

**PLANNING COMMISSION MEETING
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, February 2, 2010**

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of the Municipal Center on February 2, 2010. Chairman Klevan welcomed everyone and asked the Commission members as well as the audience to please speak into the microphone so they could be heard. Chairman Klevan then called the meeting to order at 6:00 p.m. asking the secretary for the roll.

Ms. Rush called the roll of the Board to establish a quorum:

Commissioner Present: Rick Bennett, Alderman John Drinnon, Mike Harless, David Klevan, Forrest Owens, Lisa Parker, Dike Bacon.

Commissioner Absent: Susan Burrow

Staff Present: David Harris, Jerry Cook, Wade Morgan, Katie Graffam, Josh Whitehead, Tim Gwaltney and Pam Rush.

A quorum for tonight's Planning Commission meeting was established.

1. Approval of Minutes for January 5, 2010

Chairman Klevan stated for those people who just arrived, tonight's agenda is on the front table. The first order of business is the approval of the minutes for January 5, 2010. If there were no additions, corrections or deletions to the minutes of the January 5, 2010, meeting of the Planning Commission, he would entertain a motion for approval.

Alderman Drinnon moved to approve the Planning Commission minutes of January 5, 2010, as submitted, seconded by Mr. Bacon.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – absent; Drinnon – yes; Parker – yes; Bacon – yes; Harless –yes; Owens - yes; Klevan – yes. **The motion was passed**

Consent Agenda: Chairman Klevan stated the second order of business is the approval of the Consent Agenda. He then proceeded to read the Consent Agenda item:

2. Radford Planned Development – south side of Dogwood Road, east of Pete Mitchell Road – Request Amendment to the Final Plat for Reduced Front Yard on Lot 10

INTRODUCTION:

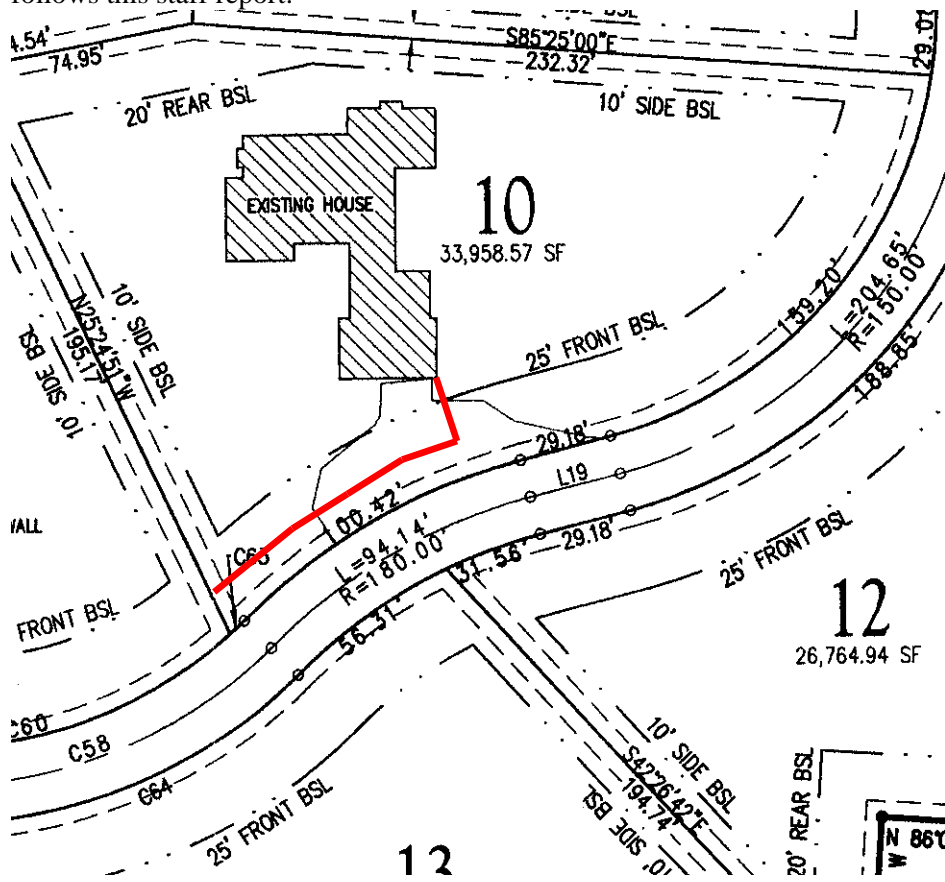
Applicant Name: **Tony Salvaggio – Owner**
Location: 7880 Radford Ridge (Lot 10, Radford Planned Development)
Current Zoning District: "R" Residential
Description of Request: **Request an Amendment to the Final Plat for a Reduced Front Yard on Lot**
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BACKGROUND: Radford Ridge was granted Final Planned Development approval on April 4, 2006. The applicant is currently renovating the home at 7880 Radford Ridge, one of two existing homes that were retained with the development of this property.

