

**BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, October 8, 2013  
6:00 p.m.**

The regular meeting of the Board of Zoning and Appeals was scheduled and held in the Council Chambers of the Municipal Center on October 8, 2013. Chairman Evans called the meeting to order at 6:03 p.m.

Chairman Evans explained to those in attendance that the Board of Zoning Appeals is a Quasi-Judicial body and as such, the latitude for acting on applications is somewhat limited by State Statute and City Ordinance. He also reminded those appearing before the Board that the meeting is recorded and they would need to identify themselves, give their address and be sworn in for the record. He then swore in the staff.

Chairman Evans stated that he would like to make note that the motions made in all meetings are of an affirmative nature. He stated this does not necessarily mean that the motion will be approved, but that the language will be in an affirmative nature when the motion is made.

Ms. Regina Gibson called the roll of the Board and established a quorum:

**COMMISSIONERS PRESENT:**

Mr. Henry Evans, Chairman; Mr. Frank Uhlhorn, Vice Chairman; Ms. Jennifer Sisson; Ms. Pat Sherman; Mr. Tony Salvaggio; Mr. David Klevan; and Alderman Forrest Owens.

**DEVELOPMENT STAFF PRESENT:**

Mr. Andrew Pouncey, Economic and Community Development Director; Mr. Wade Morgan, Chief Planner; Ms. Regina Gibson, Administrative Secretary; and Mr. Alan Strain, Attorney

Chairman Evans announced that Mr. Lincoln Aphenia with a Scout Troop was in the audience tonight working on his Community Merit Badge.

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**1. Approval of Minutes for September 10, 2013**

Mr. Salvaggio moved to approve the Board of Zoning and Appeals minutes of September 10, 2013, seconded by Mr. Uhlhorn, with no further comments or discussions.

**ROLL CALL:** Mr. Salvaggio – Yes; Ms. Sisson - Yes; Mr. Uhlhorn – Yes; Alderman Owens – Yes; Ms. Sherman – Yes; Mr. Klevan – Yes; Chairman Evans – Yes.

**MOTION PASSED**

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**2. 1551 E. Churchill Downs – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height in the “R” Low Density Residential District Old Business.**

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Poplar Estates, Block J subdivision was approved by the Germantown Planning Commission on December 8, 1969.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The home was constructed in 1972.

**PREVIOUS VARIANCE REQUESTS:** The BZA on August 10, 2010, denied a requested variance to allow an existing fence to exceed six feet in height. The applicant reapplied for the variance, which was discussed at the August 13, 2013 BZA meeting. The applicant withdrew the request to allow discussion between the Mayor and Aldermen about amending the fence regulations to increase the maximum allowed height of fences.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow a wood fence along the rear and side lot lines to be up to 8 feet in height. The proposed fence will replace an existing fence that is 7 ft., 9 in. in maximum height.

The applicant obtained a permit from the City for a six foot tall fence on May 22, 2003. At some point after that, the homeowner added two (2) feet of lattice board to the top of the wood fence along the rear lot line. The Germantown Code Compliance staff notified the owner of the violation via letter on May 24, 2010. The owner then applied to the BZA for a variance to allow the additional height. The request was denied and the owner appealed the decision to Chancery Court.

The owner now proposes to replace the existing rear lot line fence with a solid, stockade-type fence that is 8 feet in height. In addition, the homeowner proposes to construct an 8 foot tall fence along a 24 foot section of the southern side lot line. The intent is for the new fence to follow the natural contour of the side lot line and connect to the 8 ft. rear lot line fence. The remaining approximately 74 feet of the fence will be 6 feet in height.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, “the maximum height of any fence shall be six (6) feet.” The applicants’ fence exceeds six (6) feet in height by an additional two feet.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance due to exceptional topographic conditions of the property. According to the applicant, there is a “4 foot inlet that drains from approximately 5 to 6 other homes. In order for the inlet to provide proper drainage, the grade of our lot is lower than surrounding lots. Thus, when a standard 6 foot fence is installed, because of this lowered grade at the rear of the property, homeowners around ours have complete view of our backyard, allowing us very little privacy.” The applicant further notes that the topographic change causes a hardship in that “homes around us have a more than normal view into our backyard leaving us with less than normal privacy expected from a standard 6 foot fence.”

