1. Board Of Zoning Appeals Agenda

   Documents:

   _AUG 26, 2019 BZA AGENDA.PDF

2. V2019-24 Roswell St 863

   Documents:

   V2019-24 ROSWELL ST 863.PDF
NOTE: Applicant and those in favor have a total of 20 minutes to make their presentation to the Board. Applicant may reserve any portion of this time for rebuttal. All those in opposition have a total of 20 minutes to present comments to the Board.

CALL TO ORDER:

MINUTES:

20190726    July 29, 2019 Board of Zoning Appeals Meeting Minutes

Review and Approval of the July 29, 2019 Board of Zoning Appeals Meeting Minutes.

VARIANCES:

20190669    V2019-24 [VARIANCE] ELIZABETH JEAN BANISTER

V2019-24 [VARIANCE] ELIZABETH JEAN BANISTER is requesting a variance for property zoned CRC (Community Retail Commercial), located in Land Lot 1231, District 16, Parcel 0220, 2nd Section, Marietta, Cobb County, Georgia, and being known as 863 Roswell Street. Variance to reduce the minimum lot size to allow the operation of one automobile dealer. Ward 5A.

ADJOURNMENT:
STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2019-24  Legistar #: 20190669

Board of Zoning Appeals Hearing: Monday, August 26th, 2019 – 6:00 pm

Property Owner: Elizabeth Jean Banister
879 Roswell Street, LLC
200 N Highland Ave NE
Unit #204
Atlanta, GA 30307

Applicant: Same as owner

Address: 863 Roswell Street

Land Lot: 1213  District: 16  Parcel: 0220

Council Ward: 5A  Existing Zoning: CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:
1. Variance to reduce the minimum lot size to allow the operation of one automobile dealer.
   [§708.16 (B.6.a)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:
1. Exceptional or extraordinary circumstances or conditions are not applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application is not necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. 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.
Recommended Action:
Denial. The owner and applicant, Elizabeth Jean Banister of 879 Roswell Street LLC, is requesting a variance to allow the property to be utilized as an auto dealership at 863 Roswell Street. The subject property and adjacent properties are zoned CRC (Community Retail Commercial) within the Commercial Corridor Overlay District – Tier A. To the north lies Washington Avenue (collector road) and to the south lies Roswell Street (arterial road). The subject property has four (4) suites associated with the property (Suite A, B, C, & H). The owner is requesting to allow an auto dealership on the 0.59 acre property.

The subject property was historically used as an auto dealership. However, in 1998 the City’s regulations were amended to limit auto dealerships to properties with a minimum of one (1) acre dedicated to the use. Any dealerships that existed at the time with less than one (1) acre became legally nonconforming uses and were subject to the City’s Nonconforming Use regulations, which state that a nonconforming use may continue provided that the use shall not be “reestablished after discontinuance for a continuous period of 6 months or 18 months during any 3-year period.”
Since that time, an auto dealership license had been maintained at this property until the last license expired at the end of 2014. There was an attempt to extend the nonconforming use in 2015 but the applicant did not complete the proper business license process. A zoning certification letter written in 2016 confirmed that the property was no longer legally nonconforming or “grandfathered” to be used as an auto dealership.

The numerous automobile sales lots operating on parcels that do not meet the minimum acreage requirement have been an ongoing concern for the city. One of the major problems caused by the lack of area is that when inventory being delivered, the delivery trucks stop in the street to unload the vehicles and this causes issues such as roadblocks and congestion. The maneuvering of inventory, lack of customer parking, and poor access to the property is also a concern with smaller lots. These issues are even greater since the subject property is bordered by two major thoroughfares – Roswell Street and Washington Avenue.

In addition, the City has an on-going streetscape project to improve Roswell Street with the intention of beautifying the corridor and increasing safety measures for pedestrians, cyclists and automobiles. The new medians along Roswell Street limit access to the property by requiring driveways to be “right-in, right-out”. These improvements will make delivery of vehicles even more difficult than previous conditions.

While the loss of the nonconforming status for auto sales may have been unintentional by the license holder and/or owner, it is the stated purpose of Section 706, Nonconforming Uses to permit non-conformities to continue until they are removed, but not to encourage their survival. As a result, staff recommends denial.

If, however, the Board decides to approve this request, staff recommends the following stipulations:

1. The subject property shall be limited to only one (1) active used car dealership.
2. The use shall not be reestablished after discontinuance for a continuous period of 6 months or 18 months during any 3-year period.
APPLICATION FOR VARIANCE OR APPEAL
(Owner/Applicant/or Representative must be present at all public hearings)
(NOTE: CORRESPONDENCE IS HANDLED VIA EMAIL UNLESS OTHERWISE REQUESTED)

For Office Use Only:
Application #: 2019-24 Legistar #: 20190669 BZA Hearing Dt: 8-26-19
City Council Hearing Dt (if applicable): __________________________ FZ #: 19-351

This is a variance/appeal application for:

☐ Board of Zoning Appeals  ☐ City Council

Owner's Name: Elizabeth Jean Banister

EMAIL Address: banister.ej@gmail.com

Mailing Address:
200 N Highland Ave NE
Unit 2A
Atlanta, GA 30307
Phone Number: 404-561-6606

