

**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  
SARAH WILLIAMS, CLERK ADMINISTRATIVE ASSISTANT**

The workshop was called to order by Chairman Wise at 4:00 p.m., CT.

Attorney Fuqua stated that several months ago a variance from setback requirements was granted to Mr. Charles Smith in reference to his machine shop, which is adjacent to property owned by Mr. Harold Pickron. Mr. Pickron did not receive timely notice of the meeting and was not present when the variance for Mr. Smith was heard by the Board, and has since appealed to the Board to rescind the variance. Attorney Fuqua stated the Board could either decide to set aside the variance or leave the variance in place and let Mr. Pickron exercise any other options he has to get the variance rescinded. Chairman Wise asked if installing a rain gutter, as talked about in a previous meeting, would help keep the water Mr. Pickron is concerned about off his property. Attorney Fuqua stated this was suggested at the first meeting Mr. Pickron attended, but since then Mr. Pickron has stated this would not be sufficient.

Mr. Pickron stated the most recent Land Development Code was adopted in March of 2010. There is a list of setbacks and requirements listed in the code, which differ between residential and commercial. Mr. Pickron stated on November 23, 2010 the owner of the building at the time requested the electrical wire be removed so the building could be demolished. Mr. Pickron stated in 2015 Mr. Smith applied for temporary electrical service, and prior to that there was a meeting held where Mr. Smith was denied a variance. Mr. Pickron stated he and Mr. Smith agreed to move both their buildings, but Mr. Smith stated he would need some time to move his. Mr. Pickron stated he moved his building, but Mr. Smith has not moved his and is now asking for a variance so it does not have to be moved. Mr. Pickron stated all the rain that comes off Mr. Smith's building flows onto his property. Mr. Pickron stated the Land Development Code was designed to protect people's property, and all he is asking is for his property to be protected.

Mr. Charles Smith Sr. stated when he initially tried to buy the building, he asked Mr. Pickron to be a good neighbor and leave his building attached to the building so all the water would run off the top of Mr. Pickron's building. Mr. Smith stated Ms. Boris, the previous owner, was going to have the building torn down because Mr. Pickron, who had expressed interest in the building at one time, was unable to buy the building. Mr. Smith stated he does not believe installing a rain gutter on the building will satisfy

Mr. Pickron, but he also does not believe there is a good reason for the Board to rescind the variance that has been given on the property. Mr. Smith stated they could run the water away from Mr. Pickron's property with the gutter, and moving the building right now is too expensive. Mr. Smith stated all the same reasons he and his son asked for a variance in January still apply today. They would like to get a business started and bring jobs to Calhoun County.

Mr. Charles Smith asked if the building would be grandfathered into the current codes since it was a preexisting building prior to the adoption of the code. Commissioner McDougald stated it could be grandfathered in but once a business shuts down for a period of 12 months it has to go back through an application process. Mr. Smith stated he could show where the building was in the process of being utilized during this time. Attorney Fuqua stated the building has to continue to be used for the same purpose it was being used before the code for it to qualify to be grandfathered in to the current code. Attorney Fuqua asked why Mr. Smith did not bring this issue up years ago when he applied for the first variance. Mr. Smith stated he did not know he did not even need a variance from the County at that time to start his business. Attorney Fuqua asked if any money has been spent on or for the property since the variance was granted. Mr. Smith stated he has purchased other equipment and lighting to go back in the building. Attorney Fuqua stated to the Board he was trying to see how much liability, if any, the Board would have to Mr. Smith if they grant Mr. Pickron's request to set aside the variance. Attorney Fuqua stated any money that has been expended on the property between the time the variance was granted and when the Smith's were sent the letter informing them of Mr. Pickron's appeal would be a liability to the Board. Commissioner McDougald asked if there was any documentation stating the Smith's agreed to move the building. Mr. Pickron stated in the meeting minutes from when the first variance was denied the Smith's stated it would take a few years for them to acquire the money to move the building. Commissioner McDougald stated when the variance was granted all the legal requirements to notify the residents in the area of the property had been satisfied, but when Mr. Pickron came before the Board afterwards with his appeal, the Board decided they wanted to do the right thing and hear everyone out. Commissioner McDougald stated a discussion about a remedy between the two (2) neighbors was discussed for a rain gutter to be installed to divert the water coming off the building, and Mr. Pickron was agreeable to this at one point but it seems now an agreement between the two will not be possible. Commissioner McDougald stated the Board has the authority to grant a variance, provided it will do no harm, but it has been determined since the variance was granted that there is harm being done because of the amount of rain that comes off the building onto Mr. Pickron's property. There was further discussion about the property. Mr. Smith stated he had already intended to place a rain gutter on the building, and had already spoken to two (2) different contractors about gutters before Mr. Pickron came before the Board. The only reason he has not installed them yet is because he received the letter about not spending any more money on the building until the variance issue has been resolved. Mr. Smith stated he has proof the building has not been abandoned. Mr. Smith stated he has electrical equipment that will be in the building, so gutters will have to be installed to keep water away from the equipment. Mr. Smith stated the twelve (12) month period of time for the Land Development Code was never a factor and the variance was not needed in the first place, and he will be willing to prove this in court. There was further discussion about the variance and the letters received by the Smith's.

