

BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, December 13, 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 December 13, 2016.

1. Chairman Sisson called the meeting to order at 6:03 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; 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. Revised Agenda

Chairman Sisson explained the reason for the revised agenda was due to the notification sent out for one of the items had an incorrect property address and incorrect square footage for the lot. However, the notification was revised and hand delivered by the applicant to residents within the 300 foot radius notification area. The applicant has provided a signed certification that attests to the completion of this action. Chairman Sisson called for a motion:

Alderman Gibson moved to approve the revised agenda, seconded by Mr. Browndyke.

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

MOTION PASSED

4. Approval of Minutes for November 8, 2016. Previously Known as Agenda Item No. 3

During executive session the board requested “inaudible” be removed from the minutes since the remaining text is clear concerning the subject of the discussion on that specific agenda item.

Alderman Gibson moved to approve the revised Board of Zoning and Appeals minutes of November 8, 2016 as amended in executive session; seconded by Ms. Hicks, with no further comments or discussions.

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

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).

INTRODUCTION:

Case Number: 16-651

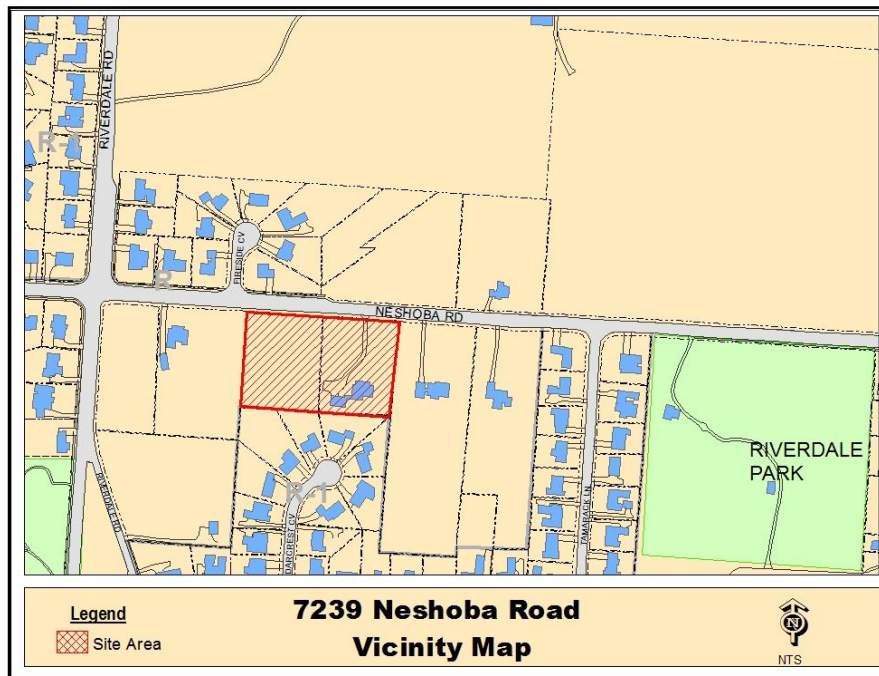
Applicant Name: Carol Pearson, Homeowner

Location: 7239 Neshoba Road

Current Zoning District: “R” Residential District

Description of Request: Approval of a Variance to Allow a Fence to be Exceed 6 feet in Height

*Refer to the Disclosure Form attached for more information



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 provided.

Ms. Carol Pearson explained one of the main reasons they bought this house was because of the pasture land that was next to it, which is underneath TVA lines. There are no trees or any other protection for these horses on this lot. They removed the thicket that was there due to the bees, wasp, and other critters, and once this thicket was removed, they realized that there had been a chain linked fence in that location. They decided to use the chain link fence post that was still remaining to attach their fence boards, in order to give their horses a run-in to protect them from the weather elements, and in a location wasn't under the TVA Lines. It didn't occur to them that the run-in would be considered a fence. The fence/run-in is not on

any property lines; rather, it is way back from the road, as well as a good distance from the back property line, as one can see in the pictures. This was the only area on the property they could use to give the horses protection, and asked the board to grant her variance request.

After much discussion, Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance to allow a fence of 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, as discussed, subject to the staff comments contained in the staff report and the site plan submitted with the application, seconded by Mr. Browndyke.

ROLL CALL: Mr. Uhlhorn – Yes; Ms. Hicks - Yes, due to the uniqueness of the TVA lines running through your property and the history of the property having a fence; Alderman Gibson – Yes, for the reasons stated by Ms. Hicks; Mr. Browndyke – Yes, for the reasons previously stated; Chairman Sisson – Yes, for the reasons previously stated

MOTION PASSED

PROPOSED MOTION #2: To approve a variance to allow a fence of 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, as discussed, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance to allow a fence of 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, as discussed, subject to the staff comments contained in the staff report and the site plan submitted with the application, seconded by Ms. Hicks.

