

**Revised**  
**Approved 1/7/2020**

**Cherokee County Zoning Board of Appeals**  
**Public Hearing Minutes**  
**Thursday, December 5, 2019**  
**6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regular public hearing on Thursday, December 5, 2019 in Cherokee Hall of the Cherokee County Administration Building. In attendance for the Zoning Board of Appeals were Chairman Elizabeth Semler, Tim Ragsdale, Lisa Tressler, Melissa Range, and Marla Doss. In attendance for Cherokee County staff were Michael Chapman, Zoning Manager, Thomas Trawick, Planner; Tamala Davis, Planning Technician, and Paul Frickey, County Attorney. The meeting was called to order at 6:32 p.m.

**Case #19-12-061V Billy Wayne Tyson** at 6150 Old Alabama Road requesting a variance to Cherokee County Zoning Ordinance, Article 9, Section 9.3 and a five (5) year renewal of Variance Case#16-09-034V. Applicant seeks a variance to be allowed to sell bait and work on boats from accessory structure. The property is located in Land Lot 1030 of the 21st District and further described as Cherokee County Tax Map 21N05, Parcel 213.

Mr. Ragsdale stated he has special circumstances and will need to recuse himself from voting on this application.

Mr. Ragsdale stepped down from the dais.

Ms. Semler noted that since there will be only four (4) members voting on this case, if it is a tie vote on the application, then the outcome will be a denial.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated the intent of the Home Occupation Ordinance is to permit residents of the community a broad choice in the use of their homes as a place of livelihood and the supplementing of personal and family income. He stated the ordinance is also intended to maintain the residential character, look, and feel of residential areas from the adverse impacts of activities associated with home occupations. Therefore, the department recommends denial of the applicant's request to work on boats from the premises. The department recommends approval of the applicant's request to sell bait from the premises and recommends attaching conditions similar to the Board's previous conditional approval: 1) There shall be no signage or advertising; 2) No retail sales; 3) Business shall only be allowed for twenty-four (24) months; and 4) Applicant shall maintain and, if necessary, supplement the vegetative screening along Ms. Brook's property (TIN: 21N05 211). Supplemental plantings and replanting shall consist of evergreen trees, shrubs, or combination thereof, native or adaptable to the region.

Billy Wayne Tyson represented this case. Mr. Tyson stated he had a 36-month variance before and his understanding from previous Administrator that it would not run out until end of 2019, however it actually was the end of September. He stated he feels everything out in this area will be either commercial or industrial and this is his reason for seeking a five (5) year time. Mr. Tyson stated the boat repair is what he survives on currently.

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

Ms. Semler closed public comment.

Ms. Semler stated she thought that when the variance was granted previously, the applicant would be moving or find another location.

Mr. Tyson stated he was going to use it to do the bait sales, however that was not working too good. He stated then they started doing boat repair and feels that is working better. He stated it would just be temporarily until he sells the property. He stated the screening has been done to Ms. Brook's property.

Ms. Tressler stated she agrees with staff's recommendation.

Ms. Range asked is the location currently being operated as bait sales and boat repair. Mr. Tyson stated yes, they started doing boat repair a little over a year ago.

Mr. Frickey stated the Board's authority to grant variances is limited and the Board cannot grant a variance to a use of land that is prohibited by the Ordinance in the district in question. He stated because the proposed boat repair use is a prohibited use in this district, the Board does not have the authority to grant the variance requested beyond what the Home Occupation Ordinance allows.

Ms. Tressler made a motion to approve the bait sales with staff conditions and to deny the request for boat maintenance and repair. Seconded by Ms. Doss. Motion passed 4-0.

Mr. Ragsdale returned to the dais.

**Case #19-12-062V Roger Oliver** at 437 McCurry Trail requesting a variance to Cherokee County Zoning Ordinance, Article 7, Table 7.1A: Minimum District Development Standards to encroach four (4) feet into the minimum fifty (50) foot building line setback on the east side and to encroach eleven (11) feet into the minimum fifty (50) foot building line setback on the southwest side. The property is located in Land Lot 101 of the 14th District and further described as Cherokee County Tax Map 14N09, Parcel 057A.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated the available evidence indicates that there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, and topography. Such conditions are peculiar to the particular piece of property involved, therefore the department does not object to the variance request as submitted and recommends approval.

Roger Oliver represented this case. Mr. Oliver stated there was a mistake made on the grading and this got missed. He stated he has his neighbors here to speak in support of his request.

