

Approved 2-6-2020

Cherokee County Zoning Board of Appeals
Public Hearing Minutes
Thursday, January 2, 2020
6:30 p.m.

The Cherokee County Zoning Board of Appeals held its regular public hearing on Thursday, January 2, 2020 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 #20-01-001V James and Connie Garrison (Case #20-01-001V) at 350 Garrison Trail requesting a variance to Cherokee County Zoning Ordinance, Article 5, Section 5.6 A. - Location on Lot to be allowed to have a detached garage in the front yard area. The property is located in Land Lot 1002 of the 3rd District and further described as Cherokee County Tax Map 03N05, Parcel 197A.

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 buildable area of the lot is constrained by the stream and its associated buffer and impervious setback and the septic system (which cannot be located in the stream buffer). The topography of the lot descends towards the stream near the middle of the lot which further constrains the buildable area of the lot. The available evidence indicates that there are extraordinary and exceptional conditions pertaining to the particular piece of property in question. 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.

James Garrison represented this case. Mr. Garrison stated he would like for the garage to stick out a little bit so they can drive straight into it. He stated he has spoken with all adjoining property owners and they do not have any issues with his request. Mr. Garrison stated the home will probably not even be seen from the highway.

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

Ms. Semler closed public comment

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

Case #20-01-002V Allan Kosloski at 1333 Reece Road requesting a variance to Cherokee County Zoning Ordinance, Article 5, Section 5.6 A. - Location on Lot to be allowed a detached accessory building in the front yard area. The property is located in Land Lot 725 of the 2nd District and further described as Cherokee County Tax Map 02N04, Parcel 251.

Michael Chapman presented this case. Mr. Chapman discussed location of property, surrounding zoning and staff comments. He stated the Planning and Zoning Department has received two (2) letters in support of this request and no letters in opposition. Mr. Chapman stated the stream has a 50-foot undisturbed natural vegetative buffer plus a 25-foot impervious cover setback on both stream banks as measured from the top of the stream bank. The applicant stated in their application that 300 linear feet of septic lines are in place which limits the buildable area of the lot. No septic tanks or septic tank drain fields shall be permitted within the stream buffer or the impervious setback. 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. Each of these factors is peculiar

to the particular piece of property involved, therefore the department does not object to the variance request as submitted and recommends approval.

Allan Kosloski represented this case. Mr. Kosloski stated the easement is shared by two (2) other homeowners and he has submitted letters of support from them. He stated this was not the original location for the building, however due to septic they had to change the location. He stated the garage will be used for two (2) cars and a motor home.

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

Ms. Semler closed public comment.

Ms. Range asked what will be the size of the detached building and the size of the home. Mr. Kosloski stated the garage will be 2,000 square feet and the home is 2,300 square feet.

Ms. Range asked if the building was already under construction. Mr. Kosloski stated, no.

Ms. Semler stated she feels this is very similar to the first case with it being so far from the road.

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

Case #20-01-003V Patrick Malloy Communities at 9641, 9721, 9725 and 9729 Cumming Highway requesting a variance to Cherokee County Zoning Ordinance, Article 23 - Conservation Design Community, Table 23-2 Setback Requirements to reduce the front setback from the required thirty-five (35) feet to twenty (20) feet for model home lots. The property is located in Land Lots 630, 666, 667, 668, 701, 702, 703, 738, 739, 740, 773, 774 and 812 of the 3rd District and further described as Cherokee County Tax Map 03N16, Parcel 070A.

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 contour data indicates that the topography in and around lots 251, 252, 253, and 254 descends toward a stream. In addition, a 20-foot sanitary sewer easement runs between the lots and Belmont Club Drive. Because of conditions pertaining to topography, the department recommends approval of the request to reduce the front building setback for lots 251, 252, 253, and 254 provided the minimum building separation of 15 feet between structures is maintained as required by Article 23. However, based on the available evidence, the department is unable to determine that a practical difficulty or unnecessary hardship exists for lots 255 and 256 and recommends denial of the request for lots 255 and 256.

