

**MINUTES FOR CHEROKEE COUNTY
ZONING BOARD OF APPEALS
Thursday, September 05, 2002**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on Thursday, September 05, 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 and Cindy Castello. Newly appointed member Deborah Parcell arrived after the meeting was underway. In attendance for Cherokee County staff were Mark Mahler, Jim Cain and Vicki Taylor.

County Attorney Mark Mahler called the meeting to order at 6:35 P.M., so that the Board could vote on a new chairman and vice-chairman. He also announced the appointment of a new Board member, Deborah Parcell, to replace Steve Harris.

Cindy Castello made the motion to appoint Karen Mahurin as Chairman. Bob Reilly seconded the motion and the vote for approval was unanimous. Then Chairman Mahurin nominated Bob Reilly as Vice-Chairman. Evert Hekman seconded this motion and the vote was again unanimous for approval.

There were three old cases on the agenda, which had been tabled from prior meetings.

Case #02-07-019A, Carole G. Chastain requested a variance to Article 7, Table 7.1; Minimum District Development Standards. The applicant requested a variance to encroach 12 feet into the right side yard setback. The Zoning Ordinance requires a 15 foot side yard setback. The property is located at 665 Upper Burris Road in Land Lot 180 of the 14th District and is further described as Cherokee County Tax Map 14N13, Parcel 088.

Attorney Tom Pope, representing Carole Chastain, spoke in favor. He explained to the Board why it was necessary for Ms. Chastain to seek a variance. Evert Hekman asked him if Ms. Chastain was just asking for an encroachment and he replied in the affirmative. There was no opposition to this case.

Jim Cain gave the staff recommendation, which was for approval. A discussion ensued as to how close the encroachment was to the neighbor's property line and if there were any objections to this variance.

Bob Reilly made a motion to approve the variance. Cindy Castello seconded the motion and the vote was 4-0 for approval.

Case #02-07-022A, Cimmaron Field Services, Inc., as agent for Voicestream Wireless, Inc., requested a variance to Article 7.7-27, Section 4; Standards for Telecommunication Towers and Antennae, Aesthetics/Lighting. The applicant requested a variance of 100 feet to allow the tower to be located 50 feet from the west property line; a variance of 100 feet to allow the tower to be located 50 feet from the south property line; and a variance of 51 feet to allow the tower to be

located 89 feet from the east property line. The Zoning Ordinance calls for setbacks equivalent to the tower height of 150 feet. The property is located at 7914 Highway 92 in Land lot 1220 of the 15th District and is further described as Cherokee County Tax Map 15N06, Parcel 296.

Attorney Scott Taylor, representing the applicant, spoke in favor. Along with Mr. Taylor were Paul Whitmeyer, Carolyn Gould and Drew Overton, who are all representatives of Voicestream Wireless. They made themselves available to answer any questions the Board might have. Mr. Taylor described to the Board how the telecommunication tower grids work. He then proceeded to describe the subject property and explained why a variance was needed. He handed out to the Board members information pertinent to this case. Mr. Taylor pointed out that Voicestream is committed to co-location; however, there are no towers in this immediate area to co-locate on. He said that the proposed tower would meet all of the county requirements other than setbacks. He asked Paul Whitmeyer to come forward and explain how the towers are sited.

While Mr. Whitmeyer was coming to the podium, Mr. Taylor was asked how deep in the ground the tower would be set. He answered that footings and foundations are determined by geotechnical and soil samples. He said that forty feet would be a good estimate.

Mr. Whitmeyer then gave his presentation to the Board, explaining why they chose this particular site for the telecommunication tower. He proceeded to define the fall zone. A discussion ensued. Mr. Whitmeyer discussed the E-911 system that has been mandated by the federal government under the FCC. He said a tower is needed in this area in order to provide the E-911 service. He requested that the variances be approved.

A discussion ensued about how close towers must be located to one another and their height requirements, in order to ensure adequate coverage. Another discussion ensued about health concerns of telecommunication towers. Carolyn Gould explained that the levels of emission from the towers is so diminished at five feet distance that exposure would be minimal.

Mr. Taylor then explained that the towers are constructed so that there are breakaway sections every forty feet. Therefore, the entire 150 foot tower would not fall in one direction.

Gerry Campbell spoke in opposition. She read a letter to the Board that expressed her feelings about the proposed tower. She owns a daycare facility next to the proposed site. Her objection was based on health concerns and the structural integrity of the tower.

