

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, March 3, 2005
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on March 3, 2005, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Chairman Evert Hekman, Roy Taylor, Sean Jerguson, Amy Mumaugh and Greg Elder. In attendance for Cherokee County Staff were Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician. The meeting was called to order at 6:30 pm.

Old Cases

Case #05-01-002V Vien Nguyen requesting a variance to Article 10, Table 10.1; Buffer Requirements. The applicant is requesting a variance to encroach into the 35' zoning buffer for grading and installation of septic field lines. The property is located at 5495 Bells Ferry Road in Land Lot 1224, District 15 and described as Cherokee County Tax Map 15N06, Parcel 177.

Vicki Taylor reported that the Nguyen's did obtain their easement from the apartments.

New Cases

Case #05-03-010V Sal Salerno requesting variances to Article 7, Section 7.5-3.3(e), (f) and Article 10, Table 10.1. The applicant is requesting a waiver of the 10 ft. wide landscape strip in front to allow parking area for car sales up to property line, a waiver of the required 6 ft. wide landscape strip along all sides & rear and to remove the requirement to have evergreen vegetation of 3 ft. in front for purposes of visibility of cars for sale. The applicant is also requesting a variance for a reduction in the required zoning buffer 15 ft. for grading and re-vegetation. The property is located on Bells Ferry Road in Land Lot(s) 1224, 1225, District 15 and described as Cherokee County Tax Map 15N06, Parcel 180.

Vicki Taylor gave Staff recommendations that due to site conditions with the classic size and shape hardship, Staff recommends this petition be approved for a reduction in the landscape strip along Bells Ferry to 6-feet in width with the option of a decorative fence in lieu of the 3-foot height vegetation. Staff further recommends a waiver to the 6-foot wide side and rear landscape strips. With

regards to the zoning buffer, Staff would like to see a temporary encroachment for grading and a grass lined detention pond with the area re-vegetated.

Sal Salerno said he had nothing further to add to the Staff report given by Ms. Taylor.

No one spoke in favor or opposition.

Greg Elder asked Staff was the recommendation for a temporary encroachment in the buffer for grading in the grass line detention pond but you're not necessarily asking for a reduction in the buffer.

Ms. Taylor said based on the way it is laid out he would need a temporary encroachment for grading only.

Mr. Salerno said he would be okay with the 35 foot buffer and he would re-vegetate.

Mr. Elder said the only suggestion he had with regard to the landscape strip was the three rail white fence is a nice idea but it might obscure the view of the cars. He had an idea that you might want to consider a landscape berm maybe a 2 foot low growth vegetation.

Mr. Salerno said the ten feet is County owned and could he landscape in that area. He said he wanted to pave up to the property line because with the 35 foot buffer on the back he ends up with little land.

Mr. Elder there is a 10 foot right-of-way that he cannot encroach; then there is a 10 foot strip between there and where the cars are parked that you're asking a reduction from 10 to 6 feet. Mr. Salerno agreed. Mr. Elder suggested in those 6 feet that he do the planting. Ms. Taylor said for clarification Mr. Salerno asked for a full waiver completely and she had suggested planting could be done in 6 feet. She further stated whatever the Board decided to do a reduction instead of a complete waiver that would wipe out the intent of the Hwy 92 Village Ordinance. Mr. Salerno said a two foot. Ms. Taylor told Mr. Salerno she believed he had enough space to plant something and soften up the look.

Chairman Hekman said he wasn't sure where the right-of-way ended, was it the property line. Ms. Taylor said they are the same where the right-of-way ends the property line begins. Chairman Hekman stated there is a side walk and the grass is probably County owned. He stated the County probably would not mind him planting some landscaping there. Ms. Taylor said Mr. Salerno would be the one keeping the grass maintained anyway.

Sean Jerguson asked Mr. Salerno that since the detention pond has to be in the buffer area does your Engineering allow for a grass detention area or does it have to be a hard coat structure. He stated he didn't know, but if hard coat he would just have to put it under the parking lot, which he didn't want to do. Mr. Jerguson said the Board needed to know the answer to that because there shouldn't be concrete in the buffer.

