

**MINUTES FOR CHEROKEE COUNTY
ZONING BOARD OF APPEALS
Thursday, February 6, 2003
6:30 pm**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on February 6, 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, Karen Mahurin and Roy Taylor. 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 6:30 pm. Mark Mahler swore in Roy Taylor to the Zoning Board of Appeals.

Old Cases

Correction to Case #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 49', a variance to reduce the rear setback to 14' and a variance to reduce the side setback to 2'. The applicant is also requesting a variance to allow an enlargement of an existing use. This property is located at 8609 Ball Ground Hwy in Land Lot 065 of the 3rd District and further described as Cherokee County Tax Map 03N07, Parcel 003.

Chairman Mahurin stated there is a clarification to this case. She stated it was approved last month, but the minutes stated that the ZBA was approving the variance according to the agenda and the agenda did not list the actual variance. She read the variance was to reduce the front building setback along Ball Ground Hwy to 49 feet, to allow a 14-foot rear yard setback and to allow a 2-foot side yard setback and allow a variance for enlargement of an existing non-conforming use. She clarified that is what the ZBA approved, but simply did not state it for the record. ZBA approved this clarification with one abstaining, Roy Taylor.

New Cases

Case #03-02-005A Mark and Lauren Mancini requesting a variance to Article 4, Section 4.3; Definitions. The applicant is requesting a variance to be allowed two (2) pot-bellied pigs in a residential zoning district. This property is located in Sable Trace Subdivision at 101 Sable Trace Trail in Land Lot 1049 of the 21st District and further described as Cherokee County Tax Map 21N11, Part of Parcel 083.

Mark Mancini represented this case. He stated he was interested in purchasing a home in the Sable Trace Subdivision rather than buy the home and have a fiasco, they decided to apply for a variance to have their two pot bellied pigs on the same property ahead of time. He stated they had not bought the property yet, but were in the process if they were approved.

Chairman Mahurin, for the record, asked Mr. Mancini why he is seeking this variance. He stated the current ordinance only allows for one per residence. He stated they would like to have both for pets and not used for food consumption.

No one spoke in favor or opposition.

Jim Cain gave staff recommendations to suggest approval of the variance request. He stated the Board might want to consider assigning a stipulation of erecting an 8-foot solid wood fence rather than the 6-foot fence proposed by the applicant. He stated he would like to enter into the record written comments from Vicki Taylor, Zoning Administrator, she commented the Mancini's letter of intent states they plan on erecting two small barns behind the middle of the house, but in their site plan they show these structures as large doghouses. She emphasizes that while the doghouse will be fine, they would not be able to erect two barns or accessory structures in the zoning district. Also for the record, written comments from Glenda Casteel, Director of Building Inspections, to allow an additional pot bellied pig. She stated years ago the ordinance did not allow for pot bellied pigs on residentially zoned property; then came the decision concerning Burp, the pig. She commented that a public hearing was conducted by the BOC to hear a request by a resident to allow a pot-bellied pig in Towne Lake. The Commissioners decided to allow a pot-bellied pig as a pet, but if she remembered correctly the Commissioners only allowed one pot-bellied pig per residentially zoned area. She stated she had asked Sheila Corbin to provide those minutes so the ZBA could abide by the Commissioners' actions. Mr. Cain stated he wondered if the covenants would allow for a wood fence to be erected and the applicant should address this with the Board.

Mr. Heckman asked Mr. Mancini if there presently are any houses built on either side of this property. He answered no, the property is in Phase 3 and nothing has been established yet. Mr. Heckman asked Mr. Mancini if he had done any research as far as the covenants to erect a 6-foot fence. Mr. Mancini said he already had gotten approval from the builder and it fell within the covenants.

Chairman Mahurin asked specifically what the covenants approved. Mr. Mancini stated the covenants were ok with the pets. She asked if it specifically stated pot-bellied pigs. He stated it mentioned exotic pets and typically pot-bellied pigs are classified as such. Even though there is no homeowners association yet, he did have written approval from the builder.

Chairman Mahurin asked about the barns in his application. He stated they were not supposed to be barns, but large doghouses.

Mr. Brannon asked how large the pigs are. He stated they are about the size of a large dog except they are shorter and lower to the ground. He stated the structures would be large enough to house each pig and contain heat in the wintertime.

Ms. Costello asked how long they had had the pigs. Mr. Mancini stated they have had Henry for 10 years and Skippy for 5 years now.

Ms. Costello had Mr. Mancini look at the map with her and stated she knew there would be houses built here, but asked about some property adjacent to Mr. Mancini's property. Mr. Mancini stated the property is undeveloped R-40. Mr. Mancini said he was told there are several different owners to that big lot of property. She asked if a house was on the property and he stated it was all woods.

