

BOARD OF ZONING APPEALS  
CITY HALL COUNCIL CHAMBERS  
Tuesday, January 9, 2018  
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 January 9, 2018.

1. Alderman Mary Anne Gibson called the meeting to order at 6:03 p.m.
2. Alderman Mary Anne Gibson requested the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT: Ms. Jennifer Sisson; Alderman Mary Ann Gibson; Mr. Hunter Browndyke; Mr. Mike Harless; Ms. Jodie Bowden; Mr. Frank Uhlhorn; and Ms. Rhea Clift

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. Election of Chairman and Vice Chairman

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

ROLL CALL: Mr. Harless – Yes; Ms. Bowden – Yes; Mr. Uhlhorn – Yes; Ms. Clift – 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.

Mr. Harless 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. Clift – Yes; Ms. Bowden – Yes; Mr. Harless – Yes; Alderman Gibson – Yes; Ms. Sisson - Yes

MOTION PASSED

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4. Adopt New Agenda

Alderman Gibson made a motion to adopt the new agenda, seconded by Mr. Browndyke with no further comments or discussion.

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

**MOTION PASSED**

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5. Approval of Minutes from the November 14, 2017 Meeting. Previously Known as Agenda Item No. 4

Mr. Browndyke moved to approve the Board of Zoning and Appeals minutes of November 14, 2017, as discussed; seconded by Alderman Gibson, with no further comments or discussions.

ROLL CALL: Mr. Uhlhorn – Yes; Mr. Harless – Recused Himself; Mr. Browndyke – Yes; Ms. Bowden – Yes; Ms. Clift – Yes; Alderman Gibson – Yes; Chairman Sisson - Yes

**MOTION PASSED**

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6. 7268 Oakville Drive – Approval of a Variance to Allow an Accessory Structure to Exceed 8 Feet in Height in the Required Side and Rear Yard Setbacks in the R-T District. (Case No. 18-801) Previously Known as Agenda Item No. 5

**INTRODUCTION:**

Case Number: 18-801

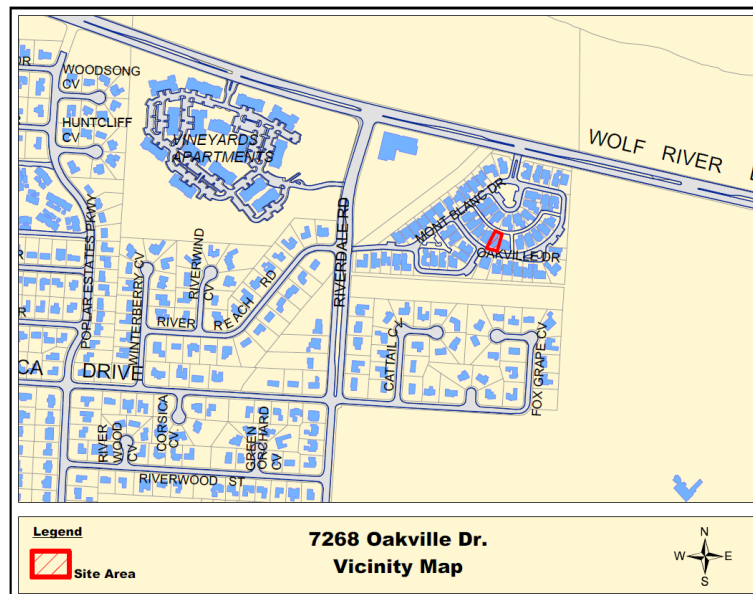
Location: 7268 Oakville Dr.

Applicant: Andrew Butas w/ Gurley’s Azalea Garden

Property Owner: Pamela Robertson

Zoning District: “R-T” Residential Townhouse District

Description of Request: Variance to allow an accessory structure (decorative garden structure) to exceed 8 feet in height in the required side and rear yard setbacks 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 20).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1999.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** In his application, the applicant terms the decorative garden structure as a trellis. However, according to the Code of Ordinances §6-103(c), a trellis is defined as: “Trellis means a frame, usually of wood or metal, supporting open latticework and used as a screen or a support for growing vines or plants. Trellises are limited to eight feet in height.” Thus, after reviewing the application and given the height and massive construction of the decorative garden structure at 7268 Oakville Dr., it is being considered an accessory building/structure by the city.

