

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, September 2, 2004
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on September 2, 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 and Cindy Castello. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Glenda Casteel, Director, Building Department, Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician for the Planning & Zoning Department. Bart Brannon did not attend. The meeting was called to order at 6:30 pm.

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 21st District and further described as Cherokee County Tax Map 21N11A, Parcel 002.

Mark Mahler advised the Board that Mr. Miller had told him there were problems getting through closing and that they had gotten attorney's involved. Mr. Mahler suggested removing this from the agenda and if this was not resolved within the next 60 days, he would issue a citation. He stated there would need to be another public hearing since it had gone on so long. He stated this case had gone on for about a year.

Discussion ensued as to how this case was brought to the attention of the County.

Roy Taylor made a motion to cancel this variance request. Seconded by Cindy Castello. Motion passed 4-0.

New Cases

Case #04-09-041V D. R. Horton, Inc. requesting a variance to Article 10, Section 10.6-7; Stream bank buffer regulations. The applicant is requesting a variance to encroach 8.9 feet into the stream bank buffer for patio and also a variance to allow installation of a privacy fence. This property is located at 704 Mill Creek Cove in Land Lot 1216 of the 3rd District and further described as Cherokee County Tax map 03N12E, Parcel 047.

Vicki Taylor gave Staff findings and Ben Boatright represented this case.

Mr. Boatright stated that the encroachment of the patio into the stream bank buffer never came up during closing and that the only way he knew about it was when a man who nether confirmed nor denied who he worked for came to his home after the closing measuring the patio while he was in China. He stated his wife was given the impression he was with the County. Mr. Boatright further stated he wanted to add a fence in the buffer because he has a child and there is a steep drop off and wanted the fence for safety reasons.

No one spoke in favor or opposition to this case.

Mr. Hekman stated the property owner is between a rock and a hard place and who should really be reprimanded is the builder. Mr. Taylor agreed.

Mr. Taylor asked Mrs. Casteel why this was not caught at the final inspection. She stated the inspectors look for footer compliance and may not have realized there was a stream bank buffer.

Chad Rother representing D. R. Horton who works for Hayes James & Associates, stated he knew nothing as to the particulars why the home was built like this. He stated he was sent with a plat of the property.

Discussion ensued as to any penalties that could be levied against D. R. Horton.

Chairman closed the public hearing.

Cindy Castello made a motion to approve the fencing, due to safety reasons, with as little disruption to the buffer as possible and that there be no buildings placed in this buffer. Seconded by Chairman Mahurin. Motion passed 4-0.

Cindy Castello made a motion to approve the encroachment of the patio into the buffer. Seconded by Evert Hekman. Motion passed 4-0.

Case #04-09-042V Richard Hampson requesting a variance to Article 5, Section 5.6(c), Accessory Structures. The applicant is requesting a variance to allow a 1280 square foot accessory structure instead of the required 900 square feet size limitation. This property is located at 134 Hunters Mill in Land Lot 896 of the 15th District and further described as Cherokee County Tax Map 15N28B, Parcel 017.

Vicki Taylor gave Staff findings and Richard Hampson represented this case.

No one spoke in favor of this case.

Randy Tough spoke of concerns as to the building materials to be used, the effect it would have on property values and a set of five issues of concern presented to the Board.

Marsha Talkovich spoke of concerns as to the additional traffic if this was to be a commercial use.

Mr. Hampson spoke in rebuttal. He addressed Mr. Tough and Ms. Talkovich concerns.

Discussion ensued as to the building material to be used and the sturdiness of that material. Discussion ensued as to the final appearance of the structure.

Chairman Mahurin spoke of concerns of the electrical service and the possible effect on neighbors. Discussion ensued.

Chairman closed public hearing.

Evert Hekman made a motion to approve with the following conditions: 1) Total square footage will be 1,280 square feet and not just the footprint, 2) horizontal siding be applied to the exterior of the structure and 3) the structure is not to be used for commercial purposes. Seconded by Roy Taylor. Motion passed 4-0.

Case #04-09-043V John Lineberger requesting variances to Section 4.05, A.2 of the Cherokee County Development Regulations and to Article 7, Table 7.1A of the Cherokee County Zoning Ordinance. The applicant is requesting a variance to allow 133 feet for sight distance along a dead end road instead of the required 200 feet and requesting a variance to allow a 35-foot front building setback instead of the required 50 feet. This property is located at 127 Big Oak Drive in Land Lot 267 of the 14th District and further described as Cherokee County Tax Map 14N23C, Parcel 028C.

Vicki Taylor gave staff findings and Jonathan Kesler with Bray & Johnson Attorneys, represented this case.

Mr. Kesler stated that Engineering really had no problem with the site distance variance as long as signs were posted as to the approaching driveway. He stated that the adjacent commercial property has a driveway entrance onto Big Oak Drive in the same proximity as the driveway proposed.

