

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, December 9, 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 December 9, 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

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 November 11, 2014

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of November 11, 2014, seconded by Mr. Uhlhorn, 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

2. 9151 Orleans Walk Cove – Request Approval of a Variance to Allow a Fence to Exceed 30 inches in Height within the Required Front Yard Setback on Orleans Walk Cove in the “R” Low Density Residential District.

BACKGROUND: DATE SUBDIVISION APPROVED: The Orleans Way Planned Unit Development was approved by the Planning Commission in 2005.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: New Construction, 2014.

PREVIOUS VARIANCE REQUESTS: Approval of a Variance to Allow a Swimming Pool to Encroach into a Utility Easement and a Landscape Easement in August, 2014.

DISCUSSION: SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 6-102 (General provisions), which states fences over 30 inches in height are not permitted within the required front yards of lots, as specified in the zoning ordinance, with the exception of subdivision entrance features and attached fences/walls.

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a 6 foot high fence 2.5 feet (30”) within the front yard building setback of the property adjacent to Orleans Walk

Cove. The newly proposed fence with gate opening will attach to the existing brick column and wrought iron fence within the landscape easement that is owned and maintained by the neighborhood Homeowners Association, Orleans Way HOA. The proposed fence will match the existing fence's design and finish. The applicant has provided a letter of support from a representative of the neighborhood Homeowners Association.

APPLICANT'S JUSTIFICATION: The applicants are requesting the variance to enable them to construct a "a wrought iron fence and gate both similar in style and color to the existing wall which would appear as a continuation of the one presently standing". Their attached letter explains why the approval of the variance to allow their proposed placement of the fence rather than meet the requirements of the zoning ordinance is a better option in their efforts to maintain the standards of the community. See the attached documents for additional reasoning.

STAFF COMMENTS:

1. A representative for the Orleans Way HOA has provided a letter stating their support of the proposed iron pool fence and its minor encroachment.

PROPOSED MOTION: To approve a variance for 9151 Orleans Walk Drive to allow a Fence to Exceed 30 inches in Height within the Required Front Yard Setback on Orleans Walk Cove in the "R" Low Density Residential District, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Mr. David Branch asked the board to approve his variance request allowing him to attach a new fence with the same design and finish to the existing brick column that is already there. From there the fence would run parallel to the building for about thirty feet then turn 90 degrees for about four feet to attach to the building. The iron fence will limit access to the pool in the back yard and would also match the existing fence in design and finish. This new fence would extend about three feet beyond the thirty foot building line.

Mr. Preston Croft with the Albertine Company explained that the Albertine Company feels that their addition to the fence would be practical and more pleasing to the eye.

Chairman Evans called for a motion.

Mr. Uhlhorn moved to approve a variance for 9151 Orleans Walk Drive to allow a Fence to exceed 30 inches in Height within the Required Front Yard Setback on Orleans Walk Cove in the "R" Low Density Residential District, as discussed and subject to the comments contained in the staff report and seconded by Ms. Sherman.

Mr. Klevan expressed his appreciation to Mr. Branch for coming before the board twice now prior to a problem rather than after the fact. It is always better to ask for permission than it is for forgiveness.

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

MOTION PASSED

3. 7539 Martha's Cove – Request Approval of a Variance to Allow a Lot that is less than the Minimum Lot Size in the "R" Low Density Residential District.

BACKGROUND: DATE SUBDIVISION APPROVED: The Germantown Meadows Subdivision was approved by the Planning Commission in 1969.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1972

PREVIOUS VARIANCE REQUESTS: none

DISCUSSION: SPECIFIC SECTIONS OF ZONING ORDINANCE: Sections 23-330(1), which requires a minimum lot size of 15,000 square feet and 23-331 (1), which requires a minimum lot width of 100 feet for lots within the R Low Density Residential district.

NATURE OF VARIANCE REQUESTED: the lot as platted is 14,250 sq. ft. in area and is 95 feet in width. It is 750 sq. ft. below the minimum lot size for the R zoning district.

APPLICANT'S JUSTIFICATION: The applicant notes that the lot was approved by Germantown as configured. If the home were destroyed, the owner would be unable to rebuild.

STAFF COMMENTS:

1. The Germantown Meadows subdivision plat notes that the subdivision is zoned "R-1".
2. Lots 1 through 10, and 29 are in similar situations. Lots 1 through 10 have insufficient lot width, but do meet the minimum lot size.

PROPOSED MOTION: To approve a variance for 7539 Martha's Cove to allow an existing lot that is less than the minimum lot size and lot width in the "R" Low Density Residential District, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Ms. Allyson Avera explained that the title company is asking for a variance to give title insurance on the chance that the property is destroyed that it could still be rebuilt under the current "R" wording.

Mr. Phillip Ginn asked the board if the decision made tonight would cover all of the other homes in this situation or if they would have to seek a variance individually.

Chairman Evans explained that this situation is not necessarily unique to this subdivision and they were looking at a way to where they could grandfather in all of those that are already an approved subdivisions so that they don't have a parade of people having to come before this board to seek a variance.

Mr. Uhlhorn moved to a approve the variance for 7539 Martha's Cove to allow an existing lot that is less than the minimum lot size and lot width in the "R" Low Density Residential District, as discussed subject to the staff comments contain in the staff report and the site plan submitted with the application and seconded by Ms. Sisson.

