

FBOARD OF ZONING APPEALS
CITY HALL COUNCIL CHAMBERS
Tuesday, October 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 October 9, 2018.

1. Alderman Gibson called the meeting to order at 6:09 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. Alderman Gibson Swore in the Staff.

2. Alderman Gibson requested the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT: Mr. Frank Uhlhorn, Ms. Rhea Clift, Jodie Bowden; 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. Election of Vice-Chairman to Complete the 2018 Term

Mr. Uhlhorn nominated Ms. Rhea Clift as Vice-Chairman, seconded by Ms. Bowden, with no further comments or discussions.

Ms. Clift accepted the position.

ROLL CALL: Ms. Bowden - Yes; Mr. Uhlhorn – Yes; and Alderman Gibson – Yes

Meeting was turned over to the new Vice-Chairman.

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4. Approval of Minutes from the August 14, 2018 Meeting.

Ms. Bowden moved to approve the Board of Zoning and Appeals minutes of August 14, 2018, as discussed; seconded by Alderman Gibson, with no further comments or discussions.

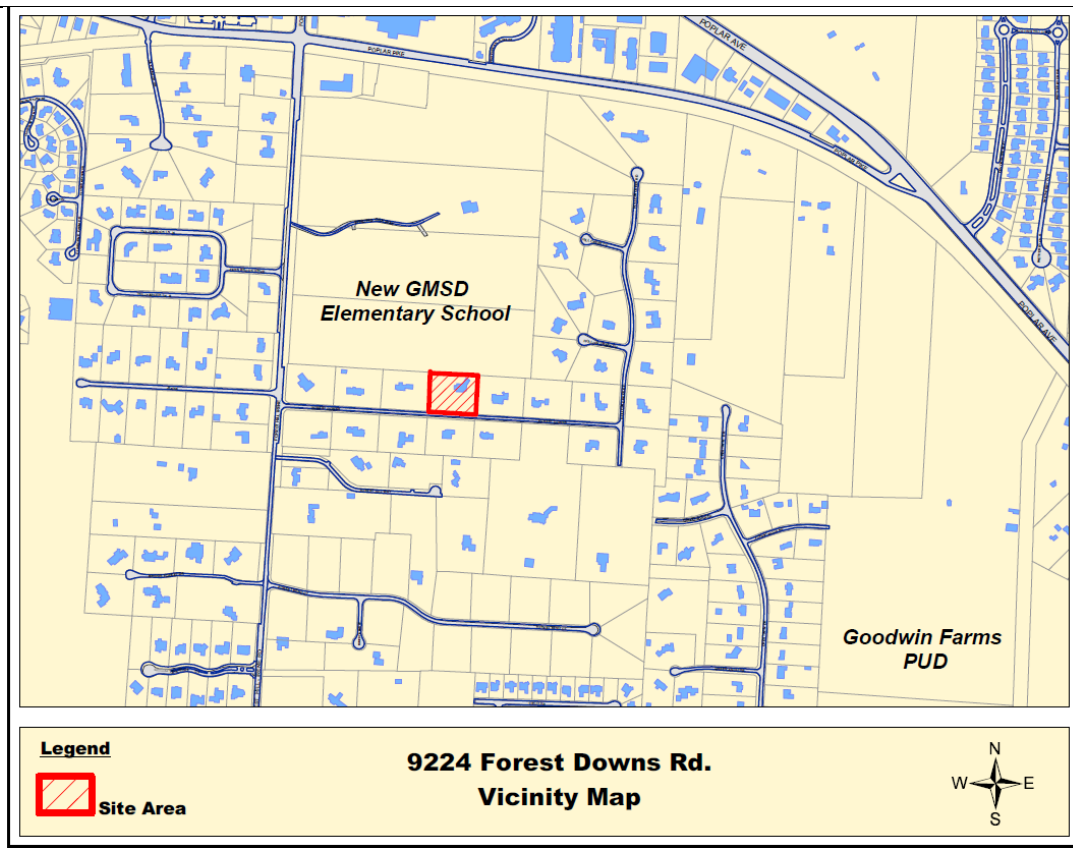
ROLL CALL: Mr. Uhlhorn – Abstain; Ms. Bowden - Yes; Alderman Gibson – Yes; Chairman Clift – Yes.

