

BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS

Tuesday, May 10, 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 May 10, 2016. Chairman Sisson called the meeting to order at 6:18 p.m. requesting the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT:

Ms. Jennifer Sisson, Chairman; Alderman Mary Anne Gibson; Mr. Frank Uhlhorn; Mr. Mike Harless; Ms. Pat Sherman; and Ms. Sherri Hicks

DEVELOPMENT STAFF PRESENT:

Mr. Cameron Ross, Economic and Community Development Director; Ms. Sheila Pounder, Senior 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.

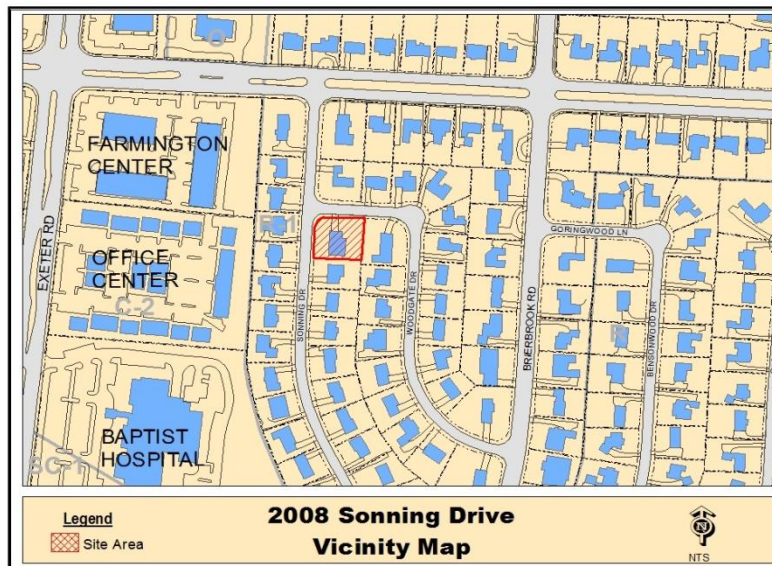
1. Approval of Minutes for April 12, 2016. Shown as Agenda Item No. 3

Mr. Uhlhorn moved to approve the Board of Zoning and Appeals minutes of March 8, 2016 with the understanding that his name be corrected on page 3, seconded by Ms. Sherman, with no further comments or discussions.

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

MOTION PASSED

2. 2008 Sonning Drive – Approval of a Variance to Increase the Width of a Driveway in the Front Yard of a Corner Lot in the R-1 District. (Case No. 16-618). Previously Known as Agenda Item No. 6



BACKGROUND:

DATE SUBDIVISION APPROVED: March 1, 1972.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: The home was constructed in 1974.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 23-88(a)(2) (Maximum width), which states “For residential corner lots only, a parking pad located beyond the limits of the driveway may be permitted within the required front yard, provided the parking pad's paved area abuts the principal driveway, and does not exceed a maximum of 300 square feet within the required front yard”.

NATURE OF VARIANCE REQUESTED: The property’s “R-1” zoning district establishes a minimum front yard setback, extending 40 behind the property line. The applicant was cited on March 11, 2016 by a City Code Compliance Officer for having a driveway addition that is approximately 400 square feet within the front yard of a residential corner lot. The addition of an 18’ x 22’ parking pad (396 sq. ft.) to the existing driveway causes the paved area in the front yard on this lot to exceed the Code by approximately 100 square feet.

APPLICANT’S JUSTIFICATION: The applicant states that the reason for the variance request is “the family need for additional off-street parking spaces for multiple drivers in the household, thereby; freeing up on street parking spaces for safety to the neighbors, and to resolve an ongoing erosion issue due to the heavy shade of trees in the yard that has become an eyesore”. See pages 6-9 for a copy of the application for information concerning the justification for this request.

STAFF COMMENTS:

