

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, May 5, 2005
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on May 5, 2005, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Chairman Evert Hekman, Vice-Chairman Roy Taylor, and Amy Mumaugh. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician. The meeting was called to order at 6:30 pm. **Sean Jerguson was not in attendance.**

Old Cases

Case #05-02-008V Verizon Wireless requesting a variance to Article 7, Section 7.7-27C(2)(a); Telecommunication Towers. The applicant is requesting a variance to reduce the tower setback to 160.2' on the west property line and a variance to reduce the tower setback to 122' along the front property line. The Cherokee County Zoning Ordinance requires a 180' building setback for this location and due to the tower height being 180' tall. This is a revision from their original application. The property is located at 185 Moose Loop Road in Land Lot 162 of the 14th District and further described as Cherokee County Tax Map 14N18, Parcel 002.

Vicki Taylor, Zoning Administrator stated that the applicant was to bring additional information regarding alternate structures to the Board members and that she did receive an additional hand-out from Mr. Geiger regarding this case.

David Kirk, the representative for Verizon Wireless spoke and stated that he was to bring in additional information regarding the proposal of this tower at this location, if the tower would be lighted and illustrations of alternative tower structures that could be used in this location. Kirk presented the exhibits to the members. He stated that FAA does not require lighting for this tower and presented examples of different alternative towers.

Hekman asked about the overlap of signals. Kirk stated that to some extent there would be and explained using the exhibit.

Taylor stated that the one tower that is not noted on this is the Ridge Pine Tower that is near the Canton Fire Station on Hwy 5 and looks to be within the red circle and is not considered or indicated on the exhibit. Taylor stated that it was not considered insufficient and has not been noted.

Another representative for Verizon Wireless spoke and stated that all the properties have been looked at even the additions that Mr. Geiger had offered and that the Ridge Pine Water Tank tower was not deemed sufficient by the engineer. The exhibit, that she prepared, shows the search area and came from the FCC website, any structure over 100 ft. within a 5 mile area is what was indicated, other areas were evaluated in addition to what is on this exhibit.

Taylor stated that he did appreciate the applicant making a sincere effort to answer questions that he felt was not answered before.

Chris Geiger spoke out and asked if the members would consider any of the information that was submitted by the citizens in opposition.

Taylor stated that he was looking at this now. Taylor asked if there was a response from the City of Canton on this case.

Vicki Taylor stated that Mr. Geiger had asked the City of Canton to make comments and the Planning and Zoning Department as not received anything new since the last meeting. Vicki Taylor also stated that this case is not subject to the Growth Boundary agreement.

Taylor made a motion to deny based on conversations with Bennie Carter, Canton City Manager. Seconded by Chairman Hekman. Vote of 2 – 2.

Discussion ensued regarding no comments being received from City of Canton.

Elder made a motion to approve request with alternative tower to be a pine tree. Seconded by Mumaugh. Vote of 3 to 1 with Roy Taylor opposing.

Case #05-04-017V Steven Austin requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 9' to allow a 41' front building setback instead of the required 50' front building setback. The property is located at 200 Prospector Way in Land Lot 339 of the 3rd District and further described as Cherokee County Tax Map 03N14, Parcel 073.

Vicki Taylor stated that she has received additional letters of support and letters of opposition, as well as a constitutional challenge for the file. She gave the members pictures of the inside of the home and outside. Also pictures of the surrounding homes that were given for the file. Taylor stated that she did talk with Environmental Health and they informed her that all of their paper work stated the 50' building setbacks and that they had been out to the site 2 or 3 times trying to get everything situated due to this being a difficult site.

Glenda Casteel, Building Director stated that the additional right-of-way is what probably confused everyone and when she found out about there being a problem with the setback, she didn't realize that the County had this additional 10' right-of-way. She stated that her inspectors were not aware of this and the third party engineer was not aware of this and this may have been what happened with the applicant. She was not aware of this 60' right-of-way being in the Development Regulations.

