

**BOARD OF ZONING APPEAL  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, September 9, 2014  
7:00 p.m.**

The regular meeting of the Board of Zoning and Appeal was scheduled and held in the Council Chambers of the Municipal Center on September 9, 2014, 2014. Chairman Evans called the meeting to order at 7:05 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; Ms. Jennifer Sisson; Ms. Pat Sherman; Mr. Hunter Browndyke; Mr. David Klevan; and Alderman Forest Owens

**DEVELOPMENT STAFF PRESENT:**

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

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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 August 12, 2014**

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of August 12, 2014, seconded by Ms. Sisson, with no further comments or discussions.

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

**MOTION PASSED**

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**2. 7562 Canon Gate Cove – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height.**

**BACKGROUND:** DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1975.

**PREVIOUS VARIANCE REQUESTS:** none.

**DISCUSSION:** NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow a wood fence along the side lot line to be 8 feet in height. The fence is existing and begins 40 feet behind the front lot line and extends along the east side lot line between 7562 and 7568 Canon Gate Cove.

Code Compliance staff observed the fence on May 30, 2014 and notified the property owner that a fence permit was required and that the maximum allowed height of a fence is 6 feet. Subsequent inspections were made by Code Compliance staff on June 9, 2014 and July 1, 2014. The homeowner filed the variance application on July 10, 2014.

**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 exceptional topographic conditions. According to the applicant, the neighbor’s property is “about 4 foot above our property. The fence provides some level of privacy between the two houses”.

**STAFF COMMENTS:**

1. The applicant requests a two foot variance to allow an eight foot tall wood fence along the side (east) property line.
2. The fence abuts the driveway on the neighboring property (7568 Canon Gate Cove) that is up to 4 feet above the subject property.
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 7562 Canon Gate Cove to allow an existing fence along the east side lot line to be eight feet in height, subject to staff comments and the documents submitted with the application.

Chairman Evans explained that since the applicant was not present the commission had no other option but to remove this item from the agenda and postpone it to next month.

**DEFERRED TO NEXT MONTH**

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**3. 7765 Dogwood Road – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height.**

**BACKGROUND:** DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1950.

**PREVIOUS VARIANCE REQUESTS:** none.

**DISCUSSION:** NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow a wood fence along a 200 foot long section of the east lot line to be 8 feet in height. The existing fence begins approximately 565 feet behind the Dogwood Rd. property line and extends 200 feet long the east property line.

Code Compliance staff observed the fence on July 29, 2014 and notified the property owner that a fence permit was required and that the maximum allowed height of a fence is 6 feet. The homeowner filed the variance application on August 15, 2014.

**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 the criteria of “other exceptional situation”. The homeowner notes that “a new subdivision directly across from our riding arena. All the new activity spooks the horses. It’s a safety issue for us.” They explain that if we cut the privacy fence to 6 feet, the horse and rider will be visible to what is going on over on the other side of the fence.

STAFF COMMENTS:

1. 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 7765 Dogwood Rd. to allow an existing fence along a 200 foot section of the east side lot line to be eight feet in height, subject to staff comments and the documents submitted with the application.

Richard Winchester Jr. attorney for the applicant explained that Mr. Fry was not able to attend the meeting due to illness and Mrs. Fry is in attendance to answers questions if necessary. The reason they replaced this section of plank fence with the 8 foot high fence was to shield the riding arena from the neighbors and excessive noise so the horses don't get spooked and cause an accident.

Susan Glassman, Carlton Ealey, Jimmy Chancellor, Tempe Walker Chancellor, and Richard Glassman all spoke against the construction of this fence and asked the board to enforce the fence ordinance.

Mr. Klevan moved to approve a variance for 7765 Dogwood Rd. to allow an existing fence along a 200 foot section of the east side lot line to be eight feet in height, as discussed and subject to the comments contained in the staff report and seconded by Ms. Sherman.

**ROLL CALL:** Ms. Sherman – No; Mr. Klevan – No; Alderman Owens – No; Mr. Browndyke – No; Ms. Sisson – No; Chairman Evans – No.

**MOTION DENIED**

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**4. 7222 Neshoba Circle – Request Approval of a Variance to Allow an Accessory Structure to be less than the Required Distance from the Property Line.**

BACKGROUND: DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1987

PREVIOUS VARIANCES: None

DISCUSSION: NATURE OF VARIANCES REQUESTED: The requested variance is to permit a pergola to be constructed within the rear yard area. The proposed pergola will be 9 ft. 8.5 in. in height and located 8 ft. from the side lot line. The standard setback for the structure would be 9 ft. 8.5 in. from both lot lines. The proposed setback results in a 20.5 inch (1 ft. 8.5 in.) encroachment into the standard setback, so requires approval of a variance.

SPECIFIC SECTION OF ZONING ORDINANCE:

Sec. 23-236(2)(b). An accessory building or structure with a height of 8 feet or more may extend into the required rear yard, but shall be located a distance equal to at least the height of the structure from the rear and side lot lines.

APPLICANT'S JUSTIFICATION: The applicant bases the variance request on the exceptional narrowness, shallowness, and shape of the lot that results in undue hardship upon the owner. The applicant states that "they need 9 ft. 8.5 in. (in height) to preserve the correct proportions of the pergola and provide at least 7 feet of clearance when stepping down from the deck."