DISCUSSION: According to the applicant, the house was constructed in 1940. Its size does not conform to the restrictions of the subdivision. In addition, the existing two-car garage also places the applicant into difficulty conforming to the subdivision restrictions dealing with vehicles in driveways (see letter from applicant). According to the applicant, the proposed addition to the house along its southern and southwestern facades will alleviate these violations. The applicant seeks a reduction of the front yard on his lot, Lot 10, in an attempt to construct a parking court.

Since the applicant's request concerns a front yard as proscribed by the Planning Commission through the planned development process, and not a front yard as defined by the Zoning Code, the proper way to process the applicant's request is through a plat revision by the Planning Commission, and not a variance through the Board of Zoning Appeals. As such, the applicant does not have the burden to prove extraordinary circumstances or hardship since a zoning variance is not sought. Nevertheless, the applicant has provided evidence that unusual topographical and other site issues necessitate his request for a variance. According to the applicant, the north yard, or side yard, is encumbered by a very steep grade making an addition to the house along that façade impractical. The west yard, or rear yard, is also encumbered by grade changes, as well as a few large trees that the applicant wishes to retain. The applicant has also expressed his wish to keep the east yard, or front yard, in its current state, which is in great excess of the required 25-foot front yard setback. In fact, the house lies nearly 150 feet from Radford Ridge Drive, nearly 6 times the required front yard setback.

An architect's rendering of the proposed addition has been submitted by the applicant and immediately follows this staff report.



Close-up of Lot 10: Proposed 10-foot front yard in **RED**.



Home as viewed from the front (from the east).



Existing garage and driveway (edge of Radford Ridge Drive along bottom left).



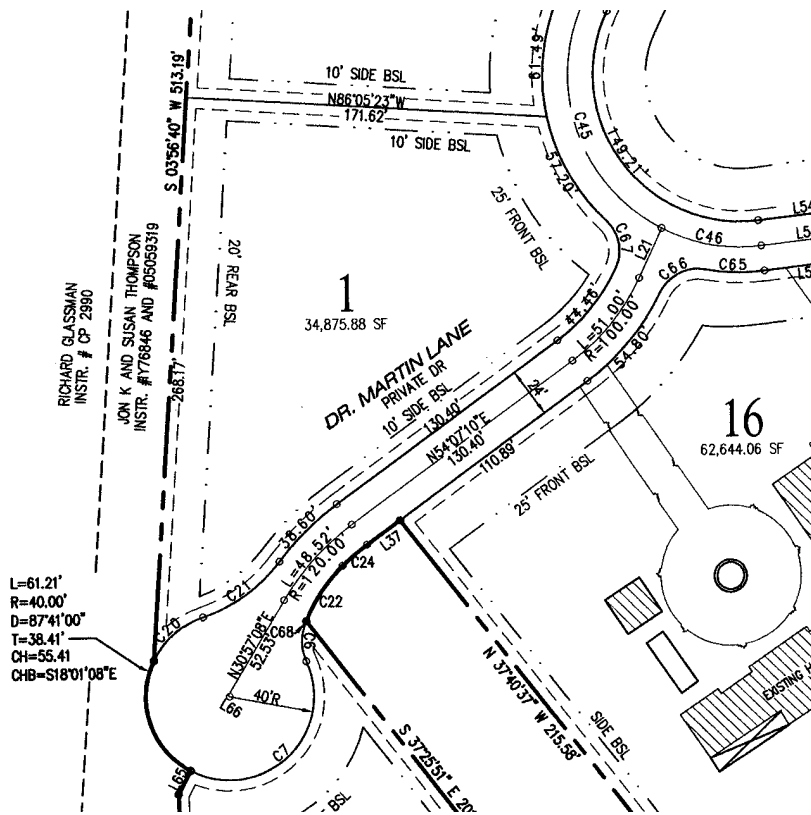
Another view of side of home from the east.

