



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes BOARD OF ZONING APPEALS

J. K. Lowman, Ward 2, Chairman
James A. Mills, Ward 3, Vice Chairman
Brad N. Leskoven, Ward 1
David Hunter, Ward 4
Ronald Clark, Ward 5
Bobby Van Buren, Ward 6
Justice Barber, Ward 7

Monday, July 28, 2014

6:00 PM

City Hall Council Chambers

Present: Justice Barber, David Hunter, James Mills, Brad N. Leskoven,
Bobby Van Buren

Absent: J. K. Lowman, and Ronald Clark

Staff:

Brian Binzer, Development Services Director
Rusty Roth, Development Services Manager
Patsy Bryan, Secretary to the Board
Shelby Little, Urban Planner
Matthew Williams, Urban Planner
Doug Haynie, City Attorney

CALL TO ORDER:

Vice Chairman James Mills called the July 28, 2014 Board of Zoning Appeals Meeting to order at 6:00 p.m.

MINUTES:

20140795

June 23, 2014 Board of Zoning Appeals Meeting Minutes

Review and Approval of the June 23, 2014 Board of Zoning Appeals Meeting Minutes

Mr. Hunter made a motion to approve the June 23, 2014 Board of Zoning Appeals Meeting Minutes as amended, seconded by Bobby Vanburen. Motion carried 5 – 0 – 0.

A motion was made by Board member Hunter, seconded by Board member Van Buren, that this Minutes be Approved and Finalized. The motion CARRIED by the following vote: 5 – 0 – 0

Absent: 2

Vote For: 5

VARIANCES:**20140765 V2014-23 Hamid Nikfarjam 447 Atlanta Street**

V2014-23 [VARIANCE] HAMID NIKFARJAM request a variance for property located in Land Lot 02880, District 17, Parcel 0380, 2nd Section, Marietta, Cobb County, Georgia and being known as 447 Atlanta Street. Variance to increase occupancy from 24 to 36 beds. Ward 1A.

File #20140765 (V2014-23) was presented by Mr. Roth for property located in Land Lot 02880, District 17, Parcel 0380 and being known as 447 Atlanta Street.

A public hearing was held.

The applicant, Hamid Nikfarjam, is requesting a variance to increase occupancy from 24 to 36 beds. Mr. Nikfarjam was not present due to the death of his mother.

Dennis Stamey and Dr. Lovell represented Mr. Nikfarjam in his request to add 12 additional beds (6 rooms) with a price point of \$2,500 per month. They also stated that Mr. Nikfarjam has acquired additional parking.

No one spoke in opposition.

The public hearing was closed.

Mr. Leskoven made a motion to approve the variance request, seconded by Mr. Vanburen. The motion carried 5 – 0 – 0.

A motion was made by Board member Leskoven, seconded by Board member Van Buren, that this Variance be Approved and Finalized. The motion CARRIED by the following vote: 5 – 0 – 0

Absent: 2

Vote For: 5

20140768 V2014-26 Elizabeth A. Nusser 336 Whitlock Avenue

V2014-26 [VARIANCE] ELIZABETH A. NUSSER request a variance for property located in Land Lot 12210, District 16, Parcel 0120, 2nd Section, Marietta, Cobb County, Georgia and being known as 336 Whitlock Avenue. Variance to waive the minimum standards for parking and driveway surfaces so as to allow the use of slate chips for driveway. Ward 3A.

File #20140768 (V2014-26) was presented by Mr. Roth for property located in Land Lot 12210, District 16, Parcel 0120 and being known as 336 Whitlock Avenue.

A public hearing was held.

The applicant, Elizabeth A. Nusser, is requesting a variance to waive the minimum standards for parking and driveway surfaces so as to allow the use of slate chips for the driveway.

Mrs. Nusser gave an overview of why she wanted to use chip slate and that she did not need a permit from the Georgia Department of Transportation (GDOT).

Although staff recommended a 20' concrete apron, Mrs. Nusser agreed with Vice Chairman Mills on a 16' buffer and that the apron be installed within 3 months of sidewalks being installed along Whitlock Avenue.

There was no one in opposition

The public hearing was closed.

*Vice Chairman Mills made a motion to approve the variance with a 16' concrete apron to be installed after sidewalks are done. Mrs. Barber asked for an amendment to the motion stating that the apron be installed no more than 3 months after sidewalks installed, seconded by Mr. Hunter.
The motion carried 5 – 0 – 0.*

A motion was made by Board member Mills, seconded by Board member Hunter, that this Variance be Approved as Stipulated. The motion CARRIED by the following vote: 5 – 0 – 0

Absent: 2

Vote For: 5

20140762

V2014-27 Judith Stegall 1067 Longwood Drive

V2014-27 [VARIANCE] JUDITH STEGALL request a variance for property located in Land Lot 00780, District 17, Parcel 0430, 2nd Section, Marietta, Cobb County, Georgia and being known as 1067 Longwood Drive. Variance to allow a fence be constructed within 2' of a public right of way and a variance to increase the allowable height for a fence to 8'. Ward 2B.

