

BOARD OF ZONING APPEALS  
CITY HALL COUNCIL CHAMBERS  
Tuesday, March 12, 2019  
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 March 12, 2019.

1. Alderman Mary Anne Gibson called the meeting to order at 6:05 p.m.
2. Alderman Mary Anne Gibson requested the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT: Alderman Mary Ann Gibson; Mr. Mike Harless; Ms. Jodie Bowden; Mr. Frank Uhlhorn; and Ms. Rhea Clift

DEVELOPMENT STAFF PRESENT: Mr. Cameron Ross, Economic and Community Development Director; Mr. Joe Nunes, Neighborhood Services Manager; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney.

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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 in an affirmative nature when the motion is made.

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3. Election of Chairman and Vice Chairman

Alderman Gibson called for a motion to elect a Chairman.

Mr. Uhlhorn made a motion to nominate Ms. Jennifer Sisson and seconded by Ms. Clift with no further comments or discussion.

ROLL CALL: Mr. Harless – Yes; Ms. Bowden – Yes; Mr. Uhlhorn – Yes; Ms. Clift – Yes; Alderman Gibson – Yes

Alderman Gibson called for a motion to elect a Vice Chairman.

Mr. Harless made a motion to elect Ms. Rhea Clift as Vice Chairman, seconded by Ms. Bowden with no further comments or discussion.

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

MOTION PASSED

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4. Approval of Minutes from the December 11, 2018 Meeting.

Mr. Harless moved to approve the Board of Zoning and Appeals minutes of December 11, 2018, as discussed; seconded by Ms. Bowden, with no further comments or discussions.

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

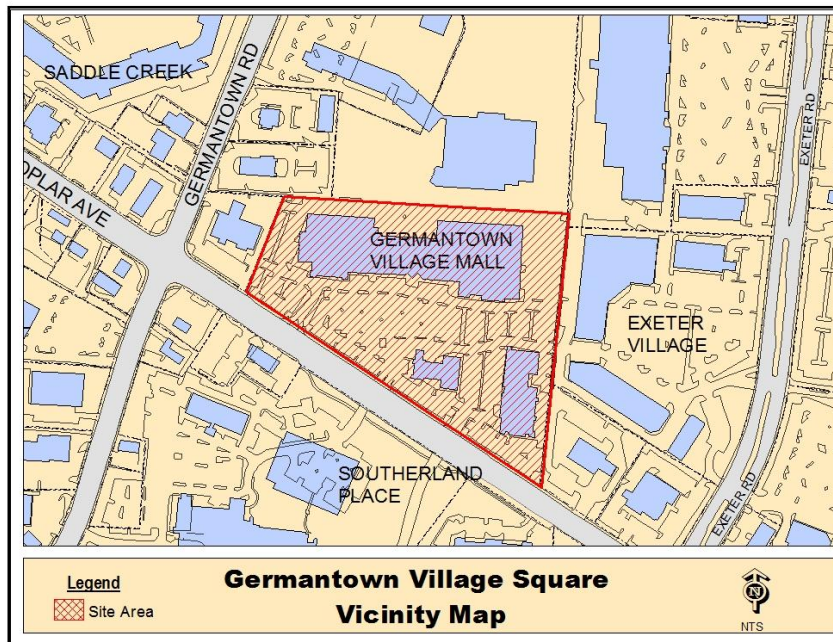
MOTION PASSED

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5. 6750 Poplar Ave. (Germantown Village Square) – Approval of a Variance to Allow a Parking Reduction at an Existing Shopping Center in the T5 Urban Center Zoning District (Originally Developed Under the Pre-existing SC-1 Shopping Center Zoning Regulations (Case No. 15-502)

INTRODUCTION:

|                           |   |
|---------------------------|---|
| Case Number:              | 15-502  |
| Location:                 | 6750 Poplar Ave. (Germantown Village Square)  |
| Property Owner/Applicant: | PEBB Germantown IND LLC – Evan Rosenblatt, Agent  |
| Representative:           | Kimley Horn – Jarmon Peregoy, Agent   |
| Zoning District:          | “T5” Urban Center Zoning District (Originally Developed Under the Pre-existing “SC-1” Shopping Center Zoning Regulations) |
| Description of Request:   | Approval of a variance to allow a parking reduction at an existing shopping center  |

\*Refer to the Disclosure Form attached for more information



BACKGROUND:

DATE OF ANNEXATION: June 13, 1955, per Carter Harville.