STAFF COMMENTS:

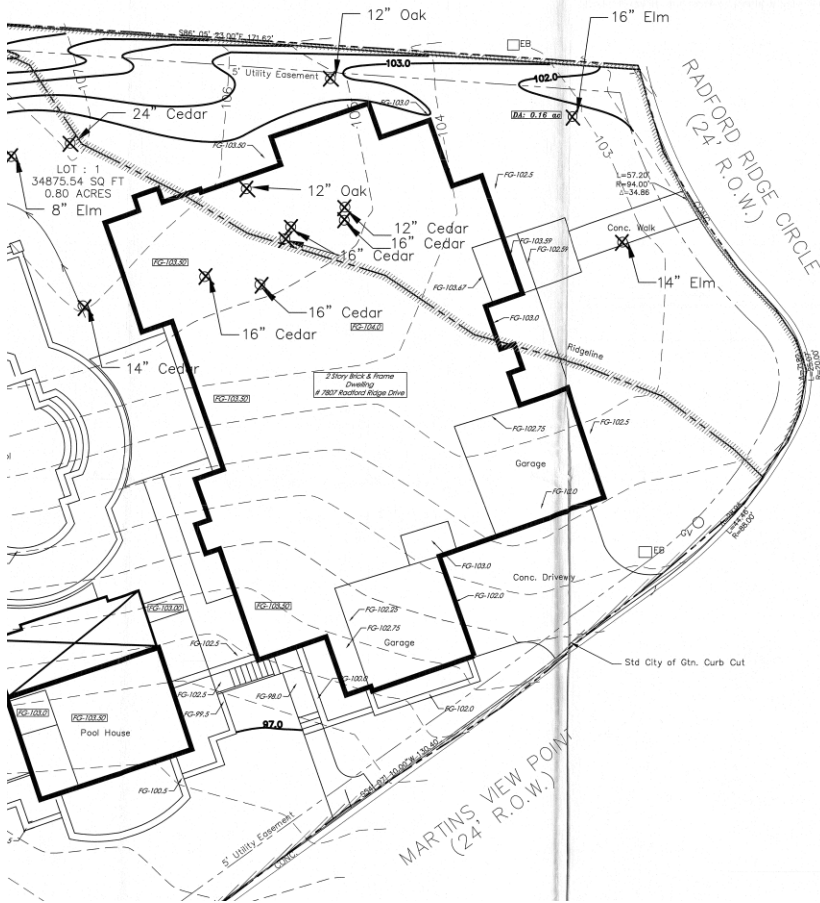
A. PRIOR TO PLAT RE-RECORDATION:

1. The applicant shall obtain the signatures of the requisite amount of lot owners required to amend the plat, as indicated in the Declaration of Covenants, Conditions and Restrictions of the development. These signatures shall be placed on the signature page (page 4) of the final plat.
2. The applicant shall be responsible for the re-recording fees.