File #20140762 (V2014-27) was presented by Mr. Roth for property located in Land Lot 00780, District 17, Parcel 0430 and being known as 1067 Longwood Drive.

A public hearing was held.

The applicant, Judith Stegall, is requesting a variance to allow a fence to be constructed within 2' of a public right of way and a variance to increase the allowable height for a fence to 8'.

The need for an 8' fence is due to the removal of a fence during construction of a multi-use trail along Powder Springs Street. The trail/sidewalk that has been constructed is at a higher elevation than the applicant's property.

No one spoke in opposition.

The public hearing was closed.

Mr. Hunter made motion to grant the variances, seconded by Mr. Vanburen. The motion carried 5 – 0 – 0.

A motion was made by Board member Hunter, seconded by Board member Van Buren, that this Variance be Approved and Finalized. The motion CARRIED by the following vote: 5 – 0 – 0

Absent: 2

Vote For: 5

20140763 V2014-28 Marco A. Rivas 1245 Bellemeade Drive

V2014-28 [VARIANCE] MARCO A. RIVAS request a variance for property located in Land Lot 00660, District 17, Parcel 1210, 2nd Section, Marietta, Cobb County, Georgia and being known as 1245 Bellemeade Drive. Variance to operate automobile sales and repair shop on a parcel that is only .557 acres. Ward 2B.

File #20140763 (V2014-28) was presented by Mr. Roth for property located in Land Lot 00660, District 17, Parcel 1210 and being known as 1245 Bellemeade Drive.

A public hearing was held.

The applicant, Marco A. Rivas, is requesting a variance to operate an automobile sales and repair shop on a parcel that is only .557 acres.

Mr. Rivas has operated this location before as an automobile sales and as a repair shop but it became vacant after being used as a pawn shop and lost the grandfathered status.

There was no one in opposition.

The public hearing was closed.

Mr. Hunter made a motion, seconded by Mr. Vanburen, to approve based on the fact that it was an automobile sales and repair shop previously. 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 4 – 1 – 0 with Mrs. Barber opposed.

A motion was made by Board member Hunter, seconded by Board member Van Buren, that this Variance be Approved and Finalized. The motion CARRIED by the following vote: 4 – 1 – 0

Absent: 2

Vote For: 4

Vote Against: 1

20140797 V2014-29 Paragon Investors 258 North Forest Avenue

V2014-29 [VARIANCE] PARAGON INVESTORS request a variance for property located in Land Lot 11600, District 16, Parcel 0910, 2nd Section, Marietta, Cobb County, Georgia and being known as 258 North Forest Avenue. Variance to reduce the required side yard setback for an unenclosed carport from 5' to 3'. Ward 3A.

File #20140797 (V2014-29) was presented by Mr. Roth for property located in Land Lot 11600, District 16, Parcel 0910 and being known as 258 North Forest Avenue.

The owner, Paragon Investors, is requesting a variance to reduce the required side yard setback for an unenclosed carport from 5' to 3'.

Mr. Grif Chalfant, builder of said property, stated that he is a city councilman, not the owner of the property, did not buy the property, not the architect, but was hired after the property was purchased to remodel the home which was previously in a very run down condition.

The building permit application form that was approved by Planning & Zoning Staff for renovations to 258 North Forest Avenue did not mention the addition of a carport. No site plan was reviewed since it appeared that all of the renovations were to be on the interior of the house, except for one area in the back that was being replaced on the existing footprint. When staff was notified that a carport was being built, it was apparent that the required 5 ft. side yard building setback for an open, unenclosed carport had not been met.

Mr. Roth stated for the record that a new survey indicates the setback is not actually 3' but at its nearest point is 2.1'

Diane Carter, Vice President of the Forest Hills Neighborhood Association and a resident of Vance Circle, stated that Mr. Chalfant is asking for a variance that not only encroaches the property line but for a carport that is already built.

Ms. Carter submitted her statement with an attachment from Jean Turner marked Exhibit "A" (Page 1 of 3, Page 2 of 3, Page 3 of 3) and signatures from residents of Forest Hills Subdivision marked Exhibit "B" (Page 1 of 3, Page 2 of 3, Page 3 of 3) to be submitted into the record.

Ms. Carter continued to discuss the building permit application and discrepancies that followed allowing Mr. Chalfant to continue building.

Ms. Carter asked that the Board deny the variance and that the carport be removed.

The neighbor's concern is that the carport is over the buffer and other issues not addressed by the Board.

Vice Chairman Mills addressed Mr. Haynie who addressed Mr. Roth regarding Section 706.03. As Mr. Roth stated, the non-conforming clause as read by Ms. Carter is correct. If someone wants to expand a non-conforming use, there option would be to come to this Board and ask for a variance.

Mr. Haynie stated that what Ms. Carter cited is correct but to cure that is through a variance from this Board.

