

Cherokee County Zoning Board of Appeals
Public Hearing Minutes
Thursday, March 2, 2017
6:30 p.m.

The Cherokee County Zoning Board of Appeals held its regular public hearing on Thursday, February 2, 2017 in Cherokee Hall of the Cherokee County Administration Building. In attendance for the Zoning Board of Appeals were Chairman Elizabeth Semler, Melissa Range, Cindy Castello, Marla Doss and Lisa Tressler. 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 6:35 p.m.

Ms. Semler made a motion to amend the agenda to move the appeals case to the last case on the agenda. Seconded by Ms. Range. Unanimous approval.

Case #17-03-008V Bryan Barrett at 456 Payne Road requesting a variance from Article 5, Section 5.6A to allow an accessory structure (double garage) in the front yard area. The property is located in Land Lot 704 of the 15th District and further described as Cherokee County Tax Map 15N16, Parcel 075.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location of home and staff comments.

Bryan Barrett represented this case. Mr. Barrett stated they currently do not have a garage and he would like to build a double garage in the front yard for storage. He stated this is the only area they can use due to the location of septic lines, easements and topography.

There was no one present to speak in support of or in opposition to this application.

Ms. Semler closed public comment.

Ms. Semler made a motion to approve the application with the condition that the applicant provides screening for the road. Seconded by Ms. Castello. Unanimous approval.

Case #17-03-009V Beazer Homes at 2064 West Hampton Drive requesting a variance from Article 7, Table 7.1A of 4.12 feet to allow a 20.88 foot front building setback and a variance of 0.88 feet to allow a 9.12 foot side building setback for construction of a home. The property is located in Land Lot 879 of the 3rd District and further described as Cherokee County Tax Map 03N10C, Parcel 184.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location of home and staff comments.

Paul Duigan represented this case. Mr. Duigan stated the builder constructed this home over the building setback lines. He stated this is minor however they have put conditions in place going forward so this does not happen again. He stated there is a new as built process as well as the previous construction manager was let go and the builder was reprimanded. He stated they take this very serious and he feels the proper measures have been taken.

There was no one present to speak in support of or in opposition to this application.

Ms. Semler asked if the home was built. Mr. Duigan stated, yes.

Ms. Castello made a motion to approve. Seconded by Ms. Doss. Motion passed 5-0.

Case #17-03-010V Amber Barnhart at 1426 Curtis Road requesting a variance from Article 7, Section 7.7-24B of 65 feet to allow a 10 foot side building setback on the north and east property lines for construction of a barn housing livestock. The property is located in Land Lot 1062 of the 3rd District and further described as Cherokee County Tax Map 03N17, Parcel 045A.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location of home and staff comments.

Amber Barnhart and Chase Curtis represented this case. Ms. Barnhart stated this is the only location to construct the barn. She stated it will be for her personal horses so they have shelter and feed. Ms. Barnhart stated you would not be able to see the barn and they will install vegetation for screening.

Emmet Curtis spoke in support. Mr. Curtis stated this is family property and has no objection to the granting of the variance.

Ms. Range made a motion to approve. Seconded by Ms. Doss. Motion passed 5-0.

Case #17-03-011V Donald Jones at 910 Pine Circle requesting a variance from Article 5, Section 5.6A to allow construction of a detached garage in the front yard area. The property is located in Land Lot 750 of the 21st District and further described as Cherokee County Tax Map 21N10A, Parcels A101 and A102.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location of home and staff comments.

Donald Jones represented this case. Mr. Jones stated there is an existing foundation and block wall where the accessory structure will be located. He stated the structure will be used to house an RV and will have a brick façade.

There was no one present to speak in support of or in opposition to this application.

Ms. Semler made a motion to approve with the condition that the lots are combined. Seconded by Ms. Range. Motion passed 5-0.

Case #17-03-012V Robert and Catherine James at Wabash Trail and Caboose Lane requesting a variance from Article 16, Section 16.1.3, Boundaries, A and Section 16.1.4 to allow the rest of their property to be included in the Highway 92 Overlay for development of a residential attached single family neighborhood allowing up to 8 units per acre. The property is located in Land Lots 1226 and 1223 of the 15th District and further described as Cherokee County Tax Map 15N06, Parcels 208 and 208A.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location and staff comments. She stated she has received several letters in opposition and no letters in support. She stated she feels there is miscommunication on what the applicant is proposing and this request will not rezone the property.

