

BOARD OF ZONING APPEALS  
CITY HALL COUNCIL CHAMBERS  
Tuesday, November 14, 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 November 14, 2017.

1. Chairman Sisson 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, Chairman; Alderman Mary Ann Gibson; Mr. Hunter Browndyke, Vice Chairman; Ms. Patricia Sherman; Frank Uhlhorn; 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 September 12, 2017 Meeting

Ms. Hicks moved to approve the Board of Zoning and Appeals minutes of September 12, 2017, as discussed; seconded by Mr. Uhlhorn, with no further comments or discussions.

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

MOTION PASSED

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4. Wolf River Center, Part of Lot 2 – Approval of Variances to Allow 1) Building Height in Excess of the 35 Foot Maximum; 2) Parking in the Required Front, side and Rear yards and 3) Accessory Structure Closer to the Property Lines in the C-2 District. (Case No. 17-705)

INTRODUCTION:

Case Number: 17-705

Location: Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.)

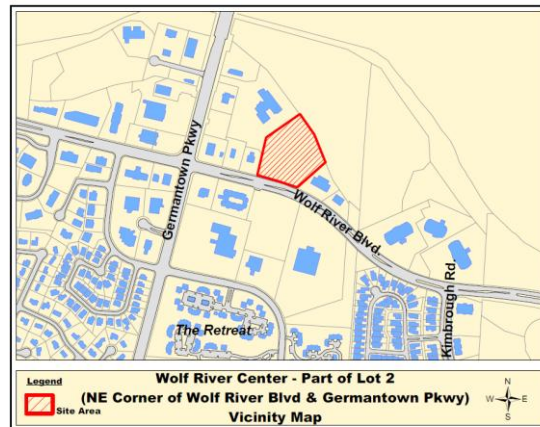
Applicant/Owner: Zach Chandler w/ Baptist Memorial Healthcare Corp.

Developer: Avenida Partners Development Group, LLC

Representative: Greg Marcom w/ Reaves Firm - Agent

Current Zoning District: "C-2" General Commercial (pending rezoning to "R-H" Retirement Housing)

Description of Request: Variances to allow: 1) Building Height in Excess of the 35 Foot Maximum; 2) Parking in the Required Front, Side and Rear Yards; and 3) Accessory Structures Closer to the Property Lines than allowed in the "R-H" Retirement Housing (pending rezoning approval)



**BACKGROUND:**

DATE OF ANNEXATION: June 14, 1973, per Ordinance No. 1973-10.

DATE SUBDIVISION APPROVED: On August 3, 2004 the Planning Commission gave preliminary and final site plan approval for plans to demolish an existing Walmart building and subdivide the site into six lots. On July 22, 2013, the Board of Mayor and Aldermen approved Project Development Contract No. 1183 for Baptist Rehabilitation Hospital on a portion of Lot 2. The current subject parcel, which is part of Lot 2, has remained vacant.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Vacant.

PREVIOUS VARIANCE REQUESTS: Not applicable.

**DISCUSSION:**

The subject property is owned by Baptist Memorial Healthcare Corporation. It is currently zoned "C-2" (General Commercial). Avenida Partners Development Group is proposing to rezone the subject property from "C-2" (General Commercial) to "R-H" (Retirement Housing), in order to develop an independent living retirement community.

On April 4, 2016, the Planning Commission recommended approval of the rezoning. The Board of Mayor and Alderman have heard the first and second (public hearing) readings for the rezoning. The third and final reading of the rezoning is pending approval by the BZA of this request for three variances. The three variance requests pertain specifically to congregate housing (§23-352), which is an allowed use in the R-H zoning district. The applicant has provided a detailed justification for the three variances from §23-352, as outlined below.

**VARIANCE REQUEST 1:**

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from the following section of the Code of Ordinances: §23-352(6): "Height regulations. No structure shall exceed 35 feet in height as measured from the average of the finished ground elevations at the front line of the building except where the front of the building is adjacent to a public street, in which case the height shall be measured at the perimeter yard building line."

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow a maximum building height of 51' (or four stories) to accommodate an independent living retirement facility. There are no residentially zoned properties nearby, and the proposed building would be set back over 100' from the front property line. The proposed building height and type are compatible with surrounding properties and uses, such as the Baptist Hospital.

