

**BOARD OF ZONING APPEALS**  
**MUNICIPAL CENTER COUNCIL CHAMBERS**  
**Tuesday, January 12, 2016**  
**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 January 12, 2016. Alderman Gibson 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:**

Alderman Mary Anne Gibson; Ms. Jennifer Sisson; Mr. Hunter Browndyke; Mr. Mike Harless; Ms. Patricia Sherman; Ms. Sherri Hicks.

**DEVELOPMENT STAFF PRESENT:**

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

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**1. Election of Chairman and Vice Chairman (Previously known as Agenda Item No. 3)**

Alderman Gibson called for a motion to elect a Chairman. Mr. Browndyke made a motion to nominate Ms. Sisson and seconded by Mr. Harless, with no further comments or discussion. Ms. Sisson indicated that she would accept the position.

**ROLL CALL:** Mr. Harless – Yes; Ms. Sherman – Yes; Ms. Hicks – Yes; Alderman Gibson – Yes; Mr. Browndyke – Yes

Alderman Gibson called for a motion to elect a Vice Chairman. Mr. Browndyke made a motion to nominate himself and seconded by Ms. Sherman with no further comments or discussion.

**ROLL CALL:** Mr. Harless – Yes; Alderman Gibson – Yes; Ms. Hicks – Yes; Mr. Sherman – Yes; Chairman Sisson.

Alderman Gibson turned the meeting over to Chairman Sisson.

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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. This meeting is recorded and those appearing before the Board would need to identify themselves, give their address and be sworn in for the record.

Motions made in all meetings are of an affirmative nature and 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.

**2. Approval of Minutes for November 10, 2015. (Previously known as Agenda Item No. 4)**

Mr. Browndyke moved to approve the Board of Zoning and Appeals minutes of November 10, 2015, seconded by Ms. Sherman, with no further comments or discussions.

**ROLL CALL:** Ms. Hicks – Abstain; Mr. Browndyke – Yes; Alderman Gibson – Abstain; Ms. Sherman – Abstain; Mr. Harless – Yes; Chairman Sisson – Yes.

**MOTION PASSED**

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**3. 7765 Dogwood Road – Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height (Case No. 15-558). Previously known as Agenda Item No. 5**

BACKGROUND: DATE OF ANNEXATION: June 13, 1955.

DATE SUBDIVISION APPROVED: The property is not part of a subdivision.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: The home was constructed in 1950.

PREVIOUS VARIANCE REQUESTS: The applicant erected an 8 foot fence along a side property line without a permit and was cited for this violation by the Office of Code Compliance in 2014. A request for a variance to retain the existing 8 foot fence was denied by the BZA on September 9, 2014. The applicant was instructed to reduce the fence height to 6' per Zoning Ordinance.

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 property's "R" zoning district establishes a minimum front yard extending 40 behind the property line. The applicant proposes a treated pine, split rail fence that will be 5 feet (60 inches) in height along the Dogwood Road frontage of this subject property. The fence is proposed to be located 14 feet behind the existing edge of the pavement, which is a 26 foot encroachment into the required front yard.

APPLICANT'S JUSTIFICATION: The applicant indicates that the reason the variance is being requested is "to be consistent with existing design of the neighboring fencing east of the site; creating a uniform and complimentary appearance". See pages 5-7 for a copy of the application with information concerning the justification for this request.

STAFF COMMENTS:

1. The requested variance will result in a fence that is 5 feet (60 in) in height and 14 from the front property line to be located in the front yard of this property.
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 to up to 60 inches in height and located 14 feet from the front property line within the required front yard setback of 7765 Dogwood Road 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. Joe Windham w/Dixie Fence Memphis – Representative for Ms. Betty Fry explained that his client was requesting the variance in order to be consistent with the resident on the east side all the way to Poplar.

The board questioned why the owner didn't want to be consistent with the property owner to the west which has the brick fence, the drainage and why the owner wasn't present to answer the questions.

Mr. Kenneth Norwood explained that he wasn't speaking for or against it but wanted to help clarify the drainage discussion that the board was questioning. He explained that the drainage was actually sloping toward Dogwood because there is a culvert that runs underneath that drains onto his property and then runs on down the ditch to Poplar.

In further discussion the board expressed their disappointment that the owner of the property didn't show up to answer the questions that the board had and didn't understand why she chose to be consistent with the fence on the east side as opposed to the brick fence on the west side, and didn't feel this request met any of the guidelines as identified by the Board of Zoning Appeals for approving this request.

Mr. Windham told the board that he believed the owner could have shown up but didn't feel she needed to be there.