Cindy Castello asked what type of commercial business. Mr. Kesler stated retail. Ms. Castello asked the volume and the number of parking spaces. Mr. Kesler stated 18 was

proposed.

No one spoke in favor or opposition.

Roy Taylor asked if a traffic study had ever been done as a result of Engineering comments in the rezone case.

Vicki Taylor stated they had not been required to do the traffic study during the rezone.

Roy Taylor stated that he still has concerns about this proposal and discussion ensued.

Chairman closed public hearing.

Evert Hekman made a motion to approve the setback variance. Seconded by Cindy Castello. Motion passed 4-0.

Karen Mahurin made a motion to postpone the variance request for 30 days regarding sight distance until they discuss this issue with Engineering Department regarding site distance. Seconded by Roy Taylor. Motion passed 4-0.

Case #04-09-044V Richard Leifson requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 10 feet to allow a 40-foot front building setback instead of the required 50 feet according to the recorded plat. This property is located at 341 Hillcrest Circle in Land Lot 729 of the 2nd District and further described as Cherokee County Tax Map 02N09A, Parcel 061.

Vicki Taylor gave staff findings regarding this case.

Roy Taylor made motion to approve. Seconded by Karen Mahurin. Motion passed 4-0.

Case #04-09-045V Brian Anthony requesting a variance to Article 5; Section 5.6(a); Accessory Structures. The applicant is requesting a variance to allow an accessory structure for solar equipment in the front yard area. The property is located at 1009 Hidden Branches Trail in Land Lot 237 of the 14th District and further described as Cherokee County Tax Map 14N24, Parcel 214.

Jeff Rusbridge, Attorney for Mr. Anthony, represented this case. Mr. Rusbridge discussed this proposal or request and stated that Mr. Anthony thought that he did not have to meet zoning laws since Georgia Power is not required. He felt that this was the only place to put this solar building and he felt he should be able to.

Chairman asked how the building relates to the solar panels. Mr. Rusbridge stated that it is his understanding that this building houses the electrical equipment that is connected to the solar panels and has to be within a certain distance.

Mr. Rusbridge stated that he is aware that there are other citizens opposing this request and would like to answer any of their questions.

No one spoke in favor.

Marilyn Dillard spoke in opposition. She stated she knows about the codes, permits and inspections and feels that Mr. Anthony constructed this building intentionally. Ms. Dillard stated that he has clear cut the property in the front, caused damage to adjacent properties and will definitely create an erosion problem.

Hal Loss spoke in opposition. Mr. Loss stated that he was in favor of the solar panels and did not have a problem with Mr. Anthony putting up a solar panel, however, he is upset as to how it was handled by Mr. Anthony. Mr. Loss stated that he gave Mr. Anthony permission to cut a few pine trees on his property without damaging any other trees. He stated that a logger came in and cut all the trees on his property to get light on his solar panel. Mr. Loss stated some conditions that he would like placed on this proposal if they decide to approve.

Discussion ensued regarding the solar panels.

Jeff Allen spoke in opposition. Mr. Allen discussed his concerns and questions with staff and members. Mark Mahler informed everyone that solar panels do not require permits, that the County does not regulate this and the only thing that we are looking at is the building being in violation of the County ordinance due to it being in the front yard and not obtaining a permit.

Mr. Rusbridge spoke in rebuttal. Mr. Rusbridge stated that he wanted to clarify that this building was not pre-existing like an email from the applicant had stated. Mr. Rusbridge stated that he does not have anything to provide stating that this is the only place for this building. He discussed some of the conditions that were mentioned earlier.

Chairman closed public hearing.

Roy Taylor made a motion to denial. Seconded by Karen Mahurin. Motion passed 4-0.

Case #04-09-046V Champion Manufacturing requesting a variance to Article 7; Table 7.1A; Minimum District Development Standards. The applicant is requesting a

variance to reduce the rear building setback from 14 feet as per the recorded plat to 7 feet to enclose an existing concrete patio. This property is located at 934 West Oaks Drive in Land Lot 300 of the 15th District and further described as Cherokee County Tax Map 15N18J, Parcel 175.

Jim Pritchett with Champion Manufacturing represented this case. Mr. Pritchett stated that they are aware of others in the neighborhood. He stated that the patio is existing and they would not be any closer to a property line than what they are already.

Laura Balent with the Board of Directors of the Homeowner's Association for West Oaks spoke in opposition. She stated that it is true that several homes in this neighborhood were built without the proper approval. Ms. Balent stated that this request has not gone to the Board of Director's, they knew about it from the posting of the variance sign and they will not approve a request for this. She stated that the reason they would not approve this is because they have had issues with adjacent homeowners on the existing sunrooms due to noise.

Chairman closed the public hearing.

Evert Hekman made a motion to deny this request. Seconded by Roy Taylor. Motion passed 4-0.

Other Items

Chairman made a motion to approve the August 5th minutes, Seconded by Hekman. Motion approved 4-0.

The meeting adjourned at 9:00 p.m.