

BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, February 9, 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 February 9, 2016. Chairman Browndyke called the meeting to order at 6:04 p.m. requesting the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT:

Mr. Hunter Browndyke, Chairman; Alderman Mary Anne Gibson; Mr. Mike Harless; Ms. Patricia Sherman; and 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

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.

1. Approval of Minutes for January 12, 2016. Shown as Agenda Item No. 3

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of January 12, 2016, seconded by Ms. Hicks, with no further comments or discussions.

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

MOTION PASSED

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2. 7765 Dogwood Road – Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height on a Lot in the R District (Case No. 15-558). Shown as Agenda Item No. 4

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. The existing brick wall fence on the property adjacent to the west of the site is 3 feet in height and the existing split rail wood fence on the property adjacent to the east (Glassman) of the site is 5½ feet in height and setback approximately 12 feet from Dogwood Road.
3. The height of the existing brick piers located at the driveway entrance to the subject site is 6'4".
4. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit.
5. The applicant submitted supplemental information and pictures to reflect a change in the property's topography from north to south. The property appears to change in grade with the street being higher than the property along its frontage.
6. The information also indicates that the fence would assist in preventing horses that are on the property from getting out and creating a dangerous situation for drivers along Dogwood Road.



CITY OF GERMANTOWN TENNESSEE

1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

Date Received: _____
Received By: _____

BOARD OF ZONING APPEALS OFFICIAL APPLICATION FORM

1. Date of Application: _____
2. Action Requested (Circle one): Variance Use on Appeal Interpretation
3. Address of property where action is requested: 7765 Dogwood Rd.
4. Briefly explain the specific action requested (e.g. "variance from required front yard setback in an "R" zoning district", or "variance to allow fencing to exceed six feet in height"):
Variance of height and set back on rail fence that is 5 ft. high.
5. Name of person submitting this request: Joe Windham
6. Is this person the (circle one): Owner Agent/Representative Attorney
7. Address of person submitting request: 5055 Macon Rd.
Memphis, TN. 38122
8. Telephone Number of person submitting request: 901-301-8080
9. Email Address of person submitting request: dixiememphis@att.net
11. Name and address of all property owner(s): Mrs. John E. Fry
7765 Dogwood Rd. Germantown, TN.
38138
12. In the space below, describe the reasons for submitting the identified request. **Include in the explanation the reason(s) why there is not another solution or why it cannot be accomplished in compliance with the Ordinance.** Attach additional sheets if necessary.

To Be consistent with Existing Design of The neighboring Fencing (EAST) creating a uniform and complimentary appearance.

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____ Other extraordinary and exceptional situation or condition of the piece of property
(Describe in the box below if checked)

We have a situation where horses live on the property. Although they live on the back of the property, if they were to get loose it could provide a dangerous situation for the animal and a driver on the road.
The fence is an important issue. Dogwood

2. **Resulting in:**

____ Peculiar and exceptional practical difficulties
(Describe in the box below if checked)

To be consistent with existing design of the neighboring fencing (least) creating a uniform and complimentary appearance.

____ Undue hardship upon the owner
(Describe in the box below if checked)

It won't match neighboring fencing.

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14. Ownership Shares in Project (if applicable).

A. If the owner of the land which is the subject of this Application (including all owners, lessees and developers) is a for-profit entity, i.e. individual, sole proprietor, general partnership, limited partnership, corporation, limited liability company, R.E.I.T., a trust, or any other form of for-profit business entity or a non-profit entity, the authorized representative of the Owner must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Owner. (If another business entity owns 10% or more of the ownership interests in the Owner, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Owner, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest **does** not have to be disclosed.

Owner / President or Equivalent:

OWNER Betty & John Fry

Persons or Entities* Owning
10% or More of the Ownership
Interests of the Owner:

Name

Business or Home Address

7765 Dogwood Rd

*See language in parenthesis above.

B. Not for Profit Entities. If the applicant submitting the Application (including all owners, lessees and developers) is a not for profit entity, the authorized representative of the Applicant must list below the name and business or home address of the President (or equivalent chief executive officer) and the members of its board of directors:

Applicant: _____

Address: _____

President or Equivalent

Chief Executive Officer: _____

Members of the Board of Directors of the Applicant:

Name

Business or Home Address

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PLEASE NOTE: THE INFORMATION LISTED BELOW MUST BE PROVIDED OR YOUR APPLICATION MAY BE DEEMED INCOMPLETE

13. If a variance is requested, provide the following required information below to best of your ability.

The Board of Zoning Appeals has the following powers: (Section 23-49)

