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**MINUTES FOR CHEROKEE COUNTY  
ZONING BOARD OF APPEALS  
Thursday, January 9, 2003**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on January 9, 2003, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Bart Brannon, Cindy Costello, Evert Heckman and Karen Mahurin. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Jim Cain and Vicki Dye, Planning & Zoning Department, Glenda Casteel, Building Department. The meeting was called to order at 6:35 pm.

**Old Cases**

02-11-045A Eddie Wang requesting a variance to Article 11, Table 11.1; Sign Regulations. The applicant is requesting a variance to allow one additional freestanding sign on this property. This property is located at 14865 Hwy 92 in Land Lot 1256 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N30, Parcel(s) 064.

Mr. Wang represented the case. He stated that there is a six-unit shopping center with a BP station on one side. The only sign existing is a BP price sign and there are 5 other units that have no sign for their business at all. The request is to expand the existing BP sign from 88 sq.ft. to add an additional 25 sq.ft. (5 x 5) so that each tenant can have a 5 sq.ft. space to show they are in there so they can do their business.

No one spoke in favor or opposition.

Jim Cain pointed out that the agenda had incorrectly identified that he wanted to add an additional freestanding sign, that was Mr. Wang's old request, and that the correct request is identified in his staff report. Mr. Cain then read the staff report that requests a variance for 1) the enlargement of a preexisting freestanding sign to 113 sq.ft. and 2) a variance to the Hwy 92 Village Ordinance that requires monument signs. Mr. Cain's recommendation was for approval of these requests.

Mr. Heckman asked if this request had been run by BP and if they were ok with this. Mr. Wang said yes and stated he owned the whole shopping center as well as the BP operation and it is under his authority.

Ms. Costello made a motion to approve the existing freestanding sign for 120 sq.ft. Seconded by Mr. Heckman. Passed unanimously. Ms. Costello made a motion to grant a variance to the Hwy 92 Village Ordinance as it relates to monument signs. Seconded by Mr. Brannon. Passed unanimously.

02-12-048A David T. Graham requesting variances to Article 7, Table 7.1A; Development District Standards and Article 13; Non-Conforming Uses. The applicant is requesting a variance to reduce the front building setback along Ball Ground Hwy to 65', a variance to reduce the rear

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setback to 30' and a variance to reduce the side setback to 15'. The applicant is also requesting a variance to allow an enlargement of an existing non-conforming use. This property is located at 8609 Ball Ground Hwy in Land Lot 065 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N07, Parcel 003.

Mr. Graham represented this case. He stated he is the owner of Auto World Auto Parts and also the building and property owner of 8609 Ball Ground Hwy. He stated it has been an auto parts store for the past 19 years. He stated he was seeking four variances: 1) a variance of 16' on the front setback on Ball Ground Hwy to allow for a 49' front yard setback, 2) a 16' variance on the rear to allow a 14' rear yard setback, 3) a variance of 13' on the side to allow a 2' side setback, and 4) a variance to allow an enlargement of an existing use.

Mr. Graham presented pictures of the property to the Board for their review. He stated the addition would be to stock additional parts for the convenience of the customers. He stated the building was originally built in 1962 and the property is the same layout as in 1962. He stated that there have been various uses until he opened the auto parts business in 1984. He stated he has been in business for 19 years. He stated he rented the property until November 2001, when Mr. and Mrs. Eaton passed away and he bought the property from the children. He employs nine people, three of which are family members and he would like to expand the business so it can continue in the family. He further stated the landowner directly behind the property that would be most affected by the addition, Joan Quarles, sent a letter stating she had no problem with the request. ZBA acknowledged receipt of Ms. Quarles letter.

No one spoke in favor or opposition.

Mr. Cain then proceeded to read the staff recommendation, which was different than the request. It was noted by Mr. Cain that the application was modified and advised the agenda was correct. Mr. Graham was directed by the ZBA to look over the agenda to see if it was a correct request. Mr. Graham advised the agenda was correct.

Ms. Mahurin verified with County Attorney, Mark Mahler, that this variance request goes with the property and why it wouldn't be appropriate to rezone. Mr. Cain stated the only disadvantage to seeking a variance is that any future expansion would again need a variance whereas with a rezone it would not. Mr. Mahler agreed.

Mr. Heckman made a motion to approve the four '4' variances as stated on the agenda. Seconded by Ms. Mahurin. Passed unanimously.

