

**BOARD OF ZONING APPEALS**  
**MUNICIPAL CENTER COUNCIL CHAMBERS**  
**Tuesday, March 11, 2014**  
**6:00 p.m.**

The regular meeting of the Board of Zoning Appeals was scheduled and held in the Council Chambers of the Municipal Center on March 11, 2014. Chairman Evans called the meeting to order at 6:05 p.m. requesting the roll call. 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. Pat Sherman; Mr. Hunter Browndyke; Mr. David Klevan; and Alderman Forrest Owens.

**DEVELOPMENT STAFF PRESENT:**

Mr. Cameron Ross, Economic and Development Services Director; Mr. Wade Morgan, Chief Planner; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney

---

Chairman Evans reminded 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.

**1. Approval of Minutes for February 11, 2014**

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of February 11, 2014, seconded by Ms. Sherman, with no further comments or discussions.

**ROLL CALL:** Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Alderman Owens – Abstain; Ms. Sherman – Yes; Mr. Klevan – Yes; Chairman Evans – Yes.

**MOTION PASSED**

---

**2. 8175 Poplar Ave. – Our Lady of Perpetual Help Catholic Church – Request Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height.**

**DISCUSSION:**

The specific request is for a variance from § 6-102(b) of the Germantown Code of Ordinances, which limits the height of fences within the required front yards of lots to a maximum of 30 inches in height. The property's "R" zoning district establishes a minimum front yard extending 40 behind the property line (50 ft. behind the curb). The applicant proposes a wrought-iron fence that will be 52 inches in height for most of its run, and will be 62 inches in height at the highest point of the driveway gate. The fence is proposed to be located 20 to 21 feet behind the existing edge of the pavement, which is a 19 to 20 foot encroachment into the required front yard.

**APPLICANT'S JUSTIFICATION:** The applicant requests the variance on the basis of "other extraordinary and exceptional situation or condition" resulting in an undue hardship upon the owner. The applicant notes that the property stays very shady due to several trees, and moss grows on the driveway. He further states that the driveway is built on a slope and that residents from the Solana senior living facility walk across the property to get to the church. The condition of the property can create a danger for an elderly person. The applicant has provided a more detailed explanation in his application.

**STAFF COMMENTS:**

1. The fence is to be located 20 to 21 feet behind the existing edge of pavement. When Poplar Ave. is improved and widened in this location, the fence may extend into the new right-of-way, or be located immediately behind the sidewalk. Staff recommends that the fence be a minimum of 25 feet behind the edge of pavement, if the variance is approved. That setback will provide approximately 5 feet between the sidewalk and the fence.
2. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit.

**PROPOSED MOTION:** To approve a variance to allow a fence within the required front yard of 8175 Poplar Ave. to be 52 inches in height, with a maximum height of 62 inches at the gate, subject to staff comments and the site plan submitted with the application.

**WITHDRAWN BY APPLICANT**

---

**3. 7420 Oak Run Drive – Request Approval of a Variance to Allow Parking within the Required Front Yard.**

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to obtain permission for a parking area located within the required front yard. On November 7, 2013, Germantown Construction Inspectors noticed that the homeowner was widening the portion of the driveway beside the garage to create a parking pad. The parking pad was determined to be within the required front yard. The homeowner filed an application for a variance for the parking pad on February 4, 2014. 7420 Oak Run is a corner lot, with frontage on both Oak Run and Miller Farms Rd. The driveway is connected to Miller Farms Rd while the house faces Oak Run. The parking pad is parallel to the existing driveway, is 12 feet wide by 29.5 feet long, and is completely within the required front yard.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from §23-88(a) which prohibits parking spaces within the required front yard and limits the width of the driveway to 18 feet within 20 feet of the garage or carport.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance based on the criteria of extraordinary situation or condition, resulting in peculiar and exceptional difficulties. He states “ I want to keep my 3<sup>rd</sup> car off of Miller Farms and off of Oak Run with plenty of space for children to walk on or around my property safely.” He states further that “my driveway and yard get a lot of foot traffic before and after school.”

