

**Cherokee County Zoning Board of Appeals
Public Hearing Minutes
Thursday, March 1, 2012
6:30 PM**

Approved 4-5-2012

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on March 1, 2012 in Cherokee Hall of the Cherokee County Administration Building. In attendance for the Zoning Board of Appeals were Chairman Roy Taylor, Cynthia Castello, Lanette Shaw, Vivianne Decker and Elizabeth Semler. In attendance for Cherokee County Staff were Vicki Taylor Lee, Zoning Administrator, Tamala Davis, Planning Technician and Paul Frickey, County Attorney.

The meeting was called to order by Chairman Roy Taylor at 6:35 p.m.

Ms. Lee informed the Board that **Case #12-01-002V Race Trac** has withdrawn their application and are in the process of looking at a different site.

Case #12-01-004V Lee Graham requesting a variance to Article 5; Section 5.6 Accessory Structures. Applicant is requesting a 10 foot encroachment into the side building setback on west side for an accessory structure. This property is located at 5173 Legendary Lane in Land Lot 1294 of the 15th District and further described as Cherokee County Tax Map 15N06C, Parcel 278.

Ms. Lee stated that she is requesting the Board to consider this case abandoned. Staff has tried contacting applicant, had no response and signs were not posted on the property.

Mr. Frickey stated that there is no formal procedure for the Board to abandon a case. Mr. Taylor made a motion to direct staff to proceed with the case, to run notice in the newspaper and to post a sign on the property for a public hearing at the April 5, 2012 meeting of the Board. Seconded by Ms. Decker. Unanimous approval.

Ms. Lee presented **Case #12-03-006V Johnny Flynn** requesting a variance to Article 7; Section 7.7-21. Applicant is requesting to be allowed to park one (1) dump truck on the property. This property is located at 7855 Midway Road in Land Lot 35 of the 2nd District and further described as Cherokee County Tax Map 02N13, Parcel 193.

Ms. Lee discussed staff comments, surrounding zoning and stated that she has recently received an email and letter in opposition.

Mr. Flynn represented this case. He presented letters to the Board from all of his adjoining property owners that have no problem with him parking a dump truck on his property. He stated that he has lived here for almost 12 years and he has kept a dump truck or some type of truck the whole time he has lived on this property. Mr. Flynn stated that prior to purchasing the property he asked his surrounding neighbors if they would have a problem with him keeping a dump truck and race car on this property. He stated that he has lived there without problems and that he gets along with all his neighbors. Mr. Flynn stated that 80% of the time that they are not parked at his home, but on the job site.

Ms. Lee asked the applicant how many trucks he has because she was informed the request was only to be allowed to park one (1) dump truck on property.

Mr. Flynn stated that he does have two (2) trucks however the second truck belongs to his girlfriend's father and they try to run this truck to pay for his medical bills. He stated that the only time this truck has to come to his house is for maintenance.

Mr. Taylor asked if there was anyone to speak in favor of this application. There was none.

Mr. Taylor asked if there was anyone to speak in opposition.

Mr. Chuck Eller spoke in opposition. Mr. Eller stated that he lives at 320 Sequoyah Drive and adjoins Mr. Flynn's property. Mr. Eller stated that the first problem with this application is the applicant is appealing the enforcement of the property maintenance ordinance and that this has nothing to do with the Planning and Land Use Department. Mr. Eller stated that the applicant was informed by Chief Deputy Marshal Roach from Ms. Lee that there was no appeal for a variance to a violation of the property maintenance ordinance. He stated that he doesn't understand why it would even be heard here. Mr. Eller stated that there was very little truth to what the applicant stated tonight and less in the application. Mr. Eller presented copies of the application to the Board that are highlighted with his concerns. He discussed the zoning of the property being estate residential not rural residential, standards for vehicles that is in the property maintenance ordinance and that the applicant has not lived on this property for 11 years until April. He stated the applicant never came and talked with him prior to purchasing this property and that the way they had met was from him cranking up the race car. Mr. Eller stated that the sections of the Zoning Ordinance stated on the application are not related to this property and the applicant did not purchase the dump truck until 2004. He stated he has complained to the Board of Commissioners, County Manager, Planning & Land Use and everyone has sent him to the Marshal's office. Mr. Eller stated that the applicant has never had a business license and the other truck he parks on the property has been registered for seven years to an address in Forsyth County. Mr. Eller stated that the applicant ran an illegal and unpermitted inert landfill on this property for over three (3) years and complained to the County regarding the sediment which was passed on to the EPD. He noted that from the uses table it indicates dump trucks or trucking business would only be allowed in LI and HI which would require a rezoning not a variance.

