

BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, January 10, 2017  
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 January 10, 2017.

1. Alderman Gibson called the meeting to order at 6:05 p.m.
2. Alderman Gibson requested the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT: Ms. Jennifer Sisson; Mr. Hunter Browndyke; Alderman Mary Anne Gibson; Mr. Mike Harless; Ms Patricia Sherman; 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

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3. Election of Chairman and Vice Chairman

Alderman Gibson called for a motion to elect a Chairman. Mr. Browndyke made a motion to nominate Ms. Sisson and seconded by Mr. Uhlhorn, with no further comments or discussion.

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

Alderman Gibson turned the meeting over to Chairman Sisson.

Chairman Sisson called for a motion to elect a Vice Chairman.

Chairman Sisson made a motion to elect Mr. Browndyke as Vice Chairman, seconded by Mr. Uhlhorn with no further comments or discussion.

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

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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.

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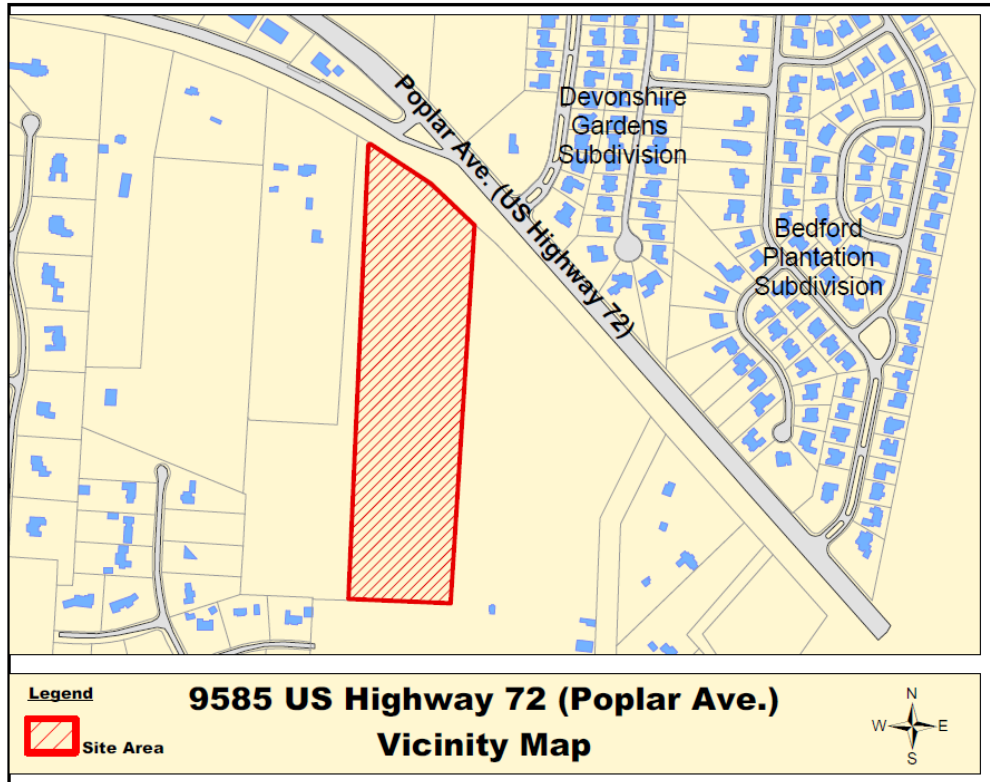
4. Approval of Minutes from the December 13, 2016 Meeting

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of December 13, 2016, as discussed; seconded by Mr. Uhlhorn, with no further comments or discussions.

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

MOTION PASSED

5. 9585 US Highway 72 (Poplar Avenue) – 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. 16-660)



**BACKGROUND:**

DATE OF ANNEXATION: July 26, 2000.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Vacant. Single family house currently under construction.

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 applicant is approval to allow a 54” high split rail wood fence along the length of the front property line, as well as a 72” high stone entry feature fence with 88” high stone columns (which include 16” high caps on top of the columns), encroaching into the front yard of an interior lot. According to §23-208(1)a., the property’s residential estate zoning district (“RE-1”) establishes a minimum front yard setback that extends 60’ behind the property line. The proposed fence would be located along the front property line, which is 88’ from the street due to the rail road right-of-way.

**APPLICANT’S JUSTIFICATION:** The applicant indicates that the reason the variance is being requested is: “The property is landlocked without street frontage. The closest street is 88’ from the property line, due to the railroad right-of-way between the front property line and Poplar Ave. Requiring the fence to be 60’ behind the front property line would require the removal of dense forest to install fencing.” See attachments with letter for further explanation.

**STAFF COMMENTS:**

1. The requested variance will result in a 54” high split rail wood fence along the length of the front property line, as well as a 72” high stone entry feature fence with 88” high stone columns (which include 16” high caps on top of the columns), to be located in the front yard of this property, approximately 88’ from Poplar Ave.
2. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit within 30 days of this approval.

