

# MINUTES OF THE CARTERSVILLE BOARD OF ZONING APPEALS

The Cartersville Board of Zoning Appeals met in a regularly scheduled meeting on November 9, 2023, in the Council Chambers.

## ROLL CALL

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

## APPROVAL OF MINUTES

### 1. October 12, 2023

Board Member Hudson made a motion to approve the minutes from October 12, 2023. Board Member Clayton seconded the motion. Motion carried unanimously. Vote: 4-0

## VARIANCE CASES

### 2. V23-25: Adjacent to 605 E. Main St. Parcel ID: C005-0004-002

**Applicant: R.H. Ledbetter Properties, LLC.**

***Variance: To reduce the minimum landscape requirements on proposed restaurant site.***

David Hardegree, Planning and Development Assistant Director stated that all adjacent property owners had been notified and the property had been properly posted and advertised.

Continuing, Mr. Hardegree gave an overview of the case stating this was a variance application by R.H. Ledbetter Properties, LLC, for property located on E. Main St. (Parcel ID: C005-0004-002), zoned G-C, General Commercial. Said property contains approximately 1.93 +/- acres. The setbacks are 20ft front & rear, and 10ft sides. This site is currently undeveloped. The owner is intending to build a restaurant on the property.

The applicant is requesting the following variances.

1. To eliminate the 5' landscape strip between the proposed restaurants' vehicular use area and the adjacent Starbucks property. (Sec. 17-66)
2. To eliminate the tree planting requirement within 5' landscape boarder between the proposed restaurant and the Kia dealership property. (Sec. 17-66)
3. To eliminate the tree planting requirement within the 10' landscape boarder along the E. Main St. right-of-way. (Sec. 17-66)

Chairman Pendley opened the public hearing.

Joshua Cox, 280 Dodd Lane, Alpharetta, came forward and stated he was the civil engineer for the project and was available to answer any questions from the board.

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

Board Member McElwee made a motion to approve V23-25. Board Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

**3. V23-26: 216 E Cherokee Ave.**

**Applicant: David Holt**

*Variance: To reduce the front yard setback for construction of building addition.*

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

Continuing, Mr. Hardegree gave an overview of the case stating this was a variance application by owner/applicant David Holt for property located at 216 E. Cherokee Ave., zoned multiple-use (M-U). Setbacks are 10ft Front, 20ft Rear, and 10ft Side. Said property contains approximately 0.26 acres.

The applicant proposes to build an addition to the building in the front yard. The addition consists of a 26.5' x 32.5' finished space along Cherokee Ave. The zoning ordinance section, Sec. 9.2., for the M-U zoning district requires a front yard setback of 10ft. The proposed addition will encroach approximately 7ft into the required setback. This site is currently a non-functioning car wash. The owner is intending to build a Dunkin Donuts drive-thru restaurant on the property. In closing, Mr. Arnold stated Karl Lutjens with Southland Engineering was present.

Continuing, Mr. Hardegree reviewed the department comments.

Chairman Pendley opened the public hearing.

Clark Holder, 125 South Ave., came forward to represent the application.

Clifton Blalock, 320 S. Erwin St., Electric Department representative, came forward to explain why the Electric Department was against this application. He stated clearance needs to be 10' for safety reasons and working clearance purposes.

Mark Hathaway, Cartersville Fire Marshall, came forward to state the applicant originally requested one-foot setback for which the Fire Department was in opposition of. Now that the request has been updated to three-feet setback, they are in opposition less. Ultimately, they would prefer a minimum of five-foot for safety if a neighboring building were to catch on fire.

Mr. Blalock returned to the podium and stated the Electric Department would prefer 8-10' of clearance.

Mr. Hardegree stated that the Water Department was asked to attend this meeting to discuss their concerns. However, no one from the water department was in attendance.

Mr. Holder returned to the podium to state the addition to the building would extend and still leave approximately 5-8' from the existing electrical pole.

This statement satisfied both Electric and Fire Department.

Board Member Clayton made a motion to approve V23-25. Board Member Hudson seconded the motion. Motion carried unanimously. Vote: 4-0

Board Member Clayton left the meeting at 6:08 PM.