Bob Truett spoke in opposition. He discussed the property surrounding the proposed tower site. He seemed to be concerned about the resale value of his commercially zoned property, if the telecommunication tower is built.

Imogene Tritt spoke. She asked why the county had ordinances, if they were not going to be enforced. She pointed out that the proposed tower could not meet the setback requirements on three sides.

Jim Cain read the staff recommendation, which was for denial due to public safety issues. A discussion ensued about consideration of other sites for the tower construction.

Evert Hekman made a motion to deny the variance. This motion was seconded by Bob Reilly and the vote was 4-0 for denial.

Newly appointed member Deborah Parcell arrived at this time and was sworn in by County Attorney Mark Mahler. Ms. Parcell excused herself from voting on the old cases, since she was not a Board member at the time they were submitted.

Case #02-08-027A, Homes by Brumby at Savanna Estates LLC requested a variance to Article 7, Table 7.1A; District Development Standards. The applicant requested a variance to encroach 15 feet into the required 50 foot side yard setback. The property is located at 203 Savannah Estates Court in Land Lot 371 of the 2nd District and is further described as Cherokee County Tax Map 02N07, Parcel 201.

DuVall Brumby spoke in favor. He explained that he needed this variance in order to clear the required state stream bank buffer when constructing his house. He introduced site plans showing the location of the house with and without the variance. He was asked questions about the driveway location and whether he had met with the Union Hill EDC. There was no opposition to this case.

Jim Cain gave the staff recommendation, which was for approval. The Union Hill EDC also recommended approval. A discussion ensued.

Bob Reilly made a motion to approve the variance. Cindy Castello seconded the motion. The vote was 4-0 for approval.

The new cases are as follows:

Case #02-09-030A, Carla H. Brigati requested a variance to Article 7.7-9. The applicant requested a variance to allow 2 miniature goats on a .50 acres lot and a variance to 20 feet on each side to allow a setback of 55 feet on each side for the structure. The Cherokee County Zoning Ordinance requires a minimum of 2 acres for livestock and structures associated with livestock, and further required a 75 foot setback from all property lines. The property is located at 2007 Vicksburg Trail in Land Lot 1154 of the 15th district and is further described as Cherokee County Tax Map 15N08C, Parcel 094.

Carla Brigati spoke in favor. She had acquired two pygmy goats in order to get rid of the poison ivy in her yard, but became attached to them as pets and was unaware that they were considered livestock in the County Ordinance. It was not until one of the goats got out of her yard and her neighbor called the police that she became aware she was in violation. She said, to her knowledge, the goats had only escaped two times in two years. Ms. Brigati had spoken with all of her neighbors and no one objected to the goats except the neighbor who reported her to the police. She submitted several letters of support for her contention that the goats are pets. One of these letters was from the Agriculture Commissioner, Tommy Irvin.

A discussion ensued about the structure used for housing the goats. The Board determined that this variance was not necessary, since the doghouse igloo used for housing the goats would not be considered a permanent structure. Deborah Parcell said she went by Ms. Brigati's home and did not notice any offensive odor from the goats.

Another person spoke in favor of this variance. The neighbor who had called the police then spoke in opposition. She explained about the goats coming into her front yard on two occasions. She said this was her only objection. If Ms. Brigati could assure her that the goats would not be allowed to come in her yard again, then she would not have any objections to this variance. Ms. Phillips then gave an account of an occasion where someone in Ms. Brigati's yard was terrorizing the goats with fireworks. She showed pictures where the goats had eaten the new shrubbery in her yard.

Jim Cain gave the staff recommendation, which was for approval. He suggested that the Board might want to impose additional buffering and screening requirements in order to satisfy neighbors' concerns.

Ms. Bragati was asked to explain the circumstances that had led to the goats getting into the neighbor's yard. She said she was first aware that the goats were out on June 13, when the neighbor told Ms. Bragati's son. Again on Labor Day, her son called her, as she was out of town, and told her the police had informed him that the goats had escaped. Ms. Bragati was asked who stayed at her home when she was out of town. She answered that her two sons were there. She was then asked about the firecracker incident. She said she would address that when she got home, indicating that she was unaware of the incident and did not approve of it. Ms. Bragati said she wanted to install a privacy fence, if this variance is approved. She assured the Board that the goats do not burrow and would not be able to dig under the fence. She asked that she be allowed 30 days to secure a loan for the fence installation. A discussion ensued as to whether the fencing should totally surround the house.

Deborah Parcell said she had gone out and looked at the property and the side fences looked secure. She also said she detected no odor from the goats.