Chairman Mahurin asked about the smell. Mr. Mancini stated unlike dogs, which are primarily meat eaters and pigs being vegetarians their stool emits no odor. He stated they do not sweat so there are no odor problems and as pets they are much cleaner than dogs. He stated if you had two dogs they would actually smell more than pigs would.

Ms. Costello asked if he would be keeping them outside all the time. Mr. Mancini stated he would and further that the pigs would sleep in their homes and come out and walk around the yard and sun themselves. She further asked if the fence area would be along the entirety of the property. He indicated it would. He stated he was not sure what the covenants had to say about an 8-foot fence. He stated that a 6-foot is normally what is standard, but he would address that with the covenants.

Chairman Mahurin asked if these were male or female pigs. Mr. Mancini stated they are both neutered males.

Ms. Costello asked if they make noise. Mr. Mancini stated they do not except once or twice a year when he trims their hoofs and they usually do that on a Saturday afternoon. He stated other than that they eat, sleep and go to the bathroom. Ms. Costello asked how long they usually live. He stated it was hard to say because most people do not keep them as pets. He stated he has heard 15 or 25 years as an average, unfortunately they are used for consumption so there is no definite on that. Mr. Mancini stated he is serious about the pigs and that is why they were here.

Mr. Taylor asked if the County regulates how many dogs could be kept on that piece of property. Mr. Mahler stated 8. Mr. Taylor commented since they were talking about an animal about the size of a dog with less complications than dogs, he could see no issue and didn't see any need to put an 8 foot fence in, which he doesn't feel is good for that neighborhood.

Mr. Brannon asked what would happen if they got out of the fence around children. Mr. Mancini stated the pig would be more scared than the kids would. He stated in the wild they are the hunted and not the aggressor except for wild boars, which pot-bellied pigs are not.

Ms. Costello asked if they are known to dig out or root. Mr. Mancini stated they would root, but it was too much work and would root down about an inch to look for water and that's about it.

Chairman Mahurin wanted to ask a question, which does not relate to the variance, but why he would have a pig as a pet. Mr. Mancini stated he wanted something more playful than a cat, but not quite as needy for walking as a dog so first they got Henry and since then became vegetarian, then Skippy was a rescued pig from animal control, someone had given him up and didn't want him anymore.

Chairman Mahurin stated she was concerned about the building of these other accessory structures. She asked Mr. Mancini did he understand what the ordinance is for these. He said no, that in the covenants he could erect a shed. Ms. Mahurin asked if he had the size for the shed with him as it relates to the covenants. He stated no, not with him, but he could get them and make them within a conformed size.

Ms. Costello asked if the structure would be higher than his fence and Mr. Mancini stated no.

Mr. Cain stated these would not be permanent structures.

Mr. Brannon made a motion to approve as requested with a 6 foot fence as the applicant proposes in his application, it is noted that the structures that he refers to in the application does list "barns," but that it not be permanent and that they do follow the covenants. Seconded by Mr. Heckman. Passed unanimously.

Case #03-02-006A Larry J. and Mechelle M. Clark requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 12' to allow an 18' rear-building setback instead of the required 30' rear building setback. This property is located in Victoria Cottage at 511 N. Little Victoria Road in Land Lot 621 of the 21st District and further described as Cherokee County Tax Map 21N10B, Parcel A061.

Mechelle Clark represented this case. She stated they have purchased property at the Victoria Cottage area that has an older cabin built in the 1970s. That their plans are to demolish the cabin and build a home that they had bought plans for already. She stated the plans are 12 feet over the rear setback.

No one spoke in favor or opposition.

Jim Cain gave staff recommendations for favorable consideration of approval provided the septic field interferes with the location of the new house elsewhere on the property. Further to enter into the record written comments from Vicki Taylor, Zoning Administrator and written comments from the Director of the Building Department, Glenda Casteel. The Zoning Administrator had commented that since the reason for the proposed house location given is the location of the current field lines, the applicant should have shown that location on the site plan and in addition she would ask why the house cannot simply be shifted forward negating a need for a rear setback variance. Comments from the Director of Building inspections, stated that the VCCI (Victoria Cottage area) originally required 50-foot setbacks and due to the nature of the area and small non-conforming lots, the BOC rezoned the area to R-20 in March 1995 allowing for a 30-foot front setback, a 30-foot rear and a 10 front side yard setback and that the rezoning was initiated to limit the necessity of variance requests.

Mr. Heckman asked if we knew where the septic lines are. Chairman Mahurin indicated the applicant could answer that. Ms. Clark indicated she had pictures. Discussion ensued as to placement of the house. Ms. Clark stated in talking with the EPA they had advised her that they would most likely have to increase their septic field from 250 feet to 300 feet with building the

new home. Ms. Clark showed a drawing of the septic field to the ZBA. She also stated due to the curve in the road, they would not be able to move the house forward.

Discussion ensued to surrounding properties and whether she had talked to her neighbors. It was noted no one was present in opposition.