DATE SITE PLAN APPROVED: Germantown Village Square, as-built revised site plan approved December 2018.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1990 (for renovation of the existing shopping center).

PREVIOUS VARIANCE APPROVALS: 1) February 13, 1990 – parking variance; 2) August 10, 1993 - parking variance for 1:214 (947 spaces per 197,400 sq. ft.); 3) April 8, 1997 – parking variance; 4) March 11, 2008 - parking variance allowing the reduction of an additional 6 parking spaces, resulting in a parking ratio of 1:217 (931 spaces per 201,437).

On March 30, 1990, the Board of Mayor and Alderman approved Project Development Contract No. 930 for the renovation of the existing Germantown Village Square Mall. On August 12, 2002, the Board of Mayor and Alderman approved the rezoning from the “C-1” Neighborhood Commercial Zoning District to the “SC-1” Shopping Center Zoning District. On October 22, 2007, the BMA approved the rezoning from “SC-1” to “T-5”. In 2008, the property owner requested a 1,000 sq.ft. addition at the rear of the shopping center for storage, which necessitated a further parking variance. The parking variance was granted. Over the years, various site modifications have occurred. In order to clarify the current site layout, total building area and parking count, the applicant submitted an updated as-built site plan to the City of Germantown Planning Division, which was reviewed and approved in December 2018.

**DISCUSSION:**

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is for a variance from Section 23-440 (1) of the City of Germantown Zoning Ordinance, which states that, “At least one off-street parking space shall be provided for each 200 square feet of gross floor area.” Per the variance granted in 2008, the permitted parking ratio for this shopping center is 1 parking space per 217 sq.ft. Per this approved ratio, the required number of parking spaces would be 923. Currently, there are 927 parking spaces for 200,438 sq.ft. of leasable area.

**NATURE OF VARIANCES REQUESTED:** The applicant wishes to develop an outparcel building on a portion of the site, utilizing the overlying “T5” Urban Center zoning regulations. In February 2018, the applicant submitted a sketch plan application for a preliminary review of this project. Per the comments from the interdepartmental Sketch Plan Committee, the first step for this proposed project would be receiving variance approval from the Board of Zoning Appeals for a parking reduction for the remaining portion of the shopping center. Although the entire property is zoned “T-5”, the parking ratio for the existing, remaining portion of the shopping center not to be redeveloped should comply with the pre-existing “SC-1” zoning district requirement, per Section 23-743 of the City of Germantown’s Smart Code. The applicant is requesting a parking reduction of 33 spaces, which would result in 894 parking spaces. Excluding the proposed outparcel building, the parking ratio for the existing shopping center would then be 1 parking space per 224 sq.ft.