Chairman Mahurin asked Mark Mahler if the Board needed to vote separately on the two variance requests. He agreed that they are two separate issues.

Deborah Parcell made a motion to approve the variance for allowing the two goats, with the conditions that there would be no more than two goats kept at a time; that there would be no breeding of the goats; that a privacy fence is to be installed along the rear property line within 60 days; and, if there are 4 more escapes of the goats, then the variance will be revoked. Evert Hekman seconded the motion and the vote was 5-0 for approval.

On the second variance concerning the accessory structure, Chairman Mahurin made a motion to deny the variance request. Cindy Castello seconded the motion and the vote was 5-0 for denial. Ms. Bragati was asked if she understood the conditions of her variances. She said she understood the first one, but was unclear on the second one. Mark Mahler clarified for her that the igloo did not qualify as an accessory structure and, therefore, did not require variance. She

could place the igloo anywhere she chose. With this ruling, Ms. Bragati would not be able to build any kind of permanent structure that would require a building permit.

Case #02-09-031A, F. W. Head, Jr. requested a variance to Article 7, Table 7.1. The applicant requested a variance to encroach 1.3 feet into the required 10 foot side yard setback. The property is located in Land Lot 443 of the 15th District and is further described as Cherokee County Tax Map 15N08C, Parcel 094.

Bill Head spoke in favor. He is the builder and also the owner of the subject property. He explained to the Board why he needed a variance. There was no opposition to the case.

Jim Cain gave the staff recommendation, which was for approval. The home has already been built and is occupied. Also, the owner has made a good faith effort to acquire additional property in order to meet the zoning requirements. Should the Board approve the variance, then Staff recommended that they consider adding conditions for approval such as fencing or landscaping, if there are any issues with the surrounding property owners.

Cindy Castello made a motion to approve the variance. Deborah Parcell seconded the motion. The vote was 5-0 for approval.

Case #02-09-032A, Brian and Elizabeth Galloway requested a variance to Article 7, Table 7.1. The applicant requested a variance to encroach 5 feet into the required 30 foot rear yard setback. The property is located in Land Lot 790 of the 2nd District and is further described as Cherokee County Tax Map 02N04A, Parcel 007.

Brian Galloway spoke in favor. He explained that he wanted to build a mother-in-law suite onto his house and, in order to do so, he would need to encroach into the required setback. He said this construction would add approximately 2,000 additional feet to his house. Mr. Galloway was asked about restrictive covenants governing his subdivision. He submitted a copy to the Board. He told them he had talked with his neighbors and there was no opposition. No one spoke in opposition.

Jim Cain gave the staff recommendation. Based on the narrowness and irregular shape of this property and the limitations on the placement of the housing addition due to the underlying septic field, Staff recommended approval of the variance.

Deborah Parcell asked Mr. Cain if this construction would require an additional septic system. He deferred the question to the applicant. A discussion ensued. Traditionally, when kitchens and baths are added, additional septic systems are required. Ms. Parcell asked for a copy of the subdivision restrictive covenants. Another discussion ensued. Ms. Parcell said that the Galloways displayed pride in ownership in their property and she felt that the addition to the house would be in good taste.

Deborah Parcell made a motion to approve the variance. The motion was seconded by Evert Hekman and the vote was 5-0 for approval.

Case #02-09-033A, Oscar and Elsie Hall requested a variance to Article 5, Section 4.6C and 5.6F. The applicant requested a variance to encroach 15 feet into the required 30 foot rear yard setback and a variance to allow a 1,280 square foot accessory structure instead of the required 900 square feet maximum. The property is located in Land Lot 122 of the 15th District and is further described as Cherokee County Tax Map 15N19, Parcel 032.

Both Oscar and Elsie Hall spoke in favor. They described the circumstances that brought them before the Board to request these variances. Mr. Hall restores classic automobiles for his own pleasure and needs an adequate facility to store them in. They were asked if they were planning on paving the driveway after construction of the garage. Mr. Hall said that eventually he would pour a concrete drive. In the meantime, he plans on putting down crusher run. A discussion ensued about the location of the proposed structure in relation to the neighbors. A neighbor of the Halls spoke in favor. There was no opposition.

Chairman Mahurin said that she had visited the site and that the location where the garage was to be placed did not appear to impact any neighbors. She also said that the Halls planned on revegetating the area.