Mr. Taylor informed Mr. Eller that the 10 minute time limit for opposition was up.

Ms. Lee noted that the front page of the staff report listed land use categories not zoning categories.

Mr. Flynn spoke in rebuttal. He stated that he doesn't know where Mr. Eller is getting these accusations. He wanted to clarify to the Board that earlier he had stated he has always had a truck parked on his property, not necessarily a dump truck.

Mr. Taylor closed the public hearing.

Mr. Frickey requested the Board let his office look into a couple of issues with this case prior to making a decision.

Mr. Taylor asked if Mr. Flynn would object to the Board postponing a decision on his application until April 5, 2012. Mr. Flynn agreed to the postponement.

Mr. Taylor made a motion to postpone a decision on this case until the April 5, 2012 Public Hearing to get legal counsel. Seconded by Ms. Castello. Unanimous approval.

Ms. Lee presented **Case #12-03-007V Cecil Herndon** requesting a variance to Article 5; Section 5.6. Applicant is requesting to encroach 5 feet at the southeast corner and 9 feet at the east property line for an accessory structure. This property is located at 5798 Salem Woods Drive in Land Lot 1129 of the 21st District and further described as Cherokee County Tax Map 21N06C, Parcel 091.

Ms. Lee discussed staff comments and noted she has not received any letters of support nor opposition. She presented a new drawing to the Board.

Mr. Herndon represented this case. Mr. Herndon stated that he is trying to get a place to put his shed and the southeast corner is the only location he has. He stated he cannot put in the front yard.

Mr. Taylor asked Mr. Herndon what will be in the shed. Mr. Herndon stated it will just be for storage.

Mr. Taylor asked for anyone in favor or opposition of this case.

Donald Zell spoke in opposition. Mr. Zell stated that he adjoins Mr. Herndon's property and his property would be greatly affected by this request. He stated that this shed would be located 1 foot from his property line. Mr. Zell stated that it is a rental property that he and his wife bought a few years ago. He stated that it is very secluded and he has concerns of run-off onto his property as well as erosion. He stated that sheds are normally used to keep junk or forgotten items and become an eyesore which could devalue his property.

Mr. Herndon stated in rebuttal that he doesn't see where this would be a problem and that it would be a nice shed.

Mr. Taylor closed the public hearing.

Ms. Castello asked the applicant would he be building this. Mr. Herndon stated it would be he and his son who is a contractor.

Mr. Taylor stated that with this new sketch, the shed would not be within 1 foot of the property line.

Mr. Taylor made a motion to accept the application with construction as shown in the revised site plan, the encroachment is to be no closer than 5 feet from the property line, both the long and narrow (south) side of the shed shall be planted with visual screening and applicant is to obtain County Arborist approval to determine adequate vegetation. Seconded by Ms. Decker. Unanimous approval.

Next is **Case #12-03-008V Tadesse Woldehanna** requesting a variance to Article 7; Section 7.7-3(a). Applicant is requesting to be allowed to have emissions testing outdoors. This property is located at 6410 Bells Ferry Road in Land Lot 972 of the 15th District and further described as Cherokee County Tax Map 15N05, Parcel 104A.

Ms. Lee presented this case. She discussed staff comments and noted she received no letters of support or opposition. Ms. Lee stated that she supports this application contingent on full compliance with the Sign Ordinance, she doesn't expect to have additional signage than what is already allowed.

Mr. Woldehanna represented this case. He stated that this variance request is to allow emissions testing of vehicles outside at this location. He discussed the process for the emissions testing and equipment.

Mr. Taylor stated that he is not sure that this falls under maintenance and repair. Ms. Lee stated that it also includes service.

Mr. Taylor asked for anyone to speak in favor or opposition. There was none.

