

Approved June 5, 2003

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, May 1, 2003
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on May 1, 2003, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Karen Mahurin, Evert Hekman, Bart Brannon and Roy Taylor. In attendance for Cherokee County Staff were Jim Cain, Principal Planner for the Planning & Zoning Department and Mark Mahler, County Attorney. The meeting was called to order at 6:30 pm. Mr. Hekman arrived at 6:50 pm.

Chairman Mahurin explained to the applicants that there were only three members of the Board present where there are normally 5 members. She asked if anyone would like to table their case for a lack of quorum since all three members present would have to vote for approval in order for the case to pass. None of the applicants accepted to postpone.

Old Cases

Case #03-04-010A Tim McCleskey requesting a variance to Article 16, Section 16.1; Hwy 92 Overlay Regulations. The applicant is requesting a variance for part of parcel 562 to be taken out of the Hwy 92 Overlay. This property is located at 3321 Trickum Road in Land Lot 1131 of the 15th District and further described as Cherokee County Tax Map 15N24, Part of Parcel 562. Applicant requested to be tabled for 30 days.

Mr. Brannon made a motion to table until the June 5, 2003 public hearing. Seconded by Chairman Mahurin. Passed with 3 votes. It was noted this will be the last time this variance is eligible to be tabled.

Case #03-04-011A American Exclusives requesting a variance to Article 7, Table 7.1A; Setback Requirements. The applicant is requesting a variance of 4' 3" to allow a sunroom to encroach into the 10' side yard setback. If approved, this would allow the side setback to be 5'9". This property is located at 1162 Britley Park Lane in Britley Park Subdivision in Land Lot 902 of the 21st District and further described as Cherokee County Tax Map 15N05F, Parcel 175.

Mr. Michael Laudette represented this case. He stated he had researched other variances in Britley Park that had been granted variances for sunrooms and had talked to the adjacent neighbors and they had no problem with the variance.

Chairman Mahurin stated that the Zoning Board of Appeals is not a precedence setting body for any other variances that may have been granted before and that the cases are taken on an individual basis.

Chairman Mahurin asked when the footings were poured did no one know it was too close?

Mr. Laudette stated Mr. Ray Beatty was the concrete person. Mr. Beatty stated the footings were not inspected. Mr. Laudette stated when the final was inspected that was when it was detected.

Mr. Taylor asked if it was procedure to have the footings signed off on before continuing construction. Mr. Laudette answered yes and stated it was his production department's assumption that Mr. Laudette had the footers inspected.

Mr. Taylor stated the footer inspection is before any concrete is poured and more than likely since it is at least half of the setback it more than likely would have been caught then.

Chairman Mahurin stated her problem was that because other variances had been granted in the subdivision that it was assumed this would be ok. Mr. Laudette stated he did research the other properties but only to know just what a situation he was in and not for the purpose of making an argument with the Board.

Mr. Rolf Fisher the homeowner stated he had contacted the next-door neighbor and she did not object to this variance request.

No one spoke in favor or opposition.

Mr. Cain gave staff recommendations for approval contingent on the applicant/homeowner addressing all safety issues related to the building separation and any firewall requirements per the building inspectors and to address any concerns the property owner to the east may have. He stated in Ms. Casteel's comments from Building Inspections she stated her concerns for any fire that may occur due to the close proximity.

Mr. Taylor stated that he had not received Ms. Casteel's comments and had hoped she would be present to address some questions.

Mr. Laudette stated he had all documents necessary and the fire ratings on their rooms are unbelievable.

Mr. Taylor stated he was concerned with possible fire safety issues and would like a report from the Fire Department. Discussion ensued.

Mr. Brannon made a motion to approve with the stipulation that applicant is to seek advice from the Fire Marshal and also to comply with the Homeowners Association. Mr. Taylor made a friendly amendment for approval, but would like a letter from the Fire Marshal's Office giving his advise and pass along this information to the Planning Commission. Seconded by Chairman Mahurin. Passed 3-0 with Mr. Hekman abstaining due to late arrival.

New Cases

Case #03-05-013A Powertel/Atlanta, Inc. requesting a variance to Article 7, Section 7.7-27(c), Setbacks for Telecommunication Towers. The applicant is requesting a variance to reduce the setback on the south side to 84', reduce setback on the east side to 64' and reduce the setback to 35' on the north side. The Cherokee County Zoning Ordinance requires the setback for a tower to be equivalent to the tower height from all sides. The proposed tower would be 180' in height. This property is located at 506 Industrial Drive in Land Lot 1220 of the 15th District and further described as Cherokee County Tax Map 15N06E, Parcel 251.