John Gaskin represented this case. Mr. Gaskin stated they are not necessarily requesting a variance due to a hardship but essentially this community is a replacement community for one they are finishing that is actually in the City of Canton. He stated the community they are finishing this year has around 900 homes and is an age restricted, 55 and over community. He stated they purchased Belmont in the Fall of 2019 and this community, Belmont, is to be a replacement community for the Soleil community. He stated these type communities have a gatehouse that will be manned 24 hours a day, an amenity and a model home park. He provided some exhibits to the Board of the model home park and discussed the process for future home buyers with the model home park. Mr. Gaskin discussed the location of the model home park, the surrounding properties, the expansion of sewer and feels there will be minimal impact to the area.

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

Ms. Semler closed public comment.

Mr. Ragsdale asked what happens to the parking lot in five (5) years. Mr. Gaskin stated it will go away and eventually a home will be built on the property.

Ms. Range asked what are his thoughts on the County's recommendation to deny the request for Lots 255 and 256. Mr. Gaskin stated he feels they were looking for a hardship and these two (2) lots do not have a hardship. He stated if they only get a variance on part of the lots it will look out of place.

Ms. Tressler asked if it is a requirement to fit those model homes on those lots to have the setbacks reduced or would the homes fit farther back on the lots. Mr. Gaskin stated they ran into difficulty with two (2) of the lots and the design center is unusual with the upper floor being the house and the bottom floor being the design center.

Mr. Frickey asked for clarification if the variance request is for all lots including the parking lots. Mr. Gaskin stated, yes. Mr. Frickey stated staff did not make a recommendation with respect to the parking lot.

Mr. Chapman stated at this point there is nothing shown to be adhering to setbacks and stated staff does not object to Lot 250.

Mr. Frickey asked if a setback is needed for this lot if staff does not apply a setback to parking. Mr. Gaskin stated, no.

Ms. Semler stated she does like how they put it away from the other development and does agree with staff's recommendation.

Ms. Tressler stated she is concerned with reducing it to twenty (20) feet.

Ms. Semler asked if the reason for the variance is convenience for it to make it easier to access when they come in to look.

Mr. Gaskin stated that does make a difference but this is more of a design concept that carries forward with these type of developments for the person's ability to see everything up close, landscaping, driveways, etc.

Ms. Range asked what is 15 feet from a marketing standpoint. Mr. Gaskin stated with the thirty-five (35) feet setback you lose that closeness of the facades and are not able to compare the product.

Mr. Ragsdale stated when you finish this development and you put in driveways to each of these 5 homes and park a car in front of the garage then someone will walk down the sidewalk can still walk by the back of that car and not walk out in the street to get around it. Mr. Gaskin stated that does happen but the HOA is very stringent and people will report this.

Ms. Semler stated she sees a hardship with some of the lots but doesn't believe it would be what the applicant would want to approve some and not the other lots. She stated she does not think it would have the look they are going for.

Ms. Doss stated she feels it would look strange to only approve some of the lots. Ms. Doss stated they can give variances for practical reasons.

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

Case #20-01-004V David and Amanda Nelson at 408 White Road requesting a variance to Cherokee County Zoning Ordinance, Article 5, Section 5.6 - Location on Lot to allow a swimming pool to be five (5) feet from rear

property line instead of the required ten (10) feet. The property is located in Land Lots 24 and 49 of the 22nd District and further described as Cherokee County Tax Map 22N06, Parcel 145.

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 and two (2) letters in opposition to this variance request on file. Mr. Chapman stated an administrative variance was granted by Cherokee County at this location on April 12, 2018 to allow a one (1) foot encroachment into the required thirty-five (35) foot front building setback and a certificate of completion was issued by Cherokee County on October 10, 2018 for a renovation and addition to the existing house. He stated due to the topography and location of the septic system this limits the buildable area of the lot. Mr. Chapman noted aerial photography indicates that the nearest house is approximately 340 feet away from the proposed pool. Such conditions are peculiar to the particular piece of property involved. Based on the available evidence, the department recommends approval.

David and Amanda Nelson represented this case. Mr. Nelson stated they recently purchased the property with the intent of putting in a pool for their family. He stated there is really not anywhere else on the property to put the pool due to the septic lines and the stream buffers. He stated there is woods behind them and that is all that can be behind them due to the buffers.

