

BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS

Tuesday, November 8, 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 November 8, 2016.

1. Chairman Sisson called the meeting to order at 6:04 p.m.
2. Chairman Sisson requested the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT: Ms. Jennifer Sisson, Chairman; Mr. Hunter Browndyke, Vice Chairman; Alderman Mary Anne Gibson; Mr. Mike Harless; Ms. Sherrie Hicks; and Mr. Frank Uhlhorn

DEVELOPMENT STAFF PRESENT: Mr. Cameron Ross, Economic and Community Development Director; Ms. Sheila Pounder, Planning Division Manager; Ms. Sarah Goralewski, 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.

3. Approval of Minutes for October 11, 2016.

Typographical errors on these minutes were corrected as instructed by Alderman Gibson.

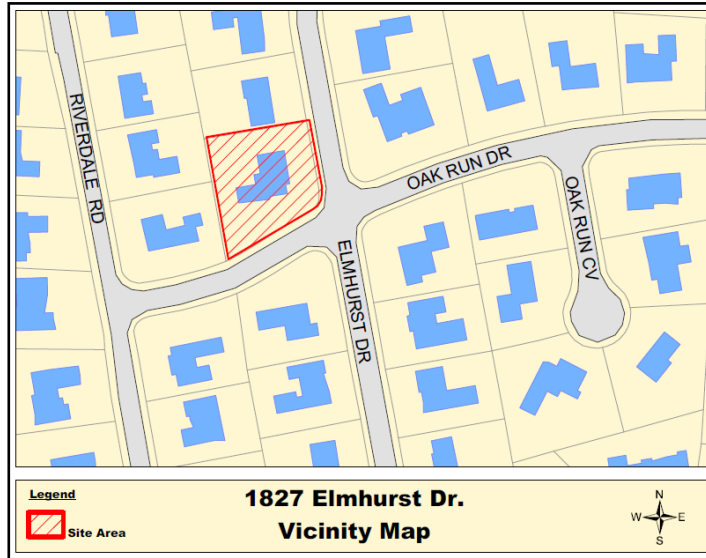
Mr. Browndyke moved to approve the Board of Zoning and Appeals minutes of October 11, 2016 as amended; seconded by Alderman Gibson, with no further comments or discussions.

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

MOTION PASSED

---

4. 1827 Elmhurst Drive – Approval of a Variance to Allow an Accessory Structure (Fireplace) to be Less Than the Required Minimum Distance from a Property Line in the R District. (Case No. 16-650).



**BACKGROUND:**

DATE OF ANNEXATION: December 23, 1964.

DATE SUBDIVISION APPROVED: Oak Run/Germantown Heights, recorded in 1978, describes this parcel as Lot 144.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1980

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from § 23-236(2)b, which requires accessory buildings or structures a height of eight feet or more to be located a distance equal to at least the height of the structure from the rear and side lot lines.

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is approval to modify an existing deck and construct an outdoor fireplace. While open on three sides, the covered deck would have a roof and a fireplace with a chimney feature that is 19' feet in height. The entire structure would be located 7' feet from the side (north) property line.

**APPLICANT'S JUSTIFICATION:** The applicant is requesting the variance to enable them to construct a covered deck adjacent to the house, which includes an outdoor kitchen with a fireplace and a 19' chimney. The applicant has determined that the location of the chimney is best serviced on the north side of the deck. This way the covered deck would work with the existing footprint of the deck and, due to the proposed placement of the chimney, the TV would not be visible from the street or experience effects of the afternoon sun. (See the application for additional reasoning.)

**STAFF COMMENTS:**

1. If the Board approves the requested variance, the applicant shall apply for an accessory structure permit for both the covered deck and the fireplace/chimney from the City of Germantown.

2. The requested variance will result in a 19' chimney being located 19'6" from the neighbor's house. Per the City of Germantown Fire Code, a permanent outdoor fireplace should be at least 15' from any structure, including a covered deck. While Fire Department would not regulate this on private property, they would like to work with the applicant on determining less combustible building materials.
3. Per § 23-236(2)b, the property owner is allowed have an accessory structure (such as the fireplace/chimney) 7'11" in height in the proposed location, without requiring a variance.

