

### CARTERSVILLE BOARD OF ZONING APPEALS

Council Chambers, Third Floor of City Hall Thursday, October 13, 2022 at 5:30 PM

### AGENDA

### **BOARD MEMBERS:**

Lamar Pendley – Chairman Linda Brunt John Clayton J.B. Hudson Kevin McElwee Malcolm Cooley Patrick Murphy Julia Drake PLANNING DIRECTOR: Randy Mannino CITY PLANNER: David Hardegree ASSISTANT CITY ATTORNEY: Keith Lovell

**CITY CLERK:** 

### CALL TO ORDER

### **ROLL CALL**

### **APPROVAL OF MINUTES**

<u>1.</u> September 8, 2022

### VARIANCE CASES

2. V22-19. 32 Cassville Rd. Applicant: Hudson and Company, Inc.

### STAFF OR COMMITTEE COMMENTS

### **OTHER**

The next meeting of the Board of Zoning Appeals will be November 10th. 5:30pm.

### **OTHER**

Persons with disabilities needing assistance to participate in any of these proceedings should contact the human resources office, ADA coordinator, 48 hours in advance of the meeting at 770-387-5616.

P.O Box 1390 – 10 N. Public Square – Cartersville, Georgia 30120 Telephone: 770-387-5616 – Fax 770-386-5841 – <u>www.cityofcartersville.org</u>



### BOARD OF ZONING APPEALS ITEM SUMMARY

MEETING DATE:	October 13, 2022
SUBCATEGORY:	Approval of Minutes
DEPARTMENT NAME:	Planning and Development
AGENDA ITEM TITLE:	September 8, 2022
DEPARTMENT SUMMARY RECOMMENDATION:	The Board of Zoning Appeals Minutes have been uploaded for your review and approval
LEGAL:	N/A

### MINUTES OF

### THE CARTERSVILLE BOARD OF ZONING APPEALS

The Cartersville Board of Zoning Appeals met in a regularly scheduled meeting on September 8, 2022, in the Council Chambers.

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

### CALL TO ORDER

Chairman Pendley called the meeting to order at 5:52 PM

### **ROLL CALL**

### **APPROVAL OF MINUTES**

### 1. Approval of Minutes: August 11, 2022

Chairman Lamar Pendley called for a motion on the August 11, 2022 BZA meeting minutes. Board Member Murphy made a motion to approve the minutes. Motion was seconded by Board Member Cooley and carried unanimously. Vote: 4-0

### VARIANCE CASES

# 2. V22-16. 30 Johnson St. Applicant: Oscar Arreaza Variance: To reduce the minimum lot size per dwelling unit from 7,000 square feet to 4,356 square feet.

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 explaining the variance application by owner/applicant, Oscar Arreaza, for property located at 30 Johnson St, zoned R-D, Single Family Duplex Dwelling. The lot is a corner lot with road frontages along Johnson Street and Gilmer Street. Setbacks are Front- 20ft. and Side- 8ft. Said property contains approximately 0.20 acres.

The applicant proposes to build a duplex on the vacant lot. The zoning ordinance for R-D (Single Family Duplex Dwelling District), Sec. 6.6, requires a minimum of 7,000 square feet per dwelling unit. 14,000 square feet is needed. The lot is 8,712sf.

The applicant is requesting to reduce the minimum required lot size to 4,356 square feet per dwelling unit. This is a 38% reduction in the lot size requirement.

Also noteworthy in the site plan provided, the proposed decks encroach into the side yard setback. The decks will have to be reduced in size, removed, replaced with a patio or receive a variance for the encroachment. A second variance is required for this process.

Chairman Pendley opened the public hearing.

Oscar Arreaza, 1044 Legacy Walk Dr., Woodstock, came forward to represent the application and answer any questions from the board.

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 deny V22-16. Board Member Murphy seconded the motion. Motion carried unanimously. Vote: 4-0

# **3.** V22-17. 2 Bob White Trl Applicant: Noral Hadbawi *Variance: To allow an 8ft. privacy fence to be installed in the front yard of a corner 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 explaining the setbacks are Front- 20ft and Side- 10ft. Said property contains approximately 1.07 acres. The lot is a corner lot with road frontages along Old Mill Road and Bob White Trail.

The applicant proposes to build a privacy fence to enclose the side of the property that will include the front yard along the Bobwhite Trail right-of-way. The fence ordinance for corner lots, Sec. 4.16, requires privacy fences to be installed behind the front yard setback, and to the rear of the house. A fence segment is proposed to the side of the house, but in the front yard along Bobwhite Trail.

