a variance should only be granted if a building could not be placed on a parcel of land to comply with the 10-foot setback rule, which is not the case with Mr. Smith's building. Mr. Pickron stated when the building was originally moved, a footer was not placed under the south side of the building, which will not meet codes. Mr. Pickron stated installing a gutter on the building would not help with the water runoff because when it rains, the water blows off the building further than a gutter would extend. There was further discussion about the water on Mr. Pickron's property. Mr. Pickron presented the Board with the land use code, which states a business must be sixty (60) feet from any roads, which was passed before the previous owner asked for the building to be demolished. Mr. Pickron asked where the variance from the 10-foot setback rule applies, and if it only applies to the side of the building beside his property or if it applies to the all sides of the building. Attorney Fuqua stated the Board basically said the building was not required to be moved by granting the variance. There was further discussion about setbacks.


Commissioner McDougald stated as he was reading the information Mr. Snowden emailed about variances, he came across a section which stated the Board could grant variances to the land development code regulations under extraordinary conditions or practical difficulties. The section also stated when the County Commission judges the variance, the public's convenience and welfare will be substantially served and no injury will come to the neighboring property. Commissioner McDougald stated in this case, there is injury to the neighboring property with the water runoff. Commissioner McDougald stated at the time of the previous Planning Commission meeting in December the notifications sent out were questioned and if regulations had been abided by for notification, and the Board decided to move forward. Commissioner McDougald stated after listening to Mr. Smith, the Board made the determination to grant the variance, but when Mr. Pickron came back at the next meeting more information was brought to light. Mr. Pickron stated Mr. Smith misled the Board at the December Planning Commission meeting. Commissioner McDougald stated his only concern is Mr. Smith did not pick up his letter notifying him of this meeting, and does not want Mr. Smith to be in the

same position as Mr. Pickron was when he did not receive his letter about the Planning Commission meeting in December. Attorney Fuqua stated Mr. Smith's letter was sent by regular mail, certified mail, and email. There was further discussion about variances and the Land Development Code. Commissioner McDougald stated a fact in Mr. Pickron's favor is Mr. Smith was aware the building needed to be moved before he bought the building. Mr. Pickron stated he does not know what he will have to do to be able to enforce the building be moved, but the only way to alleviate the issue of water flowing onto his property would be to move the building. Mr. Pickron asked the Board to uphold the original ruling on the first variance request, and he would just have to deal with the water on his property until he can find a way to make Mr. Smith move his building.

Commissioner McDougald stated he was still concerned about being in the same position again with Mr. Smith as the Board was when Mr. Pickron was unaware of the Planning Commission meeting in December. Attorney Fuqua stated Mr. Pickron was sent a notice prior to Mr. Smith's Planning Commission meeting and it was never picked up, and an ad was run in the newspaper. Mr. Smith was also sent a notice that has been delivered for two (2) weeks now but has not been picked up. Attorney Fuqua stated he believes the Board has complied with the notice provision. Attorney Fuqua stated the Comprehensive Plan is the same now as it was in 2012 when the variance was denied, and states if someone is not happy with the decision of the Board the issue can be taken to the Division of Administrative Hearings or to Circuit Court for relief. Attorney Fuqua stated Mr. Smith should have done this five (5) years ago when the variance was denied, and Mr. Pickron could do the same thing now. Attorney Fuqua stated in his opinion he does not believe the building will be able to be brought into compliance with the Land Development Code. Attorney Fuqua stated the Board has several options regarding how to move forward. The Board can either give Mr. Smith another chance to make it to a meeting, assuming no equipment has been ordered or improvements made to the property the Board could revoke the variance, or Mr. Pickron can take the matter to court. Attorney Fuqua stated not all the facts are known as far as equipment and improvements to the property since the Board approved the variance for Mr. Smith. Chairman Wise asked what the liability to the Board would be if they decide to revoke the variance. Attorney Fuqua stated the Board could have liability from Mr. Smith because when the variance was granted he was given a property right. Commissioner Jones stated he would like to send another letter giving Mr. Smith a second chance to appear at a meeting, and if he does not show up the Board will make a decision based the information they have been given. Attorney Fuqua stated there is another Planning Commission meeting set for February 28, 2017 and this issue could be added to the agenda. Commissioner McDougald stated he is willing to reconsider the granting of the variance, but wants to give Mr. Smith another opportunity to be heard before a decision is made. Commissioner McDougald stated he would like for the matter be brought back before the Planning Commission on February 28, and would like Mr. Smith to be reached by phone also to be made aware of the meeting. Commissioner Bailey asked about a summons server. Attorney Fuqua stated a server would be around \$50 if they were able to deliver the letter. Chairman Wise asked if the letter sent a couple weeks ago would be resent to Mr. Smith. Attorney Fuqua stated he would change the wording some to reflect there was a hearing held and Mr. Smith did not attend, and send the letter by email, regular mail, certified mail, and summons service. Mr. Snowden stated he would make sure everyone has Mr. Smith's phone number and he will personally call Mr. Smith tomorrow. Mr. Pickron asked what would be decided when the matter is brought back before the Board at the next Planning Commission meeting. Attorney Fuqua stated the Board would decide who takes the matter to court, Mr. Pickron or Mr. Smith.

- ❖ Commissioner Jones made a motion to table the matter of the variance until the Planning Commission meeting on February 28, 2017. Commissioner McDougald seconded the motion. Attorney Fuqua stated the letter would be emailed, sent by regular mail, certified mail, summons service, and Mr. Snowden would call Mr. Smith. Chairman Wise called for public comment. Ms. Pam Savell asked why the motion for the variance passed for Mr. Smith, and if it was because of the jobs he would bring to the county with his business. Attorney Fuqua advised the Board they did not have to answer the question. Mr. Pickron stated in the minutes the Board cited a reason for granting the variance was for the creation of jobs in the County. The motion passed unanimously 5-0.

There being no further business, the meeting adjourned at 6:05 p.m., CT.


DANNY RAY WISE, CHAIRMAN

ATTEST:


CARLA A. HAND, CLERK