Address of subject property: 863 Roswell Street Date of Acquisition: 1996/2009

Land Lot (s): 12130 District: 16 Parcel: 00230 Acreage: 0.39 Zoned: CRWard: 5A FLU: CAC

List the variance(s) or appeal requested (please attach any additional information):

Grandfather clause to the property @ 863 Roswell Street

Required Information
1. Application fee ($250)
2. Completed notarized application. The original application must be submitted with ALL original signature(s) – Copies of the application or signature(s) will NOT be accepted.
3. Copy of the deed that reflects the current owner(s) of the property.
4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
5. Site plan – drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
   Copies Required: One (1) - (8 1/2" x 11")- or - (11" x 17") drawn to scale.
   Optional Additional Plat size: (24"x 36"). If providing (24"x 36") then 25 copies REQUIRED.
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER
CAMPAIGN CONTRIBUTIONS
The Owner and Applicant herein certify that he/she [ ] has [X] has not made campaign contributions or gifts aggregating $250.00 or more to the Mayor, any member of Council or any member of the Board of Zoning Appeals within the two (2) years preceding the filing of this application.

Elizabeth Jean Banister
Signature of Owner
Print Name

Elizabeth Jean Banister
Signature of Applicant
Print Name

FINANCIAL INTEREST
The Applicant herein certifies that he/she [ ] has [ ] has not a financial interest in the property which is ten percent (10%) or more.

Elizabeth Jean Banister
Signature of Applicant
Print Name

APPLICANT CERTIFICATION
• The Applicant certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Applicant’s knowledge and belief. Should any portion not be true, then the application may be rejected.

Elizabeth Jean Banister
Signature of Applicant
July 15, 2019
Date

Elizabeth Jean Banister
Print Name

OWNERT CERTIFICATION
• The Owner certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Owners’s knowledge and belief. Should any portion not be true, then the application may be rejected.

Elizabeth Jean Banister
Signature of Owner
863 Roswell Street
Marietta, GA 30060
Address
July 5, 2019
Date

Signed, sealed and delivered in the presence of:

Note: Owner, Applicant or Representative must be present at meeting in order for case to be heard.
July 15, 2019

Application for Variance or Appeal: Item No. 4 on Application

My reasons for this variance request are briefly shared in three points below. Other important, relevant and *storied details* will follow at the Board of Zoning Appeals hearing in August.

1. **Better designated use of the land** – The areas at 863, 865 and 879 Roswell Street are all automotive related. The address, 863 Roswell Street, operated as a used car dealership since 1996. In 2016, the tenant at that address did not submit his State Dealer License to the Business Division of Marietta after telling me he had done so. With no knowledge of this not being true; this was the undoing of the Grandfather Clause of which my late husband, Barry Banister had worked a decade to keep active. And, when I took over the businesses after he passed in 2006, I too worked for the next ten years to keep the license active under the GF clause; after the City of Marietta passed the lot size ordinance in early 90’s.

2. **My city and county’s Property Tax bills for 863 Roswell Street for 2019 are in total $8,074.88.** That monetary amount has been the range for last 3-5 years. This number would be more in line for me if the property’s grandfather clause/variance is restored and income once again generated from that property. This would in turn be good for the city, with more sales tax and business (inventory/assets) tax collected once again from that location. With the *Roswell Street Improvement Project* nearing completion at this very site, it is ready for a thriving business to be located there again.
Particularly being in full view, [front and center if you will] this could be productive for all involved.

3. **Strict adherence of this code by not allowing this property to recapture the Grandfather Clause, and thereby negating my appeal is sustaining the zero property appeal and poor land use of the property;** in regards to some use area to just park cars, or to smoke, and [drink at night] on front sidewalk at those offices as witnessed by me and evidenced by empty beer bottles/caps and cigarette butts tossed. As previously stated, this property even in the 60’s 70’s and 80’s was automotive related from Kelly Chrysler Plymouth to Day’s Chevrolet to Armada to many Mechanical and Detail Shops. This area does not appeal to other brick and mortar businesses (for ex. Ins broker, CPA, Alterations, etc.) because they do not need the larger parking lot area, nor do they care to be around all the dealings on an auto related property. I can attest because I’ve had zero interest in that regard for the last two and a half years.

In summary, I am not asking for a change in zoning or variance. No property lines altered or buildings renovated. I am just requesting and asking that I (863 Roswell Street) can be grandfathered back into the good graces of the city.....never to be fooled again!!!!

Sincerest Regards,

Elizabeth Jean Banister
The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following variance requests. The Board of Zoning Appeals will consider the following requests on Monday, August 26, 2019 at 6:00 P.M., City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2019-24 [VARIANCE] ELIZABETH JEAN BANISTER is requesting a variance for property zoned CRC (Community Retail Commercial), located in Land Lot 1231, District 16, Parcel 0220, 2nd Section, Marietta, Cobb County, Georgia, and being known as 863 Roswell Street. Variance to reduce the minimum lot size to allow the operation of one automobile dealer. Ward 5A.

A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto. You may also review the property file at www.mariettaga.gov and enter the case # in the search box.

For additional information please call the Planning and Zoning Office (770) 794-5669.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Ms. Nicole Curl, ADA Coordinator, at 770-794-5558 no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060
City of Marietta Planning & Zoning