Ms. Semler made motion to approve with a condition that the variance be used only for emission testing. Seconded by Ms. Shaw. Unanimous approval.

Ms. Lee presented **Case #12-03-009V Benjamin Osborne** requesting a variance to Article 9. Applicant is requesting to be allowed to have a home occupation in a detached accessory structure. This property is located at 221 Dogwood Lake Trail in Land Lot 228 of the 2nd District and further described as Cherokee County Tax Map 02N06, Parcel 102.

Ms. Lee discussed home occupation restrictions as recorded in Article 9, Section 9.3-1 through 9.3-12 and noted she received no letters of support or opposition.

Benjie and Becky Osborne represented this case. Mrs. Osborne stated that they recently purchased this property and they would like to have a small artist and woodworking business. She stated that Mr. Osborne makes just a handful of pieces that go out to galleries and he also makes some pulpits that go to churches. She stated he only makes about 20 large pieces in a year and then at Christmas they do some platters and cutting boards. Mrs. Osborne stated that there would be no retail sales, no increase in traffic and he has no employees. She stated he was previously leasing space at the Artists and Resource Center and now they have the same square footage on their property. She stated they would like to eliminate the commute and take that money and put it towards their mortgage and childcare and for Mr. Osborne to be a part time stay at home dad. Mrs. Osborne stated she doesn't feel that this would impact their community and if there are issues with their neighbors it is something they would like to address since they are new to the area and would like for them to be their friends, they are definitely not trying to cause any problems.

Mr. Taylor asked if this was just woodworking. Mrs. Osborne stated yes.

Mr. Taylor stated that he believes the cutting of wood is an acceptable use in the AG zoning district. Mr. Taylor stated he is questioning this decision to come before this Board.

Mr. Frickey stated because the wood is prepared to sell, and is a wood working business, and falls under a home occupation business, he supports going through the variance process.

Mr. Taylor asked for anyone to speak in favor or opposition.

Charlotte Czekala came forward to speak and had questions. She stated that she lives on Gantt Road and her and her neighbors had heard that this was going to be a commercial art studio and she came just to find out for sure what they were proposing. She stated that after hearing what the Osborne's are requesting it could work in this community. Ms. Czekala stated she wanted to make sure there was not going to be any increase in traffic and noted that she hopes the family does well.

Wade Smith spoke in opposition. He stated that he lives next door at 925 Gantt Road and really wasn't sure what type of business this was going to be. He stated that he feels this would create an increase in traffic with the delivery of wood as well as the increase in noise.

Robert Benner spoke in opposition. He stated that he lives at 426 Dogwood Lake Trail and he submitted two (2) more letters of opposition from neighbors that could not attend the meeting. Mr. Benner stated that he would like to read his statement that he prepared. He stated that he and his wife oppose this variance request and they feel that the present zoning is as it should be and supports the character of their neighborhood. He stated that Gantt Road and Dogwood Lake Trail are not intended to be business centers. Mr. Benner stated that they feel the requirements for a variance request have not been met by the applicants and that this hardship has been self imposed by knowing this situation prior to purchasing the property. Mr. Benner stated they have no hard feelings towards the Osborne's and congratulate them on their new baby however they are only trying to protect their neighborhood.

Mr. Benner asked the Board if a variance is granted does that stay with the land. Mr. Frickey stated it does stay with the land.

Ms. Lee stated that this request does not change the zoning of the property or the land use.

Mr. Benner stated his concern is if this variance stays with the land and this business moves out, what type of business can move in. Mr. Taylor stated this was the only one that would be allowed and from what he understands these regulations will be changing and when it is approved by the Board of Commissioners this is something that would not even need a variance.

Mr. Taylor closed public hearing.

Mr. Taylor made a motion to approve this application along with staff findings. Seconded by Ms. Semler. Unanimous approval.

Case #12-03-010V Sam M. Bromberg requesting a variance to Article 16, Section 16.2. Applicant is requesting to be allowed to have a 62 square foot sign with a height limit of 15 feet. This property is located at 6572 Highway 92 in Land Lot 1189 of the 21st District and further described as Cherokee County Tax Map 15N06B, Parcel 002.

