

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

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on May 6, 2004, 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, Roy Taylor and Cindy Castello. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Vicki Taylor, Zoning Administrator, & Jesse Perry, Senior Clerk for the Planning & Zoning Department. 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

Case #04-04-019V THW Development requesting a variance to Article 23, Section 23.8; Conservation Subdivision Buffers. The applicant is requesting a variance to encroach into the 50' exterior conservation buffer in Oakwind Subdivision to clear, grade, and revegetate for entrance to subdivision. The Cherokee County Zoning Ordinance requires this 50' undisturbed buffer around exterior of the subdivision. This property is located along Fincher Road in Land Lot(s) 59, 60, 85, of the 22nd District and further described as Cherokee County Tax Map 22N05, Parcel 057.

Vicki Taylor gave Staff findings that Article 23, Section 23.8 requires a 50-foot perimeter buffer around any conservation subdivision adjacent to conventionally zoned property. This property's entry is only 150 feet wide, which accommodates the 50-foot right-of-way and the two 50-foot perimeter buffers, but does not have room for the area necessary for grading of the roadbed.

Applicant is requesting a variance for an encroachment into this perimeter buffer along the entrance road for the purpose of grading the roadbed and landscaping the entrance into the subdivision.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: Somewhat narrow entrance into the property.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, the road would not be able to meet Cherokee County Engineering Department standards.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No.

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

Richard Thompson represented this case. He stated that he was asking for the variance in order to restore the buffer. Karen said he actually corrected some problems upstream further.

Duane Wedan spoke in favor of the case.

Discussion ensued.

Roy Taylor made a motion to approve subject to the agreement with Mr. Wedan. Seconded by Cindy. Motion passed unanimously 4-0.

New Cases

Case #04-05-021V Marilyn Lockhart requesting a variance to Article 7: 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 3.7 feet into the 50' front yard building setback. This property is located at 130 Old Fincher Road in Land Lot 281 of the 13h District and further described as Cherokee County Tax Map 13N06, Parcel 48A.

Vicki Taylor gave Staff findings that:
Article 7, Table 7.1 designates building setbacks in AG as 50-feet from any property line.

Applicant is requesting a variance for an encroachment of 3.7 feet into the front building setback for primary structure. During the siting of the new structure a slight miscalculation was made by the builder resulting in the encroachment.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
No.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, failure to secure the variance will necessitate moving the entire foundation.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS:

No, this property is nearly five acres and the home will still be 46.3 feet from the right-of-way and approximately 65 feet from the edge of pavement.

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

Marilyn Lockhart represented this case.

Cindy asked if septic lines were in place before the structure was built.

Discussion ensued.

Roy Taylor made a motion to approve. Seconded by Evert Hekman. Motion passed unanimously 4-0.

Case #04-05-022V Shaw Gilmer requesting a variance to Article 5, Section 5.6A. The applicant is requesting a variance of 1 foot into the required 10' setback for pools. This property is located at 4011 Ironhill Lane in Land Lot 861 of the 15th District and further described as Cherokee County Tax Map 15N05E, Parcel 036.

Vicki Taylor gave Staff findings that the applicant is requesting a variance to the side setback requirement of an accessory structure to allow a pool to remain as constructed. The edge of the pool encroaches 1.0 foot into the 10-

foot side setback. Applicant states that after County inspectors told the pool company, they in turn did not inform him of the encroachment, and completed the pool construction.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: The property owner was trying to hold close to that side of the lot to avoid the roots of a large tree.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, the construction of the pool is complete and awaiting approval of the final inspection.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, this property has a privacy fence and the one foot should not impact adjacent neighbors unduly.

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

Shaw Gilmer represented this case. He said that the reason for this case was a mistake and he was taking care of it himself.

Evert Hekman made a motion to approve. Seconded by Cindy Costello. Motion passed unanimously 4-0.

Case #04-05-023V Lynda McFarland requesting a variance to Article 5, Section 5.6A & 5.6B. The applicant is requesting a variance to allow two (2) additional accessory structures and a variance for one to be located in the front yard area. This property is located at 817 Ellenwood Drive in Land Lot(s) 95 & 122 of the 15th District and further described as Cherokee County Tax Map 15N19, Parcel 037.

Vicki Taylor gave staff findings that the applicant is requesting a variance to allow completion of an additional accessory structure to house his motor home located within the front yard area. Additionally, the applicant already has a pool house and a child's playhouse located in his rear yard.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
Extreme topographic constraints in locating this building

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: The motor home could remain parked on this concrete pad, it just would have no covering to protect it from the weather.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I cannot state that this would not be a detriment to the area. There is a reason the Code prohibits accessory structures within the front yard. However, there are severe topographic issues relative to this lot and based on submittals by the applicant, there are many similar structures in this neighborhood. To leave the motor-home parked uncovered on the concrete pad does not seem to help the situation either.

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

Tommy McFarland represented this case.