STAFF RECOMMENDATION JUSTIFICATION: Staff recommends approval of this request. Staff bases its recommendation based on the fact that other lots within the development also contain reduced setbacks along their “secondary frontages.” A secondary frontage, for the purpose of this discussion, is the front yard that is adjacent to the side or rear of a house. The first new home constructed in the development, on Lot 1, demonstrates this reduced setback. See photos below for further details on Lot 1. The applicant is essentially requesting a reduced setback on his secondary frontage. Reduced setbacks on secondary frontages are not unusual. The Pinnacle, the planned development immediately to the east of Radford, contains 5-foot setbacks along a few lots’ secondary frontages. According to the promotional site plans provided by the developer, many of these houses may actually face this secondary frontage rather than Dogwood Road (the primary frontage for these lots), as they will not have vehicular nor pedestrian access to that roadway. A more historical example of reduced front yards on secondary frontages is provided in one of Shelby County’s more venerable subdivisions, Chickasaw Gardens. There, a 15-foot front yard is utilized on the secondary frontages.



Close-up of Lot 1. Note the 10-foot setback from Dr. Martin Lane (secondary frontage).



Grading plan submitted with Lot 1.



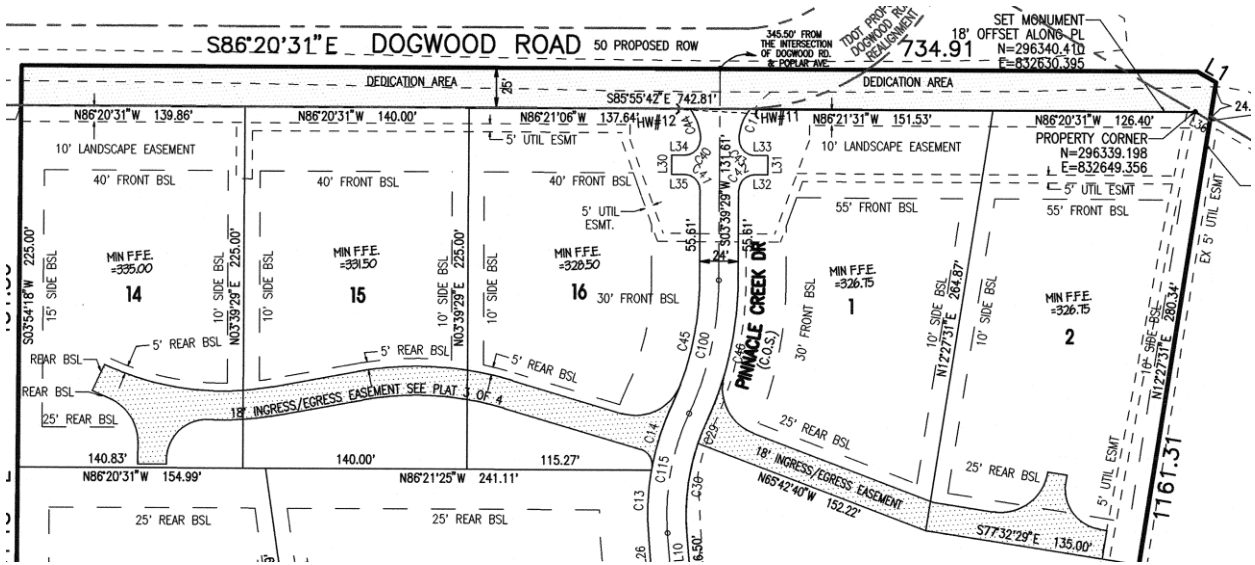
Front façade of home on Lot 1, as viewed from east (Radford Ridge Drive).



