

FBOARD OF ZONING APPEALS
CITY HALL COUNCIL CHAMBERS

Tuesday, June 12, 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 June 12, 2018.

1. Chairman Sisson called the meeting to order at 6:01 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; Mr. Frank Uhlhorn, Ms. Rhea Clift, and Alderman Mary Ann Gibson

DEVELOPMENT STAFF PRESENT: Mr. Cameron Ross, Economic and Community Development Director; 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 May 8, 2018 Meeting.

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of May 8, 2018, as discussed; seconded by Mr. Browndyke, with no further comments or discussions.

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

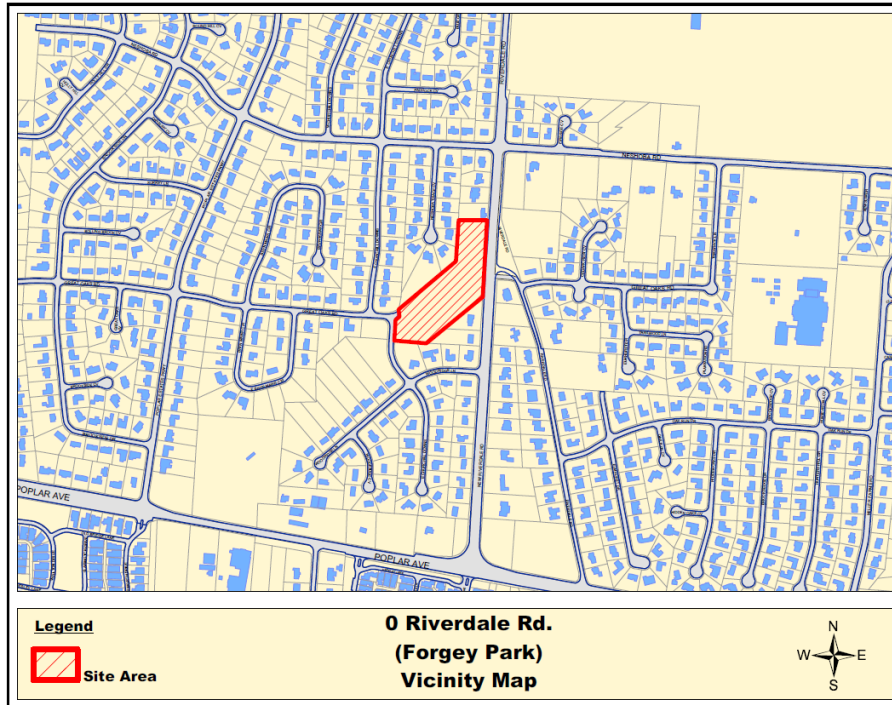
MOTION PASSED

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4. Forgey Park (Riverdale Road) – Approval of a Use on Appeal to Allow a Wireless Transmission Facility (Cell Tower) in the R District (MLGW Transmission Tower Attachment) (Case No. 18-817).

INTRODUCTION:

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| Case Number: | 18-817 |
| Location: | Forgey Park – Riverdale Rd. Side |
| Applicant: | Law Offices of Baker Donelson for Verizon Wireless – N. Andrew Rosenstreich |
| Property Owner: | City of Germantown (with a lease to MLGW for Transmission Tower) |
| Zoning District: | “R” Low-Density Residential District |

Description of Request: Use on appeal to allow a Wireless Transmission Facility (cell tower) in the "R" zoning district (MLGW Transmission Tower attachment)



BACKGROUND:

DATE OF ANNEXATION: February 24, 1969, per Ordinance No. 1968-16.

DATE SUBDIVISION APPROVED: Neshoba Trace Subdivision, recorded in 1988. Plat book 124, page 11B (Lot 1).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Not applicable. City park with MLGW transmission towers.

PREVIOUS USE ON APPEAL AND VARIANCE REQUESTS: None.

NATURE OF USE REQUESTED: The site of the proposed wireless transmission facility (cell tower) is within an existing MLGW electrical power line tower that is located in Forgey Park next to the playground. (The neighboring residential property is 1685 Riverdale Rd., which was erroneously listed in the application as the address of the MLGW transmission tower.) The plan proposes a monopole tower to be placed within the MLGW tower, with a height of 129 feet as measured to the mid-point of the antennas. A 20 ft. by 30 ft. lease area underneath and to the east of the tower will contain the equipment compound for the Verizon antennas.

