



**City of Marietta**  
**Meeting Minutes**  
**BOARD OF ZONING APPEALS**

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

**James A. Mills, Ward 3, Chairman**  
**Roy L. Shults, Ward 1**  
**J. K. Lowman, Ward 2**  
**G. Marshall Dye, Ward 4**  
**Steven A. Carson, Ward 5**  
**Millard W. Slayton, Ward 6**  
**Neil Bishop, Ward 7**

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**Monday, December 22, 2008**

**6:00 PM**

**City Hall Council Chambers**

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Present: Roy L. Shults, James Mills, Neil Bishop, G. Marshall Dye and Steven A. Carson  
Absent: J. K. Lowman and Millard Slayton

*Staff:*

*Brian Binzer, Development Services Director*  
*Patsy Bryan, Secretary to the Board*  
*Michael Cullen, Urban Planner*  
*Kyethea Kirk, Urban Planner*  
*Daniel White, City Attorney*

**CALL TO ORDER:**

*Chairman Mills called the December 22, 2008 Board of Zoning Appeals Meeting to order at 6:00 p.m.*

**MINUTES:**

**20081481 November 24, 2008 Regular Board of Zoning Appeals Meeting Minutes**

Review and Approval of November 24, 2008 Board of Zoning Appeals Meeting Minutes

*Mr. Dye made a motion to approve the November 24, 2008 Board of Zoning Appeals Minutes, seconded by Mr. Mills. Motion carried 5 - 0 - 0.*

**A motion was made by Board member Dye, seconded by Board member Mills, that this matter be Approved. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved**

**OLD BUSINESS:**

**20081311 V2008-27 Steven R. Smith 1860 Cobb Parkway South**

V2008-27 STEVEN R. SMITH request variances for property located in Land Lot 710, 17th District, Parcel 040, 2nd Section of Cobb County, Marietta, Georgia and being located at 1860 Cobb Parkway South. Variance to reduce the front setback from 70' to 48'6" and variance to reduce the residential buffer from 50' to 25'. Ward 1.

*File #20081311 (V2008-27) was presented by Mr. Cullen for property located in Land Lot 710, 17th District, Parcel 040, and being known as 1860 Cobb Parkway South.*

*The applicant, Steven R. Smith, with CB Richard Ellis and representing Volkswagen America is requesting a variance to reduce the front setback from 70' to 48'6" and a variance to reduce the residential buffer from 50' to 25'. Mr. Smith submitted the necessary letter of consent and approval from the FFA and Dobbins AFB.*

*Upon questioning from Mr. Shults, Mr. Smith agreed to the stipulation that the buffer only be reduced along the southeastern property line adjacent to Caswell Parkway and Mr. Smith agreed.*

*Frank Nixon, owner of 1830 Airport Industrial Park Drive, spoke in opposition and is concerned about water runoff.*

*Mr. Smith returned for rebuttal and stated that they are controlling storm water runoff from their site.*

*Chairman Mills and Mr. White discussed proper channels for Mr. Nixon to go through regarding water runoff.*

*Bill Rowse, with EMC Engineering Services, Inc., explained that current plans provide for control of water runoff and current gravel parking will be paved.*

*Mr. Shults made a motion, seconded by Mr. Dye, to approve both variances with the stipulation that the buffer be reduced only along the southeastern property line adjacent to Caswell Parkway with the rationale being that granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship. Motion carried 5 - 0.*

**A motion was made by Board member Shults, seconded by Board member Dye, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved as Stipulated**

## **VARIANCES:**

### **20081449 V2008-31 Angel Constructions and Assoc., Inc. 165 Fairground Street North**

V2008-31 ELIAS NIKIFOROU request variances for property located in Land Lot 1215, 16th District, Parcel 1090, 2nd Section of Cobb County, Marietta, Georgia and being located at 165 Fairground Street North. Variance to reduce the required rear yard setback from 35 feet to 25 feet; Variance to reduce the required buffer from 40 feet to 15 feet. Ward 5.

