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December 05, 2002

**MINUTES FOR CHEROKEE COUNTY
ZONING BOARD OF APPEALS
Thursday, November 07, 2002**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on Thursday, November 07, 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 and Vicki Dye. The meeting was called to order at 6:35 P.M.

Old Cases

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 Lot 1044 and 973 of the 15th District and is described as Cherokee County Tax Map 15N29C, Parcel 084.

Kevin Cowart, representing Equitable Properties, spoke in favor. He told the Board that since the last Zoning Board of Appeals Meeting, he has worked out an agreement with Cathy Garcia. He had previously removed the retaining wall that encroached onto her property. Ms. Garcia requested that this agreement be made a part of the variance approval record. Chairman Mahurin asked what was agreed upon. Mr. Cowart said that it outlined compensation for Ms. Garcia to cover any diminution of value on her property.

Deborah Parcell made a motion to grant the variance. The motion was seconded by Chairman Mahurin. The vote was 5-0 for approval. Chairman Mahurin also stipulated that the agreement between Mr. Cowart and Ms. Garcia become part of the variance record.

Case #02-10-040A, Freehome Village LLC, requested a variance to Article 7, Table 7.1; Minimum District Development Standards. The applicant requested a variance to reduce the front building setback to 35 feet along Highway 372. The property is located at the intersection of Highway 20 and Highway 372 in Land Lot 980 of the 3rd District and is further described as Cherokee County Tax Map 03N23, Parcels 179, 180, 182, 183 and part of Parcel 186.

Frank Bishop presented his case to the Board. He introduced location maps and a new site plan for his development. Mr. Bishop said that he was asking for two variances. One was for a variance setback off Highway 372 and the other variance concerned the number of parking spaces. He proceeded to explain the circumstances which led to these variance requests. A discussion ensued about the tree save areas and the septic system. Mr. Bishop described their unique septic system. There was no opposition to this case.

Jim Cain gave the staff recommendation. Chairman Mahurin requested that he give a short version. He said that in the application, two variances had been requested. Due to an oversight,

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the parking variance had not been listed on the agenda, but was included in the Staff Report. Based on the hardships created by the Georgia DOT, Staff recommended granting these variances.

Cindy Castello made a motion to approve the setback variance and the off-street parking requirement from 425 to 405 parking spaces, as requested. Bob Reilly seconded the motion 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 of the Highway 92 Overlay to include all of Parcel 187 and 187B, to be developed under the Highway 92 Overlay Ordinance for mixed uses. The property is located at 13202 Highway 92 in Land Lot 1199 of the 15th District and is further described as Cherokee County Tax Map 15N24, Part of Parcel 187 and Parcel 187B.

This case had been tabled at the last meeting. Jimmy Bobo, the applicant, said he had reached an agreement with the Butterworths to install a privacy fence along the adjoining property line with the Butterworths. He once again described his plans for development to the Board. A discussion ensued. Deborah Parcell asked Mark Mahler to clarify what uses would be allowed in the Highway 92 Overlay District. Another discussion ensued. Ms. Parcell wanted Mr. Bobo to specify exactly which area would be residential and which area would be commercial. He said that, due to the bankruptcy court, he did not have that authority. He is not the owner of the property at this time. Chairman Mahurin said that if the Board started limiting the applicants to where they could develop various aspects of their plans, it would ruin the whole spirit of the Highway 92 Overlay. Ms. Parcell said that the reason she was concerned was that this project abuts residential land. Mr. Bobo then pointed out that all of the adjacent property owners had appeared in the previous meeting and spoke in favor of this development.

Bob Reilly asked Mr. Bobo if he would proceed with his plans for development if the variance was not approved. He said he would not. His agreement for purchase with the bankruptcy court was contingent upon his getting approval of the variance. Mr. Bobo was asked if he would go for annexation into the City of Woodstock, if this variance was not approved. He said he would apply for a rezone before considering annexation. A lengthy discussion ensued. Another discussion ensued about required buffers between zoning classifications.

Cindy Castello made a motion to grant the variance request, with the condition that the applicant's agreement with the Butterworths to install a fence from the lake along the entirety of the east property line and then along the south property line be made a part of the variance record. With the consent of the other property owners, a berm could be installed along the south property line in lieu of a fence. A discussion ensued on fence heights. Evert Hekman seconded the motion. The vote was 5-0 for approval.

