

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, October 14, 2014
6:00 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 October 14, 2014. Chairman Evans called the meeting to order at 6:00 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. Jennifer Sisson; Ms. Pat Sherman; Mr. Hunter Browndyke; Mr. David Klevan; and Alderman Forrest Owens.

DEVELOPMENT STAFF PRESENT:

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 September 9, 2014

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of September 9, 2014, seconded by Alderman Owens, with no further comments or discussions.

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

MOTION PASSED

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 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.

Mr. James (Woody) Welch explained that this property was in really bad shape when they purchased it in March or April of 2014. They put approximately \$50,000 into this property to make it look better. He further explained that he was the one that constructed this fence and was not aware at the time that a fence permit was necessary. This section of fence was installed to give the neighbors privacy for their patio area and would not be needed in a couple of years after the existing trees mature.

After much discussion, Chairman Evans explained that he consistently votes no on requests where someone didn’t get a permit before they built something and then asks this board for forgiveness and feels that even if he had requested this variance before the fence was constructed he still would have voted no because of it being over the 6 ft height requirement. Chairman Evans called for a motion.

Mr. Uhlhorn moved to grant the variance for 7562 Canon Gate Cove to allow an existing fence along 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 Mr. Sherman.

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

MOTION PASSED

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3. **7222 Neshoba Circle – Request Approval of a Variance to Allow an Accessory Structure to be less than the Required Distance from a Property Line.**

BACKGROUND: DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1987

PREVIOUS VARIANCES: None

DISCUSSION: NATURE OF VARIANCES REQUESTED: The requested variance will permit a pergola to be constructed within the side 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 side or 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: 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 side yard of 7222 Neshoba Circle to be 9 ft. 8.5 in. 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.

Ms. Donna Haley expressed her appreciation for Mr. Morgan's presentation and informed the board of several neighbors present in support of her request. She explained that she had applied for a permit before the construction began. Even though she knew the structure would be 8 feet in height she didn't understand the problem until her contractor came to set the post and explained it to her. She explained that she could make this structure 8 feet tall but if you are standing on the deck and step down it would be problematic for a tall person. She instructed her contractor to stop until she spoke to the city about her options.

Mr. Klevan moved to grant the variance to allow a pergola within the side yard of 7222 Neshoba Circle to be 9 ft. 8.5 in. in height, and located 8 ft. from the lot line, as discussed and subject to the comments contained in the staff report and seconded by Mr. Sisson.

ROLL CALL: Alderman Owens – Yes; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Ms. Sherman – Yes; Ms. Sisson – 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 6:20 p.m.