

BOARD OF ZONING APPEALS  
CITY HALL COUNCIL CHAMBERS  
Tuesday, August 8, 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 August 8, 2017.

1. Chairman Sisson called the meeting to order at 6:00 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. Mike Harless; 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.

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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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3. Approval of Minutes from the July 11, 2017 Meeting

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of July 11, 2017, as discussed; seconded by Ms. Sherman, with no further comments or discussions.

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

MOTION PASSED

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4. 2691 Scarlet Road – Approval of a Variance to Allow a Gate over 30” in the Front Yard Setback in the R-E District. (Case No. 17-738)



**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

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 VARIANCES REQUESTED:** The subject property is an interior 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.

Approximately two years ago, the applicants erected a 5’ high metal farm gate that is in the public right-of-way, at the end of the driveway at 2691 Scarlet Rd. (Per City records, the public right-of-way for Scarlet Rd. is 50 ft. The paved street for Scarlet Rd. is 30’ wide. Thus, from the edge of the pavement of Scarlet Road, the public right-of-way extends an additional 10’ on each side, before the property line begins. Thus, the metal farm gate at 2691 Scarlet Rd. is located in this 10’ of public right-of-way.) The applicants were notified of this violation by the Office of Code Compliance on June 14, 2017 and advised that their options to correct the violation were to remove the gate, or apply to the BZA for a variance. (See attachment below.) On July 13, 2017, the applicants submitted an application for a variance.

**APPLICANT’S JUSTIFICATION:** The applicants indicate that the reason the variance is being requested is: “The driveway entrance is directly opposite the existing driveway where construction of a large home is/will be underway. Additionally, there is/will be concurrent construction of a second, large home adjacent to us (27 ft. from our drive entrance). Staging of construction build expected to be heavy. Our concrete driveway must be protected. We are not naïve enough to trust so many drivers as we already have a first-hand history of other contractors working on lot directly opposite us. This “temporary” gate option is both the safest and simplest options for owners and neighbors.” The applicants state that the gate will be removed once construction in the neighborhood is completed. See attachments with letter for further explanation.

**STAFF COMMENTS:**

1. If a variance is granted for a metal farm gate over 30” in the front yard of 2691 Scarlet Rd., the gate shall be moved back behind the property line, and not be located in the public right-of-way, within 30 days. The City of Germantown does not have a precedence of allowing gates or fences in the public right-of-way.
2. If the variance is not granted, the 5’ metal farm gate shall be removed within 30 days. The applicant may apply for a permit to have a 30” gate on their property, behind the public right-of-way, through the City of Germantown Neighborhood Services Division.

**PROPOSED MOTION:** To approve a variance to allow a 5’ high metal farm gate within the required front yard at 2691 Scarlet 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.

OPPOSING EMAIL FROM NEIGHBOR:

On Thursday, August 3, 2017 11:24 AM,

Subject: Re: case number 17-738

To: "[sgoralewski@germantown-tn.gov](mailto:sgoralewski@germantown-tn.gov)" <[sgoralewski@germantown-tn.gov](mailto:sgoralewski@germantown-tn.gov)>

I have been a resident of 2730 Scarlet Rd for over 40 years. The "Cattle Gate" on 2691 Scarlet Rd has an eye sore for over 2 years: degrading the character of the neighborhood. I ask that the variance NOT be granted.

Thank for your consideration.

Harold Turner

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Wayne and Teresa Holimon (applicants) explained that installing the temporary gate was an effort to protect their driveway from being destroyed by the construction trucks turning around in their driveway, after delivering supplies or hauling away debris from the site across the street from them. They tried reaching out to the neighbors as well as the last two builders for the project. Although the builders expressed understanding, they still explained that they could not prevent the trucks from using their driveway to turn around. She further explained by moving this gate out of the city's easement and onto their property, or by lowering its height, makes it both ineffective and even potentially dangerous. They requested the Board to approve this temporary gate that is well-lit, safe, and appropriately positioned, and that it be left as is until the home across this street is completed.

Chairman Sisson explained that this request is outside of this Board's authority to grant permission to leave this gate where it is presently located because it is in the city's right-of-way. Therefore, this gate will need to be moved back onto the applicant's property, outside of the city's right-of-way.

ECD Director Cameron Ross explained that while he appreciated the Holimon's effort to communicate, the word "temporary" is an irrelevant term because this cattle gate in the city's right-of-way has been there going on for 3 years, now as a "temporary" solution. While there hasn't been any construction activity on the site across the street, the temporary gate could have been taken down or they could have applied for a variance for a permanent solution. Staff's advice to the Holimon's, because the city cannot permit a gate in the city's right-of-way, is that they could ask for a variance to allow a gate higher than 30 inches, 10 feet back from the right-of-way (where the property line starts). This option is outlined in the staff report. The current situation with the cattle gate in the public right-of-way is basically a compliance issue, since the gate is out of compliance; however the Holimon's still wanted to come and talk with the Board. We have to allow them this right to come speak before the Board. Ms. Holimon is correct in saying that this temporary solution went on for a period of time. It was brought back to the city's attention in the last couple of months, in working with the Holimon's' neighbors on a case that was presented to this Board during the months of June and July. The Holimon's submitted complaints about the neighbor's variance requests. When ECD staff investigated these complaints, they saw that the Holimon's' "temporary" gate from three years ago was still present. At the June 2017 BZA meeting, the Board asked ECD staff to cite the non-compliant cattle gate put up by the Holimon's, which ECD staff did. Thus, ECD staff is aware of the situation and are now working to bring them into compliance.

After much discussion, Chairman Sisson called for a vote.

Ms. Hicks moved to approve a variance to allow a 5' high metal farm gate within the required front yard at 2691 Scarlet 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, seconded by Ms. Sherman.

ROLL CALL: Mr. Harless – While I understand the applicants concerns and issues and certainly sympathize with them, the public right-of-way issue cannot be handled by this Board. So unless you come back to this Board with a revised plan to go 10 feet back out of the public right-of-way, and onto your property, then there is nothing we can do at this time. On this variance request I vote – No; Ms. Sherman - I do sympathize with you and I haven't been in this type of situation, but as far as this variance request goes, I vote – No; Ms. Hicks – Thank you for keeping us apprised and I wish there was something we could do to take the stress out of it, because this has obviously been very stressful for you. But there is nothing exceptional that I can see, that would cause me to vote yes on this request so I will be voting – No; Alderman Gibson – Much like everything everyone has said before I will also have to vote – No, simply because this body is not designed to approve what you need from us, which is a gate in the city's public right-of-way. My hope is that since this has been a temporary solution, that by removing the gate, you will be able in the next few weeks or months, you will be able to work with this new builder and continue to work with Economic and Community Development; Chairman Sisson – I will be voting no for the reasons previously mentioned. We are all homeowners and understand the frustration, but we are not empowered to grant you what you are asking us for. We hope you are able to find what you need through another entity, so I vote – No.

MOTION FAILED

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ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:33 p.m.