Jochem Nicklas spoke in support. He stated this is a steep lot with a stream and they have no objection to the variance.

Cheryl Iler spoke in support. Ms. Iler stated it does not look like this is encroaching and has no objection to this application.

Matthew McClendon spoke in support. Mr. McClendon stated they have no objection to this variance and it cannot be seen from their lot.

There was no one present to speak in opposition.

Ms. Semler closed public comment.

Ms. Semler made a motion to approve the application as submitted. Seconded by Ms. Tressler. Motion passed 5-0.

**Case #19-12-063V John Caldwell** at 801 Tellico Road requesting a variance to Cherokee County Zoning Ordinance, Article 5, Section 5.6 B. to allow three (3) accessory structures to exceed the footprint of the principal structure. The property is located in Land Lots 1173, 1174, 1175, 1202 and 1203 of the 3rd District and further described as part of Cherokee County Tax Map 03N18, Parcel 115.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated agricultural and equestrian uses such as commercial stables and riding academies are permitted in R-40 district provided that: (1) The parcel is a minimum of 5 acres and (2) The quantity of livestock on the parcel does not exceed 1 animal per acre. Also, buildings used in the care and breeding of livestock such as cattle, hogs, sheep, horses, i.e. farm animals, must be at least seventy-five (75) feet from the property line. Given that a variance from the terms of the Zoning Ordinance likely will not be contrary to the public interest, the department does not object to the variance request as submitted and recommends approval.

John Caldwell represented this case. Mr. Caldwell stated the three (3) accessory structures will be larger than the main structure.

Jim Spruell spoke in support. Mr. Spruell stated he lives next to the property and supports the variance. He stated he does know that the other two (2) neighbors on Tellico Road supports the application as well.

There was no one present to speak in opposition.

Ms. Semler closed public comment.

Ms. Semler asked if this property has ever been zoned AG (Agricultural). Mr. Caldwell stated, not that he knew of.

Ms. Doss asked the applicant what is the intended use of these structures. Mr. Caldwell stated a private pleasure horse farm. Ms. Doss asked what will the other structures be used for. Mr. Caldwell stated a horse barn, a riding facility and a storage building. Mr. Caldwell stated a storage building that will be 80' x 120' and used for a horse trailer, truck and motor home and the other two (2) structures that are together will be a horse barn and covered riding arena for personal use.

Ms. Doss asked what is the square footage of the home. Mr. Caldwell stated the square footage of the home will be around 3,500 square feet. Ms. Doss asked if they have started construction of the home. Mr. Caldwell stated, no.

Ms. Doss asked the applicant about access from Arbor Hill Road instead of going through Mitchell Farms. Mr. Caldwell stated that would be very difficult to cross the creeks and waterways.

Ms. Semler asked the applicant how big would the storage building be. Mr. Caldwell stated is will be right at 10,000 square feet.

Ms. Doss stated one of the structures will be almost 40,000 square feet.

Mr. Ragsdale asked how many stalls would be in the barn. Mr. Caldwell stated 21 and that he is the project manager not the owner.

Ms. Semler asked the property owner to come forward.

Ms. Semler asked the property owner if she already has horses. Ms. Christina Fisher stated she has horses in Georgia and in North Carolina. She stated they have different size trailers and a motor coach.

Ms. Range asked if this was a business. Ms. Fisher stated, no. Ms. Range asked if she files a tax return. Ms. Fisher stated, no.

Ms. Doss stated the Ordinance states no accessory structure can be built prior to a principal structure and asked staff did the applicant not need a variance for that also. Mr. Chapman stated they would still need to build the house first. Ms. Doss stated she has visited the site and the material is already out ready to go and the site has been cleared.

Ms. Doss asked Mr. Caldwell was he aware of this regulation. Mr. Caldwell stated, no he was not aware of this, but that is not an issue.

Ms. Doss stated this is a very intense use for Agricultural and does not understand why they did not apply for a rezone.

Ms. Semler asked the applicant, why they did not apply for a rezone instead of a variance. Mr. Caldwell stated when he went to meet with the County, he was informed it would be easier to do a variance rather than get it zoned.

Mr. Chapman stated administratively it is easier to apply for a variance than a rezoning.

Ms. Tressler asked Mr. Chapman the distinction between stables in the R-40 zoning and farm outbuildings in the AG district. Mr. Chapman stated the use of the building. He stated a farm outbuilding is more for the equipment and the working of the farm.

