

The Oconee County Board of Zoning Appeals



August 21, 2008

Establishing Authority

- 1994 Planning Legislation
- Specifically Article § 6-29-780 & 790
- Chapter 1 of the Oconee County Performance Standard Ordinance § 1.5 - 1.6.7

Powers of the Board

Administrative Appeals

- Alleged error in order, requirements, or a decision by staff
- Answer the question:
 - Was an error made in the enforcement of the ordinance in question?
 - Were all the proper procedures followed by the staff as outlined in the ordinance?
 - Did the staff make a proper decision in the approval or denial of a request
- The Board has the power to uphold or reverse the staff's actions and may issue a permit

Powers of the Board, continued

Variance Hearings

- Appeal to the strict application of ordinance would cause unnecessary hardship
- Board is not free to make decision based on their sense of justice but must abide by the local ordinance and the 1994 Planning Act
- Courts will not uphold decisions of the Board based on errors of law, fraud or lack of supporting evidence
- Courts will not uphold a variance decision where the board acted arbitrarily, unreasonably, or in a discriminatory manner, or abuses its discretion
- A variance must not impair the public purpose

■ What can the Board do with a variance?

- Allows the Board to make an exception to an otherwise legitimate restriction for special cases
- Special cases occur when unusual circumstances make the restriction in question more burdensome than intended
- Applicant must provide proof that a particular property suffers a singular disadvantage from a regulation
- Applicant is not entitled relief from a self inflicted hardship

Standards for Granting a Variance for an unnecessary hardship

■ All must be found to be true

- Extraordinary Conditions: specific to property in question
- Other property: conditions do not apply to other properties in the vicinity
- Utilization: due to the conditions on the property the strict application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property
- Detriment: granting variance will not cause harm to adjacent property, character of community, or public good

Other Variance Considerations:

- Profitability: the fact that a property may be used more profitably if a variance is granted is NOT grounds for a variance
- Conditions: The Board may attach conditions to the granting of a variance
- Use Variances: The Board may not grant a use variance-if a regulation prohibits a use from being present in the area in question the Board can not allow it

Powers of the Board, continued

Special Exceptions

- Uses permitted by the Board that meet the terms and conditions described in the ordinance in question
- Board must follow the standards and conditions set out in the ordinance when considering a special exception

General Criteria for Granting a Special Exception (1.5.5.2 performance standards ordinance)

- In accordance with comprehensive plan and the performance standards ordinance
- In the best interest of the County, the convenience of the community and the public welfare
- Suitable for the property in question and constructed, operated, and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the community
- Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazard.

Special Exception in Oconee County

- Group Residential Developments
 - Chapter 5 of the performance standards ordinance
 - § 5.10 Board Criteria for Granting a Special Exception
- Sexually Oriented Businesses
 - Chapter 2 of the performance standards ordinance
 - Appeals of designation as a sexually oriented business, denial of sexually oriented business permit, suspension or revocation of sexually oriented business permit **require a hearing in front of the Board of Appeals**
 - Appeals process is outlined in § 2.15 - 2.15.8

Communication Towers Ordinance

- Chapter 4 of the performance standards ordinance
- § 4.8 and 4.10 list the criteria for evaluation of special exception.
 - All requirements imposed in section 4.8 must be met.
 - Does the new tower satisfy the setback requirements
 - Is the tower located in a residential area; if so does it meet the residential area requirements (§ 4.10.3 – 4.10.4)

Board Orders

- The Board concludes that the standards in Chapter 4 of the Oconee County Unified Performance Standards Ordinance which are applicable to the proposed special exception have been meet.
- The Board concludes that the proposed special exception is compatible with land uses in the district, and will not substantially diminish the value of adjacent property or property in the district.
- The Board concludes that the proposed special exception will have a positive impact upon the general health, safety and welfare of the citizens of Oconee County.