

PLANNING AND DEVELOPMENT DEPARTMENT
2875 BROWNS BRIDGE ROAD, GAINESVILLE, GA, 30504
MAILING ADDRESS: PO BOX 1435, GAINESVILLE, GA 30503
t: 770-531-6809 | f: 770-531-3902



APPLICATION FOR APPEAL

Per §17.370.010, the public shall have the right to appeal a decision made by the Planning Commission before the Board of Commissioners.

In order to file an appeal, the appellant must submit a written notice of appeal within five working days of the Planning Commission decision to the Planning Department. The appellant must submit justification and reasons for the appeal along with a \$200 appeal fee (cash or check).

Please fill out the following information:

Name: Holly Neyman - by Jane A Range, attorney
Address: 200 EE Butler Parkway
Phone Number: 770-532-6312
Email: jar@nomlaw.com
Name of original application for which appeal is requested: Nare Edelstein
Date of original application: 5-7-23

Justification and reason(s) for filing this appeal (attach additional sheets if necessary):

See attached form

Signature

Jane A Range, attorney

Date

8-14-23

For staff use only:

Action _____ Date _____ Tax Parcel Number _____

Conditions: _____

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Please fill out the following information:

Name: Holly Neyman by Lane A Range, attorney
Address: 200 E.E. Butler Parkway
Phone Number: 770-532-6312
Email: JAR@HOMLAW.COM
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Date of original application: 5/7/23

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See Attached form

Signature

Jane A. Range, atty.

Date

8-14-23

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Action _____ Date _____ Tax Parcel Number _____

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Hall County Planning Commission
2875 Browns Bridge Road,
Gainesville, GA 30504

RE: NOTICE OF APPEAL RE Application of Nave Edelstein/ 6178 Lanier Heights Road to reduce Right side yard setback to 4 feet

Comes Now, Holly Neyman, acting by and through her counsel, and appeals the decision of the Hall County Planning Commission on the application of Nave Edelstein to vary setbacks from the required ten foot setback to a four foot setback with respect to the new construction decided on August 7th, 2023.

Appellant avers that combining the request to vary setbacks on the existing home with a proposed addition to the existing home was wrongful, in that the existing home presented an entirely different factual setting than the proposed addition. The existing home was built somewhere around 1964 and predated zoning ordinances in Hall County. In that sense, the existing home does meet all or substantially all of the considerations for a hardship variance. The applicant had no control over the setbacks. However, the Applicant with consent of planning staff also combined the new addition, to be built under existing zoning standards, which require only a ten foot setback, with the old, when none of the hardship conditions exist for the new addition.

The Appellee stated that the new addition should be covered to meet the feel and appearance of the exiting home, which is not a statement of hardship, but of preference. And despite the apparent desire to match the existing footprint, the building design submitted with the application in fact features a varied width that does narrow. Accordingly, no factual basis for a hardship exists for the new construction. Since two different requests were included in the one appeal, the application of the standard to both requests as laid out in the staff report and reflected in the decision of the Board of Appeals was not factually or logically accurate. No hardship exists.

Consideration of factors in the Hall County Zoning Code, Section 17.380.060.C:

1. Whether the zoning proposal will permit a use that is suitable in view of the use, development and zoning of adjacent property and nearby property.

The zoning proposal as to the existing structure is a suitable use developed under old rules, as are many of the other homes. But since 1964, zoning restrictions and uses have been imposed. The new addition is a proposed two-story addition that will contain somewhere between 2000 and 3000 square feet based on the application plans and comments by the owner. Such a structure is not compatible with the older homes in the V-C district, and presents a much larger footprint and mass which affects, light, air and visibility of neighbors, as well as making the passage of emergency vehicles around the home more difficult. Protection of all properties for the advantages of light, air, emergency services should fall more or less equally on all neighbors. The new addition is not an existing hardship that must be cured, but a new hardship that will be imposed all the duties of providing adequate setbacks for light, air, visibility and safety on the neighboring properties. This encroaches on the neighbors to meet all the public benefits of the zoning codes building standards to protect neighboring properties.

2. Whether the zoning proposal will adversely affect the existing use of usability of adjacent or nearby property.

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2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

Ms. Neyman's property interest is as an heir to her sister's lot that is directly adjacent to the subject property. The estate is still open and title has not yet passed out of the estate. However, in future, the Neyman lot will be improved and will be subject to the rules for setbacks, etc., in the code, and such new construction will provide setbacks that benefit the neighboring property of the applicant by providing the necessary land to afford access to the rear of the property, as well as light, air, and visibility that improves the habitability of the applicant's property. Such a large structure on top of the lot line will also increase the water runoff without special attention as there will be virtually no side lot to absorb gutter runoff before entering the adjacent property. All costs are imposed on Ms. Neyman with no compensating benefits. Overall, the crowding of the property line will reduce the value of the lot. The new construction will double to triple the existing footage as well as height of the residence, increasing the negative aesthetic effects on the property. Ms. Neyman's residence is one lot down and adjacent to her sister's lot. The change in the neighborhood favoring extension of older homes and existing encroachments on other lots will negatively impact her home's value.

