

**Cherokee County Zoning Board of Appeals
Public Hearing Minutes
Thursday, February 7, 2019
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regular public hearing on Thursday, February 7, 2019 in Cherokee Hall of the Cherokee County Administration Building. In attendance for the Zoning Board of Appeals were Chairman Lisa Tressler, Marla Doss, Melissa Range, Elizabeth Semler and Tim Ragsdale. In attendance for Cherokee County Staff were Michael Chapman, Zoning Manager, Tamala Davis, Planning Technician; and Paul Frickey, County Attorney.

Michael Chapman swore in our new member, Tim Ragsdale.

Case #19-02-004V Bryan and Deborah Miller at 1097 Meadow Brook Drive requesting a variance to Article 23 - Conservation Subdivision requesting a thirty (30) foot encroachment into the required fifty (50) foot minimum exterior buffer to accommodate a swimming pool. The property is located in Land Lot 538 of the 15th District and further described as Cherokee County Tax Map 15N27E, Parcel 043.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. Mr. Chapman stated based on the evidence presented in the application, the department is unable to establish a practical difficulty or unnecessary hardship created by the zoning ordinance. He stated, therefore, the department recommends denial of the application as presented. He stated, if the board chooses to grant the request, the department suggests attaching a condition that the property owner plant trees on the property equal to the number of trees as may be removed as a result of the pool installation in order to provide a year-round visual screen between the pool and adjoining property owners.

Andy Cook with Aqua Fun Pools represented this case. He stated they would replant the buffer to county requirements. Mr. Cook stated the County would be coming out to remove one (1) tree due to road widening. He stated they can turn the pool farther to the left if need be away from the house. Mr. Cook stated there are other pools in this area and stated the adjoining property owner, Mr. Garland is here tonight in support and is willing to speak if need be. He stated that Mr. Garland is willing to help with access and is willing to take some of the dirt from them. He stated the Mr. Garland is requesting they wait on this project until the County moves the existing water line, which should take place in about 3 to 4 weeks.

Deborah Miller stated they do have approval from the HOA and have not had any objection from the adjoining neighbors.

Ms. Range asked if she had something in writing from the HOA. Ms. Miller did not have the email of approval with her. She was informed to email this approval to Planning staff.

Jerry Garland spoke in favor of the application. Mr. Garland stated they have agreed to wait until the County moves his water line and that way it will not affect his water.

There was no one to speak in opposition.

Ms. Tressler closed public comment.

Ms. Semler stated she did not see a hardship and asked the applicant about moving the pool over so they are not requesting the full 30 feet variance.

Mr. Cook stated he could move it down probably another 7-10 feet. He stated they would not want to go past the house line.

Mr. Ragsdale stated on the plat it shows a 50-foot undisturbed easement along the entire back of the neighborhood and asked if this was different than the buffer. Mr. Ragsdale stated usually you cannot build on an easement.

Mr. Chapman stated yes, on the final plat it does indicate a 50-foot undisturbed easement but is not sure what the easement would be for. He stated normally there is a 50-foot perimeter buffer for a conservation development.

Ms. Tressler asked the applicant if they are aware of the 50-foot easement and if this is a separate easement. Mr. Garland stated the homeowners all signed a contract regarding a temporary easement due to the road widening and that the easement should go away.

Paul Frickey stated a construction easement is standard for when they widen a road and is not typically reflected on a final plat. He stated this undisturbed easement shown on the final plat is probably a different easement.

Mr. Ragsdale asked if there are any utilities down the back of the properties. Mr. Garland stated no.

Mr. Garland stated when he sold the original property he requested this easement to protect his water. Mr. Frickey stated in that case it would be a private easement and is between the property owners.

Discussion ensued among the members on the request.

Ms. Semler asked Mr. Chapman if he was aware of any other variances within the same neighborhood for installation of a pool. Mr. Chapman stated he is not aware of any requests within this same neighborhood.

Ms. Semler asked Mr. Cook what variance amount he actually needed. Mr. Cook stated 20 to 25 feet.

Ms. Range asked Mr. Cook if he needed to go into the buffer at all. Mr. Cook stated yes, due to the location of the home they need 20 to 25 feet to do it right.

Ms. Tressler asked Mr. Cook what is the distance of the encroachment. Mr. Cook stated things have changed a little now since Mr. Garland has agreed to access through his property.

Ms. Doss stated they may need to go back and see what the exact distance is needed.

Mr. Ragsdale asked if he could rotate the pool 90 degrees and make more room for the pool to fit.

Mr. Cook stated they are wanting to do this without a retaining wall and the angle he has it shown would eliminate the need for a retaining wall.

Ms. Semler stated she would be willing to accept a 20-foot variance only on the dimensions of the pool in that area not along the entire buffer. She stated she could not fully support what they are asking.

Ms. Semler made a motion to approve a 20' variance only on the portion of the property where the pool or decking would be built with the condition to plant trees on the property equal to the number of trees to be

removed and the 30 feet to be an undisturbed buffer. Seconded by Ms. Range. Motion passed 4-1. Ms. Tressler opposed.

