

BOARD OF ZONING APPEALS
CITY HALL COUNCIL CHAMBERS
Tuesday, November 13, 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 November 13, 2018.

1. Chairman Sisson called the meeting to order at 6:00 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; Ms. Rhea Clift, Vice Chairman; Jodie Bowden; 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 October 9, 2018 Meeting.

Ms. Bowden moved to approve the Board of Zoning and Appeals minutes of October 9, 2018, as discussed; seconded by Ms. Clift, with no further comments or discussions.

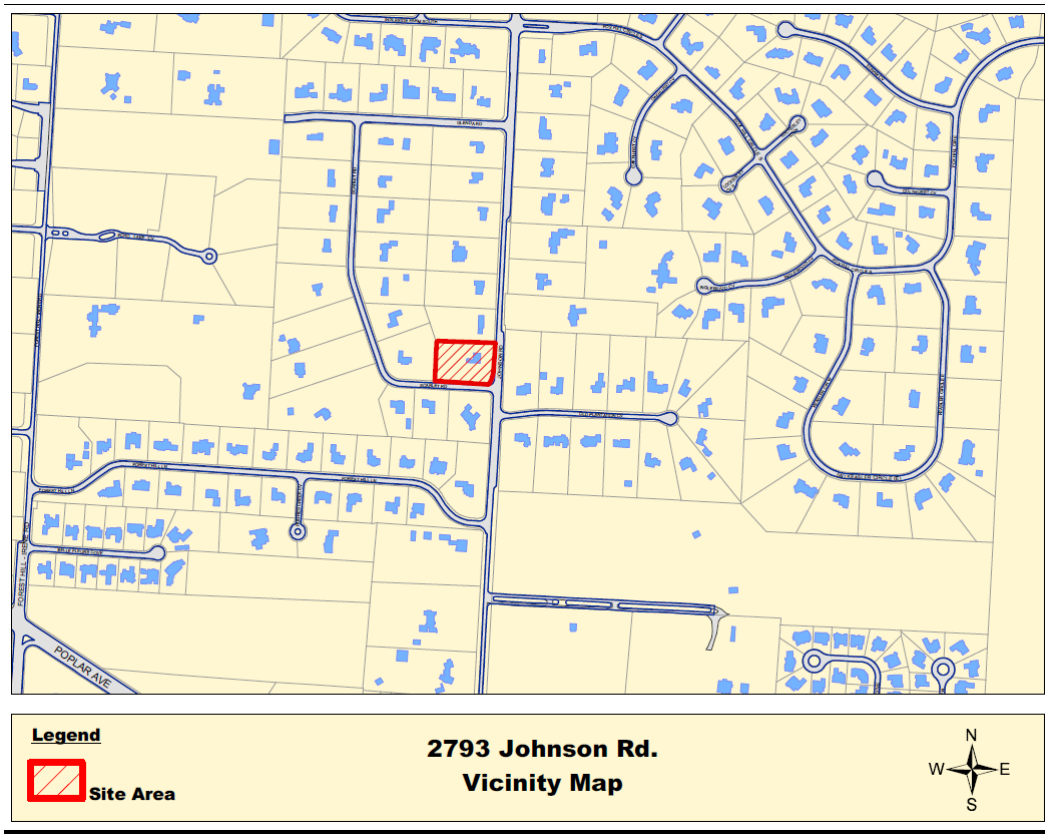
ROLL CALL: Ms. Bowden - Yes; Ms. Clift – Yes; Alderman Gibson – Yes; Chairman Sisson – Abstain.

MOTION PASSED

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4. 2793 Johnson Rd – Approval of Variance to Allow a Fence and Gates to Exceed 30” in the Front Yard Setback of the RE District (Case No. 18-825).

INTRODUCTION:

Case Number:	18-825
Location:	2793 Johnson Rd.
Applicant Name:	Fields Landscape Architecture – Marley Fields
Property Owner:	Umar Farooq
Current Zoning District:	“R-E” Residential Estate District
Description of Request:	Approval of a variance to allow gates and fences to exceed 30” in height in the front yard setback on a corner lot



BACKGROUND:

DATE OF ANNEXATION: December 31, 1984 per Ordinance 1984-32.