Cindy asked if there was a driveway directly to Ellenwood. Mr. McFarland said no, it wouldn't fit in the driveway.

Vicki Taylor said that the streambank buffer was just 25'.

Ken Carreker spoke in opposition.

Howard Moore spoke in opposition.

Tim Bailey spoke in opposition.

Raydeyne Ogle spoke in opposition

Mr. McFarland rebutted their concerns.

Roy Taylor brought up the 50' setback. Vicki stated that the 50' was a minimum, not a maximum.

Karen asked if there were any covenants for the subdivision.

Roy Taylor made a motion to table until more information on the dimensions on the building were given. Seconded by Cindy Costello. Motion passed unanimously 4-0.

Case #04-05-024V John Willett requesting a variance to Article 5, Section 5.6C. The applicant is requesting a variance to allow a 1350 sq. ft. guesthouse. This property is located at 2425 Lower Birmingham Road in Land Lot 300 of the 2nd District and further described as Cherokee County Tax Map 02N07, Parcel 091.

Vicki Taylor gave staff findings that the applicant is requesting a 50-foot variance to allow an existing structure to be designated as a guest house. This structure was converted illicitly by a prior owner. The current owner was not apprised of the zoning violations prior to his purchase of the property last fall.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
None.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: The prior owner had attempted to divide this property into two parcels to remedy the two dwelling units on one parcel issue, but needed a setback variance which ZBA denied. He then sold the property to Mr. Willet, along with several violations. Mr. Willet has been working with Planning and Zoning and Building Inspections to remedy all violations. This is the last issue to be resolved.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I do not believe this will necessarily be a detriment to the area. There is concern that this structure would be used as rental property as operated by the former property owner. However, the applicant has stated his intent is to use the property as a site for his agri-business.

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

John Willett represented this case.

Evert asked about the septic system violations. Vicki stated that it had been taken care of.

David White spoke in opposition.

Louise Delk spoke in opposition.

Roy asked how houses in question were being used. Mr. Willett said that there was no one in the new home, and his workers lived in the brick home.

Roy Taylor made a motion to approve. Chairman Mahurin made a friendly amendment that no additional structures can be allowed on the property and that the structures cannot be used for profit. Seconded by Evert. Motion passed 3-1 (Cindy in opposition).

Case #04-05-025V Dean & Barbara Bourne requesting a variance to Article 7; Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 5' to reduce the front yard building setback to 25'. The property is located at 175 & 177 Little Victoria Road in Victoria Cottage in Land Lot 621 of the 21st District and further described as Cherokee County Tax Map 21N10B, Parcel(s) 036 & 037.

Vicki Taylor gave staff findings that the applicant is requesting a 5-foot variance to allow the construction of a new single-family dwelling on two lots that are to be resurveyed into one lot of record. There are two old residences that are to be torn down. These lots are bounded on the south by Corps of Engineers property allowing for the rear setback as shown on the plot plan.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: These combined lots are shallow and narrow at each end.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: The home for which these parcels were purchased could not be built.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I do not believe this will be a detriment to the area. Anytime we can combine two lots of record into one, we decrease the density. Also, the construction of a new home, where two older, somewhat run down homes exist, is a benefit to the neighborhood.

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

Dean Bourne represented this case.

Roy Taylor asked where the flood plain line was. This was pointed out by Mr. Bourne.

Evert Hekman wanted to know about the elevation of the house. Discussion ensued.

Roy asked if the 30' setback had been adhered to in the neighborhood. Evert said this variance would not be out of character for the rest of the neighborhood.

Cindy Costello made a motion to approve. Evert Hekman seconded the motion. Motion passed unanimously 4-0.

Case #04-05-026V Iron Gates Development, LLC requesting a variance to Article 16, Section 3. The applicant is requesting a variance to bring their property into the Hwy. 92 Overlay District. This property is located at 2376 Campground Drive in Land Lot 1108 of the 21st District and is further described as Cherokee County Tax Map 21N12, Parcel 043.

Vicki Taylor gave staff findings that the applicant is requesting to be allowed to develop this parcel under the Highway 92 restrictions and guidelines as an extension of the development approved in January of this year.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:

Adjacent to the proposed development and necessary for connection to public sewer.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Prior owner made it necessary to purchase entire parcel in order to access public sewer. There would be no development north of the creek or any connection to Campground Drive.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I do not believe this will be a detriment to the area. There is a 5 DUA development to the west of this parcel and a 6 DUA development to the south. Due to the streambank buffers, there is at least 75 feet of buffer to the north of this parcel and the required 35-foot buffer to the east. These buffers are in addition to all building setbacks.

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

Bruce Carlyle represented this case.

Evert wanted to know if density was okay for Hwy 92 Overlay. Discussion ensued.

Karen asked if any further expansion was planned. Mr. Carlyle said no.

Cindy Costello made a motion to approve. Seconded by Evert Hekman. Motion passed 3-1 (Roy in opposition).

