

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, February 5, 2004
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on January 8, 2003, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Chairman Karen Mahurin, Evert Hekman, Bart Brannon, Roy Taylor and Cindy Castello. In attendance for Cherokee County Staff were Jim Cain, Principal Planner, Vicki Mulkey, Zoning Technician for the Planning & Zoning Department, Glenda Casteel for the Building Department and Mark Mahler, County Attorney. The meeting was called to order at 6:30 pm.

Old Cases

Case #03-11-054A Joseph Shields requesting a variance to Article 5, Section 5.6A. The applicant is requesting a variance to allow for a 3.8 foot setback for a swimming pool. This property is located at 2304 Westland Mill in Land Lot 1035 of the 21st District and further described as Cherokee County Tax Map 21N11A, Parcel 002.

Case has been postponed

Mark Mahler reported to the Board that Mr. Miller and Mr. Shields' attorney are negotiating and both have requested postponement for additional time to come to some type of agreement or if an agreement is not reached, Mr. Shields will remove that portion of the swimming pool encroaching on Mr. Miller's property.

Case #04-01-005V Diversified Properties is requesting a variance to Article 7, 7.1A: Minimum District Standards. The applicant is requesting a variance to allow a 10-foot variance to the 35-foot front building setback in order to construct three single-family dwellings. This property is located on Willow Way in Land Lot 1041 of the 15th District and further described as Cherokee County Tax Map 15N29A, Parcel(s) 540, 541, & 542.

Jim Cain gave Staff findings of facts that:

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: There are topography hardships to house placement on these lots. Applicant states these lots drop off dramatically at approximately 75 feet back from the existing street.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, in order to place adequate size homes on these lots complying with the 35-foot setback, more grading of the lot would be required as well as possible retaining walls.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, Staff does not believe that would be the case.

A LITERAL INTERPRETATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS OTHERS IN THE SAME DISTRICT HAVE BEEN ALLOWED: Yes.

Note: There was no public input as the public hearing was conducted at the January 8, 2004 regular Zoning Board of Appeals meeting when this case was postponed to this February meeting.

Bart Brannon stated he had gone out to the property and looked at other homes in the neighborhood and the homes next to the property in question and stated the homes are not all in a row but staggered throughout. He stated the property drops off drastically on these three lots and that the homes next to these lots did not have the rough topography that these lots have. He stated that the existing homes were built with a 35 foot front yard setback and some homes setback further and that he felt that today's standard of a 25 foot front yard setback would not adversely affect the neighborhood and suggested some plantings between the homes.

Bart Brannon made a motion to approve as requested. Cindy Castello seconded. Motion failed 3 to 2 with Karen Mahurin, Evert Hekman and Roy Taylor in opposition.

Discussion ensued as to the sharp drop off of the land and the present code requirement of a 25-foot setback today.

Glenda Casteel stated at the time the subdivision was approved the requirement then was a 35-foot front yard setback.

Discussion ensued as to the Homeowner's Association being in opposition to this variance request.

Karen Mahurin made a motion to deny. Seconded by Evert Hekman. Motion passed 3 to 2 with Bart Brannon and Cindy Castello in opposition.

New Cases

Case # 04-02-006V Cam Properties of Ga. LLC requesting a variance to Article 10, Section 6-2. The applicant is requesting a variance to allow the required 50-foot buffer around the exterior of a conservation subdivision to be waived for a detention pond. This property is located on Bart Manous Road in Land Lot(s) 39, 105, 106, 111, & 112 of the 15th District and further described as Cherokee County Tax Map 15N25, Parcel 138A.

Jim Cain gave Staff findings of facts that:

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: There are topography hardships that dictate this best location for a detention pond.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: There would be more land disturbance required for storm water management to relocate, enlarge or increase the number of detention ponds.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, Staff does not believe that would be the case.

A LITERAL INTERPRETATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS OTHERS IN THE SAME DISTRICT HAVE BEEN ALLOWED: Yes.

Ron Wikle represented this case. He stated he had been in touch with Engineering and this is the only area where the water could collect to protect against water runoff and erosion.

Johnny O'Allen, the adjoining property owner, spoke in favor as he believed this detention pond will help keep water runoff away from his property.

Evert Hekman made a motion to approve. Bart Brannon seconded. Motion passed unanimously 5-0.

Case #04-02-007A Bonnie Coates is requesting a variance to Article 5.6, Section B. The applicant is requesting a variance to allow more than one accessory structure on the property and to allow a mobile home to be used for a storage building. This property is located on 585 Debord Drive in Land Lot 272 of the 23rd District and further described as Cherokee County Tax Map 23N08, Parcel 54C.

Jim Cain gave Staff findings of facts that:

This manufactured home was the primary residence of the property owner while the new home was under construction. The building permit for this new structure was issued with the condition that this manufactured home be removed upon the completion of the new residence. In addition, the permit issued by Environmental Health was also conditional upon the removal of this manufactured home. The property owner was aware and agreeable to this condition at the time.