STAFF COMMENTS:

1. The applicant requests a two foot variance to allow an eight foot tall wood fence along the rear property line and along a 24 foot section of the side (southern) property line.
2. If the variance approved, the existing fence and lattice extension along the rear lot line will be removed.
3. If the variance request is approved, the applicant must apply for a fence permit through the Department of Economic and Community Development.

PROPOSED MOTION: To approve a variance for 1551 East Churchill Downs to allow a fence along the rear property line and along a 24 ft. section of the side property line to be eight feet in height, subject to staff comments and the plans submitted with the application.

**WITHDRAWN BY APPLICANT**

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3. **1867 Kilbirnie Drive – Request Approval of a Variance to Allow a Swimming Pool to be Less than Five Feet from an Easement.**

BACKGROUND:

DATE SUBDIVISION APPROVED: The Duntreath Equus Park Subdivision, Section D, was approved in 1997.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1998.

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific requests by the applicant is to construct a swimming pool within the rear yard of the property, with the side of the pool being placed adjacent to the five-foot utility easement that extends through the rear yard.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request involves approval of a variance from § 23-262 (Swimming Pools), which requires pools to be a minimum of five feet from all property lines and recorded easements.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance based on the criteria of exceptional topographic conditions resulting in peculiar and exceptional practical difficulties. The applicant notes that the “pie shaped lot is encumbered by a 15 ft. landscape easement and additional 5 ft. utility easement creating a shallow back yard.” See the application and attachment for additional information.

**STAFF COMMENTS:**

1. The property owner shall enter into a Hold Harmless Agreement with the City, stating that the City of Germantown will not be responsible for any damage done to the pool or retaining wall arising from any work done within the utility easement. The agreement shall be completed prior to the issuance of a pool permit.
2. If approved, the applicant shall apply to the City of Germantown Neighborhood Services Division for a Pool Permit.

**PROPOSED MOTION:** To approve a variance at 1867 Kilbirnie Drive to allow a swimming pool to be closer than five feet to an easement, subject to staff comments and the site plan submitted with the application.

Mr. Greg Webb w/Morgreen Landscaping explained that this is a double frontage lot and Kilbirnie Drive takes a 90 degree turn which pushes the front yard setback for this house further back than the other homes that are in line with it and took away from the usefulness of the back yard. He also spoke with MLG&W and the 5 foot utility easement he wishes to use is not MLG&W’s easement but is designated for phone and cable. He requested that the board grant him a variance so he could use this area.

Mr. Uhlhorn moved to approve a variance at 1867 Kilbirnie Drive to allow a swimming pool to be closer than five feet to an easement, as discussed and subject to the comments contained in the staff report and the site plan submitted with the application and seconded by Ms. Sherman.

**ROLL CALL:** Mr. Klevan – Yes; Ms. Sherman – Yes; Alderman Owens – Yes; Mr. Salvaggio – Yes; Mr. Uhlhorn – Yes; Ms. Sisson – Yes; Chairman Evans - Yes

**MOTION PASSED**

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**4. 2305 McVay Road (McVay Park) – Request Approval of a Use on Appeal for an Amphitheater in the R-3 Residential District.**

**DISCUSSION:**

The request for Use On Appeal is based on Section 23-303 of the Zoning Ordinance, which states, in part, that “Philanthropic or religious institutions; places of worship; public, private or parochial schools offering general educational courses; municipal, county, state or federal uses; public utilities, golf courses; private and country clubs; parks and playgrounds; cultural activities “shall be permitted [in the “R-3” Residential Zoning District] by the Board of Zoning Appeals,” provided that the use requested is to be located on a route designated as either a major street or collector street on the official major road plan, and that the requirements set forth in Article III, Division 6 (requirements of the “R-3” Residential district), Article II, Division 2 (Board of Zoning Appeals), and Article II, Division 4 (General Exceptions)

of the Zoning Ordinance are met. Any additional use or expansion of an existing Use On Appeal requires approval from the BZA.

**APPLICANT’S JUSTIFICATION:** The applicant proposes the construction of an approximately 100 seat open air amphitheater in the western portion of the property. The amphitheater is to be 90 feet from the west property line and 90 feet from the north property line. A six foot wood fence is to be constructed on the west property line and additional trees are to be planted to the west of the amphitheater, to help buffer the abutting dwellings from the amphitheater. The existing parking areas on the eastern side of the property, and across McVay Rd., will provide parking for people attending events. See the application and attachment for additional information.