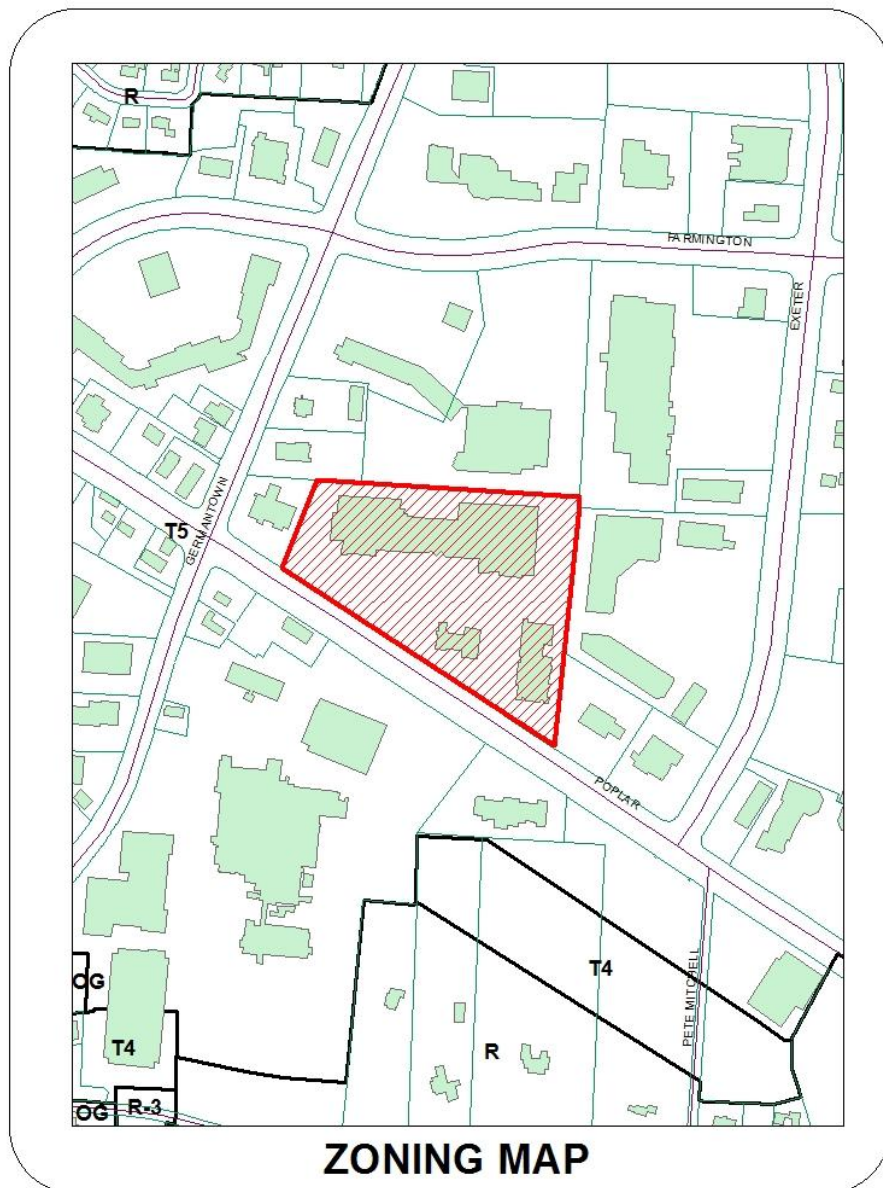
**APPLICANT’S JUSTIFICATION:** The applicant indicates that the reason the variance is being requested is due to other extraordinary and exceptional situation or condition of the piece of property: “The original, west drive entrance to the shopping center was previously relocated approximately 125 ft. to create an outparcel area that would not interfere with visibility to the existing shopping center. The parking in the [proposed] outparcel area that will be displaced by the proposed development has since been used, in part, by an adjacent landowner for overflow from their parking lot. The displaced parking is not considered critical to the success of the shopping center.” This has resulted in undue hardship upon the owner: “The parking spaces lost cannot be made up anywhere else on the overall parcel and adjacent properties are currently occupied as well.” (Please see the applicant’s parking study summary on p. 7 and the complete justification in the application, starting on p. 8, of this staff report.)

|                                     |            |
|-------------------------------------|------------|
| <i>Current Parking Count</i>        |            |
| Standard Surface                    | 706        |
| Handicap Surface                    | 17         |
| <i>Total Surface Parking Spaces</i> | <i>723</i> |
| Standard Garage                     | 199        |
| Handicap Garage                     | 5          |
| <i>Total Garage Parking Spaces</i>  | <i>204</i> |

|  |     |
|--|-----|
| Total Number of Existing Parking Spaces            | 927 |
| <i>Future Parking Count with Variance Approval</i> |     |
| Proposed Parking Reduction (Surface Parking only)  | 33  |
| Total Number of Future Parking Spaces              | 894 |

**STAFF COMMENTS:**

1. If the parking reduction variance is approved, the applicant may apply for a revised preliminary and final site plan through the Planning Commission.
2. Should the Board of Zoning Appeals grant a parking variance, a condition of approval should be that all employees shall be required to park in the parking garage, leaving the surface parking lot available to customer.
3. **PROPOSED MOTION:** To approve a variance to allow a parking reduction at an existing shopping center in the "T5" Urban Center zoning district (originally developed under the pre-existing SC-1 Shopping Center zoning regulations), subject to the Board's discussion, staff comments noted in the staff report and the site plan submitted with the application.