03-01-001A Eric & Angi Bruton requesting a variance to Article 5, Section 5.6-2; Fences around pools. The applicant is requesting a variance of 1 ft. to allow a 4 ft. high fence around a swimming pool. The Cherokee County Zoning Ordinance requires a minimum height of 5 ft. This property is located at 601 East Shore Drive in Land Lot(s) 443, 422 of the 15<sup>th</sup> District and further described a Cherokee County Tax Map 15N08C, Parcel 066.

Mr. Eric Bruton represented this case. He stated that he was basically requesting a 1 ft. variance in the fence height requirement for fencing around pools. He stated he has an existing fence

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which was installed several years ago and he mistakenly relied on the fencing company to tell him what the rules and regulations were for Cherokee County with the thought at some point later down the road they might put in a pool. When they went for the final inspection is when they found out the fence was incorrect. He stated it is an ornamental aluminum fence and because it is aluminum; the modifications would basically cost as much as installing the fence when he initially put it in. He stated he knew his gates did need to be addressed; he stated they are not up to standards as far as self-closing, self-latching and that is something he will take care of. But he did not want to take care of that until he knew that he had to take care of the whole fence. He stated the fence was put in two years ago and the pool was installed this past May.

Mr. Heckman stated that when he went by the property, he did have some concerns about the common area right next to him, but in looking at it, it looks like the pathway leads to a lake through that common area. The property between the walkway and your fence is left pretty much raw and uncleared. He asked if Mr. Bruton anticipated it always being that way. Mr. Bruton stated he knew the developer didn't plan on doing anything with it, but the main common area would be possibly addressed by the neighborhood itself, just that section with the walkway and wetlands. Mr. Heckman asked if there was anything he knew of that the association planned for that area. Mr. Bruton answered no. He stated there are three docks and that mainly people just walked down there and fished.

No one spoke in favor or opposition.

Mr. Cain gave a staff recommendation for favorable consideration of this variance provided applicant upgrades the gate walk system to control pool access. He stated this is important for children being unable to gain unsupervised pool access. He stated Mr. Bruton did indicate in his application he would be willing to do that.

Ms. Costello questioned Mark Mahler that if the ZBA approves this and then a child climbs over this fence and drowns could the County be held liable in a case like this. Mr. Mahler indicated more so if you were doing away with the fence. He stated four foot height fence probably was sufficient enough to keep the small children, who cannot swim, out of there especially since it was wrought iron and hard to get over. He stated, if he can assure you that won't happen, no, but he felt comfortable enough that it was not the type fence that a child could jump over.

Mr. Brannon made a motion to approve with the stipulation of upgrading the gate lock system to control the pool access. Ms. Mahurin asked how that would be checked. Ms. Casteel, Building Inspections, stated her department would follow through for compliance. Seconded by Ms. Costello. Passed unanimously.

03-01-002A John Maxwell Construction requesting a variance to Article 23, Table 23-2; Conservation Subdivision Setback Requirements. The applicant is requesting a variance of 3 ft. to allow a 12 ft. side yard setback. The Cherokee County Zoning Ordinance requires a 15 ft. side yard setback. This property is located at 136 Rosebury Drive in Land Lot(s) 1099 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N18A, Parcel 024.

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Mr. Maxwell represented this case. He stated he is requesting a 3 ft. reduction on the left side of a residential under construction dwelling, or rather pre-construction. The reduction would be from 15 ft. to 12 ft. on a 1-acre parcel in a conservation subdivision. The home is currently under contract and this is the seventh home he has built in this particular community. He stated there didn't appear, as he looked at the plat itself, to be any radius shown on the street, but as a result they not only staked the house, applied for the permit, etc., they already had the health department approve it and they were on hold for two months because he had all his engineers check everything which means they stake the homes and foundations to make sure everything is right on. In that process they happened to find that that radius of the street, that didn't show up on the plat per se, did show up through the engineers report. He stated if the ZBA would look at what is in front of them, they would see that they ended up with 24.6 ft on the right hand side indicating that first of all they were originally trying to obtain 28 ft. which was a minimum radius for site entry garage. He talked to the developer and talked with the adjacent homeowners and they were all 1-acre parcels and everyone was in agreement it would not have an affect on the community. He stated his primary concern was to continue with the process as soon as they possibly could because it had become a burden because the home is under contract. He stated these people were hurting and he appreciate the opportunity to be able to put this before the ZBA. He stated they were asking to move the house 3 ft. left and he had talked to the developer, he said they are 1-acre parcels and he will take the next lot and they could move it 3 ft. the other way if that is it would take.

