

BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, March 14, 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 March 14, 2017.

1. Alderman Gibson called the meeting to order at 6:05 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; 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.

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 from the January 10, 2017 Meeting

Mr. Uhlhorn moved to approve the Board of Zoning and Appeals minutes of January 10, 2017, as discussed; seconded by Alderman Gibson, with no further comments or discussions.

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

MOTION PASSED

4. 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)



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 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.

On January 10, 2017, the Board of Zoning Appeals reviewed the applicants’ original request to keep the fence in the original place. Following discussion with the BZA, the applicants agreed to withdraw their original application and work with Planning Division staff to revise their request. On January 19, 2017, Planning Division staff met with the property owner to discuss options. The property owner revised the proposed fence so that the majority of it is at the 40’ front yard setback, except for an approximately 20’ long portion that jogs out around the existing retaining wall. (This was done so that the retaining wall is contained within the backyard, behind the fence.) The property owners also gathered signatures from neighbors who support the fence proposal.

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 usable 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 revised requested variance will result in allowing an approximately 20’ long portion of a 72” high fence to be located in the front yards of this property, approximately 35’ from the property line at the corner of 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.
3. 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 an approximately 20' long portion of a fence that is 72" height to be located around an existing retaining wall in the front yards of 2177 Woodruff Cove, approximately 35' from the property line at the corner of Woodford Lane and Woodruff Cove, subject to staff comments and the site plan filed with the application.

Mr. Dustin Fulton was there to answer any questions the board might have.

Chairman Sisson noted that there were a set of facts that caused this applicant to end up with a house that had an unpermitted fence, and that this applicant did not intentionally or purposely fail to get a permit. Chairman Sisson noted the staff comments and expressed the board's appreciation to the applicant for working with staff to address the board's discussion from the past meeting of this case.

Alderman Gibson expressed her appreciation to the applicant for his openness with the board, Mr. Tom (the contractor who erected the fence), and the staff. She explained that her vote would be in favor due to the unique and irregular shape of his lot and she really appreciated how he revised his original proposal.

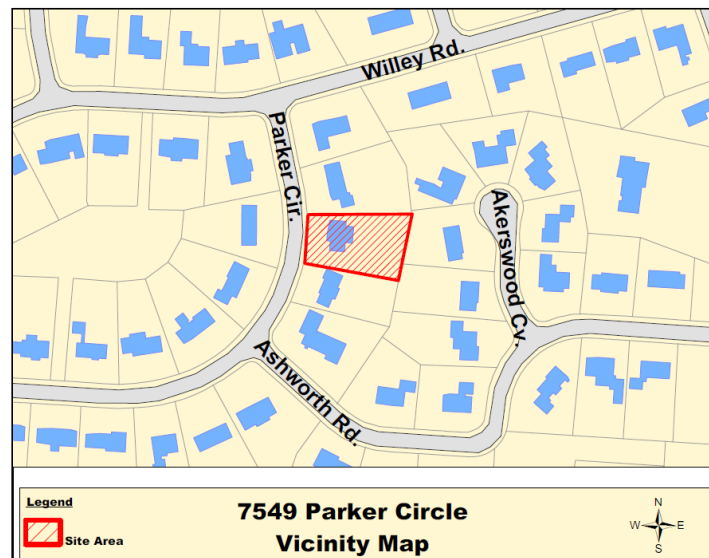
After much discussion, Chairman Sisson called for a motion.

Mr. Uhlhorn moved 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, as discussed, subject to staff comments and the site plan filed with the application, seconded by Mr. Harless.

ROLL CALL: Mr. Harless – Yes, this applicant worked with staff and withdrew his original petition. They have come up with a solution due to the uniqueness of the lot that meets the intent, and applauded the applicant for making this work. Ms. Hicks – Yes, agreed with what the other board members said and for his efforts. Mr. Uhlhorn – Yes; Ms. Sherman – Yes; as previously stated; Mr. Browndyke – Yes; Alderman Gibson – Yes; Chairman Sisson – Yes, as previously stated.