Roy Taylor said the wording of the variance said it would be re-vegetated.

Mr. Taylor said he appreciates the desire to utilize this as greatly as possible, but he felt that it had been over done and over optimistic as to how many parking spaces you could get on this lot and how you might be able to put the same things on. He said without an Engineers drawing we might guess as to how this would be done and if the building was turned so that it was not parallel with Bells Ferry you might be able to lose a few parking spaces in the back and rearrange how the whole parking lot lays out and be able to get the six feet Staff is asking for and he thought it would work.

Mr. Salerno said he can't have a car lot with very little cars and the lot is an odd shaped.

Mr. Ferguson asked Mr. Salerno if he did the design himself or did he have a land planner or Engineer look at the property. Mr. Salerno said he has a full size survey and scaled it off himself.

Chairman Hekman said one of his concerns of the granting of this would be that maybe the use could be misused at some time.

Mr. Ferguson said for the applicant to get the best use of this property he thought it might be appropriate to maybe table this and allow him to go and have a better prepared plat done trying to adhere to some of these requests and review it at that time including the detention pond. Mr. Taylor said that would be required anyway before the work is done.

Mr. Salerno said he wasn't asking for a reduction of 25 feet from 35 feet, he was just asking to be able to put his detention pond in and it would be grass and do some replanting and move his cars up to the property line.

Mr. Ferguson asked if he would be willing to have the Engineering work done. Mr. Salerno said he would like to, but what he wanted is to get this approved and have the Engineering work done later. He said that Engineers are expensive and he has experience in scaling this layout and he has put a lot of thought and work in this layout. Mr. Salerno said his business would be an improvement to the area because people are dumping at the rear of the property and he

understands there is a new code, but he would be consistent with the next door properties with his cars going up to the property line.

Roy Taylor made a motion to accept a portion of the request in the way Staff has recommended so 1) they will reduce that area in the front to six feet without the fence and a 2 foot vegetative berm, 2) that a 15 foot temporary encroachment be allowed for the purposes of grading the detention pond and that the detention pond must be grass lined with the area re-vegetated and 3) this application is tied to the presented use and if the presented use is not fulfilled then the variance becomes null and void. Greg Elder seconded. Motion passed unanimously 5-0.

Case #05-03-011V Josh & Jennifer Martin requesting a variance to Article 5, Section 5.6(A). The applicant is requesting a variance to allow a detached accessory structure to encroach 36 ft. into the front yard area. The Cherokee County Zoning Ordinance only allows accessory structure in the side and rear yards, 10 ft. from property lines. The property is located on 926 Avery Road in Land Lot 271, District 14 and described as Cherokee County Tax Map 14N30, Parcel 006.

Vicki Taylor gave Staff recommendation that this petition be approved subject to any additional plantings if necessary to mitigate impact to the adjacent lot.

Josh Martin represented this case. He said he would like to build a three car garage. He said he was going to build it detached but he is going to attach it with a breezeway. His neighbor has no objection.

Sean Ferguson wanted to know why it couldn't be attached to the rear corner instead of front. Mr. Martin said he plans to live there the rest of his life and he didn't want to have to walk up steps at 60 years old.

Clyde Thomas spoke in favor of this variance as an adjacent property owner. He said it wouldn't bother him a bit.

No one spoke in opposition.

Sean Ferguson made a motion to approve. Seconded by Roy Taylor. Motion passed unanimously 5-0.

Case #05-03-012V Woodstock Property Co., LLC requesting variances to Article 16, Hwy 92 Overlay and Article 10, Table 10.1; Buffer Requirements. The

applicant is requesting a variance to reduce the landscape strip along W. Wiley Bridge Road to 20 ft. and a variance to reduce the undisturbed zoning buffer between NC and R-20 zoning districts to 10 ft. The property is located at the intersection of Hwy 92 and W. Wiley Bridge Road in Land Lot 1196, District 15 and described as Cherokee County Tax Map 15N24, Parcel 240.