PROPOSED MOTION: To approve a variance for 1827 Elmhurst Drive to allow an enclosed porch with an 18 foot chimney to be built 7 feet from the side (north) lot line, subject to the to the board's discussion, staff comments contained in the staff report and the site plan submitted with the application.

Mr. Wade Clark, homeowner, asked the board to approve his variance request as submitted since the swimming pool location and where this accessory structure (fireplace) will be placed makes sense because the design would allow them to still have a visual of the pool.

Mr. Todd Bradford, Contractor, explained per Shelby County Code the fireplace must be 4' feet below the top of the arbor in order for it to pass inspection so this is where the 19' ft height request came from. The height of the roof is as short as the architect was able to make it in order for it to look right with the house due to the faucet ceilings and open gables.

Mr. Kasargard, 1835 Riverdale Road, spoke in favor of this request and requested that this board look at every request from the adjacent homeowners view. He also spoke of the drainage issues he is having on his property due to a neighbor's request that was granted by the past board member in hopes that someone from the city would help him to get it resolved. Alderman Gibson asked if she could meet with Mr. Kasargard to discuss his situation after the meeting.

Alderman Gibson commented on the uniqueness of this property, footprint of the home, exceptional narrowness of the L shape lot, and open concept of accessory structures. She believes this board will be seeing more of these in the future. She further explained she tends to lean toward giving great latitude because of this need and what she believes it will bring to the quality of life of the applicant as well as the surrounding area, and she takes very seriously what the neighbors say. Therefore she will be voting in favor of this request.

Ms. Hicks agreed with Alderman Gibson and would be voting in favor of this request as well.

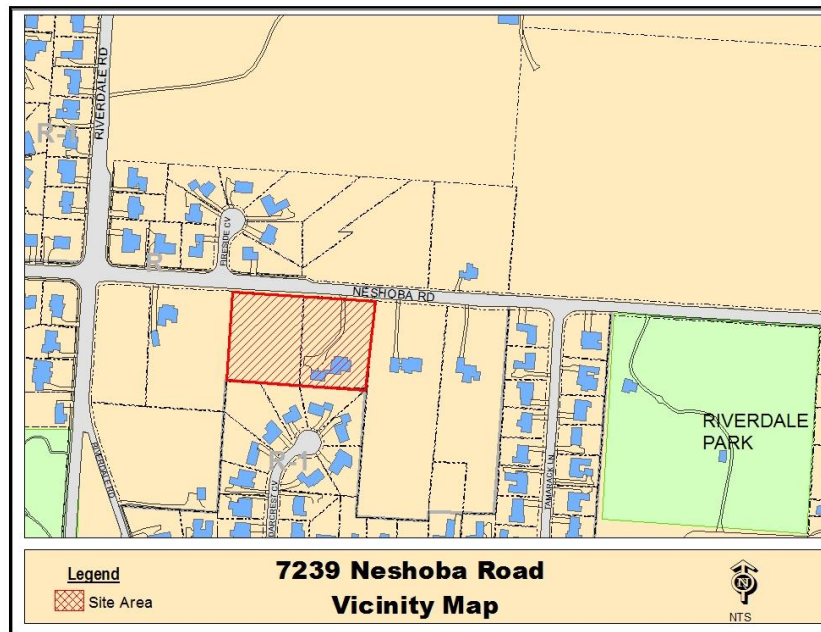
Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance for 1827 Elmhurst Drive to allow an enclosed porch with an 19 foot chimney to be built 7 feet from the side (north) lot line, subject to the board's discussion, staff comments contained in the staff report and the site plan submitted with the application, seconded by Ms. Hicks.

ROLL CALL: Mr. Harless – No, great design; however, it doesn't meet the guidelines and there are other ways to solve your problem. Mr. Uhlhorn – Yes; Ms. Hick – Yes; Alderman Gibson – Yes; Mr. Browndyke - Yes; Chairman Sisson – Yes, as stated by Alderman Gibson.