Ms. Semler asked would this be the limit of the number of accessory structures they can have in an R-40 district. Mr. Chapman stated, yes.

Ms. Semler stated she doesn't really have a problem with the application, she does feel it would be better to rezone the property.

Ms. Semler asked the owner how often would she be going up and down the road to go to shows with equipment. Ms. Fisher stated maybe twice a month.

Ms. Doss and Ms. Tressler both stated they feel this should be a rezoning.

Ms. Tressler stated each of the accessory structures are much larger than the proposed home and feels this is not the intent of the Ordinance.

Ms. Semler asked if they were against rezoning the property. Ms. Fisher stated if she sold the property in the future, she feels it would be better if the property was zoned R-40 not AG (Agricultural).

Ms. Semler made a motion to approve the application as submitted. Seconded by Ms. Range. Motion denied 2-3 with Ms. Doss, Mr. Ragsdale and Ms. Tressler opposed.

Ms. Tressler made a motion to deny the application. Seconded by Ms. Doss. Motion passed 3-2. Ms. Range and Ms. Semler opposed.

**Case #19-12-064V Gaskins Surveying and Engineering** at 109 Discovery Drive requesting a variance to Cherokee County Zoning Ordinance, Article 23, Section 23.4-3.1 a. to allow a thirteen (13) foot building separation between structures instead of the required fifteen (15) feet. The property is located in Land Lot 976 of the 21st District and further described as Cherokee County Tax Map 21N11E, Parcel 451.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated because the house is less than five (5) feet from the property line, the wall closest to the property line will have to be fire-rated in order to ensure Passive Fire Protection required by Building Code. Such conditions are peculiar to the particular piece of property involved based on its size and shape. Provided the house is completed in accordance with all applicable Building Codes, the department does not object to the request as submitted and recommends approval.

Mr. Chapman stated our office did receive an email this afternoon in opposition to this application. Jack White with Gaskins Surveying represented this case. Mr. White stated there was an error. He stated lot 50 was constructed first and they were not aware of it being that close. He stated it was a clerical error on their part. He stated both homes have been constructed and stated the firewall has been installed on this side of the building.

There was on one present to speak in support or in opposition to this application.

Ms. Semler closed public comment.

Ms. Semler stated the email submitted in opposition from the adjoining neighbor stated as soon as he saw the slab go down that he knew it was too close. Ms. Semler asked the applicant when the slab was put in and it was caught that it was too close, why did they not halt construction. He stated they realized the error when a foundation survey was done.

Ms. Semler asked Mr. Chapman does the County not go out when the slab is poured. Mr. Chapman stated it is his understanding that they do go out and do a slab inspection.

Mr. White stated they did put construction on hold for about two (2) months and the wall was not weather proofed and was open to the elements. He stated they received permission from the building department to go ahead and firewall it and get the house sealed up.

Ms. Range asked why did the framing even go up since it was caught during the foundation. Mr. White stated he cannot answer that question; he does not have those details.

Mr. Ragsdale asked the applicant if the 13 feet shown on the plan from the property line or between the homes. Mr. White stated, between the homes.

Ms. Semler stated she is still not sure why it was not caught before it got completed.

Ms. Tressler asked the applicant was the survey prepared before or after the concrete was poured. Mr. White stated after.

Mr. Chapman stated the building permit was issued July 24, 2019; erosion and sedimentation inspection was July 31, 2019; a setback inspection on September 13, 2019 with a note that says need Engineer letter; temporary pole inspection was done on July 31, 2019; a rough inspection done on September 10, 2019 and comment states they need to upload an approved survey and plumbing affidavit before inspection can be performed; another rough inspection done on September 16, 2019 with comments missing approved

foundation survey and then on October 17, 2019 comment states foundation was installed less than 15 feet from other house, variance needed before any other inspections can be performed; exterior fire wall inspection performed October 17, 2019 with comments stating foundation less than 15 feet.

Ms. Range asked shouldn't this have been caught during the setback inspection in July. Mr. Chapman stated he believes that is correct.

Mr. Ragsdale stated he feels like the adjoining property owner who submitted the email is more concerned about the fence he is wanting to install.

Ms. Range made a motion to approve as submitted. Seconded by Ms. Ragsdale. Motion passed 3-2. Ms. Tressler and Ms. Doss opposed.