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

Tom Hepburn spoke in opposition. Mr. Hepburn stated his concerns with removal and damage to the trees along with damage to the creek.

Donna Grogan spoke in opposition. Ms. Grogan stated her concerns with removal of the trees, an existing septic system being located on the property along with septic lines and a well. She stated if this pool is built it will damage the tree roots, the streams and the environment. She stated there is currently a property line dispute along the northwest property line and this could affect the location of the pool.

Debbie Hepburn spoke in opposition. Ms. Hepburn stated they pay a certified Arborist to come out to their property every 2-3 years to make sure their trees are healthy and stay healthy. She stated she feels the pool will be disaster to the trees and the streams. Ms. Hepburn stated her concerns with damage to the trees, the tree roots, streams and the topography of the property.

Mr. Nelson spoke in rebuttal. Mr. Nelson stated he had a survey prepared two (2) months ago and is a correct survey of their property. He stated they did remove a tree that they thought was on their property line and was removing only due to it being a risk. He stated they have a letter from a certified Arborist stating this tree was an extreme risk to their health with it hanging over their home. He stated they do not want to cause any trouble they just would like to have a pool for their family and would like the Board to consider their request.

Ms. Semler closed public comment.

Ms. Semler asked for clarification about the property line and if the property line is where the fence is located. Mr. Nelson stated he believes Ms. Grogan is referring to her fence and he believes it is a little bit more on her property. He stated the survey does not represent her fence. He also stated that he does have approval from Environmental Health for the location of the pool.

Ms. Tressler stated she does feel there are some hardships with this property, however five (5) feet is too close for a pool. She stated she does not feel the hardship overcomes the detriment to the adjoining property owners.

Ms. Semler asked staff for clarification on why this may have been a one (1) acre tract in an AG zoning district. Mr. Chapman stated he tried to go back and the only item he found was on the administrative variance it stated this was a legal lot of record.

Ms. Semler stated with this being zoned AG (Agricultural), she feels the same as Ms. Tressler, five (5) feet is too close to the property line.

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

Ms. Semler made a motion to deny the variance request. Seconded by Ms. Tressler. Motion passes 3-2. Mr. Ragsdale and Ms. Range opposed.

Case #02-01-005V Phillip Smith at 451 Operations Drive requesting a variance to Cherokee County Zoning Ordinance, Article 7, Table 7.1A: Minimum District Development Standards to reduce the front setback to fifteen (15) feet from the required fifty (50) feet for a privacy fence. Applicant also seeks a variance to Article 7, Section 7.7-21 a. to allow the outdoor storage yard and privacy fence to be in the front yard area. The property is located in Land Lot 281 of the 14th District and further described as Cherokee County Tax Map 14N27, Parcel 030C.

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 due to the topography, this being a narrow lot and the undisturbed buffer conditions are peculiar to the particular piece of property involved. After considering these conditions and the property's location within an industrial district, the department recommends approval.

Phillip Smith and Brad Howard represented this case. Mr. Smith stated they would like to park dump trucks and trailers on the property. Mr. Howard stated he is the civil engineer that prepared the plans. Mr. Howard stated the site plan shows how much land Mr. Smith is losing with having to follow this requirement. He stated they will be putting in a ten (10) foot landscape strip along with a six (6) foot chain link fence. Mr. Howard noted there is a Georgia Power storage yard across the street and the parking will not be visible from Hwy 5.

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 does see several constraints on the property.

Ms. Tressler asked the applicant to indicate on the map where the residential is located. Mr. Smith stated there are no houses around them. Mr. Howard showed the Board the map that indicates the location of residential zoning along with the 50-foot buffer.

Ms. Tressler asked if you put the storage behind the building, would this put it actually closer to the residential than what they are proposing. Mr. Smith stated there is no room to locate the storage behind the building.

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

Case #20-01-006A Robert Christie/Reno's Motorcycle Towing at 115 Oakwind Parkway. Applicant seeks to appeal the denial of an Application for a Home Occupation Permit (Application for Home Based Occupation Tax Certificate) for a Tow Truck Service pursuant to Article 9, Section 9.7. The property is located in Land Lot 60 of the 22nd District and further described as Cherokee County Tax Map 22N05A, Parcel 008.

