

MINUTES OF THE CARTERSVILLE BOARD OF ZONING APPEALS

The Cartersville Board of Zoning Appeals met in a regularly scheduled meeting on January 11, 2024, in the Council Chambers.

ROLL CALL

Board Members Present: Lamar Pendley, Kevin McElwee, JB Hudson, Patrick Murphy, John Clayton, and Malcolm Cooley
Absent: Linda Brunt
Staff Present: Randy Mannino, David Hardegree, Zack Arnold, and Julia Drake

APPROVAL OF MINUTES

1. December 14, 2023

Board Member McElwee made a motion to approve the minutes from December 14, 2023. Board Member Hudson seconded the motion. Motion carried unanimously. Vote: 5-0

VARIANCE CASES

2. V23-31: 709 S. Bartow St (TABLED) Applicant: Susie Gazaway *Variance: To reduce the side yard setback for construction of house addition/outdoor patio.*

Board Member McElwee made a motion to remove V23-31 from the table. Board Member Clayton seconded the motion. Motion carried unanimously. Vote: 5-0

Zack Arnold, Assistant City Planner, overview of the case stating this was a variance application by owner/applicant Susie Gazaway for property located at 709 S. Bartow St., zoned R-20 Residential. Setbacks are Front and Rear- 20ft and Side- 10ft. Said property contains approximately 0.37 acres.

The applicant has constructed an outdoor patio with roof as an addition to the home in the side yard. The addition is approximately 16x16 and is not attached to the home. This addition encroaches approximately 8.5ft into the side yard setback. The zoning ordinance section, Sec. 6.1., for the R-20 zoning district requires a side yard setback of 10ft.

The building department requested that fire rating material be used.

Chairman Pendley opened the public hearing.

Susie Gazaway, 709 S Bartow St, came forward to represent the application and stated that she was willing to adhere to the requirements of the fire rating material.

With no one else to come forward to speak for or against the application, the public hearing was closed.

Board Member Clayton made a motion to approve V23-31. Board Member Hudson seconded the motion. Motion carried unanimously. Vote: 5-0.

3. V24-01: 252 Belmont Dr.

Applicant: Forestar Group, Inc.

Variance: To allow a driveway to encroach a total of 948 square feet into the City's 25ft. impervious streambank buffer.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised.

Continuing, Mr. Arnold gave an overview of the case stating this was a variance Variance application for property located at 252 Belmont Drive and zoned R-10 (Single Family Residential). The property contains approximately 211 acres, which is planned for 330 residential lots known as "Parkside at Carter Grove Plantation".

The applicant wishes to construct an access driveway adjacent to lot 14 to give the adjacent property owner to the east permanent access to their property. The proposed location of this driveway will encroach a total of 948 square feet into the City's 25ft. impervious streambank buffer per the attached site plan. No encroachment is proposed in the twenty-five foot (25ft) State or local vegetative streambank buffer.

Continuing, Mr. Hardegree reviewed the department comments stating all departments took no exception. However, Public Works would conditionally approve V24-01 if orange "Snow" fence that was made of 4-foot-high orange plastic fabric fencing stapled in 3 locations to 2x4 treated wood stakes set 6 feet on center be installed along the 50 undisturbed buffer indicated on plans to outline and protect the 50-foot undisturbed buffer area.

Chairman Pendley opened the public hearing.

David Stuart, 1266 Powder Springs Rd., Marietta, came forward to represent the application and to answer any questions from the board.

David Hardegree, Planning and Development Assistant Director, reviewed a public comment from Sue Wadsworth, sent via email and requested that her email be a part of the minutes. See Exhibit 'A'. Ms. Wadsworth was in opposition to the variance application.

With no one else to come forward to speak for or against the application, the public hearing was closing.

Board Member Hudson made a motion to approve V24-01 to include the orange buffer to be installed per Public Works request. Board Member McElwee seconded the motion. Motion carried unanimously. Vote: 5-0

4. V24-02: 135 Douglas St.

Applicant: Blake Whiting

Variance: To allow a 6 ft. privacy fence to be installed in the front yard of a double frontage lot.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised. Continuing, Mr. Arnold stated this was a variance application by applicant, Blake Whiting, for property located at 135 Douglas St, zoned R-D Residential. Setbacks are Front- 20ft, Rear- 20ft and Side- 8ft. Said property contains approximately 0.22 acres. The lot is a double frontage lot with frontages along Douglas St. and Ruby St.

The applicant has constructed a privacy fence to enclose the property to the rear of the home along a section of Ruby St. The applicant also proposed continuing the privacy fence approximately 40ft along the Ruby St. right-of-way. The fence ordinance, Sec. 4.16, requires privacy fences to be installed behind the front yard setback, less than 4ft tall, and non-opaque in a front yard.

Code Enforcement noticed the construction of the fence and asked the property owner to stop construction until a variance was granted. Much of the fence is already constructed.

Chairman Pendley opened the public hearing.

Blake Whiting, 135 Douglas St., came forward to represent the application.

With no one else to come forward to speak for or against the variance application, the public hearing was closed.