## PARKING STUDY SUMMARY

(See agenda packet for complete parking study, table and figures, as well as site photos)



### MEMORANDUM

To: City of Germantown  
From: Douglas A. Swett  
Kimley-Horn and Associates, Inc.  
Date: February 25, 2019  
Subject: Germantown Village Square - Parking Occupancy Study

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#### *Introduction*

PEBB Germantown IND LLC is proposing a Starbucks within the existing Germantown Village Square Shopping Center. The site is at the southwest corner of the development fronting Poplar Avenue and adjacent to the existing First Tennessee Bank. With the project, Starbucks will be removing 37 existing parking spaces and replacing them with nine spaces for a net loss of 33 parking spaces. Germantown Village Square currently has an approved parking variance since it has less spaces than required by the City. Since the proposed Starbucks will be reducing the number of available on-site spaces, the City of Germantown requested that a parking occupancy study be performed for the development to determine the impact on reducing the number of spaces.

#### *Data Collection*

Kimley-Horn collected parking occupancy data in the PM peak hour on Wednesday February 20, 2019 and in the AM and Midday peak hours on Thursday February 21, 2019. We utilized drone technology to document occupied spaces in 15-minute increments over a 2-hour time-period for each peak hour. Since parking patterns are highly influenced by the location of the destination in a larger development such as Germantown Village Square, we divided the overall development into parking zones to collect data and calculate occupancy rates. The parking zones are shown in Figure 1. The Starbucks is proposed to be constructed in the West Zone identified in **Figure 1**. The parking occupancy data for each of those zones is summarized in **Table 1**.

Aerials of the peak 15-minute period for the West Zone are shown in **Figure 2**, **Figure 3**, and **Figure 4** for the AM, Midday, and PM peak hours, respectively. The AM peak 15-minute occupancy was found to be 10:00 AM – 10:15 AM. The Midday peak 15-minute occupancy was found to be 12:45 PM – 1:00 PM. The PM peak 15-minute occupancy was found to be 4:00 PM – 4:15 PM.



# 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: 2/13/2019
2. Action Requested (Circle one):  Variance  Use on Appeal  Interpretation
3. Address of property where action is requested: 7694 Poplar Avenue
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"):  
Variance to allow a reduced amount of provided parking spaces over the gross property, Parcel ID G0231 00028.
5. Name of person and title submitting this request: Jarmon Peregoy, PE
6. Is this person the (circle one):  Property Owner  Agent/Representative  Attorney
7. Address of person submitting request: 6750 Poplar Avenue Ste. 600,  
Memphis, TN 38138
8. Telephone Number of person submitting request: 901-374-9109
9. Email Address of person submitting request: jarmon.peregoy@kimley-horn.com
11. Name, address, phone number and email address of all property owner(s):  
PEBB Germantown IND LL, 7900 Glades Rd. Ste. 600, Boca Raton, FL 33434  
Phone: 561-613-4020 Email: ehochman@pebbent.com
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 existing amount of parking spaces within the overall parcel is 927 and the amount of proposed parking spaces is 894. The parking spaces within the eastern portion of the development are commonly unused and these spaces offset spaces lost by this proposed out lot development. The parcel has limited area and the amount of lost parking spaces cannot be made up anywhere else on the existing parcel. The adjacent properties are currently occupied, as well.



BZA Application

Page 2

**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)

Exceptional topographic conditions

(Describe in the box below if checked)

BZA Application  
Page 3



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

The original, west drive entrance to the shopping center was previously relocated approximately 125 feet to create an outparcel area that would not interfere with visibility to the existing shopping center. The parking in the outparcel area that will be displaced by the proposed development has since been used, in part, by an adjacent landowner for overflow from their parking lot. The displaced parking is not considered critical to the success of the shopping center.

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)

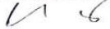
The parking spaces lost cannot be made up anywhere else on the overall parcel and adjacent properties are currently occupied, as well.