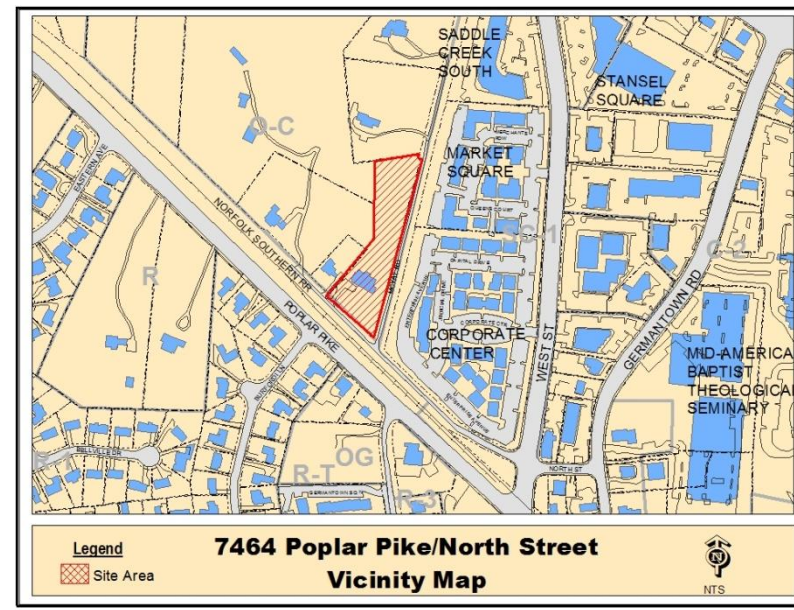
1. The property is a corner lot with the driveway and parking pad located on Woodgate Drive.
2. A copy of the letter to the applicant from the City’s Code Compliance Officer and pictures of the site are attached to the staff report.
3. The requested variance will result in a 396 square foot parking pad area to be located in the front yard of this property.

PROPOSED MOTION: To approve a variance for 2008 Sonning Drive to allow an increase in the width of a driveway to 396 square feet in the front yard on a corner lot in the “R-1” Medium Density Residential District, subject to the board’s discussion, staff comments contained in the staff report, and the site plan submitted with the application.

Mr. Ken Stewart requested that this item be withdrawn for 90 days.

TABLED FOR 90 DAYS BY APPLICANT

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3. 7464 Poplar Pike/North Street – Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 inches in Height in the T-5 District. (Case No. 16-619). Previously Known as Agenda Item No. 7



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 1998.

PREVIOUS VARIANCE REQUESTS: NONE.

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 subject property was rezoned from “R” Residential to “O-C” Office Campus in March, 2002; it was subsequently rezoned from “O-C to the “T5” Urban Center District” in 2007 by the approved of the Smart Code. As a residential use, the property has a 40 foot front yard setback on it that predates the current “T5” zoning district requirements. The current zoning on this property establishes a minimum, 0’, and maximum, 12’, front yard setback for this property. The applicant intends to continue using this property residential purposes as a live/work unit under the current zoning and seeks approval of a variance to build a “traditional cross brace wood fence with brick gate Buttresses at the driveway entrances that will be located 12 feet from the front property line along North Street and smaller brick piers at secondary gates that will be located 9 feet from the front property line along McVay Road”. The location of the new fence along the front of the property on North Street will be in line with fences on the adjacent properties to the west.

APPLICANT’S JUSTIFICATION: The applicant indicates that the reason the variance is being requested is “the property is within an adopted Smart Code District and is expected to be surrounded by more dense development in the near future. The proper is isolated and lies north of and in very close proximity to an active railroad track. The existing home sets over 100 feet back from the road and there is a severe slope and grade change at the currently required front setback line. The variance is also being

requested for aesthetic enhancement of the property”. See pages 7-10 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’ in height. The fence will be 9’ to 12’ from the front property lines of North Street and McVay Road and located in the front yard of this property.
2. The existing split rail fence on the property immediately adjacent to the west of the site and the brick wall fences on the property further west of the site are both approximately 3’ in height and setback approximately 12 feet from North Street. There is an 8’ tall brick fence along the east side of McVay directly in front of this site.
3. The height of the proposed brick piers located at the driveway entrance to the subject site will be 5’6” with wing walls that begin at 5’6” and peak at 8’. The gates are 6’6” tall but 7’ above ground due to the clearance needed for the gates to open and close.
4. The applicant’s supplemental information indicates that there is a change in the property’s topography from west to east and north to south, especially at the intersection of North Street with McVay Road. The property appears to change in grade with the street being higher than the property along its frontage.
5. 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 exceed 30 inches in height to be located within the required front yard setback of 7464 Poplar Pike/North Street in the “T5” Urban Center District, subject to the discussion by the Board, staff comments contained in the staff report, and the site plan and documentation submitted with the application.

