

**APPROVED**  
**November 07, 2002**

**MINUTES FOR CHEROKEE COUNTY  
ZONING BOARD OF APPEALS  
Thursday, October 03, 2002**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on Thursday, October 03, 2002 in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Karen Mahurin, Evert Hekman, Bob Reilly, Cindy Castello and Deborah Parcell. In attendance for the Cherokee County staff were Mark Mahler, Jim Cain, Vicki Taylor and Vicki Dye. The meeting was called to order at 6:35 P.M.

Case #02-09-035A, Yellow Creek LLC requested a variance to Article 10, Section 10.6-7; Stream Bank Buffers. The applicant requested a variance to encroach into the stream bank buffer along the Etowah River for a stream mitigation bank. The property is located in Land Lots 322-329 and 393-400 in the 3<sup>rd</sup> District and is further described as Cherokee County Tax Map 03N26, Parcels 022 and 022A.

Chairman Mahurin asked Greg Smith, representative for Yellow Creek, to simply give the details that were requested at the last meeting. Mr. Smith said that Chip Pottinger would answer most of the questions that were asked at the last meeting. Mr. Smith introduced a letter of support from Robin Goodlittle of the Fish and Wildlife Service.

Mr. Pottinger gave some background information on the Loudermilks, who own Yellow Creek. He submitted financial statements, verifying the financial stability of the mitigation bank. He said the financial stability of the mitigation bank was never in question, because the Corps of Engineers had already given their approval. He proceeded to explain to the Board why stream mitigation bank is necessary, in addition to the stream bank buffers already imposed by the county and the state. Mr. Pottinger explained the monitoring and reporting process. He said that a stream mitigation bank insured protection of the buffers, regardless of political climates. Even if the 150 foot buffer presently in place were rescinded, the stream mitigation bank would remain in place and enforceable. Mr. Pottinger was asked how the buffer would be monitored. He said the Homeowners Association would be monitoring the stream bank at all times. He said the stream mitigation bank is a good thing and the variance should be granted without further delay. Mr. Pottinger was asked why it would be better to have boat ramps and hiking trails in the buffer, rather than leaving it undisturbed. He said that with the stream mitigation bank, activities would be regulated and monitored.

Mr. Smith then spoke, saying that the community amenities they are proposing in the stream bank buffer have less impact than horses and cattle grazing along the river. He said that, without the stream mitigation bank, homeowners could encroach into the buffer without any monitoring.

Deborah Parcell said she had spoken with the Water Authority and that they were in favor of the stream mitigation bank, with the exception of the boat ramps. They were not in favor of pouring concrete for the ramps into the river. She also spoke to David Word at the DNR. He had indicated that he liked this idea and suggested that Yellow Creek go ahead and put their plan together and then get back with him. Ms. Parcell said that Ricky Dobbs of the Water Authority

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said he would be in favor of this project if the other authorities gave their approval. Ms. Parcell recommended that the Board wait on giving approval of the variance until they received approval from the DNR, Water Authority, etc. She said the federal and state authorities want approval from the local government before they give their approval and the local authorities want state and federal approval before they give their approval. A discussion ensued about the boat ramps.

Deborah Parcell made a motion to approve the variance, contingent upon receiving approval from all the state entities listed and also contingent upon the applicant posting a performance bond in the amount of whatever would stand for the mitigation. There was no second, so the motion failed.

Evert Hekman then made a motion to approve the variance, as submitted. Chairman Mahurin seconded the motion. The vote was 4-1 for approval, with Deborah Parcel voting against approval.

Chairman Mahurin announced that Case #02-10-036A, Randle Gable had been withdrawn. This case, in fact, had been withdrawn the prior month.

In Case #02-10-042A, Laura Ramsey, the applicant requested that the case be tabled for thirty days. Bob Reilly made a motion to table. The motion was seconded by Cindy Castello and the vote was 5-0 to table. A discussion ensued about notifying adjacent property owners for the next hearing.

Case #02-10-40A, Freehome Village was also requested to be tabled for thirty days. Evert Hekman made the motion to table. Cindy Castello seconded the motion and the vote was 5-0 to table.