BZA Application  
Page 4

**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: Ian Weiner, Authorized Person

Signature: 

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

| Name                                 | Business or Home Address                                 |
|--------------------------------------|--|
| <u>Bruce Weiner</u>                  | <u>7900 Glades Road, Suite 600, Boca Raton, FL 33434</u> |
| <u>Bruce H. Weiner 2016 Trust I</u>  | <u>7900 Glades Road, Suite 600, Boca Raton, FL 33434</u> |
| <u>Bruce H. Weiner 2016 Trust II</u> | <u>7900 Glades Road, Suite 600, Boca Raton, FL 33434</u> |

\*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:

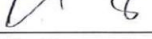
| Name  | Business or Home Address |
|-------|--------------------------|
| _____ | _____                    |
| _____ | _____                    |
| _____ | _____                    |
| _____ | _____                    |


BZA Application  
Page 5

15. Certification

All applicable parties shown below must sign the application:

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

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

I, Jarman Perisay , (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.**

STAFF PRESENTATION:

ECD Director Cameron Ross made a staff presentation. He clarified that the parking reduction request is for 33 parking spaces, which would bring the total amount of parking spaces down to 894. The shopping center would then have a parking ratio of 1 parking space per 227 s.f. (The staff report incorrectly noted 1 parking space per 224 s.f.). Per the applicant, the justification for the parking reduction is to allow consideration by the Planning Commission for a revised final site plan to include a new outparcel building, to be developed utilizing the overlying "T5" Urban Center zoning designation.

BOARD DISCUSSION:

Board members asked if the amount of parking spaces resulting from the parking reduction would comply with SmartCode guidelines.



Mr. Evan Rosenblatt with PEBB Enterprises addressed the Board. Doug Swett with Kimley Horn (project engineer) explained that under SmartCode, the parking requirement for retail is 3 parking spaces per 1,000 s.f. The development currently has 200,438 s.f. of building area, which would require approximately 600 parking spaces. The maximum allowable parking spaces under SmartCode is 5 parking space per 1,000 s.f., which would be approximately 1,000 parking spaces. Thus, the development provides the required parking per the SmartCode regulations. The SmartCode regulations also allow for shared parking between retail and office.

Mr. Harless asked what the parking requirement is for office under SmartCode and what is the distribution of office versus retail tenants. Mr. Swett answered SmartCode requires 2 parking spaces per 1,000 s.f. for office. Mr. Rosenblatt answered that the current tenant breakdown, in terms of building square footage, is about 140,000 s.f. retail and 60,000 s.f. office spaces at present, and this places them within the Smart Code guidelines.

Alderman Gibson asked if the property management is working on conversations with the tenants so that employees park away from the areas where customers would like to park. Mr. Rosenblatt answered that with current tenants it's encouraged, and all new leases stipulate that employees are not allowed to park in the front parking lot, but rather use the parking garage.

Mr. Harless commended PEBB on revitalizing the shopping center. However, he has noticed that parking has become tight. He requests that they remain cognizant of the parking situation because parking is already difficult at the present time.

After brief discussion, Chairman Clift called for a vote.

Mr. Uhlhorn moved to approve a variance to allow a parking reduction of 33 parking parking space (1 parking space per 227 s.f.), resulting in a total of 894 parking spaces, at an existing shopping center in the "T5" Urban Center zoning district (originally developed under the pre-existing SC-1 Shopping Center zoning regulations), 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, with the following conditions of approval:

- Property management shall work on a policy that all employees shall be required to park in the parking garage and the surface parking lot on the northwest corner of the property, leaving the remaining surface parking lot available to customers.

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

MOTION PASSED

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6. 9647 Spring Loop Dr. – Approval of a Variance to Allow a 6' High Fence in the Required Front Yard Setback on a Corner Lot in the R Single-Family Zoning District. (Case No. 19-916)