Ms. Semler stated this case will go a little different than the previous cases tonight. Ms. Semler asked Mr. Frickey to explain further the process for the appeal.

Paul Frickey stated this is an appeal of the decision by the Zoning Administrator and will be handled a little differently pursuant to the Boards by-laws. He stated in this situation the question is whether or not the Zoning Administrator was clearly erroneous in the decision that is subject to the appeal. He stated in order to conduct this hearing, the Zoning Administrator will present the County's position in respect to the original decision which was a denial of an application for a home occupational tax certificate. He stated the Zoning Administrator will have 15 minutes if needed to present the basis for that decision and then the applicant will have the right to present their case for 15 minutes. Mr. Frickey stated if necessary, the County may have 5 minutes to rebut what is presented by the applicant. He stated both parties will have 5 minutes to present a closing statement and then it will be turned over to the Board to render their decision. He stated there is no public comment period of the hearing.

Michael Chapman stated the applicant presented an application for a home occupation tax certificate for Reno's Motorcycle Towing on November 13, 2019. He stated in the application, the activity was described as, "Toyota pick-up truck with motorcycle lift, pick up and tow broke down motorcycles to repair shop or their residence." He stated the applicant did provide photos of the tow truck and provided those to the Board as well as photos taken by staff. He stated Article 9 outlines the intent and criteria for a home occupation. He stated because the tow truck (which has been modified to haul equipment) and all aspects of the business are conducted from the home, this caused him to classify the home occupation as a tow truck service which is prohibited under Article 9, Section 9.5-11. He stated if the tow truck was not parked on the premises, he may have been able to classify the home occupation as an office facility as described in Section 9.4 or as an unspecified home occupation as specified in 9.6. He stated his determination was because the truck has been modified for this business, is to be parked on the premises and nearly all of the aspects of the business are to be conducted from the home, he classified as a tow truck service, which is prohibited as a home occupation.

Robert Christie presented his case and stated the main part of the business is just the office and parking the truck. He stated even if he found another location to park the truck, he is on 24-hour call, so he would need to have the truck with him at his home.

Ms. Semler asked if County staff would like to add any additional information. Mr. Chapman stated, no.

Ms. Semler asked the applicant would he like to add any additional information. Mr. Christie stated this is just a home office with the truck being parked in the driveway. He stated he does not bring any of the work back home with him. He stated he has to be on 24-hour call and cannot park the truck anywhere else.

Ms. Semler asked staff if the only reason for this decision is because the truck was modified for this business. Mr. Chapman stated, yes. He stated the applicant was up front about it and voluntarily provided photos of what the vehicle would look like.

Ms. Semler asked staff what if it was kept in the garage. Mr. Chapman stated it is really still bringing this modified vehicle back to the house.

Ms. Range asked staff how does that work for like construction trucks or trucks with a ladder carrier on top and is that considered modified. Mr. Chapman stated there are some weight differences for different types of vehicles in the property maintenance ordinance. He stated certain types of vehicles aren't allowed to be parked on a property. He stated AG zoned properties do have some exceptions.

Ms. Range asked Mr. Christie if this truck was an F-150 or F-250. Mr. Christie stated an F-150. Mr. Chapman stated if the truck was not modified, it would be allowed. Mr. Chapman stated a ladder truck would probably exceed the weight limit allowed in a residential district.

Ms. Semler noted she read Mr. Christie's letter stating he had an HOA in his neighborhood that has approved his request if the sides are covered up.

Ms. Semler stated it is really about the use of the truck not so much the look of it.

Mr. Frickey stated as the Board considers this he wants to make sure the direction of the conversations is appropriate and that the burden is on the County to prove that the decision was not clearly erroneous. Mr. Frickey stated it is not to replace the judgement of the Zoning Administrator but to determine whether the Zoning Administrator clearly erred in his interpretation of the application and the Zoning Ordinance.

Ms. Tressler stated she feels this is a tow truck operation.

Ms. Range asked is it because the address is the same as the business and what if he worked for someone else, if the truck could sit there.

Mr. Frickey stated the home occupation tax certificate is related to the business.

