

Cherokee County Zoning Board of Appeals
Public Hearing Minutes
Thursday, May 2, 2013
6:30 p.m.

Approved 6-6-2013

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on Thursday, May 2, 2013 in Cherokee Hall of the Cherokee County Administration Building. In attendance for the Zoning Board of Appeals were Chairman Elizabeth Semler, Roy Taylor, Cynthia Castello, Bill Dewrell and Melissa Range. 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 at 6:33 p.m.

Case #13-04-010V David G. Williams requesting a variance to Article 5, Section 5.6A. The applicant is requesting a variance to allow an accessory structure in front building setback. This property is located at 1178 Lower Union Hill Road in Land Lots 285 and 286 of the 2nd District and further described as Cherokee County Tax Map 02N02, Parcel 134.

Ms. Lee presented this case. Ms. Lee discussed the revised staff comments stating that Mr. Williams has offered to reduce the size of the proposed structure by 10 feet resulting in the variance request dropping to 30 feet. She also gave Engineering's comments that stated the addition of the easternmost driveway must be permitted and in order for Mr. Williams to establish the drive-through operation he desires, he must close off the westernmost driveway. Ms. Lee stated staff suggests some additional screening vegetation be required adjacent to the right-of-way.

Mr. Mike Bray, Attorney for Mr. Williams, represented this case. Mr. Bray stated his client is willing to reduce the size of this structure to 50 feet instead of 70 feet which would allow a 20 foot setback off the road right-of-way and he would be willing to plant shrubs up at the front if requested to do so. Mr. Bray distributed packets to the Board and stated this situation developed because of the discrepancies within the Zoning Ordinance. He stated the building line setback is not the same as the front yard and this is not what the Ordinance reads. Mr. Bray stated accessory buildings are treated different than any other structures and if you wanted the building line setback the same as the front yard this is all they needed to say but that is not how the Ordinance reads. He stated the definition of a front yard per the Ordinance states extending the full width of the lot and located between the street line and the front line of the building projected to the side lines of the lot and that is why when the permits were issued it says N/A, which the applicant thought meant not applicable instead of not allowed. Mr. Bray stated Cherokee County has gone to court a few times over these matters and it has been said in the Court of Appeals of the Supreme Court that discrepancies in the language of the Zoning Ordinance shall be resolved in favor of the full use of the property. He stated Mr. Williams was issued two valid building permits which created a vested right and he then spent money based on what the County issued. He stated there are multiple structures out in this area 10 feet from the right-of-way so this historic Ordinance is not being enforced. He followed

up with the building line states setbacks for the primary structure only not for any structure and his client did everything he thought he was to do when he was issued these permits.

Ms. Lee stated Staff treated this structure as a farm out-building in which they only applied the building setbacks, not the portion of the ordinance related to the regarding the front yard. She stated that if Mr. Williams reduces the building to 50 feet, this would allow for a 30 foot setback from the front property line and if he reduces it to 60 feet this would allow for it to be 20 feet off the right of way.

Mr. Bray stated they are requesting for a 30 foot variance to allow for a 20 foot front building setback.

Ms. Semler asked if there was anyone to speak in support or opposition of this application. There was none.

Mr. Frickey stated there were several emails submitted regarding this application and the Board needs to consider whether they would like to hear these as part of the record for making a decision on this case.

Mr. Taylor stated he thought it was already policy until a final decision is made that we accept all input from the public whether it be verbal, written or electronic communications.

Mr. Taylor made a motion to set a policy to accept correspondence from the general public concerning the matters at hand that both in favor or opposition would be considered by the Board for each particular case. Seconded by Ms. Castello. Unanimous approval.

Ms. Lee read the 9 letters of support and showed a map to the Board indicating the location of these property owners in proximity to the subject site.

Ms. Lee read the 5 letters of opposition and showed a map to the Board indicating the location of these property owners in proximity to the subject site.

Mr. Bray spoke in rebuttal. He stated it may be unwise to set a policy at a public hearing on an item that may or may not be in your Ordinance. He asked how would the applicant know of something submitted electronically. Mr. Bray stated we are creating the Ordinance as we go along. He stated there are traffic issues regardless of this structure being there or not and this structure cannot just be put anywhere on this property due to the floodplain.