Case #02-10-042A, Laura Ramsey requested a variance to Article 11, Table 11.1; Signs. The applicant requested a variance to allow an 8 square foot sign with a maximum height of 8 feet in an AG Zoning District. The Cherokee County Zoning Ordinance requires a 6 square foot sign with a maximum height of 4 feet. The property is located on Blue Bird Acres Road in Land Lots

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904, 969 and 976 of the 15th District and is further described as Cherokee County Tax Map 15N29, Parcel 054.

Laura Ramsey made an announcement that she was requesting a 2 foot by 4 foot sign, with a height of 8 feet instead of the 2 foot by 3 foot sign called for in the Cherokee County Sign Ordinance. This announcement was made to clear up any misconceptions that people might have concerning her variance request. She then proceeded to explain her need for a variance. Ms. Ramsey was asked what other businesses were in the area. She said one neighbor had a plant business and another raised ostriches and conducted tours. Another neighbor has a tree farm. She was asked why she needed a larger sign than was allowed without a variance. She answered that the name of her business, Green Acres Equestrian Center, is a long name and the print would have to be too small to be effective if put on a 2 foot by 3 foot sign. Ms. Ramsey said the proposed sign would not obstruct the view of motorists.

Roger Nottingham also spoke in favor. He had no objections to the sign as long as it did not obstruct the line of sight when coming out of the road. Since Ms. Ramsey was allowed to put a business there, he felt she should be allowed to advertise that business. Deborah Parcell asked about another horse farm in the area and the sign associated with it.

Mike Duncan spoke in opposition. He was concerned about the sign causing an increase in traffic on the narrow road. Chairman Mahurin pointed out to him that Ms. Ramsey had the right to put up a sign; that the reason she was asking for a variance was to increase the size of the sign.

Nancy Duncan also spoke in opposition. Ms. Duncan first expressed opposition to any sign. After it was explained to her that Ms. Ramsey had the right to install a sign in compliance with the County Ordinance, she then expressed opposition to the sign variance. She mentioned several neighbors who were also in opposition. She said they all felt that the sign should remain the size allowed in the County Ordinance. During her presentation, she mentioned that she posts a banner from time to time, advertising her own business.

Jim Cain gave the staff recommendation, which was for approval. The applicant had obtained permission from the owner of the property where the sign would be installed. If approved, Staff recommended that the applicant meet with Staff regarding the exact placement of the sign to insure that there are no right-of-way concerns or interference with traffic visibility.

Deborah Parcell asked about the current zoning on the subject property. Mark Mahler told her that the proposed use is permitted in AG zoning. It was also confirmed that Ms. Ramsey has a business license. Ms. Parcell then asked questions about the other businesses in this area.

Evert Hekman said he had a problem with approving an 8 square foot sign. He had no problem with approving the 8 foot height. Chairman Mahurin said her concerns were exactly the opposite.

Ms. Ramsey gave her rebuttal. She told the Board that she had installed a gate in order to access pastureland further down the road so she would not have to drive to that pasture. She also described her business, which consisted of riding stables and therapy for handicapped children.

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She said this business is by appointment only. In publication advertisements, Ms. Ramsey only lists her telephone number and not her address, so there will be no unscheduled traffic. Deborah Parcell asked would not the proposed sign increase traffic. Bob Reilly asked Ms. Ramsey if she would consider removing the arrow from the sign. Ms. Ramsey said she would.

Bob Reilly made a motion to approve the variance, with the condition that the arrow be removed from the sign. There was no second, so the motion failed.

Deborah Parcell then made a motion to approve a 6 square foot sign with an 8 foot height. Evert Hekman seconded the motion. The vote was 3-2 for approval of the motion. Ms. Ramsey asked if she could keep the arrow on the sign. Mark Mahler told her that she could, if it would fit on the 6 square foot sign. Ms. Ramsey then asked how many signs are allowed on one piece of property. Mr. Mahler answered that one sign per parcel is permitted. The Board suggested that Ms. Ramsey call the Planning and Zoning Office the following day to get her questions answered so they could proceed with the other cases.

New Cases

Case #02-11-043A, Janusz B. Ziolkowski requested a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant requested a variance on Tract 1 to reduce the west side building setback to 49 feet, reduce the east side building setback to 17 feet and to reduce the minimum lot width to 128 feet instead of the required 150 foot minimum lot width. The applicant also requested a variance to reduce the west side setback to 20 feet on Tract 2. The property is located at 2425 Lower Birmingham Road in Land Lot 300 of the 2nd District and is further described as Cherokee County Tax Map 02N07, Parcel 091.