DATE SUBDIVISION APPROVED: Forest Hill Estates, February 7, 1962.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1964 (Current house proposed to be demolished.)

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCES REQUESTED: The subject property is a corner lot in the "R-E" residential estate zoning district. The property's "R-E" zoning district establishes a minimum front yard setback, extending 60' behind the property line. The applicant intends to demolish the existing house and build a new residence, with the front of the house facing Scarlet Rd. The existing house faces Johnson Rd. with a circular driveway on Johnson Rd., and a second single driveway on Scarlet Rd. The site plan for the proposed new house would eliminate the existing driveways, and replace with one circular driveway on Scarlet Rd. only. This would reduce the number of curb cuts on this property from three to two.

As part of the concept for the new residence, the applicant is proposing a fence, masonry wall and gates ranging from 30" to 4.5' high in the front yard setback along Scarlet Rd. The majority of the fence length would be 30" high, with the gates and its supporting walls and fences being up to 4.5' at the driveway entrances (for lengths of 49'4" and 56' at each driveway entrance, respectively). The column height for the entrance gates would range from 4'10" to 6' high, as measured from grade.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The variance request is to allow a fence greater than 30" in the front yard setback. The subject property is a corner lot, with two front yards facing Johnson Rd. and Scarlet Rd. Per §23-183(1)(a), the front yard setback is 60'. Per §6-102(b), fences (which include gates and walls) may not be over 30" in the front yard setback. The applicant is proposing

two portions of fencing over 30” in the front setback along Scarlet Rd.: 4’ high fencing and gates (for a length of 49’4”) at the western driveway entrance, approximately 5’ from the property line along Scarlet Rd., and a 4.5’ high masonry wall and 4.5’ high gates with columns ranging from 4.5’ to 6’ (for a length of 56’) at the eastern driveway entrance, approximately 40’ from the front property line along Scarlet Rd. The proposed height of the fence along the rest of Scarlet Rd. (approximately 200’ in length) and the entire length of Johnson Rd. (approximately 175’ in length) in the front yard setback is 30”, which is in compliance with the zoning ordinance.