Roy Taylor stated that since seemingly no one else in the subdivision messed up on the extra 10 ft. or not and he is greatly concerned that people think the alternative is for the house to be torn down. Taylor stated that it would not have to be torn down to be moved back. Taylor stated that he is in the process of working on a project where they are picking a home up and moving it a quarter of a mile to reset it on a foundation. He stated that this could just be slid 10 ft. back. Taylor stated to tear the house down would be a great hardship on anyone and this would not be the alternative.

Roy Taylor stated that he remembered that Sean Jerguson had some concerns at the last meeting and he was not sure if those had been resolved.

Vicki Taylor stated that one of his concerns was if Mr. Austin had built in the County before and she had done research and found that he was not a builder and has not had any other building permits issued in the County. Vicki stated that this was the only issue she remembers.

Greg Elder stated that part of the reason this Board exists is that things are not always in black and white. He stated that this seems to be a particular case and the responsibility for this happening, no one is taking it and that bothers him. Elder stated that they do approve variances a lot of the time but that is not a reason to approve this one, variances exist because there are mitigating circumstances and where honest mistakes are made and he is still trying to decide if this is one of those cases. Elder stated that he doesn't feel that the applicant is responsible here, that he does feel that the Engineer does have some responsibility and that if nothing else that this may be an opportunity for the County to look at this situation and try to come up with a way in the future that these things can be minimized.

Roy Taylor stated that this is done by lots of other municipalities and that is that they require a licensed surveyor to stake it so that it becomes a professional liability if it is done wrong and it is taken out of the hands of the contractor. Taylor stated that this is a real pain for the contractors and see several of these being a problem.

Greg Elder asked about administrative variance. Vicki Taylor stated that she can give a 5% administrative variance on building setbacks.

Roy Taylor stated that we have a really angry neighborhood here and that he is going to vote with them and he made a motion to deny. Elder seconded. Vote of 2 – 2.

Hekman stated that he rode out to this site and does not see where the position of the house being where it is, is an impact on the current residences. He feels that because the triangular shape of the property he feels that this is the only place he could have located it.

Elder asked if this case were denied, could the applicant still appeal to the Board of Commissioners? Elder stated that he really feels that the Engineer and the County have some responsibility to work out with this homeowner. He stated that he feels that the homeowner paid for a service that was rendered in error.

Glenda Casteel, Building Director stated that the County inspectors nor the Engineer are licensed surveyors and cannot be held liable for an error of this type.

Discussion ensued regarding the Development Regulations. Vicki Taylor stated that this was a measuring error from the curb.

Roy Taylor asked Mrs. Casteel if the rules got changed to add this survey in this process, would it relieve these situations?

Casteel stated it would, however, she restated some of the difficulties in making this a requirement.

Amy Mumaugh made a motion to approve. Seconded by Hekman. Vote of 2 – 2.

Hekman stated that all the members are not here and all that they could do is postpone until next month when they have all the members.

Hekman made a motion to postpone. Seconded by Elder. Vote of 3 – 1.

Case #05-04-023V Foresite, LLC has withdrawn their application.

New Cases

Case #05-05-024V Randy & Renee White requesting a variance to Article 7, Table 7.1A. The applicant is requesting a variance of 14' to allow a 36' side setback instead of the required 50' building setback. The property is located in Savanna Estates Subdivision at 114 Savanna Estates Drive in Land Lot 371 of the 2nd District and further described as Cherokee County Tax Map 02N07, Parcel 242.

Randy White represented this case. White stated that this is a slender piece of property that requires a 2,800 square foot home and 50' building setbacks would only allow for a 50' footprint. White stated that they are requesting to reduce the building setback to 36' and would give them some room. He stated that he does have a letter of support from the adjoining property owner on this side they are requesting a variance. There will be a home built on this property as well and he has spoken with the developer where variances have been granted in the past for this subdivision due to lots being slender. White stated that the covenants state a 35' building setback.

Adam Bowling spoke in favor. Bowling stated that he was an adjoining property owner.

Hekman closed the public hearing.

Hekman stated that he rode out to this site and does not feel that this would impact anyone.

