

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, February 3, 2005
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on February 3, 2005, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Chairman Evert Hekman, Roy Taylor, Sean Jerguson, Amy Mumaugh and Greg Elder. In attendance for Cherokee County Staff were Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician. The meeting was called to order at 6:30 pm.

Old Cases

Case #05-01-002V Vien Nguyen requesting a variance to Article 10, Table 10.1; Buffer Requirements. The applicant is requesting a variance to encroach into the 35' zoning buffer for grading and installation of septic field lines. The property is located at 5495 Bells Ferry Road in Land Lot 1224, District 15 and described as Cherokee County Tax Map 15N06, Parcel 177.

Vicki Taylor said applicant has requested this case be carried over one more month. Ms. Taylor said Ms. Nguyen had reported to her that they had negotiated an agreement with the apartments and have sent them a check and the apartments have said they would issue an easement agreement once the check has cleared, but they didn't want to withdraw this request until this has occurred.

Roy Taylor made a motion to postpone. Seconded by Sean Jerguson. Motion passed unanimously 5-0.

New Cases

Case #05-02-007V Dupree Station, LLC requesting a variance to Section 4.20 of the Development Regulations. The applicant is requesting a variance to be allowed to have a total of 10 model homes in Dupree Station @ Towne Lake. The Cherokee County Development Regulations state a maximum of 6 model homes per subdivision if subdivision consists of 100 or more lots. This property is located on Dupree Road in Land Lot(s) 1090, 1091, 1142, 1143 of the 15th District and further described as Cherokee County Tax Map 15N12, Parcel(s) 96, 92, 94, 97, 77, 78, 90, 93, 93A, 91, 76, 88, 78A.

Vicki Taylor gave Staff findings and David Pearson represented this case.

Mr. Pearson explained they had an agreement with the County to donate land to extend Stonebridge Parkway and to install the road themselves, but when they got down to building the road the County asked that they build the road and Mr. Pearson said he agreed to do that. There have been many delays and the road was supposed to be completed over a year ago and that is pursuant to a written agreement his company has with the County. He asked to be able to build the 10 models requested instead of the 6 allowed to help with their moving forward with the project.

Anthony Perry, builder, spoke in favor of this variance because Mr. Pearson has been patient with the County regarding this road issue; however, Mr. Pearson has been delayed and he has been delayed and he didn't want to miss the Spring market for obvious reasons.

No one spoke in opposition.

Discussion ensued as to the road issues such as acquisitions for right-of-way, potential condemnations that Mr. Pearson understood finally did not go that far, construction delays by the contractor that he understood had held up several projects by simply not manning the projects correctly and weather.

Discussion ensued as to the building of the amenity before the final plat is recorded. Vicki Taylor stated construction plans have been approved. Ms. Taylor explained the final could take two weeks up to whenever the Engineers send back revisions and they are reviewed and maybe some revisions were not completed as asked and they are returned for further revisions. It can take some time.

Roy Taylor said he understood why the rules are written as they are for accessibility of roads because it has to do with fire issues and inspectors complain of mud, etc. He stated it was unfortunate that the County had made promises to Mr. Pearson that was clearly holding him up, but the Board allowing you to do this against the rules that are there isn't making up to the fact or a reason to not follow the rules.

Chairman Hekman made a motion to approve the application as submitted. Seconded by Greg Elder. Motion passed 4-1, with Roy Taylor in opposition.

Case #05-02-008V David C. Kirk, Esq. for Verizon Wireless (VAW) LLC requesting a variance to Article 7, Section 7.7-27c(4)(a) and 7.7-27c(2)(b);

Setbacks for Telecommunication Towers. The applicant is requesting a variance of 150' to allow a 30' setback on the eastern property line. The Cherokee County Zoning Ordinance states all towers are to be setback equal to the height of the proposed tower. This tower is to be 180' tall. The property is located at 185 Moose Loop Road in Land Lot 162 of the 14th District and further described as Cherokee County Tax Map 14N18, Parcel 002.

Vicki Taylor gave Staff findings and Norman Underwood, Mike Mankin, Real Estate Manager for Verizon, Vanessa Buice and George Moore of VFW, Post 5262 represented this case.