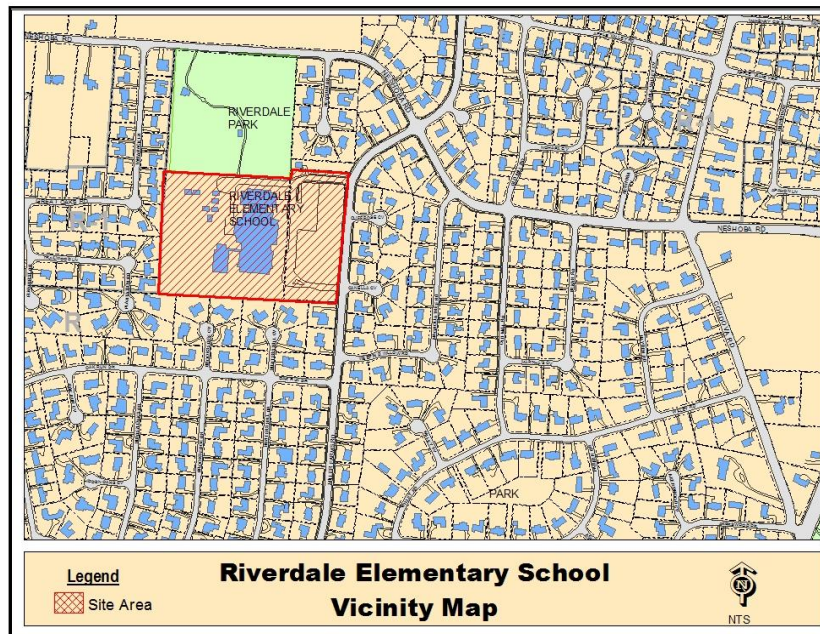
Mr. Barry Jones representing Jim & Liz Jacobs explained that this was a very nice piece of property and feels that their request for this fence would strengthen the appeal of a true Germantown Historic appearance and would be in line with the fences on the adjacent properties to the west.

Mr. Uhlhorn moved to approve a variance to allow a fence to exceed 30 inches in height to be located within the required front yard setback of 7464 Poplar Pike/North Street in the “T5” Urban Center District, subject to the discussion by the Board, staff comments contained in the staff report, and the site plan and documentation submitted with the application, seconded by Ms. Sherman.

ROLL CALL: Ms. Sherman – Yes; Ms. Hick – Yes; Alderman Gibson – Yes; Mr. Uhlhorn – Yes; Chairman Sisson – Yes

MOTION PASSED

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4. 7391 Neshoba Road – Riverdale Elementary School Germantown Municipal School’s Board of Education – Approval of a Use on Appeal for a Public School Parking lot Addition in the R District.(Case No. 15-551). Previously Known as Agenda Item No. 4



BACKGROUND: Riverdale Elementary School was constructed by the Shelby County Board of Education in 1969. It was transferred to the Germantown Municipal School District when that entity was created.

PREVIOUS VARIANCE REQUESTS: On November 10, 2015, the BZA granted approval of a Use on Appeal for a Public School (Building Addition).

DISCUSSION: The recent Board approval was for an expansion of the school that consists of a 42,261 sq. ft. building addition on the east side of the existing school building and 135 parking spaces east and south of the proposed building. The applicant is now seeking a second approval for an additional 107 parking spaces to be located on the west side of the existing building. The granting of this approval by the Board will allow a revised site plan that reflects this new parking lot area to be presented for approval to the Planning Commission and Design Review Commission. Due to the school's timing issues, a revised site plan that included the new parking spaces were presented to the Planning Commission on May 3, 2016 and was approved unanimously an amendment to the motion that requires that this project receive approvals from both the Board of Zoning Appeal and the Design Review Commission.

The request for a use on appeal is based on Section 23-228 of the Zoning Ordinance, which states, in part, that educational facilities shall be permitted [in the "R" 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 a collector street on the official road plan" and that the other requirements set forth in Article II, Division 4 (requirements of the "R" zoning district), Article II, Division 4 (General Exceptions) and Article II, Division 2 (Board of Zoning Appeals) of the Zoning Ordinance are met.

Article II, Division 2 describes the project characteristics the board of zoning appeals must review in its deliberations on the use: 1) whether or not the approval will impair an adequate supply of light and air to adjacent property, 2) will it unreasonably increase the congestion of public streets, 3) increase the danger of fire and endanger public safety; 4) 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.

APPLICANT'S JUSTIFICATION: See the included application and proposed site plan for additional information.

STAFF COMMENTS:

1. In reviewing a proposed use on appeal, the Board of Zoning Appeals (BZA) may consider screening, landscaping, setbacks, etc., in order to determine whether the proposal will have an adverse impact on the adjacent properties. The BZA may require such screening, setbacks or other special provisions deemed necessary to mitigate such negative impacts.
2. A revised site plan that included the new parking spaces was approved unanimously by the Planning Commission on May 3, 2016.
3. If the Use on Appeal is approved, the applicant shall apply to the Design Review Commission for landscape, fence and lighting plan approval.