MOTION PASSED

5. 9224 Forest Downs Rd. - Approval of Variance to Allow a Fence and Gates to Exceed 30” in Height in the Front Yard Setback of the Re-1 District (Case No. 18-837).

INTRODUCTION:

Case Number:	18-837
Location:	9224 Forest Downs Rd.
Property Owner/ Applicant:	Brandon & Ashley Toney
Current Zoning District:	“RE-1” Residential Estate District
Description of Request:	Approval of a variance to allow gates and fence to exceed 30” in height in the front yard setback



BACKGROUND:

DATE OF ANNEXATION: July 26, 2000 per Ordinance 2000-10.

DATE SUBDIVISION APPROVED: Forest Hill Woods, September 7, 1977.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1981

PREVIOUS VARIANCE REQUESTS: April 8, 2008: Rear Setback Variance reduced to 24’ from 50’ for an attached pool house (granted).

DISCUSSION:

SPECIFIC SECTIONS OF ZONING ORDINANCE: The variance request is to allow a fence, columns, brick entrance wall and gates greater than 30” high in the front yard setback. The specific request is approval of a variance from the following section of the Code of Ordinances: §6-102(b): “fences (which include gates) 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 “RE-1” residential estate zoning district. Per §23-208(1)(a), the property’s “RE-1” zoning district establishes a minimum front yard setback, extending 60’ behind the property line. The variance request is to allow a fence and entrance gates greater than 30” in the front yard setback.

The applicant is proposing a proposing a 4’ high wrought iron fence with 5’ high brick columns along the front of the property, 15’ behind the property line. Portions of the 4’ high fence would extend along the side of the property (in the front setback area), either stopping in the wooded area or connecting to existing fencing on the side of the property. Additionally, the applicant is requesting a curved brick wall entrance feature (6.33’ long on each side of the gate) at each entrance of the circular driveway on Forest Downs Rd., that ranges from 4.75’ to 6’ in height. It would have 6.75’ high columns and 6’ high gates. The 6’ high gates would be located 23’ from the front property line.

APPLICANT’S JUSTIFICATION: The applicants indicate that the reason the variance is being requested is per the condition “other extraordinary and exceptional situation or condition of the piece of property.” Per the applicant, “there is no right-of-way designed for pedestrians, culvert for drainage or curb to mark the beginning of the roadway on Forest Downs Rd. There is no buffer between our driveway and the street... There are no safety signs on Forest Downs Rd. or a posted speed limit for the safety of pedestrians. This is very dangerous for children and animals. The current ordinance of 30” does not provide adequate height to counter children from crossing over the fence and into the street where they could be hit by oncoming traffic...” Additional justification is provided in the application (see p. 7 of the staff report).