The specific request is approval of a variance from the following sections of the Code of Ordinances §23-333(7)(b): “Such buildings may extend into the required rear yard but shall be located a distance from the rear and side lot line equal to at least the height of the structure” and §23-333(7)(c): “Accessory buildings... shall not be nearer than 30 feet from the rear property line, nor located a distance from the side property line 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 for approval to allow an existing 9’10” high accessory structure (decorative garden structure), approximately 19’2” in length, to remain along the east side property line, approximately 10’ from the rear property line. (There is no setback between the structure and the fence.) Per the recorded plat for the Vineyards PUD, the side yard setback is 3.5’ and the rear setback is 25’ for the principal structure (or 5’ for the garage), as well as a 5’ rear utility easement and 3.5’ side yard utility easement. The accessory structure appears to be setback 5’ from the rear utility easement. However, it does encroach into the 3.5’ side yard utility easement. (Trellises are allowed in utility easements, but not accessory structures.)

Prior to construction of the accessory structure in 2015, the applicant did receive approval from the Vineyards Homeowners’ Association. However, no permit for an accessory structure was filed with the City of Germantown Neighborhood Services Division. On November 17, 2017, the applicant was notified by City of Germantown Code Compliance that the accessory structure needs to be brought into compliance.

**APPLICANT’S JUSTIFICATION:** The subject property is located in the Vineyards PUD, which is a zero lot line development, and the lot is slightly pie-shaped. The applicant indicates that the reason the variance is being requested is: “The property itself is 6,098 sq. ft. The house footprint takes up 2,680 sq. ft. of that space. The house is narrow and an L-shape, leaving very little room in the backyard for any kind of entertaining. The backyard is approximately 20 feet at its widest and goes to 16 feet as you get closer to the rear end of the property/service road. The property is well landscaped (professionally) with courtyards and elements of visual interest throughout to utilize the very little spaces available.” The applicant has provided further justification, starting on page 14 of this staff report.

STAFF COMMENTS:

1. As an alternative, the applicant could remove the current accessory structure and install an 8' trellis (per the city's definition) in the current location, which is permitted per Section 6-103(c), with a permit through the City of Germantown Neighborhood Services Division.
2. If the variance is approved, the applicant shall request to have the side yard utility easement released within 30 days of this approval. While a trellis is allowed in the side yard easement, an accessory structure is not. If the easement cannot be released, then the applicant shall remove the accessory structure within 30 days of notification by the respective utilities.
3. If the variance is approved and the easement is released, then the applicant shall apply to the Neighborhood Services Division for an accessory structure permit within 30 days of this approval.
4. If the variance is not approved, the applicant shall remove the existing accessory structure within 30 days of the Board's action.

PROPOSED MOTION: To approve a variance to allow an 9'10" high accessory structure (decorative garden structure) that is 19'2" in length, located within the required side and rear yard setbacks (approximately 0' from the east side property line and 10' from the rear property line), at 7268 Oakville Dr. in the R-T zoning district, subject to staff comments and the site plan filed with the application.

BOARD DISCUSSION:

Ms. Goralewski replied to the question asked by the boards Attorney Alan Strain concerning the maximum height definition as stated in the city's ordinance. Ms. Goralewski explained per the city's ordinance (Sec. 6-103(c)), trellises are limited to 8 ft. in height.

Mr. Joe Nunes, Neighborhood Services Manager, explained that the staff did go out to this neighborhood to inspect trellises, arbors and accessory structures, due to previous variance requests. He did recall that there was a trellis at a different property that did meet the 8 ft height requirement, but was not permitted. (This property owner came in for a permit.) One other structure was built prior to 2010, therefore it was considered to be grandfathered, due to the city's policy on the treatment existing non-conforming fences and structures.

Mr. Andrew Butas with Gurley's Azalea Garden explained that he is the designer of this trellis and was not aware that he was supposed to get a permit. He explained the Code of Ordinance defines the trellis as having a frame usually made of wood or metal supporting open lattice work and used as a screen or support for growing vines and plants, and this structure they built meets all these criteria and should be considered as a trellis. The houses in this area are large and the lots are very small, so they built the trellis/structure to scale with the house and outdoor space. The actual height of the trellis is 9'3" per onsite measurement. This trellis was approved by the HOA Architectural Committee and didn't realize they needed to pull a permit with the city for a trellis, especially since the HOA had approved it. It does not impede the neighbors view and it is not able to be seen from the service road except in one area. He asked that this board allow them to keep the trellis as is and at the height built, for the sake of the design aesthetics, and the sustained value that it brings to the Robertson's home as well as their surrounding neighbors. This is after all the goal of Germantown as well as the applicant's.