**STAFF COMMENTS:**

1. If the Use on Appeal is approved, the applicant shall apply to the Germantown Planning Commission for site plan approval and then to the Design Review Commission for landscape, fence and lighting plan approval.

**PROPOSED MOTION:** To approve a Use of Appeal for an amphitheater at 2305 McVay Road., subject to staff comments and the site plan submitted with the application.

Mr. Tim McCullough requested that the item be withdrawn from the agenda and moved to next month.

Mr. Andy Pouncey informed the board that Mr. McCullough has been asked to meet with the neighbors and provide more information to the neighbors and to the staff.

**WITHDRAWN BY APPLICANT**

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**5. 8103 Meadow Glen Drive – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height in the “R” Low Density Residential District.**

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Germantown Ridge subdivision was approved by the Germantown Planning Commission on April 4, 1986.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The home was constructed in 1988.

**PREVIOUS VARIANCE REQUESTS:** The application was initially considered at the September 10, 2013, BZA meeting. After some discussion, the applicant withdrew to allow discussion between the Aldermen and Mayor about increasing the maximum permitted height of fences.

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow a wood shadow-box fence up to 8 feet in height to be constructed along the side lot line. The proposed fence will begin 64 feet behind the curb (54 feet behind the front lot line) and extend a distance of 58 feet. The fence will be placed approximately 1 foot from an existing retaining wall on the neighboring lot.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, “the maximum height of any fence shall be six (6) feet.” The applicants’ fence exceeds the six foot maximum by two feet, requiring a two foot variance.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance due to other extraordinary conditions of the property, resulting in exceptional practical difficulties. According to the applicant, there is a “two foot difference in height of property along property line at neighbor’s driveway”, and a “legal 6’ high fence won’t screen properly because of 2’ higher infilled driveway.”

**STAFF COMMENTS:**

1. The applicant requests a two foot variance to allow an eight foot tall wood fence along along a 58 foot section of the side (southern) property line.

2. The proposed fence will be approximately one foot inside the property line, approximately one foot from an existing 2 foot tall (max.) retaining wall on the adjoining lot.
3. If the variance request is approved, the applicant must apply for a fence permit through the Department of Economic and Community Development.

**PROPOSED MOTION:** To approve a variance for 8103 Meadow Glen Drive to allow a fence along a 58 foot long section of the (southern) side property line to be eight feet in height, subject to staff comments and the plans submitted with the application.

Ms. Carolyn H. Jones explained that there used to be Holly Trees planted next to the neighbors drive but was taken out because they were not providing the needed screening after the neighbors raised the properties elevation approximately 2 feet and placed their driveway on the property line. She requested permission to put up an 8 foot fence and on the ground around the base of the fence she would place a layer of mesh and gravel. She informed the board that she would be responsible for all future maintenance.

Mr. Uhlhorn moved to approve a variance for 8103 Meadow Glen Drive to allow a fence along a 58 foot long section of the (southern) side property line to be eight feet in height, as discussed and subject to staff comments and the plans submitted with the application and seconded by Ms. Sherman.

Alderman Owens thanked the homeowners for withdrawing from last month's meeting and although it was not the will of the Board of Mayor and Alderman to improve the wholesale amendment to the fence regulations. This case clearly represents a hardship and warrants our permission.

Chairman Evans explained that he historically votes against 8 foot fences. He looks at 6 foot fences around town that are typically wood fences that are just not attractive so an 8 foot fence is just 1/3 more unattractive as the 6 foot fence. He also explained that he consistently votes against variances where the homeowner has done something without the proper permits and then come before them asking for forgiveness. In the case, neither of these circumstances exists and while looking at the privacy issue, this was probably the most dramatic requests that they have ever had in the 10 or more years that he has served on this board.

**ROLL CALL:** Alderman Owens – Yes; Ms. Sisson – Yes; Ms. Sherman – Yes; Mr. Klevan – Yes; Mr. Salvaggio – Yes; Mr. Uhlhorn – Yes; Chairman Evans - Yes

## **MOTION PASSED**

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### **ADJOURNMENT**

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:25 p.m.