

**-MINUTES  
CRISP COUNTY ZONING BOARD OF APPEALS  
MEETING  
September 19<sup>th</sup> 2023**

The Crisp County Zoning Board of Appeals met at a regular meeting on the 19<sup>th</sup> day of September 2023 at 9:00 a.m. in the Crisp County Government Center. The following members were present: Dale Mitchell, J.C. Clark, Lucky Taylor, and Ray Cromer. Also present, Crisp County Planning Director, Mickey Dunnivant and Building Inspector Jimmy Mumphery.  
Visitors present: Jack Shiver.

Chairman Dale Mitchell called the meeting to order.

**MINUTES**

Chairman Dale Mitchell asked for a motion on the April 18<sup>th</sup> 2023 meeting.

**VOTE:** Motion was made by JC Clark with a second by Lucky Taylor to **approve** the minutes of the April 18<sup>th</sup>, 2023 meeting. Carried unanimously 3-0.

**PUBLIC HEARING**

A request from Willie C Coleman, for a variance to allow him a front yard setback reduction from 35ft to 28ft so that he can place a double wide trailer on his vacant lot located on the corner of Robin Drive and Lark Drive in the Wiley Acres Subdivision , Cordele Georgia and is zoned RS1 (Single Family Residential).

Mr. Coleman was present and spoke on behalf of the request. Mr. Dunnivant informed the board that Jimmy Mumphery went to the location and measured the setbacks for Mr. Coleman. Mr. Coleman stated that he wanted to place a 32x65 double wide on the lot and with the current setbacks, any placement would prevent him from having a front yard. Mr. Mitchell asked if his front door would be facing Thrush Street. Mr. Coleman responded yes.

Mr. Coleman was asked the location of his septic tank. He pointed to a location on the map. Coleman said the septic tank had been inspected and was good condition.

Mr. Mitchell asked if there were any further questions. There were none. Mr. Mitchell, concluded the public portion of the hearing.

**MEETING**

Mr. Mitchell asked if Planning & Zoning had any calls or responses to the letters from people whom may be against the request. Dunnivant reported that Marty Roundtree, called and said that he was against Mr. Coleman having the variance. Mr. Roundtree said that he would be out of town on the date of the meeting but wanted it to be known that he was not for the variance. After discussion, the chairman asked for a motion.

**DISCUSSION and VOTE:**

Mr. Mitchell asked if there were any further discussion, there were none. After a finding of the facts, JC Clark made a motion to grant the variance for the setbacks and read aloud the standards that needed to be met in order to grant the variance. A Special Exception variance may be granted upon a finding that the relief, if granted, would not cause substantial detriment to the public good or be injurious to the use and enjoyment of the environment or other property in the immediate vicinity nor diminish and impair property values within the surrounding neighborhood or impair the purpose and intent of the Development Code.

Mr. Mitchell stated that all four standards had been met. A motion was made (unintelligible on recording as to who made the motion) The motion was seconded by Ray Cromer. Mr. Mitchell asked for all who were in favor to say "I". The vote was carried unanimously.

**NEW BUSINESS**

Dunnavant updated the board on the meeting dates and templates that would be used for the Crisp County Comprehensive Plan. Dunnavant told the board the Plan is a road map for County and City leaders to use for development and land use.

Mr. Taylor asked for a synopsis of the plans purpose. Dunnavant told Taylor that it establishes what growth is wanted and encouraged in the zoning districts. It's a blueprint as to what the people want with a listing of what the local governments plan to fund.

Dunnavant told the board that his concern was the Character Areas, which are basically the zoning districts. More people are working from home now and some of the residential business's need to be reconsidered as to be allowed. Dunnavant explained that the Character Areas needed to match what the Development Code allowed or did not allow.

Mr. Taylor asked how and who would decide what was in the Plan. Dunnavant told him through a series of public meetings with citizens and government leaders and plan would be developed. Funding would be appropriated through budgetary allocations and grants. Dunnavant told the Board the meetings are advertised in the local paper but citizen participation is almost zero. Your government leaders are usually the only people who attend to the meetings and are who decide on the issues. JC Clark remembered the advertisement of the meetings when Chairman Wiggins was working on the plan during his tenure with the City of Cordele. Mr. Mitchell remembered talks of a by-pass at one time in the plan. Dunnavant told the board he would send out an email with links to them and others asking for participation in the near future.

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Dunnivant told the board that he was working toward getting City Reporter Software online by January 1<sup>st</sup> 2024. Dunnivant explained the benefits of the software and felt like it would be added value for the citizens to have a 24hr portal to apply for permits.

Dunnivant informed the board that he was going to use a company called GIS-1 to handle addressing matters in the unincorporated areas of Crisp County. Dunnivant said this was a needed service and that when addresses are not being assigned, GIS-1 would work on our NG911 mapping data. Dale Mitchell agreed and spoke of an incident. Dunnivant told the board that he hopes to move addressing to 911 in the new budget and that he was discussing the same with County Administrator Clark Harrell.

Dunnivant spoke of Legal & Legislative updates he learned while at the Georgia Association of Zoning Administrators. The following was discussed:

### House Bill 916

This bill created a unified "*petition for review*" procedure for appealing a case from a lower judicatory to superior court or state court. Any document filed requesting review by a superior or state court of a decision (i.e., a "final judgment") of a lower judicatory, however titled, will be treated by the courts as a "*petition for review*" per new OCGA § 5-3-3 (9). No more writ of certiorari review *effective July 1, 2023* }

A petitioner must file a petition for review with the clerk of the reviewing court within 30 days after the *signed* and *final judgment* of the lower judicatory.