Mr. Harless expressed his appreciation of the well thought out and becoming design. However, this does not meet the Germantown Code, which states that a trellis is limited to 8 ft in height.

Ms. Pam Robertson explained that in 2015, they had completed a lot of remodeling, including the landscaping. Everything went through to the HOA's architectural committee that was necessary for their approval, and this committee approved their plans unanimously.

Mr. Dennis Sexton (neighbor) explained that during the time of this trellis approval, he was part of the HOA architectural committee. Ms. Robertson provided everything that the HOA architectural committee requested from them. Since these homes have 10 ft high ceilings downstairs with 8 ft French doors, if you were to lower these trellises, it would begin to interfere with the line of sight and balance.

Alderman Gibson explained that the issue is the height, not the structure itself. Even though it is not the technical definition trellis from the city's standpoint, she was leaning toward an exceptional situation or condition. Even knowing that all of the lots in the Vineyards are similarly shaped, the footprint of the home takes up almost half of the square footage of the lot itself. The lot itself is considered to be an exceptional, narrow lot.

Mr. Harless explained that while he applauds the design and workmanship of this project, the city's ordinances say a trellis must be 8' high. If this board allows a variance for the unusual shape of this lot and there are 60 of these lots, then theoretically they should allow variances on every lot. Two months ago, this board turned down a variance just 2 doors down from the Robertsons to extend the fence to 8', to keep people from looking into the neighbor's living room. If Gurley's had known to apply for a permit, it would have saved everyone a lot of time, and he feels the applicant would have been able to design a trellis that would have met the city's requirements, and would have been just a nice and effective. Therefore, he will be voting no on this request.

Mr. Uhlhorn explained that this applicant didn't knowingly, willingly, or with complete disregard build this trellis without a permit. Until this meeting, Mr. Uhlhorn didn't even know that there was an ordinance regulating trellis height, and he would not have known to get a permit either. He event built houses in this neighborhood himself. He feels the trellis was designed to scale with these houses in this subdivision. So, he will be voting in favor of this request.

Chairman Sisson explained if one threw away the city's ordinance, and asked each of them as a group of citizens if this structure is beautiful and should stay, then she was sure they would all agree. Unfortunately, as the Board of Zoning Appeals, that is not the task in front of them. The task before each of them is to uphold the City's Ordinances and to only grant variances that fall under certain, exceptional circumstances that will allow them to make an exception. However, the ordinance does not take in account one's intent. It is not something that this board is allowed to consider in order to grant the variance. The guidelines this board has to consider in granting a variance is rather if this lot has exceptional narrowness, shape, shallowness, exceptional topography, and is an exceptional situation, as compared to the other surrounding lots. Now given the neighborhood that this property is in and the similarity of that lot with the other 60 neighboring lots, she feels this is not the case. She does not see where this board has been given the ability or authority under the city's ordinances to grant this request, therefore she will be voting no when the roll is called.

After brief discussion, Chairman Sisson called for a vote.

Mr. Uhlhorn moved to approve a variance for a 9'10" high accessory structure (decorative garden structure) that is 19'2" in length, located within the required side and rear yard setbacks (approximately 0' from the east side property line and 10' from the rear property line), at 7268 Oakville Drive, in the R-T zoning district, subject to the boards' discussion, staff comments and the site plan filed with the application, seconded by Alderman Gibson.

ROLL CALL: Alderman Gibson – Yes; Mr. Harless – No, as previously stated; Mr. Browndyke – Yes; Mr. Uhlhorn – Yes; Ms. Clift – Yes; Ms. Bowden – Yes; Chairman Sisson – No