Board Member Clayton made a motion to approve V24-02 with the condition that the fence be set back 10' from the curb line. Board Member Cooley seconded the motion. Motion carried unanimously. Vote: 5-0

5. V24-03: 75 Jackson Farm Rd.

Applicant: Marlene Morgan

Variance: To allow a 6 ft. privacy fence to be installed in the front yard of a double frontage lot.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised. Continuing, Mr. Arnold stated this was a variance application by Marlene Morgan, for property located at 75 Jackson Farm Road, zoned P-D, Planned Development. Setbacks are Front- 20ft, Rear- 20ft and Side- 10ft. Said property contains approximately 0.26 acres. The lot is a double frontage lot with frontages along Jackson Farm Rd., and Doubletree Path.

The applicant has constructed a privacy fence to enclose the property to the rear of the home along a section of the Doubletree Path right-of-way. The fence ordinance, Sec. 4.16, requires privacy fences to be installed behind the front yard setback, less than 4ft tall, and non-opaque in a front yard.

Chairman Pendley opened the public hearing.

Marlene Morgan, 75 Jackson Farm Rd., came forward to represent the variance application. She stated that she used Fox Fence Company and did not know that a variance was needed.

The public hearing was closed.

Board Member McElwee made a motion to approve V24-03. Board Member Murphy seconded the motion. Motion carried unanimously. Vote: 5-0

6. V24-04: 13 Jackson Farm Rd.

Applicant: Alvair Leno Krahembuhl

Variance: To allow a privacy fence in the front yard of a double frontage lot.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised. Continuing, Mr. Arnold stated this was a variance application by Alvair Krahembuhl, for property located at 13 Jackson Farm Road, zoned P-D, Planned Development. Setbacks are Front- 20ft, Rear- 20ft and Side- 10ft. Said property contains approximately 0.24 acres. The lot is a double frontage lot with frontages along Jackson Farm Rd., and Doubletree Path.

The applicant has constructed a privacy fence to enclose the property to the rear of the home along a section of the Doubletree Path right-of-way. The fence ordinance, Sec. 4.16, requires privacy fences to be installed behind the front yard setback, less than 4ft tall, and non-opaque in a front yard.

Chairman Pendley opened the public hearing.

Alvair Krahembuhl, 13 Jackson Farm Rd., came forward to represent the application and stated that he used Sunshine Dreamscapes Restoration and stated he had HOA approval and was not aware that he needed anything further. Continuing, he apologized for the oversight.

The public hearing was closed.

Board Member Hudson made a motion to approve V24-04. Board Member Cooley seconded the motion. Motion carried unanimously. Vote: 5-0

7. V24-05: 13 Rock Foot Way

Applicant: Paul Pena

Variance: To allow a privacy fence in the front yard of a double frontage lot.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised. Continuing, Mr. Arnold stated this was a variance application by Paul Pena, for property located at 13 Rock Foot Way, zoned P-D, Planned Development. Setbacks are Front- 20ft, Rear- 20ft and Side- 10ft. Said property contains approximately 0.25 acres. The lot is a double frontage lot with frontages along Rock Foot Way., and Doubletree Path.

The applicant has constructed a privacy fence to enclose the property to the rear of the home along a section of the Doubletree Path right-of-way. The fence ordinance, Sec. 4.16, requires privacy fences to be installed behind the front yard setback, less than 4ft tall, and non-opaque in a front yard.

The fence is currently encroaching into a city storm line easement along the southern and western property lines. The applicant was notified on 11-28-2023 that the fence would need to be removed from the easement. If approved, the City Code Enforcement Division is prepared to give the applicant 30 days to relocate the sections of the fence encroaching into the City's easement.

In closing, Mr. Arnold stated that Public Works would not support approval of a variance that encroached into the easement.

Chairman Pendley opened the public hearing.

Paul Pena, 13 Rock Foot Way, came forward to represent the application. He stated he used Summit Fence Company and is prepared to move the fence.

Lee Tuck, owner of Summit Fence Company, stated that he apologized and was not aware of the easement. Continuing, he stated he even had a survey done of the property that did not reference this easement. However, he is prepared to move the fence out of the easement at no charge to Mr. Pena.

The public hearing was closed.

Board Member Clayton made a motion to approve V24-05 with the condition that the fence is moved out of the easement within 30 days. Board Member McElwee seconded the motion. Motion carried unanimously. Vote: 5-0

8. V24-06: 124/126 Lee Street

Applicant: David Munisteri

Variance: Reduce lot area on two lots for construction of two homes.

Mr. Arnold stated that all adjacent property owners had been notified and the property had been properly posted and advertised. Continuing, Mr. Arnold stated this was a variance application by David Munisteri for property located at 124 and 126 Lee Street, formerly known as 38 Walker Street and zoned R-7 (Single Family Residential). Said properties contain approximately 0.13 acres each.