"Lower judicatory" is broadly defined to include any government official or body "exercising judicial or quasi-judicial powers authorized by law" per new OCGA § 5-3-3 (5) & (6)

### OCGA 5-3-5(a)

Except as provided... a reviewing court shall:

- Review only matters raised in the record of the proceeding in the lower judicatory;
- Accept the **findings of fact** and credibility of the lower judicatory **unless they are clearly erroneous**;
- Accept a decision regarding an issue within the sound discretion of the lower judicatory **unless such a decision was an abuse of discretion**;
- Determine whether the final judgment was sustained by sufficient evidence; and
- **Review questions of law "de novo"**

### OCGA 5-3-7(b)

- Petition for review must be filed within 30 days after the final judgment is:
- *Signed and notice of the final judgment has been provided to all parties*, if the lower judicatory does not have a clerk; **or**
- Filed or recorded, whichever first occurs, if the lower judicatory has a clerk.
- Note that the filing date can be extended by the Superior Court for up to 30 days. O.C.G.A. 5-3-11(b)

### TAKE HOME MESSAGE

1. The appeal of a rezoning decision is the same as it used to be... a de novo bench trial in front of the Superior Court. The legal standard also remains the same: whether the existing zoning is a significant detriment to the property which is not justified by a substantial public benefit.
2. The appeal of a special use permit is record review.
3. Appeals of variances and decisions on administrative appeals are also record reviews.
4. Record review means that it is incumbent upon the party who wishes to appeal to make sure that she gets her evidence in the record prior to the decision being made. Having a transcript or at least a recording of the hearing is also a good idea.
5. The rule of raising constitutional objections still applies to all zoning decisions up for appeal.
6. There is a new notice and hearing procedure for quasi-judicial zoning decisions. *30 days before the hearing along with additional notice mailed to the owner of the property subject to the proposed action. HB 1405, O.C.A. 36-66-4(g)*
7. Where there is a delegation of zoning power to an official or board, then there needs to be policies and procedures that apply, and also standards and criteria that guide the decision.
8. The new law is in effect now.
9. Certiorari is gone

### A refresher on HB 1405.....

#### Notice of *Quasi-Judicial Hearing*

- Notice of a quasi-judicial hearing must be provided at least 30 days before the hearing along with additional notice mailed to the owner of the property subject to the proposed action
- Due process for quasi-judicial hearings before the local government (such as a variance or special use permit) requires the following:
  1. Notice of the hearing
  2. Applicant must be allowed to explain its reasons for requesting the variance
  3. Allow presentation of evidence in support of the application, including letters, photographs, plats, and schedules of property values in the community
  4. Allow the applicant to answer questions from the board members
  5. Preparation of a verbatim transcript or detailed account of the hearing sufficient for judicial review
  6. Explain the reasons for the board's decision, and put that in writing. *Findings of Facts*

#### *Appeals of Quasi-Judicial Decisions* to the Superior Court

On appeal, the court reviews

1. *Only the record of the proceedings* before the local government administrative agency;
2. *Accepts findings of fact and credibility of the agency unless* they are clearly erroneous;
3. *Accepts a decision regarding an issue unless* an abuse of discretion;
4. Determines if judgment was sustained by sufficient evidence; and
5. Reviews question of law de novo.

**Recent Court Decision**

**Sprayberry v. Board of Commissioners of Putnam County, 366 Ga. App. 810 (2023)**

Under zoning ordinance standards for granting a variance for “exceptional narrowness, shallowness or shape of a specific piece of property” **or** “where strict application of the development requirements would result in undue hardship,” landowners who sought setback variance in order to construct swimming pool were not required to show undue hardship if they established exceptional narrowness or shape of their property warranted a variance.

**Legislation that PASSED**

***SB 213 – Must Allow Nonconforming Mobile Homes to be replaced with New Ones***

- Requires counties and cities to allow new mobile homes to replace preexisting and nonconforming mobile homes.
- Applies to a community/park or on other residential land.
- The local government cannot enforce any zoning, regulation or restriction or impose any conditions on the new home that are not required of the existing home. There are several exceptions to this preemption:
- PASSED–Effective July 1, 2023

***HB 311 – Property Tax Relief in Federal Disaster Areas***

- Enables local governments to grant optional temporary property tax relief in federal disaster areas.
- Local emergency management personnel determines list of properties.
- Tax commissioners determine tax digest value of the properties.
- Each local government (city, county or school system) makes the decision whether to grant this relief.
- Relief can be reduction of millage rate or a credit of a flat dollar amount.
- Property owners who feel they were overlooked may appeal.
- PASSED – Applies to tax assessments issued on or after April 1, 2023.

***SB 146 - EV Charging Station***

- Sets the regulatory and taxation framework for electric vehicle charging stations.
- Allows electricity to be sold on a per kilowatt-hour basis, grants oversight authority of electric charging stations to the Georgia Department of Agriculture and will tax electricity used to charge electric vehicles in a similar manner as gasoline.
- By January 1, 2025, all city and county charging stations shall be capable of accurately metering, measuring, and prominently displaying the amount of electricity delivered to each electric vehicle on a per kilowatt-hour basis, either directly upon the station or remotely by a digital network.
- PASSED – Effective January 1, 2025

***HB 132 – Authorize the Use of Ungraded Lumber***

- In the construction or repair of any accessory structure.
- Must not contain habitable space.
- Property must be zoned or primarily used for residential or agricultural purposes.
- PASSED – Effective July 1, 2024

OLD BUSINESS

None.

Meeting was adjourned by Chairman Mitchell.



Dale Mitchell  
Chairman



Mickey Dunnavant  
Secretary/Planning Director