Mr. Randy Mannino represented this case. He noted when this request first came before the Board it was denied. He noted they had found an industrial site more appropriate for this type of land use. He stated they had had no opposition to this variance by the adjacent property owners. The design of the tower is for a 50-foot fall zone within the owner's property and not a fall radius onto others' property.

No one spoke in favor or opposition.

Mr. Cain gave staff recommendation for approval as long as the highest safety standards are still adhered to by the applicant and developer.

Mr. Hekman made a motion to approve as submitted with the 50-foot fall zone. Seconded by Mr. Brannon. Passed 4-0.

Case #03-05-014A Highridge Partners, Inc. requesting a variance to Article 16, Section 16.1; Hwy 92 Village Ordinance. The applicant is requesting a variance to include parcel(s) 293 and 295 into the Hwy 92 Overlay. This property is located at 5882 Priest Road and 5894 Priest Road in Land Lot 1127, 1128 of the 21st District and further described as Cherokee County Tax Map 21N06, Parcel(s) 293, 295.

Chuck Ware represented this case.

Chairman Mahurin asked if a site plan had been submitted. Mr. Cain answered, "no," just a boundary survey.

Mr. Cain gave staff recommendations for approval contingent upon applicant providing a general site plan that addresses the arrangement of land uses in the project area.

Mr. Hekman stated he would like to eventually see a site plan for this project.

Mr. Taylor made a motion to approve the variance in concept pending an approved site plan by Planning & Zoning. Discussion ensued regarding the technical review process and compliance with the Hwy 92 Village Ordinance.

Mrs. Kathy White spoke in favor as her husband owns parcel 293.

Mr. Kyle Priest asked about access. Mr. Ware stated access would be off Highway 92. Mr. Cain stated Engineering would address proper access during Technical Review.

Mr. Hekman stated they could attach conditions if necessary if the Board knew generally what the plans were. He stated he did not have a problem in this instance since only a small portion is in the Hwy 92 Village Ordinance, but did not want to set a precedence for the future without a site plan, he did not feel this is appropriate.

Mr. Taylor made a motion to approve the variance contingent upon staff approval of site plan. Seconded by Mr. Brannon. Passed 4-0.

Case #03-05-015A Legendary Homes, Inc. requesting a variance to the former Article 8, Table 8.1; PUD Regulations. The applicant is requesting a variance to encroach 3'6" into the required 10' side building setback. This property is located inside BridgeMill Subdivision at 314 Orchard Walk in Land Lot 137 of the 15th District and further described as Cherokee County Tax Map 15N07, Parcel(s) 278.

Mr. Parks Huff represented this case and during his presentation agreed to plantings if the Zoning Board of Appeals placed that as a stipulation to the approval of the variance.

Mr. Thomas Hogan stated he had pulled the lines several times and believed it to be correct at 10 foot 2 inches. He stated the footings and walls were inspected and were never questioned until the house was framed and mechanical's put in it. Discussion ensued as to placement of pins.

Mr. Mike Gnatovic spoke in favor as the potential homeowner. He stated he had signed a contract and the house had been put on hold since March. He and his wife have had to move into an apartment waiting on this issue to be resolved.

Mr. Todd Luvent explained the animosity between Mr. Cochran, the adjacent homeowner and Legendary Homes as a past employee. He said he had agreed to buy the land for the encroachment from the Cochrans, but this arrangement had been made 7 weeks ago without the paperwork being signed by Mr. Cochran.

Mrs. Linda Cochran spoke in opposition, as the adjacent homeowner, and stated the house is a sore thumb to the community. She stated there had been an agreement for \$5,000 for the strip of land with Legendary Homes, but they had to get their mortgage holders' approval to sale this land. This agreement was pending with the mortgage company when she and her husband received the paperwork for this hearing.

Mr. Cain gave staff recommendation for approval and suggested if there were opposition that the Zoning Board of Appeals may consider requiring landscaping or fencing to provide screening.

Mr. Brannon made a motion to approve. Seconded by Mr. Hekman. Passed 3-1 with Mr. Taylor opposing.

Case #03-05-016A Casey R. Joyner requesting a variance to Article 5, Section 5.6 Accessory Structures. The applicant is requesting a variance of 8.9' to allow an existing accessory structure to be located 1.1' from the property line. The Cherokee County Zoning Ordinance requires a 10' building setback for an accessory structure. This property is located at 1378 Bart Manous Road in Land Lot 106 of the 15th District and further described as Cherokee County Tax Map 15N25, Parcel(s) 204A.

