



PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

Board Adjustment Minutes

June 28, 2012

7:00 PM

The following members of the governing body were present:

Danny Takah-Vice Chair, John Eigenbrode, Chris Chopelas, alternate member Roger Fish

Staff members:

Rox Burhans

Craig Thomas

John Deer

Helen Boich, Secretary

Keith Merritt, BOA Attorney

Call to Order-Vice Chair Danny Takah called the meeting to order.

Roll Call- Patricia Laws and Sidney Sandy were absent.

Approval of Minutes- May 24, 2012-**Approved**

Public Hearings:

All those speaking to the requests were sworn in.

VAR 2012-002 Duke Energy Setback: A variance request for relief from UDO Section 530-030 to encroach on the required side yard setback to construct an accessory structure on site. Location: 3500 Gribble Road; Applicant: Duke Energy.

Planner Craig Thomas presented the request. He stated the applicant would like to construct a new accessory building approximately 1500 sq feet. The zoning for the property is Heavy

Industrial. The section of the ordinance that regulates this issue is 530-030 requiring the side setback to be 20 feet. The proposed structure would encroach the setback approximately 20 feet. The property is 7 acres located on Gribble Rd. The property currently has 3 accessory structures located at the back of the property. The property is fenced and is used as a storage yard. There is existing landscaping and the applicant has proposed to add more.

Mr. Thomas stated staff has analyzed the surrounding land use, the site aspects, the existing buildings and the circulation. The proposed building will be 75' X 20', 15' height and enclosed on three sides.

Mr. Thomas stated the only options were to relocate the building or request a variance. He stated he will let the applicant explain the reason for the location.

Mr. Thomas stated the property is located in the Cherokee Woods Suburban Residential Village of the Comprehensive Plan. The village is mostly built out and there are just a few vacant parcels available for new development. Mr. Thomas referred to:

Goal 1.3.2 – Land Use and stated Staff is of the opinion the accessory structure does not create a land use conflict between neighboring properties as the design of the building utilizes architectural enhancements, and landscaping has been proposed to obstruct its view from the general public. If the Board is of the opinion that the required findings of fact can be made to approve the project, staff recommends the site be subject to the following conditions:

1. Applicant must obtain all applicable permits for the addition.
2. The new structure shall have a minimum 10 foot separation from existing structures
3. Landscaping shall be installed consistent with what has been provided in the conceptual plan.
4. The fence shall be repaired to correct any buckling or leaning.

Pursuant to UDO Chapter 380.020, when considering whether to approve an application for a Variance the Board must find:

1. Whether the property is in the Town's jurisdiction.

Mr. Thomas informed the members the property is in the Town's jurisdiction.

2. Whether the application is complete.

Staff is of the opinion that the application for VAR 2012-002 is complete.

3. Consider whether the application complies with all of the applicable requirements of this ordinance.

The project does not comply however the variance process allows a process to conclude the strict enforcement of the ordinance would result in practical difficulties or unnecessary hardship.

Mr. Thomas stated pursuant to UDO Chapter 380.020, the BOA must make all the required considerations of public health, safety, and welfare. The Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed development will:

1. Not allow applicant to make reasonable use of property;
2. The hardship is suffered solely by the applicant;
3. Hardship relates to applicant's land rather than personal circumstances;
4. Hardship is unique or fairly so, rather than one shared by surrounding properties;
5. The hardship is not the result of the applicant's own actions;
6. Will not grant an extension of an existing nonconformity or initiate a nonconforming land use.

Member Fish asked if the road is a DOT road. Mr. Thomas replied it is a privately owned road and it is up to them to maintain. He stated a tax assessment is an option to bring Choctaw Rd up to standards. It is then turned over to the town of DOT.

Member Fish asked what the building is constructed of. Mr. Thomas replied concrete panels, basically hardi plank.

Mr. Jain, architect for the project, came before the Board. Mr. Jain stated the building will be constructed with up to 4 feet of masonry brick and above that will be cement lap siding. It will be enclosed on three sides. Only equipment vehicles will be stored in the proposed building. The yard storage will remain where it is.

No further discussion

Vice Chair Takah called for a motion to the following:

Whether the application is complete.

Member Eigenbrode motioned the application is complete

Member Fish seconded the motion.

All members agreed

Vice Chair Takah called for a motion on the Findings of Fact that the proposed development will:

1. Not allow applicant to make reasonable use of the property.

Member Chopelas motioned it does not allow the applicant to make any reasonable use of the property because the property is only 7 acres and the property is landlocked.

Member Fish seconded the motion.

All members agreed.

2. The hardship is suffered solely by the applicant.

Member Fish motioned the hardship is specific to them being it is remote from the community.

Member Chopelas seconded the motion.

All members agreed.

3. Hardship relates to applicant's land rather than personal circumstances.

Member Fish motioned the hardship is suffered by the applicant because the property is landlocked, their business is increasing.
Member Chopelas seconded the motion.
All members agreed.

4. Hardship is unique or fairly so, rather than one shared by surrounding properties.

Member Fish motioned again it is a hardship for the applicant because the property is landlocked and there is little or no realistic expectation for expansion.
Member Chopelas seconded the motion.
All members agreed.

5. The hardship is not the result of the applicant's own actions.

Member Eigenbrode motioned the hardship is not a result of the applicant's own actions due to changes in the setback requirements of the UDO.
All members agreed.

6. Will not grant an extension of an existing nonconformity or initiate a nonconforming land use.

Member Fish motioned it is a unique situation.
Member Chopelas seconded the motion.
All members agreed.

With all the Findings being made in the affirmative:
Member Chopelas motioned to approve VAR 2012-002.
Member Fish seconded the motion.
All members voted in favor.

Other Business

Vice Chairman Takah recognized John Eigenbrode and thanked him for his years of service on the Board of Adjustment.

Adjournment

**Town of Indian Trail
Board of Adjustment**

_____ **Chair** _____ **Date**

_____ **Secretary**