

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, July 1, 2004
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on July 1, 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, Glenda Casteel, Director, Building Department, Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician 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.

Mark Mahler, County Attorney, asked that the Board carry over this case one more month since he would need to touch base with Mr. Miller regarding his satisfaction over the final resolution of this case.

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.

There was no public comment segment at this meeting since all comments were heard at the June 2004 meeting.

Chairman Mahurin made a motion to deny. Seconded by Evert Hekman. Motion passed unanimously.

Case #04-06-032V Wayne & Trang Stevens requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 15' to allow both side building setbacks to be 35'. The Cherokee County Zoning Ordinance requires a 50' building setback from all property lines. This property is located at 16570 Westbrook Road in Land Lot 174 of the 2nd District and further described as Cherokee County Tax Map 02N12, Parcel 063G.

Pat Taylor represented this case. He stated he had worked to get some type of compromise between the parties involved. He submitted to the Board paperwork of different scenarios as to where the Stevens could place their home, garage and pool.

Betty Bell spoke in opposition.

Jim Gallagher spoke in opposition.

Bob Westbrook, Ms. Bell's nephew, spoke in opposition.

Pat Taylor spoke in rebuttal and stated he wished that there could be some type of compromise made.

Discussion ensued among the Board to the different scenarios offered. The Board advised those in opposition if they denied the variance, then one of the other scenarios offered could have a greater impact to the neighbors' privacy, but that the Stevens would be in compliance with County Code. The opposition did not concede to a compromise.

Roy Taylor made a motion to deny. Seconded by Evert Hekman. Motion passed unanimously 5-0 to deny.

New Cases

Case #04-07-035V Eng Taing requesting a variance to Article 5, Section 5.13A and B; Mailbox Supports. The applicant is requesting a variance to allow a massive mailbox support in the right-of-way as well as a matching brick column. This property is located at 116 Aaronwood Court in Aaronwood Subdivision in Land Lot 173 of the 2nd District and further described as Cherokee County Tax Map 02N12, Parcel 106.

Vicki Taylor gave Staff findings that:

PRESENTATION OF SUBJECT

The applicant is requesting a variance to the prohibition of the brick column mailbox and placement of this mailbox and another brick column within the County right-of-way. 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:

Applicant states this lot is on a dead-end residential street with only four homes past his driveway. He further states this is a very quiet street with very little traffic.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP:

Mr. Taing states had he been aware of the ordinance he would not have gone to the considerable expense of erecting these structures and there will be additional expense to tearing them out.

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

No, but does impair the purpose and intent of the Ordinance.

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

No.

RECOMMENDATION:

The Ordinance prohibiting massive mailbox supports was originally enacted in June 1999. However, Cherokee County does not require a permit to erect mailboxes, therefore, it is nearly impossible to regulate something that does not require any review or approval. This regulation is not well known and the Marshal's Office is only able to pursue these on a reactive basis. The traffic volume on this road is minimal therefore posing a minimal safety risk to the homeowner. If the Board elects to grant a variance to this Ordinance, we should consult the County Attorney as to the

necessity and reliability of the Indemnification offered by the applicant.

Eng Taing represented this case. He stated he lives on a cul-de-sac and the speed limit is 25 mph and he believed his mailbox did not pose a danger to anyone.

No one spoke in favor or opposition.

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

Case #04-07-036V Robert and Charolette Czekala requesting a variance to Article 5; Section 5.5-2; Accessory Uses. The applicant is requesting a variance to place a tennis court in the front yard area. The property is located at 1516 Gantt Road in Land Lot(s) 230, 231 of the 2nd District and further described as Cherokee County Tax Map 02N07, Parcel 119A.

Vicki Taylor gave Staff findings that:

PRESENTATION OF SUBJECT

The applicant is requesting a variance to the restriction of accessory uses to the side or rear yard in order to construct tennis courts in the front yard area. There are no letters of opposition on file.

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

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:

Lake and flood zone take up a large portion of the rear yard and there is inadequate space within the side yard areas.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP:

A standard tennis court is 60 feet by 120 feet and it is doubtful a court would fit in the remaining rear yard area.

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

Property owner has nearly six acres and it appears there is a vegetated visual screen.

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

No.

RECOMMENDATION:

I recommend approval with the conditions (1) the court be constructed maintaining a full vegetated visual screen along the near property line and, (2) if lighted, there be no light trespass onto adjacent property.

Charlotte Czekala represented this case.

Ken Czekala spoke in opposition due to the trees that would be taken down between their properties for the tennis court. He stated he wanted cypress trees planted to block the view of the court because it would literally be in his view from his front porch and driveway.

Bart Brannon made a motion to postpone the case for 30 days so that the Czekala's may come to written agreement. Cindy Castello seconded. Motion passed unanimously 5-0.