MOTION PASSED

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5. 7549 Parker Circle – Approval of a Variance to Allow an Accessory Structure (Boat Cover) to be Less Than the Required Minimum Distance from the Side Property Line in the R District. (Case No. 17-704)



DISCUSSION:

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from two sections of the Zoning Ordinance: 1) § 23-236(1) which states: “No accessory buildings/structures and other outdoor accessory constructions shall extend beyond the front line of the principal building, nor shall they extend into the required side yard between the front and rear lines of the principal building,” and 2) § 23-236(2)b, which states that: “an accessory building or structure with a height of eight feet or more may extend into the required rear yard, but shall 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 boat shelter that is 10’ 10” in height (to the mid-point of the roof) and located 5’ 1” feet from the side (north) property line. The existing boat shelter is also located between the front and rear lot lines of the house, with about 5’ of the back of the boat shelter extending into the rear yard. (See attached site plan.)

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance to enable him to keep the boat shelter in its current location for this reason: “My property is in a flood zone. When it rains, my back yard floods. I put the boat shelter in the only area of the yard that stays relatively dry and is the highest elevation in the back yard, as the rest of the backyard slopes away from the house.”

The applicant was notified by a Code Compliance Officer on January 27, 2017, that the boat shelter 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 side property line, and that the structure was located between the front and rear house lines. A variance must be granted before a permit could be issued for the boat shelter construction in its current location. The homeowner submitted an application for a variance on February 8, 2017, and noted in the application that the current location is the best place for the structure due to the property being in a 100-year flood zone. See the application for additional reasoning.

STAFF COMMENTS:

1. If the BZA approves the requested variance, the applicant shall apply for an accessory structure permit from the City of Germantown Neighborhood Services Division.

Proposed Motion #1: To approve a variance for 7549 Parker Circle to allow an existing boat shelter that is 10’ 10” in height to be located 5’ 1” feet from the side (north) property 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 7549 Parker Circle to allow an existing boat shelter to extend beyond the side setback while being located between the front and rear lines of the principal building, subject to the to the board’s discussion, staff comments contained in the staff report and the site plan submitted with the application.

Mrs. Elizabeth Ross explained that their back yard was very low and subject to frequent flooding. The contractor they were paying to work on their house is the same one that built this accessory structure (boat cover) and they were under the impression that he had acquired the proper permit.

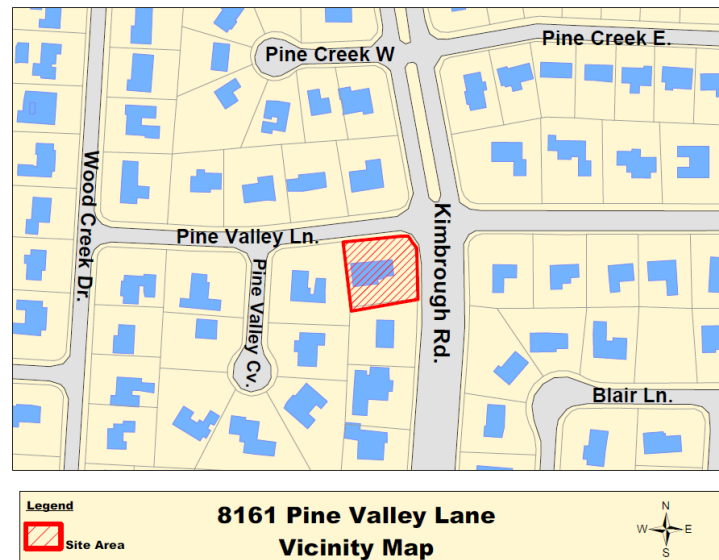
The board explained that the applicant would be in compliance if he were to remove the top and posts of this accessory structure (boat cover). Since this structure was to protect a boat, yet it is opened on all four sides, it would more than likely be better protected by a heavy duty boat cover than this structure. The argument that the hardship is because the property is in a flood zone is not a good reason to grant this request. Unfortunately, the city’s ordinance doesn’t allow this board to grant a variance based on the reasons given in this request. Chairman Sisson called for a motion.

Mr. Uhlhorn moved to approve a variance for 7549 Parker Circle to allow an existing boat shelter that is 10'10" in height to be located 5'1" feet from the side (north) property line as well as the variance to allow an existing boat shelter to extend beyond the side setback while being located between the front and rear lines of the principal building, subject to the board's discussion, staff comments contained in the staff report, and the site plan submitted with the application, seconded by Mr. Harless.