**APPLICANT'S JUSTIFICATION:** The applicant indicates that the reason the variance being requested is to allow redevelopment flexibility for a property which has been vacant for over 13 years, and to accommodate a project compatible with surrounding medical uses. See page 10 with letter for further explanation.

**VARIANCE REQUEST 2:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from the following section of the Code of Ordinances: §23-352(7): "*Parking requirements.* Off-street parking shall be provided on the same tract as the congregate care facility, but not in the required perimeter front, side or rear yards at a minimum of one space per congregate housing unit."

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow surface parking for the independent living retirement facility in the required 40' front yard and 50' side and rear setbacks. A landscape buffer of 25' (front yard), 15' (east side yard) and 10' (west side and rear yards) will be provided on the site. No parking will occur in these buffer areas. The "C-2" zoning of the neighboring medical and commercial properties does allow surface parking in the front setback. (Per "C-2" zoning, parking is not allowed in the first 20' from the public right-of-way.)

**APPLICANT'S JUSTIFICATION:** The applicant indicates that the reason for the variance being requested is to allow redevelopment flexibility for a property which has been vacant for over 13 years, and to accommodate a project compatible with surrounding medical uses. A sufficient landscape buffer to screen the surface parking shall be provided on an approved site plan. See page 10 with letter for further explanation.

**VARIANCE REQUEST 3:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from the following section of the Code of Ordinances: §23-352(8): "*Accessory structures.* Accessory structures associated with congregate care facilities shall not exceed 20 feet in height and shall not be nearer than 30 feet from the rear property line, nor be closer to the side property line than a distance equal to the height of the structure and not closer than five feet to any recorded easement."

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow one-story enclosed resident parking (garages) to be located 10' from the west side and rear property lines and 15' from the east side property line. The pentagon-shape of the property constrains development options.

**APPLICANT'S JUSTIFICATION:** The applicant indicates that the reason the variance is being requested is to allow redevelopment flexibility for a property which has been vacant for over 13 years, and to accommodate a project compatible with surrounding medical uses. See page 10 with letter for further explanation.

**STAFF COMMENTS:**

1. If the variances are approved, the applicant may apply for a preliminary and final site plan through both the Planning Commission and then the Design Review Commission, after the rezoning of the property to R-H "Retirement Housing" has been approved by the Board of Mayor and Aldermen.

PROPOSED MOTION 1: To approve a variance to allow a building height no greater than 51 feet at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing zoning district, subject to staff comments and the site plan filed with the application.

PROPOSED MOTION 2: To approve a variance to allow surface parking in the required front, side and rear yard setbacks (but not in any landscape screen or buffer areas) at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing, subject to staff comments and the site plan filed with the application.

PROPOSED MOTION 3: To approve a variance to allow accessory structures (specifically garages for a senior living facility) to be 10’ from the side and rear property lines at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing, subject to staff comments and the site plan filed with the application.

BOARD DISCUSSION:

Alderman Gibson asked if this project could be changed over to be apartments if things were not working out well as a retirement community to which Ms. Sarah Goralewski responded “not by right, it would have to come back through the approval process”.

Mr. Greg Marcom w/Reaves Firm, explained that they were not asking for O-51 but were asking for a 51 ft height for the building in the back which is 4 stories and there is a 3 story building in the front. They have honored the O-51 setbacks by having the buildings 96 ft away from all property lines. They have mimicked the O-51 height requirements on this property and that is why they were requesting a variance. The parking variance request was due to the possibility of fire and therefore felt the garages were better suited across the parking lot.

After brief discussion, Chairman Sisson called for a vote.

Mr. Uhlhorn moved to approve a variance to allow a building height no greater than 51 feet at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing zoning district, subject to the boards’ discussion, staff comments contained in the staff report, and the site plan filed with the application, seconded by Ms. Hicks.

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

Mr. Uhlhorn moved to approve a variance to allow surface parking in the required front, side and rear yard setbacks (but not in any landscape screen or buffer areas) at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing, subject to the boards’ discussion, staff comments contained in the staff report, and the site plan filed with the application, seconded by Ms. Hicks.