Ms. Costello asked if the adjacent property is vacant. Mr. Maxwell indicated the property to the east, right side of it Lot 18, they had previously built on, owned by Dan and Karen King, the home is there and is occupied. He stated the property to the left is an unoccupied lot, the developer still owns that and they have had that discussion with him. Ms. Costello stated she was wondering if the same problem could exist when it comes time to build a house on those lots. Mr. Maxwell answered he does not know why it could happen, this was just an oversight on our behalf because of the radius. He stated the rest of the street, all of us could look at it, and say there is no conceivable way this is on a radius road. Further that was why his Engineering firm are involved with everything they touch so this was just a safeguard to make sure our homeowner didn't get into an issue. He stated, to answer your question, he didn't think so.

Mr. Maxwell stated that one of the requirements is that the Building Department make them run flags or line down along the property line and a lot of builders in this area have taken a pull off that property line and when you're talking 400 ft. of depth you cannot be accurate and its not worth the aggravation. He stated he had talked with Mr. Mahler previously and Mr. Cain was kind enough to entertain their thoughts and basically they started all the construction of the property they split the fence up etc., etc., and they have been ready to go, but said they were going to put it to a halt and bring it to you guys.

No one spoke in favor or opposition.

Mr. Cain gave staff recommendations for approval.

Mr. Brannon made a motion to approve. Seconded by Ms. Costello. Passed unanimously.

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03-01-003A Melissa Weaver requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 15 ft. to allow a 35 ft. rear-building setback. The Cherokee County Zoning Ordinance requires a 50 ft. building setback on all sides in the AG zoning district. This property is located at 1205 Avery Road in Land Lot(s) 271, 306 of the 14<sup>th</sup> District and further described as Cherokee County Tax Map 14N30, Parcel 089C.

Ms. Weaver represented this case and stated she and her husband had purchased 6 acres around May and what happened was they started building in the beginning of October and the rear of the house had an encroachment and they did not realize it. They had their erosion inspection, plumbing and slab inspection and the day after they poured the slab, the next business day, they were notified through the County inspector that they had an encroachment. She stated there is a large natural vegetation buffer right there through the property line and she did have colored pictures if the ZBA needed them. She stated it was very, very hard to find the property lines. She stated the house they are building is their personal house and that it is a single story house. She stated the back part of the house is only 1 ft. and that it kind of goes diagonally to the slab they already poured. She stated she asked for the maximum 15 ft just to make sure, it actually was 14.6 ft. on one side and 1 ft on the other. She stated it was an honest mistake. She stated it was 5.90 acres and it also has a .08 cemetery on it that the County owns or the State. She stated it does have a 20 ft. buffer for an access to the cemetery and their encroachment did not interfere with that at all on the building line.

Ms. Costello asked how much it cost to have the slab poured. Ms. Weaver replied around \$9,800.00 with the slab, plumbing and grading, that does not include the permits and impact fee. Further she stated if they for some reason were not able to get this variance all the plumbing would have to be taken out.

Deanna Hudson spoke in opposition; she lives at 1195 Avery Road, just to the west of this. She and her husband lives there, moved into the house in 1998, they chose that property because it is zoned agricultural, which is requiring a 50 ft. setback. She stated if they wanted to live in a subdivision close to the neighbors they would have gone the subdivision route. Another main concern of hers, was they saw it being built and construction and thought it might be a garage. She stated her husband had called the building permit department and was told it was a home. Mr. Hudson had called the building inspections department and they said it passed inspection. The building department advised they would have run a string from the property marker to the home to measure and make sure it was the 50 ft. minimum. She stated the inspector was someone by the name of Tommy Weaver and that just struck a concern with them. She stated she didn't know if there was any relation at all, but it was kind of odd. Then her husband called the County Marshal and had him come out and she didn't know what he did because her husband was at work. She and her husband opposed because it was kind of odd that it did pass inspection.

Euvon Lance, Mrs. Hudson's mother spoke in opposition; her property touches the Weaver property. She is concerned about the cemetery road. She stated the road is a dirt road running from Avery Road and there is a pine thicket around the cemetery they use to clean up. She stated

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the graves are slaves and the previous owner had plowed over the graves and her mom told the Weaver's they had better put a fence around it and they did. She stated she was worried something might happen to them, because a lot of people don't care about them. She clarified that her mom lives on the adjoining property and she lives on Sugar Pike.