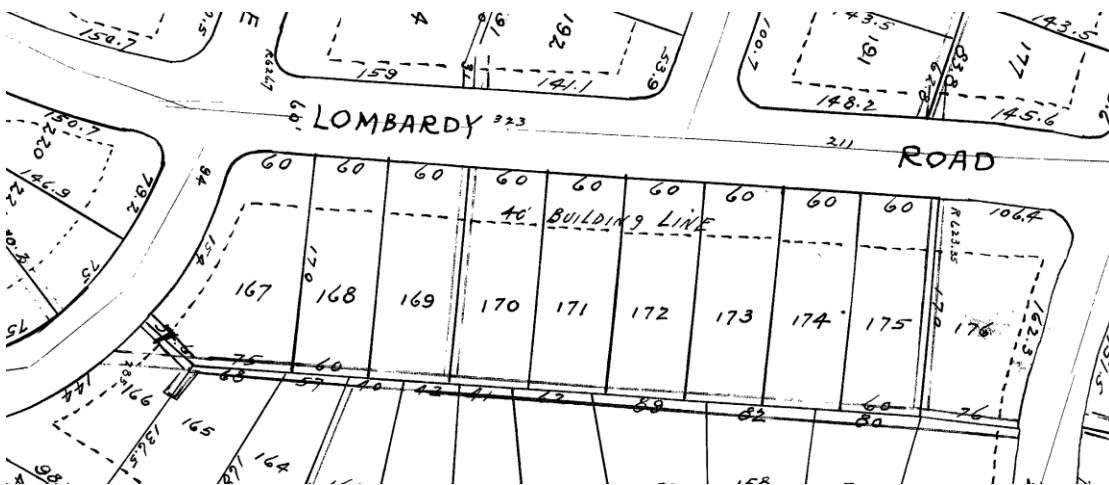
Close-up of front façade of home on Lot 1, as viewed from the intersection of Radford Ridge Drive and Dr. Martin Lane (note edge of street at left bottom of photo).



Side façade of home on Lot 1, as viewed from south (Dr. Martin Lane). The home is set back 10 feet from the roadway.



Close-up of plat for The Pinnacle. The Pinnacle is located directly east of Radford, the subject subdivision. Note the 5-foot building setbacks from the southern roadway.



Close-up of plat for Chickasaw Gardens. Note the reduced 15-foot setbacks along the side property lines on the corner lots.

The Subdivision & Site Plan Review Subcommittee (Forrest Owens, Chairman) did not meet.

STAFF RECOMMENDATION: Approval.

PROPOSED MOTION: To grant the request for an amendment to the Radford Planned Development Final Plat to allow for a reduced front yard on Lot 10, subject to staff comments and the site plan filed with this application.

Approved by the Planning Commission, February 2, 2010.

Chairman Klevan stated, at the Executive Session this evening, the following items were placed on the Consent Agenda by the Planning Commission: **Radford Planned Development**. As part of the Consent Agenda, these items will **not** be presented, discussed or voted upon individually. If you would like to have it discussed before the Planning Commission this evening, please come forward at this time.

Chairman Klevan stated again, ***Radford Planned Development*** has been placed on the Consent Agenda and will be voted upon as one motion and will not be discussed individually unless someone on the Commission or in the audience comes forward to remove that item from the Consent Agenda. Does anyone interested in any of these matters wish to be heard?

Chairman Klevan stated, seeing no one come forward; I would like to note that on all matters concerning the Consent Agenda, the vote of each member of the Planning Commission would constitute an acknowledgement that the member has read the application or proposal, the staff reports and the Subcommittee report. I am prepared for a motion for approval of the Consent Agenda.

Mr. Bennett moved to approve the Consent Agenda as read, seconded by Alderman Drinnon.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – absent; Drinnon – yes; Parker – yes; Bacon – yes; Harless –yes; Owens - abstain; Klevan – yes. **The motion passed.**

3. Amendment to Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors, of the Germantown Code of Ordinances to allow Temporary, Outdoor Sales of Fruit, Vegetables, Produce and Baked Goods in the “T-5” Smart Growth Zoning District.

INTRODUCTION:

Applicant Name: ***City of Germantown***
Location: “T-5” Smart Growth Zoning District
Description of Request: ***Request Amendment to Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors, of the Germantown Code of Ordinances to allow Temporary, Outdoor Sales of Vegetables, Fruit, Produce and Baked Goods***

BACKGROUND: In October of 2005, the Board of Mayor and Aldermen adopted by resolution Vision 2020, an outline plan for the future growth of Germantown. One of the goals of Vision 2020 includes the desire for its citizens to have “pride in Germantown” by hosting “strong community events and festivals [that] bring people together as a community.” During the Charette process, the participants expressed an interest in a farmers market being held in Germantown that would sell vegetables, fruit, produce and baked goods. Currently, our ordinance only allows a farmers market to take place on church property. Several members of the community would like this opportunity to be opened up to the T-5 Smart Growth zoning district in Germantown.