ROLL CALL: Mr. Uhlhorn – Yes; Ms. Hicks – No; Ms. Sherman – No; Mr. Harless – No, for the reasons previously stated; Mr. Browndyke – Yes; Alderman Gibson – No; Chairman Sisson – No

MOTION FAILED

6. 8161 Pine Valley Lane – Approval of a Variance to Allow an Additional Driveway and Increased Width of Existing Driveway in the Front Yard on a Corner Lot in the R District. (Case No. 17-709)



DISCUSSION:

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 23-88(a)(2), which states “The maximum width of a driveway in the required front yard shall be 24 feet at the apron with a maximum driveway surface width of 18 feet.” Additionally, the Zoning ordinance defines a driveway as follows: “*Driveway* means a paved way, on private property, providing access from a public way, street or alley to the main buildings, carport, garage, parking space or other portion of the premises.” The applicant wishes to add a second, circular driveway in the front yard facing Pine Valley Drive. On July 28, 2014, the Board of Mayor and Aldermen approved an amendment to Ordinance 2014-08 – Regulations on Front Yard Parking in Residential Districts, which does not expressly allow for the addition of a second driveway in the front yard setback.

NATURE OF VARIANCE REQUESTED: The property's “R” zoning district establishes a minimum front yard setback, extending 40' behind the property line. The applicant is proposing to add a parking pad no greater than 300 s.f. onto the existing driveway off of Kimbrough, which he is permitted to do on a corner lot per § 23-88(a)(2). In addition to keeping the existing driveway off of Kimbrough Rd. and adding a parking pad, he is requesting an additional, second circular driveway in the front yard setback facing Pine Valley Ln. This proposed second driveway would be connected to the existing driveway via a 4' wide sidewalk.

APPLICANT’S JUSTIFICATION: The applicant states that the reason for the variance request is due to exceptional narrowness, shallowness or shape of the lot, resulting in peculiar and exceptional practical difficulties, as follows: “Due to the danger of my driveway being on busy Kimbrough Rd., I am requesting permission for a circular driveway. There is not ample parking on the property and I am not able to park on the street in front of my house due to a stop sign, mailbox and fire hydrant. There is no parking for guests or visitors, due to this. My home is located on a corner lot. I also have a blind view because of trees on the corner across from my home.” See attached application.

STAFF COMMENTS:

1. The property is a corner lot with the current driveway on Kimbrough Rd. The property owner intends to construct a parking pad of no more than 300 s.f., abutting the principal driveway off of Kimbrough Rd., which is allowed per Section 23-88(a) of the Municipal Code.
2. The requested variance will result in allowing an additional 12’ wide circular driveway (not leading to the garage) to be located in the front yard setback of this property.
3. Per Section 23-88(d) of the Municipal Code, the applicant shall submit a driveway permit to the Engineering Division for both the parking pad and the new circular driveway. In conjunction with this request, the applicant shall work with the City’s Storm Water Engineer to ensure that proper erosion control measures are in place on this property.

Proposed Motion: To approve a variance for 8161 Pine Valley Lane to allow a second 12’ wide circular driveway in the front yard setback facing Pine Valley Lane on a corner lot in the “R” Low 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. Richard Coger explained that he really didn’t have anything else to add to the presentation but he expressed accolades for Ms. Sarah Goralewski for helping him to get through this process. He explained that on Pine Valley Ln. there is a fire hydrant and a stop sign. Based on the ordinance, he has to be parked 15 feet away from the fire hydrant, so he really doesn’t have any parking on the street for visitors.

Chairman Sisson expressed to the applicant the board’s appreciation for coming to them before he performed any work. Due to Kimbrough Rd. being on a busy road and a corner lot, she understands the need to be able to enter and exit the property safely. Because of these reasons and the uniqueness of the lot, she will be voting to approve this.