This variance request is to reduce the minimum lot size for each lot from 7,000sf to 5,695sf (Lot 1A, 124 Lee St) and 5,718sf (Lot 1B, 126 Lee St). Initially, the applicant was able to receive "Density Bonuses" to reduce the lot area if one of the following occurred per Ord. Sec. 6.5.3 (N):

- 1. Submittal of an affidavit certifying that all units will meet certification standards of the EarthCraft House certification program or will be LEED certified homes.*
- 2. Submittal of an affidavit certifying that all units will be clad with exterior finishes of brick, stone, or hard-coat stucco on sixty-seven (67) percent or more of wall surfaces and one hundred (100) percent architectural roofing shingles.*
- 3. A donation of land to the City of Cartersville for one (1) of the following: community greenway facility including surface trails if directly accessible from the development, or a neighborhood park with public access. In either case, the minimum total area to be donated shall be ten (10) percent of the total acreage of the property. All legally necessary documents, including, but not limited to, a property deed to convey land to the City of Cartersville, shall be completed at time of approval of any final plats.*

Mr. Munisteri chose to certify the homes as Earthcraft Homes in item 1. The cost for doing this was determined to be excessive, so the applicant is seeking relief through the variance process to reduce the lot size to construct the houses. All other zoning regulations can be met.

For reference, there are (4) lots along Lee St from Herring St to Walker St. that are under 5,000sf in area. These lots are on the same side of the street. Area measurements are approximate per QPublic:

41 Walker St: 4,412sf
128 Lee St: 4,519sf
132 Lee St: 4,359sf

134 Lee St: 3,300sf

Lots on the west side of Lee St from Herring St. to Knight St. are a min. 9,000sf in area.
Lots on the west side of Lee St from Herring St. to Knight St. are a min. 9,000sf in area.

In closing, Mr. Arnold stated that this case came before the Board of Zoning Appeals previously in November 2023 and was denied with a vote of 3-1. However, Mr. Munisteri wanted to reapply to see if he could receive a favorable outcome.

Chairman Pendley opened the public hearing.

David Munisteri, 25 Hastings Dr., came forward to represent the application and to express his desire to provide EarthCraft quality homes.

Sherri Jefferson, 117 Lee St., came forward to speak against this application due to traffic and narrow roadway.

Mr. Munisteri returned to the podium and stated that due to the lot sizes, he was unable to face a house and driveway toward Walker St.

Chairman Pendley called for a recess at 6:49pm until 7:00pm to allow Mr. Munisteri and Ms. Jefferson to attempt to come up with a resolution.

Chairman Pendley called the meeting back to order at 7:00pm.

Keith Lovell stated that Mr. Munisteri was requesting both driveways to be on Lee St. However, Ms. Jefferson was requesting one of the driveways to access from Walker St.

Ms. Jefferson returned to the podium and stated if access off of Walker Street was not feasible, she would be pleased as long as the driveways are not directly across from her driveway.

Mr. Munisteri stated he is willing to work with Ms. Jefferson to come up with a solution.

The public hearing was closed.

Board Member McElwee made a motion to approve the variance requested with the condition that one driveway access is off of Walker St. and one driveway access is off of Lee St. Board Member Clayton seconded the motion. Motion carried. Vote: 4-1 with Board Member Murphy in opposition.

With no other business to discuss, Board Member McElwee made a motion to adjourn at 7:11 P.M.

February 8, 2023
Date Approved

/s/ _____
Chairman

Exhibit 'A'

David Hardegree

From: Sue Wadsworth <suewadsworth@outlook.com>
Sent: Thursday, January 11, 2024 1:22 PM
To: David Hardegree
Subject: [EXTERNAL] January 11, Carter Grove / Wilson Variance

Follow Up Flag: Follow up
Flag Status: Flagged

My property directly adjoins the stream and property effected by this Variance. I know Carter Grove was sued by Tim Wilson for access. Obviously, this was the resolution to that suit.

The Notice Of Variance appears to refer to a decrease from 75' to 25' for the whole 211 acres. Which will void the existing Hydrology Study for Parkside, since a large protion of the property is included in the stream EPA setbacks. If you review the Hydrology Study that adjoins my property you will note that Forestar/Parkside has diverted stormwater runoff from hard surfaces to two retainage ponds (so 80 to 100 acres runoff going to one 6 ac.and an 11 ac. pond -BOTH of which then drain into a small creek) which runs the lenght of the east side of my property. This same creek is the one effected by this variance.

A couple of years ago I tried to negotiate a deal to get Emergency access on that side of my property, per the request of the State Forestry Service. This access was to allow me to remove an overgrowth of trees on the east side of the creek. The main reason the Forestry Service was concerned was the that after the Parkside development is completed there will be almost no access in case of a forest fire . I even offered to purchase a lot for an emergency entrance. Forestar, among other things, sited the restriction of the stream set back.

Setbacks are designed to protect our State Waterways. When it comes to Carter Grove, Parkside and Forestar the City of Cartersville seems to bend the rules for their convenience.

Their are several other places for this driveway even though they have already violated the rules and installed it.

Please reject the variance.

Sue Wadsworth

344 Dogwood Ln
Hiram, GA 30141

Cell: 404-304-9040



Bartow County, GA

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GAZAWAY SUSIE H
 709 S BARTOW ST
 0.37 Acres Value \$369,500

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