Glenda Casteel, Building Inspections Department spoke and for the record, stated that Tommy Weaver is not related to these people to her knowledge. She stated it was ironic, but Tommy does have a granddaughter named Melissa, but this is not that Melissa. Ms. Casteel asked if Tommy Weaver was any relation to these Weavers and the answer was no. Glenda stated she had asked Tommy what happened when he went out. Ms. Casteel stated she didn't know if the property lines were miss-marked, or what happened, but indicated everybody always says if you have 5 acres why did you pull so close to the side, rear or whatever it is, evidently poor planning. We got a complaint, we went out the next day and that's when it was discovered. There is nothing going on as to why an inspector has approved anything because he liked the name Weaver or was related, so I did want to clear that up.

Ms. Mahurin stated to Ms. Hudson, they do have some money into this, let me tell you our alternatives they are: We say no, they tear it down or physically tear it up and move it. My question to you is what do you want to see or is there anything else that could correct this that you feel comfortable with. Discussion ensued regarding planting a buffer or to do something to satisfy Ms. Hudson's situation.

Ms. Mahurin asked Ms. Casteel if they had gotten an ok on that slab. Ms. Casteel answered they had gotten an approval; she did not know what happened. Ms. Mahurin stated she understood Ms. Casteel's position thinking they are doing their own thing and weren't following procedure, but apparently they did follow procedure and the Building Department said they were ok. Ms. Weaver stated they got their site graded in October and after that it had rained every day for a period of three weeks, but they were willing to do whatever it takes to plant a natural vegetation as long as they didn't have to tear anything up.

Ms. Mahurin asked Ms. Hudson would she rather see a fence or a natural vegetation. She replied a natural vegetation.

Ms. Mahurin asked Mr. Mahler how the roads are maintained to cemeteries. He replied that the State owns the road, and there is some sort of perpetual bond there, the access has to be maintained. The County does have a cemetery ordinance that says it has to be maintained, but that is a whole separate issue. Ms. Mahurin explains to Ms. Lance that the variance right now is on the house situation and not the cemetery or the road. Discussion ensued and Ms. Mahurin advised Ms. Lance to contact Planning and Zoning for further questions.

Mr. Cain gave staff recommendation for approval, but if a vegetative buffer is required, he suggests the County Arborist be contacted to decide the appropriate landscaping.

Ms. Costello made a motion to approve the 35 ft. variance with condition of a vegetative buffer per the County Arborist that is comfortable with the adjoining neighbor. Seconded by Mr. Brannon. Passed unanimously.

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03-01-004A Ernest Blackwell requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 27 ft. to allow a 23 ft. side yard setback. The Cherokee County Zoning Ordinance requires a 50 ft. building setback on all side in AG zoning district and further described as Cherokee County Tax Map 14N08, Part of Parcel 019C.

Mr. Blackwell represented this case. He stated his wife's mom and daddy owned 5.5 acres on Darby Road and he and his wife have been married 22 years and they just had their first child and the grandparents wanted them to be close by. He stated they ended up getting two acres of land, which the County said they had to have for this zoning district, but where their house is positioned on their property and the land, there is only 175 ft. of road frontage and only 700 or 800 ft. deep and it's pie shaped so that it gets smaller the further you get from the road. They were wanting to put the house on the crest of the hill so that the water would go away from the house. He stated when they started the process, the parent-in-laws paid for the surveyor and when it was surveyed they did have the 50 ft. setback, but then that was only about 10 ft. off the corner of his house, which he stated he didn't think the County has a regulation as to how much property he can sell to somebody. Ms. Mahurin explained the setbacks are measured from the property lines whether or not he owns both pieces in the zoning district. Mr. Blackwell stated his father-in-law got nervous about it and he had it resurveyed and moved it 35 ft. off his house. Mr. Blackwell stated there is a letter in the file from his mother and father-in-law stating they have no problem with this variance. The encroachments are 25 ft. on one end and 23 ft on the other end and he asked for a 27 ft. variance. Another thing is he wasn't aware that the 175 ft. on the road going back a 100 ft. would shrink that much. He stated there is 60 feet between houses. Discussion ensued.

No one spoke in favor or opposition.

Mr. Cain stated staff recommendation was for approval as submitted.

Mr. Heckman made a motion to approve as requested. Seconded by Ms. Mahurin. Passed unanimously.

Other Items

Mr. Heckman made a motion to approve the December 5, 2002 minutes. Seconded by Ms. Mahurin. Passed by a vote of 3, Bart Brannon abstaining.

Mr. Brannon made a motion to adjourn. Seconded by Mr. Heckman. Motion passed unanimously. Meeting adjourned at 7:38 pm.