This property has (1) open code enforcement case, as well as (4) prior cases for property maintenance issues.

In closing, Mr. Hardegree reviewed the department comments and stated that several public comments had also been made with several of those neighbors being in attendance.

Chairman Pendley opened the public hearing.

Husein Hadbawi, applicant, came forward and stated that this request was simply to provide privacy and to block what neighbors are calling Code Enforcement about.

Board Member Murphy inquired about the open code enforcement violations to which Mr. Hadbawi replied that there are still two (2) vehicles in which he still needed to get tagged and insured.

Chairman Pendley inquired as to the type of fence the applicant was looking to install and stated he would like to see a rendering or proposal of a specific type of fence.

James Shoemaker, 4 Bob White Trl., came forward to speak against the application. Greg Culverhouse, 3 Bob White Trl., came forward to speak against 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 deny V22-17. Board Member Murphy seconded the motion. Motion carried unanimously. Vote: 4-0

### 4. V22-18. 15 Galway Dr.

### Applicant: Ladd Floyd

*Variance*: To allow a streambank stabilization project to include constructing a viewing platform within the 50ft undisturbed stream bank buffer.

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 explaining ehe applicant wishes to conduct a streambank stabilization project in conjunction with construction of a viewing platform along the river bank. The proposed viewing platform is approximately 256 square feet, with the entirety of the structure encroaching into the 50ft undisturbed buffer. Twenty-five feet of the fifty-foot stream buffer closest to the river is the State buffer. There is also a proposed 5ft concrete walkway that is to be constructed within the 25ft State undisturbed buffer. The total area of disturbance within the State buffer is .05 acres. This project has already been approved by the Army Corps of Engineers as well the Georgia Environmental Protection Agency.

The mitigation plan required by the City ordinance is satisfied by the plans for bank stabilization.

The development regulation for which relief is sought is 7.5-205 (a)(2).

Chairman Pendley opened the public hearing.

Lauren Noll, 114 Old Mill Rd., came forward as a representative of Southland Engineering to represent the applicant.

Board Member Clayton inquired if this platform would be for public use.

Ladd Floyd, 148 W. Main St., came forward to address Board Member Clayton's inquiry to which he replied that the platform would only be used for personal access and no public access would be allowed.

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

Board Member Murphy made a motion to approve V22-18. Board Member Clayton seconded the motion. Motion carried unanimously. Vote: 4-0

With no other business to discuss, Board Member Clayton made a motion to adjourn at 6:36 P.M.

September 8, 2022 Date Approved

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



### BOARD OF ZONING APPEALS ITEM SUMMARY

MEETING DATE:	October 13th, 2022	
SUBCATEGORY:	Variance	
DEPARTMENT NAME:	Planning and Development	
AGENDA ITEM TITLE:	V22-19. 32 Cassville Rd. Applicant: Hudson and Company, Inc.	
DEPARTMENT SUMMARY RECOMMENDATION:		
LEGAL:	N/A	



P.O. Box 1390 • 10 North Public Square • Cartersville, Georgia 30120 Telephone: 770-387-5600 • Fax: 770-387-5605 • www.cityofcartersville.org

## MEMO

To:BZAFrom:Randy Mannino/David Hardegree/Zack ArnoldCC:David ArcherDate:September 28, 2022Re:File # V22-19

# Summary: To allow a portion of a privacy fence to encroach into the front yard of a corner lot.

### Section 1: Project Summary

Variance application by applicant Hudson and Co. Inc. for property located at 32 Cassville Rd, zoned R-20 Residential. Setbacks are Front- 20ft and Side- 10ft. Said property contains approximately 4.25 acres. The lot is a corner lot with road frontages along Charles St. and Cassville Rd.

The applicant proposes to build a privacy fence along the western property line to provide additional privacy to the rear of the home. The privacy fence will encroach approx. 100ft. into the Charles St. front yard, but will be no closer than 58ft. to the Charles St. ROW. See attached plan.

The HPC reviewed the encroachment at the September 20<sup>th</sup> meeting and approved the request with a condition that the privacy fence have pickets on both sides of the fence. See attached approval letter for case, COP22-17.

### The variance request is for the following and per the submitted site plan sketch:

1. To allow a portion of a 6ft. privacy fence to be installed in the front yard of a corner lot.

### Section 2. Department Comments

### Electric Department: Takes No Exception

#### Fibercom: No comments received

**Fire Department:** The Cartersville Fire Department takes no exception to this V22-19 as long we can gain firefighting access to the property. We asked that a gate key switch override be added at each gate. The gate key switch can be order from Knoxbox.com

Gas Department: Takes No Exception

Public Works Department: Takes No Exception.