Benson Chambers represented this case. Mr. Chambers stated the site plan presented with the application shows the intent of the property which would be residential attached townhomes which would allow the property and the entire area access to sewer. He stated they had requested eight (8)

units per acre however when the plan was prepared it actually came to 6.65 units per acre. Mr. Chambers stated the applicant has spent some time working with the Association that owns and maintains Lake Tarn. He stated they have been in negotiations to go above and beyond requirements to protect the lake from siltation and water runoff. He stated this has not been discussed with the Lake Tarn Homeowner's association and request this case be postponed until next month.

Ms. Semler made a motion to deny the request for postponement. Seconded by Ms. Tressler. Motion passed 3-2. Ms. Doss and Ms. Castello opposed.

Renaye Ohanesian spoke in opposition. Ms. Ohanesian stated she lives in Lake Forrest and provided a petition with 270+ signatures opposing this application.

Kimberly Hyde spoke in opposition. Ms. Hyde stated she is representing the Lake Forrest subdivision and discussed their concerns with density, safety, traffic and buffers. Ms. Hyde stated this development would not be in compliance with the Future Development Plan.

Laurie Mueller spoke in opposition. Ms. Mueller discussed her concerns with the density, traffic and run off. She stated her property was damaged from the widening of Highway 92 and this area cannot support any more high density development.

Curtis and Natasha Wilson spoke in opposition. They discussed their concerns with increase in traffic, safety, density and environmental impact.

Phillip Steadham spoke in opposition. Mr. Steadham stated he has walked this entire property and it is one giant ravine that comes down to a creek. He also discussed his concerns with property values.

Leslie Bussey spoke in opposition. She stated she agrees with Mr. Steadham that the property is on a slope and when you remove the trees everything will slide south.

Ms. Semler made a motion to extend the time one minute. Seconded by Ms. Castello. Motion passed 5-0.

Marshall Hunton spoke in opposition. He discussed his concerns with traffic and density from townhome development.

Joanne Council spoke in opposition. She stated she is here for her mom who lives next to this property and this will affect her view and noted her concerns with water run-off.

Ms. Semler made a motion to extend the time two minutes. Seconded by Ms. Range. Motion passed 5-0.

Steven Van Schooten spoke in opposition. Mr. Schooten discussed his concerns with silt and water run-off to Lake Tarn. He stated he is not against development, but is concerned with the additional traffic as well.

Richard Thomas spoke in opposition. Mr. Thomas discussed his concern with the proposed 3 story townhome development.

Mr. Chambers spoke in rebuttal. Mr. Chambers stated most of the concerns are zoning or development issues and will be addressed by the Development code especially as to run-off. He stated there are excessive retention requirements to prevent extra water leaving the property. He discussed traffic and entrance concerns. He stated this development will bring sewer to this area and feels sewer is preferred over septic tanks. Mr. Chambers stated it creates a burden to the property owners for half their property to be included in the overlay district and the other not. He noted the price range of the homes will range from \$200's to \$250's.

Ms. Semler closed public comment.

Discussion ensued among Board members and staff.

Ms. Range made a motion to approve the variance request to extend the Overlay Boundary and deny the request to increase the density. Seconded by Ms. Semler. Motion passed 3-2. Ms. Castello and Ms. Tressler opposed.

Case #17-03-014V Clarence and Malinda Croft at 647 Sixes Road requesting a variance from Article 7, Section 7.5-3.4d and Article 11, Section 11.6, 1a to allow a waiver from the required monument and be allowed to expand the existing freestanding sign to 120 square feet of copy area. The property is located in Land Lot 635 of the 15th District and further described as Cherokee County Tax Map 15N15, Parcel 002.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, location of sign and staff comments. Ms. Lee stated she has received no letters in support and one (1) letter in opposition. Ms. Lee stated a sign permit was permitted for 66 square feet copy area.

Malinda Croft represented this case. Ms. Croft discussed the history of the property and stated the property has no access. She stated the sign was made larger and she was not aware of this. Ms. Croft stated she is asking to increase to 120 square feet of copy and needs to have the sign to pay the taxes on the property.

Dyan Schuckers spoke in favor. Ms. Schuckers stated she works with Mike the Mechanic who rents the sign each month. She stated they are requesting it be a little bigger to be more visible from the street.

Barbara Kriner spoke in opposition. Ms. Kriner stated she would like the sign regulations adhered to and the current sign already has adequate visibility from the road.

Debra Frieden spoke in opposition. Ms. Frieden stated she has been trying to actively work with the County and City of Holly Springs to get an Overlay district on Sixes Road. She feels if approved, this will open the door for others.

Malinda Croft spoke in rebuttal. Ms. Croft stated she does not feel this will open the doors for others and does not understand why it cannot be larger.

Ms. Semler asked staff what size was permitted. Ms. Lee stated the sign was permitted with 66 square feet of copy area and is grandfathered in at this size.