Mr. Casey Joyner represented this case. He stated this encroachment came to light at the survey plat review process when the property was resurveyed and the property line was moved closer to the garage.

No one spoke in favor or opposition.

Mr. Cain gave staff recommendation for approval due to grandfathered status of the accessory structure.

Mr. Taylor made a motion for approval. Seconded by Mr. Brannon. Passed 4-0.

Case #03-05-017A R. J. Lewis, Inc. requesting a variance to Article 23; Conservation Subdivision, Section 23.2; Setback Requirements. The applicant is requesting a variance for an encroachment of 4'6" along Laurel Ridge Drive and an encroachment of 4'8" along Willow Court. The Cherokee County Zoning Ordinance requires a 30' front building setback. This property is located in Laurel Ridge Subdivision at 201 N. Willow Court in Land Lot(s) 39, 40, 41 of the 2nd District and further described as Cherokee County Tax Map 02N13, Parcel 067.

Mr. R. J. Kad represented this case. He stated he passed all inspections and had obtained a CO and this issue of encroachment came up at the closing.

Mr. Walter Sate spoke in favor. He stated he had contracted to buy the house.

No one spoke in opposition.

Mr. Cain gave staff recommendations for approval.

Mr. Hekman commented this is another case of similar issues brought up before the Board.

Mr. Brannon made a motion to approve. Seconded by Mr. Taylor. Passed 4-0.

Case #03-05-018A Greg and Donna Goodall requesting a variance to Article 5; Accessory Structures, Section a and c. The applicant is requesting a variance of 3' to allow a 7' building setback for an accessory structure and a variance to allow this accessory structure to be 1,152 sq. ft. in size instead of the required 900 sq. ft. This property is located at 619 Water Tank Road in Land Lot(s) 924, 925 of the 3rd District and further described as Cherokee County Tax Map 03N11, Parcel 134.

Mr. Greg Goodall represented this case.

No one spoke in favor or opposition.

Jim gave staff recommendations for approval with a condition that the detached garage be an appropriate scale relationship between the size of the existing house and the proposed detached garage. He stated Staff is of the strong opinion that no accessory structure should ever exceed the size of the principal structure. In addition his comments were that the detached garage be of a similar appearance to the house in terms of color and architectural style.

Mr. Hekman stated he did not get a plat showing the lay out of where the house and detached garage is to be located and would have appreciated seeing this. Mr. Goodall then showed Mr. Hekman the lay out he had.

Mrs. Goodall stated they had already picked out the color similar to their home.

Mr. Taylor asked why the structure has to be set back further. Mr. Goodall stated there was a giant beech tree and he did not want to disturb it.

Mr. Hekman made the comment that Mr. Goodall might want to consider any grading activities around the tree due to possible damage. Mr. Goodall said they would be moving dirt into the area. Mr. Taylor stated compaction could be just as much a problem.

Mr. Taylor made a motion to approve. Seconded by Mr. Hekman. Passed 4-0.

Case #03-05-019A Penney Davis requesting a variance to Article 7, Section 7.7-45(a). The applicant is requesting a variance to allow a private school on a four (4) acre tract of land instead of the five (5) acre requirement. This property is located at 4095 N. Arnold Mill Road in Land Lot(s) 822 of the 15th District and further described as Cherokee County Tax Map 15N28, Part of Parcel 009B.

Mr. Davis represented this case. He explained they wanted to buy 5 acres and keep an acre to build their home on separate from the school.

Mr. Brannon asked how many students were enrolled. Mr. Davis stated 135 students total, but that some come once a week, some students come twice a week and there are only 30 to 35 students at the school at one time.

Mr. Hekman asked if the buildings could meet building setbacks. Mr. Davis stated he knows the setbacks and can make them.

No one spoke in favor or opposition.

Mr. Cain gave staff recommendation for approval.

Mr. Hekman made a motion to approve with the condition of an easement for access to the one acre tract for the home. Seconded by Mr. Brannon. Approved 4-0.

Other Items

Approval of April 3, 2003 Minutes.

Mr. Brannon made a motion to approve the April 3, 2003 minutes. Seconded by Mr. Hekman. Passed 4-0.

Chairman Mahurin made a motion to appoint Mr. Hekman as Vice-Chairman for the Zoning Board of Appeals. Seconded by Mr. Brannon. Passed.

Mr. Taylor made a motion to adjourn the meeting. Seconded by Mr. Brannon. Passed. Meeting adjourned at 8:35 pm