Janusz Ziolkowski presented his case to the Board. He wants to subdivide his property, but cannot meet the required setbacks. He originally planned on living in one house and selling the other, but now he says he would like to sell both houses.

Lou Holcomb spoke in opposition. She introduced photos to the Board, showing what was being done with the subject property. Ms. Holcomb said that the buildings on the subject property were constructed thirty years ago for use as storage sheds. They were never meant to be lived in. She said that those buildings were now being converted into multi-family housing. She also said that these dwellings were being advertised on the Internet. Deborah Parcell had Ms. Holcomb point out where the buildings are on the subject property.

Mr. Ziolkowski gave his rebuttal. He explained that he had people from his country staying with him. He also has an artist's studio. This was his explanation for the so-called multi-family use that Ms. Holcomb complained about.

Jim Cain gave the staff recommendation. He said there are two principal structures on one lot at this time. It was brought to the attention of Staff that Mr. Ziolkowski had converted a barn into a house without the proper permits. Staff recommended approval of the variance requests, with the condition that applicant is to meet all the requirements specified by the Building Inspections Department. Applicant must pay all applicable impact fees and penalties.

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Chairman Mahurin made a motion to table this case for thirty days in order to allow time for the questionable issues to be checked out. Deborah Parcell seconded the motion. Glenda Casteel said she knew nothing about this situation. It would have to be investigated. Mark Mahler asked Mr. Ziolkowski if he would allow inspectors to examine his property. He answered that he would allow an inspection. The Board then asked Ms. Casteel to conduct an inspection of the subject property and give a report at the next scheduled meeting on December 05, 2002. The vote to table was 5-0 in favor.

At this point, Chairman Mahurin declared a two minute break.

Case #02-11-044A, 111 South Fulton, Inc. requested a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant requested the following variances:

- Lot 11; Reduce side building setbacks to 15 feet.
- Lots 12-14; Reduce side building setbacks to 40 feet.
- Lot 15; Reduce side building setbacks to 30 feet.
- Lot 42; Reduce side building setbacks to 40 feet.
- Lots 43-46; Reduce side building setbacks to 35 feet.
- Lot 48; Reduce side building setbacks to 35 feet.
- Lot 49; Reduce side building setbacks to 35 feet.

The property is located on Sugar Pike Road in Savanna Estates Subdivision in Land Lots 350, 371 and 372 of the 2nd District and is further described as Cherokee County Tax Map 02N07, Parcels 204, 205, 206, 207, 208, 235, 236, 237, 238, 239, 241 and 242.

Attorney Mike Bray, representing the applicant, spoke in favor. He explained to the Board why the applicant requested these variances. He said the applicant wanted to maintain estate homes in an AG zoning district. Deborah Parcell asked Mr. Bray if the applicant could replot the plans and address their own problem. Mr. Bray said they could not and still get what they were entitled to with the two-acre minimum development. A discussion ensued. He asked that the Board consider other precedents that have been set and worked out right. Mr. Bray said there had to be a reasonable expectation of yield on the development. Another discussion ensued between Mr. Bray and Ms. Parcell. There was no opposition to this case.

Jim Cain read the staff recommendation. Staff recommended approval of a 20 foot variance to the side yard setbacks for the twelve lots proposed. This would allow for thirty foot side setbacks instead of the required fifty foot side setbacks. Staff felt that the requested 35 foot encroachment for Lot 11 is too large a variance to be appropriate for the area. Mr. Cain said that the ZBA might want to consider only a 15 foot variance that would still address the applicant's request for all but Lots 11 and 15. The applicant would have to reduce the size of the proposed houses slightly for Lots 11 and 15.

Bob Reilly asked how many lots were being proposed. Mr. Bray answered that they were proposing 54 lots. Chairman Mahurin asked about Lot 10. A discussion ensued. They then discussed Lot 15.

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Deborah Parcell made a motion to approve fifteen foot side setback variances, as recommended by Staff, with the exception that Lot 15 be granted a twenty foot side setback variance. Evert Hekman seconded the motion. Lots 10, 11 and 12 would be reconfigured to accomplish the setbacks. Several discussions ensued simultaneously.