Ms. Doss made a motion to approve. Seconded by Ms. Castello. Motion fails 2-3. Ms. Semler, Ms. Tressler and Ms. Range opposed.

Ms. Semler made a motion to deny. Seconded by Ms. Tressler. Motion passes 3-2. Ms. Doss and Ms. Castello opposed.

Case #17-03-015V Dave Burks at 5003 Peninsula Way requesting a variance to the Cherokee County Zoning Ordinance, Old Article 8 PUD Section 8.5-2, to allow a reduction of the front building setback from 15 feet to 8 feet, a 7 foot encroachment. The property is located in Land Lot 201 of the 22nd District and further described as Cherokee County Tax Map 02N09B, Parcel 002.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning, topography and staff comments. Ms. Lee stated she has received no letters in support or in opposition.

Dave Burks and Scott Burks represented this case. Scott Burks stated a survey was prepared and was provided to the County meeting setbacks. He stated an inspector came out to the property and said the home looked to close to the road. He stated they went through all the correct avenues however it was missed by the surveyor.

Joe and Marilyn Biviario spoke in support. Ms. Biviario stated they live next door and support this application.

There was no one present to speak in opposition. Ms. Semler closed public comment.

Ms. Castello made a motion to approve as submitted. Seconded by Ms. Doss. Motion passed 5-0.

Case #17-03-013A Lydia Moll at 3097 S. Cherokee Lane has filed an appeal to the Zoning Administrator's determination that there is insufficient documentation to prove a legal kennel has ever been operated at 3097 S. Cherokee Lane. The property is located in Land Lot 1249 of the 15th District and further described as Cherokee County Tax Map 15N24, Parcel 171.

Vicki Lee presented the case. Ms. Lee discussed location of property, surrounding zoning and staff comments. She stated she was made aware of the situation in March 2016 where Ms. Moll was informed by the Marshal's office that she needed a business license. Ms. Lee stated when she met with Ms. Moll she informed her that she needed to provide documentation proving this pre-existed as a kennel prior to code. Ms. Lee stated she did receive a few items, however, no documentation was provided she operated a commercial kennel. She stated a cease and desist letter to stop operating a kennel was sent out and now Ms. Moll is appealing the decision for denial of a business license. Ms. Lee stated a business license cannot be obtained because we have no documentation that she has ever operated a kennel legally. She stated the initial zoning ordinance stated a kennel had to be in CG (Commercial).

Parks Huff came forward with questions for Ms. Lee. Mr. Huff requested to see the 1969 Ordinance where a kennel was not allowed in the RE zoning district. He asked does the County currently have a limitation on the number of dogs. Ms. Lee stated yes, no more than eight (8) dogs or cats over eight (8) months of age and this is stated in the definition of a kennel in Article 4 of the Zoning Ordinance. Mr. Huff asked if you could be grandfathered if you exceeded this limit. Ms. Lee stated if you had been legally operating a kennel and if the code changed you could be grandfathered in. She stated Ms. Moll first told her she started operating a kennel in 1968 which would pre-date the Zoning Ordinance however she did not provide any documentation providing proof of a commercial kennel. She also stated the building permit for the accessory structure Ms. Moll stated was for the kennel was obtained in 1973. Mr. Huff asked if Ms. Moll had provided some documentation on raising dogs and cats on her property for an extended period of time. Ms. Lee stated not really. Ms. Lee stated she has not provided any documentation proving she has been operating a commercial kennel legally.

Parks Huff provided information to the Board and staff. Mr. Huff stated Ms. Moll is doing everything she can to comply with the County Ordinances. He stated she purchased this farm land on South Cherokee Lane in 1968 and she bought it specifically to raise animals. He stated she constructed a kennel facility in 1973. She has raised dogs and cats for a long time and had award winning show cats that reside in her kennel and currently has 18 retired cats. Mr. Huff stated she had two (2) types of dogs, maltese and yorkies. He stated they are very small dogs and currently have six (6) yorkies that are older dogs and 10-12 maltese that are being bred. He also noted that she has had her beauty parlor at this location since 1968, she pays her taxes and has been doing the same thing for a very long time. Mr. Huff stated the State department has recently inspected the property and has obtained the appropriate State permits/license. He stated she is requesting to be allowed to keep her cats and to keep the existing dogs and noted she will not be expanding.

Lydia Moll stated she moved here in 1968 and does not bother anyone. She stated the animals are healthy and brought trophies, ribbons and awards to show to the Board. She stated some of her items

she lost due to her basement flooding however she brought what she found. She stated a book was wrote in 1968 regarding her kennel and is requesting to keep what she has.