Ms. Lee presented this case. Ms. Lee discussed staff comments and noted that this property falls within the Hwy 92 Overlay as well as the Bells Ferry Corridor. She noted that the existing sign was permitted back in 1992 with 47 square feet of copy area and a 14.5 foot overall height. Ms. Lee stated that the widening of Highway 92 did not take additional right of way however the power lines had to be moved back which obstructs the view of the existing sign. Ms. Lee stated that she supports the relief she is just not sure what that he is asking is going to help that much.

Sam Bromberg represented this case. Mr. Bromberg stated that his mom owns the building and they have had the building for several years but the biggest issue was the widening of Highway 92 which took most of their greenery and parking. He stated due to economic times it has been difficult to keep a tenant in the building and there is no signage that you can really see. Mr. Bromberg stated that the proposed sign will be higher up which will create a little better visibility and hopes this will help.

Mr. Taylor asked if there was anyone to speak in support of this application.

Mr. Doug Aho spoke in support. He stated that the gable roof on the existing sign takes up a lot of room and on the proposed sign the copy area will be moved up to the top to make it more visible and will make it a little taller. Mr. Aho stated the sign will match the building and will be a very nice sign.

Mr. Taylor asked if there was anyone to speak in opposition of this application. There being none, Mr. Taylor closed the public hearing.

Ms. Semler stated that she doesn't feel that this would be out of character for this area at all.

Ms. Shaw agreed with Ms. Semler and stated further that since they will be putting the writing higher on the sign she does feel that it would make it more visible and asked the applicant if this was the intent.

Mr. Bromberg stated that they really feel that it will enhance the property in this area and will be a little more visible.

Ms. Shaw asked if they have thought of putting signage on the building itself. Mr. Bromberg stated yes.

Ms. Shaw made a motion to approve. Seconded by Ms. Decker. Unanimous approval.

The next item was the discussion of **Case #10-07-011V Holdheide Academy**. Ms. Lee stated that the Board delayed any decision on this case until all Board members were present.

Mr. Frickey asked the Board to take a short recess. Mr. Taylor made a motion to take a 5 minute break. Seconded by Ms. Decker. Unanimous approval.

Mr. Taylor reopened meeting.

Ms. Lee stated that last month Ms. Dorsten came and addressed the Board and that her variance approval expires as of July 2012. Ms. Lee stated it doesn't seem like Ms. Dorsten is any closer to finding a property with larger acreage.

Mr. Taylor stated that he had informed Ms. Dorsten at the original public hearing that he wanted her to come back with a plan and he understands these are tough times but at the latest meeting he did not hear of plan.

Ms. Lee stated that she feels Ms. Dorsten is trying to make her current location the best it could be without looking elsewhere. She stated that the report she gave was admirable with respect to what she has accomplished.

The Board discussed this case briefly.

Mr. Frickey stated that instead of an extension, the applicant would have to re-apply for variance with a new application. Mr. Taylor made a motion to have staff prepare letter to Ms. Dorsten informing her that she will need to re-apply. Seconded by Ms. Decker. Unanimous approval.

Ms. Lee stated the last case to discuss is **Case #10-10-017V Bryan Keith Andrews**. She informed the Board no video available for the October 2010 ZBA Public Hearing.

The Board discussed this case further. Mr. Taylor stated that he needs to do more and is dissatisfied with what Mr. Andrews is proposing. Mr. Taylor stated if the applicant wants to proceed then he needs to do more.

Ms. Lee stated that he does not have an active building permit because the Planning Department does not issue permits when there is an outstanding violation.

Mr. Frickey stated that if he is in violation of the condition of the variance it could be handled by the Marshal's office and Planning Department.

Mr. Taylor stated if he does not come back with a proposal then the Planning Department will get the other departments involved.

Mr. Taylor made a motion to approve the revised January minutes. Seconded by Ms. Shaw. Unanimous approval.

Ms. Castello made a motion to approve February minutes. Seconded by Ms. Shaw. Unanimous approval with Ms. Semler abstaining since she did not attend this meeting.

Ms. Semler made a motion to adjourn. Seconded by Ms. Taylor. Unanimous approval.

The meeting adjourned at 8:34 p.m.