Jim Cain gave the staff recommendation. He pointed out that the ordinance has changed since the Halls first applied for their variance. At that time, the accessory structure was required to set back the same distance from the property line as the primary structure. Now, the accessory structure only has to be 10 feet from any property line. He proceeded to recommend that, should the Board decide to grant the variances, then they may want to require additional screening (landscaping and/or fencing) along the neighboring rear property line.

Bob Reilly made a motion to approve the variance, with the following conditions:

1. The applicant must revegetate the disturbed area within sixty days of completion of construction.
2. The garage must be constructed to match the appearance of the primary structure.

Evert Hekman seconded the motion and the vote was 5-0 for approval.

Case #02-09-034A, M. Anthony Baker requested a variance to Article 7, Table 7.1. The applicant requested a variance to encroach 10 feet into the required 50 foot side yard setback on both sides. The property is located in Land Lot 122 of the 15th District and is further described as Cherokee County Tax Map 15N19, Parcel 032.

Tony Baker spoke in favor. He gave the Board some history on his property and explained why he was seeking a variance. He named several neighbors who he said were not opposed to this variance. He said that the subdivision restrictive covenants had expired over a year ago. Mr. Baker said he wanted to build his dream house and, in order to do that, he would need a variance. A discussion ensued about the size of the lots in the subdivision. Another discussion ensued about the positioning of Mr. Baker's house on the lot.

Anton Zellman spoke. He is one of the owners of the property behind the subject property. He asked the Board if a precedent would be set by their decision on this case. They answered that it would not.

Jim Cain gave the staff recommendation. The narrowness of this existing lot would make residential development more difficult than in most cases in terms of meeting setback requirements, therefore, Staff recommended approval of the variance.

Cindy Castello made a motion to approve the variance. Bob Reilly seconded the motion. The vote was 5-0 for approval.

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 be allowed to encroach into the stream bank buffer for stream bank mitigation. Cherokee County requires a 150 foot undisturbed natural buffer along the Etowah River. The property is located in Land Lots 322 through 329 and Land Lots 393 through 400 in the 3rd District and is further described as Cherokee County Tax Map 03N26, Parcels 022 and 022A.

Greg Smith spoke in favor. He described to the Board the applicant's plans for restoring vegetation along the Etowah River bank buffer area. The reason for the variance request is so the applicant can create a walking trail for the residents. The applicant is also proposing other recreational areas along the river, such as kayak launching sites and boat ramps.

Deborah Parcell asked Mr. Smith to explain what stream bank mitigation means. He explained the process of selling credits. Mr. Smith said that there were periodic inspections done to the area. The first year, there would be four inspections and thereafter, one inspection per year for the next six years. The service area for the credits is within the Etowah River basin. The Stream Mitigation Bank Review Team sets the limits of the service area. A discussion ensued. Mr. Smith said that all the pertinent agencies have given their approval. Evert Hekman asked you would oversee the credit process. Mr. Smith said an outside firm would be hired to handle the accounting. The Corps of Engineers would have to give approval for everything done. Mr. Smith said that the financial assurances have to be made prior to bank approval.

Sandy Reilly spoke in opposition. She is an adjacent property owner. Her concerns were about the amount of river frontage involved in this project. She wanted clarification on what exactly was being done and why. A discussion ensued. Mr. Smith said the ratio is approximately 6-1 for credits. For every incursion into the buffer, six times that amount of credits would have to be bought.

Deborah Parcell asked Mr. Smith if he had met with the Cherokee County Water Authority. He said he had not. However, he said he had been working with Robin Goodlow, a biologist with the Fish and Wildlife Department, and that she has preliminarily approved this project. Another discussion ensued about which would be better for the environment, the stream mitigation bank or just leaving the 150 foot undisturbed buffer in place. Mr. Smith said the project would cost over \$100,000.

Another person who lives across the street from the subject property asked questions about the project.

Deborah Parcell made a motion to table this case for thirty days, in order to get more information on the stream bank mitigation process and to check with the various agencies for their input. Bob Reilly seconded the motion. The vote was 4-1 to table, with Evert Hekman voting against tabling.

Chairman Mahurin made a motion to approve the July 11, 2002 Minutes. Evert Hekman seconded the motion. The vote was 3-0-2 for approval. Two members were not present at that meeting, so they abstained.

Chairman Mahurin made a motion to approve the August 01, 2002 Minutes. Evert Hekman seconded the motion and the vote was 4-0 for approval. Deborah Parcell was not a member at the time of that meeting.

The meeting was adjourned at 9:00 P.M.