Mr. Klevan expressed his appreciation to Ms. Avera for bringing this to the staff's attention. He believes we will fix a problem that exists not only in this subdivision but others dating back to the 60's and 70's as well.

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

MOTION PASSED

4. 9236 Poplar Pike – Request Approval of a Variance to Allow a Building Encroachment into the Front Yard Setback from Poplar Pike and Professional Plaza Drive in the "O-51" Office District.

BACKGROUND: On August 27, 2001, the Board of Mayor and Aldermen approved the third and final reading for the rezoning of the proposed Lot 2 from "R-H" Retirement Housing to "O-51" Office. On October 2, 2001, the Planning Commission approved a request for Preliminary Approval of an Office P.U.D. The applicant never went further with this request. On August 7, 2007, the Planning Commission approved a request for Preliminary Plat Approval of a 2-lot subdivision of the property.

PREVIOUS VARIANCE REQUESTS: The BZA approved on August 14, 2007, 2 variances for an Alzheimer's care facility on Lot 1 of this subdivision. The variances dealt with the building setback from an adjacent residential property and number of parking spaces.

DISCUSSION: The proposed site plan places an office building 40 feet from the south lot line (abutting the Greenbelt) and 10 feet from the north lot line (abutting the private drive).

SPECIFIC SECTIONS OF ZONING ORDINANCE: Variances are requested from Section 23-496 (1), which requires a 60-foot building setback for buildings on lots that provide for parking within the required front yard. The lot's frontage on both Poplar Pike and Professional Plaza Drive are considered front yards under the zoning regulation's definition of front yard.

NATURE OF VARIANCE REQUESTED: The proposed building will encroach 20 feet into the front yard setback along Poplar Pike and 50 feet into the front yard setback from Professional Plaza Drive (private street).

APPLICANT'S JUSTIFICATION: The applicant notes that Lot 2 is an oddly shaped lot, and has been encumbered by a variety of dedications and easements that renders the lot almost undevelopable. See the application and associated documents for further explanation.

STAFF COMMENTS:

1. Staff notes that the lot's configuration places a front yard along 78% of the lot's total boundary.

PROPOSED MOTION: To approve a variance at 9236 Poplar Pike for a Building Encroachment into the Front Yard Setback from Poplar Pike and Professional Plaza Drive in the "O-51" Office District, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Mr. Curtis Doss with McGehee Nicholson Burke Architects explained that he was there just to introduce the applicant to the board. Methodist Properties is a group of two medical specialists in town. One is already located in Germantown and the other has an office adjacent to Germantown but would love to move her practice here. So they have purchased this property for that purpose. He would be there to answer any architectural questions the board might have.

Mr. Blair Parker with Blair Parker Designs explained that this lot has many aspects and a lot of setbacks that really didn't come with the property. They provided a write-up in the application that was fairly specific and provided some history as to how this site became as small as it is today. They asked the board to approval their request of a variance to allow a building encroachment into the front yard setback from Poplar Pike and Professional Plaza Drive.

Mr. Klevan moved to approve a variance at 9236 Poplar Pike for a Building Encroachment into the Front Yard Setback from Poplar Pike and Professional Plaza Drive in the "O-51" Office District, as discussed and subject to the comments contained in the staff report and seconded by Mr. Sisson.

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

MOTION PASSED

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5. **8151 Poplar Avenue – Request Approval of a Variance to Allow a 20 Foot Height Increase of an Existing 100 Foot Tall Wireless Transmission Facility in the "R" Low Density Residential District.**

BACKGROUND: DATE PRINCIPAL STRUCTURE APPROVED/BUILT: The existing wireless transmission facility (WTF) was approved by the BZA at its meeting on April 10, 2001, and by the Planning Commission on June 4, 2001. The WTF was constructed under Project Development Contract 1076.

PREVIOUS VARIANCE REQUESTS: none

DISCUSSION: SPECIFIC SECTIONS OF ZONING ORDINANCE: Section 23-86(h)(3) sets a maximum tower height of 100 feet.

NATURE OF VARIANCE REQUESTED: The proposed tower extension will increase its height by 20 feet, which is a variance of 20 feet from the WTF regulations.

APPLICANT'S JUSTIFICATION: The applicant states that a 3-story building (Solana senior living community) has been built on the adjacent property to the east which limits the use of the space on the tower. In lieu of requesting the installation of a new cell tower in this area, we are seeking to co-locate on an existing tower with additional height to provide for the needed additional service coverage in this area. The application notes that the maximum allowed cell tower height of 100 feet creates an extraordinary and exceptional situation, and the 3-story building on the adjacent property results in an undue hardship.

STAFF COMMENTS:

1. The applicant has indicated they will provide cell phone coverage maps describing reception with and without the increased tower height.
2. Staff suggests that data on number of dwellings within the coverage areas also be provided.

PROPOSED MOTION: To approve a variance at 8151 Poplar Ave. to allow a 20 foot height increase to an existing 100 foot tall Wireless Transmission Facility in the "R" Low Density Residential District, subject to the staff comments contained in the staff report and the site plan submitted with the application.

DEFERRED TO NEXT MONTH

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:30 p.m.