Chris Geiger spoke in opposition and stated he has the closest house to this proposed tower on parcel 4A down hill from this site. He stated the variance request was for 85 percent of the setback requirement and this would be a complete disregard of the regulations. He stated this would set a precedent for radical variances. He stated, that in Verizon's presentation, they stated it would cause extensive earth moving to place the tower in the middle of this property, but he felt Verizon was putting the greater burden on adjoining property owners for this site to be profitable. He stated the adjacent property is not vacant, but is to be developed as a Planned Unit Development (PUD) through City of Canton for 77 units and high-end homes that this tower would adversely impact that development. He stated further there was no guarantee that this tower would not be lighted causing further adverse impact. He stated he did not want to disparage the VFW in their efforts to get some income out of their property, but when the PUD plans are submitted, it runs all the way to Marietta Highway and he suggested they hold on just a little longer and their property would be much more valuable for a townhome development and elderly development which is much more valuable than what they would get off of leasing a cell tower. He asked this variance be denied.

Edwin Swords, III spoke in opposition as an adjacent land owner and that his home is probably a thousand feet away. His idea was to give the land adjacent to the proposed site to his children to build on. He stated in addition that Verizon would need an acre of his land for access to this tower. He requested that this variance be denied.

Norman Underwood spoke in rebuttal.

Amy Mumaugh asked if a tower has to go in that general area. Ms. Buice answered in the affirmative.

Greg Elder asked if there was an existing tower in the area that could be upgraded. Ms. Buice answered no.

Discussion ensued as to the lighting and height of the tower for lighting. Discussion ensued as to the fall zone of the tower. Ms. Buice said she had done work in Florida where hurricanes have come through and no tower had fallen and she knew of no tower that has ever fallen and they are made to collapse, if anything.

Sean Jerguson stated he values private property rights and input and I certainly value the VFW's right to put up a tower and if they can do so without infringing on the rights of adjoining property owners then there is their right to do so and it sounds like it could work on this site, but I would not be willing to grant a variance that any way, shape or form would infringe on Dr. Sword's property given, although the likelihood is very small, that this tower could fall, it still could fall and that could diminish the use and enjoyment of his property so I would be very opposed a variance that would create a situation like that.

Amy Mumaugh asked if the power lines down from this property is on differently zoned property or County property. Vicki Taylor stated power companies have eminent domain. She stated she understood that, but just wondered if they were on any of the adjacent properties.

Greg Elder stated even if the variance was not granted, that Verizon could still put a tower on the VFW property with a light and that would be something no one would want.

Roy Taylor addressed Mr. Elder and asked what made them think when they had a little over 300 foot wide piece of property and the minimum size of this tower is 180 feet which means they would have to have a 360 foot wide piece of property to have that distance on either side. How do they think they could put that there and it sounds like it would have to be a 200 plus foot tower and that means they would need to have a 400 foot wide piece of property, so I think it was not suited well for this piece of property. First, the drawing that we were given is to the centerline of the pole not to the edge of the pole for its setback and the building would have to be to the edge and not the centerline. The associated building that is to be built with this tower, they call it a shelter, is shown to be less than the required 10 foot off the property line, if it was to be considered an ancillary structure, so it doesn't meet that requirement. Its major thing is the code calls for this to be an alternative style tower, which really is talking to one of the disguised towers, perhaps you have seen them over at Union Hill and they look like an outrageously large tree, but still an effort was made and it does blend better than the Canton tower that sits out there as an advertisement for the City of Canton and is trying to get people to look

at it instead of diminishing its look. He stated Verizon has not tried in the least to try and fit into the County in any way with this presentation, which isn't to say that a presentation couldn't be made, such as to put it in the center of the property, put it as one of these alternative towers, make sure it is as close to the fall distance is outside of that. All of those would still have been things that needed a variance, but it would have been a good faith thing for them to say look at what we have done to try to meet your regulations and you go a little bit on your side and I don't see it at all. He stated he is completely against this request for a variance.

Sean Jerguson made a motion to deny. Seconded by Roy Taylor. Motion passed 3-2, with Greg Elder and Amy Mumaugh in opposition.

Case #05-02-009V Carlos A. Gaviria requesting a variance to Article 7, Section 7.7-9; Setbacks for Barns. The applicant is requesting a variance of 35' to allow a barn 40' from the side property line. The Cherokee County Zoning Ordinance states all barns associated with livestock must be setback 75' from all property lines. The property is located at 650 Iron Mountain Road in Land Lot 22 of the 2nd District and further described as Cherokee County Tax Map 02N10, Parcel 98.

Vicki Taylor gave Staff findings and Carlos Gaviria represented this case.

The adjacent property owner stated he had no problem with the variance request and the Board should have a letter from him to that effect. The Board agreed they did.

No one spoke in opposition.

Roy Taylor made a motion to approve. Seconded by Sean Jerguson. Motion passed unanimously 5-0.

Other Items

Approval of January 6, 2005 Minutes.

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

Greg Elder made a motion to adjourn. Seconded by Sean Jerguson. Motion passed unanimously 5-0.

Meeting adjourned at _____ (I will get from clock out time from Tamala).