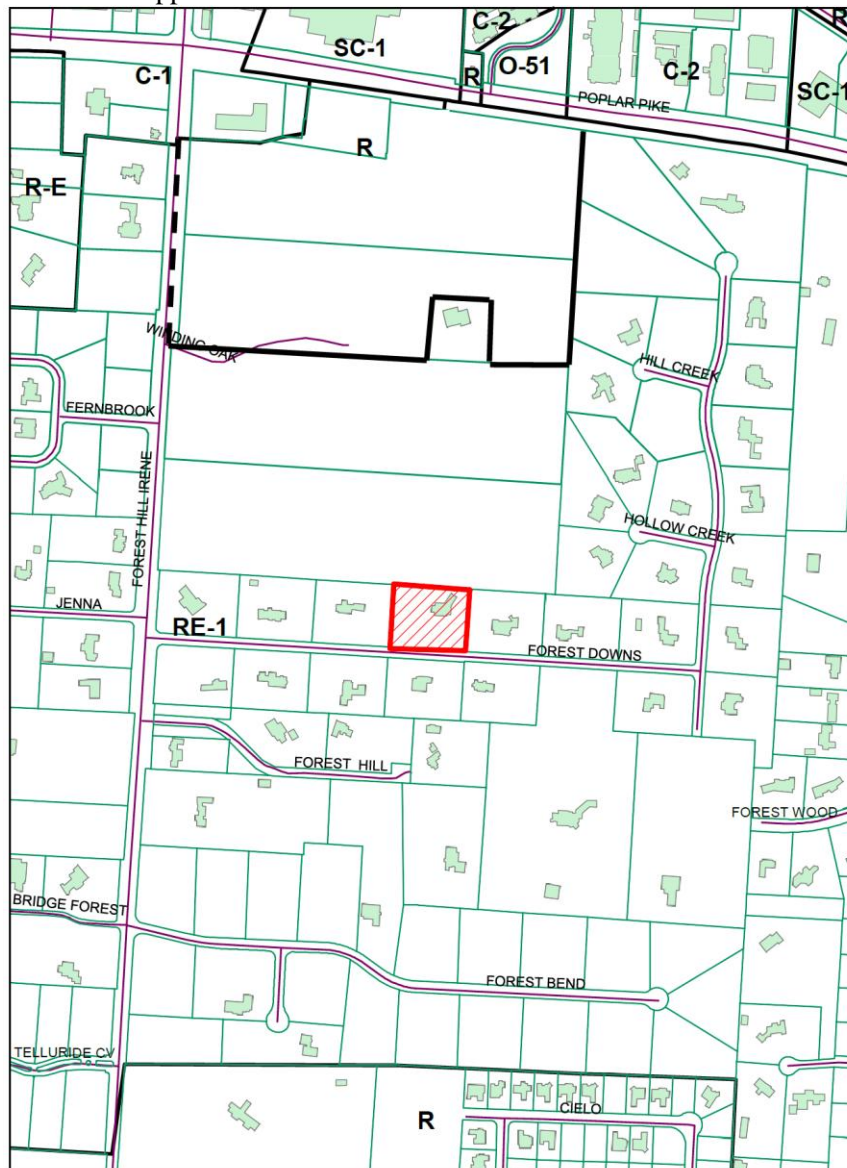
BOARD OF ZONING APPEALS’ POWERS: Per §23-49(a)(4), the Board of Zoning Appeals shall be able to consider granting a variance: “Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any provision of this chapter would result in peculiar and exceptional practical difficulties to or undue hardship upon the owner of such property, to authorize upon appeal relating to the property a variance from such strict application so as to relieve such difficulties or hardship, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. Financial disadvantage to the property owner is not sufficient proof of hardship.

STAFF COMMENTS:

1. The requested variance will result in the following:
 - a. 4’ high wrought iron fence with 5’ brick columns, located 15’ from the front property line along the front of the property, as well as along sides of the property in the front setback area, connecting to existing fencing on the eastern side of the property and stopping in the side wooded area on the western side of the property
 - b. Curved brick wall driveway entrance features at both entrances of the circular driveway, 6.33’ long on each side of the gate, and ranging from 4.75’ to 6’ in height, with 6’ high gates located 23’ from the front property line and 6.75’ high brick columns