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

Mr. Uhlhorn moved to approve a variance to allow accessory structures (specifically garages for a senior living facility) to be 10’ from the side and rear property lines at Wolf River Center, Part of Lot 2 (NE Corner of Wolf River Blvd. & Germantown Pkwy.), pending rezoning to “R-H” Retirement Housing, subject to boards’ discussion, staff comments contained in the staff report, and the site plan filed with the application, seconded by Ms. Hicks.

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

MOTION PASSED

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5. 1706 Riverdale Road – 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. 17-716)

INTRODUCTION:

Case Number:

17-716

Location:

1706 Riverdale Rd.

Property Owner:

Doug Hughes

Applicant Name:

Sally Peters (Agent)

Current Zoning District:

“R” Residential district

Description of Request:

Approval of a variance to allow a fence over 30” in front yard setback in the “R” Residential zoning district



BACKGROUND:

DATE OF ANNEXATION: December 23, 1964. Ordinance 1964-6.

DATE SUBDIVISION APPROVED: Neshoba. Unknown.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Unknown.

PREVIOUS VARIANCE REQUESTS: Approval of a variance to allow a fence of approximately 72’ in length within the required front yard to exceed 30 inches in height (granted 4-11-2017).

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 48” high split rail wood fence along remaining length (approximately 275 feet) of the front of the property. According to §23-232(1) a., the property’s residential zoning district (“R”) establishes a minimum front yard setback that extends 40’ behind the property line. The property is polygon-shaped, with a portion fronting New Riverdale Road and a portion fronting an undeveloped tract of land owned by the City of Germantown. (This is where Riverdale Rd. was previously aligned.) A majority of the subject property is undevelopable, due the presence of a TVA easement (including towers and cables). On April 11, 2017, the applicant received approval of a variance for a 48” fence, approximately 72’ length, to encroach into the front yard setback. The applicant would now like to extend this fence for the entire front length of the property (approximately an additional 275 feet).

Per the drawing submitted by the applicant, the entire fence length would encroach about 20’ into the 40’ front setback. However, the fence would still be approximately 30’ from New Riverdale Rd. at its closest point and approximately 80’ at its furthest point. (It would not encroach into the public right-of-way, which ends 10’ in from the face of the curb.) The proposed extension of the fence would line up with the northern neighbor’s existing 48” high fence that is located in the front yard setback on the front property line (about 30’ from New Riverdale Rd.).

**APPLICANT’S JUSTIFICATION:** The applicant indicates that the reason the variance is being requested is due to the odd shape of the lot and the TVA easement. The fence height, type and placement would be consistent with the already existing fence on the property, as well as with other fences on neighboring properties.

**STAFF COMMENTS:**

1. The requested variance will result in a 48” high split rail wood fence along the entire length of the front of the property, encroaching approximately 20’ into the 40’ front setback. However, the fence will range from approximately 30’ to 80’ from New Riverdale Rd.
2. Per the Tennessee Valley Authority (TVA), “If the type and location of the fence do not unreasonably interfere with TVA’s easement rights, they may be allowed. For example, landowners can install agricultural-type fences, such as those made of three-strand barbed wire or woven-wire. Stone, brick, wrought-iron and chain-link fences are generally not allowed without special access provision.” It is the applicant’s responsibility to contact the TVA’s Transmission Right-of-Way Team to see if any permits through that utility are needed in order to construct a fence on their easement.
3. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit, after first contacting the TVA.

**PROPOSED MOTION:** To approve a variance to allow a 48” high fence within the required front yard setback for the entire length of the front of property at 1706 New Riverdale Rd., subject to the board’s discussion, staff comments contained in the staff report, and the site plan submitted with the application.

**BOARD DISCUSSION:**

Ms. Sally Peters explained that they were just requesting to complete the fence that has already been started. The existing fence around the house has been completed and would like to install Kentucky Horse Fence from Old Riverdale to Neshoba with a gate which should make it more serviceable for property maintenance.

Alderman Gibson spoke of her appreciation to the applicant for improving this piece of property.

Chairman Sisson explained that this particular lot is unusually shaped and compounded with that the TVA easement makes is difficult to manage or develop in any way. So she would be voting yes to this motion because of the uniqueness previously mentioned.