*File #20081449 (V2008-31) was presented by Mr. Cullen for property located in Land Lot 1215, 16th District, Parcel 1090, and being known as 165 Fairground Street.*

*The applicant, Elias Nikiforou, represented by his brother Chris Nikiforou, is requesting a variance to reduce the required rear yard setback from 35' to 25' and a variance to reduce the required buffer from 40' to 15'.*

*Mr. Nikiforou explained that he is requesting the variance to install a proposed concrete block retaining wall at the back of the property to stabilize the adjacent slope that is shifting toward the applicant's property.*

*Mr. Carson made a motion, seconded by Mr. Dye, to grant the variances with the following stipulations with the rationale being that granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare:*

- (1) Buffer with a minimum of 20' and including 2 staggered rows of evergreen trees - minimum DHB of 2 inches and planted every 10 feet - must be provided;*
- (2) Buffer must also include a permanent wall or solid fence not less than 6 feet in height along property lines abutting residentially zoned properties;*
- (3) Proposed retaining wall must be designed and stamped by a structural engineer and incorporated into the 20' foot buffer.*

*Motion carried 5 - 0 to approve with stipulations.*

**A motion was made by Board member Carson, seconded by Board member Dye, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved as Stipulated**

**20081450 V2008-32 Pavel Semenov 597 Polk Street**

V2008-32 PAVEL SEMENOV request variance for property located in Land Lot 1222, 16th District, Parcel 0780, 2nd Section of Cobb County, Marietta, Georgia and being located at 597 Polk Street. Variance to increase the maximum allowable height for fences fronting a public/private street from 4 feet to 8 feet. Ward 3.

*File #20081450 (V2008-32) was presented by Mr. Cullen for property located in Land Lot 1222, 16th District, Parcel 0780, and being known as 597 Polk Street.*

*Sergei Semenov, owner of 597 Polk Street, is requesting a variance to increase the maximum allowable height for fences fronting a public/private street from 4' to 8'.*

*As explained by Mr. Semenov, the driveway is directly across from Evelyn Street and all lights and traffic point directly into the driveway.*

*Chairman Mills made a recommendation, seconded by Mr. Carson, to approve the variance with the stipulation that the wall be no closer than 14' to Polk Street and no higher than 6 feet with the rationale being that exceptional or extraordinary circumstances or conditions are applicable to the development of the site that do not apply generally to sites in the same zoning district.*

*The motion carried 5 - 0.*

**A motion was made by Board member Mills, seconded by Board member Carson, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved as Stipulated**

**20081451 V2008-33 Karl Novak 688 Collins Road**

V2008-33 KARK NOVAK request variances for property located in Land Lot 0854, 16th District, Parcel 0030, 2nd Section of Cobb County, Marietta, Georgia and being located at 688 Collins Road. Variance to reduce the west side buffer from 40 feet to 11.5 feet; Variance to reduce the west side setback for the existing shed from 15 feet to 11.5 feet; Variance to reduce the rear setback from 35 feet to 0 feet; Variance to reduce the rear buffer requirement from 40 feet to 10 feet. Ward 6.

*File #20081451 (V2008-33) was presented by Mr. Cullen for property located in Land Lot 0854, 16th District, Parcel 0030, and being known as 688 Collins Road.*

*The applicant, Karl Novak, is requesting a variance to reduce the west side buffer from 40' to 11.5'; variance to reduce the west side setback for the existing shed from 15' to 11.5'; variance to reduce the rear setback from 35' to 0' feet and a variance to reduce the rear buffer requirement from 40' to 10'.*

*Mr. Novak stated that these variances are necessary to build a one story garage in order to store equipment.*

*Daniel White expressed concern that the variances can be granted based on the businesses and use of building as an office; however, there may be some concerns when applying for a business license, as to whether it is proper use in CRC. Daniel White stressed that this variance would only be for the structure on the subject property.*

*Mr. Bishop made a motion, seconded by Mr. Shults, to approve the variances as per the recommendations explained by Mr. White and to include stipulations noted in staff analysis and as follows:*

*#1 Prior to approval of the land disturbance permit, a survey must be provided indicating the location of the pipe, stream, and channel in order to properly*

*locate the 22 ft. x 60 ft. garage on the 688 Collins Road property.*

*#2 A single row of evergreen trees must be planted along the side and rear fence line. The trees shall be a minimum of 1.5 inches in diameter and shall be planted every 8 feet.*

*The rationale for approval is to make trees fit within the hardwoods and that granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.*

*The motion carried 5 - 0.*

**A motion was made by Board member Bishop, seconded by Board member Shults, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved as Stipulated**

**20081480 V2008-34 Floyd W. Northcutt, Sr. 1312, 1322 and 1308 Powder Springs Street**

V2008-34 FLOYD NORTHCUTT request variances for property located in Land Lot 02590, 19th District, Parcels 0110, 0580 and 0570, 2nd Section of Cobb County, Marietta, Georgia and being located at 1312, 1322 and 1308 Powder Springs Street. Variance to allow disturbance of natural vegetation within the required buffer area; Variance to allow land disturbance within the required buffer area; Variance to waive installation period for trees located within the required buffer area designated as Phase II of the site. Ward 2.