Mr. Heckman said by driving through the neighborhood, he thought this would be an improvement.

Mr. Heckman made a motion to approve the variance as requested. Seconded by Ms. Costello. Passed unanimously.

Case #03-02-007A David & Sharon Petrey requesting a variance to Article 7, Section 7.7-9; Setbacks for Barn. The applicant is requesting a variance of 30' to allow a 45' building setback instead of the required 75'. This property is located on Owens Store Road in Land Lot(s) 1028 of the 3rd District and further described as Cherokee County Tax Map 03N17, Parcel 061A.

David Petrey represented this case. He stated he had applied for a 30-foot variance to build a new barn beside the school property that is building built right now. He said he has an existing barn, but would like to keep it for a utility and build a new barn.

Russ Sims, Supervisor Planning for Cherokee County School System spoke in favor of the variance. He stated Mr. Petrey's line is adjacent to where they are currently constructing the Owens Store Middle School and about to construct a High School across the road. He stated Mr. Petrey's property line that joins the school's is estimated at 800 to 1,000 foot long and totally contiguous. He stated the position of the barn is mid-way of the property and further the school property that is being developed is Mr. Petrey's north property line will be the school's south property line and they do have a tree buffer in that area. He stated the school also has plans for ball fields and Mr. Petrey and his wife have been very gracious to the School System and school feels like their project is massive compared to what Mr. Petrey wants to do. The school has no problem with him going forward and being allowed to build his barn.

No one spoke in opposition.

Jim Cain gave staff recommendations for denial. Written comments by Glenda Casteel, Director of Building Inspections, were that they could keep or expand the existing barn and stay within the required 75-foot setback. She further commented that the previous ordinance required 200-foot setbacks for barns associated with livestock and this requirement was reduced in 1992 to 75 feet. She is further of the opinion with 7 plus acres; that the applicant should be able to comply with the required setbacks. Written comments by Vicki Taylor, Zoning Administrator, were that the request for a variance in the application is due to topography, which is a classic hardship; however, there are no contours shown on the site plan, which makes it hard to assess this claim.

Mr. Petrey responded that the existing barn is very old and does not set 75 feet off the property line. He stated the barn is in very bad shape and he doesn't even know how old it is; therefore,

he can't expand to it. He said basically what he would have to do is tear the barn down and build a new one and he explained he had a steep mud erosion problem and he would like to keep the old barn for storing his tractor and then place ties to keep the erosion from taking place, because it just keeps running off. He said it will stay wet for at least two weeks. He said he needed a barn in this pasture to keep rotating the horses. He stated the reason he wanted to build a barn where desired is because it is the flattest area on the property and there wouldn't be as much grading.

Mr. Taylor stated in the finding of facts he finds it inaccurate. He thought this is an exceptional condition that exists here. He stated one of the reasons we have setbacks is for the safety and aesthetics of the neighbor. He stated if another residence could be built on the adjoining property that would be a different situation, but the school is going in there and hopefully for a 100 years and the barn will probably not be there for another 100 years. He refers to the property having 7 acres and you would think there would be some place to build a barn 75 feet from the property line, but knowing it will always be a planned buffer area and buffered to playing fields and after hearing Mr. Sims position, it should not be a problem. Discussion ensued regarding buffers.

Ms. Costello made a motion to approve the 30-foot variance. Seconded by Mr. Brannon. Passed unanimously.

Case #03-02-008A Phillip Cates requesting a variance to Article 5, Section 5.6-12; Fencing Requirements. The applicant is requesting a variance of 3' to allow a 11' high fence instead of the 8' height maximum. This property is located on Hwy 369 and Lower Creighton Road in Land Lot(s) 538, 539, 471, 472 of the 3rd District and further described as Cherokee County Tax Map 03N27, Parcel 035.

Mr. Cates represented this case. He stated he recently purchased 70 acres of property zoned agricultural and the request is to raise 8 foot fencing to 11 feet, not an 11 foot of wooden fence, but 11 foot of game fencing in order to keep the deer out and away from the landscaping and tree farm.

Chairman Mahurin asked if deer can jump that high. Mr. Cates stated deer can easily jump a 8-foot fence.

No one spoke in opposition or in favor.

Jim Cain gave staff recommendations for favorable consideration of this variance request. He stated for the record that the Zoning Administrator had no comments and the Director of Building Inspections commented if there are no objection from the neighbors she would not see any problem with the fence.

Chairman Mahurin made a motion to approve. Seconded by Mr. Taylor. Passed unanimously.

Other Items

Approval of January 9, 2003 Minutes.

Chairman Mahurin made a motion to approve the minutes. Seconded by Mr. Brannon. Passed with one abstaining, Mr. Roy Taylor.

Mr. Brannon made a motion to adjourn. Seconded by Mr. Heckman. Passed unanimously.

Meeting adjourned at 7:12 pm.