ROLL CALL: Mr. Browndyke – Yes; Alderman Gibson – Yes, because they were replacing an existing fence; Ms. Hicks – Yes, because they were replacing an existing fence; Mr. Uhlhorn – Yes; Chairman Sisson – Yes, for reason previously stated

MOTION PASSED

6. 8115 Woodcreek Cove – Approval of a Variance to Allow a Lot to be Less Than the Minimum Required Lot Area (14,429 Square Feet) in the R District (Case No. 16-658).

INTRODUCTION:

Case Number: 16-658
Applicant Name: Uhlhorn Brothers Construction
Location: 8115 Woodcreek Cove
Current Zoning District: “R” Residential District
Description of Request: Approval of a Variance to Allow a Lot to be Less Than the Minimum Required Lot Area (14,429 square feet) in the R District



DATE OF FINAL PLAT APPROVAL: November 1, 2005

PREVIOUS VARIANCE REQUESTS: None.

BACKGROUND: On November 1, 2005, the Planning Commission granted preliminary and final approval for the Gardens of Wood Creek Planned Development (PD), located north of Dogwood Road and west of Wood Creek Road. The PD consisted of 6 residential lots, ranging in size from 15,000 and 22,700 square feet, as well as two common open space areas (COS “A” and COS “B”) along the west side of the subdivision (Wood Creek Drive) and a landscape easement on the west side of the subdivision (Coachman’s Drive). On January 24, 2006, the Design Review Commission approved a subdivision entrance feature and a landscape plan for the two common open space areas and the landscape easement. On June 12, 2006, the Board of Mayor and Aldermen approved development contract number 477 for the PD, which noted that the subdivision was to be completed within 24 months.

DISCUSSION: The request is to allow Lot 6 of The Gardens of Woodcreek PD to be 14,429 s.f., which is less than the minimum allowable lot area in the R residential district.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 23-230(1) (Minimum Lot Area), which states “The minimum lot area in the R residential district shall be as follows: Single-family dwellings: 15,000 square feet.”

NATURE OF VARIANCE REQUESTED: When the final plat for the Gardens of Wood Creek PD was created, it noted Lot 6 to be 15,000 s.f. However, on October 25, 2016, the applicant submitted a foundation survey for Lot 6 showing the lot size as only 14,429 s.f. The surveyor confirmed that the original plat, showing Lot 6 as 15,000 s.f., was incorrect.

Planning Division staff advised the applicant to talk with the Homeowners’ Association (HOA) about acquiring some land from the abutting common open space “B,” in order to bring the lot size up to the required 15,000 s.f. This was not successful, as common open space “B” is primarily a public drainage easement. Thus, the applicant decided to move forward with the variance request to allow the lot to remain at 14,429 s.f.

APPLICANT’S JUSTIFICATION: See the included application, letter, and revised plat for additional information.

STAFF COMMENTS:

1. If the variance is approved, the applicant shall revise and re-record the final plat to reflect the correct lot size.
2. All conditions of the original Planning Commission and Design Review Commission approvals shall remain.

PROPOSED MOTION: To approve a variance to allow a lot to be less than the minimum required lot area of 14,429 square feet in the residential R district, subject to the discussion of the Board, staff comments in the staff report, and the site plan submitted with the application.

Mr. Uhlhorn recused himself from this Agenda Item.

Mr. Gerry Patrikios, speaking as the civil engineer that helped with this project about 10 years ago. He explained that the surveyor Tim McCaskill could not attend this meeting but he would try to answer any questions the Board might have. This project started off as an 8 lot subdivision, then changed to a 7 lot, then to a 6 lot layout, and the final correct lot areas did not get updated on the final plat.

Alderman Gibson expressed her appreciation for the staff catching this discrepancy and understands that the original plat had a difference of 571 square feet, and this lot is certainly smaller than the required amount for this zoning district. The applicant should have been able to rely on the professional services of the original survey when it was originally platted, and in good faith moved forward with their project. She will be voting in favor of this item when the roll is called.

Chairman Sisson called for a motion.

Mr. Browndyke moved to approve a variance to allow a lot to be less than the minimum required lot area of 14,429 square feet in the residential “R” district, as discussed by the Board, staff comments in the staff report, and the site plan submitted with the application, seconded by Alderman Gibson

ROLL CALL: Ms. Hick – Yes; Alderman Gibson – Yes; Mr. Browndyke - Yes; Chairman Sisson – Yes

MOTION PASSED

7. **Other Business:**

Alderman Gibson recognized Harrison Browndyke with Cub Scott Pack 241, Christ United Methodist Church.

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:37 p.m.