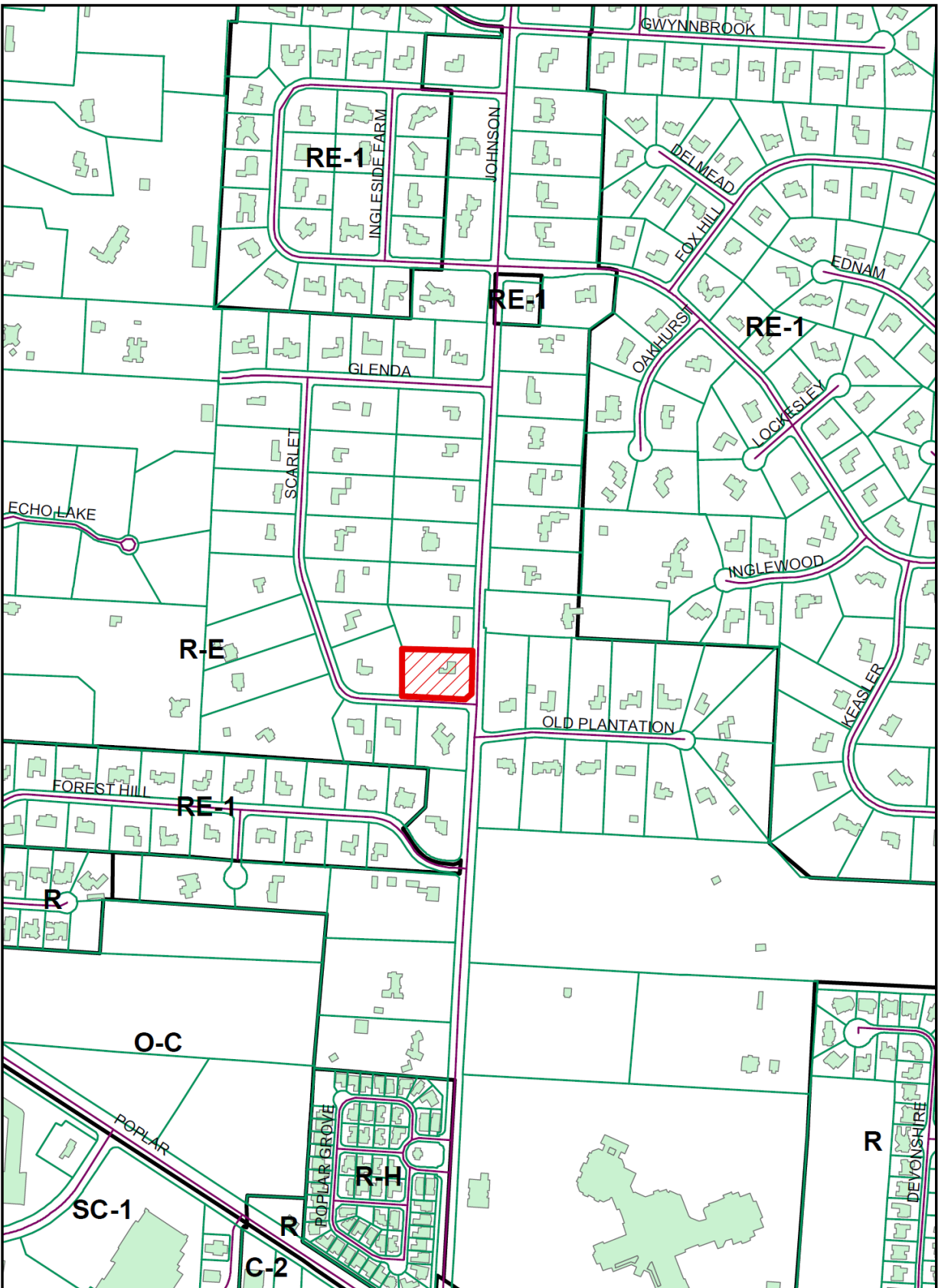
APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the following criteria (with the applicant’s responses in parentheses):

- Exceptional narrowness, shallowness, or shape: “Corner lot has two front yard setbacks.”
- Exceptional topographic conditions: “The property has over 11’ of topographical fall from north to south towards Scarlet. The grade change is a hardship. We propose to have an open lawn for recreation and entertainment areas. We have children who will be playing soccer and other sports in the front yard along Scarlet, and their safety is a concern. The proposed gates will keep recreation better contained and leave more space for children to play.”
- Other extraordinary and exceptional situation or condition of the piece of property: “Being a corner lot, we would like to utilize the space along Scarlet to fully enjoy our property. The gates at Scarlet in the proposed locations will provide security for the property.”
- Undue hardship upon the owner: “Johnson Rd. can have high traffic volumes. By locating gates on Scarlet Rd., it is safer for owner and visitors to enter the property and not slow or stop traffic on Johnson Rd.”

STAFF COMMENTS:

1. If the variance request is granted, the applicant shall obtain a fence permit from the City of Germantown Neighborhood Services Division.
2. An existing subdivision entrance feature (SEF) is located on the southeastern corner of this property. The site plan and all future building plans shall clearly show this. Additionally, on the foundation survey for the proposed new house, this SEF shall be clearly labeled, with a note that it is the property owner’s responsibility to maintain this SEF.
3. A grading, drainage and tree removal plan for this property shall be submitted to the City of Germantown Engineering Division, prior to submitting for any building permits.
4. The recorded plat for this property shows a well and septic field. Prior to the current house being demolished, these shall be properly abandoned through Memphis/Shelby County Health Department, prior to any building permits. The applicant shall provide verification of this when applying for a demolition permit through the City of Germantown Engineering Division

PROPOSED MOTION: To approve a variance to allow gates and fencing up to 4.5’ high, with columns and posts up to 6’, within the required front yard setback (facing Scarlet Rd.) on a corner lot at 2793 Johnson Rd. in the “R-E” 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.