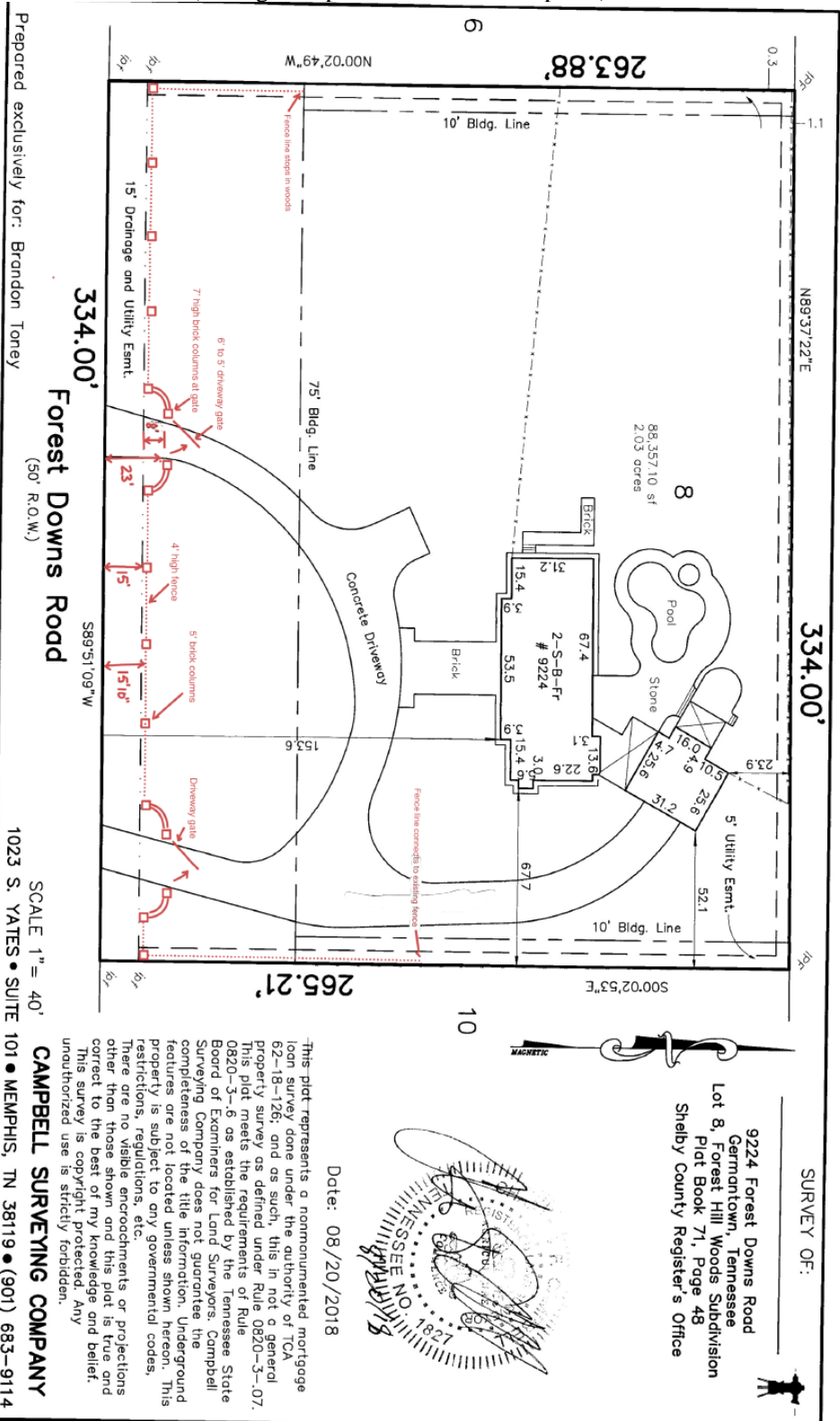
2. The applicant has prepared a comprehensive variance request packet with photos and analysis. Please see the agenda packet for this additional information.
3. Should the variance request be denied, per Article V of the Board of Zoning Appeals By-Laws: “No reapplication for the same request which relates 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.”
4. If the variance is approved, the applicant shall apply to the Neighborhood Services Dept. for a fence permit within 30 days of this approval.

Proposed Motion: To approve a variance to allow a 4’ high wrought iron fence with 5’ high brick columns and curved brick wall driveway entrance features (ranging 4.75’ -6’ in height) with 6’ high gates and 6.75’ high columns at 9224 Forest Downs Rd. in the “RE-1” 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.