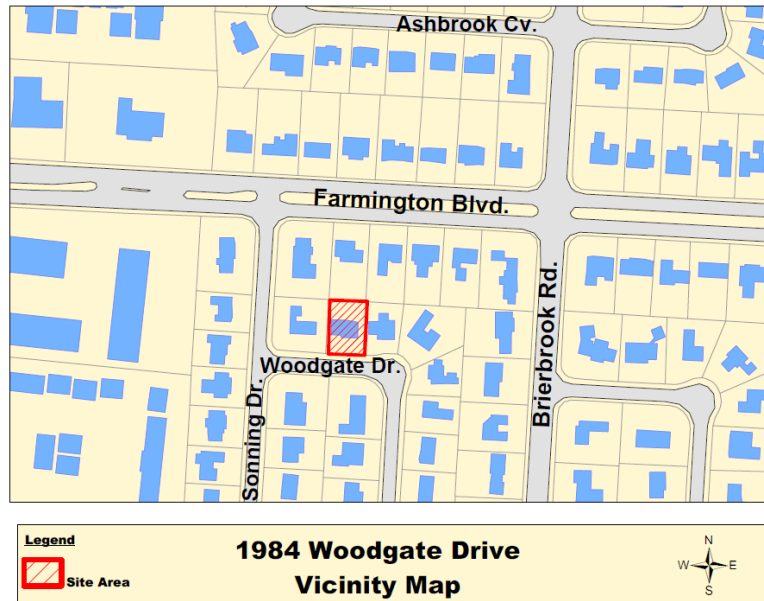
After discussion, Chairman Sisson called for a motion.

Mr. Harless moved to approve a variance for 8161 Pine Valley Lane to allow a second 12’ wide circular driveway in the front yard setback facing Pine Valley Lane on a corner lot in the “R” Low Density Residential 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.

ROLL CALL: Ms. Sherman – Yes; Mr. Harless – Yes, for the reason stated concerning the stop sign and the safety; Mr. Uhlhorn – Yes; Ms. Hicks – Yes, for the reasons stated previously; Mr. Browndyke – Yes, for the reasons stated; Alderman Gibson – Yes, due to the exceptional practical difficulties with the stop sign and fire hydrant; Chairman Sisson – Yes

MOTION PASSED

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7. 1984 Woodgate Drive – Approval of a Variance to Allow a Two-Story Building Addition to the Principal Structure to be Less Than the Required Minimum Distance from the Side Property Line and a Driveway to be Greater Than the Maximum Allowable Width in the R District. (Case No. 17-710)



DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval to add a one-story, attached garage to the principle structure that will encroach into the west side setback, and for a wider than allowed driveway addition to reach the proposed third garage bay. (While there is a proposed two-story addition to the existing house, the proposed garage portion, which encroaches into the side setback, will only be one-story).

SPECIFIC SECTIONS OF ZONING ORDINANCE: There are two specific variance requests. The first is a variance from §23-232(2) which requires there to be one or more required side yards of not less than ten feet in the “R” low-density single-family residential zoning district. The proposed one-story attached garage addition would be 2.94 feet from the west side property line, so a variance for an encroachment of 7.06 feet is required.

The second request is for a variance from §23-88(a)(1), which requires that a driveway be no more than 18’ in width, except for 20’ in front of the garage or carport, then it may be the width of the garage or carport. The second variance is necessitated by the placement of the proposed third garage bay. The driveway addition to reach the proposed third garage (which is set back further than the existing garage) would render the driveway approximately 28’ wide beyond the 20’ of both the proposed and existing garage, which is greater than the maximum allowable width.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape, resulting in peculiar and exceptional practical difficulties. The applicant states “Our lot is 85’ in width. This narrowness causes the requested addition the need to encroach the side yard setback lines. Other lots have as much as 5-12 feet more in width.” See the application for additional information and reasoning.

STAFF COMMENTS:

1. If variance request #1 is granted, the applicant must apply for a building permit through the Shelby County Construction Code Enforcement.
2. If variance request #2 is granted, the applicant must apply for a driveway permit through the City of Germantown Engineering Division.

Proposed Motion #1: To approve a variance to allow an attached garage to be 2.94' from the west side property line (which is less than the required minimum distance) in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application.

Proposed Motion #1: To approve a variance to allow a 28' wide driveway (greater than the maximum allowable width) in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application.

WITHDRAWN BY APPLICANT

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 7:17 p.m.