Vicki Taylor gave Staff recommendation that this application be approved with the proffered stipulation that the applicant will install a 6-foot privacy fence and a vegetative screen along the western property line.

Ken Trevor represented this case. He said the property to the west of this property will be zoned for commercial use. Dr. King owns the property and this is his intention.

Jim Morgens also represented this case of Woodstock Property he wanted to emphasize that Dr. King does not object to the reduction and the whole purpose is to move the building closer to Highway 92 and to incorporate the village feel to the property.

Mr. Taylor asked what the back portion of the property was to be used for. Mr. Morgens said he would really have to see what the market is, but his best guess would be offices maybe 10,000 square feet.

Mr. Taylor asked if Dr. King owns the adjacent property. Mr. Morgens said he did. Mr. Taylor said with that expectation of Dr. King developing that property as commercial, one of the goals of the 92 Ordinance was to reduce the number of curb cuts coming out on Highway 92. He said that maybe they could work with Dr. King to have one entrance instead of both entrances coming out on Highway 92. Mr. Trevor said there has been discussion with Dr. King regarding this, but ultimately they would have to follow what DOT says.

No one spoke in favor.

Thais Escondo spoke in opposition and she lives in the Willow Creek Subdivision. She stated there is a homeowner's coalition that is involved in zoning activities along the Highway 92 corridor. This coalition has been involved for the last five years and was highly active during the Highway 92 development. She stated this coalition cares how the corridor developments and they are opposed to these variances. She stated great care was taken in the thoughts of buffers for smaller properties to larger properties. For instance, a buffer required for a property abutting residential property over 7 acres is a 75 foot buffer and the buffer requirement for 7 acres or less is 40 feet. She stated the first page of the ordinance states it is in place to protect the established subdivisions in the corridor. With the widening of Highway 92 it was understood that development

would come and it was asked how you protect the subdivisions along a 4 lane highway. For the two men from Atlanta to come in and say they will be commercial is misleading. She said the property to the west is an established recorded subdivision zoned R-20 and there are a couple of parcels already with for sale signs on them. She said there is an organization in place that should that property go under contract it will be a huge fight with the County Commission. She said they aren't going into a subdivision and take out lots to assemble property. She said the Board needs to look at this as a commercial property that is abutting residential property and she said the Board should be respectful of those neighbors who don't have a vested interest in selling their property, but the one that live there and continue to live there and face the issues coming upon them by the development of the Highway 92 corridor. She said years ago when the property came for rezoning, they wanted General Commercial and the coalition fought that so as a concession they agreed to Neighborhood Commercial with a 40 foot buffer to protect the neighbors and for them to come back now to ask for a reduction isn't right. She said a lot of work and thought had gone into the Highway 92 Ordinance and she asked the Board to respect that.

Jim Morgens spoke in rebuttal and said they are asking for only a reduction that touches Dr. King's property and there are no houses on them.

Roy Taylor asked to be shown where the nearest houses are to the subject property and the subdivision.

Sean Jerguson asked how far lot 70 is from Highway 92 and it was estimated approximately 125 feet. Discussion ensued as to the subdivision and different distances from Highway 92 and subject property.

Mr. Taylor asked about the detention pond and specifically if it could be put in soft. Mr. Trevor said yes and that it was planned to be a graded pond that could be landscaped along. Mr. Taylor said instead of calling it an undisturbed buffer it could be a 40 foot landscaped buffer. Mr. Morgens said they would prefer the stipulation be that the detention pond would either be a grassed detention pond or structured under parking. He said it hasn't been designed yet. Mr. Taylor said that was understood, but in concept and he is concerned about the homeowner and how things might get close in the upper back corner could they make it a part of the thing that brought that 40 foot around and instead of saying undisturbed call landscaped and make it a part of... Mr. Taylor said he wished Dr. King had come in because the reasonable expectation is the property along Highway 92 will become commercial whether there are houses there or not. He said he was just trying to think in the spirit of the Overlay what things that could happen.