#### Water Department:

WATER SERVICE COMMENTS:

This property is located in the City of Cartersville Water Department's water service area. The requested variance will have no affect on water service to this site , provided the fence is not located over the existing Cartersville Water Department water main. Also the fence has to be located so that the existing water meter does not end up inside the fenced area.

SEWER SERVICE COMMENTS:

This property is located in the City of Cartersville Water Department's sewer service area. The requested variance will have no affect on sewer service to this site.

#### Section 3. Public Comments Received by Staff

9/28: Anonymous caller. General Inquiry.

Several email communications with adjacent owners opposing the decorative perimeter fence, but not the privacy fence.

### Section 4. Variance Justification:

*Please review the following findings, as stated in the Zoning Ordinance, that are to be utilized in determining justification for approval or denial of variance request(s).* 

#### Sec. 4.16. - Fences and walls.

A. In all zoning districts:

- 1. No fence or wall shall constitute an obstruction to the vision for or create a hazard to vehicular traffic.
- 2. No fence or wall, including retaining walls, shall be constructed of exposed concrete block, tires, junk or other discarded materials.
- 3. The fencing standards as stated in this section shall not apply to fencing for detention ponds.

- 4. The wall standards as stated in this section shall not apply to retaining walls approved by the plan review process for planned developments.
- B. In all residential and commercial zoning districts:
- 1. Any fence or wall which extends into the front yard shall be ornamental or decorative, and shall not be opaque. Any such fence or wall may be constructed of brick, stone, wood, wrought iron, split rail, or other decorative material as approved by the zoning administrator.
  - 2. Fences and walls shall not exceed four (4) feet in height in a front yard and shall not exceed eight (8) feet in height in a side or rear yard.
    - 3. Chain-link fencing material may be used in the front yard with prior approval of a variance by the board of zoning appeals. No variance is required if chain link fencing material is used in a side or rear yard.
- → 4. For a corner lot or double frontage lot, a screening or opaque fence may be installed to the rear of the principal structure at a maximum of eight (8) feet in height provided that the fence shall be located behind the required front yard setback and shall not be located adjacent to or abutting a collector or arterial street.
  - 5. Razor wire (ribbon) shall be prohibited.
  - C. In all industrial zoning districts:

Fences or walls shall not exceed (8) feet in height in front, side and rear yards

### Sec. 21.3. - Powers and duties of the board of zoning appeals.

The board of zoning appeals shall have the following powers and duties:

- 21.3.1. *Appeals.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of this chapter. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or agency of the City of Cartersville affected by any decision of the zoning administrator. Such appeal shall be taken within thirty (30) days of said decision by filing with the zoning administrator a written notice of appeal specifying the grounds thereof. Decisions on appeals shall be issued in writing within ten (10) business days of the hearing on the appeal.
- 21.3.2. *Continuance of a nonconforming use.* The board of zoning appeals may allow a nonconforming use to be reestablished after discontinuance for twelve (12) consecutive months. The procedure for the request shall be the same as if it was a variance. If it is deemed by the board of zoning appeals that one (1) or more of the following apply, the board may grant said request.
  - A. The design, construction, and character of the building is not suitable for uses permitted in the district in which the nonconforming use is situated; and

- B. Undue hardships to the property owner would result in not allowing the building to be reopened for a nonconforming use; and
- C. Adjacent property would not be unduly damaged by such use of the building; and
- D. The use is to be identical or similar to the prior nonconforming use of the building.
- 21.3.3. *Variances.* The board of appeals has the power to hear requests for variances from the provisions of this chapter. Variance may be granted only if the board finds all of the following to exist:
  - A. That one (1) of the following is true, through no action or fault of the property owner or predecessor:
    - 1. The property is exceptionally narrow, shallow or unusually shaped;
    - 2. The property contains exceptional topographic conditions;
    - 3. The property contains other extraordinary or exceptional conditions; or
    - 4. There are existing other extraordinary or exceptional circumstances; and
  - B. That the strict application of the requirements of this chapter would result in practical difficulties to, or undue hardship upon, the owner of this property; and
  - C. That the requested variance relief may be granted without substantially impairing the intent and purpose of this chapter.

Variance decisions shall be issued in writing within ten (10) business days of the hearing.