Ms. Semler stated she believes County staff was correct on his interpretation of what it says in Article 9.

Ms. Semler made a motion to deny this appeal. Seconded by Ms. Range. Motion passed 5-0.

Case #20-01-007V Milton O. Blankinship at 1820, 1928 and 2164 Ball Ground Highway and 255 Teague Drive requesting a variance to Cherokee County Zoning Ordinance, Article 7, Section 7.4-2 (c.) and (d.) Zero-Lot-Line Residential (RZL) - to eliminate the requirement for a dwelling to be constructed against the lot line on one side of a lot and no windows, doors, or other openings shall be permitted on this side and to allow a single-family dwelling to be centered on a lot. In addition, applicant seeks to reduce the minimum side yard of ten (10) feet on one side to five (5) feet. The properties are located in Land Lots 242, 243, 263, 265 and 275 of the 14th District and further described as Cherokee County Tax Map 14N22 Parcels 052E, 057, 062 and 063 and Tax Map 14N22C Parcels 001, 006 and 014.

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 zero-lot-line development is meant to promote better use of space within a smaller lot by permitting the construction of houses on lots without a side yard requirement on one side of the lot. The evidence presented in the application does not demonstrate that a literal enforcement of the provisions of these regulations will result in 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.

Mike Bray represented this case. Mr. Bray stated how it is indicated to them now is that for a zero lot line development the home has to be on the property line. He stated this project was approved back in 2016 and no one thought the home had to be built on the property line. He stated he feels the hardship is how they are going to maintain the side of the home on a lot line or even repair the roof on that side of the property. Mr. Bray stated they tried to figure out if anyone else has had this problem before with this zoning district. He provided copies of other projects where the home was located in the middle of the home, which is what they are requesting. He stated the other issue is if they have to put the home on the lot line, they cannot have a window. Mr. Bray stated with the five (5') proposed setback they would still maintain a fifteen (15) foot separation.

Jeff Johnson spoke in support. Mr. Johnson stated he is a partner on this development and feels if this variance is not granted it would be a hardship for the homeowner.

Carol Henson spoke in opposition. Ms. Henson stated she lives in this area and has concerns with additional traffic. Ms. Semler stated the development has already been approved, the applicant is just requesting a variance to the Ordinance. Ms. Tressler stated he is requesting the home be moved to the center of the lot instead of on the property line.

Mr. Frickey stated the number of homes has already been approved, the variance tonight is to be allowed to put them in the center of the lot and only affects the side setbacks.

Mr. Bray spoke in rebuttal. Mr. Bray stated he feels the number of signs they had to post for this variance has some owners concerns.

Ms. Semler closed public comment.

Ms. Range asked for clarification from staff on what is being requested. Mr. Chapman stated this is how it reads in the Ordinance, that the houses shall be on the lot line and then it creates more of a private yard for the adjoining lot since their cannot be any openings on this side.

Ms. Semler asked staff if there is a different zoning district that allows five (5) feet on each side. Mr. Chapman stated, you have RD3 zoning that allows up to 3 units.

Ms. Doss stated she thinks they have granted this before and thought there were going to be changes made to the Ordinance. Mr. Chapman stated there have been discussions of that however no changes.

Mr. Ragsdale stated you have the privacy factor at the 10 feet, when you move them over you can put windows anywhere you want and no privacy.

Discussion ensued among the Board.

Ms. Tressler asked staff has he had a chance to look at the developments that the applicant mentioned. Mr. Chapman stated there are some RZL developments that are centered from previous variances granted and previous interpretations.

Ms. Doss made a motion to approve. Seconded by Ms. Tressler. Motion passed 3-2. Ms. Semler and Mr. Ragsdale opposed.

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

Ms. Range made a motion to nominate Ms. Semler as Chairman to the Board. Seconded by Mr. Ragsdale. Motion passed 5-0.

Ms. Semler made a motion to nominate Ms. Tressler as Vice Chairman to the Board. Seconded by Ms. Doss. Motion passed 5-0.

Ms. Doss made a motion to adjourn. Seconded by Ms. Range. Motion passed 5-0. The meeting adjourned at 8:26 p.m.