**STAFF COMMENTS:**

1. The Zoning Regulations prohibit parking spaces within the required front yard, which is the area within 50 feet of the curbs of both Oak Run Dr. and Miller Farms Road, in this situation.
2. If the Board approves the requested variance, staff recommends that landscaping of between 18 and 36 inches in height be required along the east side of the parking pad, so as to buffer the view of the parked vehicle.

**PROPOSED MOTION:** To approve a variance for 7420 Oak Run Drive to allow the existing parking pad to encroach into the front yard setback, subject to staff comments and the site plan submitted with the application.

Mr. James Underwood explained that he didn’t realize that he wasn’t allowed to install this parking pad until he was contacted by Code Compliance. He asked the board to approve his request for this variance which will allow him to keep the parking pad.

Mr. Thomas Stanfill expressed his approval of Mr. Underwood’s parking pad.

The board explained that these situations are a double edge sword. Even though sympathy leans toward the applicant side, there are codes and regulations that must be abided by or they must be changed. The regulation in which this board operates does not allow them to consider cost issues when making their decisions. The job of this board is to provide variances when it is necessary because conditions exist that do not allow the property owner to enjoy his property or when a hardship case has been established. Neither of these situations seem to exist, therefore the board requested that Mr. Underwood consider withdrawing this variance request for 90 days and resubmit it at a later date. By doing this, it will give the Planning Commission chance to revisit this ordinance and get a better reading or possibly change it.

Mr. Underwood asked that his request be withdrawn for 90 days.

#### **WITHDRAWN BY APPLICANT**

---

#### **4. Sanders Ridge PUD – Request Approval of a Variance to Allow a Subdivision Entrance Feature to be Less than the Minimum Setback from the Street.**

##### DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain permission for a Subdivision Entrance Feature (SEF) to be constructed as close as 10 feet to the curb of Sanders Ridge Lane. The proposed SEF will consist of a ten foot tall brick entrance column and a seven (+/-) foot tall brick wall on each side of Sanders Ridge Lane at the subdivision entrance. The SEF will replace an existing brick wall that is 2 to 3 feet in height.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from §6-105 which requires a Subdivision Entrance Feature to be a minimum of 15 feet from the curb. The proposed SEF extends 5 feet into the standard setback area. The standard maximum height of an SEF is 10 feet (exclusive of lights and finials) at the 15 foot setback line.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of extraordinary situation or condition of the property, resulting in peculiar and exceptional difficulties.” The HOA representative states “this is an existing subdivision with an existing entrance feature. The existing entrance feature is setback 10 feet from the curb of Sanders Ridge Lane. The HOA desires to improve the appearance of the entrance without impacting the existing homeowners.”

##### STAFF COMMENTS:

1. A landscape/fence easement shall be created on the Sanders Ridge PUD plat for the entrance feature.
2. If the Board approves the requested variance, the proposed entrance feature shall proceed to the Design Review Commission for final approval.

PROPOSED MOTION: To approve a variance to allow the entrance feature for the Sanders Ridge PUD to be located up to 10 feet from the curb of Sanders Ridge Lane, subject to staff comments and the site plan submitted with the application.

Mr. Brad Shapiro explained the reason for them wanting to change out the existing entrance was to give them more of a sense of entry way in to their neighborhood.

Mr. Mike Studdard, explained that he was in favor of this ten foot entry way plan. He was not in favor of moving the entry way to fifteen feet because it would mean possibly losing the crepe myrtle trees and the homeowners don’t want this wall closer to their home.

Mr. Danny Simco just wanted assurance from the board that the plan being presented is a final design and would not include a gate feature in the future.

Alderman Owens explained that this being the previous dead end of a subdivision and now with the creation of a new subdivision it speaks more to this being considered a hardship because it was originally designed with an entrance off the main road. This particular instance is not similar to other subdivisions and feels this is what justifies it as a hardship.

After much discussion, Chairman Evans called for a motion.

Mr. Uhlhorn moved to approve a variance to allow the entrance feature for the Sanders Ridge PUD to be located up to 10 feet from the curb of Sanders Ridge Lane, as discussed and subject to the comments contained in the staff report and seconded by Mr. Klevan.

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

**MOTION PASSED**

---

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:46 p.m.