*File #20081480 (V2008-34) was presented by Mr. Cullen for property located in Land Lot 03590, 19th District, Parcel 0110, 0580 and 0570 and being known as 1312, 1322 and 1308 Powder Springs Street.*

*The applicant, Floyd W. Northcutt, Sr., is requesting a variance to allow disturbance of natural vegetation within the required buffer area; variance to allow land disturbance within the required buffer area and a variance to waive installation period for trees located within the required buffer area designated as Phase II of the site.*

*Mr. Northcutt stated that he is the developer of the site and will purchase .95 acres of the 3-acre site.*

*The water management pond will be in the .95 acres, which will also serve the remaining 2 acres. Mr. Northcutt is proposing to build a NAPA auto parts store of which he already has a lease. As explained by Mr. Northcutt, the 2 acre site will be graded to level the property and to make water flow properly. In order to accomplish this, it will be necessary to encroach into the buffer and get close to neighbors' rear property line.*

*Mr. Northcutt stated that he has tried unsuccessfully to contact the neighbors regarding the rear entrance to property off of Wesley Park Drive. Mr. Northcutt is willing to abandon or deed rear entrance of property to neighbors.*

*Establishing sewer in the area would be a benefit to the area, according to Mr. Northcutt.*

*Mr. Dye confirmed that Mr. Northcutt has seen staff recommendation of denial on variance #3 since the buffer should be provided for the entire site. The existing buffer is insufficient and should be replanted to establish a buffer that will provide a better visual screen.*

*Mr. Northcutt presented photographs' indicating what he thinks is good for the neighborhood and Chris Cash with Gaskins Surveying described the shape of the property.*

*The following residents spoke in opposition:*

*Mrs. Betty Magnus, represented by Ken Waldrep, lives at 981 Wesley Park Drive. Mrs. Magnus would like to have a 6' fence, 10' off property line and 4 rows of Leland Cyprus along rear of property for screening. Mrs. Magnus is concerned about water runoff if Phase II is graded and left vacant.*

*Gail Walters has personally maintained part of the 40' buffer and is opposed to the project.*

*Mr. Northcutt explained that he would deed the rear entrance property so it would never revert back to the current owner.*

*Phase II cannot be left as a dirt field because state law requires property to be fully stabilized after a 14 day period.*

*Mr. Dye made a motion, seconded by Mr. Bishop, to recommend denial for variance #3 since the buffer should be provided for the entire site. Given that the existing buffer is insufficient and should be replanted to establish a buffer that will provide a better visual screen, Mr. Dye recommended approval of variance #1 and #2 with the following stipulations:*

- 1. The applicant will work with the City Arborist to prepare a revised tree protection and replacement plan to protect existing trees within the buffer and establish the limits of disturbance.*
- 2. Stormwater retention/detention facilities shall not be placed within the buffer area.*
- 3. A permanent wall or solid fence must be installed along the property line abutting the residential properties as part of the buffer.*

4. *All trees - four (4) staggered rows of evergreen trees with a minimum DBH of 2 inches - must be installed prior to issuance of a Certificate of Occupancy.*
5. *Shoebox lighting (environmental lighting) shall be used on the entire site in order to protect neighboring properties.*
6. *The dumpster locations shall be screened from view and the dumpsters must have rubber lids to reduce the noise level.*

*The rationale for granting this application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare. Motion carried 5 - 0.*

*Although this item is reflected by Legistar as Passed and Approved w/stipulations, it is only items 1 and 2 that were approved. Item #3 was denied.*

**A motion was made by Board member Dye, seconded by Board member Bishop, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 5 - 0 - 0**

**Approved as Stipulated**

**ADJOURNMENT:**

*The December 22, 2008 Board of Zoning Appeals Meeting adjourned at 7:06 p.m.*

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*JAMES A. MILLS, CHAIRMAN*

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*PATSY BRYAN, SECRETARY*