

BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, October 11, 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 October 11, 2016.

1. Chairman Sisson called the meeting to order at 6:08p.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; Ms. Pat Sherman; and Ms. Sherrie Hicks

DEVELOPMENT STAFF PRESENT: Mr. Cameron Ross, Economic and Community Development Director; Ms. Sheila Pounder, Planning Division Manager; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney

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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.

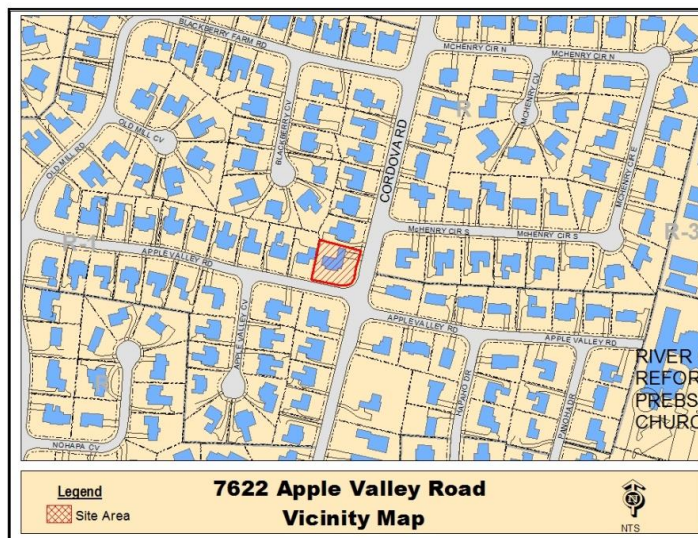
3. Approval of Minutes for August 9, 2016.

Mr. Browndyke moved to approve the Board of Zoning and Appeals minutes of August 9, 2016, seconded by Ms. Hicks, with no further comments or discussions.

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

MOTION PASSED

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4. 7622 Apple Valley Road – Approval of a Variance to Allow an Accessory Structure to be Less Than the Required Minimum distance from a Property Line in the R-1 District (Case No. 16-645).



**BACKGROUND:**

**DATE OF ANNEXATION:** February 24, 1969 (Ordinance 1968-16)

**DATE SUBDIVISION APPROVED:** Apple Valley Subdivision. Section A was approved by the Shelby County Planning Commission and Shelby County Commission in 1969.

**DATE PRINCIPAL STRUCTURE APPROVED/BUILT:** 1970.

**PREVIOUS VARIANCE REQUESTS:** None.

**DISCUSSION:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from § 23-261, 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 of an existing shed that is 8.10 feet in height and located 2.8 feet from the side (west) property line.

**APPLICANT'S JUSTIFICATION:** The applicant is requesting the variance to enable him to keep the shed in its current location since "available space in the backyard is limited and the only usable space for a shed, in accordance with the Code, is too narrow to accommodate a useful shed". The applicant was notified by a Code Compliance Officer on August 19, 2016, that the shed location was in violation of the Code and that a permit should have been obtained from the City of Germantown for the construction and installation of the structure. It was determined that the structure was too close to the existing fenced property line and that a variance must be granted before a permit could be issued for the shed construction. The homeowner submitted an application for a variance on September 13, 2016 and noted in the application that the current location is the best place for the structure because "the existing pool takes up most of the space in the backyard". Also, it should be noted that the applicant states that "there was a slightly smaller (deteriorated) shed previously in the same location and this new structure is replacing it". See the application for additional reasoning.

**STAFF COMMENTS:**

1. Upon review of the BZA application for a variance, it was determined that the shed as well as the pool's plumbing equipment are located within an existing 5 foot utility easement along all sides of the property line. § 23-261 of the Zoning Ordinance states "No accessory building or structure shall be located within a recorded easement". The applicant should be required to remove this equipment and the shed out of the easement or a second variance must be granted for it to remain in the easement and the applicant will be required to enter into a Hold Harmless Agreement with the City of Germantown.
2. If the Board approves the requested variance, the applicant shall apply for an accessory structure permit from Germantown.

**PROPOSED MOTION 1:** To approve a variance for 7622 Apple Valley Road to allow an existing shed that is 8.10 feet in height to be located 2.8 feet from the side (west) 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.

**PROPOSED MOTION 2:** To approve a variance for 7622 Apple Valley Road to allow a shed and pool plumbing equipment to be located within the 5 foot utility easement along the west and north property lines, subject to the to the board's discussion, staff comments contained in the staff report and the site plan submitted with the application.