MOTION PASSED

- 
5. 7239 Neshoba Road – Approval of a Variance to Allow a Fence to Exceed Six Feet in Height in the R District (Case No. 16-651).



**BACKGROUND:**

DATE OF ANNEXATION: December 23, 1964.

DATE SUBDIVISION APPROVED: The property is Lot 1 & 2 in the Leike subdivision recorded in 1972. Lot 2 is addressed as 7239 Neshoba Road, but both lots are utilized as a single property due to the present of an existing TVA easement that almost entirely covers Lot 1.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: The home was constructed in 1973.

PREVIOUS VARIANCE REQUESTS: On December 14, 1999, the BZA granted a variance to permit an accessory structure (shed) to be located at a distance from the property line less than the height of the structure, within a recorded TVA easement, and on a lot that does not have a principal building.

**DISCUSSION:**

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to retain a 6.83 feet tall wooden fence as part of a shelter run-in for their horses in a pasture adjacent to their home, and an 8.5 foot tall wooden fence that extends from the western property line to principal structure and along the rear property line. Both fences have already been installed on site without the required permits. The 6.83 feet fence extends 60 feet along the adjacent run-in as indicated by the applicant's site plan. The 8.5 feet tall wooden fence abuts the existing split three-rail fence surrounding the adjacent pasture, and extends to the southwest corner of the home approximately 76.7 linear feet (as measured by Code Officers) and along the rear property line behind an existing pool. Due to the location of these two fences, obtaining precise measurements have been difficult for staff. Consequently, staff was unable to measure the length of the fence behind the pool at the rear of the home. The locations of the fences are indicated on attached pictures provided by the applicant as well as some taken by the Code Officers that are included in this staff report.

The applicant was notified of the fence height violation by Code Compliance Officers on March 14, 2016 and advised that her options to correct the violation were to remove the fence, reduce the fence height to bring it into compliance, or apply to the BZA for a variance. The cited code violation was for only the fence located in the pasture. The fence behind the pool was identified later as part of the research and

inspection for this BZA report. The applicant was made aware of the second violation and is now seeking a variance to be allowed to retain both fences as currently existing on site.

**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 request is for two separate fences that exceed the maximum height allowed for fences in the residential district. The applicants’ fence in the pasture exceeds six (6) feet in height by less than a foot, and the fence that extends from the western property line to principal structure and behind the pool exceeds the maximum fence height by two and half feet.

**APPLICANT’S JUSTIFICATION:** The applicant indicates that the reason the variances are being requested is the need “for structural support of a necessary run-in to provide shelter for their horses and as a replacement of an existing fence behind pool for privacy due to the slope of the land.” See pages 5-7 for a copy of the application along with some additional attached information concerning the justification for this request.

**STAFF COMMENTS:**

1. The requested variance will result in a fence that is 6.83 feet (82 inches) in height adjacent to the house run-in located in the pasture and 8.5 feet (102 inches) in height behind the pool, along the rear property line this property.
2. The applicant has not provided information to illustrate the slope in the land along the rear property line as stated in the application.
3. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for fence permits.

**PROPOSED MOTION 1:** To approve a variance to allow a fence to up to 6.83 feet (82 inches) in height as support for the existing run-in located in the pasture of 7239 Neshoba 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.

**PROPOSED MOTION 2:** To approve a variance to allow a fence to up to 8.5 feet (102 inches) in height extending from western property line to principal structure and along the rear property line, behind the pool, of 7239 Neshoba 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.

**WITHDRAWN BEFORE MEETING BY APPLICANT**

---

6. 3110 Ashmont Drive – approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height in the RE-1 District (Case No. 16-652).



**BACKGROUND:**

DATE OF ANNEXATION: December 3, 1986.