After brief discussion, Chairman Sisson called for a vote.

Ms. Hicks moved to approve variance to allow a 48” high fence within the required front yard setback for the entire length of the front of property at 1706 New Riverdale Rd., subject to the board’s discussion, staff comments contained in the staff report, and the site plan submitted with the application, seconded by Mr. Browndyke.

**ROLL CALL:** Ms. Sherman – Yes; Mr. Uhlhorn – Yes; Ms. Hicks – Yes, for all the reasons mention by Chairman Sisson; Mr. Browndyke – Yes; Alderman Gibson – Yes; Chairman Sisson - Yes

**MOTION PASSED**

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6. 2691 Scarlet Rd. – Approval of a Variance to Allow a Gate within the Required Front Yard Setback to Exceed 30 Inches in Height in the R-E District. (Case No. 17-738)

**INTRODUCTION:**

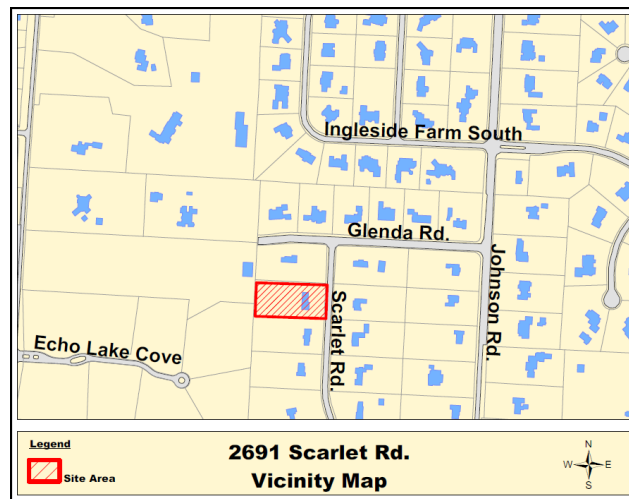
Case Number: 17-738

Location: 2691 Scarlet Rd.

Applicant Name/  
Property Owner: Teresa and Wayne Holimon

Current Zoning District: “R-E” Residential Estate District

Description of Request: Approval of a variance to allow a gate over 30” in the front yard setback in the “R-E” Residential Estate District



**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: Rejected variance request for a 5' gate in the public right-of-way on 8-11-2017.

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 page 7.) On July 13, 2017, the applicants submitted an application for a variance.

On August 8, 2017, the applicants came before the Board of Zoning Appeals and requested to have the temporary 5' high metal gate directly at the street, in the public right-of-way. The BZA stated that this was not possible, as it is not in their purview to grant variances in the public right-of-way. The BZA rejected the request.

The current request is for a temporary, 5' high metal farm gate to be constructed at the property line across the driveway (thus, 10 feet from the edge of the street and not in the public right-of-way). Per the applicant, the gate would be removed if no construction is occurring across the street or next door.

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 on the applicant's property, and not be located in the public right-of-way, within 30 days.
2. If a variance is granted, the applicant shall apply for a permit to have a 5' gate on their property (behind the public right-of-way) through the City of Germantown Neighborhood Services Division. The duration of this temporary gate will be outlined in the fence permit.
3. If the variance is not granted, the 5' metal farm gate shall be removed within 30 days.



PROPOSED MOTION: To approve a variance to allow a temporary 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.

BOARD DISCUSSION:

Ms. Teresa Holimon explained that their request was, once the construction starts back, that they would be allowed to put a temporary gate up to protect their property until the construction is completed. She felt being back 10 ft from the entrance decreased its effectiveness, but it still provided some protection from the larger vehicles being able to use their driveway. The 30 inch fence/wood gate would not be adequate because the trucks sit up so high it wouldn't be visible and the heavy construction vehicles would just back over the gate. So their request is to be allowed to install a 5' gate, 10 ft back once construction starts and will take it down once construction is over.

The board questioned if she would consider installing a permanent gate since they don't normally grant temporary variance requests to which Ms. Holimon expressed that she didn't want a permanent gate because it is just not that kind of neighborhood.

Ms. Hicks expressed that she sees a lot better options than are being presented and explained that she would not be voting in favor of their request.

