

*Approved
August 14, 2003*

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, July 10, 2003
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on July 10, 2003, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Karen Mahurin, Evert Hekman, Bart Brannon, Roy Taylor and Cindy Castello. In attendance for Cherokee County Staff were Jim Cain, Principal Planner and Vicki Dye, Zoning Technician for the Planning & Zoning Department and Mark Mahler, County Attorney. The meeting was called to order at 6:30 pm.

Case #03-07-024A Mitch Martin requesting a variance to Article 5; Section 5.6(c). The applicant is requesting a variance of 380 sq. ft. to allow a 1,280 sq. ft. accessory structure. This property is located at 405 Harbor Way in Port Victoria Subdivision in Land Lot 538, 539 of the 21st District and further described as Cherokee County Tax Map 21N09, Parcel 334.

Jim Cain gave Staff recommendation that this request be approved and a permit issued contingent on the applicant's commitment to leave all vegetation in place that is not necessary to the construction of the garage and to restore disturbed areas as soon as possible following construction.

Mitch Martin represented this case. He stated he didn't plan to go any closer than 42 feet to the property line. Mr. Brannon asked if the next door neighbor had any problem with this request. Mr. Martin stated no and that neighbor Mick was present.

No one spoke in favor or opposition.

Bart Brannon made a motion to approve with Staff recommendations and for the applicant to obtain a building permit. Seconded by Roy Taylor. Passed unanimously.

Case #03-07-025A Lamar Advertising requesting a variance to Article 11, Table 11.1; Signs. The applicant is requesting a variance of 25' to allow two (2) signs the height of 60'. The Ordinance requires a maximum height of 35'. This property is located along I-575 at the back portion of 603 Univeter Road in Land Lot 90 of the 15th District and further described as Cherokee County Tax Map 15N13, Parcel 109.

Jim Cain gave Staff recommendation for approval contingent upon concurrence by Georgia Department of Transportation. Mr. Brannon asked what concurrence by GDOT means. Mr. Cain stated he understood that GDOT would not cut down the trees so that the sign would be visible. Mark Mahler said he knew some new laws had

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gone into effect that says you cannot cut vegetation for signage. Mr. Mahler asked if the sign was in the right-of-way and Mr. David Stone said no it was on private property. Chairman Mahurin asked if the County had different ordinances years ago before that allowed these signs. Mr. Mahler stated that these signs are non-conforming and in a grandfathered status. Chairman Mahurin asked if there were other signs in the County that have asked for this height. Mr. Cain stated there were others along I-75 in Acworth that were granted variances to be seen from I-75. Mrs. Castello asked what happens when the trees grow further; will the applicant come back to raise the sign further. Mr. Mahler made a suggestion to table the application until GDOT could be contacted to find out what their procedures and regulations are.

Vicki Dye, Zoning Technician, Planning & Zoning Department stated she works with Larry Siniard of GDOT for sign permits. She explained that once Planning and Zoning approves a sign or variance like tonight and the sign is permitted. The applicant takes that permit to GDOT and GDOT has a form that they give the applicant to bring back to Planning and Zoning Department to sign off on that the County is ok with the dimensions of the sign. He also has to determine how close the sign is to any exit. Mr. Brannon stated with the new law in effect the Board might see more of these cases in the future. Mr. Taylor asked Mr. Mahler if he understood that more information needed to be gathered. Mr. Mahler stated it was a shot in the dark there tonight. Mr. Taylor stated since the applicant was there the Board should hear him and Chairman Mahurin agreed. Chairman Mahurin stated that she would like to see GDOT's regulation or requirements considering there may be more cases like this one.

David Stone represented this case. He stated the signs were built approximately 10 years ago on a single pole. Lamar Advertising purchased the company that erected the sign and there was a tree problem. He stated he had tried not only in this County but other Counties to get permits to cut trees and they can't get any. He stated his company was paying land leases. He stated Ms. Dye was correct that GDOT doesn't care how high they go as long as the County signs off on it but there would be no request again for a variance because once you go so high; the sign print is not legible for that size sign. He wanted to ask nicely to be able to raise the sign and get a permit to do so. Mr. Hekman said he gathered that GDOT wants some indication how the County feels about it. Mr. Stone stated GDOT does not have a height limitation, but goes by the County guidelines and he stated that it wasn't so much trees as brush hiding the signs.

No one spoke in favor or opposition.

Ray Taylor said he had some serious concerns, if this was a new situation, the Ordinance would not allow this. He stated the County has worked very hard on the

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sign ordinance for legal requirements that other municipalities have not been able to do successfully. He stated he did not want to undermine what the Commissioners' intent was in passing that ordinance. This would violate what the Commissioners have passed and in that sense it would be a mistake to try and do an end run to the current regulations.