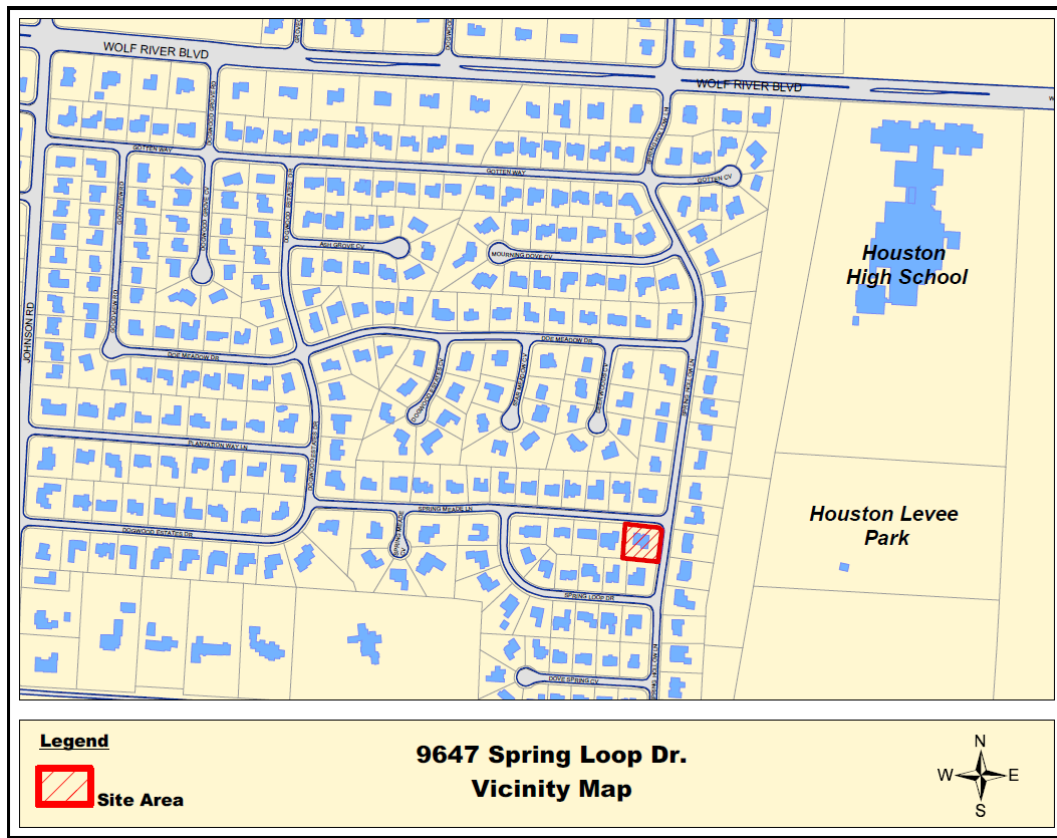
INTRODUCTION:

|                                    |                           |
|------------------------------------|---------------------------|
| Case Number:                       | 19-916                    |
| Location:                          | 9647 Spring Loop Dr.      |
| Property Owner/<br>Applicant Name: | Brian and Gina Vandegrift |

Current Zoning District: "R" Low-Density Single-Family Residential District

Description of Request: Approval of a variance to allow a 6' high fence in the required front yard setback on a corner lot

\*Refer to the Disclosure Form attached for more information



**BACKGROUND:**

DATE OF ANNEXATION: December 31, 1988, per Ordinance 1988-29.

DATE SUBDIVISION APPROVED: Dogwood Grove Subdivision, Section C, recorded on July 1, 1988. Plat Book 115, Page 19 (Lot 315).

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1988.

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:**

SPECIFIC SECTIONS OF ZONING ORDINANCE: The variance request is to allow a fence greater than 30" in one of the front yard setbacks on a portion of a corner lot. Per §6-102(b), "fences 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." The subject property is a corner lot in the "R" residential zoning district. According to §23-232(1) a. and b., the minimum front yard setback is 40' from the property line for all street-facing sides.

**NATURE OF VARIANCES REQUESTED:** The specific request by the property owners is approval to allow an existing wood fence that is 6' in height to encroach into one of the front yards of a corner lot. The property owners erected a new wood fence that is approximately 6' in height, that encroaches approximately 8' into the 40' front yard setback along Spring Hollow Dr., for a length of approximately 55'. (Please site plan on p. 5 of this staff report.) This fence was constructed without first obtaining a permit.