Mr. Taylor addressed Ms. Escondo and said he wished she would be involved and make comments in the sense of concessions that you think in keeping with the Overlay to be able to make this happen.

Ms. Escondo said that even if those pieces that front Highway 92 go commercial they too would have to do the landscaping and have the buffers so they need to have a uniform look with each other. She asked the Board if they approve this variance are they going to deny the others coming down the line and asking for the same thing. The only variances should be for the shape of the lot.

Greg Elder reiterated the care taken in preparing this Overlay District as he was a member of that committee.

Sean Ferguson stated the overlay is a guideline and this is a very unusual situation.

Mr. Elder asked if the building could be turned to make the property work better. Mike Pou stated they wanted to get the building away from the neighborhood and as unobtrusive as possible to the neighborhood.

Roy Taylor made a motion to approve this application with 1) Staff recommendation of a 6 foot privacy fence along the west property line and 2) the northwest corner south for 100 feet, become the 40 foot undisturbed buffer be a 40 foot landscape buffer for a grassed detention pond and after that point reduced to 10 feet. Seconded by Sean Ferguson. Motion passed 4-1, with Greg Elder in opposition.

Case #05-03-013V Mike George requesting variance to Article 5, Section 5.6-C; Accessory Structures. The applicant is requesting a variance to allow a 1624 sq. ft. accessory structure. The Cherokee County Zoning Ordinance allows a maximum of 900 sq. ft. The property is located at 4641 Oakhurst Lane in Land Lot 178, District 2 and described as Cherokee County Tax Map 02N13, Parcel 068.

Vicki Taylor gave Staff recommendation that this petition be approved subject to any necessary vegetative screening for adjacent property owners.

Mike George represented this case. He said he needed this space for his mother and his wife's mother who have had ill health and unfortunate circumstances and he expounded on these to the Board.

Gary White spoke in favor of the variance because he knew the situation as a friend of the family.

Ray Hartman spoke in opposition because Mr. George has a business on this property and the covenants state no other uses but single-family residential. He said he had two cars and a truck and was told that everything had to have everything in the garage with the door closed and he said he could not even build a pad for his cars because it was against the covenants. He said he had lived there since 1995 and has no animosity against Mr. George, but this type building would not fit in to the neighborhood. He said they all are on septic and it would be overloading the area to put additional homes on the properties.

Sue Hartman spoke in opposition because this could potentially become rental property. She asked if she could see a picture of what is planned and Mr. George showed her his plan. She stated it appeared this is a garage with an apartment above, but typically elderly folks with physical problems do not do stairs well. She said she talked from experience because she and her father had to have a ramp and everything on one level to take care of her mother and in and out of the home. She specifically asked the realtor if the lot next to her could be zoned for a business and the realtor told her it could not. Later a home was built and she was glad to see that. She said she doesn't know what the real intent is, but she didn't see it being for elderly care.

Mike George spoke in rebuttal and said the County doesn't allow for rental property and so do the covenants. He stated over the last several years they have had several family members living with he and his wife, his father, her father, his mother, her mother and he thought it is plan to see they are a very tight family and the intention is to take care of the mother and mother-in-law down the road. In response to the second story, he said he had already talked with the relatives and they do make means of transporting people from one level to another level. He stated his lot does not allow for building onto the left side or right side of the home. He talked about the topography of his land. He said he has 13 Leland Cypresses that run down the left side of the property.

Chairman Hekman asked about the septic system. Mr. George said the County would not allow them to tie onto the existing septic system. They were told they would have to have an additional system. Bank's septic came out and said that was not the case, but their intention was to put a separate system out there and everyone told him he would need to move the current system.

Mr. Jerguson asked if they had had a Level 3 soils test done on the property. Mr. George said yes except for the front yard for possible future movement of the existing septic. Mr. Jerguson said for the Board's knowledge that Mr. George will be required to have 300 feet of infiltrator line or 600 feet of gravel line. Mr. Jerguson said he would not feel comfortable in granting a variance until a permit has been issued by Environmental Health because if we grant the variance and

Environmental Health will not issue a permit, it is a moot point. He thought they were putting the cart before the horse.