Mr. Brannon stated this was not a new request, but a sign that is grandfathered in and he would probably agree if it were a new situation. Mr. Taylor stated it's fine where it is. Mr. Brannon said it's not fine for a business, and as someone who has been in the marketing business and priced billboards; he would not advise anyone to buy these billboards at any price. He stated that another government agency has restricted the ability to remove the trees, in his opinion, is rather ridiculous then what is a business owner to do. He stated Mr. Stone has a blockage that GDOT or the State Legislature has done this and prevented him from being able to get a reasonable use out of his business. Mr. Brannon agreed if it was a new sign he would agree with Mr. Taylor's comments, but since it is there he thought it would be reasonable to allow him to make a reasonable profit or market these signs to the business industry. Mr. Taylor asked then why as we as a County decide not to allow them. Mr. Brannon replied they did not decide to allow on an instillation already in place, we decided to do it on new, as you said. Mr. Taylor stated that both have to do with height. Mr. Brannon stated when trees grow and over time they will grow then there has to be a way of addressing it. Chairman Mahurin asked why the sign was considered non-conforming. Mr. Stone answered that the size is too big. Mr. Brannon stated then this one was grandfathered in when the Commissioners implemented the new sign ordinance. Chairman Mahurin stated then we would be extending a non-conforming and we keep perpetuating the situation and stated that was the way she saw it. Mr. Taylor suggested allowing them to put up what would be legal in that same spot. Mr. Brannon asked if that would get over the trees. Mr. Taylor said he believed so and the problem is the size of the sign. Mr. Taylor asked the current limitations. Ms. Dye replied 35 feet and 120 sq.ft. of copy area. Mr. Brannon stated that would only give Mr. Stone a year at the most. Mr. Stone said the sign is now at 30 feet. Mr. Brannon referred to the Staff recommendations stated there are many other signs in the County existing at a greater height. Mr. Taylor said not in the County but the corridor. Mr. Brannon again referred to Staff recommendation that said in the County. Mr. Taylor stated he thought it was a bad precedent.

Bart Brannon made a motion to approve with Staff recommendations. Cindy Castello seconded. Passed 3 to 2 with Chairman Mahurin and Roy Taylor in opposition.

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Case #03-07-026A Louis & Carol Padovano requesting a variance to Article 7, Table 7.1; Minimum District Development Standards. The applicant is requesting a variance of 25' to allow a 25' side setback instead of the required 50' side building setback. This property is located at 110 Nathan's Ridge at Brockington Farms Subdivision in Land Lot 456 of the 3rd District and further described as Cherokee County Tax Map 03N15, Parcel 092H.

Jim Cain gave Staff recommendation that topography is a classic hardship and recommends this request by approved.

Louis Padovano represented this case. Mr. Padovano reiterated the topography on the property as steep and that this was the only site available for the home. Mrs. Castello asked Mr. Padovano if he will be living in the house. Mr. Padovano's reply was yes. Mr. Taylor asked who was the developer? Mr. Brannon stated Gary Pruitt is the builder. Mr. Taylor stated this has nothing against you folks and what you're trying to do and how you're going about it and such. Mr. Taylor stated there is a 3-acre parcel out there and there is not one place on it worth building except in an area already designated within County rules to not build there. Mr. Padovano said the whole bottom part of the property is bottomland and it has three streams. Mr. Taylor stated that is a very nice thing for a developer to lop off and give back to the County and try to see if he can get some other use out of it or incorporate it into a larger parcel, but have a building site on it. Mr. Taylor stated for the Board to permit a lot to be used that shouldn't have ever been sold as a building lot because there was no appropriate place to put a house on it is rewarding the developer who should have been required to provide a suitable building site on this piece of property before he sold it. Chairman Mahurin asked if that should have been caught at other points. Mr. Taylor said he didn't know who would look at it. Chairman Mahurin stated the Planning Commission. Mr. Taylor said they do not look at it in that much level of detail. Chairman Mahurin said it should have been caught at some other level before someone bought it. Mrs. Castello asked Mr. Padovano if he already owns the land. Mr. Padovano answered yes. Chairman Mahurin told Mr. Taylor she understood what he was trying to say. Mr. Taylor asked at what point do we send the message to the developers that they need to provide more information. Mr. Brannon and Chairman Mahurin stated the P&Z (Planning & Zoning). Mr. Taylor asked if we as an organization could draft a memo back to that organization that this should never have come to us. Chairman Mahurin stated they could certainly do that and say this is an example. Mr. Cain stated the house footprint is not required on the plans at the review stage with the exception of the RZL zoning classification. Mr. Taylor stated that P&Z would never know this is not buildable they just see a 3 acre plot. Mr. Taylor said your saying then that P&Z cannot catch this so at