Case #02-10-037A, Rob Grunkemeyer requested a variance to Article 5, Section 5.6C; Accessory Structures. The applicant requested a variance to allow a 1,500 square foot accessory structure. The Cherokee County Zoning Ordinance requires a maximum square footage of 900 square feet. The property is located in land Lot 816 of the 3<sup>rd</sup> District and is further described as Cherokee County Tax Map 03N16, Parcel 155.

Rob Grunkemeyer presented his case to the Board. He requested a variance to build a detached steel garage to store his collection of automobiles. He described the various plans he had considered for building the garage. He wanted to build a 30 foot by 50 foot, one-story garage. He was asked what the square footage of his home is. He answered that it was over 3,000 square feet. He said the metal building would be colored to match the house. His home is situated on +1 acre. Mr. Grunkemeyer said there were similar accessory buildings in the neighborhood. He was asked about the proposed driveway. He assured the Board that there would be no major clearing done in order to construct the accessory building. Another discussion ensued.

Colleen Bohm spoke in opposition to this case and presented a petition signed by 13 residents of the neighborhood who were also against the variance. She was opposed to the size of the proposed structure.

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Paul Kreher spoke in opposition. He was opposed to the size of the proposed structure and the fact that it will be a metal building, which he felt was out of character with the neighborhood. He thought there were restrictive covenants for the subdivision that prohibited such buildings as the one being proposed. Mr. Kreher was asked if he would be in favor of the variance if the proposed building was constructed of wood rather than metal. He still had objections to the size, which he said was comparable to another house. Mr. Kreher was asked if he would prefer a 900 square foot metal structure or a 1,500 wooden structure. He said he did not want either.

Mr. Grunkemeyer gave his rebuttal. He said that the proposed structure would not be visible to the neighbors and that no one would ever know it was there unless he told them. He discussed the various options he now has for construction of the accessory building, without the variance. He was asked if he would consider using some other construction material other than metal. He indicated that the cost would be prohibitive.

Tevis Johnson spoke in opposition. He said one could see everything from the road and he felt that the proposed building would be visible to the neighbors.

Jim Cain gave the staff recommendation. He said that, should the Board choose to grant the requested variance, they might want to ensure an appropriate scale relationship between the size of the existing house and the proposed detached garage. Staff is of the strong opinion that an accessory structure should never exceed the size of the principal structure. In addition, Staff recommended that, if approved, a condition should be placed on the location of the garage in distance from the home and that the garage must be similar in appearance to the house in terms of color and architectural style. Also, additional screening and landscaping could be required, if necessary.

Evert Hekman said that he had a problem with the proposed building being metal. Chairman Mahurin was concerned about the size. Cindy Castello then made a motion to deny the variance. This motion was seconded by Chairman Mahurin and the vote was 5-0 for denial.

Case #02-10-038A, Equitable Properties of Atlanta requested a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant requested a variance to encroach 9 feet into the side yard setback to build a home. The Cherokee County Zoning Ordinance requires a 10 foot side yard setback. The property is located in Fox Hall Subdivision at 14140 Old Course Drive in Land Lots 1044 and 973 of the 15<sup>th</sup> District and is further described as Cherokee County Tax Map 15N29C, Parcel 084.

Kevin Cowart, owner of Equitable Properties, spoke in favor. He explained to the Board the circumstances that lead to his request for a variance. He introduced pictures. He told the Board he was trying to work out an agreement with his neighbor, but as yet, there was no resolution. Mr. Cowart said that the home had passed all of the building inspections and was fully constructed before he realized that there was a problem. He had the property resurveyed and confirmed that the house encroached into the buffer. He has removed the retaining wall.

Catherine Garcia, who lives at Lot 32 next door to the subject property, spoke in opposition. She said she was opposed because she did not know what her options are in this situation. She felt

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that the circumstances would affect her property well into the future. She also said she had shifted her house as far as was possible on her property to try to compensate for Mr. Cowart's encroachment. Ms. Garcia said that someone walking out of Mr. Cowart's basement could literally step into her yard, making her liable for a possible accident. She said she was looking to the Board to give her guidance and to help resolve this situation. She also said that the offer of \$5,000 by Mr. Cowart to purchase land from her was ludicrous. She had consulted an appraiser and was told that the land was worth much more. Ms. Garcia was asked what she thought the value of nine feet of her land was and she told the Board she was not going to sell it.

