

**Cherokee County Zoning Board of Appeals  
Minutes  
Thursday, June 3, 2004  
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on June 3, 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, Bart Brannon and Cindy Castello. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Vicki Taylor, Zoning Administrator, Vicki Mulkey, Zoning Technician for the Planning & Zoning Department. The meeting was called to order at 6:30 pm.

**New Case**

**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 2<sup>nd</sup> District and further described as Cherokee County Tax Map 02N12, Parcel 063G.

Vicki Taylor gave Staff findings that:

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

**EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:**

This is a pie-shaped lot with topographic hardships,(steepness, dam breach zone) as well as Environmental Health limiting the buildable area.

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

Yes. This is a legal lot of record with acreage exceeding the minimum acreage, however, because of its shape, topography and soils type, this lot has limited buildable area.

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

I do not believe this variance would be a detriment to the area. These lots are heavily wooded, providing a natural screen. There is a vacant lot to the north (Mrs. Betty Bell) and the house to the south (M/M Gallaher) is approximately 75 feet from the front property line. The proposed Stevens home would be nearly 400 feet back from the front property line.

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

Yes.

**RECOMMENDATION:**

As protective covenants are not law, but a private agreement between parties, and because it is not clear if the Stevens are a party to any private agreement, as is our policy, Staff reviewed this application without regard to any covenants. Based upon our criteria, Staff recommends approval of the setback variance, contingent upon the maximum vegetation remaining between this lot and the adjacent lots.

Wayne Stevens represented this case.

Bart Brannon asked the shape of the adjacent lots. Mrs. Stevens stated the adjacent lot is wider at the front and narrows to the rear.

Bob Westbrook spoke in opposition for Mrs. Bell and said they had measured Mrs. Bell's lot and they could place a home on that lot and meet the setbacks of 50 feet. He stated the Hickman's and the Gallaher's also objected.

Betty Bell spoke in opposition.

Pat Taylor, building consultant to the Stevens, spoke for an amenable settlement, possibly plantings for ensuring privacy. He asked that this case be postponed to try to come to an agreement with the adjacent property owners.

Roy Taylor asked if the home could be turned to meet the setbacks and he asked if they could rethink the positioning of the home.

Lonnie Castillo, builder for the Stevens, stated the hardship to the property would not help by turning the home.

Mr. Stevens spoke in rebuttal and stated he had been in touch with the neighbors and no one had objected other than Mrs. Bell.

Bart asked if they had been in touch with the Gallaher's or Hickmans. Mrs. Stevens stated when she spoke to the Gallaher's they had no opposition at that time.

**Roy Taylor made a motion to table this request until the next public hearing to allow the applicants and adjacent owners to come to an amenable agreement. Seconded by Evert Hekman. Motion passed unanimously 5-0.**

**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 21<sup>st</sup> District and further described as Cherokee County Tax Map 21N11A, Parcel 002.

**Mark Mahler stated that Mr. Shields and Mr. Miller, the adjacent property owner, have come to an agreement and this case will be withdrawn.**

**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 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N19, Parcel 037.

Mr. McFarland stated that his surveyor, Ron Wikle, should have dropped off plans in the Planning and Zoning Office showing the dimensions of the structures on his property. Vicki Taylor said no plans had been received.

Mr. McFarland stated he had a small version for the Board to look at; however, those plans did not have enough information for the Board to make a decision.

The Board advised Mr. McFarland for them to make a determination in this case, they would need the following information to be shown on the plat prepared by the surveyor: 1) dimensions of all accessory structures, 2) building setbacks for those structures, 3) any streams marked and showing the EPD 25 foot stream bank buffer and 4) to bring his permit of encroachment into this stream bank.

Glenda Casteel stated there were no permits except for the playhouse and when and if a variance is approved that Mr. McFarland will need to permit those structures through the Building Department.

**Roy Taylor made a motion to postpone until the next public hearing so that the applicant can obtain the necessary information needed for the Board. Seconded by Bart Brannon. Motion passed unanimously 5-0.**

**New Cases (cont.)**

**Case #04-06-031V Waymon L. Hix** requesting a variance to Article 5, Section 5.6A and Article 7, Table 7.1A. The applicant is requesting variances to allow a detached carport in the front yard area or a variance to allow a 15' front building setback. The Cherokee County Zoning Ordinance requires a 30' building setback from the front property line. This property is located at 107 Lower Victoria Road in Land Lot 678 of the 21<sup>st</sup> District further described as Cherokee County Tax Map 21N10A, Parcel 065.

Vicki Taylor gave Staff findings that:

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

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: Yes, this is a small lot, not very deep and somewhat pie shaped.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes, there is no additional buildable area.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: No, there are similar structures in this area, due to it recreational nature.

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

**RECOMMENDATION:**

Staff recommends that this petition be approved, allowing Mr. Hix to attach the carport with the 15-foot encroachment into the front building setback.