Where, by reason of *exceptional narrowness, shallowness or shape* of a specific piece of property or by reason of *exceptional topographic conditions* or *other extraordinary and exceptional situation or condition of such piece of property*, the strict application of any provision of this chapter would result in *peculiar and exceptional practical difficulties* to or *undue hardship upon the owner* of such property, to authorize upon appeal relating to the property a variance from such strict application so as to relieve such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. *Financial disadvantage to the property owner is not sufficient proof of hardship.* [Emphasis added]

This application for a variance is based on the condition(s) checked below (check all that applies):

1. Condition of property:

Exceptional narrowness, shallowness, or shape
(Describe in the box below if checked)

We have a change of grade or elevation from street onto property. The fence needs to match the existing adjacent setback to east and west or it will be too low as related to neighboring dogwood Rd.

Exceptional topographic conditions
(Describe in the box below if checked)

There is a considerable drop in grade from street to front of property.

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15. **Certification**

Sign the following statement and indicate owner, agent or attorney.

I, owner ~ Betty + John Fry, (owner), attest to the best of my knowledge that the items submitted above are correct and accurate.

I, Joe Windham, (agent or attorney), attest to the best of my knowledge that the items submitted above are correct and accurate.

Note that approval of the application is based upon information provided herein and any change in this information including any change in ownership interests of the subject real property, after filing the application may result in reconsideration of any approval.

The Applicant/Owner/Lessee acknowledges and agrees that if the developer of a project is not the owner of the subject real property, the owner/lessee and developer shall be required to join in the project development contract with the City and the obligations of the project development contract shall be the joint and several obligations of the developer, owner, and lessee.

1/27/2016

City of Germantown Mail - Fwd: 7765 Dogwood Road



Pounder, Sheila <spounder@germantown-tn.gov>

Fwd: 7765 Dogwood Road

1 message

Morgan, Wade <wmorgan@germantown-tn.gov>
To: Sheila Pounder <spounder@germantown-tn.gov>

Tue, Jan 26, 2016 at 4:25 PM

Wade Morgan, AICP

Chief Planner

901.757.7281

www.germantown-tn.gov

City of Germantown - Excellence. Every day.

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----- Forwarded message -----

From: **Marc Belz** <marckbelz@gmail.com>

Date: Tue, Jan 26, 2016 at 3:52 PM

Subject: 7765 Dogwood Road

To: wmorgan@germantown-tn.gov

Good afternoon Wade! I am writing this letter in regards to a property at 7765 Dogwood Rd. It is owned by John and Betty Fry. She would like to erect a 4 rail fence along the front of her property that would match her neighbors to the east, the Glassman family. Their address is 7787 Dogwood. We are asking permission to use the same setback from the street as the neighbor. In fact, most of the properties to the east towards Poplar have a similar setback. The height would match the Glassman existing fence. At the Fry driveway, we propose to have a pair of temporary chain link gates. These would serve 2 purposes. 1). To provide security during construction of her new home. 2). To act as a safety feature for people driving on Dogwood. Mrs Fry has horses on the property and the fence along with the gates would serve to keep any loose animals from wondering into the street. The wood fence would be permanent and we would submit a gate plan for approval after the construction is completed. I believe that the consistent setback and matching of existing fences both complement the neighborhood/ street and also provide a safety factor for drivers and neighbors on Dogwood. Please feel free to call me with any questions. Thanks for your consideration. I will send pictures for clarification purposes. Sincerely, Marc Belz , general contractor. 901.482.1303

Sent from my iPhone

PROPOSED MOTION: To approve a variance to allow a fence to be 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.

Ms. Betty Fry and Marc Belz requested the board to approve their request for a 5 foot (60 inches) in height split rail wood fence and setback approximately 14 feet from Dogwood that would match the neighbors Richard and Susan Glassman all the way down to Poplar. There are horses on the property and there is a considerable drop in elevation which is why they were asking for the higher fence to ensure the horses and public safety.

Mr. Steven Destefais explained that after viewing the property and being on it many times, any reasonable person driving by would see and realize immediately that esthetically the fence needs to be in line with the other property in order to look proper for this piece of property.

