

BOARD OF ZONING APPEALS
CITY HALL COUNCIL CHAMBERS

Tuesday, May 8, 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 May 8, 2018.

1. Chairman Sisson called the meeting to order at 6:10 p.m. and announced, 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 of an affirmative nature when the motion is made. Each applicant has the opportunity to withdraw the application up until the time a motion is made. There are limitations as to when an applicant can reapply for the same request once the motion fails. Chairman Sisson swore in the staff.

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; Mr. Hunter Browndyke, Vice Chairman; Mr. Mike Harless; Ms. Jodie Bowden; Mr. Frank Uhlhorn, Ms. Rhea Clift, and Alderman Mary Ann Gibson

DEVELOPMENT STAFF PRESENT: Ms. Sheila Pounder, Planning Division Manager; Ms. Sarah Goralewski, Senior Planner; Ms. Regina Gibson, Administrative Secretary; Mr. Joe Nunes, Neighborhood Services Manager; and Mr. Alan Strain, Attorney.

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3. Approval of Minutes from the April 10, 2018 Meeting.

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of April 10, 2018, as discussed; seconded by Mr. Uhlhorn, with no further comments or discussions.

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

MOTION PASSED

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4. 3645 Forest Hill-Irene Rd – Harvest Church – Approval of a Use on Appeal to Allow an Increase in an Accessory Use (Parking Lot) to an Existing Church in the R District. (Case No. 15-560).

INTRODUCTION:

Case Number: 15-560

Location: 3645 Forest Hill-Irene Rd. (Harvest Church)

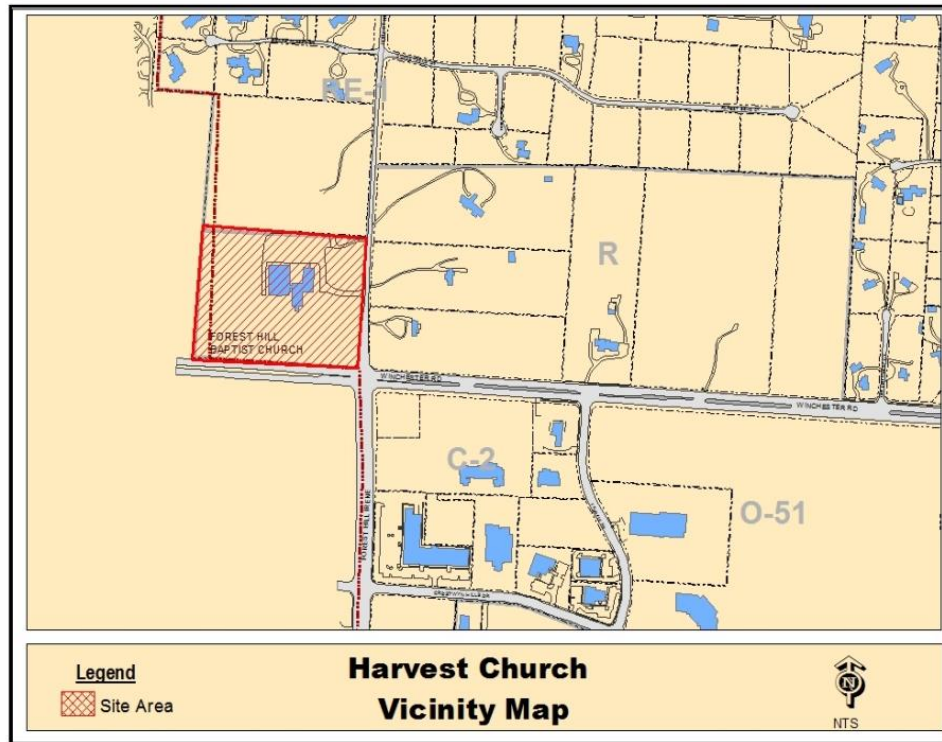
Applicant: Michael Rogers w/ Fisher Arnold

Property Owner: William Garner, Lead Pastor

Zoning District: “R” Low-Density Residential District

Description of 1) Use on appeal to allow an increase in an accessory use (parking lot) for an

Request: existing church in the “R” zoning district



BACKGROUND:

DATE OF ANNEXATION: July 26, 2000, per Ordinance No. 2000-10.

DATE SUBDIVISION APPROVED: Harvest Church final plat, recorded on May 23, 2017. Plat book 272, page 26 (Lot 1).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1998. Expansion 2017.