Mr. George said the bank said 150 feet. Mr. Jerguson said they are talking about 50 feet per bedroom. Mr. George said Lee Ann at Environmental Health will not give him a permit until she knows the exact size structure he is allowed to build and then she needs to see plans and blueprints. Mr. Jerguson said for Mr. George to make an assumption of 1,600 square feet. Mr. George said Lee Ann is not taking assumptions. Chairman Hekman said then if you have less square footage you cut the plans accordingly. Mr. Jerguson said the question is if there is enough room.

Mr. Taylor said there are several issues they were struggling with is septic and the other is what is the County's regulations of a second home on the property.

Vicki Taylor said the Zoning Ordinance allows any zoning district and this is found in Article 5, to have a guest house of 900 square feet heated floor space and up to 1,200 square feet for a guest house with a car port. The policy as to who can live there are mother, father, grandparents and family members. It is still considered a guest house because there is no income from it.

Mr. George had a letter from the Homeowners Association approving the structure. He mentioned the Leland Cypress trees on the property line.

Amy Mumaugh asked if he would consider further plantings of Leland Cypress to conceal the guest house. Mr. George agreed.

Chairman Hekman said he would like to make a point that there is already a provision that a guest house can be placed on the property. He stated the issue is the size.

Ms. Mumaugh asked if that was a two car garage. Mr. George said a three car garage with a small storage area off to one side of it.

Mr. Taylor asked the footprint and Mr. George stated 1,624 is the footprint. Mr. Taylor asked if that was the size of the building and Mr. George replied no, that is the footprint only. Mr. Taylor asked the square footage of the building. Ms. Taylor stated it has been determined by the footprint only. Mr. George said the building is 28 x 58. Ms. Taylor said there had been no strong resolution as to if they can have a loft especially with parking the cars on the first level. However, Ms. Taylor wanted to point out that he could connect it by a breezeway and he wouldn't even have to be here tonight as long as he met his setbacks. She said she appreciates when people say they want to do things the right way instead of circumventing the system.

Mr. George said his approval from the Homeowners Association was contingent upon him bricking the front, side and back and he would put the same pitch to the roof to match the home.

Sean Jerguson, stated not to confuse the issue further, that with the type of estate lots and homes being built in Cherokee County, for instance a 9,000 square foot home, is it unrealistic to limit people to a 900 square foot guest house. Mr. Taylor agreed that it was.

Vicki Taylor said that for each full acre over two full acres you are allow to have an additional 200 square feet so if someone has 50 acres.... Mr. Jerguson said but what about the guy with 3 acres; further, he didn't feel like this allowance was going to work in the market now in Cherokee County.

Roy Taylor said he was fine with making it adjustable. Mr. Jerguson said maybe a sliding scale. Chairman Hekman agreed and said if it is measured by the footprint of the building that allows for double the square footage.

Mr. Taylor asked what the purpose of the footprint is. Ms. Taylor replied that is what makes the impact. She stated that what this Board usually sees are garages for boats, RV's and antique cars and usually the height is not the issue it can be one story or two stories, it's the footprint. Mr. Mahler has said it isn't any of our business what is inside, only the footprint. She said the height is limited to 25 feet, which is easily three stories.

Mr. Jerguson said from a market value this 900 square feet limitation must have been put in place years ago because it just isn't enough. He said he had just built a four car garage on his property that is a 1,600 square foot footprint and then he put a 1,000 square feet up so he has 2,600 square feet in his. He said he is in the City so it's a different ball game there, but its not out of place with the houses built now.

The Board discussed the regulations further as it relates to having a small lot, for instance, an R-15 zoning classification and be able to erect a 900 square foot garage with a total of 1,800 square feet and discussed how disproportionate that is.