There is a precedent of the BZA approving uses on appeal for the location of cell towers within the existing MLGW electrical power line tower. On November 13, 2012, the BZA approved a use on appeal for a cell tower located in the MLGW transmission tower on the Germantown Greenway, east side of Miller Farms Rd., north of Hollow Fork Rd. and south of Wolf River Blvd. (development contract no. 1061).

SPECIFIC SECTION OF ZONING ORDINANCE:

Per Section 23-86(c)(2), wireless transmission facilities are allowed within residential districts, with the approval of a use on appeal.

Per Section 23-86(h)(5), wireless transmission facilities within power transmission line towers are encouraged by the zoning regulations, and have specific criteria for their approval in addition to the standard general criteria for a use on appeal:

“Shared use. The shared use of existing towers or the placement of towers less than 35 feet in height at locations adjacent to a mature wireless facility, or wireless transmission facilities incorporated within existing power transmission line towers, shall be encouraged whenever possible.

a. The applicant's proposal for a new wireless transmission facility shall not be approved unless it can be documented by the applicant that the proposed equipment planned for the proposed tower cannot be accommodated on an existing or approved tower located within a minimum distance of 0.10 miles due to one or more of the following reasons:

1. The planned equipment would exceed the structural capacity of existing and approved towers, considering existing and planned use of those towers cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
2. The planned equipment would cause radio frequency (RF) interference with other existing or planned equipment for these towers, and the interference cannot be prevented at a reasonable cost.
3. Existing or approved towers do not have space on which planned equipment can be placed so it can function effectively and reasonably in parity with other similar equipment in place or approved.
4. Geographic service requirements.

b. The applicant shall also address the extent to which shared use of the proposed tower will be allowed in the future. A letter of intent committing the tower owner and his successors to allow shared use of the tower, if an applicant agrees in writing to pay any reasonable charge for shared use, shall be filed in the office of the department of community development, prior to any building permit being issued.

c. The applicant's plans must demonstrate how shared facilities would potentially be situated on proposed sites. Towers and/or structures shall be required to be designed for multitenants on the initial installation, i.e., designed for two sets of a fully sectorized antenna arrays.”

In order to comply with the ordinance requirements listed under Sec. 23-86(h)(5)(a), the applicant provided a heat map to show that the new cell tower is needed due to geographic service requirements (4.). The applicant has not discussed shared use or design for multitenants in their request.

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.

Per Sec. 23-86(c)(1), if the BZA approves the use on appeal, the Planning Commission shall

review and approve the site plan, the Design Review Commission shall review and approve a landscaping and fencing plan as well as the appearance of the tower, and the Board of Mayor and Aldermen shall approve a development contract for the construction of the tower and the associated equipment compound.

APPLICANT'S JUSTIFICATION: The applicant is requesting the new wireless transmission facility to improve coverage and capacity issues due to increased wireless congestion. (See applicant's letter on p. 9.)

STAFF COMMENTS:

1. City staff from the following departments reviewed the proposal and provided comments:
 - a. Police: No specific issues, especially since there is already an MLGW tower located here. This would improve cell phone connectivity and reliability in that area which would be important to Police, and the residents who may need our services. Additionally, Police uses cellular connectivity to and from squad cars for their in-car computers.
 - b. Fire: No issues.
 - c. Engineering (comments to be addressed with Planning Commission submittal):
 1. There is no parking area designated for maintenance vehicles (no parking is allowed on New Riverdale Rd.). Plans note "tower accessed by foot from street." No driveway access shown across existing sidewalk and no curb cut drive apron shown. Concern: where will maintenance vehicles park?
 2. Wood fence should be heavily screened with landscaping.
 3. Fence should be as high as the tallest equipment inside the fence. (If taller than 6' high, variance shall be required.)
 - d. Information Technology: This is an area experiencing coverage issues.
 - e. Public Works: Please ensure that the contractor performing the proposed installation to the existing structure is careful not to damage/destroy any public infrastructure (roadways, grass, utilities, etc.) in utilizing the heavy equipment to install. If any public infrastructure is damaged/destroyed in the installation process, the contractor is responsible for repairing/replacing the infrastructure in kind
2. If the use on appeal is approved by the Board of Zoning Appeals, the proposed wireless transmission facility (tower) shall proceed to the following Boards and Commissions for approval, in this order: Planning Commission for the site plan, Design Review Commission for landscaping, fencing and other appearance items, and to the Board of Mayor and Aldermen for a development contract. Following securing approvals from the City of Germantown, the applicant shall apply for a building permit through Shelby County Code Enforcement.
3. Should the applicant apply for approval through the Planning Commission, they shall ensure that all the development standard requirements under Sec. 23-86(i) are met with the application submittal.