PREVIOUS USE ON APPEAL AND VARIANCE REQUESTS:

- May 13, 2014: Use on Appeal to expand church’s parking lot (approved)
- January 12, 2016: Use on Appeal to expand church buildings (approved)
- March 13, 2018: Use on Appeal and Variance to expand church’s parking lot (denied)
- April 10, 2018: Request to Waive 6-month Waiting Rule to Re-file Use on Appeal to expand church’s parking lot (granted)

HISTORY:

The property was annexed into the City of Germantown on July 26, 2000, as part of the annexation of a 1,450-acre area in the vicinity of Forest Hill-Irene Rd. and Winchester Rd. The property was originally the site of Forest Hill Baptist Church that was built in 1998, according to the Shelby County Assessor Records. Additions and alterations to the existing educational building for the church were approved as Project Development Contract #47. The BZA approved on May 13, 2014, a Use on Appeal for the expansion of the church’s parking lot. A second Use on Appeal was approved by the BZA on January 12, 2016, for expansion of the church buildings (sanctuary and education buildings). The church property was purchased by Harvest Church, who was using the facilities together with Forest Hill Baptist Church. (On January 13, 2016, Harvest Church purchased the property from Forest Hill Baptist Church.) On June 7, 2016, the Planning Commission approved a revised preliminary and final site plan for the expansion of the church facilities. On July 27, 2016, the Design Review Commission approved the revised preliminary and final site plan. On April 24, 2017, development contract #1195 was approved by the Board of Mayor and Alderman for the church expansion work.

On March 13, 2018, the Board of Zoning Appeals considered the following requests: Use on Appeal to expand the church's parking lot and a variance to allow parking in the front yard setback. The BZA denied the Use on Appeal (and thus the variance was not considered). On April 10, 2018, the applicant requested that the BZA waive the 6-month waiting rule of reapplication and allow the applicant to re-file a Use on Appeal application for the next regularly scheduled Board meeting. This request was pursuant to Article V.5 of the BZA's Rules and Procedures, which states, "No reapplication for the same request which relates to all of the same property involved in a former case shall be accepted by the Board or staff within six (6) months of the decision of the Board on the former application unless the Board, at a regular or special meeting, by the affirmative vote of at least four (4) members, waives this rule subsequent to a written petition filed by the applicant." The BZA granted this request.

DISCUSSION:

The specific request of this application is only for a Use on Appeal to expand the parking lot. The applicant has redesigned the proposed parking expansion so that it is no longer in the front yard setback and a variance is no longer required. The current request is to increase the parking lot to 130 spaces (rather than the previously requested 157 spaces).

SPECIFIC SECTION OF ZONING ORDINANCE: The request for Use On Appeal is based on Section 23-228 of the Zoning Ordinance, which states, in part, that "Philanthropic or religious institutions; places of worship; public, private or parochial schools offering general educational courses; municipal, county, state or federal uses; public utilities, golf courses; private and country clubs; parks and playgrounds; cultural activities "shall be permitted [in the "R" Residential Zoning District] by the Board of Zoning Appeals," provided that the use requested is to be located on a route designated as either a major street or collector street on the official major road plan, and that the requirements set forth in Article II, Division 4 (General Exceptions), and Article II, Division 2 (Board of Zoning Appeals), of the Zoning Ordinance, are met. Any additional use or expansion of an existing Use on Appeal requires approval from the BZA. The request to increase the size of the surface parking lot is an expansion of the existing use on appeal.

Article II, Division 2 describes the project characteristics the Board of Zoning Appeals must review in its deliberations on the use: 1) whether or not the approval will impair an adequate supply of light and air to adjacent property, 2) will it unreasonably increase the congestion of public streets, 3) increase the danger of fire and endanger public safety; 4) or in any other way impair the public health, safety, comfort or welfare of the inhabitants of the city. Further consideration may relate to screening, landscaping, location or other conditions necessary to protect property in the vicinity of the subject site.

APPLICANT'S JUSTIFICATION: The applicant states that Harvest Church has experienced significant growth recently. The Harvest Church congregation exceeds the capacity of the sanctuary and meets in the fellowship hall. Based on current attendance figures, an additional 130 parking spaces are needed. Per the parking requirements for places of worship, outlined in §23-235, the number of required parking spaces for Harvest Church is 260 parking spaces. Currently, 547 parking spaces are provided on the site. With an additional 130 parking spaces, the total number would be 677 parking spaces. The applicant has also provided a landscape plan to show how the parking expansion would be screened from Winchester Rd. See the application letter of explanation for additional information.