Mr. Huff provided documentation to the Board of a list of the cats that have to be registered to participate and show.

Ms. Range asked Ms. Moll if she has ever received revenue from her animals or filed taxes. She said she did file taxes at the time she got her permit for the kennel building. Ms. Range asked if this is filed yearly. Ms. Moll stated for 3 years beginning in 1973.

Ms. Range stated currently you have 34 animals and asked Ms. Moll if she is breeding them. Ms. Moll stated not the cats. Ms. Range stated you are only allowed to have eight (8) cats. Ms. Moll stated the State allows her to have forty (40) animals and she pays them \$200.00 a year for having the animals. Ms. Range stated these are County issues not State issues.

Ms. Semler asked Staff what the date was of the letter that was sent out to Ms. Moll for the denial. Ms. Lee stated January 5, 2016.

Ms. Semler asked Ms. Moll do you have any documentation of any licenses that pre-dates January 5, 2016. Mr. Huff stated she had not been registered with the Department of Agriculture prior to that. He stated she went to them prior to this and was informed she did not have enough dogs to breed and at some point their regulations changed.

Discussion ensued regarding number of animals and registration.

Ms. Doss stated in 1968 there were no regulations in Cherokee County and we built as many buildings as we wanted and had as many animals as we wanted. She stated at this time everyone was zoned AG (Agricultural). Ms. Lee stated there was no zoning at this time. Ms. Doss stated she knows of AG zoned property that has changed to R-80 and it wasn't from them requesting it be zoned. Ms. Lee stated the zoning of this property had not changed. Ms. Lee stated she does not know that Ms. Moll was raising animals at a kennel level in 1968. She stated in 1969 it was not a permitted use and it is not a permitted use today. Ms. Lee stated this started because of complaints with neighbors.

Jim Hobbs stated he has known Ms. Moll for 15 years and his daughter does her taxes. Mr. Huff asked if he was familiar with Ms. Moll's business from 1968 to 1975. Mr. Hobbs stated they have been friends for 15 years and he has attended shows with her and pet conventions.

Jamie Gianfala, Deputy Chief Marshal, stated they went out to the property first due to complaints of smells and odors. He stated there were numerous animals on the property and at the time 19 cats that had to be treated for respiratory problems. He stated there were 4 dogs that needed to be treated and noted it was so bad they had to contact Ms. Garcia with the animal shelter to come out and treat the animals. He stated Ms. Moll was up front with them and showed them all of the ribbons and trophies and was willing to work with the Marshal's office. Chief Gianfala stated they helped her get the cats back in good health and explained to her what procedure she needed to follow to obtain a business license. He stated many of the animals did not have rabies shots, which is a state law. He stated Ms. Moll informed them in March she would get down to the minimum of eight (8) animals. He stated in December they received another call and went back out to the property. They found 50 dogs on the property and 17 cats with still no business license. He stated at that point they had to write citations and they asked her again to reduce the number of animals to 8. They explained that this business is not permitted at this location. He stated the Marshal's office went back out two (2) days ago for a re-check and she had a gate up and does not let them onto the property.

Parks Huff asked Chief Gianfala if he has been on the property. Chief Gianfala stated no, his Marshal's went out. Jodi Griffiths, with the Marshal's office came forward. Mr. Huff asked if she was on-site December 30th and if the State came out and inspected the property. She stated, yes. He stated on December 30th the State found no violations. Deputy Griffiths stated that is correct. Mr. Huff asked if

Ms. Moll provided documentation that all her animals were up to date with shots. Deputy Griffiths stated yes. Mr. Huff asked if Ms. Moll had been responsive regarding the issues with the health of the animals. Deputy Griffiths stated she did not see any issues.

Ms. Range asked Deputy Griffiths if the complaint was a neighbor. Deputy Griffiths stated no it was a customer who purchased an animal from Ms. Moll that had gotten sick. Deputy Griffiths stated when they get a complaint, they verify every complaint.

Paul Frickey gave closing statement. He stated it was not legal to run a kennel in 1973 and is not allowed today.

Parks Huff gave closing statement. He stated Ms. Moll started this kennel before the 1969 Ordinance which would be a legal existing non-conforming use. He requests to postpone this case for 30 days to come up with a frame work, to inspect the property and to find a solution.

The Board discussed among themselves.

Ms. Semler made a motion to uphold the Zoning Administrator's decision. Seconded by Ms. Range. Motion passed 3-2. Ms. Doss and Ms. Castello opposed.

Ms. Semler made a motion to approve the February 2, 2017 Minutes. Seconded by Ms. Castello. Motion passed 5-0.

The meeting adjourned at 9:50 p.m.