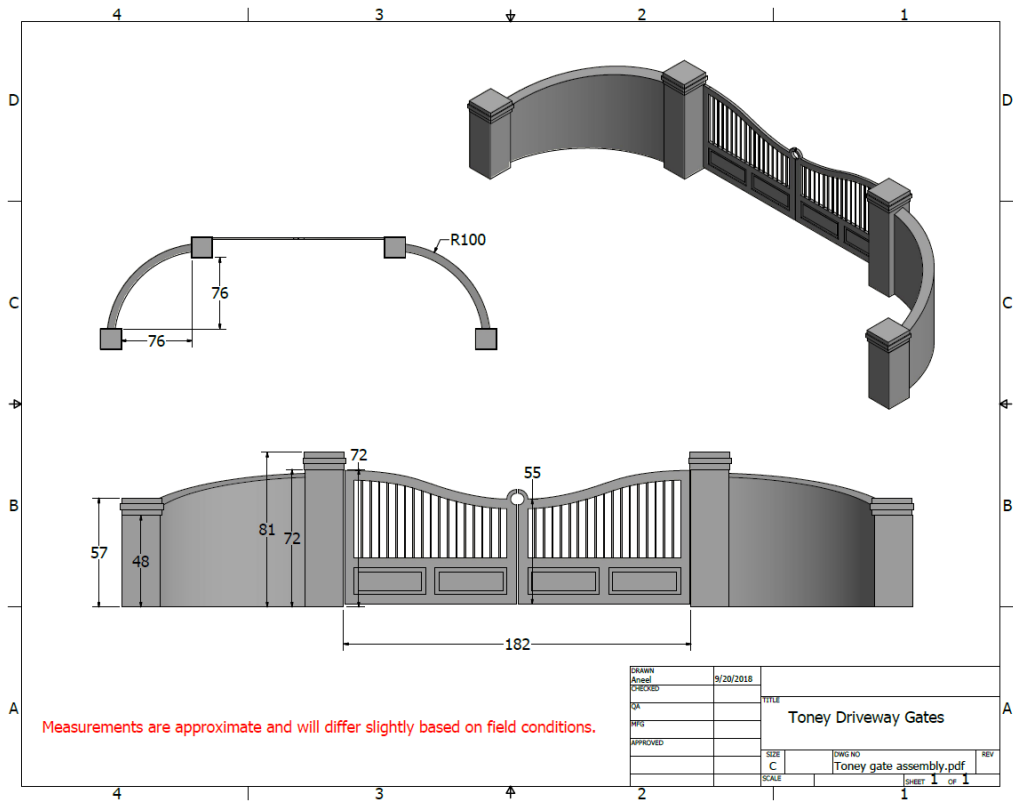
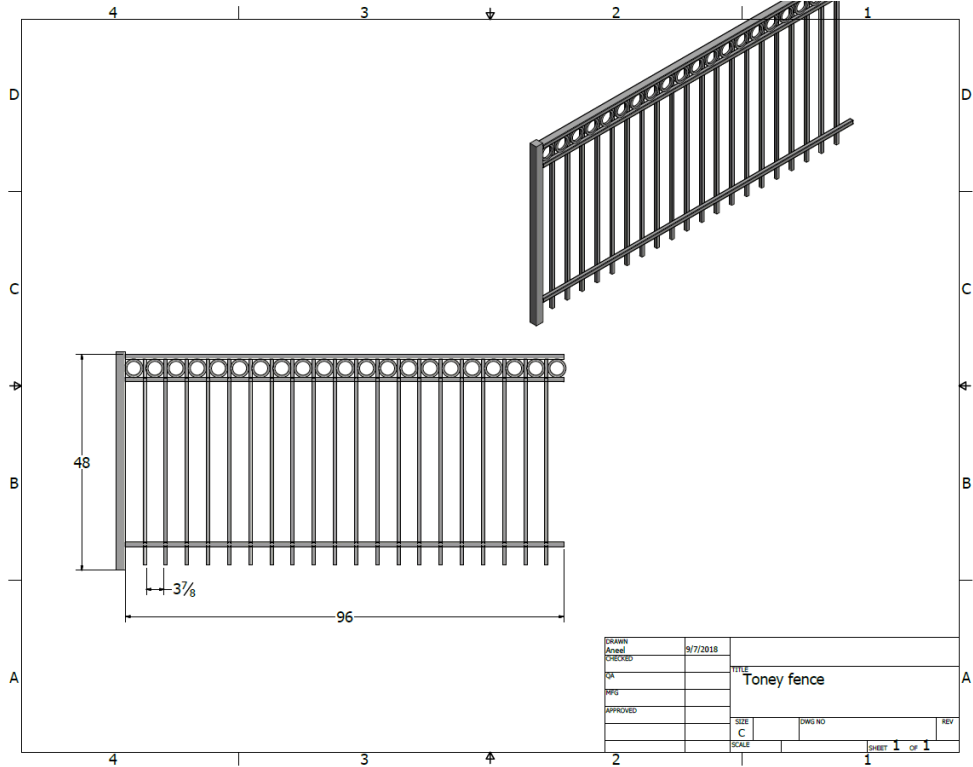