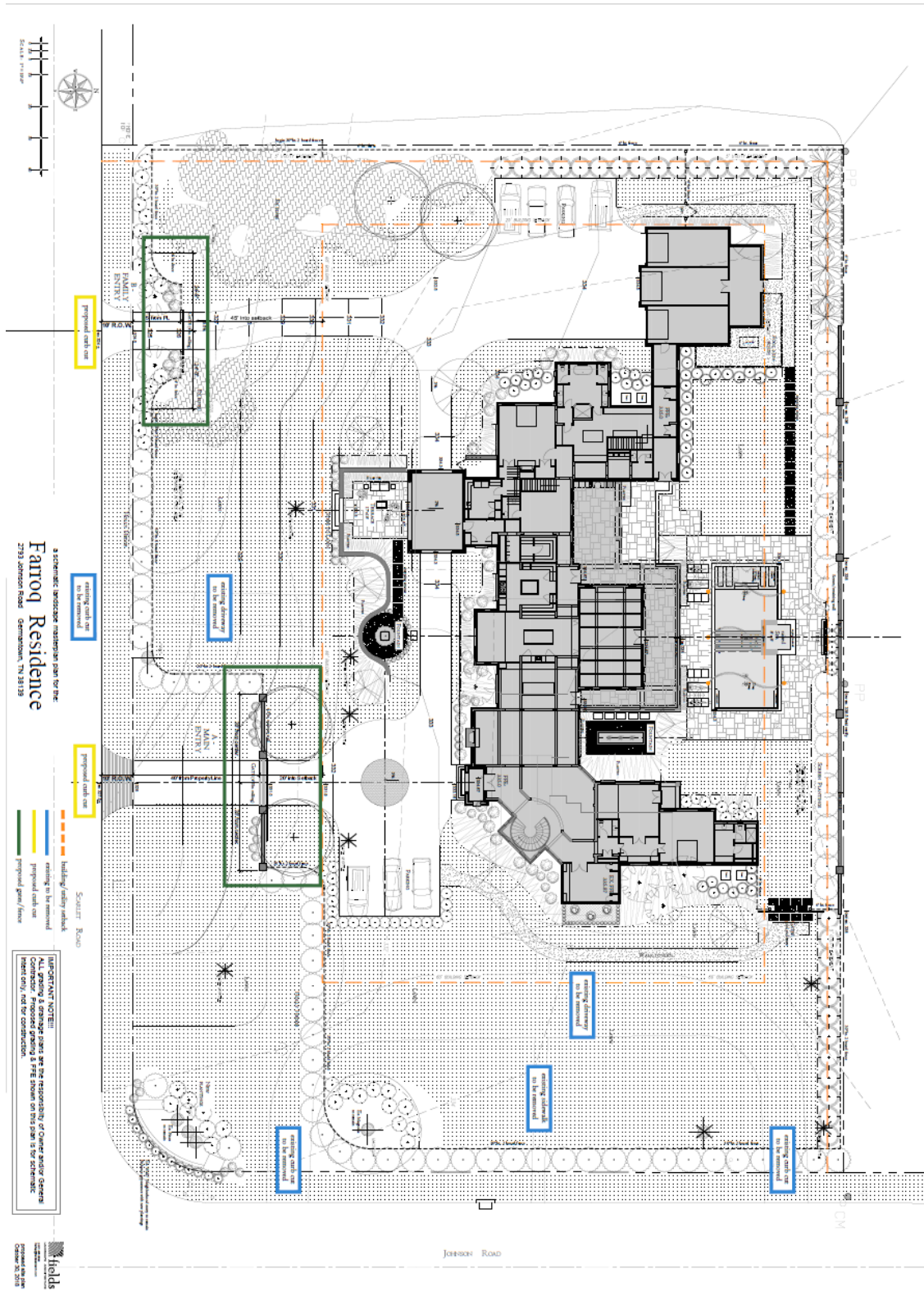


ZONING MAP

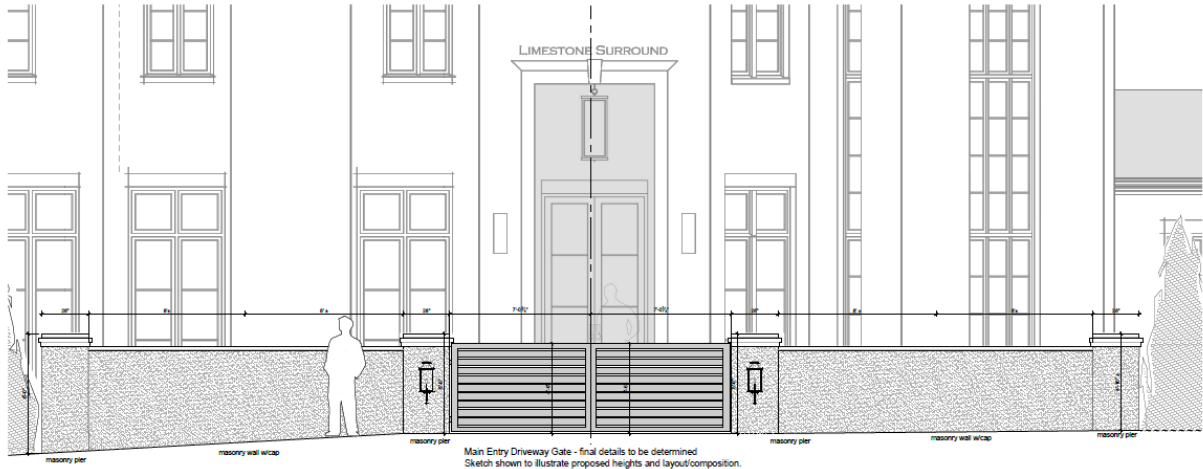
AERIAL PHOTO OF THE SITE



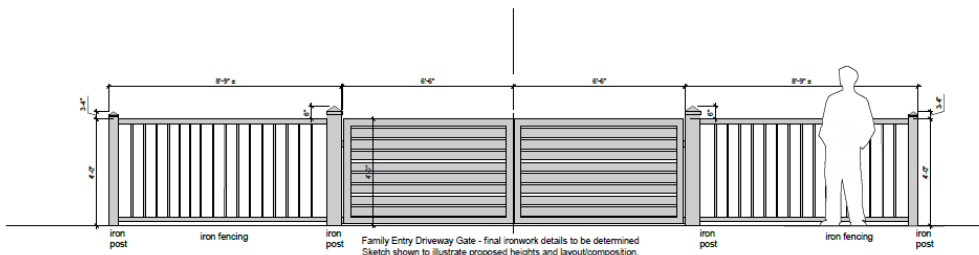
PROPOSED SITE PLAN
 (See agenda packet for full-sized plans)



PROPOSED FENCING AND GATES



A FENCE/GATES AT MAIN ENTRY
 SCALE: 1/2"=1'-0"



B FENCE/GATES AT FAMILY ENTRY
 SCALE: 1/2"=1'-0"

<p>Farooq Residence 2793 Johnson Road Germantown, Tennessee</p>
<p> LANSINGVILLE, NORTH CAROLINA 1-800-688-8888 www.fieldsinc.com</p>
<p>scale: see notes</p>
<p>October 30, 2018</p>
<p>fence & gates</p>



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: October 30, 2018
2. Action Requested (Circle one): Variance, Use on Appeal; Interpretation; Administrative Variance
3. Address of property where action is requested: 2793 Johnson Road
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"):
Request variance to allow gates , columns and wall to encroach into the front yard setback and exceed 30 inches in height in RE Zoning district.
5. Name of person and title submitting this request: Umar Farooq/Marley Fields
6. Is this person the (circle one): Property Owner Agent/Representative Attorney
7. Address of person submitting request: 3206 Wetherby Drive Germantown TN 38139
8. Telephone Number of person submitting request: 901.846.9881/901.486.8884
9. Email Address of person submitting request: afchoudhary@yahoo.com marley@fieldslandarch.com
11. Name, address, phone number and email address of all property owner(s): same
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.

The gates are for security for our home, and we would like them away from the setback so that we may fully utilize our lot and have proper vehicular circulation.

The proposed locations of the gates are suggested by an experienced, liscensed architect and landscape architect. These locations are best fit for the overall layout of our property and in keeping with the aesthetics of the neighborhood. This is clearly shown by many other properties in the vicinity where gates have been constructed in a similar manor and location as we propose.