Deborah Parcell said that, as far as the Board goes, they only have two options. The first would be to grant the variance and let Mr. Cowart and Ms. Garcia work things out in court, or second, to deny the variance and have Mr. Cowart tear down the house. They asked for Mark Mahler's opinion. Ms. Garcia was asked if she would consider selling her home to Mr. Cowart and she answered that she would not. She said it was her dream home and she was moving here from Memphis.

Jim Ehlers spoke in opposition. He lives across the street from the subject property. He was concerned about how a situation like this could happen in Cherokee County. He said he had no empathy for the builder. Mr. Ehlers continues to receive EMC bills for Mr. Cowart's property because Mr. Cowart will not have the address changed. He said it would not bother him in the least if Mr. Cowart was required to tear the house down and start over. Mr. Ehlers said that someone had not done their job.

Deborah Parcell asked Mark Mahler how the Board's decision could affect a possible civil case. Chairman Mahurin asked if that was even something this Board should consider.

Mr. Cowart gave his rebuttal. He said if he did not get this variance, he was facing foreclosure. He already has the house sold, but without the variance, he cannot close on that sale.

Jim Cain gave the staff recommendation. In lieu of relocating the entire house and garage to reduce or eliminate the encroachment and size of the variance request, Staff recommended that the applicant try to negotiate with the adjoining property owner to the east to acquire additional property to offset the encroachment. The only other option would be to resize the house and garage. Should the ZBA be inclined to approve the variance, Staff urged the Board to insure that the applicant addresses all of Ms. Garcia's concerns.

Bob Reilly made a motion to table the case for thirty days to give the applicant and his neighbors time to work out an agreement. Evert Hekman seconded the motion. The vote was 5-0 to table the case.

Case #02-10-039A, Robert Beardslee requested a variance to Article 8, Table 8.1; Previous PUD Regulations. The applicant requested a variance to encroach 2 feet into the side yard setback adjoining Lot Number 3079 and a variance to encroach 5 feet into the side yard setback adjoining Lot Number 3077 for construction of a deck on both sides. The Cherokee County Zoning Ordinance requires a 10 foot side yard setback. The property is located in Bridge Mill

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Subdivision at 121 Cedar Woods Trail in Land Lot 151 of the 15<sup>th</sup> District and is further described as Cherokee County Tax Map 15N07G, Parcel 246.

Mike Burwell, the perspective buyer of the property, spoke in favor. He announced that he did not now need the 2 foot encroachment variance on the side adjacent to Lot 3079. He is repositioning his deck. He had met with the other neighbor on Lot 3077 the day of this meeting and had come to an agreement to ask for a 2 foot encroachment variance on that side instead of the original 5 feet. He pointed out to the Board exactly what he was requesting, which was only one variance of 2 feet on the side adjacent to Lot 3077.

Mike Buskey spoke. He lives on Lot 3079. He thought all the residents should stay in the code. That was his concern. As Mr. Burwell had withdrawn his request for a two foot variance on the side adjacent to Mr. Buskey's property, Mr. Buskey had no objections to the remaining variance.

Jim Cain gave the staff recommendation. Considering the encroachment is for outdoor use and still would allow adequate separation from the adjoining property, Staff recommended approval.

Cindy Castello made a motion to approve a two foot variance on the side of the property adjacent to Lot 3077. The motion was seconded by Bob Reilly and the vote was 5-0 for approval.

Case #02-10-041A, B G Land LLC requested a variance to Article 16, Section 16.1; Highway 92 Overlay Guidelines. The applicant requested a variance to extend the depth of the 1,000 foot boundary line to include all of Parcel 187B, to be developed under the Highway 92 Overlay for mixed uses. The property is located at 13202 Highway 92 in Land Lot 1199 of the 15<sup>th</sup> District and is further described as Cherokee County Tax Map 15N24, Part of Parcel 187 and 187B.

Jimmy Bobo, owner of B G Land, spoke in favor. He said the subject property had been batted around for a while and was now in bankruptcy. He has offered a contract to purchase the land and it has been approved by the bankruptcy attorneys. He explained to the Board why he is seeking a variance. Mr. Bobo pointed out on the map where the boundaries of the subject property are. He was asked if multiple parcels were involved in this variance. He proceeded to explain to the Board how these parcels are platted. The Overlay boundary does not run parallel to the platted boundaries of the subject property. This is why, said Mr. Bobo, that they want a variance to incorporate all of the subject property into the Highway 92 Overlay District. A discussion ensued. Mr. Bobo said he would be willing to address any buffer concerns and would cooperate with the neighbors.