The board explained that if they voted against this motion then the applicant would have to wait 6 months to come back to the board for the same variance request. However, they would be allowed to come back next month if they changed their request or if they chose to withdraw this motion until next month so the owner could be present.

Mr. Windham requested this item to be withdrawn until next month.

### **MOTION WITHDRAWN BY APPLICANT**

#### **3. 7195 McVay Manor Cove – Approval of a Variance to Allow the Principal Structure to Encroach into the Required Front Yard Setback. (Case #: 15-559). Previously known as Agenda Item No. 6**

BACKGROUND: DATE SUBDIVISION APPROVED: February 4, 2003.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: NA (vacant lot)

PREVIOUS VARIANCE REQUESTS: None

#### DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval to construct a single family detached dwelling on the lot, with an attached garage that is set back 15 feet from the front property line. The standard front yard setback distance is 40 feet.

The applicant also provided an alternative site plan (Concept Plan B) that locates the garage in the rear and proposes a 25 foot front yard setback for the dwelling (a 15 foot encroachment).

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-257(1) which requires there to be a front yard of at least 40 feet. The proposed dwelling (Concept Plan A) places the garage 15 feet from the front property line, so requires a variance of 25 feet from the standard front yard setback.

(Concept Plan B requires a 15 foot variance).

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of "exceptional narrowness, shallowness or shape". She notes that the lot has an exceptional shape due to the extremely short length of the cul-de-sac.

#### STAFF COMMENTS:

1. Lot 16 has an irregular shape due to the "bulb" in McVay Manor Cv. The south lot line is 34 feet shorter than the north lot line (173.2 ft. vs 139.17 ft.)

2. The applicant has provided a site plan illustrating the placement of a dwelling and attached, 3 car garage.
3. If the variance request is granted, the applicant must apply for a building permit through the Memphis/Shelby County Office of Construction Code Enforcement.

**PROPOSED MOTION:** To approve a variance for 7195 McVay Manor Cove to allow the principal structure to encroach 25 feet into the required front yard setback in the “R-1” Residential zoning district, subject to the staff comments and the site plan filed with this application.

Ms. Cindy Reaves explained that once she purchased this lot she realized the reason this property had been on the market for so long was because it was so irregular and had so many things wrong with it that it was going to be difficult to plan for a house to be built on it. She presented 2 concept plan ideas but explained that she would prefer the board approve her Plan A.

Ms. Laura Shy reminded the board of a letter that their Home Owners Association had written stating that Cindy had met with them and they felt very confident that she will build a home that will fit in with their neighborhood. This lot has been empty for a long time and they would like to see this lot built on and are willing to give their approval as long as the home fits in with the homes that are already there.

After much discussion, Chairman Sisson called for a motion.

Ms. Sherman moved to approve a variance for 7195 McVay Manor Cove to allow the principal structure to encroach 25 feet into the required front yard setback in the “R-1” Residential zoning district, subject to the staff comments and the site plan filed with this application, seconded by Alderman Gibson.

Mr. Harless moved to amend the proposed motion to allow a 15 ft encroachment and delete the reference to the site plan filed with the application,

After additional discussion, Ms. Sherman withdrew the original motion.

The amended motion was seconded by Alderman Gibson.

**ROLL CALL:** Ms. Sherman – Yes; Mr. Harless – Yes; Alderman Gibson – Yes; Mr. Browndyke – Yes; Ms. Hicks – Yes; Chairman Sisson – Yes

Before the close of the meeting Chairman Sisson re-addressed this case with the board to ensure everyone understood the motion for this item as it was amended. She explained the motion as amended would make concept “Plan A” more difficult to build and would require a 25 ft variance, whereas concept “Plan B” would only require a 15 ft variance.

There was additional discussion on the impact of the amended motion on the applicant’s plans, including questions to Alan Strain on the proper method to bring up the applicant’s original plan.

Alderman Gibson made a motion to reconsider the previous vote, seconded by Mr. Browndyke.

**ROLL CALL:** Ms. Sherman – Yes; Mr. Harless - No; Alderman Gibson – Yes; Mr. Browndyke – Yes; Ms. Hicks – Yes; Chairman Sisson – Yes

Chairman Sisson called for another motion

Alderman Gibson explained that she knew everyone wanted to go home but she wanted to hear what Mr. Harless has to say about this item and maybe help them understand this in a different way. She expressed her respect for Mr. Harless and his longevity with the city.

Mr. Harless explained that it had become clear to him that giving a variance from the BZA is something special and takes a really unique set of circumstances to receive that variance. If a variance is going to be given then the less of a variance you give he feels the better off the board will be. Ms. Reaves came before this board with 2 options A and B. Therefore if we have a lesser variance request to give and she is satisfied with it then he felt that it was a reasonable compromise for everyone.