Commissioner Jones stated since Mr. Smith states he does not need a variance the Board can rescind their variance and he can get a lawyer and take the issue to court. Mr. Smith stated he now has a piece of property he cannot sell to anyone without disclosure, paying taxes on the property, and did not realize the issues he would have when he bought the property. Mr. Smith stated he has no choice but to be before the Board now, but from what he understands he did not need the variance or conditional use permit because the building was preexisting before the ordinance went into place. Mr. David Smith stated if the variance remains in place, they would be able to move forward with opening their business and install gutters on the building to divert the rainwater.

Chairman Wise asked Mr. Frank Snowden about the building being preexisting and not needing a variance. Mr. Snowden stated if the building were developed today, it would have to meet setback requirements. Mr. Snowden gave the Board a brief history of the building, stating it was once on someone else's property and was moved by court order, but not far enough to meet the setback rule. The building was in use as a business until the owner's death and since then not been operating as a business. Mr. Snowden stated the Comprehensive Plan and the Land Development Code are slightly different. The Comprehensive Plan states discontinuance of non-conforming uses for a period of twelve (12) months or greater and the Land Development Code states abandonment or discontinuance of operation for twelve (12) months or greater. Mr. Snowden stated these are legal terms, which he has researched, but has not been able to come to a conclusion about what they mean. Mr. Snowden stated he has not come across any other cases that match this particular case. There was further discussion about use of the building and the variance.

Attorney Fuqua stated whether or not the Board decides to let the variance stand or rescind the variance, there will still be water flowing off the roof of the building onto Mr. Pickron's property when it rains. Attorney Fuqua stated Mr. Pickron's real avenue under the Comprehensive Plan was to appeal to the circuit court, but he did not get notice of the variance and the Board decided to continue this hearing. Attorney Fuqua stated if the Board decides to grant Mr. Pickron's request to rescind the variance, the Smith's could take the issue to the circuit court. Attorney Fuqua stated he has tried to find out what money the Smith's have invested into the property since the variance was granted, and this would be the Board's liability if the variance were rescinded. Attorney Fuqua stated the Board can also uphold the variance and require gutters be placed on the building, and Mr. Pickron could take the matter to circuit court if he so chose. Mr. Smith stated the Board could also recognize the building was preexisting to the ordinance and there is no variance or permit required. There was further discussion about the variance.

Chairman Wise stated the Board has heard the facts from both sides, and when they initially granted the variance they did so in good faith in order to bring jobs to Calhoun County. Chairman Wise stated Attorney Fuqua has given the Board three (3) options for solving the issue of the variance, either do nothing and leave the variance as it is, rescind the variance, or amend the variance to require the installment of gutters.

Commissioner McDougald stated the Board granted the variance thinking there was no harm being done by doing so, but since have found this is not the case with the issue of rainwater on Mr. Pickron's

property. Commissioner McDougald stated since the building is out of compliance with the Land Development Code and is causing harm to the adjacent property, he would vote to rescind the variance.