STAFF COMMENTS:

1. The applicant notes there is a 10.5 inch difference in elevation between the existing deck and the grade of the lot. The standard 8 ft. height limit for a pergola would provide a clearance of 5 ft. 6 in., when the 16 in. dimension of the structure's height is included.

PROPOSED MOTION: To approve a variance to allow a pergola within the rear yard of 7222 Neshoba Circle to be 9 ft. 8.5 in height, and located 8 ft. from the lot line, subject to the comments contained in the staff report and the site plan filed with the application.

## **DEFERRED TO NEXT MONTH**

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### **5. 1674 Halleford Circle – Request Approval of a Variance to Allow an Accessory Structure to be less than the Required Distance form a Property Line.**

BACKGROUND: DATE SUBDIVISION APPROVED: Allenby Lakes Planned Unit Development was granted Final Plat approval by the Planning Commission on March 5, 1996. The Board of Mayor and Aldermen approved Project Development Contract Number 991 on April 8, 1996.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1998

PREVIOUS VARIANCES: None

DISCUSSION: NATURE OF VARIANCES REQUESTED: The requested variance is to permit an arbor to be constructed within the rear yard area and use an existing 6 foot tall brick wall as support for the arbor. The proposed arbor will be 10 ft. 6 in. in height and 8 ft. 2 in. from the southern lot line, and 12 ft. from the east lot line. The standard setback for the 10 ft. 6 in. structure would be 10 ft. 6 in. from both lot lines. The proposed 8 ft. 2 in. setback results in a 2 ft. 4 in. encroachment into the standard setback, so requires approval of a variance.

#### SPECIFIC SECTION OF ZONING ORDINANCE:

Sec. 23-236(2)(b). An accessory building or structure with a height of less than 8 feet may extend into the required rear yard, but shall be located a distance equal to at least the height of the structure from the rear and side lot lines.

APPLICANT’S JUSTIFICATION: The applicant bases the variance request on the exceptional narrowness, shallowness, and shape of the lot that results in undue hardship upon the owner. The applicant states that “they are proposing to build an arbor. At 3 points the arbor is anchored on top of a (existing) 6 ft. brick wall on three sides of the patio.” The proposed 10 ft. 6 in. height relates to the existing fascia board that goes around the house.

#### STAFF COMMENTS:

The proposed arbor is to be 10 ft. 6 in. in height and located 8 feet from the south lot line and 12 feet from the east lot line. The standard location is 10 ft. 6 in. from both lot lines. A variance is required for the 8 ft. setback from the south line.

PROPOSED MOTION: To approve a variance to allow a 10 ft. 6 in. tall accessory structure at 1674 Halleford Circle, to be located 8 feet from the south lot line, subject to the comments contained in the staff report and the site plan filed with the application.

Andy Pouncey explained that he was representing the applicant and this arbor is being built to help reduce the heat so they can sit outside and enjoy their patio.

Mr. Klevan moved to approve a variance to allow a 10 ft. 6 in. tall accessory structure at 1674 Halleford Circle, to be located 8 feet from the south lot line, as discussed, and subject to the comments contained in the staff report and the site plan filed with the application, and seconded by Alderman Owens.

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

## **MOTION PASSED**

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**6. Thornwood Planned Unit Development (West side of Exeter Road, North of Neshoba Road) – Request approval of the 25 foot extension of a zoning district boundary line.**

**BACKGROUND: DATE SUBDIVISION APPROVED:** The Thornwood PUD outline plan was approved by the Board of Mayor and Aldermen on May 12, 2014.

**PREVIOUS VARIANCE REQUESTS:** none.

**DISCUSSION: NATURE OF REQUEST:** The specific request by the applicant is to relocate the T-5 district boundary northward 25 feet so as to make the boundary parallel to the approved east-west internal street within the Thornwood PUD. The net effect of the boundary line shift will be to increase the allowed building height from 3 stories (T-4 district) to 5 stories (T-5 district).

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The request is addressed in section 23-49(2), which lists the powers of the BZA: "To permit the extension of a district for a distance of not more than 25 feet where the boundary line of a district divides a lot or tract held in a single ownership on January 19, 1981."

**APPLICANT'S JUSTIFICATION:** The applicant is requesting the boundary line shift in order to improve the development potential of this portion of the Thornwood PUD. See the attached application for additional explanation.

**STAFF COMMENTS:**

1. The proposed boundary re-alignment totals 2,000 sq. ft. in area, and is 25 feet wide at the widest point.
2. The property is owned by Cathy Owen Wilcheck, and has been in the same ownership since prior to January 19, 1981.

If the request is approved, a note shall be added to the Thornwood PUD outline plan explaining the approval.

**PROPOSED MOTION:** To approve the extension of the T-5 district boundary a distance of 25 feet as described in the plan submitted with the application.

Andy Pouncey explained that he was representing the applicant and asked the board to approve their request to shift the boundary line on this property to improve the potential of future development.

Mr. Klevan moved to approve the extension of the T-5 district boundary a distance of 25 feet as described in the plan submitted with the application, as discussed and seconded by Ms. Sisson.

**ROLL CALL:** Mr. Browndyke – Yes; Alderman Owens – Yes; Ms. Sisson – Yes; Mr. Klevan – Yes; Ms. Sherman – 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 8:02 p.m.