John Peacock, an adjacent property owner, spoke in favor. He wanted some kind of resolution on the subject property. He said the issue had been beaten to death. He wanted the Planning Commission to go ahead and make a decision so he could proceed with his plans. He discussed the Highway 92 Overlay. He felt that the residents who were most affected by the Overlay had not even been consulted when the Overlay was drafted. To his knowledge, none of these residents had been included on the Overlay Committee. He said there were exceptions to the Overlay all around the subject property. Mr. Peacock said that parcels part in and part outside of the Overlay made property less valuable. He did not feel that the members of the Overlay Committee were qualified as planners and he thought they had not made good decisions.

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Mark Cagle spoke in favor. He had served on the 53 Man Committee. He said it was always discussed at the meetings that large tracts would be included in their entirety into the Overlay. The Overlay was supposed to make things simpler so that Highway 92 would develop in an orderly fashion. A discussion ensued.

Stan Rogers spoke. He explained how the Overlay Committee came up with their guidelines. Leon Butterworth and his brother Charles Butterworth spoke. For the record, they wanted to meet with Mr. Bobo to address their concerns about screening and privacy.

Ann Meyers, who served as Chairman of the Highway 92 Overlay Committee, spoke in opposition. She said the 1,000 foot boundary for the Overlay was for the protection of the owners of residential property adjacent to Highway 92. She felt that the plans for the proposed development were not sufficient enough in detail for an approval at this time. Chairman Mahurin told her that this hearing was only concerned with the 1,000 foot boundary, not what kind of development was being proposed. Ms. Meyers said that granting this variance would double the Overlay boundary and set a precedent. A discussion ensued.

Mr. Bobo gave his rebuttal. He was amenable to meeting with people and addressing their concerns. He said that if he had purchased Dr. Peacock's property, then it would not have been necessary to seek a variance. Mr. Bobo explained to the Board why the property had been divided into three parcels. He now wanted to reconcile the property into one tract. Further discussion ensued about appropriate boundaries. Mr. Bobo said he was willing to do whatever the Butterworths want in developing this site. Evert Hekman asked Mr. Bobo if he had any intentions of requesting annexation into the City of Woodstock. He said he depended on whether he got this variance.

Jim Cain gave the staff recommendation, which was for approval. He was asked why, in writing his recommendation, he had referred to the old Highway 92 Overlay requirements, when they were no longer relevant. He said it was just a note of reference. Chairman Mahurin wanted the Board to understand that the decision would be made using the new ordinance, not the old.

Evert Hekman said he was uncomfortable making a decision on this case without reading the new Highway 92 Ordinance. The Board had not been provided with copies of the new ordinance. Deborah Parcell said that approving this case would be setting a precedent. Chairman Mahurin said that each case was heard on its own merits.

Evert Hekman made a motion to table the case for thirty days, allowing time for the Board to study the new Highway 92 Overlay Ordinance. Deborah Parcell seconded the motion and the vote was 3-2 to table. Karen Mahurin and Cindy Castello voted against tabling. Chairman Mahurin told Staff that the Board wanted copies of the new ordinance as soon as possible.

Evert Hekman made a motion to approve the minutes for the September 05, 2002 Meeting. Chairman Mahurin seconded the motion and the vote was 5-0 for approval.

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A discussion ensued about whether the Board had any authority determining what is developed on the subject property. Mark Mahler said that the Board could only address the boundary issue, not the development issue.

Chairman Mahurin then asked Mark Mahler to write a letter to the Board of Commissioners about how bad Case #02-10-038A – Equitable Properties was. A discussion ensued. Chairman Mahurin said she could not believe that this same scenario keeps occurring over and over again. Mr. Mahler said that he would also bring this case to the attention of Jerry Cooper, County Manager.

Deborah Parcell made a motion to adjourn the meeting. Chairman Mahurin seconded the motion and the vote was 5-0 for adjournment. The meeting adjourned at 8:40 P.M.