**PROPOSED MOTION 3:** To approve a variance for 7622 Apple Valley Road to allow pool plumbing equipment to be located within the 5 foot utility easement along the west and north property lines, subject

to the to the board's discussion, staff comments contained in the staff report and the site plan submitted with the application.

Mr. Greg Anglin explained that he understood that he had violated the city's ordinances and this structure was significantly taller than allowed. However, he explained that he would like to have some storage space and felt this was the only area where it could be placed. The pool was already there when he purchased the home. That only left this 15' area and if the shed is moved in any way it would then obstruct passage from the back yard to the front yard.

The board asked if the homeowner had applied for a permit before constructing this building. Mr. Anglin explained that he had an individual contractor to build this shed on his lot for him and admitted that he didn't apply for a permit before the structure was built because he didn't realize he was supposed to.

The board asked several questions concerning the structures flooring and foundation in hopes that these could be altered in order to lower the shed's height and bring it into compliance. Suggestions were also made to reposition the building in different ways in order to bring it into compliance with no success due to the location of the gate.

After much discussion, Ms. Hicks explained that this board has to find a reason that makes this request exceptional and she can't find it. She appreciated the board trying to help Mr. Anglin find a way to keep this shed but he does have other options such as he didn't have to have a shed and he does have a garage. Therefore when asked to vote on this motion she would be voting no. In regards to the pool equipment this item was pre-existing to him purchasing the home, and she could support the variance for it.

Chairman Sisson explained that she was trying her best to help him to meet the requirements specified in the ordinance and he was so close but based on the discussion here tonight she was not seeing the exceptional nature to grant this request so therefore she would be voting no as well. As far as the utility, she did see the exceptional nature based on the corner lot and the pool drainage and equipment. Chairman Sisson then explained that the applicant now knows how the board is leaning toward when the roll is called so he could either withdraw this motion or the board can vote.

Ms. Pounder explained that if the board granted the pool variance and the applicant worked with staff to redesign the building in order to comply with the city's ordinance then a variance would not be required. It would just be a simple matter of doing a hold harmless agreement with the City of Germantown because of the proximity to the easement.

Mr. Anglin agreed to withdraw the variance request for the shed and requested the board to vote on the pool plumbing equipment variance.

MOTION 1 – WITHDRAWN BY APPLICANT

MOTION 2 – WITHDRAWN BY APPLICANT

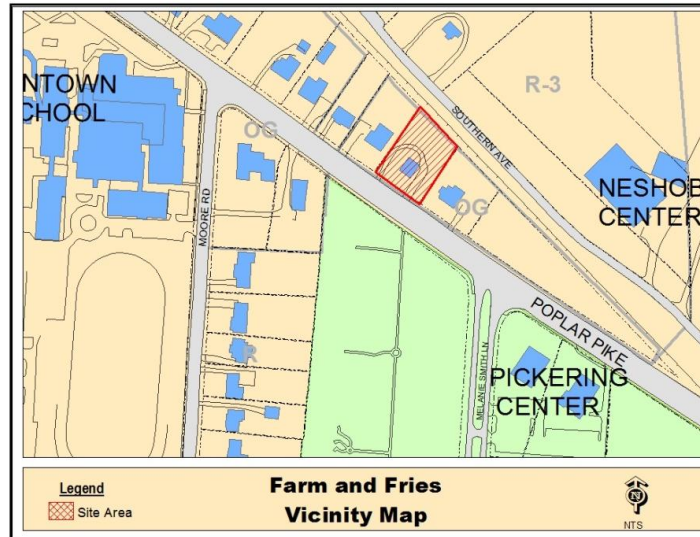
Chairman Sisson called for a motion.

Mr. Browndyke moved to approve a variance for 7622 Apple Valley Road to allow pool plumbing equipment to be located within the 5 foot utility easement along the west and north property line, subject to the board's discussion, staff's comments contained in the staff report and the site plan submitted with the application, seconded by Ms. Hicks.

ROLL CALL: Ms. Hicks – Yes; Alderman Gibson – Yes, because there are extraordinary conditions meriting this variance; Ms. Sherman – Yes; Mr. Browndyke – Yes; Chairman Sisson – Yes, for the reasons previously stated.

MOTION 3 PASSED

5. 7724 Poplar Pike – Approval of a Variance to Allow the Principal Structure to Encroach into the Required Front and Side Yard Setbacks in the OG District (Case No. 16-646).



