

**BOARD OF ZONING APPEAL  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, November 11, 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 November 11, 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. Cameron Ross, Economic and Development Services Director; Mr. Wade Morgan, Chief Planner; Ms. Sheila Pounder, 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 October 14, 2014**

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of October 14, 2014, seconded by Ms. Sisson, with no further comments or discussions.

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

**MOTION PASSED**

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**2. Behavioral Health Care Facility – East Side of Crestwyn Hills Drive, 1500 feet South of Winchester Road – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height.**

**BACKGROUND:** The 33.861 acre parcel is part of the Forest Hill Heights Planned Development. It was approved by the Memphis/Shelby County Land Use Control Board and County Commission and then annexed by Germantown in 2000.

**PREVIOUS VARIANCE REQUESTS:** none.

**DISCUSSION:** NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow the installation of a security fence, ten feet in height, surrounding the exterior activity yards as illustrated on the accompanying site plans.

**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 four feet, requiring a variance.

**APPLICANT'S JUSTIFICATION:** The applicant is requesting the variance due to other extraordinary and exceptional situation or condition of the property that results in peculiar and exceptional practical difficulties. The applicant notes that a higher degree of security with regard to patient movement and interaction with visitors is necessary. The requested fencing height is an industry standard and has been used on similar facilities in other parts of the country.

**STAFF COMMENTS:**

1. The applicant requests a four foot variance to allow a ten foot tall security fence around the exterior activity areas of the facility, as illustrated on the site plan.
2. The attached elevation diagram indicates the design and construction of the two types of fence.
3. Photos of the proposed fence and material are attached.
4. If the variance request is approved, the applicant shall include construction drawings of the gate and fence to the Department of Economic and Community Development.

**PROPOSED MOTION:** To approve a variance for the Baptist Memorial/Acadia Health Care Behavioral Health Facility on Crestwyn Hills Drive, to allow fences up to 10 feet in height, subject to staff comments and the documents submitted with the application.

Mr. Mike Davis with The Reaves Firm explained that the fences would not be on the property line. There will be a loop drive around the facility and the court yard would be north of that loop drive. Immediately south of the property is the Veterans Cemetery and Memphis Light Gas and Water owns the property to the east and south east so there are really no one to view the fence any time in the near future. The fence is vital for security. It discourages climbing and passing of contraband from inside or outside of the facility. The central fence is actually a two sided wood fence that separates the two courtyards. The outer fence is a very strong black vinyl coated wire mesh ½" x 3" so it will be almost impossible to climb.

Chairman Evans called for a motion.

Mr. Klevan moved to approve a variance for the Baptist Memorial/Acadia Health Care Behavioral Health Facility on Crestwyn Hills Drive, to allow fences up to 10 feet in height, as discussed and subject to the comments contained in the staff report and seconded by Mr. Uhlhorn.

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

**MOTION PASSED**

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**3. 2136 W. Glenalden Drive – Request Approval of a Variance to Allow a Principal Structure to Encroach into the Required Front Yard Setback.**

**BACKGROUND:** DATE SUBDIVISION APPROVED: The Glenalden PUD was originally approved by The Memphis and Shelby County Land Use Control Board on April 7, 1979 and by the Shelby County Commission on Sept. 11, 1979. It was annexed by Germantown on Dec. 31, 1981. Glenalden PUD is a 130 lot single family development on private drives. The PUD allows 30 foot front yard setback, 5 foot side yard setbacks and 20 foot rear yard setbacks.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1985

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:** NATURE OF VARIANCE REQUESTED: The specific request by the applicant is construct a single car garage addition on the front of the house. The garage addition will be 21 ft. 2 in.

from the edge of the pavement of West Glenalden Drive, so will encroach 8 feet, 10 inches into the required front yard.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from §23-567(b), which allows the PUD to modify the setback regulations of the zoning district in which the PUD is located. In the case of Glenalden PUD, a front yard setback of at least 30 feet is allowed. The proposed addition and associated variance will extend 8 feet, 10 inches into that setback.

**APPLICANT'S JUSTIFICATION:** The applicant is requesting the variance in order to add an additional garage bay. They note that the property is "too narrow to allow for a garage bay to be located on the south side and too shallow to build on the east side." In addition, "our HOA does not allow cars to be parked on the street overnight nor exterior buildings for storage. This addition would provide the space needed to help keep our neighborhood clean and uncluttered."