Mr. Dewrell stated he feels a lot of this could have been handled before the applicant got his permit and feels like he should be allowed to move forward.

Ms. Semler closed the public hearing.

Mr. Dewrell made a motion to approve a 30 foot variance. Seconded by Ms. Castello.

Ms. Semler stated safety is a concern when considering this application.

Mr. Taylor stated he has issues on what was presented this evening, there being no hardship and is hesitant to just say okay, however, also recognizes the fact that the County is in part complicit in the confusion of why it is before them tonight.

Ms. Semler stated the applicant did sign the form that he would call for inspections and he also misrepresented what was currently on the property. She stated she agrees that there are other places on the property this building can go and is concerned with the safety in constructing this too close to the road.

Ms. Semler stated there is a motion to approve the revised application to allow a 30 foot variance. A vote was taken with three (3) in favor, two (2) opposed. Ms. Semler and Mr. Taylor opposed.

Next case, **Case #13-05-011V** Tracy Payne requesting a variance to Article 10, Table 10.1. The applicant is requesting a variance to encroach 25 feet into a zoning buffer for a storage addition. This property is located at 14664 Highway 92 in Land Lot 1255 of the 15th District and further described as Cherokee County Tax Map 15N30, Parcel 027.

Ms. Lee presented this case. Ms. Lee discussed staff comments, location of property, gave adjacent zoning and noted she has received no letters of support or opposition.

Mr. Tracy Payne and Mrs. Julie Payne represented this case. Mr. Payne stated they purchased this property in 2007 and in order to expand this building they need to encroach into this buffer. He stated this is a very shallow lot and this is the only location to expand.

Ms. Semler asked if there was anyone to speak in favor of this application.

Ms. Susan Rickman stated she owns the property surrounding the subject property and is not in support or opposition, she just needed clarification on exactly what the applicant is requesting. She asked if this variance would allow a structure to be 10 feet from the property line and if yes, that she would be in favor as long as they maintain a buffer.

Ms. Semler asked if there was anyone else to speak in favor or opposition. There being none, she closed the public hearing.

Mr. Dewrell asked Mr. Payne how much more footage are you proposing to build. Mr. Payne stated 3,700 square feet and they currently have 9,400 square feet.

Ms. Lee stated the site plan indicates a 15 foot building setback, necessitating only a 20 foot variance.

Mr. Taylor made a motion to accept the application to build 15 feet from the property line and within that 15 feet the applicant will be required to put in a vegetative screen that will create a

full screen of the building over time and will work with the County Arborist to develop this screening across the entire edge of the piece of property. Seconded by Ms. Semler. Unanimous approval.

The last case, **Case #13-05-012V** Doug Miller requesting a variance to the 1988 Article 8, Section 8.5-2 for PUD zoning. The applicant is requesting a variance to reduce the side building setback to 5 feet for a garage addition. This property is located at 2016 Gold Leaf Parkway in Land Lots 149 and 150 of the 15th District and further described as Cherokee County Tax Map 15N07F, Parcel 045.

Ms. Lee presented this case. Ms. Lee discussed staff comments, location of property, gave adjacent zoning and noted she received no letters of support or opposition.

Mr. Doug Patton represented this case. Mr. Patton submitted photos to the Zoning Board of Appeals to help explain the hardship for this case. He stated the garage will be attached to the home and there are two large magnolia trees that will block the view from the neighbor's house. He stated this is the only place logical for this addition and that it will be stone and brick to match the home.

Ms. Semler asked if there was anyone to speak in support or opposition of this application. There being none, she closed the public hearing.

Mr. Taylor made a motion to approve this application. Seconded by Mr. Dewrell. Unanimous approval.

The last item on the agenda was the approval of the April 4, 2013 Minutes. Ms. Semler made a motion to approve. Seconded by Mr. Dewrell. Unanimous approval.

Ms. Semler made a motion to adjourn. Seconded by Mr. Dewrell. Unanimous approval. The meeting adjourned at 7:38 p.m.