Case #19-02-005V James Vertullo, Jr. (Case #19-02-005V) at 980 Steeplechase Road requesting a variance to Article 7, Table 7.1A: Minimum District Development Standards to encroach twenty-five (25) feet into the required fifty (50) foot minimum building setback on the east and west side to accommodate a residential home. The property is located in Land Lots 271 and 272 of the 2nd District and further described as Cherokee County Tax Map 02N11, Parcel 021.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. He stated the significant area of floodplain and the proposed location of the septic system limit the buildable area of the lot to that portion closest to the cul-de-sac. He stated such conditions are peculiar to the particular piece of property involved and as a result, the Planning and Zoning Department does not object to the requested variance.

James Vertullo, Jr. represented this case. Mr. Vertullo stated he cannot fit home into the buildable area. He stated they would like to build a ranch home on this property and cannot do so without getting into the flood area. He stated they are requesting a variance on each side to fit the home.

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

Keri Preter spoke in opposition. Ms. Preter stated she is adjacent to this property and noted her concerns with subdividing the property and feels there is a reason as to why this lot has not been built on. She stated she has spoken with neighbors from the area that have stated they were told the land was not suitable for construction of a home. She stated she has Patty Bailey with her tonight who is an adjacent neighbor as well. She stated she spoke with the previous property owner, Ms. Kimbrell who was informed she could not build on this property because the land would not pass a perc test. Ms. Preter stated if a home is constructed, she feels it needs to cause as little disturbance as possible. She stated her concerns with erosion and the stability of her driveway being compromised. Ms. Preter presented photos to the Board.

Mr. Vertullo spoke in rebuttal. He stated the septic system is outside of the floodplain. He stated they will meet all requirements for erosion as required by the County.

Ms. Semler asked Ms. Preter if she is Lot 12. Ms. Preter stated, yes.

Ms. Tressler closed public comment.

Mr. Frickey asked staff if the variance was only for Lot 13. Mr. Chapman stated, yes.

Ms. Range stated she does see a hardship with the back and the sides.

Ms. Tressler stated part of the hardship is the floodplain but part of it is this is a very large floor plan.

Ms. Doss stated the size of the home does not fit on this lot.

Mr. Ragsdale asked if they have the topo for the property. Mr. Chapman provided a topo map.

Ms. Semler asked Mr. Vertullo if he has any room to work with a 25-foot variance. Mr. Vertullo stated they have a little flexibility and can rotate the home around some.

Ms. Semler stated she does see the hardship with the location of the septic and floodplain. She stated she doesn't see where he can move back any only rotate the home.

Ms. Range made a motion to approve as submitted.

Mr. Ragsdale stated he does not see why the home cannot be moved back after looking at the topo map.

Ms. Tressler confirmed with staff the location of the floodplain.

Mr. Ragsdale asked how the floodplain is determined based off the elevations. Ms. Doss stated the County has a flood map.

Ms. Range stated after discussion, she would like to still keep her motion to approve as submitted. Motion failed for lack of second.

Ms. Semler made a motion to approve a 15-foot variance on the east and west side. Seconded by Ms. Tressler. Motion passed 3-2. Ms. Range and Mr. Ragsdale opposed.

Case #19-02-006V Donna Dilbeck at 180 Karina Place requesting a variance to Article 5, Section 5.5-7.3 Minimum Access Standards to allow a flag lot with twenty (20) feet of road frontage instead of the required thirty (30) feet. The property is located in Land Lot 269 of the 14th District and further described as Cherokee County Tax Map 14N24, Parcel 182.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. Mr. Chapman stated based on the information provided by the applicant, relief, if granted, would likely not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance. He stated as a result, the Planning and Zoning Department does not object to the requested variance.

Laura Rollins with Dyer and Rusbridge represented this case. Ms. Rollins stated this would allow Ms. Dilbeck to subdivide her parcel into a one (1) acre parcel for her son and a 1.74-acre parcel for herself. Ms. Rollins stated Ms. Dilbeck's home is already located on this parcel and her current driveway is located on the side with 20 feet of road frontage. She stated this is a unique L-shaped parcel and is limited in subdividing to have direct access to both tracts.

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

Ed McPherson spoke in opposition. Mr. McPherson stated he lives in the same subdivision and is here for clarification. He stated he just put his 10 acres up for sale and if they would grant a variance to allow him 20 foot of road frontage then he would change the way he would sell his land. Mr. McPherson stated he is not opposed to this application and feels he could make more money if approved. Mr. McPherson asked the Board what is the chances his property would be approved for same type of variance request.

Mr. Frickey stated every application is decided on its own merits and the Board cannot give answers to hypothetical questions. He stated they cannot provide any insight as a Board to what they would do on an application that is not before them.

Ms. Rollins spoke in rebuttal. She stated the lot is unique with its dual road frontage and the existing driveway is on the 20 foot of frontage.

Ms. Doss asked Ms. Rollins if this property was subdivided from a larger tract. Ms. Rollins stated, yes in 2000.

Ms. Tressler closed public comment.

Ms. Doss stated she does not have a problem with this request.