Marston Brown, Attorney, represented this case.

Helen Ogren spoke in favor.

No one spoke in opposition.

**Bart Brannon made a motion to approve without attaching the garage to the home. Seconded by Roy Taylor. Motion passed unanimously 5-0.**

**Case #04-06-033V Todd and Barbara Smith** requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 15' side building setback. The Cherokee County Zoning Ordinance requires a 50' building setback from all property lines. This property is located on Arrow Wood Drive in Arrow Head Forest Subdivision in Land Lot 31 of the 22<sup>nd</sup> District and further described as Cherokee County Tax Map 14N01, Parcel 031.

Vicki Taylor gave Staff findings that:

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

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE: The topography of this lot is steep with a deep gully running the length of the property flowing into the lake.

APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP: Yes. This is a legal lot of record with acreage exceeding the minimum acreage, however, because of its topography, this lot has limited buildable area. In order to meet the 50 foot setback, the home would have to be built upon a much steeper area, increasing the land disturbance, the cost, and would limit the ability to have a garage.

RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS: I do not believe this variance would be a detriment to the area. These lots are heavily wooded, providing a natural screen.

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

**RECOMMENDATION:**

Staff recommends approval of this petition contingent upon the maximum vegetation remaining between Lot 30 and Lot 31.

Todd Smith represented this case.

No one spoke in favor.

Bill Adams, the adjacent property owner, spoke in opposition.

Glenn McAllister, President of Lake Arrowhead HOA, stated they had voted against the variance since Mr. Adams is in opposition and since the Smith's had not yet purchased the property. He stated he hoped the Smiths could work out something out.

Discussion ensued regarding Lake Arrowhead covenants and whether the applicant should withdraw the application or whether to approve or deny and the ramifications to the applicant.

**Bart Brannon made a motion to approve. Seconded by Cindy Castello. Motion failed 2-3, with Roy Taylor, Evert Hekman and Chairman Mahurin in opposition.**

**Chairman Mahurin made a motion to deny. Seconded by Bart Brannon. Motion passed unanimously 5-0.**

**Case #04-06-034V Haymore Contractors, Inc.** requesting a variance to Article 23, Table 23.2; Conservation Subdivisions. The applicant is requesting a variance to allow a side building

setback of 4'6". The Cherokee County Zoning Ordinance requires a 10' side building setback. The property is located at 134 Gold Springs Court in BridgeMill Subdivision in Land Lot 54 of the 14<sup>th</sup> District and further described as Cherokee Tax Map 14N06B, Parcel 010.

Vicki Taylor gave Staff findings that:

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

**EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PECULIAR TO THE SITE:** Lot drops off in the rear and is somewhat narrower in the front.

**APPLICATION OF REGULATIONS WOULD CREATE A PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP:** Yes. This home is built and the certificate of occupancy is on hold pending the outcome of the hearing.

**RELIEF, IF GRANTED, WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIR THE PURPOSES AND INTENT OF THESE REGULATIONS:** The position of the structure within 5 feet of the side lot line is not in conformity with the area. The fact that the applicant also owns the lot adjoining the subject lot can help with mitigation to the encroachment.

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

**RECOMMENDATION:**

The entire structure does not encroach, only a small corner and the adjacent lot is owned by the applicant. Staff recommends approval of this petition contingent upon the placement of the adjacent structure being a minimum of 30-feet from the common property line, noting that had the subject home and the adjacent home been placed at the 10-foot setback line, the building separation would have been 20 feet. This recommended requirement would set the homes nearly 35 feet apart.

Brenton Haymore represented this case. He stated he owned the lot next to this property and that he could build the home on that lot 30 feet away from this encroachment.

No one spoke in favor or opposition.

**Cindy Castello made a motion to approve with 30 feet between homes. Bart Brannon seconded. Motion passed unanimously.**

**Other Items**

**- Discussion on % for administrative variances.**

*Approved July 1, 2004*

Discussion ensued as to the Board's preference of recommendation to the Commissioner of a 5 percent or 10 percent administrative variance.

Chairman Mahurin stated she preferred 5 percent.

Glenda Casteel stated in the past that a 10 percent administrative variance had not been a problem for setbacks, but that the problem had arisen for a 10 percent variance for buffers.

Discussion ensued as to how to track repeat offenders.

Bart Brannon stated 10 percent was okay with him.

Mark Mahler stated he would put the ZBA's request for administrative variances on the Board of Commissioner's agenda for June 15, 2004 and they would decide the 5 percent or 10 percent issue. He stated if the Commissioners so desired, then they would send a draft ordinance before the Planning Commission for a public hearing.

**- Approval of April 1, 2004 Minutes and May 6, 2004 Minutes.**

**Evert Hekman made a motion to approve the April and May minutes. Seconded by Chairman Mahurin.**

**Bart Brannon made a motion to adjourn. Seconded by Chairman Mahurin.**

Meeting adjourned at 8:15 pm