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what point could this be caught. Mr. Cain stated only if it is a requirement to put the house footprint on the plans. Chairman Mahurin said then you would be looking at every lot. Mrs. Castello asked Mr. Padovano if he was aware of any other similar problems in the subdivision and he stated there are four homes there now on this one street, two at the top and two at the bottom and he has no one to the left of him. He further stated they had no problems because their homes are on top of the hills, but his is down in the hole. Chairman Mahurin asked if it was only for one corner and he answered yes. Chairman Mahurin said they could discuss this later as a measure to catch something, but she stated she didn't know if there ever could be, it would be tough. Mr. Taylor stated he knew how the applicant got to this point, but he was trying to keep this from happening in the future to others. Mr. Padovano said that would be good because if he knew this he would not have purchased the property. Mr. Taylor pointed out he was not penalizing the applicant at all.

No one spoke in favor or opposition.

Motion made by Cindy Castello to approved. Seconded by Bart Brannon. Passed unanimously.

Case #03-07-027A McDonald's Corporation requesting a variance to Article 7, Table 7.1; Minimum District Development Standards. The applicant is requesting a variance of 24' to allow a 51' front setback instead of the required 75' front building setback. This property is located at 5600 Bells Ferry Road in Land Lot 1224 of the 15th District and further described as Cherokee County Tax Map 15N06, Part of Parcel 182.

Jim Cain gave Staff recommendation for approval of this application, as it would result in less of an encroachment than currently exists.

Karen Sanders represented this case. She stated they wanted to do away with the outdoor play place and build a modern indoor play place that is climate controlled. Mrs. Castello asked if they are going to make it larger. Mr. Brannon said he had been out there and presently the play place is 40 feet from Bells Ferry Road right now. Ms. Sanders said it will be safer than it is now.

No one spoke in favor or opposition.

Mr. Taylor said he had e-mailed a question to Vicki Taylor, Zoning Administrator, but realizes she had been out ill, whether someone from Engineering or Capital Improvements has any knowledge of road improvements and how it will affect this

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project. Mr. Cain stated the applicant should be in touch with Geoff Morton of Capital Improvements and he could answer this question.

Roy Taylor made a motion to approve with a recommendation to the McDonald's Corporation to be in touch with Geoff Morton, Engineering about any possible road widening. Seconded by Evert Hekman. Passed unanimously.

Case #03-07-028A Countryside Villas requesting variances to Article 10, Table 10.1; Buffer Requirements. The applicant is requesting a 1 ft. variance for an encroachment into the buffer area at Lots 17 and 34. These properties are located at 101 Countryside Court and 152 Countryside Court in Countryside Villas Subdivision and in Land Lot 686 of the 15th District and further described as Cherokee County Tax Map 15N04K, Parcels 017, 034.

Jim Cain gave Staff recommendation for approval contingent on all other conditions of zoning being met. As per Resolution 00-R-45, those are: (1) Structures shall be four-sided brick, (2) A minimum of 1,500 square feet per unit, (3) A maximum of 44 units, and (4) Provision of a fence in rear abutting residential.

Discussion ensued that the applicant is requesting a 1-foot variance to a buffer and the plans show a 50-foot building line. Vicki Dye, Zoning Technician, Planning and Zoning Department stated she had researched the plat for Countryside Villas and found it was signed in error as a 50-foot building line, but should have read a 50-foot buffer. Mr. Mahler stated the line itself doesn't change so he stated he had no problem with it going forward.

Tad Causey represented this case.

No one spoke in favor or opposition.

Evert Hekman stated that he normally would not approve something like this, but due to the topography there and the height above the adjacent neighborhood and that the development is pretty well done he had no problem with it. Mr. Taylor stated when it's something this small, it's something to be dealt with and the County had conditioned it to be bricked all the way around and that wouldn't even be a foot but maybe only 7 ½ inches.

Roy Taylor made a motion to approve with Staff recommendations. Seconded by Bart Brannon. Passed unanimously.

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Other Items:

Approval of June 5, 2003 Minutes.

Karen Mahurin made a motion to approve the June 5, 2003 minutes. Seconded by Cindy Castello. Passed unanimously.

Discussion ensued as to how the County could recognize unbuildable lots. Motion made by Evert Hekman for Mark Mahler to look into procedures of other Counties to address unbuildable lots. Seconded by Roy Taylor. Passed unanimously.

Meeting adjourned at 7:30 pm