Case #04-07-037V Matthew Genoble requesting a variance to Article 5, Section 5.6A & 5.6B. The applicant is requesting a variance to allow one additional accessory structure on his property and a variance of 7' to allow a 3' side building setback. The Cherokee County Zoning Ordinance requires a 10' building setback and only one accessory structure per parcel of land. This property is located at 604 Victoria Road in Victoria Cottage Subdivision in Land Lot 678, 691 of the 21st District and further described as Cherokee County Tax Map 21N10A, Parcel 190.

Vicki Taylor gave Staff findings that:

PRESENTATION OF SUBJECT

The applicant is requesting a variance to the limitation of one accessory structure and a 7-foot variance to the 10-foot side yard setback for accessory structures. There are no letters of opposition on file, however, there are letters of support from two adjacent property owners.

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

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:

The lots in this subdivision are generally small and the applicant owns three lots of record. When purchased, the house sat on one lot and the garage on another. Mr. Genoble subsequently erected this carport on the third lot.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP:

The carport was erected over an existing driveway and there is a huge oak tree the applicant wishes to preserve. The structure has been in place for over a year and the materials to join the two sections have been ordered and the materials to enclose the structure have been purchased.

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.

RECOMMENDATION:

As currently constructed, no building permit was required, therefore Mr. Genoble was not informed of the 10-foot setback requirement. Should he be allowed to continue with the renovations to the structure, a permit will be required (enclosed

structure in excess of 120 square feet). I recommend approval with the condition that should the adjacent property owner primarily affected request mitigation, the structure be screened with vegetation (yet there is probably not enough room for this) or a privacy fence.

Mat Genoble represented this case.

No one spoke in favor.

Larry Ferguson spoke in opposition as the adjacent property owner.

Mat Genoble spoke in rebuttal.

Mark Mahler suggested that Glenda Casteel go out and meet with Mr. Genoble to see what an appropriate solution would be to possibly connecting the two structures.

Bart Brannon made a motion to postpone until the next regular public hearing. Seconded by Karen Mahurin. Motion passed unanimously 5-0.

Case #04-07-038V MetroGroup Development requesting a variance to Article 10, Table 10.1; Buffers between zoning districts and Section 10.6-7; Stream Bank Buffers. The applicant is requesting a variance to encroach 25' into the required 50' undisturbed stream bank buffer, a variance to reduce the 35' zoning buffer to 10' around the perimeter of the cemetery and a variance of 15' to allow a 20' zoning buffer for a length of 125' from the Hwy 140 ROW to the South. This property is located at the corner of East Cherokee Drive and Hwy 140 in Land Lot(s) 253, 323, 324 of the 15th District and further described as Cherokee County Tax Map 15N26, Parcel(s) 151, 153, 154.

Vicki Taylor gave Staff findings that:

PRESENTATION OF SUBJECT

The applicant is requesting variances to the zoning buffers and County streambank buffers in order to facilitate development of a shopping center. There are no letters of opposition on file.

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

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:

There are topographic conditions as well as the State and County streambank buffers.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP:

It would restrict development on the site.

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.

RECOMMENDATION:

With regards to the reduction in the zoning buffer along the west property line for 125 linear feet, I recommend approval as the adjacent R-40 parcel is in commercial use and the reduction would be of little impact, if any to that property. I recommend approval of the reduction in the zoning buffer along the AG property that is an existing cemetery with enhanced planting along the cemetery's entire border. With regards to the streambank buffer, based upon the drawing provided, it appears there would be little encroachment, and that would be primarily during the construction of the proposed retaining wall only. I recommend approval with the condition the area be restored as directed by the County Arborist in compliance with County regulations.

Mark Gottlick and Brett Basqin represented this case.

Roy Taylor stated he had no problem with the reduction in the zoning buffers, but was very concerned of any encroachment of a stream bank buffer. He stated he considered a retention wall and detention pond major structures.

Bart Brannon stated he thought the 25 foot state stream bank buffer was sufficient.

Evert Hekman stated he would like to look at the Engineering.

Roy Taylor stated he would prefer to reduce the parking spaces as opposed to encroachment in the stream bank buffer.

Bart Brannon made a motion to approve the stream bank encroachment. Motion failed for lack of second.

Roy Taylor made a motion to deny the stream bank encroachment. Seconded by Evert Hekman. Motion passed 4-1 with Bart Brannon in opposition.

Bart Brannon made a motion to approve the reduction in the buffer around the cemetery as per letter of agreement between Hickory Flat Cemetery, Inc. and the Metro Group. Karen Mahurin seconded. Motion passed unanimously 5-0.

Bart Brannon made a motion to approve a variance of 15 feet to allow for a 20 foot zoning buffer for a length of 125 feet from the Hwy 140 ROW to the south. Cindy Castello seconded. Motion passed unanimously 5-0.

Other Items

- Approval of June 3, 2004 Minutes.

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

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

Meeting adjourned at 8:00 pm.