Roy Taylor made a motion to approve. Seconded by Elder. Vote of 4 – 0. Motion passed.

Case #05-05-025V Sharp Residential, LLC requesting variances to Article 23, Section 23.8; Buffers for a Conservation Subdivision. The applicant is requesting a variance to encroach into the 50' undisturbed buffer to install septic field lines on Lots 15, 25 and 32 of Glen Brooke Subdivision, Phase II. These properties are located at 436 Mill Stream Way, 414 Mill Stream Way and 507 Hickory Glenn in Land Lot(s) 760, 825 of the 15th District and further described as Cherokee County Tax Map 15N28C, Parcel(s) 39, 49 and 56.

Vicki Taylor stated that the applicant has removed the request for Lot #15. She stated that this subdivision has had problems with soil conditions and topography and has been working closely with Environmental Health on these issues.

Roy Taylor asked if there was any information provided from the Engineer who layed out the entire subdivision. Vicki Taylor stated that she was unsure of who the Engineer was.

Matt Holland from Sharp Residential, LLC represented this case. Holland stated that he got involved with this just recently and he was aware of previous personnel that did get into these buffer areas. He stated that he did meet with the County Arborist to plan out everything and the applicant did everything that the County Arborist requested to remedy the situation. Holland stated Lot 25 is not a case where the buffer was encroached into. The buffer itself is for replacement field for septic lines. He stated that there has never been a septic permit issued for Lot 25. It originally had a drainage easement running across it. He stated that Environmental Health came out to the site and informed them that they could get a septic system on the lot behind the home without getting into this buffer. However, if a replacement field was ever needed, it would have to go into this buffer. Holland stated that this is usually not an issue.

Holland stated Lot 32 was originally issued a septic permit and the original placement was in the front yard, the lot was excavated, a foundation was put in and when the Health Department came out to approve the location, they found the soils in the front yard unsuitable. He stated that the only place suitable is in the buffer, up on a hill. The rear of this lot has such a huge amount of topography that it actually goes up 27 ft. from the back yard to the top of the hill. Holland stated that obviously they cannot put it in this area and need to be able to put this in the buffer area. Holland stated that they would do everything they can to save as many trees as possible to put these field lines in and they have been successful in doing this.

James Bando spoke in opposition. Bando stated that his lot backs up to Lot 15, which is no longer a part of this request. However, he is still opposed to the other 2 variances. He does not feel that the existing neighbors should have to pay the price for mistakes made by engineers, builders, etc. Bando stated that this is not okay for them to disturb an area that is undisturbed when this was known beforehand plus have already encroach into an undisturbed buffer. Bando stated that he does not understand how these mistakes are made when it is all planned out to begin with.

Howard Brummel spoke in opposition. Brummel stated that his lot backs up to Lot 25 and Lot 32. Brummel stated that on Lot 25 they have about 98 feet of undisturbed ground yet besides some of the dirt that is already moved and it seems to him that they would have enough room to do the system they need to with the drainage and still not go into this undisturbed buffer. Brummel stated on Lot 32 there is a serious problem, but what was not stated was that the original plan that was approved was to put the house up higher on the hill and have room on the left side of the house for the field lines. He stated that they wanted a side entry garage, so they moved the house closer to the road and this created the problem. Brummel stated that in his opinion they have not done a good job in trying to save trees. He stated that they are 15' from his property line and they shouldn't have built this home where they did. He feels that this variance needs to be denied.

