

BOARD OF ZONING APPEALS
CITY HALL COUNCIL CHAMBERS
Tuesday, July 11, 2017
6:00 p.m.

The regular meeting of the Board of Zoning Appeals was scheduled and held in the Council Chambers of City Hall on July 11, 2017.

1. Chairman Sisson called the meeting to order at 5:34 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; Mr. Mike Harless; Mr. Frank Uhlhorn; Ms. Patricia Sherman; Alderman Mary Ann Gibson and Ms. Sherrie Hicks

DEVELOPMENT STAFF PRESENT: Mr. Cameron Ross, Economic and Community Development Director; Mr. Joe Nunes, Neighborhood Services Manager; 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 June 13, 2017 Meeting

Mr. Browndyke moved to approve the Board of Zoning and Appeals minutes of June 13, 2017, as discussed; seconded by Alderman Gibson, with no further comments or discussions.

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

MOTION PASSED

4. 9263 Glenda Road – Approval of a Variance to Allow an Additional Driveway in the Front Yard on a Corner Lot in the R District. (Case No. 17-713)



BACKGROUND:

DATE OF ANNEXATION: December 31, 1984 per Ordinance 1984-32.

DATE SUBDIVISION APPROVED: Forest Hill Estates, February 7, 1962.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1966 (demolished in 2016)

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCES REQUESTED: The subject property is a corner lot in the “R-E” residential estate zoning district. The property’s “R-E” zoning district establishes a minimum front yard setback, extending 60’ behind the property line. The applicant intends to build a new residence, with the front of the house facing Scarlet Rd., and the garage with the primary driveway and parking pad off of Glenda Rd. As part of the concept for the new residence the proposal would include additional driveway in the front setback, with a total of two curb cuts on Glenda Rd. and one on Scarlet Rd.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The applicant is requesting a variance to allow an additional driveway in the front yard setbacks, facing both Scarlet and Glenda Roads. Per §23-186(a), “off-street parking spaces required in the “R-E” district under this section shall be provided on the same lot, parcel or tract as the principal building, but not in any portion of the required front yard.” (The applicant is proposing to add a parking pad of about 206 s.f. onto the proposed driveway in the front yard setback off of Glenda Rd., which he is permitted to do on a corner lot per § 23-88(a)(2). This will be screened with landscaping.) This additional driveway could be used as parking, although a majority of the portion facing Scarlet Rd. is behind the front setback.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or exceptional topographic conditions. The subject property is a corner lot, which limits its development options more than the majority of properties in the surrounding neighborhood, as it has two front yard setbacks. From Scarlet Rd. going west, the subject property slopes down about 11 ft. from Scarlet Rd. to the front of the proposed house. Per the applicant, because of the slope, reversing a vehicle up an incline could be a safety hazard. Multiple curb cuts and driveways offer additional exits to avoid hazards.

The applicant has also provided information about other R-E properties in the surrounding area that have additional/circular driveways. The applicant maintains that his proposal is in keeping with the character of the neighborhood. (See the map and photos attached.) The applicant has provided a supplemental explanation and reasoning for the variance request.

STAFF COMMENTS:

1. On June 13, 2017, the Board of Zoning Appeals heard the original application, which was for four variance requests: 1) a carport to encroach into the required front yard setback; 2) a gate within the required front yard to exceed 30 inches in height; 3) an additional, circular driveway in the front yard facing Scarlet Rd.; and 4) an increased width of principal driveway in the front yard setback facing Glenda Rd. At this meeting, the property owner withdrew the application and agreed to explore revisions.
2. The applicant has revised the site plan for the proposed residence so that all the variance requests have been eliminated except for one, namely additional driveways on the property. The applicant revised the driveway configuration, so that there is now only one driveway off of Scarlet, with the majority of the driveway pulled back behind the front setback. Two curb cuts are now proposed off of Glenda Rd., with some of the driveway/parking pad screened with landscaping.

3. The recorded plat for this property shows a well and septic field. These shall be properly abandoned through Memphis/Shelby County Health Department, prior to any building permits.
4. Demolition permits for the existing house have already been filed with the City of Germantown and Memphis/Shelby County Office of Construction Code Enforcement, and the original house has been demolished and the former pool filled. A compaction test shall be required where the pool was filled in, if this has not already been completed.
5. If the variance request is granted, the applicant must first apply for grading/stormwater/tree plan permits through the City of Germantown's Engineering Division, prior to applying for building permits through the Memphis/Shelby County Office of Construction Code Enforcement.