STAFF COMMENTS:

1. In an interdepartmental, pre-application review, the following was required to be provided with the parking lot expansion request: 1) a parking utilization study, and 2) details on how drainage will be accommodated since the current inlets cannot handle the capacity. At a pre-application meeting, the applicant provided drone video footage of a typical Sunday. A parking utilization study has not been submitted as part of this application. The applicant stated that drainage plans would be provided as part of the Planning Commission application.

2. Planning Division staff requested that the applicant explore other options to accommodate the parking need, such as a possible parking garage on the rear, northwestern parcel in the City of Memphis, a parking agreement with the neighboring Southwind Cove commercial center to the west, adding another weekend service to accommodate the growing congregation, or staggering the three separate churches that all meet at the same service time. The applicant currently has a parking agreement with Southwind Cove. They considered the other options and determined that they are not feasible.
3. The Planning Division has received two calls from neighboring residents, concerned about the impact of the proposed parking lot expansion.
4. If the use on appeal is approved, the applicant must submit a revised final site plan to the Planning Commission and then revised final site, landscaping and lighting plans to Design Review Commission for their review.
5. If the use on appeal is approved, the 20' landscaping screen around the perimeter of the parking area shall be exclusive of the front yard setback.
6. The property owner has been notified by Code Compliance that the unpermitted ground-mounted signs be removed from the property and that the property owners apply for compliant signage. The property owner has not responded to Code Compliance and this code violation is currently outstanding.

PROPOSED MOTION: To approve a Use on Appeal to allow an increase in an accessory use (parking lot) by 130 parking spaces for Harvest Church at 3645 Forest Hill Irene Rd., subject to the Board's discussion, staff comments noted in the staff report and the site plan submitted with the application.

BOARD DISCUSSION:

Mr. Spence Ray expressed his appreciation to the Board for reconsidering their request. They are 117 ft behind the curb from the edge of their parking lot on the south end and 95 ft from the right-of-way. Those 40 parking spaces were moved to the east which creates circular access to the south entrance of the existing sanctuary for the people of Forrest Hill Baptist Church. So this plan opens up the whole parking area to the people that are actually meeting in that sanctuary. There is now a 20 ft landscape easement or buffer along the north property line, the utility building is gone, and they have added this parking. They are now using about 94 spaces within the commercial areas where the church's office space and child care center is located. The additional 130 spaces that they are asking for should meet their needs for what the church is doing right now. They also added 2 major access points onto Winchester to get them off of Forrest Hill Irene and will protect the street frontage for those residents. As far as the temp sign is concerned, Mr. Ray said next week they would either have the existing sign down or be in the codes office to get a permit.

Chairman Sisson and Mr. Harless expressed their appreciation to Mr. Ray and all others involved with this project for coming back to this board with a much better plan for them as well as for the city.

Mr. Uhlhorn made a motion to approve a Use on Appeal to allow an increase in an accessory use (parking lot) by 130 parking spaces for Harvest Church at 3645 Forest Hill Irene Rd., subject to the Boards' discussion, staff comments noted in the staff report and the site plan submitted with the application, seconded by Mr. Browndyke.

ROLL CALL: Mr. Harless – Yes, for all the reasons stated; Mr. Browndyke – Yes; Mr. Uhlhorn – Yes; Ms. Cliff – Yes; Ms. Bowden – Yes; Alderman Gibson – Yes; Chairman Sisson - Yes

MOTION PASSED

5. 1712 Padington Park Lane – Approval of Variance to Allow the following in the T3 District. 1.) an Accessory Structure (Pergola) to Exceed 8 Feet in Height and Have a Solid Roof; and 2.) a Fence within the Required Side Yard to Exceed 6 Feet in Height. (Case No. 18-811).

INTRODUCTION:

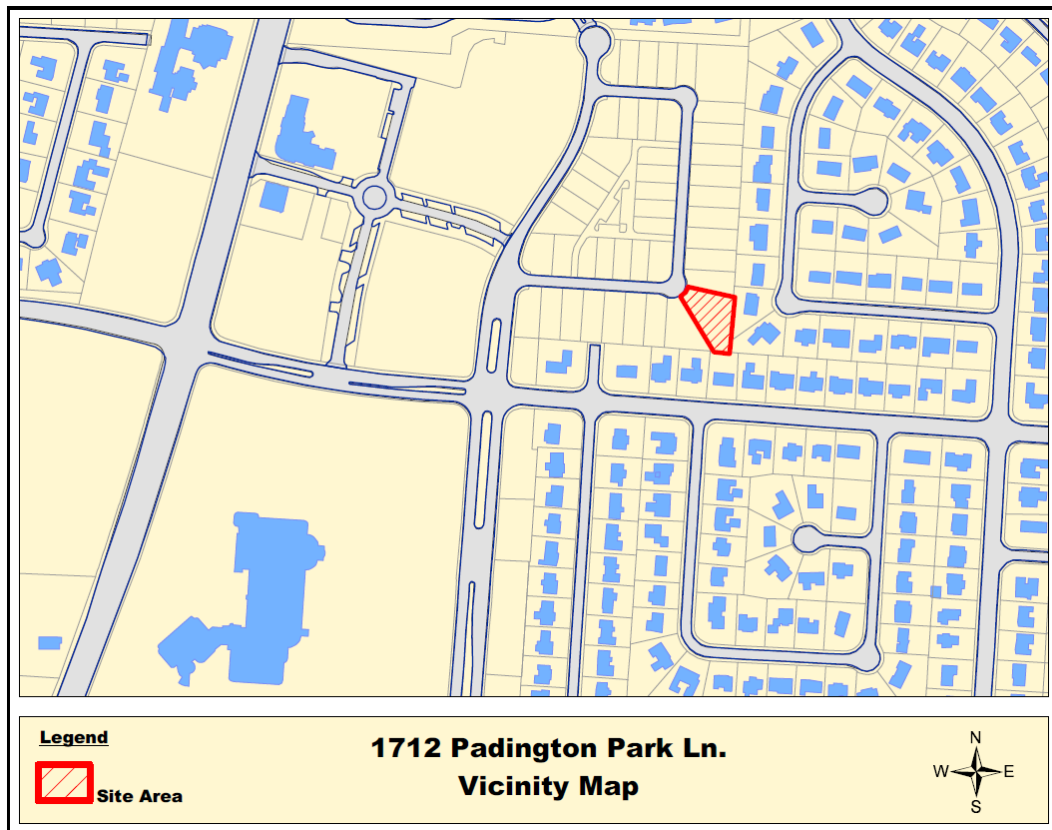
Case Number: 18-811

Location: 1712 Padington Park Ln.

Property Owner/Applicant: Robert Longfield

Zoning District: “T-3” Suburban Zoning District

Description of Request: Variances to allow: An accessory structure (pergola) to exceed 8 feet in height and have a solid roof and a fence within the required side yard to exceed 6 feet in height in the T-3 Suburban zoning district.



BACKGROUND:

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

DATE SUBDIVISION APPROVED: Somerset Subdivision, recorded on June 12, 2015. Plat book 264, page 29 (Lot 9).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 2017.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

In February 2018, the City of Germantown Code Compliance conducted a final inspection for pool and fence permits at 1712 Padington Park LN. At that time, it was discovered that the installed fence was over the 6' height noted on the permit, and that an arbor had been constructed near the pool without a permit. Code Compliance notified the homeowner of the violations and informed him of his options. The homeowner would like the fence and arbor to remain as constructed, and is requesting variance approval for these two non-conforming items.

VARIANCE REQUEST 1: PERGOLA

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from the following section of the Code of Ordinances §6-103(a): "Pergola means a structure of usually parallel colonnades supporting a roof of girders and cross rafters or trelliswork that is predominately open to the elements and designed so as to allow climbing plants to grow on it. Any roof constructed on a pergola shall be limited to framework. A minimum of 50 percent of the roof area shall be open to the elements and shall be evenly distributed throughout the roof area. Pergolas are limited to eight feet in height."

NATURE OF VARIANCE REQUESTED: The variance request is to allow an existing pergola to remain that deviates from the regulated definition per §6-103(a), as described above. The existing pergola is 8'8" high and that has a solid roof. A variance is *not* required for the pergola's location. (It is not located in any easements.) Unlike the regulations for other residential zoning districts, the T-3 zoning regulations do not outline location and setback specifications for pergolas, such as the distance from the side property line shall be equal to the height of the structure (if the structure is over 8' tall). The approved Planning Commission minutes from October 1, 2013, for the Somerset Subdivision states only that "accessory structures (including pergolas) may encroach into a side yard setback." Thus, an 8'8" pergola would *not* be required to be 8'8" from the side property line.