ZONING MAP

PROPOSED SITE PLAN
 (See agenda packet for full-sized plans)



PROPOSED FENCING, BRICK ENTRANCE FEATURE AND GATES



EXAMPLES OF GATE AND FENCE COLUMNS





CITY OF GERMANTOWN TENNESSEE

1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

Date Received: _____
Received By: _____

BOARD OF ZONING APPEALS OFFICIAL APPLICATION FORM

1. Date of Application: 9/8/2018
2. Action Requested (Circle one): Variance Use on Appeal Interpretation
3. Address of property where action is requested: 9224 Forest Downs Road Germantown, 38138
4. Briefly explain the specific action requested (e.g. "variance from required front yard setback in an "R" zoning district", or "variance to allow fencing to exceed six feet in height"):
Requesting variance to allow 4" tall iron fence with evenly spaced 5" brick columns.
See proposed map for exact details.
5. Name of person submitting this request: Dr. Brandon S. & Mrs. Ashley S. Toney
6. Is this person the (circle one): Property Owner Agent/Representative Attorney
7. Address of person submitting request: 9224 Forest Downs Road. Germantown, 38138
8. Telephone Number of person submitting request: Mobile: 901-461-6536
9. Email Address of person submitting request: brandontoney21@gmail.com
11. Name and address of all property owner(s): Dr. Brandon S. & Mrs. Ashley S. Toney
12. In the space below, describe the reasons for submitting the identified request. **Include in the explanation the reason(s) why there is not another solution or why it cannot be accomplished in compliance with the Ordinance.** Attach additional sheets if necessary.
To provide safety and security for children playing in our front yard. There is no right of way designed for pedestrians, culvert for drainage, or curb to mark the beginning of the roadway on Forest Downs Road. There is no buffer between our yard/driveway and the street for children or dogs before stepping onto the city roadway. There are no safety signs on Forest Downs or a posted speed limit for the safety of pedestrians. This is very dangerous for children and animals. The current ordinance of 30" does not provide adequate height to counter children from crossing over the fence and into the street where they could be hit by oncoming traffic. This not only includes our children, but other children who will be at our home as our children grow older.

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PLEASE NOTE: THE INFORMATION LISTED BELOW MUST BE PROVIDED OR YOUR APPLICATION MAY BE DEEMED INCOMPLETE

13. If a **variance is requested**, provide the following required information below to best of your ability.

The Board of Zoning Appeals has the following powers: (Section 23-49)

Where, by reason of *exceptional narrowness, shallowness or shape* of a specific piece of property or by reason of *exceptional topographic conditions* or *other extraordinary and exceptional situation or condition of such piece of property*, the strict application of any provision of this chapter would result in *peculiar and exceptional practical difficulties* to or *undue hardship upon the owner* of such property, to authorize upon appeal relating to the property a variance from such strict application so as to relieve such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. *Financial disadvantage to the property owner is not sufficient proof of hardship.* [Emphasis added]

This application for a variance is based on the condition(s) checked below (check all that applies):

1. **Condition of property:**

Exceptional narrowness, shallowness, or shape
(Describe in the box below if checked)

Exceptional topographic conditions
(Describe in the box below if checked)

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Other extraordinary and exceptional situation or condition of the piece of property
(Describe in the box below if checked)

We live on a 2 acre estate lot. The majority of our yard is in the front of the property & we would like to fence it in at an appropriate height for the safety of our children and dogs playing.