DISCUSSION: The following ordinance amendment is requested:

Bold, italicized text to be added.

Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors
§7-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Farmers Market means a cultural activity where a common facility or area is utilized where local farmers/growers gather on a regular, recurring basis to sell a variety of fresh fruits, vegetables, produce and baked goods, from independent stands directly to consumers.

§7-100. Exceptions.

- (h) Farmers Markets shall be permitted in the T-5 Smart Growth zoning district, with the prior approval of the Board of Mayor and Aldermen. All Farmers Markets must be inspected and approved by all applicable authorities, and comply with all the rules and regulations adopted by the city.*

STAFF COMMENTS:

1. *To request approval for a Farmers Market, the applicant would obtain the application from the Department of Economic and Community Development (ECD). Staff will place the applicant's request on the next available Board of Mayor and Aldermen agenda for approval. If approved, the applicant will be notified by letter of the terms of the approval.*
2. Staff has developed Farmers Market Rules and Regulations that each market shall adhere to. The applicant will receive this information from ECD when applying for market approval.

**Rules and Regulations
Farmers Markets**

The adoption of Vision 2020 included the desire for its citizens to have "pride in Germantown" by hosting "strong community events and festivals [that] bring people together as a community." During the community Charette process, the residents expressed an interest in a farmers market being held in Germantown that would sell fruit, vegetables, produce and baked goods.

The Germantown Code of Ordinances (Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors) allows the operation of farmers markets within the "T-5" Smart Growth zoning district. The Board of Mayor and Aldermen may approve an exception to any of the operating guidelines listed below:

A. Permit Requirements and Fees

1. An application for approval shall be made to the *Department of Economic and Community Development (ECD)* within 30 days of the proposed opening date of the market, *to be placed on the next available Board of Mayor and Aldermen agenda.*
2. The application can be obtained from City at the Germantown Department of Economic and Community Development, 1920 S. Germantown Road, Germantown, Tennessee 38138.
3. The application fee is currently \$50 per market. An approval covers one harvest season, running from *April 1 through November 30*. The approval is issued based on the location of the market. If a market chooses to move locations, a new application and approval fee shall apply. Fees are subject to change.

B. Location

1. Farmers markets are approved within the "T-5" Smart Growth zoning district.
2. The market shall not block any drive aisle extending from a major or collector street. Vendors and/or market managers must take every reasonable precaution to protect the safety of the customers from traffic and other hazards.

3. A Site Plan must be submitted to ECD for review and approval. The Site Plan shall include the following: Vicinity Map, location of all facilities (such as tents, canopies, vendor displays, etc.), parking areas for vendor cars and trucks, public walkways, parking areas for customers including handicap parking, toilet facilities, temporary water and electric utilities (if any), garbage containers and signs. All aspects of the Site Plan must be in compliance with all applicable building codes including ADA. Access to existing fire hydrants must be maintained and shown on the Site Plan.
4. ***If a conflict arises with the proposed site plan and the recommendations of the ECD staff, the applicant has the option to appeal to the Planning Commission (PC). If the PC approves the amended site plan, the application shall be forwarded to the Board of Mayor and Aldermen for approval on the next available agenda.***

C. Parking

1. Two (2) parking spaces are recommended per vendor stall. This parking recommendation is in addition to any existing parking requirements for a shopping center or business, depending on where the market location is proposed.
2. Delivery trucks shall not occupy more than one parking space. Delivery trucks shall only be parked on the premises on the day of the market.
3. No handicap parking spaces or handicap access ramps shall be blocked by the operation of the market.
4. No parking shall occur on unapproved parking surfaces, such as, but not limited to, parking islands, medians, common open spaces, parkland, etc. All parking must occur on paved surfaces.