PROPOSED MOTION: To approve a Use on Appeal for Riverdale Elementary School (Parking Lot Addition), a public school at 7391 Neshoba Road, subject to the discussion by the Board, staff comments in the staff report, and the site plan submitted with the application.

Cameron Ross stated for the record as the Fire Marshal has said based on the information that he has at the present time, he is comfortable with plans as he sees it. The Fire Marshal will be taking a much more closer look at these plans during the construction document review which is at the end of May and the Design Review Commission. Life, health, and safety issues are paramount to everything and the Fire Marshal does have the final say before any project goes into operation.

Mr. Jason Manual, Germantown Schools Superintendent and David Smith w/A2H explained they wanted to keep the same level of parking that they currently have for the school. The additional parking spaces to be located on the west side of the existing building will be for parking during the school hours and for the plays because this is where they have their stage. Evening usage will be limited to 2 weeks because they only have a spring and fall play at this school. The need for the parking lot is long term and during construction so the teachers have one location to park. They can't get rid of the portable buildings until the new building is open for use.

Mr. Ron Sklar spoke against this project as it is being presented. He explained that he has lived there for 32 years. He has granted 50 to 100 students a year access to the school by walking up his driveway and down the corridor that he has provided for them for 32 years now so he feels no one has more invested interest in the Riverdale School than he does and that this design is not up to Germantown Standards. He explained that he is a Real Estate Developer and has built a lot of parking lots in his career and feels that this design is the most torturous entrance that he had ever seen from a major street especially for a fire truck. The fire truck would have to dodge fire plugs, utility poles, chiller system for the entire school, and the dumpster. The parking lot should be at least 200 feet further north than it is and would serve the playground, easier access for the fire truck as well as staff, students, and visitors to get in and out. He mentioned several different plants that should be planted along the south side of the parking lot to make a solid hedge so the vehicles are not visible. The developers should go back to the drawing board and improve this plan by moving the parking lot, changing the traffic plan, showing the landscaping, lighting, irrigation etc.

Mr. Ross explained that what the applicant is asking for tonight is to occupy a little bit more ground in the residential area for the school. They would be going before the Design Review Commission at the end of the month to discuss the lighting and landscaping plans and to get their approvals. The reason the applicant is coming before you tonight is for the expansion of the Use on Appeal.

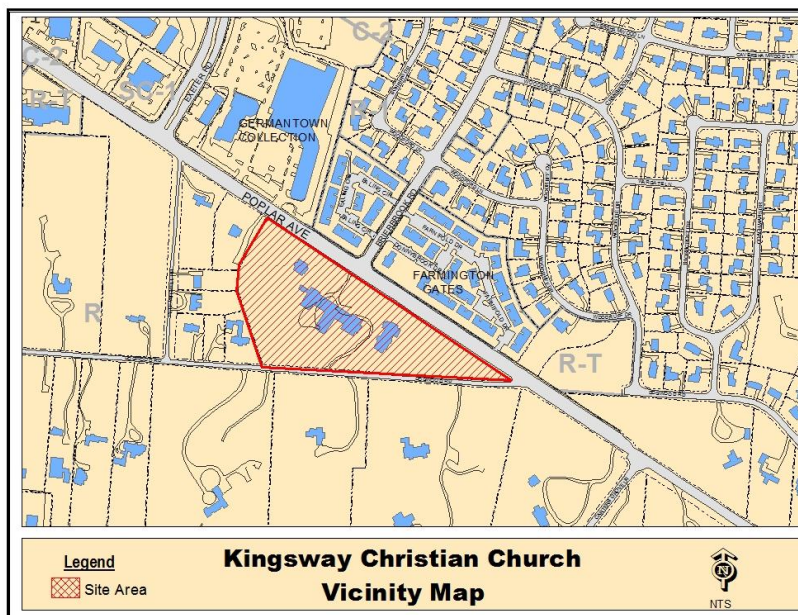
After much discussion, the board expressed their concern with the landscaping and lighting and requested that they do all they can to buffer the sound and absorb the light from their neighbors and to work at addressing Mr. Sklars concerns to which Mr. Manual agreed.

Ms. Hicks moved to approve a Use on Appeal for Riverdale Elementary School (Parking lot Addition), a public school at 7391 Neshoba Road, subject to the Board's discussion, staff comments contained in the staff report, and the site plan submitted with the application, seconded by Alderman Gibson.