Ms. Parcell then restated her motion. She recommended approval of fifteen foot side setback variances for Lots 10, 11, 12, 13, 14, 42, 43, 44, 45, 46, 48 and 49. She recommended approval of a twenty foot side setback for Lot 15. Chairman Mahurin seconded this motion. For the record, the Board stated that no lots will be lost with this motion. The vote was 5-0 for approval.

Case #02-11-045A, Eddie Wang requested that this case be tabled for thirty days. Chairman Mahurin made a motion to table the case for thirty days. Deborah Parcell seconded the motion and the vote was 5-0 to table.

Case #02-11-046A, Forrest Homes, Inc. requested a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant requested a variance to reduce the front building setback from 35 feet to 33.6 feet. The property is located at 201 Hollyberry Way in Holly Trace Subdivision in Land Lots 692 and 693 of the 3rd District and is further described as Cherokee County Tax Map 03N22C, Parcel 011.

Ron Wikle presented this case to the Board. He explained to the Board why a variance was needed. There was no opposition to the case.

Jim Cain gave the staff recommendation, which was for approval. Deborah Parcell made a motion to approve the variance. The motion was seconded by Chairman Mahurin. The vote was 5-0 for approval.

Case #02-11-047A, Bill and Jane Dreyer requested variances to Article 7, Table 7.1A; Minimum District Development Standards. The applicants requested a variance to be allowed to construct a home on a non-conforming lot that consists of approximately 1.5 acres in an AG Zoning District. They also requested a variance to reduce the building setbacks to 35 feet on the front, 40 feet on the sides and 40 feet on the rear. This property is located at 441 Wyatt Road in Land Lot 1055 of the 3rd District and is further described as Cherokee County Tax Map 03N23, Parcel 047.

Jane Dreyer presented her case to the Board. She explained the situation and why she was seeking a variance. Mark Mahler said that this lot was created when the road was widened. Before that, it was part of a much larger tract. He felt that this lot would be considered an existing lot of record and that the Dreyers would not need to seek a variance. Ms. Dreyer continued to explain that the setback variances were needed because of a creek running through the property. At this point Jim Cain said that Lynn Tully, the previous Principal Planner, had determined that this lot was not a lot of record and had never been recorded. He produced a letter from Ms. Tully. Mark Mahler said that the existence of this letter still did not change his mind.

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Clay Nichols spoke in opposition. He lives to the north of the subject property. He also produced the letter from Lynn Tully. A year ago when he came to the Planning and Zoning Department for advice about buying the subject lot and building a home for his mother, Ms. Tully informed him that the lot was non-buildable. Mr. Mahler said he would like to research this matter before proceeding with the case. It has to be a lot of record in order to build on it. Mr. Mahler said that you cannot vary a lot size. A discussion ensued. Mr. Nichols talked about the surrounding lots that are two acres or larger. He said he did not think a smaller lot should be allowed. He was upset that the Board was even considering this variance, when he had been turned down flatly by Lynn Tully a year ago.

Chairman Mahurin explained that the Board was here to either grant or deny a variance – nothing more. All of the other issues brought up in this case are out of their control.

Jeannette Navarro spoke in opposition. She read her objections to the Board. She had abided by the rules when buying her home and she expected everyone else to abide by the rules, also. She did not want the Board to set a precedent in this case. She asked that the Board deny the variance. Chairman Mahurin pointed out to Ms. Navarro that the Board's decisions did not set precedents. Each case is decided on by its own merits.

Chairman Mahurin made a motion to table the case for thirty days. Deborah Parcell seconded the motion. The vote was 5-0 to table.

Deborah Parcell made a motion to approve the minutes for the October 03, 2002 Meeting. Cindy Castello seconded the motion. The vote was 5-0 for approval.

Chairman Mahurin asked Glenda Casteel, Director of the Building Inspections Department, to speak. Ms. Casteel spoke in defense of her inspectors. She said they did not determine property lines, that the surveyors do that. They take the word of the surveyor when determining setbacks. If the surveyor makes a mistake, then the inspector makes his determination on that incorrect property line. She said the Building Inspections Department was taking a lot of heat for things that were not their fault. She told the Board that she was going to become more actively involved with the variance process in the future. The Board welcomed her input and said it was very much needed.

Cindy Castello made a motion to adjourn. Evert Hekman seconded the motion and the meeting was adjourned at 9:00 P.M. by a unanimous decision.