D. Infrastructure

1. The markets shall consist of temporary, removable structures on paved surfaces only. Market set-up and removal must occur on the day of the operation.
2. If the market uses any type of overhead covering, including, but not limited to, tents, gazebos, etc., the public side of the overhead covering shall be white in color.
3. Lighting shall only be utilized within the market if an overhead covering is installed, to light only vendor spaces and customer aisles. No lighting shall flood adjacent properties, or be utilized to light event signage.
4. Applicants shall contact the Germantown Fire Department at 901.751.7600 to request an inspection of the premises if the structure warrants an inspection. The inspection and approval shall take place prior to the opening of the market. ***An attached outline of the requirements of the Fire Department is attached.***
5. Applicants shall contact the Shelby County Health Department at 901.544.7775 to gain all necessary inspections and approvals prior to the opening of the market. ***The attached ordinance pertaining to Health Department permits for a farmers market is attached.***
6. The Tennessee Department of Revenue requires that a portion of all vendors' sales shall be taxed. All vendors and market managers shall contact the Department of Revenue at 615.253.0600 to inquire about registration and current guidelines.

7. *Copies of the applicable business license, permits and inspections shall be displayed in a conspicuous place on the day of the market.*

E. Signage

1. Each market shall be allowed one (1) temporary directional sign at each entrance to the premises from a major or a collector street. The directional sign may contain only the following text with a directional arrow: Farmers Market Today. No signs shall be displayed on vehicles.
2. An additional internal sign is allowed at the major entrance to each market with the farmers market hours and dates of operation with the management company listed and contact information, to be approved with the permit.
3. No sign shall exceed eight (8) square feet in size, no more than four (4) feet in height and shall be temporary in nature and only erected during the hours of operation.
4. No sign shall impede the view of vehicular or pedestrian traffic.

F. Operation

1. Each market shall be permitted to operate from *April 1 through November 30*.
2. Each market may only operate between 7 a.m. and 12 p.m., on Saturdays only.
3. If a market location is proposed for the parking lot of an existing business, written permission must be submitted by the property owner with the application. In that letter, the property owner must supply an official copy of the necessary insurance to operate a market on the premises.
4. Property owners are ultimately responsible for the clean up of the market after closing. All market areas shall be cleaned and re-opened for general use within two hours of closing.
5. *The applicant is ultimately responsible for ensuring that all vendors have the appropriate documents to permit the vendor activity of a farmers market, as well as being responsible to ensure that all applicable guidelines are followed from the City of Germantown, Shelby County Health Department and the State of Tennessee.*

G. Enforcement

1. The Division of Code Enforcement has the right to inspect all markets. If a market is found to be in violation of the terms of the permit and/or the guidelines above, a \$50 fine may be levied on the property owner, after proper notice has been issued.

Smart Growth Subcommittee (David Klevan, Chairman):

The subcommittee did not meet.

PROPOSED MOTION: To grant the request for an ordinance amendment to Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors, of the Germantown Code of Ordinances to allow temporary, outdoor sales of fruit, vegetables, produce and baked goods in the "T-5" Smart Growth zoning district, subject to staff comments.

Mr. Bennett made a motion to grant the request for an ordinance amendment to Chapter 7, Businesses, Article 4, Peddlers, Transient Vendors and Mobile Frozen Dessert Vendors, of the Germantown Code of Ordinances to allow temporary, outdoor sales of fruit, vegetables, produce and baked goods in the "T-5" Smart Growth zoning district, subject to staff comments, seconded by Mr. Harless.

Ms. Parker asked, are we trying to promote vendors to come every Saturday, or once a month? She thinks the hours should be extended.

Mr. Pouncey stated that would be up to the applicant. We are going to try to set the times from 7:00-12:00 on Saturday.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – absent; Drinnon – yes; Parker – yes; Bacon – yes; Harless –yes; Owens - yes; Klevan – yes. **The motion passed.**

4. Chairman Klevan asked if there was any old business or new business to come before the Commission. **There was none.**
5. Chairman Klevan asked if there were any liaison reports. **There was none.**

ADJOURNMENT

The meeting adjourned at 6:20 P.M.