APPLICANT'S JUSTIFICATION: The subject property is located in the Somerset Subdivision, a smaller-lot development. The subject property is slightly pie-shaped with numerous easements. The applicant indicates that the reason the variance is the lot's narrowness. The applicant has provided further justification, starting on page 14 of this staff report.

VARIANCE REQUEST 2: FENCE

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 an existing 6' high fence with a 6" cap (totaling 6'6"), with 7' posts, along the side and rear property lines. Per the applicant, the neighborhood covenants require that the fence be capped, of a similar construction to and aligned with the subdivision fence, which the applicant's fence is.

APPLICANT'S JUSTIFICATION: The applicant indicates that the reason the fence was built at this height was to line up with the existing subdivision fence. While the applicant's fence does align, the subdivision fence is only 6' high, as it is at a higher grade. The variance is being requested is due to the dramatic slope of the subject lot. See the application on page 17 for further explanation.

STAFF COMMENTS:

1. If the variances are approved, the applicant shall apply to the Neighborhood Services Division for a revised fence permit and an arbor permit within 30 days of this approval.
2. If the variances are not approved, the applicant shall bring the arbor and the fence into compliance within 30 days of the Board's action.

PROPOSED MOTION 1: To approve a variance to allow an 8'8" high pergola with a solid roof (located 5'1" from the side property line) at 1712 Paddington Park LN in the T-3 "Suburban" zoning district, subject to the Board's discussion, staff comments noted in the staff report and the site plan submitted with the application.

BOARD DISCUSSION:

Mr. Robert Longfield, the applicant explained that they are new to Germantown so all of this construction was completed before they closed on the house and was unaware that the permits were not done appropriately. He knew he had to have a fence installed around the pool for safety reasons. Due to the dramatic slope and grade of the property they had to stair step the fence to keep it from sagging.

Mr. Harless asked Mr. Longfield if the pergola and fence were built before or after they purchased the home. To which Mr. Longfield answer that they were built before they ever closed on the house. Mr. Harless stated, therefore, it would have been difficult for Mr. Longfield to acquire a permit for these structures since he was not the rightful owner of the property at the time they were built.

Mr. [REDACTED] Williams spoke in favor of the fence. Due to the slope in his yard and in a spot where if it hadn't been built this way then he was not sure how it would look long term or if it would even stand for very long. He feels this fence looks great, adds to the neighborhood, and is needed due to the security standpoint.

Mr. John Vaughn explained that he lives behind this property and is not in opposition to this fence and pergola. Instead, he spoke of his concerns of all of the clear cutting that was causing large amounts of dust and feels it killed one of his trees. He then asked the board if he and his neighbors would be able to do the same thing as Mr. Longfield if they so chose.

Alderman Gibson explained that this board is only speaking of this one particular parcel and this property is also in different designation then where you are located. They are in a T3 zoning. She further explained that she would never want to answer a hypothetical question of what you could be built because you would need to go through the planning process.

Mr. Uhlhorn made a motion to approve a variance to allow an 8'8" high pergola with a solid roof (located 5'1" from the side property line) at 1712 Paddington Park LN in the T-3 "Suburban" zoning district, subject to the Boards' discussion, staff comments noted in the staff report and the site plan submitted with the application, seconded by Mr. Browndyke.

ROLL CALL: Ms. Clift – Yes; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Mr. Harless – Yes, because the homeowner did not build this, it was done by the developer. Ms. Bowden – Yes; Alderman Gibson – Yes; Chairman Sisson – Yes, regarding the new zoning district and the confusion that was had over that.

MOTION PASSED

PROPOSED MOTION 2: To approve a variance to allow a 6'6" high fence (with 7' posts) at 1712 Paddington Park LN in the T-3 "Suburban" zoning district, subject to the Board's discussion, staff comments noted in the staff report and the site plan submitted with the application.

Mr. Uhlhorn made a motion to approve a variance to allow a 6'6" high fence (with 7' posts) at 1712 Paddington Park LN in the T-3 "Suburban" zoning district, subject to the Boards' discussion, staff comments noted in the staff report and the site plan submitted with the application, seconded by Mr. Browndyke.

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ROLL CALL: Ms. Bowden – Yes; Ms. Clift – Yes; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes, due to the slope; Mr. Harless – Yes, the ordinances allows us to make modifications and approvals when the unusual slope of the property warrants it and in this case I believe it does; Alderman Gibson – Yes, due to the uniqueness of the topography; Chairman Sisson – Yes, for all of the reasons previously stated.

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:43 p.m.