DATE SUBDIVISION APPROVED: Germantown Village Subdivision, recorded in 1968, describes this parcel as Lot 20.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1976

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from the following section of the Code of Ordinances: §6-102(b): “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 applicants is approval is to allow a wood split rail fence 50” in height, encroaching into the front yards on a corner lot. According to §23-208(1)a. and b., the property’s residential estate zoning district (“RE-1”) establishes a minimum front yard setback that extends 60’ behind the property line. (Per the recorded plat for this lot, the required building setback is 75’ from the edge of the street, which appears to approximately include the required 60’ front yard setback from the property line and the remaining 15’ of public right of way.)

The applicants erected a new split-rail wood fence that is approximately 50” in height, and is approximately 37’ from the edge of the street. The applicants were notified of this violation by the Office of Code Compliance on June 22, 2016 and advised that their options to correct the violation were to remove the fence, reduce the fence height to bring it into compliance, or apply to the BZA for a variance. On June 27, 2016, the applicants applied and were approved for a fence no higher than 30”. However, the 50” fence still remained. On July 20, 2016, the property owners spoke with Ms. Pounder about applying for a variance. On August 9, 2016, the Office of Code Compliance gave the owners 30 days to comply. On September 21, 2016, a court summons was issued. On October 13, 2016, the applicants appeared in court, and agreed to apply for a variance. (See attachments below.)

**APPLICANT’S JUSTIFICATION:** The applicants indicate that the reason the variance being requested is: “The layout of the land and original structures, such as the detached garage that is now a work shed, need to be secured from easy access to potential thieves. This property is along Poplar Pike. We feel that a fence below 50”, because of the peculiar layout of the land, would jeopardize the safety and security of our pets and young children. In addition, movement of the fence would not allow us to use the land as productively as we would like.” See attachments with letter for further explanation.

**STAFF COMMENTS:**

1. The requested variance will result in a fence that is 50” height to be located in the front yards of this property, approximately 37’ feet from the edge of the street on both Poplar Pike and Ashmont Drive.
2. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a newly revised fence permit.
3. If the variance is not approved, the applicant must either move the 50” fence to the 75’ building setback line, or reduce the height of the fence to 30” in its existing location.

**PROPOSED MOTION:** To approve a variance to allow fencing within the required front yards of 3110 Ashmont along Ashmont Drive and Poplar Pike to exceed 30” in height, subject to staff comments and the site plan filed with the application.

Mr. Dan Saffer, applicant, explained they have two children and one on the way and so wanted to fence in their property. The contractor they chose to erect the fence told them he knew the City of Germantown Ordinances and Codes so they hired him to construct the fence. They were later contacted by a Germantown Code Compliance officer that they were in violation. They were informed that their contractor had not been issued a permit and because they have a corner lot they would have to have the fence setback 70 ft from the road. This property has a circular drive and a side driveway that is used to park their vehicles. There is also a shop on the Poplar Pike side of the property that they wanted to fence in for safety and security.

After much discussion, the board explained the fence on the north side must be in compliance which would be no more than 30” inches in height. The west side the fence will need to be moved back and be no more than 30” inches in height to be compliant. The south side which runs along Poplar Pike, can stay where it is but must not be over 40” inches in height.

Mr. Howard Green, 3019 Ashmont Drive, was initially against having a fence in the front yard but later agreed after the board and staff explained the code.

Mr. Bob Sikeman, 3044 Ashmont Drive, explained that he was happy to have the children in the neighborhood and wants them to be safe. He is opposed to the fence being in the front yard along Ashmont and feels it should be kept at the same height but be moved back to the front of the house. He is not opposed to them having the full height of the fence that runs along Poplar Pike for their protection.

Chairman Sisson called for a motion.

Mr. Harless would like to propose the following motion for the property located at 3110 Ashmont Road that the fence surrounding the property on the west and north side be in full compliance with Germantown rules and regulations which requires 30”. However, on the south side which is the Poplar Pike side, the existing fence be reduced to 40” in height, subject to the board’s discussion, staff comments contained in the staff report, and the site plan submitted with the application, seconded by Ms. Hicks.

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

MOTION PASSED

---

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:58 p.m.