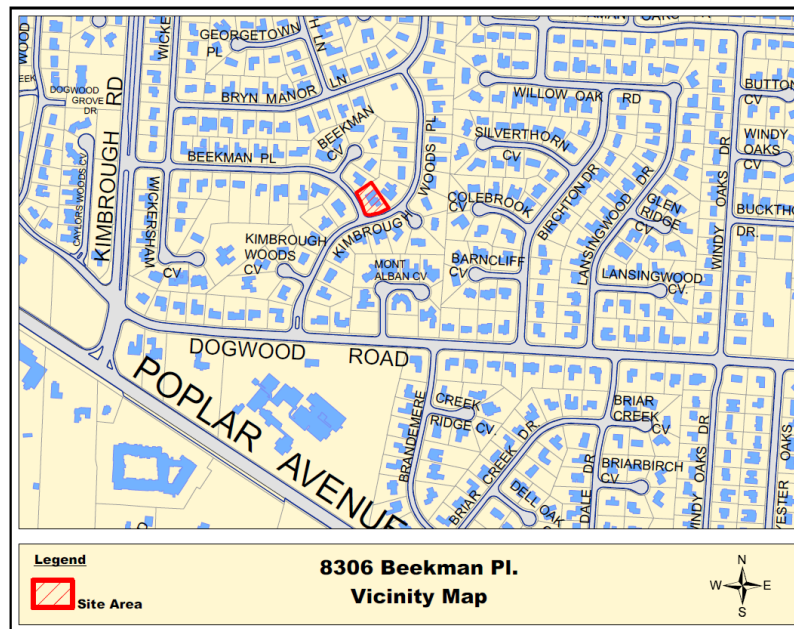
MOTION PASSED

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7. 8306 Beekman Place – Approval of a Variance to Allow an 11.5’ High Accessory Structure in the Required Side and Rear Yard Setbacks in the R District. (Case No. 18-802) Previously Known as Agenda Item No. 6

**INTRODUCTION:**

Case Number: 18-802  
Location: 8306 Beekman Place  
Applicant/Owner: Taylor Trezevant  
Zoning District: “R” Low-Density Residential  
Description of Request: Variance to allow an 11.5’ high accessory structure (playhouse) in the required side and rear yard setbacks in the R Low-Density Residential district



**BACKGROUND:**

DATE OF ANNEXATION: April 11, 1974, per Ordinance No. 1974-2.

DATE SUBDIVISION APPROVED: Kimbrough Woods Subdivision, Revised Section A, re-recorded on July 3, 1980. Plat book 79, page 24 (lot 20).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1976.

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 §23-236(2)b: “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 for approval to allow an existing 11.5' high accessory structure (playhouse), approximately 100 sq. ft. in area in its current location in the rear yard, 0.5' from the northwest side setback and 2' from the rear setback. On May 15, 2017, the applicant was notified by the City of Germantown Code Compliance that the accessory structure needed to be brought into compliance. Since receiving notice from Code Compliance, the applicant has been working with the various utility companies to have the 5' northwest side yard setback released. All utilities have confirmed the release of this easement.

There is an existing shed located on the northwest property line. Per the owner, the shed existed prior to them purchasing the property in 2013, and per the City of Germantown's Senior Code Officer, it appears to have been in existence for a long time. Per Shelby County Code Enforcement's records, there is no building permit for the existing shed.

**APPLICANT'S JUSTIFICATION:** The subject property is located on a corner, with less usable rear yard than other properties in the neighborhood. The applicant indicates that the reason the variance is being requested is: "With the narrowness of our rear yard, along with the configuration, there is no green area to locate the playhouse that does not violate an ordinance or make supervising children difficult. Being a corner lot, the widest portion of our rear yard is approximately 28 ft. This portion is around two corners from our only rear exit and with improvements made by previous owners, leaves little room for a children's playhouse." The applicant has provided further justification, starting on page 10 of this staff report.

**STAFF COMMENTS:**

1. The 5' northwest side utility easement has been released by the various utilities. The applicant shall now prepare a revised survey of the property, as well as revise and re-record the subdivision plat for Kimbrough Woods Subdivision, Revised Section "A," to reflect this change. This is independent of the variance consideration.
2. If the variance is approved, then the applicant shall apply to the Neighborhood Services Division for an accessory structure permit within 30 days of this approval.
3. If the variance is not approved, the applicant shall remove the existing accessory structure within 30 days of the Board's decision.

**PROPOSED MOTION:** To approve a variance to allow a 100 square foot accessory structure (playhouse), that is 11.5' in height, within the required side and rear yard setbacks (approximately 0.5' from the northwest side property line and 2' from the rear property line) at 8306 Beekman Place in the R zoning district, subject to staff comments and the site plan filed with the application.