PROPOSED MOTION: To approve a Use on Appeal to allow a wireless transmission facility (cell tower) located at Forgey Park (Riverdale Rd, side) in the "R" Single-Family Residential district, subject to the Board's discussion, staff comments noted in the staff report and the site plan and documents submitted with the application.

BOARD DISCUSSION:

Mr. Andrew Rotenstreich with the Law Offices of Baker Donelson explained that he was representing Verizon Wireless and was there to answer any questions the board might have. This was an unusual installation for a cell tower but it is in a residential area and they already have an MLG&W transmission tower there to use. Verizon chose this area because they need a tower in order to get the coverage it needs to fill in a significant gap in coverage. He explained that they would be using cabinets instead of a shelter so they will not be taller than 6 ft. The tower is 126 ft pole tapered in design where the base is approximately 2 ½ x 3 ft and it gets thinner as it goes up. They will also be installing a wood fence and landscaping as the city's ordinance requires. By granting this request the board would be allowing Verizon to broaden their coverage significantly and requested the boards' approval.

Ms. Jackie Adams spoke against this item due to this tower being in view from her back deck and will be an additional eye sore like the un-updated park that the city will not do anything about.

Mr. Uhlhorn made a motion approve a Use on Appeal to allow a wireless transmission facility (cell tower) located at Forgey Park (Riverdale Rd. side) in the "R" Single-Family Residential district, subject to the Board's discussion, staff comments noted in the staff report and the site plan and documents submitted with the application, seconded by Mr. Harless.

ROLL CALL: Mr. Browndyke – Yes; Mr. Harless – Yes, because we will be getting so much better coverage in this area, due to Germantown residents' complaints of not being able to make emergency calls, and having dropped calls. Mr. Uhlhorn – Yes; Ms. Clift – Yes, because of the 911 coverage; Alderman Gibson – Yes; Chairman Sisson - Yes

MOTION PASSED

5. 7126 Neshoba Rd – Approval of Variance to Allow a Driveway to be Greater than the Maximum Allowable width in the R-1 District. (Case No. 18-818).

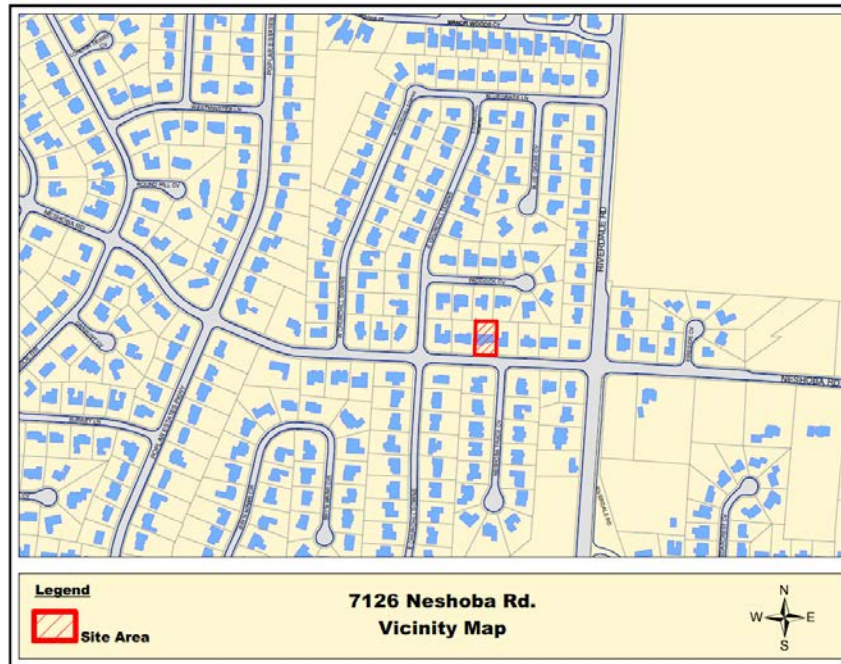
INTRODUCTION:

Applicant/Property Owner: Abram Patrick Alexander

Location: 7126 Neshoba Rd.

Current Zoning District: "R-1" Single-Family Residential District

Description of Request: Approval of a variance to allow a driveway to be greater than the maximum allowable width



BACKGROUND:

DATE OF ANNEXATION: February 24, 1969, per Ordinance No. 1968-16.

DATE SUBDIVISION APPROVED: Poplar Estates Subdivision – Block J, recorded in 1971, describes this parcel as Lot 38.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1972

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval for a wider than allowed driveway, for a pullout and a connection to a walkway. The applicant’s contractor applied for a curb cut permit through the City of Germantown Engineering Division. When city staff conducted a final inspection, it was determined that a portion of the driveway in the front yard setback was greater than the allowable width of 18’.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The request is for a variance from §23-88(a)(1), which requires that a driveway be no more than 18’ in width in the front yard setback, except for 20’ in front of the garage or carport, then it may be the width of the garage or carport. In this case, the driveway is already as wide as the width of the two-car garage (18’ wide). An angled portion of the driveway is up to 31’ wide (18’ driveway width plus 13’ pullout), for a length of 8’, in the front yard setback.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape, resulting in peculiar and exceptional practical difficulties. The applicant states: “The original driveway required rear entry onto increasingly busy Neshoba Rd. The driveway in its current design allows vehicles to turnaround and to enter Neshoba Rd. driving forward.” See the application for additional information and reasoning.

STAFF COMMENTS:

1. Planning Division staff received one phone call from a neighbor, speaking in favor of the variance.

2. If the variance request is granted, the applicant shall revise the driveway permit through the City of Germantown Engineering Division and receive final approval.
3. If the variance request is denied, the applicant shall remove the non-compliant portion of the driveway within 30 days.

PROPOSED MOTION: To approve a variance to allow driveway greater than the maximum allowable width (for a portion 8' long and 31' wide) at 7126 Neshoba Rd. in the "R-1" Single-Family Residential 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. Alexander, property owner explained other residents on his street already have drives such as he was requesting. Although the pictures that were presented at the meeting did not show any plantings, Mr. Alexander informed the board that he has already planted pampas grass that would screen the concrete from view as well as sod. His wife's grandmother visits them quite often and has recently been diagnosed with cancer and is currently using a wheelchair for mobility. By moving his vehicle to the new addition, it allowed her to be able to exit the vehicle without rolling out onto the grass. This additional concrete section would offer his wife more maneuverability to safely exit their driveway on this busy section of street.

Staff reminded the Board that at the executive session of the BZA meeting, Mr. Ross looked up the traffic report for the applicant's area and it showed this section of roadway receives over 6,000 trips per day.

After much discussion, Chairman Sisson called for a motion.

Mr. Harless made a motion to approve a variance to allow a driveway greater than the maximum allowable width (for a portion 8' long and 31' wide) at 7126 Neshoba Rd. in the "R-1" Single-Family Residential zoning district, subject to the Board's discussion, staff comments noted in the staff report and the site plan submitted with the application, seconded by Mr. Uhlhorn.

ROLL CALL: Ms. Clift – Yes, due to the applicant being able to drive out safely from their driveway; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Mr. Harless – Yes, as previously stated; Alderman Gibson – Yes, due to the exceptional situation with the traffic on Neshoba; Chairman Sisson – Yes, for the reasons previously stated.

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:31 p.m.