ROLL CALL: Mr. Harless – Yes, with the provision that the landscaping and lighting is taken care of both on the west and south side and to take a real good look at moving the parking back 40' and feels it is the right thing to do for all the reasons that have been sited. Extra landscaping will not hurt anything and makes the grounds look better; Ms. Sherman – Yes; Mr. Uhlhorn – Yes; Ms. Hick – Yes; Alderman Gibson – Yes; Chairman Sisson – Yes

MOTION PASSED

5. 7887 Poplar Avenue – Kingsway Christian Church of Memphis – Approval of a Variance to allow a School to be Located on a Lot Less than the Minimum Lot Area Required in the R District. (Case No. 16-617). Previously Known as Agenda Item No. 5



DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Church – 2002/School - 2006.

PREVIOUS VARIANCE REQUESTS: None.

OTHER USE ON APPEAL REQUESTS: On March 14, 2006, the Board granted approval of a Use on Appeal to allow a school (the Memphis Oral School for the Deaf) in an "R" Residential Zoning District.

BACKGROUND: On May 14, 2002, the Board of Zoning Appeals granted a Use on Appeal to allow the construction of a church facility in an "R" residential zoning district. On May 4, 2004, the Planning Commission granted Final Site Plan approval for the Kingsway Christian Church. On June 22, 2004, the Design Review Commission (DRC) granted Final Plan approval with the exception of the Landscape and Lighting Plans. On July 27, 2004, the DRC approved the revised Lighting Plan but withheld approval of the revised Landscape Plan. The Landscape Plan was administratively approved at a later date.

DISCUSSION: The current request is to allow the property that the existing school building is located on to be subdivided from the property with the existing church facilities. This subdivision will create a new lot, less than 5 acres in the "R" District, for the Memphis Oral School for the Deaf. Each of the current uses already has separate addresses. The church address is 7887 Poplar Avenue and the Schools address is 7901 Poplar Avenue. The school and the church will share the existing entrance driveway from Poplar

Avenue. The parking needs for the school will be accommodate on its own lot and the church will retain parking spaces on its lot.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 23-230(3) (Minimum Lot Area), which states “The minimum lot area in the R residential district shall be as follows: Schools: five acres, plus one acre for each 200 or fraction of 200 students over the 200 the school is designated to serve”.

NATURE OF VARIANCE REQUESTED: Kingsway Christian Church owns a 10.377 acre parcel on Poplar Avenue. The church currently leases a building and a portion of their property to the Memphis Oral School for the Deaf. The church wishes to subdivide their property into two legal lots of record that would allow them to sale to the school the property that it currently occupies. The proposed lot size to be sold to the school is 3.137 acres based on the current configuration of the existing improvements on this site. This newly proposed lot will be less than the minimum lot size (5 ac.) required for schools located in a “R” district. The approval of this variance would allow Memphis Oral School for the Deaf and Kingsway Christian Church to exist in their current location but on two separate lots if the proposed subdivision is approved by the Planning Commission.

APPLICANT’S JUSTIFICATION: See the included application, letter, and proposed site plan for additional information.

STAFF COMMENTS:

1. If the variance is approved, the applicant shall apply to the Germantown Planning Commission for Subdivision approval.

PROPOSED MOTION: To approve a variance to allow a school at 7901 Poplar Avenue to be located on a 3.137 acre lot, which is less than the minimum lot area required in the “R” District, subject to the discussion of the Board, staff comments in the staff report, and the site plan submitted with the application.

Mr. Michael Rogers w/Fisher Arnold explained that this property is fully owned by Kingsway Christian Church and sometime afterwards Memphis Oral School for the Deaf came to an agreement with the church to share use of this building and over time it has evolved. Recent interest from the school expressed concern that if Kingsway ever decided to sell the property the school wanted to possibly purchase it from the church. The church is requesting to subdivide this lot, creating a new lot, less than 5 acres for the Memphis Oral School for the Deaf. Kingsway will still own both lots, they just want to subdivide their property into two legal lots of record that would allow them to sale to the school the property that they are presently using if there ever became a need. He asked the board to grant this request based on the uniqueness of this situation.

Mr. Harless explained that by approving this, it would mean that this newly proposed lot would be less than the minimum lot size of 5 acres required for schools located in the “R” district and that by approving this in the future, as an example, we may have other schools that may want to place a school on 2 ½ acres and really shouldn’t deviate from the code.

After much discussion, Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance to allow a school at 7901 Poplar Avenue to be located on the 3.137 acre lot, which is less than the minimum lot area required in the “R” District, subject to the Board’s discussion, staff comments contained in the staff report, and the site plan submitted with the application, seconded by Alderman Gibson.

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

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 7:40 p.m.