Commissioner Jones stated at this point he stands by his decision to grant the variance.

Commissioner Hall stated he wants to do what is right, but he does not know enough about the legal issues at hand.

Commissioner Bailey stated he does not think gutters will solve Mr. Pickron's problem. Commissioner Bailey asked if the building were moved to the 10-foot setback requirement if the building would have to be altered again to meet the setback requirements from the main highway. Mr. Snowden stated the Comp Plan states a building of new development for commercial use must be setback a minimum of 60 feet from the edge of the right of way. There was further discussion about the Land Development code and zoning in the area of the building.

Chairman Wise asked when the Comprehensive Plan was changed. Mr. Snowden stated the Comprehensive Code was adopted in 1991, and the Land Development Code was adopted in 1992 and amended in 2010. Chairman Wise asked if Mr. Pickron's building was attached to the Smith's building in 2010. Mr. Pickron stated it was not attached at the time the Land Development Code was adopted. Mr. Pickron stated his building was attached to Mr. Smith's building from 2000 to 2010. There was further discussion about the variance. Chairman Wise stated if a gutter would solve the rain problem, desperately needed jobs could be brought to the County with the business the Smith's would like to open. Attorney Fuqua stated the only way the Board could make Mr. Smith install a rain gutter would be to grant the variance and amend it to state a rain gutter must be installed. Mr. Smith stated there is equipment in the building suffering from the rain and he has all intentions of putting up a gutter on the building to help with the rainwater. There was further discussion about the property.

- ❖ Commissioner McDougald made a motion to rescind the variance. Chairman Wise seconded the motion. Commissioner Jones asked by rescinding the variance, would the Board be liable for any money spent by the Smith's for the property since the variance was granted. Attorney Fuqua stated yes, the Board could be liable. Commissioner Jones asked if the Board would have any liability to Mr. Pickron if they do not rescind the variance. Attorney Fuqua stated there would not be as much liability to the Board with Mr. Pickron, other than the water flowing onto his property, which will be there regardless. There was further discussion about the variance. The motion failed 1-4. Commissioner Bailey, Commissioner Hall, Commissioner Jones, and Chairman Wise opposed.
- ❖ Chairman Wise made a motion to amend the variance to include installing a rain gutter to keep the water off Mr. Pickron's property. Commissioner Bailey seconded the motion.
- ❖ Commissioner Bailey made a motion to amend Chairman Wise motion to include installing the gutter within 30 days. The motion passed 5-0.

- ❖ Chairman Wise motion to amend the variance to include installing a rain gutter passed unanimously 5-0.

Attorney Fuqua stated the Board has received a request from Mr. Michael Davis to place another mobile home on his property, which is already non-conforming and in the flood zone, so he can have income from the additional mobile home rental. Attorney Fuqua stated the Technical Review Committee has generally recommended against granting this kind of variance.

Mr. Davis stated he needs an additional rental home on his property to generate enough income to keep his mother and him in their home. Mr. Davis is a quadriplegic, and stated it costs him over \$2,000 a month for attendant care, and he gets no help from the State with these costs. Mr. Davis stated his wife passed away four years ago, who was his caregiver, and now he has to provide care for himself. Mr. Davis stated he has been living off his late wife's life insurance since then, but the money will run out within a year. Without a stable income, he and his mother's only alternative will be to move into a nursing home. Mr. Davis stated with this additional mobile home he would have the income they need to stay in their home. Mr. Davis supplied the Board with photos of his home and property. Mr. Davis stated he is asking for a special variance, and realizes a variance like this has not been granted before, but his situation is unique. Commissioner McDougald asked how much property Mr. Davis owns. Mr. Davis stated he owns eight (8) acres combined. Mr. Davis stated he has two houses currently on his property, and is buying one adjoining property with a house back from the County (Tax Deed Sale). There was further discussion about the property.

Mr. Ben McDaniel stated there are already too many houses on Mr. Davis' property putting him over the code in the flood zone, and that Mr. Davis could get government assistance for the extra money he needs if he applied. Mr. McDaniel stated he opposes Mr. Davis request for a variance.