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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. If this section is not completed, the application will be deemed incomplete and returned.

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)

This is a corner lot that has 2 front yard setbacks.

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

This property has over 11' of topographical fall from north to south towards Scarlett. The grade change is a hardship. We propose to have an open lawn for recreation and entertainment areas. We have children who will be playing soccer and other sports in the front yard along Scarlett, and their safety is a concern. The proposed gates will keep recreation better contained and leave more space for children to play.

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

Being a corner lot, we would like to utilize the space along Scarlett to fully enjoy our property. The gates at Scarlett in the proposed locations will provide security for the property

2. **Resulting in:**

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

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

Johnson Road can have high traffic volume, especially at peak times of day. By locating the gates on Scarlett, it is safer for the Owner and visitors to enter the property and not slow or stop traffic on Johnson Road.

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 & Title: Dr. Umar Farooq / Property Owner
Signature: _____

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 Name & Title: _____
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
_____	_____
_____	_____
_____	_____
_____	_____

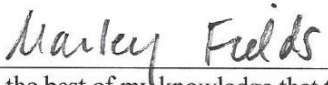
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15. **Certification**

All applicable parties shown below must sign the application:

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

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

I,  _____, (agent or attorney & title), 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.

PLEASE NOTE THAT YOUR APPLICATION MAY BE WITHDRAWN AT THE PUBLIC HEARING PRIOR TO THE BOARD OF ZONING APPEALS VOTING ON IT, SUBJECT THE BOARD'S APPROVAL OF YOUR WITHDRAWAL REQUEST.

IF THE BOARD VOTES ON AND DENIES YOUR REQUEST, YOU MAY NOT RESUBMIT THE SAME REQUEST FOR AT LEAST 6 MONTHS.

NO REFUNDS ARE ISSUED FOR WITHDRAWN OR DENIED REQUESTS.

Board Discussion:

Ms. Marley Fields (project architect) has been working with the property owners. She explained this request was due to hardship on the property, as this is a corner lot. They took into consideration the 30" height rule for the iron fence for a majority of the property, and the gates will be iron slats for visual penetration. This lot has two front yard setbacks and lacks a safe play area for their children. They are trying to circulate the vehicles safely through the property, so they will have to push the gates into the front yard setbacks facing Scarlet Rd. By doing this, they will be eliminating the drive entrance that is presently on Johnson Rd., keeping traffic exiting and entering the property off of busy Johnson Rd., and will be installing two drive entrances (one circular driveway) onto Scarlet Rd. Thus, the total number of curb cuts on this property will be reduced from three to two.

Ms. Terri Balton (2808 Scarlet Rd.) spoke against this request due to visibility issues. She is the neighbor to the rear and expressed concern about a lack of visibility, with the fence being pushed forward and of possible plantings. This section of Scarlet Rd., up to the intersection with Johnson Rd., has poor visibility. She spoke of a natural deer run and has seen up to 16 deer at a time traveling from Johnson Rd to Scarlet Rd. With the fence being pushed out closer to the street, possible plantings, the deer, and bicyclists who now use the bicycle lane on Johnson Rd., the drivers exiting Scarlet Rd. will not be able to see around that corner.

After much discussion, Chairman Sisson called for a motion.

Alderman Gibson made a motion to approve a variance to allow gates and fencing up to 4.5' high, with columns and posts up to 6', within the required front yard setback (facing Scarlet Rd.) on a corner lot at 2793 Johnson Rd. in the "R-E" 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, seconded by Ms. Clift.

ROLL CALL: Ms. Clift – Yes; Ms. Bowden – Yes; Alderman Gibson – Yes, with the consideration that the representative and the homeowners on that corner do not restrict the neighbors' line of sight on Scarlet Rd. up to Johnson Rd.; Chairman Sisson – Yes, based on the fact that this is a corner lot, the topography challenges, the two front yard setbacks, deer, bicyclists, all while trying to get off of a very busy road such as Johnson Rd.

MOTION PASSED

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5. New/Old Business: Chairman Sisson asked if there were any new or old business to discuss. There was none.
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ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:24 p.m.