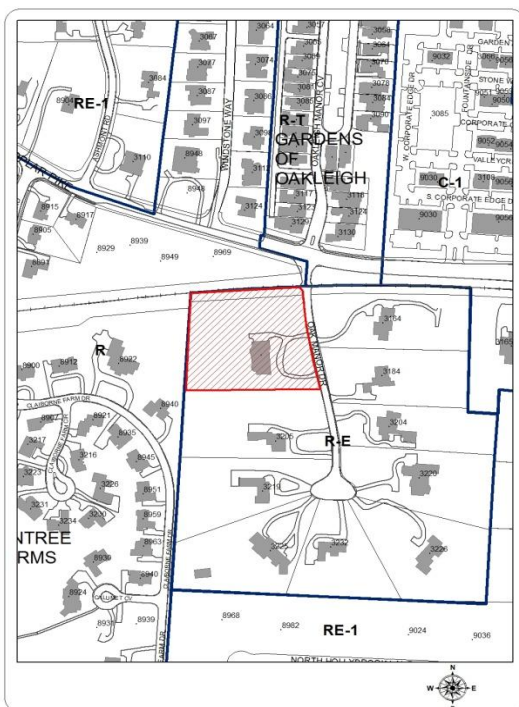
After much discussion, Chairman Browndyke called for a motion.

Ms. Sherman moved to approve a variance to allow a fence to be 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, as discussed, subject to the staff comments and the site plan filed with this application, seconded by Ms. Hicks.

ROLL CALL: Alderman Gibson – Yes; Ms. Sherman – Yes; Mr. Harless – No, not necessary concerned with the esthetics but the variance itself. He feels there are ways to do this since they are going to build a new entrance that will be setback that they could build the fence along that line as well. Understands they are trying to match up with the Glassman’s but there is no guarantee that the people that own the property to the west of you will match up with your fencing; Ms. Hicks – Yes; Chairman Browndyke - Yes

MOTION PASSED

2. 3175 Oak Manor Dr. - Approval of a Variance to Allow a Fence along the North Property Line in the Side Yard to Exceed 72 Inches in Height on a Lot in the R-E District (Case No. 16-602). Shown as Agenda Item No. 5



BACKGROUND: DATE SUBDIVISION APPROVED: The Oak Manor subdivision was approved by the Memphis/Shelby County Land Use Control Board on Sept. 9, 1979 and annexed by Germantown on July 8, 1998.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1984.

PREVIOUS VARIANCE REQUESTS: none

DISCUSSION:
NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow a pre-cast concrete “Fencestone” fence along the side lot line to be up to 8 feet in height. The proposed 8 foot fence will extend for approximately 70.5 feet along the north lot line, abutting the CSX railroad.

The location of the proposed fence is indicated on an attached plan.

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 six (6) feet in height by two feet.

APPLICANT’S JUSTIFICATION: The applicant states “the north side of our property is beside the railroad track at Poplar Pike and Oak Manor Drive. We planted privet shrubs to try to block the unsightly view of the tracks, but the railroad sprays poison that kills the plants and mows the trees down” He notes that the property is located beside a railroad track, which is an extraordinary and exceptional situation that results peculiar difficulties in blocking the view of the railroad tracks from the back of their house. The applicant has provided several photos to illustrate the views from and into his back yard.

STAFF COMMENTS:

1. The applicant has provided several photos to illustrate the views from and into his back yard.
2. The railroad track is approximately 3.5 feet above the elevation of the abutting property.
3. On Nov. 9, 1999, the BZA approved a variance to allow an 8 foot tall fence along the north lot line (abutting the railroad) of 3164 Oak Manor Dr.
4. 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 3175 Oak Manor Drive to allow an eight foot tall fence along the north property line, subject to staff comments and the plans submitted with the application.

Mr. James Patton explained that the fence he is requesting will be located 70 ½ feet past the concrete fill on the left of the photo and is requesting it be 8 feet tall. The Railroad track is 3 ½ feet high. He explained that he had planted privet shrubs there to try and block the unsightly view of the tracks but the railroad sprays poison that kills the plants and mows the trees down. He asks that the board approve his request to build an 8 foot tall fence to block the view of the railroad tracks.

Chairman Browndyke called for a motion.

Ms. Sherman moved to approve a variance for 3175 Oak Manor Drive to allow an eight foot tall fence along the north property line, subject to the staff comments and the plans submitted with the application, seconded by Ms. Hicks.