**LETTERS OF SUPPORT:**

**JACKSON, SHIELDS, YEISER & HOLT**

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January 9, 2018

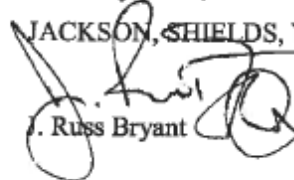
City of Germantown

Re: Trezevant Request for Variance

To Whom It May Concern:

The purpose of this letter is to inform the City of Germantown of my position regarding the above referenced matter. My name is Russ Bryant and I reside at 2281 Kimbrough Woods Place in Germantown. Shortly after my family and I moved in to 2281 Kimbrough Woods Place we met our next door neighbors, Taylor and May Trezevant. The Trezevant's shortly thereafter invited us over for dinner and we quickly struck up a friendship with the Trezevants as did our children. Since then our children frequently play together and in fact play in the play house that is the subject of this variance. It is my understanding that the previous owner of our home did not approve of the play house. Furthermore, it is my position that the previous owner's disapproval of the play house should not be a motivating factor as to whether or not the variance is granted. Finally, I whole heartedly support the Trezevants in their efforts to obtain a variance for the play house because it is for the betterment of our neighborhood and most importantly our children.

Sincerely yours,

JACKSON, SHIELDS, YEISER & HOLT  
  
J. Russ Bryant



To: City of Germantown  
Department of Economic and Community Development  
1920 S. Germantown Rd.  
Germantown, TN 38138

To All Concerned at the City of Germantown regarding 8306 Beekman Place:

As homeowners and direct neighbors to 8306 Beekman Place, we believe that the requested variance for the 11' 5" play structure in the backyard should be approved. It is a well built, attractive structure that adds charm to our very family-friendly neighborhood. The 8306 Beekman Place play structure is along our side fence. We have a direct view of it from our yard. We too have a play structure in our yard. Our kids enjoy being able to talk back and forth to the Trezevants' kids and socialize over the fence. In fact, our kids rarely interacted with the Trezevant kids before the play structure was built. The play structure has brought neighbors together, which is the purpose of community development. While we appreciate the City having ordinances in place to keep our Germantown attractive, we believe that certain ordinances should have some leniency. This is one such ordinance. The Trezevants have a very small backyard. They have done the best they can to foster a fun atmosphere for their children with such limited space in their yard. This play structure is beneficial to their children and ours, and it is harming no one. If any problems ever did arise with the playhouse (unlikely), we are certain that the Trezevants would act quickly to provide a remedy. Notably, the playhouse is barely visible, if at all, from the street and cannot reasonably be characterized as a nuisance.

For these reasons, we support the Trezevants' request that the City grant a variance to allow the play structure at 8306 Beekman Place to remain in place.

Sincerely,

William E. Routt III and Bridgett Routt  
8300 Beekman Place  
Germantown, TN 38139  
901-896-4193  
901-896-4197

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**BOARD DISCUSSION:**

Mr. Taylor Trezevant apologized for not handling this situation properly. He explained they moved to this neighborhood because it was a family- and child-friendly and oriented neighborhood. As they visited homes throughout this neighborhood, everyone seemed to have club houses and most of them were up against the fence. As the aerial photo shows, there is a lot of concrete in their backyard, and the area where he placed the playhouse is really the only area that is available, so if anyone accidentally fell, then it would be on the grass and not the concrete.

Mr. Harless explained this lot has two front yards which makes this a very unusual lot. So since this lot has two front yards, then this prevents him from building this playhouse in any other spot on the property. Therefore, he will be voting in favor of this request.

Alderman Gibson agreed that the uniqueness of the two side and front yard setbacks makes this a perfect candidate for a variance.

Mr. Russ Bryant explained that they are the neighbor that is to the back of the applicant. He explained that he moved his family from East Memphis to specifically to the Kimbrough Woods neighborhood

because he felt this neighborhood was the epitome of the Germantown family neighborhood. Both of his children use the playhouse regularly, and you really can't even see the structure from the road. He asked that the board approve this request, if not for the adults, then at least for the children.

After brief discussion, Chairman Sisson called for a vote.

Mr. Uhlhorn moved to approve a variance to allow a 100 square foot accessory structure (playhouse), that is 11.5' in height, within the required side and rear yard setbacks (approximately 0.5' from the northwest side property line and 2' from the rear property line) at 8306 Beekman Place in the R zoning district, subject to the boards discussions, staff comments contained in the staff report, and the site plan filed with the application, seconded by Mr. Browndyke.

ROLL CALL: Ms. Bowden – Yes; Ms. Clift – Yes; Mr. Uhlhorn - Yes; Mr. Browndyke – Yes, I agree with Mr. Harless' comments and for the children; Mr. Harless – Yes; Alderman Gibson – Yes; Chairman Sisson - Yes

MOTION PASSED

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ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:55 p.m.