Mr. Steve Bailey stated he is opposed to Mr. Davis request for a variance. The request is against the County's codes and the property is in the flood zone.

Ms. Victoria Conyers stated her father is Mr. Davis brother, who lives on the property also, and she is living with her parents at this time because they are both disabled. Ms. Conyers stated if Mr. Davis were allowed to move the additional mobile home onto the property this would give her a place to live with her children within walking distance of her parents, and not be cramped into one home. Ms. Conyers stated this would greatly benefit her family if the Board would grant Mr. Davis request.

Ms. Davis, (Mother of Michael Davis), stated she has lived on the property for 46 years and built a house there. Ms. Davis stated she had to call the HUD (Department of Housing and Urban Development) program in Jacksonville to remodel her home when her son had his accident so the home would accommodate him. Ms. Davis stated the house was lost due to foreclosure, but Mr. Davis is in the process of buying the home back. Ms. Davis stated there has been no floodwater where the additional mobile home would be located. Ms. Davis asked the Board to please consider the variance to keep her and her son out of the nursing home; she does not want to leave her home of 46 years.

Mr. Robert Davis, Mr. Davis brother, stated he approves of the request for a variance. Mr. Davis stated this would keep his mother and brother out of the nursing home, and the area where the mobile home would sit has not flooded.

Ms. Bessie Pearson stated her father, Mr. John McDaniel, is a neighbor of Mr. Davis and he opposes the request for a variance.

Mr. Mark Bozeman stated he opposes the request for a variance.

Mr. Adam Bozeman stated he opposes the request for a variance.

Ms. Shirley McDaniel stated she opposes the request for a variance.

Ms. Marjorie Peterson stated she lived on Sheard Road and her home was flooded twice, even after elevating her home after the first flood. Ms. Peterson stated she wanted to put another mobile home on her property, and her complaint with Mr. Davis' request is if it is granted she should be able to move another trailer to her property as well. Ms. Peterson stated she is opposed to Mr. Davis request for a variance, and everyone in the flood zone should have equal rights. Ms. Peterson stated one person should not get special treatment.

Mr. John McDaniel stated he is opposed to Mr. Davis request for a variance.

Ms. Geraldine Sheard stated she has been trying to build an addition to her church for years, and was told since the structure is in the flood zone it would need to be raised five (5) feet, and must stay within a certain dimension. Ms. Peterson stated she has nothing against Mr. Davis, but she opposes because she believes everyone in the flood zone should be treated fairly and equally. There are people who want to build on their property in the area, but are unable to because of the flood zone.

Chairman Wise stated Mr. Fuqua has informed the Board the Technical Review Committee has recommended denial of the request for a variance, based upon previous requests to develop in the flood plain. Attorney Fuqua stated there is also an issue with density.

Mr. Snowden stated the property is zoned mixed use, and in flood zones, there can be one unit per five (5) acres provided there is one acre of uplands for the unit. Mr. Snowden stated the entire property is in the flood zone, with the particular location of the property being in a marginally flood prone area. Mr. Snowden stated the property is already over densified according to the County's Comp Plan and Land Development Code. There was further discussion about the property.

Commissioner McDougald stated he feels for Mr. Davis' situation and would like to be able to grant a special exception based on his hardship circumstances, but with the technicalities and the chance FEMA could increase flood insurance rates for all flood insurance policy holders if found out of compliance, he cannot agree to grant the request for a variance.

Commissioner Jones stated there are already violations of the flood ordinance in the County, and if the Board grants a variance for one person in the flood plain, they have to do it for everyone. Mr. Jones stated he feels for Mr. Davis, but must oppose the request for a variance.

Commissioner Hall stated he would like to be able to grant the request for a variance, but legally it seems the Board's hands are tied.

- ❖ Commissioner Jones made a motion to deny Mr. Davis' request for a variance. Commissioner McDougald seconded the motion. Commissioner Bailey stated he feels for Mr. Davis but with the regulations, he cannot vote to grant the variance. The motion passed unanimously 5-0.

There being no further business, the meeting adjourned at 5:58 p.m., CT.

  
DANNY RAY WISE, CHAIRMAN

ATTEST:

  
CARLA A. HAND, CLERK