Vicki Taylor said she was all for a sliding scale and if based on a percentage of the lot size up to point.

Sean Jerguson asked if they should be having work sessions and Mr. Taylor agreed they should be having work sessions or Mr. Jerguson said they could have through an e-mail round table come to sort of consensus for the next

meeting and send a formal letter to the BOC. Mr. Jerguson asked if they could have a work session next month after the meeting and instead of in this format have a round table discussion like the Board does upstairs in that room. It was determined because of Spring break this date would not be effective.

Mr. Jerguson said he was still concerned about the septic system. He said he would like to see we receive some type of confirmation from Environmental Health from Lee Ann that it will work and they will approve it. He asked Vicki Taylor would it be inappropriate to draft a letter from the Planning and Zoning Office to the Health Department requesting them to review this with the assumption of 1,624 square foot structure and if approval is granted from the Health Department, then bring that back to us and we go from there. He said it is more than just the linear footage their adding to the new septic field because you have to have twice that much amount in reserve field. Mr. George said they have that. Mr. Jerguson said he wanted to see it from the Health Department. Ms. Taylor agreed to draft the letter; however, you can't get a building permit until you have environmental approval and if he doesn't have environmental, he can't build it anyway. Ms. Taylor asked or was trying to see where he was coming from on this issue. Mr. Jerguson said there is multiple ways to skin a cat in a septic system, drip system, perk system and he wanted to know what he is playing with and he wanted to see approval from Environmental Health.

Greg Elder asked what would be the problem with assuming it is approved subject to Environmental Health approval. Mr. Jerguson said they could phrase it that way, but what if they say this house has to be moved over to the property line and he has a variance already. Vicki Taylor says he has a variance for the size and not the placement. Mr. Elder stated then he would have to come back for another variance and he would rather keep it simple and get Environmental Health's approval first.

Mr. Taylor said he understood what Mr. Jerguson was getting at, but they may or may not have to hear the case again. Mr. Taylor said he would like to take this matter up outside of this case and redefine what they can or cannot do per those 900 square feet.

Chairman Hekman made a motion that the request be granted based upon a total square footage of 1,624 square foot up and down based on approval by Environmental Health. Seconded by Roy Taylor. Motion passed 5-0.

Mrs. Mulkey said she needed to verify the record that she heard the motion was for 1,624 square foot total up and down and not footprint. Ms. Taylor said if that is total he could conceivably get 1,800 square foot now with no variance as the code reads.

Sean Jerguson made a motion to reconsider the motion. Seconded by Chairman Hekman. Motion passed 5-0.

Further discussion ensued as to total square footage as opposed to the footprint of the building heated and non-heated, one story or two story.

Sean Jerguson made a motion to approve a guest house of 1,624 square foot footprint based on approval by Environmental Health. Seconded by Chairman Hekman. Motion passed 5-0.

Other Items

Approval of February 3, 2005 Minutes.

Roy Taylor made a motion to correct the minutes. Seconded by Amy Mumaugh. Mr. Taylor said he had changes on minutes to Case Number 05-02-008V – Verizon Wireless – “Roy Taylor did not feel that this tower location was well suited for this particular piece of property.” does not even begin to cover what I said. Mrs. Mulkey said she knew that it did not go into how many feet it should be moved to the left or to the right. Mr. Taylor stated his point was that he didn’t feel like they have even attempted to meet the ordinance in place for its size, for its design, for its distance for every aspect of the case and he wanted it very clear what he specifically said. Mr. Jerguson would like his comments included. Motion passed 5-0.

Roy Taylor stated that he wanted a letter from this group asking that a change not a clarification, but a change happen to the actual wording of the 900 square feet building, then we can talk about what we want to be allowed to do to it with specific words, for example, if it is under eaves we will allow an additional 450 square feet of space to be.....

(Note to ZBA: Tape did not record at this point.)

Chairman Hekman made a motion to adjourn. Seconded by Greg Elder. Motion passed 5-0.

Meeting adjourned at 8:45 p.m.