Alderman Gibson commented that although there is regret for things that had happened before with the previous builder(s) and the history that they have had, she is still struggling with what she could do to try and make this right but for a temporary structure that has been there for 3 years already is a conundrum.

Chairman Sisson explained as an attorney herself she understood that temporary has a very fluid and flexible meaning. She understood their desire to have something temporary but agrees with Ms. Hicks that there are other alternatives that are available that would be a better option than this that is before them at this time.

Mr. Wayne Holimon explained the only time(s) they close the gates are when they see the problem beginning. They have had garbage cans and construction cones that they were using to block the driveway entrance, damaged and even stolen. This is why they decided to install the temporary cattle gate to begin with. It was meant to protect the driveway from the heavy construction trucks only.

After much discussion, Chairman Sisson called for a vote.

Ms. Hicks moved to approve a variance to allow a temporary 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 Alderman Gibson.

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

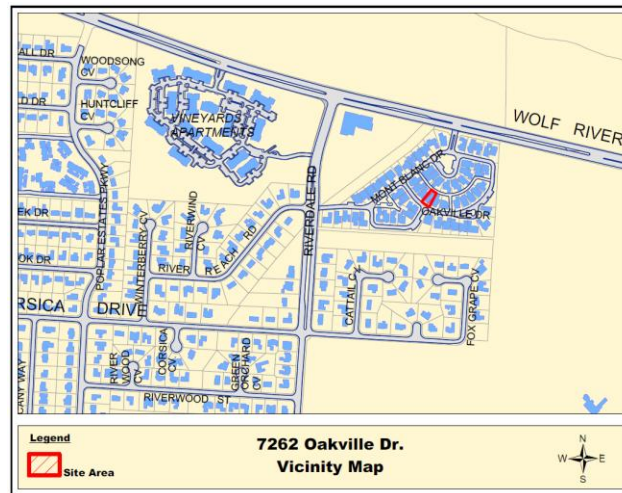
MOTION FAILED

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7. 7262 Oakville Dr. – Approval of a Variance to Allow a Fence within the Required Side Yard to Exceed 6 Feet in Height in the R-T District. (Case No. 17-753)

**INTRODUCTION:**

Case Number: 17-753  
Location: 7262 Oakville Dr.  
Applicant/Owner: Robert Bostick  
Zoning District: “R-T” Residential Townhouse District  
Description of Request: Variance to allow a fence within the required side yard to exceed 6 feet in height in the R-T Residential Townhouse district



**BACKGROUND:**

DATE OF ANNEXATION: June 14, 1973, per Ordinance No. 1973-10.

DATE SUBDIVISION APPROVED: The Vineyards PUD, Phase I, recorded on December 23, 1996. Plat book 198, page 3 (lot 19).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1998.

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(a): “the maximum height of any fence shall be six feet.”

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is for approval to allow a 6’ high fence with a 3” cap (totaling 6’3”), with a 16’ long section that is 8’ high with a 3” cap (totaling 8’3”), on the side yard setback. The applicant had an existing 6’ fence in this location, which his fence contractor replaced with the current fence, including a 3” cap.

The applicant’s property is in the Vineyards PUD, which is a zero lot line development. Both his property and his neighbor’s are slightly pie-shaped, narrowing from a 21’8” separation between houses at

the street, to 8' at the closest point. Per the applicant, a 6' fence does not provide privacy with windows only 8' from each other.

In September and October 2017, the applicant was notified by both his Homeowners' Association and the City of Germantown Code Compliance that the fence needs to be brought into compliance. On October 5, 2017, the applicant applied to the BZA, requesting a variance to allow the fence to remain as built.

**APPLICANT'S JUSTIFICATION:** The applicant indicates that the reason the variance is being requested is: "... to address a privacy issue between the two homes in a zero lot line neighborhood. Both homes have living areas with exactly 8 feet from each other... The original fence height allowed each neighbor to see into the other home unless the shade or shutters were kept continually closed." See the application on page 16 for further explanation.

**STAFF COMMENTS:**

1. As an alternative to the section of fence that is 8'3" high, the homeowner could install an 8' high trellis attached to the 6' fence in the side yard, which is permitted per Section 6-103(c).
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 shall reduce the fence on the side yard to no more than 6 feet.