Mrs. Barber confirmed the main concerns of the homeowners association being the roof line and that the carport does not fit visually with the neighborhood. Additional comments continued as to whether or not the builder knew he needed a variance.

Mr. Chalfant returned for rebuttal and stated that he relies on the city Planning & Zoning staff to point out things and that he did make a mistake on the application but it was an honest mistake.

The public hearing was closed.

Vice Chairman Mills addressed Mr. Roth by asking how this permit made it through the process without knowing this would be a problem. As explained by Mr. Roth, the permitting process requires several different department to sign off on the permit. When it came to Planning & Zoning, the note at the bottom that indicated it was interior work and the notes in the description did not mention the carport; therefore, the full building plans were not reviewed. The permit then went to the Building Permit Office where they reviewed the structural aspects, it met all of their structural aspects, signed off on it, and issued the permit. The building inspectors looked at them. The application did not mention the addition to house.

Mr. Haynie pointed out a procedural point that should there be a motion to approve, it should reflect the variance be from 5 ft. to 2.1 ft.

Vice Chairman Mills made a motion, seconded by Mrs. Barber, to approve the variance based on the fact that the city made a mistake and it is not in the judgment of Vice Chairman Mills to make the contractor pay for something that is the city's mistake. The criteria 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 – 0.

A motion was made by Board member Mills, seconded by Board member Barber, that this Variance be Approved and Finalized. The motion CARRIED by the following vote: 5 – 0 – 0

Absent: 2

Vote For: 5

20140800

V2014-30 Paragon Investors 245 Hunt Street

V2014-30 [VARIANCE] PARAGON INVESTORS request a variance for property located in Land Lot 11600, District 16, Parcel 0770, 2nd Section, Marietta, Cobb County, Georgia and being known as 245 Hunt Street. Variance to reduce the side yard setback from 10' to 8' on either side and a variance to increase the allowable building height from 35' to 41'5." Ward 3A.

File #20140800 (V2014-30) was presented by Mr. Roth for property located in Land Lot 11600, District 16, Parcel 0770 and being known as 245 Hunt Street.

A public hearing was held.

The owner, Paragon Investors, is requesting a variance to reduce the side yard setback from 10' to 8' on either side and a variance to increase the allowable building height from 35' to 41'5."

Mr. Chalfant reiterated his comments from the previous variance request, identified as V2014-29, and reflected in Paragraph 3.

During the permitting process, Mr. Chalfant stated that he was told that cantilevers can project into the setback which is totally opposite of code. The height on the plan figured from the first floor to the top of the ridge is about 33'. To the top of the chimney is 35'. The code calls for an average distance in the basement of half of the basement level.

Sara Kruger, a resident of 257 Hunt Street and a member of the Forest Hills Neighborhood Association, spoke in opposition.

A statement read by Mrs. Kruger identified issues that violate the city code in Photos "A" through "E" and included as a part of the record. Photo "A" identifies both houses being two story. The house on the right was built to comply with the height ordinance within the last 5 years. The house on the left was built 6.5 feet over the city height ordinance. The house at 245 Hunt Street is nearly 20% over the restricted height towering over Forest Hills. Photo "B" shows what 20% of the restricted height limit looks like when viewed from a neighboring street. Photo "C", taken from inside the neighbor's backyard, shows the massiveness of the house not just to the next door neighbor but the entire neighborhood. Photo "D" was also taken from inside the adjoining neighbor's backyard and shows the privacy fence installed 2 weeks ago to help mitigate the "visual nuisance" of the encroachment to the neighboring 257 Hunt Street property. The fence does not block much of the house and violates another city ordinance, as identified in Photo "D" and "E".

Mrs. Kruger asked the Board to vote to deny all variances.

Marion Savic described the past history and the purchase of this property where, at the current time, Councilman Johnny Sinclair was responsible for finding the property through his private business and was also in partnership with Paragon Investments who purchased the property, and also Mr. Chalfant who is a city councilman. Mrs. Savic stated to the Board of the incestuousness of this transaction in Forest Hills Neighborhood is duly noted by all of the neighbors.

Vice Chairman Mills questioned Mr. Roth as to how this got by the city. Mr. Roth stated that it was approved in error.

Vice Chairman Mills made a motion, seconded by Mrs. Barber, to approve the variances based on the city's error and that the fence needs to face the opposition direction and a 4' maximum height from the front of the house.

The motion carried by a vote of 4 – 1 – 0 with Mr. Leskoven opposed.

A motion was made by Board member Mills, seconded by Board member Barber, that this Variance be Approved and Finalized. The motion CARRIED by the following vote: 4 – 2 – 0

Absent: 2

Vote For: 4

Vote Against: 1

ADJOURNMENT:

Vice Chairman Mills made a motion to adjourn the July 28, 2014 Board of Zoning Appeals, seconded by Mr. Leskoven, at 7:36 p.m.

JAMES A. MILLS, VICE CHAIRMAN

PATSY BRYAN, SECRETARY