3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

The existing structure, while small, still provides a cottage suitable to the V-C zoning category and carries the value which is greatly appreciated by lake lot demand. An improved structure that adds the second story on the existing home and which adds the additions that meet setback still have a reasonable economic use in the neighborhood. The applicant's claimed use is a weekend vacation home for family and that use is easily met if the setbacks are adhered to on the new section of the house.

4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, schools, police protection, fire protection, public health facilities or emergency medical service.

The setback is too narrow to allow any fire or emergency service vehicles to reach the home or the dock on the lake without encroaching onto the neighboring property. Again, the Neyman property is being subjected to the cost of development and providing service to the lot without any benefit.

5. Whether the zoning proposal is in conformity with the policy and intent of the future land use plan for the physical development of the area.

The plan is residential in use, but not in terms of the building requirements of the district. Hall County does not allow such narrow setbacks on new construction anywhere else on free standing single family homes under current rules.

6. The extent to which property values are diminished by the existing zoning restrictions.

There was no evidence presented that the property value would be diminished in the new construction complies with the Code.

7. The extent to which the destruction of the subject property's value under the existing zoning promotes the health, safety, morals or general welfare of the public.

The setbacks being applied to the new construction do not destroy the subject property's value under the existing zoning. Preserving setbacks that allow for light, air and visibility protect the property value. Accessibility of emergency services protects the property value as well as the neighbor's value.

8. The relative gain to the public as compared to the hardship imposed upon the individual owner.

As to the new construction, no hardship is imposed. The public is protected and specifically the adjacent neighbors are protected because adequate health and safety considerations are protected.

9. The length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the property.

No evidence was produced that the home was vacant. To the extent that applicant wishes to renovate and may not use the home fully during renovation (though a boat could be kept and used while renovating), is a personal choice not a market issue that makes the home unusable.

10. Whether there are other existing or changing conditions affecting the use or development of the property which give supporting grounds for the either approval or disapproval of the zoning proposal.

The V-C category was created with smaller lots and smaller minimum home sizes. Those lot sizes cannot be changed. The lake market has changed since V-C was first instituted, but there is still a demand for weekend only homes. What hasn't changed is that Hall County regulations favor set backs for the protection of neighboring properties. Reducing setbacks by 60 % (10 feet to 4 feet) without a true hardship for the new construction, damages neighbors and the public's interest in safety.

11. Whether the change would create an Isolated district unrelated to the surrounding districts, such as spot zoning.

The hardship variance is not a re-zoning so the standard is inapplicable.

12. Whether the present zoning district boundaries are illogically drawn in relat to existing conditions in the area.

This is not a re-zoning so district boundaries are not affected.

13. Whether the change requested is out of scale with the need of the County as a whole or the immediate neighborhood.

The change violated the County's policy on setbacks for public protection and clearly affects the local neighborhood as well.

14. Whether it is impossible to find adequate sites for the proposed use in districts permitting such use and already appropriately zoned.

This is not a rezoning so the standard is inapplicable.

15. Whether the need for rezoning could be handled instead by a variance request to the zoning board of adjustment.

This is not a rezoning so the standard is inapplicable.

16. Whether there would be an ecological or pollution impact resulting from major modifications to the land if the request is granted.

As noted above, water runoff issues not adequately addressed by the owner could cause erosion or flooding of adjacent property.

17. Whether there is reasonable evidence based upon existing and anticipated land use that would indicate a mistake was made in the original zoning of the property.

This is not a rezoning, so no mistake is evident, the same use will continue legally, only the setback is in question.

The hardship as to the new addition was not demonstrated by the applicant. It is a matter of preference over hardship. To the extent the original homeplace pre-existed zoning, it is grandfathered, and not even a hardship hearing is necessary to the continued use. The setbacks are not a zoning issue that disallows a house addition. The setback requirements should apply to the new addition as they would to any other construction on the property that is added after the original part of the home. No new garage or shed could be placed closer to the property line. But somewhere between 1100 and 1900 square feet of new construction is being grandfathered as well by this application with no showing of hardship, just a concern for how the house would look if the façade was not a straight line. Few homes built today are straight line, perfectly rectangular. And as shown by the submitted site plan, this home changes the width by the owner's design.

Respectfully submitted this 14th day of August, 2023

Hulsey, Oliver & Mahar, LLP

BY: 

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