- 21.3.4. *Conditions.* In granting a variance, the board of appeals may attach such conditions regarding the location, character and other features of the proposed building, structure, property, development standards or use as it may deem advisable so that the purpose of this chapter will be served, public safety and welfare secured and substantial justice done.
- 21.3.5. Limitations on variances; improper variance requests. Variances cannot be given to totally remove a requirement or to exempt a property or applicant entirely from a requirement. If a variance is being sought that is, in the judgment of the zoning administrator, a request that would constitute a text amendment, then the application shall not be accepted. The applicant shall instead be directed to file for a text amendment. Furthermore, the board of appeals shall not be authorized to grant a density variance or a use variance to permit a use in a district in which the use is prohibited. A variance application shall not be accepted if the variance seeks something that cannot be varied. A variance application shall not be accepted if the variance is contradictory to the ordinance.
- 21.3.6. *Self-inflicted hardship.* The board shall not grant variances when the hardship was created by the property owner or his predecessor, and shall not grant hardship variances based on shape or topography for lots of record not existing prior to November 7, 1996. Configuring a subdivision to create lots that are difficult to build is an example of a hardship created by the property owner or predecessor, that does not justify a variance.

Sections 21.3.7, Place of worship, and 21.3.8, Group homes, omitted. Not applicable.



Cartersville Historic Preservation Commission 10 N. Public Square P.O. Box 1390 Cartersville, Georgia 30120

September 23, 2022

Hudson & Company, Inc. PO Box 367 Cartersville, GA 30120

RE: COP22-17. 32 Cassville Rd. Hearing Results Letter.

Mr. Hudson,

This letter confirms the outcome of your Certificate of Preservation (COP) application to the Cartersville Historic Preservation Commission (HPC) for property located at 32 Cassville Rd. On September 20th, 2022 the HPC <u>approved with a condition</u> the following task item per the HPC Application:

1. Allow a 6ft privacy fence, approximately 100ft. in length, to extend into the front yard near Charles St with a condition that the privacy fence have pickets on both sides.

# If you modify or make additions to the approved scope of work, you must reapply to the Historic Preservation Commission and receive approval before continuing the project.

A variance is also required for the privacy fence. The variance, V22-19, will be reviewed by the Board of Zoning Appeals on Oct. 13<sup>th</sup> at 5:30pm.

On September 20th, 2022 the HPC denied the following per the HPC Application:

1. Remove the existing condition on the property originating from COP20-32 that prohibits the addition of a fence around the perimeter of the property.

You may appeal this decision to City Council within 30 days of the hearing date. Contact me for instructions.

If you have any questions, please contact me directly or by calling the City of Cartersville Planning Department at 770-387-5600.

Sincerely.

David Hardegree, AICP City Planner O: 770-387-5614 dhardegree@cityofcartersville.org

#### Item 2.

# 



 Parcel ID
 C002-0016-007

 Sec/Twp/Rng
 n/a

 Property Address
 32 CASSVLLE RD

 District
 Cartersville

 Brief Tax Description
 LL452-3 LD4

Alternate ID32251ClassResidentialAcreage4.25

(Note: Not to be used on legal documents)

Owner Address EVANS CALVIN H & TAMMY PO BOX 1505 CARTERSVILLE, GA 30120

Date created: 9/27/2022 Last Data Uploaded: 9/26/2022 10:55:45 PM



### City of Cartersville Application for Variance Board of Zoning Appeals

Hearing Date: <u>/6-13-2022</u> 5:30pm	Application Number: 1/22-/9
	Date Received: 8-29-2022
Applicant Hudson & Company, Inc Office P	hone 770-383-9200
	/ Other Phone 770-480-1598
City Cartersville State GA Zip 30120	Email john@hudsoncompanyga.com
JOHN B HUDSON Representative's printed name (if other than applicant)	Phone (Rep) 770-480-1598
Orst and the spinited name (in other than applicant)	Email (Rep) john@hudsoncompanyga.com
Representative Signature	ature
Signed, sealed and delivered in presence of: EXPIRES	My commission expires:
Notary Public	
and the second se	
* Titleholder CALVIN & TAMMY EVANS (titleholder's printed name)	382-5064
Address PO BOX 1505	n@augsburginvestments.com
Signature Signed, sealed, delivered in presence of: DPIRES	My commission expires:
Augusta Strein Notary Public	
TOW CONTRACT	
Present Zoning District R-20	
Acreage 4.25 Land Lot(s) 452-3 District(s)	Section(s)
Location of Property: 32 CASSVILLE ROAD	
(street address, nearest intersections, etc.) Zoning Section(s) for which a variance is being requested:	
Summary Description of Variance Request: TO ALLOW 6' PRIV	ACY FENCE TO ENCROACH INTO
FRONT YARD	d an location location
(Additional detail can be provide	on Justification Letter)

\* Attach additional notarized signatures as needed on separate application pages.