Case #04-05-027V Robert Harris Homes requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 10' to reduce the front yard building setback to 40'. The property is located at Bells Ferry Road in Land Lot 1117 of the 21st District and further described as Cherokee County Tax Map 15N06, part of parcel 131 and parcel 132.

Vicki Taylor gave staff findings that the applicant is requesting a 10-foot variance to allow construction of new townhomes along Bells Ferry Road. The Zoning Ordinance calls for a 50-foot front building setback on a four-lane arterial road.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
State and County streambank buffers limits site layout.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Shifting the buildings back would accommodate the setback, however, construction would be that much closer to the creeks.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I do not believe a 10-foot encroachment will be a detriment to the area.

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

Sid Ransom represented this case. Cindy asked if a fence would go up. Mr. Ransom said they normally fence and berm their projects.

Discussion ensued that it would be better to have variances for only the three lots that need the encroachment.

Evert Hekman made a motion to approve the 10 foot encroachment for the three lots in question only. Seconded by Chairman Mahurin. Motion passed unanimously 4-0.

Case #04-05-028V Morton Buildings, Inc. requesting a variance to Article 5, Section 5.6B. The applicant is requesting a variance of 1326 sq. ft. to allow a 2226 sq. ft. accessory structure and a variance to allow one (1) additional accessory structure. The property is located at 476 Providence Drive in Land Lot(s) 118, 171 of the 15th District and further described as Cherokee County Tax Map 15N19, Parcel 161A.

Vicki Taylor gave staff findings that the applicant is requesting two variances to allow the construction of a 2226 square foot accessory structure to house cars and antique vehicles. Currently, there is a 12' X 12' storage shed on the property.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
No.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, without this structure the applicant will have to rent space elsewhere, or relocate.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, I do not believe it would.

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

Mark Stein represented this case.

Cindy asked if there would be running water. Mr. Stein said no.

Evert Hekman made a motion to approve. Seconded by Cindy. Motion passed 4-0.

Case #04-05-029V Bruce Arnett Sr. requesting a variance to Article 7, Table 7.2; Permitted Uses Table and requesting a variance to Article 16; Hwy 92 village Ordinance to allow a carwash. The variance requests for Hwy 92 Village Ordinance includes Section IV.A; Permitted Uses, V.C.3; Architecture, Section V.C.4; Building Materials and Sections V.C.6A & B; Freestanding and Wall Signage. This property is located on Hwy 92 in Land Lot 1220 of the 15th District and further described as Cherokee County Tax Map 15N06, Parcel 298.

Vicki Taylor gave staff findings that the applicant is appealing the interpretation that a car wash facility is not a permitted use in the Overlay district, in that Service Stations are a listed permitted use. The applicant is also requesting variances to the architectural styles, building materials, and signage requirements.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:
No.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, without granting of the appeal and the variances, this project cannot go forward.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, I do not believe it would.

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

Rob Shores represented this case.

Cindy asked if it was close to car dealership. Vicki said it was close to Sonny's BBQ.

Doug Finderburk spoke in opposition.

Roy spoke about a zoning change instead of a variance. Discussion ensued as to whether or not the ZBA hearings were public hearings.

Discussion ensued about the applicant really needing a variance or a rezone.

Evert and Chairman Mahurin said that a rezone might be better for the applicant's situation.

Applicant withdrew case.

No vote necessary.

Case #04-05-030V Copacali Homes requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance to allow a 29' front building setback. The property is located at 129 Shiloh Ridge Trail in Land Lot(s) 1222 & 1223 of the 3rd District and further described as Cherokee County Tax Map 03N06A, Parcel 014.

Vicki Taylor gave staff findings that the applicant is requesting a variance for an encroachment of 6 feet into the front building setback for primary structure. During the siting of the new structure focus was on pulling the structure as far forward as possible

in order to fit the building and septic system as far from the streambank buffer as possible.

No letters of opposition have been received in this office as of this date.

FINDINGS OF FACTS (*The following are standard questions for a variance request*)

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: A streambank buffer bisecting the property at approximately the halfway point and the steep topography, as well as the larger than required cul-de-sac radius.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, without granting of the appeal six feet will have to be cut off from the front of this home.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, I do not believe it would.

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

Paul Ruschmeyer represented this case.

Cindy made a motion to approve. Seconded by Evert. Motion Passed 4-0.

Other Items

Reinstitution of Administrative Variances

The Board spoke about the reinstitution of administrative variances. It was agreed that it should only be for variances of 5% or less to building setback lines, and that no buffer variances should be granted administratively.

Approval of April 1, 2004 Minutes.

Minutes were not approved. It was agreed to wait until next month.

The Board spoke about changes to the variance application. Chairman Mahurin and Vicki Taylor stated that they would get together to discuss the changes more fully.

Approved June 3, 2004

Motion was made to adjourn. Motion was seconded. Motion passed unanimously 4-0.

Meeting adjourned at 8:45 pm