**4. V23-27: 5 Parmenter St.**

**Applicant: Samantha Thompson**

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

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

Continuing, Mr. Hardegree gave an overview of the case stating this was a variance application by owner/applicant for property located at 5 Parmenter St, zoned R-7 Residential. Setbacks are Front- 20ft, Rear- 20ft and Side- 8ft. Said property contains approximately 0.18 acres. The lot is a double frontage lot with frontages along Parmenter St., and a public alley.

The applicant has constructed a privacy fence to enclose the property to the rear of the home along the public alley. 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. Most of the fence is already constructed.

Chairman Pendley opened the public hearing.

Samantha Thompson, 5 Parmenter St., came forward to represent the application and to state that she did not have an issue with providing a lock or adhering to the double swing gate request.

David Sheets, 5 Ohio St., came forward to speak in favor of this application.

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

Board Member McElwee made a motion to approve V23-27 with the double swing gate as required by the Electric, Gas, and Water Departments. Board Member Hudson seconded the motion. Motion carried unanimously. Vote: 4-0 with Chairman Pendley voting.

**5. V23-28: 26 Quail Run**

**Applicant: Justin Gordon**

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

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

Continuing, Mr. Hardegree gave an overview of the case stating this was a variance application by owner/applicant for property located at 26 Quail Run, zoned R-7 Residential. Setbacks are Front- 20ft, Rear- 20ft and Side- 8ft. Said property contains approximately 0.21 acres. The lot is a double frontage lot with frontages along Guyton St. and Quail Run.

The applicant proposes to construct a privacy fence to enclose the property to the rear of the home along Quail Run. 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 applicant also proposes to build a storage building to the rear of the home, in the front yard along Quail Run. Sec. 4.9, requires accessory structures on double frontage lots be constructed in the side or rear yard only, and comply with the side yard setbacks.

**The variance request is for the following:**

1. To allow a 6ft. privacy fence to be installed in the front yard of a double frontage lot (Sec. 4.16).
2. To allow an accessory structure to be constructed in the front yard of a double frontage lot (Sec. 4.9).

Mr. Hardegree also stated that Public Works requires a 10' setback.

Chairman Pendley opened the public hearing.

Chereta Gordon, 26 Quail Run, came forward to represent the application and stated that there is foot traffic through her property and would like the fence to enhance safety and privacy.

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

Board Member Hudson made a motion to approve V23-28 with the double gate and lock. Board Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0 with Chairman Pendley voting.

**6. V23-29: 124/126 Lee St.**

**Applicant: David Munisteri**

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

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

Continuing, Mr. Hardegree gave an overview of the case stating this was a variance application by owner/applicant 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 the time of approval of any final plats.*

The applicant 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.

This project was reviewed and approved by the HPC on 8/15/23 per COP23-17. This approval was before the were known.

**The variance request is for the following:**

1. To reduce the min. lot size from 7,000sf to 5,695sf for Lot 1A, 124 Lee St; and
2. To reduce the min. lot size from 7,000sf to 5,718sf for Lot 1B, 126 Lee St.

Chairman Pendley opened the public hearing.

David Munisteri, 25 Hastings Dr., came forward to represent the application.

Deloris Garnigan, 36 Walker St., came forward to speak against the application.

De'Asia Jefferson, 117 Lee St., came forward to speak on behalf of Marsha Underwood, who lives at 115 Lee St. In her statement, it was understood that Ms. Underwood is opposed to the application.

Dustin Garnigan, 36 Walker St, came forward to speak on behalf of Sherry Jefferson, who resides at 117 Lee St. In his statement, it was understood that Ms. Sherry Jefferson was opposed to the application.

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

Keith Lovell, City Attorney, made the comment that whether this variance application is approved or denied, houses can still be built on the lot to which all those that spoke against the application, understood.

Mr. Munisteri returned to the podium and stated that he had not spoken with any of the neighbors and were not aware of their concerns. However, he understands their concerns.

Board Member McElwee made a motion to approve V23-29. Board Member Hudson seconded the motion. Motion failed with a vote of 3-1 with Board Member Cooley in opposition.

Mr. Lovell stated that the Board of Zoning Appeals does require four votes to pass an application and without four votes, the application request is denied.

With no other business to discuss, Board Member McElwee made a motion to adjourn at 6:44 P.M.

December 12, 2023  
Date Approved

/s/ \_\_\_\_\_  
Chair