City of Cartersville \* Planning and Development Department \* 2<sup>nd</sup> Floor \* 10 N. Public Square Cartersville, GA 30120 \* 770-387-5600 \* www.cityofcartersville.org 125

### **CONDITIONS VERIFICATION**

List the Article(s), Section(s) and Subsection(s) of the Zoning Ordinance for which a variance is requested.

Article	Section 4.16	Subsection B
Article	Section	Subsection
Article	Section	Subsection

The Board of Zoning Appeals was established to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of the zoning ordinance. The Board has the power to hear requests for variances from the provisions of the zoning ordinance, Article XXI APPEALS. See Section 21.3 for additional information pertaining to conditions.

To assist staff and the Board of Zoning Appeals in the analysis of the variance application, please check all of the following conditions that apply to your variance request:

1	The property is exceptionally narrow, shallow or unusually shaped,
2	The property contains exceptional topographic conditions,
3	The property contains other extraordinary or exceptional conditions; and
4	There are other existing extraordinary or exceptional circumstances; and
5.	The strict application of the requirements of this ordinance would result in practical difficulties to, or undue hardship upon, the owner of this property;
6.	The requested variance relief may be granted without substantially impairing the intent and purpose of this ordinance

Additional Comments by Applicant: PROPERTY IS A CORNER LOT AND AS SUCH ZONING LANGAUGE DOES NOT ALLOW FOR PRIVCAY FENCES TO BE PLACE IN "FRONT YARD". WE ARE ASKING FOR A VARIANCE TO ALLOW FOR A PORTION OF 6' PRIVACY FENCE TO BE INSTALLED INTO THE FRONT YARD ON THE WESTERN LINE OF THE PROPERTY THE PRIVACY FENCE WILL BE NO NEARER THAN APPROX. 58' FROM PROPERTY CORNER AT CHARLES ST.

### REQUIREMENTS FOR FILING AN APPLICATION FOR ZONING VARIANCE CITY OF CARTERSVILLE, GA

Completed applications must be submitted to the City of Cartersville Planning & Development Department, located at 10 N. Public Square, 2<sup>nd</sup> Floor. Cartersville, GA 30120.

### **Requirements**

- 1. Completed Application: Include all signatures. If multiple owners are involved in the Variance petition, each owner must fill out an individual application, though only a single filing fee is required per property. The application and all associated documents must be submitted no later than the established filing deadline date. Associated documents should include or demonstrate:
  - a. Existing conditions
  - b. Proposed conditions or project
- 2. Boundary Survey/Plat: Include a copy of the boundary survey/plat which shall include the metes and bounds description. Please indicate property lines with dimensions, location of buildings and other structures, north arrow, scale, street numbers, lot and/or parcel numbers, and locations of setback lines or other dimensional requirements.
  - 3. Conditions Verification Form: Complete the Conditions Verification form (attached).
  - 4. Justification Letter: Submit a statement explaining the reason(s) the variance is needed.
  - 5. Adjacent Property Owners: Provide a list of all current owners of record for properties located immediately adjacent to or directly across a public street or railroad right-of-way from the subject property. (Form attached). See also Item 7 below.
  - 6. Filing Fee: If the variance is for a residential property and the applicant is the owner-occupier of said property: \$75
     For all other cases: \$300
     All fees are non-refundable.
  - 7. Public Notice Fee (Optional): The applicant may choose to have city staff prepare and manage the public notification process outlined in item 8 below. If this option is requested, there is an additional, non-refundable fee of \$50.00 which covers the cost of the newspaper ad, and the costs of printing, printing supplies, postage and proof of mailing.



GENERAL CONTRACTORS

Item 2.

Commercial & Residential Construction

**Justification Letter** 

6' Privacy Fence encroachment into Front yard

32 Cassville Road Cartersville, GA 30120

We are seeking relief from Article IV Section 4.16 Subsection B of the adopted zoning ordinance for the City of Cartersville.

This section does not allow opauge privacy fences to be placed in the front yard of a property.

We feel our varaince to allow encroachment of a 6' privacy fence is justified based on the fact that this lot has multiple road frontges and thus has no side yard. We belive that the proposed placment of this 6' privacy fence meets the intent of the Zoning ordinance

espcetfully John B Hudson 8/29/2022

770.383.9200 • PO BOX 367, CARTERSVILLE, GA 30120 • WWW.HUDSONCOMPANYGA.COM

Item 2.