After much discussion, the board members decided that they should consider Ms. Reaves original request to use the preferred concept Plan A.

Chairman Sisson called for a motion.

Ms. Hicks moved to moved to approve a variance for 7195 McVay Manor Cove to allow the principal structure to encroach 25 feet into the required front yard setback in the “R-1” Residential zoning district, subject to the staff comments and the site plan filed with this application, seconded by Mr. Browndyke.

**ROLL CALL:** Ms. Sherman – Yes; Mr. Harless – Yes; Alderman Gibson – Yes; Mr. Browndyke – Yes; Ms. Hicks – Yes; Chairman Sisson – Yes

#### **MOTION PASSED**

#### **4. 3645 Forest Hill-Irene Road (Harvest Church) – Approval of a Use on Appeal for an Expansion of the Church Facilities. (Case No. 15-560). Previously known as Agenda Item No. 7**

**BACKGROUND:** Forest Hill Baptist Church was built in 1998, according to the Shelby County Assessor Records. The property was annexed by Germantown in 2001.

**PREVIOUS USE ON APPEAL REQUESTS:** The BZA approved on May 13, 2014 a Use on Appeal for the expansion of the church’s parking lot.

**DISCUSSION:** The request for a Use On Appeal is based on Section 23-228 of the Zoning Ordinance, which states, in part, that “Philanthropic or religious institutions; places of worship; public, private or parochial schools offering general educational courses; municipal, county, state or federal uses; public utilities, golf courses; private and country clubs; parks and playgrounds; cultural activities “shall be permitted [in the “R” Residential Zoning District] by the Board of Zoning Appeals,” provided that the use requested is to be located on a route designated as either a major street or collector street on the official major road plan, and that the requirements set forth in Article II, Division 4 (General Exceptions), and Article II, Division 2 (Board of Zoning Appeals), of the Zoning Ordinance are met. Any additional use or expansion of an existing Use On Appeal requires approval from the BZA.

**APPLICANT’S JUSTIFICATION:** The applicant states that Harvest Church shares the building with Forest Hill Baptist Church, and has experienced significant growth recently. The Harvest Church congregation exceeds the capacity of the sanctuary and meets in the fellowship hall. Harvest Church proposes a 10,350 sq. ft. expansion of the existing fellowship building and a 20,000 sq. ft. free-standing building. See the application letter of explanation for additional information.

#### **STAFF COMMENTS:**

1. Both Forest Hill-Irene Rd. and Winchester Rd. are major roads, as required by Section 23-228.
2. Other criteria from Article II, Division 2 include “whether or not the approval will impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion of public streets, increase the danger of fire and endanger public safety or in any other way impair

the public health, safety, comfort or welfare of the inhabitants of the city. Such consideration further may relate to screening, landscaping, location or other conditions necessary to protect property in the vicinity of the subject site.”

3. If the Use on Appeal is approved, the applicant shall apply to the Germantown Planning Commission for site plan approval and then to the Design Review Commission for landscape and lighting plan approval.

**PROPOSED MOTION:** To approve a Use on Appeal for the expansion of Harvest Church at Forest Hill Baptist Church at 3345 Forest Hill-Irene Rd., subject to staff comments and the site plan submitted with the application.

Mr. Michael Rogers w/Fisher Arnold and Mr. Spence Ray explained that obviously this request is a matter of church growth and they have been working with the city staff to ensure that the city’s fire department has adequate access to the property. Originally the church and facilities were owned by Forest Hill Baptist and they were kind enough to let them use the multi-purpose building. That would have been an interim solution to us both using the facility, Forest Hill still using the sanctuary, and that is very much the intention. Finally the property has transferred and Harvest now owns the facilities. They have a life lease agreement that allows Forest Hill Baptist to stay there as long as they have members. They have now purchased the lot that is not within the City of Germantown but is adjacent to their west property line that would provide access to Winchester.

The board expressed their excitement of the continued growth of this property and confidence that it will be taken care of in a professional manner. Chairman Sisson called for a motion.

Mr. Browndyke moved to approve a Use on Appeal for the expansion of Harvest Church at Forest Hill Baptist Church at 3345 Forest Hill-Irene Rd., as discussed, subject to staff comments, and the site plan submitted with the application, seconded by Ms. Sherman.

**ROLL CALL:** Mr. Harless – Yes; Ms. Hicks – Yes; Ms. Sherman - Yes; Alderman Gibson – Yes; Mr. Browndyke – Yes; Chairman Sisson – 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 7:18 p.m.