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: None.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: It would cost the property owner to remove this manufactured home and construct a structure for storage of goods.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: Yes, Staff does not believe that the expressed intent of the Ordinance addressing accessory structures is for manufactured homes to be recycled as storage facilities.

A LITERAL INTERPRETATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS OTHERS IN THE SAME DISTRICT HAVE BEEN ALLOWED: No.

Roy Taylor asked what the difference between the mobile home as an accessory structure as opposed to a metal building erected on the property. Glenda Casteel explained mobile homes are under HUD standards and metal or stick- built structures are under the State building code standards.

Bonnie Coates represented this case. She stated she needed the structure to house feed, etc. for her goats, chickens and other farm animals. She stated she felt she had to agree to remove the mobile home in order to obtain her Certificate of Occupancy (CO) for her new home.

No one spoke in favor or opposition.

Discussion ensued as to her agreement with the County to remove the mobile home once she had obtained a CO from the County. Glenda Casteel stated Environmental Health concerns are that the Coates' are using the existing septic system for their new home and the system cannot handle both the existing mobile home and the new home. She stated the Building Department would not consider the mobile home as a residential unit if the kitchen elements had been removed.

Chairman Mahurin expressed her concerns that the County had an agreement with Mrs. Coates and now she did not want to honor that agreement.

Glenda Casteel stated the additional agreement between the County and the Coates was to reimburse the Coates their impact fee once the mobile home was removed. Discussion ensued.

Discussion ensued that Mrs. Coates has a five-acre tract of land and any impact to the neighboring properties.

Roy Taylor made a motion to allow Mrs. Coates to maintain the mobile home structure with the following conditions: 1) without plumbing, i.e., bathroom and kitchen to address any County Authority issues within 60 days and 2) applicant will pay County fees for any necessary inspections. Seconded by Bart Brannon. Motion passed unanimously 5-0.

Case #04-02-008V Donna McGee is requesting a variance to Article 7.3-7, 7.3-8, 7.3-9, 7.3-10, and Table 7.1 Minimum District Development Standards: Permitted Uses, Section 7.6. The applicant is requesting a variance to allow for a 51-foot front building setback, a 37-foot side yard setback, and to allow the operation of an antique store as a permitted use in AG. This property is located on 2136 Holbrook Campground Road in Land Lot 1191 & 1192 of the 3rd District and further described as Cherokee County Tax Map 03N30, Parcel 069.

Jim Cain gave Staff findings of facts that:

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: None

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: This store in some capacity has been in existence for approximately 75 years.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, Staff does not believe that would be the case.

A LITERAL INTERPRETATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS OTHERS IN THE SAME DISTRICT HAVE BEEN ALLOWED: Yes.

Donna McGee represented this case. She explained that she was in a grandfathered status with her antique shop and the shop had burned down. She stated by the grandfathered status she would be able to rebuild at the exact foot print of the building that burned, but she thought if she could obtain the setback variances, the new building would look better on the property and not be so close to the road. She stated the building would be metal but with a front facade as an appearance of a barn structure that would be visually appealing with a wood front.

Michael Sheppard spoke in favor that it would be an improvement to those corner properties.

Discussion ensued as to the placement of the new building and that the back of the building abuts a hill and the back of the building would be masonry block.

No one spoke in opposition.

Evert Hekman made a motion to approve with the condition that the front and two sides be covered with a material that is not metal and that the building would not have a metal building appearance. Seconded by Cindy Castello. Motion passed unanimously 5-0.

Case #04-02-009V Cliff Stanfield is requesting a variance to Article 23, Section 23.8; Buffer Requirements. The applicant is requesting a variance to allow three specific encroachments into the 50' perimeter buffer for clearing, grading, and re-vegetating. The property is located at 2121 Wilkie Road in Land Lot(s) 43, 44, 99, 100, 101, 102, 114, 116, 117, 118, 119, 120, 167, 168, 169 and 170 of the 2nd District and described as Cherokee County Tax Map 02N12, Parcel(s) 051, 068A, 047, 001.

Jim Cain gave Staff findings of facts:

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: Topographic hardships do exist at this development.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Without the variance grades

would be steep and would not appear natural. At the entrance a retaining wall would have to be built to meet existing grades causing a possible sight distance problem as well as an aesthetic difficulty.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, Staff does not believe that would be the case.

A LITERAL INTERPRETATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE APPLICANT OF RIGHTS OTHERS IN THE SAME DISTRICT HAVE BEEN ALLOWED: Yes.

Cliff Stanfield represented this case and stated that any disturbance would be replanted with quality plantings.

Cindy Castello made a motion to approve as requested. Seconded by Bart Brannon. Motion passed unanimously 5-0.

Other Items

Approval of January 8, 2004 minutes.

Roy Taylor made a motion to approve the minutes. Seconded by Bart Brannon. Motion passed unanimously 5-0.

Evert Hekman made a motion to adjourn. Seconded by Cindy Castello. Motion passed unanimously 5-0.

Meeting adjourned at 7:30 pm