**Case #19-12-065V Catahoula Land Company** at 8420 Vaughn Road requesting a variance to Cherokee County Zoning Ordinance, Article 11, Section 11.4 - Monument Style to waive the requirement of masonry frame around the copy area of a freestanding monument sign. The property is located in Land Lot 361 of the 2nd District and further described as Cherokee County Tax Map 02N02, Parcel 006H.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated the intent of the Signs and Outdoor Advertising Ordinance (Article 11) is to regulate signs in such a manner as to protect and preserve the aesthetic qualities of Cherokee County while promoting traffic safety without causing unsafe conditions. In addition, the regulation of signs within Cherokee County is necessary and in the public interest to promote the economic well-being of Cherokee County by creating a favorable physical image, to protect property values within Cherokee County, and to encourage economic development within Cherokee County. The available evidence presented in the application does not demonstrate a practical difficulty or unnecessary hardship as described in the Zoning Board of Appeals Ordinance (Article 15, §15.14 (B)). As a result, the department recommends denial of the application as submitted.

Fred Ware represented this case. Mr. Ware stated the style of sign that they have as well as some of their competitors in the immediate area have a digital sign and the request is for the digital part of that sign. He stated in order for the sign to actually read it has to have some venting on three (3) sides. He stated they inquired with the sign company to see if there was a way around that but there is not. He stated the Zaxby's restaurant that is two (2) doors over is not encased with brick. He stated the sign would have a brick base but without being encased with masonry.

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

Ms. Range asked Mr. Ware if he discussed taking brick up the sides and venting it somehow. Mr. Ware stated yes but it was not a practical way especially in the summer months with the heat and air has to be able to flow through it for it to operate efficiently. He stated if it doesn't have air then they will wear out and will need to be replaced within a couple of years.

Ms. Semler asked staff when the monumental signage was required in this area. Mr. Chapman stated in or around 2009.

Ms. Semler stated she does not remember giving any variances in this area and does not see a hardship.

Mr. Ragsdale stated if the sign was made out of aluminum how does it breathe through the aluminum. Mr. Ware stated the sides and tops are vented. Mr. Ragsdale stated he does not see that on this drawing. Mr. Ware stated he did not understand this himself and asked Lang signs if there was another way around this

and they had informed him there was not. He stated with Dairy Queen this is a standard package and they would have to go through additional expense of basically doing a custom sign. He stated after discussions with the County he didn't really expect it to be an issue because there were other digital signs around.

Ms. Range asked the applicant when did the Zaxby's open. Mr. Ware stated in 2006.

Ms. Semler made a motion to deny this application. Seconded by Mr. Ragsdale. Motion passed 4-1. Ms. Doss opposed.

**Case #19-12-066V East Cherokee Storage, LLC** at 127 Highland Village Drive requesting a variance to Cherokee County Zoning Ordinance, Article 5, Section 5.5-5 (i.) Effect of Recorded Plat to encroach three (3) feet into the twenty (20) foot front building line setback and one (1) foot into the fifteen (15) foot building line setback and undisturbed buffer. The property is located in Land Lots 700 and 741 of the 15th District and further described as Cherokee County Tax Map 15N16H, Parcel 069.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has not received any letters in support of or in opposition to this variance request on file. Mr. Chapman stated a zoning buffer on two sides as well as a detention pond limit the buildable area of the lot. The applicant in this variance application also owns the adjoining GC tract to the south which is also in use as a self-storage facility. The lot presents some extraordinary and exceptional conditions pertaining to its size and shape. Therefore, the department does not object to the variance request as submitted and recommends approval.

George Laycock represented this case. Mr. Laycock stated the encroachment was a mistake by the contractor.

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

Ms. Semler closed public comment.

Ms. Range asked the applicant when was the encroachment discovered. Mr. Laycock stated not until final inspection.

Ms. Semler asked the applicant if he got a chance to read the opposition letter. Mr. Laycock stated, no.

Ms. Semler stated it was more to do with the drainage issues and the pond. Mr. Laycock stated no one has brought this to his attention.

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

Ms. Semler made a motion to approve the November 7, 2019 Meeting Minutes. Seconded by Ms. Doss. Motion passed 5-0.

Ms. Semler made a motion to adopt the 2020 ZBA Calendar. Seconded by Ms. Tressler. Motion passed 5-0.

Ms. Semler made a motion to adjourn. Seconded by Ms. Range. Motion passed 5-0. The meeting adjourned at 7:56 p.m.