**STAFF COMMENTS:** The Glenalden Home Owners Association Board of Directors has approved the plans for the addition.

**PROPOSED MOTION:** To approve a variance for 2136 W. Glenalden Drive to allow the principal structure to be located 21 ft. 2 in. from the front lot line, so as to encroach 8 feet, 10 inches into the required front yard, all subject to staff comments and the site plan submitted with the application.

Mr. William Brown explained that they had bought their house about 2 months ago and have spent quite a bit of money renovating it but need more room so they are asking the board to grant them a variance to build a garage with a utility room onto the front of their principle structure. He further explained that the architectural review committee voted in favor 2-1 and the Board of Directors approved.

Ms. Dorie Simms and Ms. Liz Sillay spoke in favor of this variance request explaining the need to encourage homeowners to update these older homes and increase their value. Ms. Susan Burnett read from the Germantown Ordinance and the Tennessee Court of Appeals. She spoke of her desire to maintain the unified building plan set forth with Glenalden PUD covenants and restrictions and feels this variance would change the character of their neighborhood. Mr. Dan Tacker explained that he is not really opposed to this variance but understands that any distance closer than 30 feet is outside the CC&R's and has to be approved by 70% of the homeowners and not the Architectural Committee or the Board of Directors.

Mr. Klevan suggested that when the motion is made that it require a formal letter from the Homeowners Association Board of Directors legally approving this request. Alderman Owens agreed with Mr. Klevan and added that he had spoken with the president of the Homeowners Association and he confirmed that they had indeed approved Mr. Brown's request.

Mr. Klevan moved to a approve the variance for 2136 W. Glenalden Drive to allow the principal structure to be located 21 ft. 2 in. from the front lot line, so as to encroach 8 feet, 10 inches into the required front yard, as discussed and subject to the site plan submitted with the application and comments contained in the staff report as well as the formal approval letter from the Homeowners Association Board of Directors and seconded by Mr. Sherman.

**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**

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### **4. The Village at Germantown – 7820 Walking Horse Circle – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height.**

**BACKGROUND:** The Village at Germantown was initially approved as Project Development Contract #1098 by the Board of Mayor and Aldermen on June 23, 2003. It is a 247-unit continuing care retirement

community for seniors and contains varying levels of housing and care, including single-family cottages, independent living apartments, assisted living, skilled care and special care units. On March 4, 2014, the Planning Commission approved plans for 30 assisted living dwelling units, 16 memory care dwelling units and 2 skilled care units; in a Memory Care and Assisted Living Facility.

PREVIOUS VARIANCE REQUESTS: none.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow the installation of 2 gates, one at the entrance from Germantown Rd. and the other at the entrance from Exeter Rd. The gates will be 7.5 feet in maximum 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 the six foot maximum by 1.5 feet, requiring a variance.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance due to an exceptional situation or condition of the property that results in exceptional practical difficulties. The applicant notes that “gates 6 ft. in height would not be aesthetically pleasing.”

STAFF COMMENTS:

1. The applicant requests a 1.5 foot variance to allow a 7.5 foot tall metal gate within the Germantown Rd. entrance and the Exeter Rd. entrance.
2. The attached elevation diagram indicates the portion of each gate that will exceed 6 feet in height.
3. If the variance request is approved, the applicant shall submit construction drawings of the gate and fence to the Department of Economic and Community Development.

PROPOSED MOTION: To approve a variance for The Village at Germantown to allow two entrance gates to be up to 7.5 feet in height, subject to staff comments and the documents submitted with the application.

Mr. Tim McCaskill, with McCaskill & Associates explained that The Village at Germantown had considered gates in the past for security and now feels it is necessary since there is a real possibility of a hotel and multifamily development going in to the south. They want to be able to control who comes onto their property. The gates will be closed at all times. Access is obtained by either a sticker on the residents windshield where the gate will open automatically, a card reader that the employees will be able to gain access, and a call box for the people who are coming to visit a resident or front office. The gates are equipped with emergency responses that when the fire truck comes up and honks the gates will automatically open. There is a battery backup that will run the gates for approximately 24 hours. When the battery runs low the gates will automatically open and remain that way.

Mr. Uhlhorn moved to approve a variance for The Village of Germantown to allow two entrance gates to be up to 7.5 in height, as discussed and subject to the comments contained in the staff report and seconded by Mr. Sherman.

**ROLL CALL:** Mr. Klevan – Yes; Ms. Sherman – Yes; Alderman Owens – Yes; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Ms. Sisson – 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 6:45 p.m.