Farrell Middleton with Sharp Residential, LLC spoke in rebuttal. Middleton stated that they do not want to argue with the neighbors. He stated that they did not develop this property, they bought it from a developer, nor did they do the engineering, this was done by the soils engineer with the Health Department. Middleton stated that they did not make the land, the

slopes, and in regard to the clear cutting that they have been accused of for septic tank construction, they are at the total discretion of the Health Department. He stated that he did wish that they could do something differently but the Health Department is the one that tells them where the septic tank has to go. He stated that they are not responsible for what the soils dictate they were approved for single family housing and that is what they are trying to do. Middleton stated that he is aware of the 50' undisturbed buffer that the Planning & Zoning Department requires, but there have been several permits issued where the initial permit indicates these septic tanks and field lines in this 50' buffer. They are caught between the Health Department and Planning & Zoning. Middleton stated that they put in these septic systems according to the Health Department regulations and it was approved, since then they have gone back on several lots and done tree replacement with the advice of Craig Henschel, County Arborist and in the case on these 2 lots in regard to lot 32 it is a very steep lot. Middleton stated that another issue they get into with the Health Department is they do not readily approve alternative systems, there are other types of septic systems beyond the tank and traditional field lines, he wished that they would approve a different type of septic line so they would not have to get into this buffer, but they have not allowed them to do that and that they are extremely limited in options on what they can do. Middleton stated that what they would propose to do is, if they do need to infringe on this buffer that we would definitely consider and agree to a replacement situation like they have done on several other lots.

Roy Taylor asked what grounds did the Health Department give you in denying to allow alternative systems? Middleton stated that he is not sure, that this is a State Department and he thinks it is a personal choice with the employees of the department.

Elder stated that on Lot 32 the applicant had stated that the Health Department had originally approved the soil, but that the house was moved.

Middleton showed pictures of this lot and explained further.

Hekman asked if this lot would require a pump. Middleton stated yes.

Mumaugh asked if Middleton would be the one in charge of this now since it had been tossed around so many times? Mr. Middleton answered, yes.

Hekman noted that he needed to recuse himself from the vote due to previous legal issues with the applicant. Hekman stated that if there are only 3 present of the 5 members, there has to be a unanimous vote in order to pass any motions. He noted generally when this occurs, we give the applicant a choice of either to accept for a vote or to be postponed until all members are present. Middleton stated that they would like to move forward.

Elder asked how many more lots are to be developed in this subdivision? Middleton stated that there are 3 lots left. Holland stated that he has already met with the Health Department on all remaining lots and have approval.

Discussion ensued regarding getting something to the Commissioners to have these requirements changed with the Health Department and regarding how much of this buffer needs to be disturbed on each of these lots.

Roy Taylor made a motion for approval with the conditions that the septic lines be snaked through trees not to exceed dept of the first 40 feet of the 50' undisturbed buffer and that the remaining 10 feet plus an unused buffer, be landscaped to a full visual screen per the County Arborist.

Seconded by Amy Mumaugh. Vote of 3 – 0 (Hekman recused himself).

Other Items

Vicki Taylor stated that the next item was not on the agenda because it was added right at the end. Taylor stated in October of 2003 we had a ZBA case where property at the intersection of Woodstock Road and Hwy 92, south side, came to us with a plan to develop this in compliance with Hwy 92 but they wanted to bring in an additional 18 acres just to the south. She stated that this property went further out of Hwy 92 than what they were comfortable doing, however over and over it was stated that we were getting a master plan of this development. This master plan indicated commercial up against Hwy 92 and then it worked its way back to residential, it indicated a connectivity with a community look. Taylor noted that it was passed with a site plan, then in November 2004, it was brought up again. Taylor stated that now Mr. Ross is back asking for approval that this is still the intent of what you had in mind.

Discussion ensued between the members regarding this case.

Mr. Ross stated that they have incorporated an amenity package and in the previous plan they did not incorporate this open space into the overall plan. They are providing access to this open space, walking trails and a gazebo type structure. Ross stated that it was his understanding that they got direction before, that as long as they maintained the connectivity and the intent of the Overlay District that they were meeting the requirements.

Roy Taylor stated that there is a big difference in the number of lots that was shown on the original plan and the new plan.

Discussion ensued and decided this would need to go to the Commissioners for review and approval.

Approval of April 7, 2005 Minutes. Roy Taylor made a motion to approve. Seconded by Mumaugh. Vote of 4 – 0.

Roy Taylor made a motion to adjourn. Seconded by Mumaugh. Vote of 4 – 0.

Meeting adjourned at 8:25 p.m.