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

Case #19-02-007V Wintergreen Development, LLC at 5471 Priest Road requesting a variance to Article 7, Section 7.7-14 e. (2) - Arts, Entertainment and Recreation Uses to reduce the setback to zero feet from the required seventy-five (75) foot setback to accommodate the clubhouse and amenity area in an active adult community. The property is located in Land Lots 1175 and 1202 of the 21st District and further described as Cherokee County Tax Map 21N06, Parcel 164.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. Mr. Chapman stated the applicant states that proposed amenity area is designed to be close to homes and not separated by a significant buffer. He stated the site plan provided by the applicant does not indicate the presence of any significant outdoor uses or structures such as a swimming pool or tennis court which could result in the creation of visual or noise nuisances. He stated as a result, the Planning and Zoning Department does not object to the requested variance.

Parks Huff with Sams Larkin & Balli represented this case. Mr. Huff provided a powerpoint to the Board. He stated Windsong is a local company that is one of the best active adult community builders in the market. He stated mailboxes are no longer allowed and now required to have mail kiosks. He stated this is an active adult community with places to walk and gather. He stated this allows the mail kiosks in a safe location with better parking, along with the clubhouse and amenity.

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

Mr. Huff stated this complies with all other setbacks.

Ms. Tressler closed public comment.

Ms. Tressler asked if they approve as submitted, would this be eliminating all setbacks on the property. Mr. Chapman stated it would be in relation to Lot 1 and waiving that 75 foot setback.

Ms. Tressler stated there is a setback shown, it is not showing to be on the property line.

Ms. Semler stated we may want to put a condition of no swimming pools or tennis courts.

After discussion it was determined it is not just in relation to Lot 1 for reduction is setback, it is as shown on site plan.

Ms. Tressler made a motion to approve the variance request based upon the setbacks on the drawing submitted in the packet with the condition there be no swimming pools or tennis courts constructed on this lot. Seconded by Ms. Doss. Motion passed 5-0.

Case #19-02-008V The Providence Group of Georgia, LLC at Idylwilde Way and Hickory Flat Highway requesting a variance to Article 7, Table 7.1A: Minimum District Development Standards to encroach twelve (12) feet into the required twenty-five (25) foot rear building setback to accommodate a storage room/golf cart garage option for Lots 1 and 14-29 in Phase I. The property is located in Land Lots 248, 249, 256 and 257 of the 15th District and further described as Cherokee County Tax Map 15N26K, Parcels 001, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028 and 029.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. Mr.

Chapman stated if the accessory buildings were detached, they could be as close as ten feet from the rear property line. He stated based on these factors, relief, if granted, would likely not cause substantial detriment to the public good. He stated as a result, the Planning and Zoning Department does not object to the requested variance.

Parks Huff with Sams Larkin Huff & Balli represented this case. Mr. Huff presented a powerpoint to the Board. He stated this is a very unique development and noted some of this development is a rear entry alley loaded product on private streets. He stated they are constantly working with what the market demands, which is extra storage and being able to park a golf cart. He stated they are requesting to attach the accessory structure instead of having it detached. Mr. Huff stated they could condition the approval with the accessory being attached and have no detached accessory structures.

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

Ms. Tressler closed public comment.

Mr. Ragsdale stated with them not having any additional buildings, he has no objection.

Ms. Semler made a motion to approve with the condition there be no additional accessory structures in the rear yard. Seconded by Mr. Ragsdale. Motion passed 5-0.

Case #19-02-009V Kathleen Gass Shea at 106 Narrows Loop requesting a variance to Article 5, Section E. CD Community Development District to encroach thirteen (13) feet into the front building line and two (2) feet into the side building line to allow for an expansion to the home. The property is located in Land Lot 237 of the 22nd District and further described as Cherokee County Tax Map 22N14, Parcel 003.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated we have received no letters in support of or in opposition to this application. Mr. Chapman stated the proposed addition does not encroach further than the existing concrete pad onsite and the applicant received approval of the Lake Arrowhead Architectural Review Committee on December 17, 2018. He stated based on these factors, relief, if granted, would likely not cause substantial detriment to the public good. He stated as a result, the Planning and Zoning Department does not object to the requested variance.

Kathleen Shea represented this case. Ms. Shea presented a powerpoint to the Board with photos. She stated they would like to build out to the front, but mostly to the side. She stated there is steep topography in front of the home. She stated they would build the house up level with the road. Ms. Shea stated they did get approval from Lake Arrowhead and presented this paperwork with the application.

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

Ms. Tressler closed public comment.

Ms. Tressler made a motion to approve as submitted. Seconded by Mr. Ragsdale. Motion passed 5-0.

Ms. Range made a motion to appoint Ms. Semler as Chairman. Seconded by Ms. Tressler. Motion passed 5-0.

Ms. Semler made a motion to appoint Ms. Range as Vice Chairman. Seconded by Ms. Tressler. Motion passed 5-0.

Ms. Semler asked for a motion to approve the minutes for the January meeting.

Ms. Tressler made a motion to approve the January 3, 2019 Minutes. Seconded by Ms. Doss. Motion passed 4-0. Ms. Semler abstained since she was not present.

Ms. Semler made a motion to adjourn. Seconded by Ms. Doss. Motion passed 5-0.