**PROPOSED MOTION:** To approve a variance to allow a 6' 3" high fence within the required side yard setback, with a 16-foot long section that is 8' 3" high, at 7262 Oakville Dr. in the R-T zoning district, subject to staff comments and the site plan filed with the application.

**BOARD DISCUSSION:**

Mr. Robert Bostick explained that they had applied for two previous fence permits for the two sections on the other side of the house. There was never a fence permit applied for regarding this section because it was just a replacement of the original fence that was already there. He went on to explain that there is only 3 feet between his house and the fence. There is a total of 8' ft from the applicants' window to the neighbors' window. So since their windows were directly across from the neighbors they struggled with what they could do to get some privacy for them both. If the fence is at 6 ft then they are looking directly into their neighbors' home. The applicant went on to explain that they have tried to get plants to grow on the trellis and so far hasn't had any luck because the area doesn't seem to be conducive for plant growth due to the wind that come through that area.

Ms. Hicks expressed her appreciation for what he is trying to do. However, it is not this body's job to do [correct] this but they want to respect the HOA's Covenants and she is hesitant to vote and give weight to the applicants' argument. Therefore, she wants to wait to see what they have to say on this first.

Alderman Gibson and Chairman Sisson explained because of the close proximity, you are not alone in this but this body start talking [is concerned] about setting a precedent. This board would set a precedent by granting a variance [for this] and for them to stay consistent it is a challenge for them. Although they understand the application and the reasoning behind it, however; this board is limited as to what they can do based on the ordinance and they have to find certain requirements. There are others in the neighborhood that has similar shape so the concern is that they would open the door for an avalanche of applications from this same neighborhood where this same situation is occurring. Therefore, we will need to know what the HOA has to say before they make a ruling.

Ms. Jennifer Bostick, explained that there is already a precedent set in their neighborhood. It is not just their fence that is over 6 ft; there are some fences and walls that have been approved by the architectural committee 2 years ago and this wall is attached to a fence. So therefore, this item shouldn't be a problem.

Mr. Donald Phrom, HOA President, explained that he only came to learn and to see what the applicants had to say and how this board reacted to it. The HOA has already requested the applicant to bring it to code and they chose to apply for a variance. They would indeed need to be granted a variance from both this board as well as the homeowners' board. He spoke in favor because as of right now is not opposed. He came only to learn and gain information.

Mr. Richard Phillips explained that this is his second time to live in close proximity to other homes and is familiar with living close and being good to your neighbors. When he decided to build in the Vineyards it was about 70% built out and they really liked it because it was an open and beautiful community. If something bothers or offends them then they have drapes and window blinds that they can close. He is very concerned that by granting a variance even for this short [length] of a [fence] piece is going to open the door for more of this to happen and feels it is a bad idea.

Mr. Uhlhorn explained that since this board supersedes the HOA it would be best if this board went ahead and voted on this item and felt the applicant was entitled to a vote tonight.

After much discussion, Chairman Sisson called for a vote.

Ms. Hicks motioned to approve a variance to allow a 6' 3" high fence within the required side yard setback, at 7262 Oakville Dr. in the R-T zoning district, subject to the boards' discussion, staff comments and the site plan filed with the application, seconded by Mr. Browndyke.

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

#### MOTION PASSED

Mr. Uhlhorn motioned to approve a variance to allow a 16-foot long section that is 8' 3" high, at 7262 Oakville Dr. in the R-T zoning district, subject to the boards' discussion, staff comments and the site plan filed with the application, seconded by Mr. Browndyke.

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

#### MOTION FAILED

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#### 8. New Business:

- a. Chairman Sisson took a moment to recognize one of the board members, Ms. Pat Sherman in case we don't meet again this year, for all of her many years of volunteering on various commissions. If she decides not to come back to serve on this board next year then she will be sorely missed.
  - b. Ms. Sheila Pounder, Planning Division Manager, requested the board members to please contact her to let her know if each member has received a useable email link to re-apply for a board/commission. Secondly, due to the deadline date at the end of December, 2017, she requested proof of the boards' community education hours so she may turn them in and if they are still in need of some opportunities she will see what she can do to help them.
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#### ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 7:36 p.m.