2. **Resulting in:**

Peculiar and exceptional practical difficulties
(Describe in the box below if checked)

We live on a 2 acre estate lot. We would like to fence in our front yard for the safety of our children and dogs. There is no sidewalk, curb, city grass strip, or other public right of way threshold to protect pedestrians from walking directly onto Forest Downs Road and being struck by oncoming traffic. There is no adequate protection lining the street to prevent serious accidents from occurring.

Undue hardship upon the owner
(Describe in the box below if checked)

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14. Ownership Shares in Project (if applicable).

- A. If the owner of the land which is the subject of this Application (including all owners, lessees and developers) is a for-profit entity, i.e. individual, sole proprietor, general partnership, limited partnership, corporation, limited liability company, R.E.I.T., a trust, or any other form of for-profit business entity or a non-profit entity, the authorized representative of the Owner must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Owner. (If another business entity owns 10% or more of the ownership interests in the Owner, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Owner, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest does not have to be disclosed.

Owner/President or Equivalent: Brandon S. Toney
Signature: *Brandon S. Toney*

Persons or Entities* Owning
10% or More of the Ownership
Interests of the Owner:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____

***See language in parenthesis above.**

- B. Not-for-Profit Entities. If the applicant submitting the Application (including all owners, lessees and developers) is a not-for-profit entity, the authorized representative of the Applicant must list below the name and business or home address of the President (or equivalent chief executive officer) and the members of its board of directors:

Applicant: _____
Address: _____
Authorized Signature for Applicant: _____

President or Equivalent
Chief Executive Officer: _____
Signature: _____

Members of the Board of Directors of the Applicant:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____

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15. **Certification**

All applicable parties shown below must sign the application:

Sign the following statement and indicate owner, agent or attorney.

I, Brandon S Toney, (property owner), attest to the best of my knowledge that the items submitted above are correct and accurate.

I, _____, (agent or attorney), attest to the best of my knowledge that the items submitted above are correct and accurate.

Note that approval of the application is based upon information provided herein and any change in this information including any change in ownership interests of the subject real property, after filing the application may result in reconsideration of any approval.

The Applicant/Property Owner/Lessee acknowledges and agrees that if the developer of a project is not the owner of the subject real property, the owner/lessee and developer shall be required to join in the project development contract with the City and the obligations of the project development contract shall be the joint and several obligations of the developer, owner, and lessee.

Last Revision Date: 7/2017

Board Discussion:

Mr. Brandon Toney explained that vehicles drive rapidly up and down their street, and they were concerned for their children's safety as they played in the front yard.

After much discussion, Vice-Chairman Clift called for a motion.

Mr. Uhlhorn made a motion to approve a variance to allow a 4' high wrought iron fence with 5' high brick columns and curved brick wall driveway entrance features (ranging 4.75-6' in height) with a 6' high gate and 6.75' high columns at 9224 Forest Downs Rd. in the "RE-1" Residential Estate 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 Ms. Bowden.

ROLL CALL: Mr. Uhlhorn – Yes, due to safety reasons; Ms. Bowden – Yes; Alderman Gibson – Yes, due to the exceptional nature of the safety concerns; Vice-Chairman Clift – Yes, due to the safety concerns and the exceptional nature of this property bordering a school (the new Forest Hill Elementary) and the traffic it may generate.

MOTION PASSED

6. NEW/OLD BUSINESS: None.

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Vice-Chairman adjourned the meeting at 6:23 p.m.