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

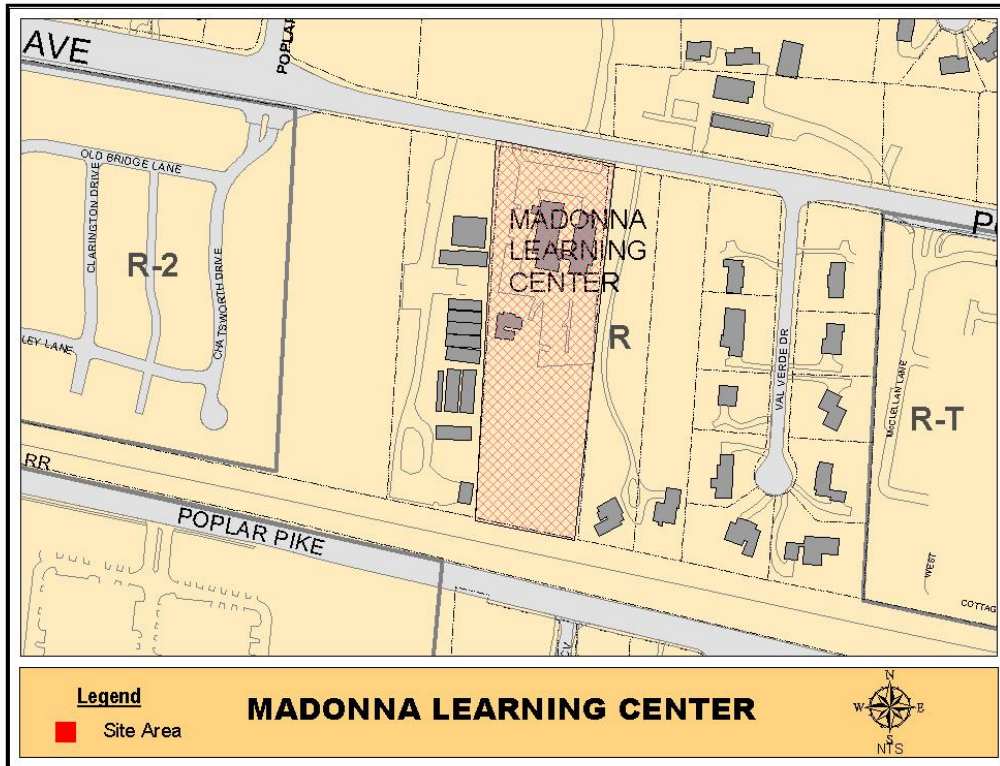
MOTION PASSED

3. 7007 Poplar Avenue - Approval of a Variance to Allow an Accessory Structure to be Less Than the Required Minimum Distance from a Property Line in the R District (Case No. 16-603). Shown as Agenda Item No. 6

BACKGROUND: PREVIOUS VARIANCE REQUESTS: The BZA on November 12, 2013, approved a Use on Appeal for expansion of a private school.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval to construct a wood storage building adjacent to the existing wood shop. The proposed 10 foot tall storage building will be placed 5 feet, 1 inch from the west property line, which is a 4 foot, 11 inch encroachment into the standard setback distance.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-236(2) which requires accessory structures over 8 feet in height to be located a distance equal to or greater than their height from the side lot line. The proposed storage building is 10 feet in height to the midpoint, so the standard setback is 10 feet.



APPLICANT’S JUSTIFICATION: The applicant requests a variance based on the criteria of “exceptional narrowness, shallowness or shape”, stating that the “Madonna Learning Center property is deep and narrow. This makes it difficult to place accessory structures so that parking and drives are not encroached upon.” That condition makes for peculiar and exceptional practical difficulties, in that “the wood storage building needs to be adjacent to the wood shop so that the students and volunteers can access the wood needed for their projects. The location shown is accessible by an ADA accessible handicap ramp.”

STAFF COMMENTS:

1. The wood shop building was approved by the Planning Commission and Design Review Commission as part of the school’s site plan.
2. If the variance is approved, the applicant shall apply for an accessory structure permit from the Germantown Dept. of Economic and Community Development, Code Enforcement Division
3. The existing wood shop and proposed storage building are highlighted on the attached site plans.

PROPOSED MOTION: To approve a variance for Madonna Learning Center, at 7007 Poplar Ave., to allow an accessory structure (storage building) to encroach 4 feet, 11 inches into the standard setback from the west property line, subject to staff comments and the site plan submitted with the application.

Ms Tamara Redburn w/Fleming Architects explained that this storage building structure has always been located on the property but was moved onto the adjacent property to the west for a year while they renovated their entire property. The wood storage building needs to be adjacent to the wood shop so that the students and volunteers can access the wood needed for their projects and the location shown has ADA handicap ramp accessibility which is needed for their students.

Mr. Charles Watson spoke in opposition of this item because there were no pictures of the structure presented. He explained that he is not against this item being approved but feels this information is important for the board to be able to make a decision.

The board explained that if they voted on this item as it was presented to them and it fails then she would not be allowed to bring this request back to the board for 6 months unless she modified her request.

Ms Tamara Redburn requested to withdraw this item until next month.

WITHDRAWN BY APPLICANT

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:54 p.m.