**PROPOSED MOTION:** To approve a variance to allow a 54” high split rail wood fence along the length of the front property line, as well as a 72” high stone entry feature fence with 88” high stone columns (which include 16” high caps on top of the columns), to be located in the front yard of this property in the RE-1 district, subject to staff comments and the site plan filed with the application.

Mr. David Grant, property owner, explained since this property doesn’t have street frontage, then it doesn’t have a front yard which makes this property a land locked anomaly. The neighbor’s fence to the east is the same as he is requesting and will not look any different.

Mr. Harless questioned the applicant concerning the size of the columns and the cap that was proposed. Then explained the city code requires an 84” maximum height on columns.

Mr. Grant said, based on the code he read, he would be allowed to have a 6’ column with a cap, but the cap was not clearly described at that point. This property is on 25 acres and is equal to a subdivision size when it comes to this type of situation.

Mr. Harless explained that if this property was zoned as a subdivision then it wouldn’t be a problem; however, it isn’t, so they will need to deal with what is presented.

Mr. Ross explained, as staff had stated the subdivision entrance feature in Chapter 6 states that the cap is at 12” and it is not a subdivision, it is a residential entry feature. The cap for individual residential fences is not clearly defined in the code, but will be clarified in the future.

Mr. Grant explained by limiting this fence to 84” maximum height, it would not look as aesthetically pleasing as he had wanted, but he would comply with the board’s decision.

Alderman Gibson expressed her appreciation for Mr. Grant’s detailed application.

After much discussion, Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance to allow a 54” high split rail wood fence along the length of the front property line, as well as a 72” high stone entry feature fence with a cap for a maximum of 84” as amended, to be located in the front yard of this property in the RE-1 district, as discussed, subject to staff comments, and the site plan filed with the application, seconded by Mr. Harless.

**ROLL CALL:** Mr. Harless – Yes, it is a unique piece of property and the fact that it doesn’t have road frontage, it should have some variance. The variance that is being proposed certainly meets the spirit of

what we are trying to do; Ms. Sherman – Yes, due to the extraordinary and exceptional situation of the property; Mr. Uhlhorn – Yes, because this addresses a number of hardships; Ms. Hicks – Yes, reasons previously mentioned; Alderman Gibson – Yes, for the reasons previously mentioned; Mr. Browndyke – Yes, because of the continuity of the existing fence which this property is close to and he is also in favor of the 88” because it is not clearly defined in the ordinance, but will agree with the 84” at this time; Chairman Sisson – Yes, for the reasons previously mentioned.

MOTION PASSED

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6. 2177 Woodruff Cove – Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height in the R District (Case No. 16-661)



BACKGROUND:

DATE OF ANNEXATION: February 24, 1969.

DATE SUBDIVISION APPROVED: Farmington Subdivision – Section A, recorded in 1969, describes this parcel as Lot 51.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1973

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 fence 72” in height, encroaching into the front yards of a corner lot. According to §23-232(1)a. and b., the property’s residential zoning district (“R”) establishes a minimum front yard setback that extends 40’ behind the property line for all street-facing sides. Additionally, per the recorded plat for this lot, “No fence shall be erected on any corner lot nearer to the street line than the rear house line except that it shall be permissible to erect fence from house to side lot line immediately in front of rear entrance door.” The house on this property is placed at an angle, rather than parallel to the street, which gives the back yard the appearance of being triangular.

Without obtaining a fence permit from the City, the applicants erected a new wood fence that is approximately 72” in height. It ranges approximately 18’ to 35’ from the property line along Woodford Lane, and 38.5’ to 47.1’ from the property line along Woodruff Cove. The applicants were verbally notified of this violation by the Office of Code Compliance on October 11, 2016 and were advised that their options to correct the violation were to remove the fence or apply to the BZA for a variance. On October 20, 2016, a letter was sent to the applicants from the Office of Code Compliance, as no action had been taken. In November, 2016, the applicant discussed options with both the Office of Code Compliance and the Planning Division. On December 15, 2016, the applicants filed an application with the Planning Division for a variance.

**APPLICANT’S JUSTIFICATION:** The applicants indicate that the reason the variance is being requested is: “The backyard on this corner lot is shaped triangularly. Moving the fence will reduce a huge section of the backyard. The backyard is sloping downwards towards the house. Thus, retaining walls are in place, cutting up an already odd shaped yard, which reduces the useable footprint of the backyard. Moving the fence will greatly diminish that useable space even more.” See attachments with letter for further explanation.

**STAFF COMMENTS:**

1. The requested variance will result in allowing a fence that is 72” height to be located in the front yards of this property, approximately 18’ to 38.5’ from the property line along Woodford Lane and Woodruff Cove.
2. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit within 30 days of this approval.

If the variance is not approved, the applicant must move the fence to the rear house line, per the covenant on the recorded plat.

**PROPOSED MOTION:** To approve a variance to allow fence that is 72” height to be located in the front yards of 2177 Woodruff Cove, approximately 18’ to 38.5’ from the property line along Woodford Lane and Woodruff Cove, subject to staff comments and the site plan filed with the application.

**WITHDRAWN BY APPLICANT**

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**ADJOURNMENT**

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:50 p.m.