PROPOSED MOTION: To approve a variance to allow additional driveways in the front yard setback facing Glenda and Scarlet Roads on a corner lot at 9263 Glenda Rd. in the "R-E" Residential Estate zoning district, subject to the board's discussion, staff comments contained in the staff report, and the site plan submitted with the application.

DISCUSSION:

Mr. Arslan Shirwany, the applicant, explained they had changed the orientation of the house and driveway. The original request was modified due to the concern of the gates and carport being in the setback, as well as the driveway in front of the garage being in violation. The neighbors concern over the driveway entrance had been satisfied. It is a difficult lot due to the 18-20 ft slope drop, front to back, and the lot narrows toward the end of the cove so the house and driveways had to be designed in order to accommodate this issue. The only request remaining is for an additional driveway. They are requesting two entrances for the front of the house, one from Glenda and one from Scarlet, as well as the one for the carport on the south side of the house.

After staff read the only opposing email regarding this request, Mr. Joe Nunes, City of Germantown's Neighborhood Services Manager, spoke regarding what the ordinance says about how many cars are allowed to park in the driveways. (See letter at the end of this item.)

Mr. Joe Nunes explained that there are no limits stipulated in the ordinance on the number of cars that are allowed to park in the driveways.

Mr. Harless applauded Mr. Swirwany for eliminating the other variance requests and for working with the neighbors. He explained that this board could not address whatever reasons that other residence had for the board to grant them their curb cuts and could not use that reason as justification for granting his request. Mr. Harless explained that he could widen his driveway from 12 to 15 feet and still do everything he wanted to in this request.

Mr. Harless moved to amend the original motion to only allow one additional curb cut rather than two, resulting in one curb cut on Glenda and one curb cut on Scarlet, seconded by Ms. Hicks.

Mr. Uhlhorn expressed opposition to this motion, suggested that the city revisit some of our ordinances, and; therefore, he could not go along with amending the applicant's motion.

After much discussion, Chairman Sisson called for a vote.

ROLL CALL: Mr. Harless – Yes; Ms. Sherman – No; Mr. Uhlhorn – No; Ms. Hicks – Yes; Alderman Gibson – No; Mr. Browndyke – No; Chairman Sisson – No.

MOTION FAILED

Chairman Sisson called for another motion.

Mr. Uhlhorn moved to approve a variance to allow additional driveways in the front yard setback facing Glenda and Scarlet Roads on a corner lot at 9263 Glenda Rd. in the "R-E" Residential Estate zoning district, as discussed by the board, subject to staff comments, staff reports, and the site plan submitted with the application, and seconded by Ms. Sherman.

Mr. Harless agreed with Mr. Uhlhorn concerning revisiting the ordinance, however, he feels the applicant should only be given one addition curb cut because most of the homes have two curb cuts. There are very few homes that have three and if this board starts granting three curb cuts then this will probably open a Pandora's box. So based on the policy that this board currently has and for the request that was before them he would be voting no.

Mr. Uhlhorn agreed but this is an "RE" lot which is two acres and up where the others maybe RE-1 or less which are pretty much standard lots.

Chairman Sisson wanted to mention for the record that each application that comes before this board has a different set of circumstances and this board votes on that application due to those circumstances and the information that is presented to them at that time.

Alderman Gibson expressed that her view has little to do with what the neighboring lots have or don't have but rather the exceptional topography of the 18 ft from the front to the very back as well as the 10 ft drop from the front to the house. This is what she considered to be an acceptable variance request.

Ms. Hicks applauded the applicant for doing such a good job working with the neighbors. However, she expressed that this neighborhood is different from Ingleside to the north. The character of this neighborhood is more rural and she couldn't find more than one home that has two driveways. Most of these lots since being redeveloped have been with one driveway. Since this is a corner lot then she would be happy with two curb cuts. However, she would be voting no when the roll is called.

ROLL CALL: Mr. Browndyke – Yes; Alderman Gibson – Yes; Ms. Hicks – No; Mr. Uhlhorn – Yes; Ms. Sherman – Yes; Mr. Harless – No; Chairman Sisson - Yes

MOTION PASSED

Letter from resident received via email:

From: T <tdholimon@yahoo.com>

Date: Mon, Jul 10, 2017 at 8:57 PM

Subject: July BZA 17-713 9263 Glenda

To: "sgoralewski@Germantown-TN.gov" <sgoralewski@germantown-tn.gov>, "cross@germantown-tn.gov" <cross@germantown-tn.gov>

Comments for Variance Application

There are valid reasons The City restricts the number of driveway entrances into streets, whether in residential or commercial areas.