**BACKGROUND:**

**DATE OF ANNEXATION:** Carter & Harville Survey – June 13, 1955

**DATE SUBDIVISION APPROVED:** The property deeds describes this parcel as Lot 3 of the Thompson 7 acres in the Cornelius 108 acres (Unrecorded)

**DATE PRINCIPAL STRUCTURE APPROVED/BUILT:** 1938

**PREVIOUS VARIANCE REQUESTS:** None.

**DISCUSSION:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from §23-519(a), which requires "...the development plan (for property in OG) to provide adequate front, side or rear yard spaces consistent with similar uses in other zoning districts...". A 40 foot front yard setback and a 20 foot side yard setback are required for restaurants without parking in the front yard in commercial districts.

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is approval of a variance that would allow the redevelopment of the site by placing the principal structure closer to Poplar Pike and the western property line. The building will encroach into the front setback 25 feet and into the side yard setback 11 feet if the setback requirements for restaurants in commercial districts are applied to this site.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance in order to develop the property for a restaurant use with parking located to the side and rear of the building, which is in keeping with the recommendation of the Design Review Manuals’ guidelines for Old Germantown. The applicant notes that the property has “limited frontage and depth that will not accommodate a fire truck turning movements on site. Placing the building closer to the street, allows the Fire Department required access for protection, which is the preferred location by the Germantown Fire Department”. In addition “the property is bisected by ‘possible charter railroad right-of-way’ further limiting the ability to develop the site”. See attached application and proposed site plan for additional information.

STAFF COMMENTS:

1. Germantown Fire Department Comment: This appears to meet our access needs.
2. The property is surrounded by other commercial/office uses along this segment of Poplar Pike.
3. The proposed building setback and site plan layout appears to demonstrate the design principals of maintaining the character of Old Germantown as required by the Design Review Manual.
4. If approved the applicant must receive approval of the site plan and building elevations from the Design Review Commission prior to obtaining a building permit from Shelby County Office of Construction Code Enforcement prior to beginning any work on the site.

PROPOSED MOTION: To approve a variance for 7724 Poplar Pike to allow the principal structure to be located 15 feet from the front property line and Poplar Pike and 9 feet from the site (western) property line, so as to encroach 25 feet into the required front yard and 11 feet into the required side yard, subject to the board's discussion, staff comments contained in the staff report and the site plan submitted with the application.

Mr. Mike Fahy explained that the hardship on this particular site is a railroad easement that bisects the middle of the property and if you apply the standard setback you can see how the building envelope becomes so condensed that they have very little room to work with that they pushed the building as far to the west as possible. They have met with the fire department. There is a fire hydrant that sits down at the southeast corner of the bottom point of the site. The fire department has expressed that they would prefer to put a fire out from the street and also said they would like the drive lane between the building and the parking on the east side of the site to be 26 feet wide so in the event they had to get their trucks out that they would have room to put the arms down. So after trying to accommodate that requirement the building had to be shifted over to the west so they could at least have some landscaping, parking isle, and drive isle. So the position on the building was based on the fire departments safety request and to follow the Old Germantown design to bring the building closer to the street and have parking in the rear. So in this particular application there is someone who is about to take a non-conforming piece of property with 2 circular drives and give us an amenity that all of us have missed every time we have visited the Pickering Center. Therefore they are requesting to be allowed to move this project forward. He explained that they still have a lot of work to do at the Design Review Commission as well as with staff. The request is that the board will see that this is a very small piece of property and trying to conform to these two requirements is a hardship and very difficult.

Mr. Bill Lender explained that his property is just west of this property and was very excited about this project.

Alderman Gibson explained that she was going to be voting to approve this request due to the railroad right-of-way and believe that this does constitute a peculiar or an exceptional reason to approve this request.

Ms. Hicks expressed her appreciation for consulting their neighbors on this process and agrees with Alderman Gibson that they do have an exceptional piece of property due to the railroad right-of-way, setbacks, and the fire departments requirements.

Chairman Sisson echoed what had been previously stated by the other board members and called for a motion.

Mr. Browndyke moved to approve a variance for 7724 Poplar Pike to allow the principal structure to be located 15 feet from the front property line and Poplar Pike and 9 feet from the site (western) property line, so as to encroach 25 feet into the required front yard and 11 feet into the required side yard, subject

to the board's discussion, staff's comments contained in the staff report and the site plan submitted with the application, seconded by Ms. Sherman.

ROLL CALL: Mr. Browndyke – Yes; Alderman Gibson – Yes; Ms. Hicks – Yes; Ms. Sherman – Yes, due to the railroad right-of-way; 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 6:52 p.m.