What most seems pertinent for our neighborhood:

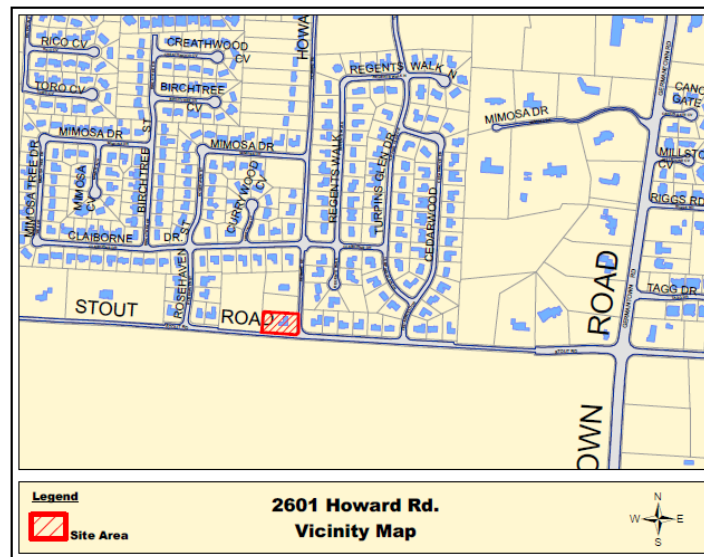
- Each exit to a residential street increases the danger to pedestrians, bicyclists and motorists, particularly if landscaping hides exiting motorist.
- Negative environmental impact of increased water and chemical run-off into our City water and sewer, the adjacent creek, and about 2 miles thereafter, The Wolf River.

- Multiple entrances can be confusing for emergency vehicles, particularly in the dark.
- Increased cost to Tax Payers for curb maintenance throughout the City.

Regards,

Teresa Holimon

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5. 2601 Howard Rd. – Approval of a Variance to Allow an Additional Driveway in the Front Yard on a Corner Lot in the R District. (Case No. 17-731)



BACKGROUND:

DATE OF ANNEXATION: June 13, 1955, per Carter & Harville Survey.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1959

PREVIOUS VARIANCE REQUESTS: None.

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 driveway in the front yard facing Howard Rd., connecting to the existing driveway off of Stout Rd. 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. Additionally, per §23-235(a), “off-street parking spaces required in the “R” district under this section shall be provided on the same lot, parcel

or tract as the principal building, but not in any portion of the required front yard.” The applicant has a parking of 300 s.f. off of the existing driveway on Stout Road, which he is permitted to do on a corner lot per § 23-88(a)(2). In addition to keeping the existing driveway and parking pad off of Stout Rd., he is requesting an additional, driveway in the front yard setback facing Howard Rd. This proposed second driveway would be to connect to the existing driveway.

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. Per the applicant, due to the danger of the driveway being on busy Stout Rd., he is requesting permission for an additional, connecting driveway, leading to Howard Rd. Rather than a circular driveway, the applicant is proposing the meandering path of the second driveway in order to preserve mature trees on the yard. See attached application.

STAFF COMMENTS:

1. The property is a corner lot with the current driveway on Stout Rd. The property owner has a parking pad of 300 s.f., abutting the principal driveway off of Stout Rd., which is allowed per Section 23-88(a) of the Municipal Code.
2. The requested variance will result in allowing an additional 10’ wide driveway, connecting to the existing driveway, to be located in the front yard setback of this property off of Howard Rd.

Per Section 23-88(d) of the Municipal Code, the applicant shall submit a driveway permit to the Engineering Division for a new curb cut/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 2601 Howard Rd. to allow a second 10’ wide driveway in the front yard setback facing Howard Rd., which connects to the existing driveway on Stout Rd., 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.

DISCUSSION:

Ms. Haley Clark, applicant’s daughter, explained that it is very dangerous to back out on Stout because there is so much more traffic due to the new development to the north. They requested the board to approve their request so they would have a safer way to enter the highway from their property.

Ms. Hicks moved to approve a variance for 2601 Howard Rd. to allow a second 10’ wide driveway in the front yard setback facing Howard Rd., which connects to the existing driveway on Stout Rd., on a corner lot in the “R” Low Density Residential District, as discussed by the board, staff comments contained in the staff report, the site plan submitted with the application, and seconded by Mr. Harless.

ROLL CALL: Mr. Harless – Yes, but the crushed limestone has not been approved so Mr. Howard will need to work with staff to get that resolved; Ms. Sherman – Yes; Mr. Uhlhorn – Yes; Ms. Hicks – Yes, because of the unique nature of Stout Road and the area around them; Alderman Gibson – Yes, because of the location; Mr. Browndyke – Yes, because of the conditions turning west onto Stout; Chairman Sisson – Yes

MOTION APPROVED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:14 p.m.