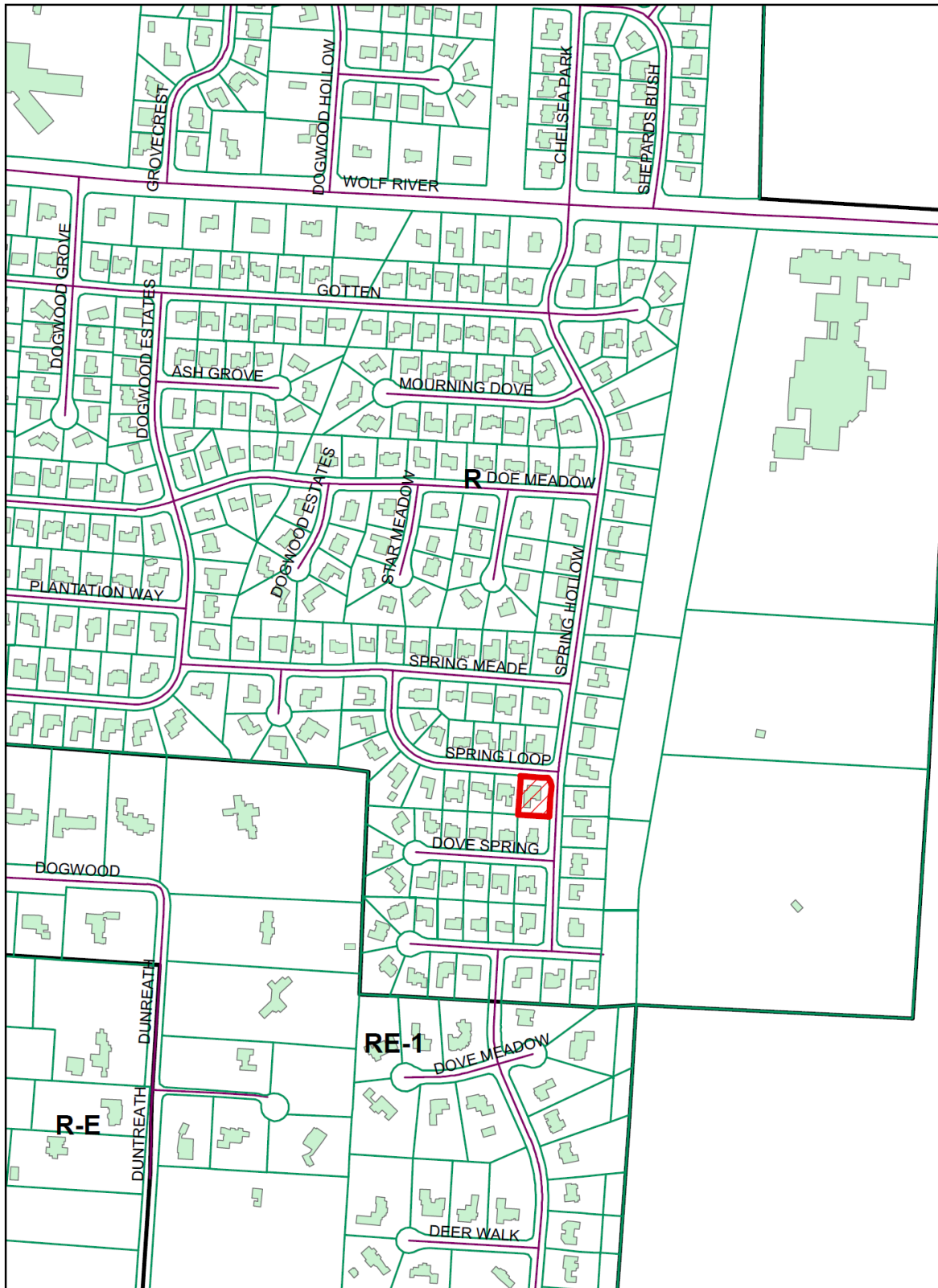
On December 1, 2017, a letter was sent to the applicants from the City of Germantown Code Compliance, requesting that the fence be brought into compliance. On December 13, 2017, a warning notice was sent to the applicant by Code Compliance, requesting action by the applicant. On May 31, 2018, a second warning notice was sent, requesting action by the applicant. On October 11, 2018, the Germantown Municipal Court issued a summons for the property owner to address the violation. In November 7, 2018, Code Compliance sent Germantown Municipal Court an update that no action had been taken by the property owner. On December 11, 2018, the property owner submitted a variance application to the Board of Zoning Appeals. (Please see agenda packet for copies of correspondence from Code Compliance.)

**APPLICANT'S JUSTIFICATION:** The applicants indicate that the reason the variance is being requested is due to extraordinary and exceptional situation or condition of the piece of property, resulting in undue hardship upon the owner: "Small grassy area in the backyard. Severe reduction of playing area for children and grandchildren and pets. Not to mention reduced property value for future potential owners due to extremely small backyard area." (See applicants' photos and written justification on p. 6 and application on p. 7 of this staff report.)

**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. If the variance is not approved, the applicant shall bring the fence into compliance within 30 days of the Board's action.

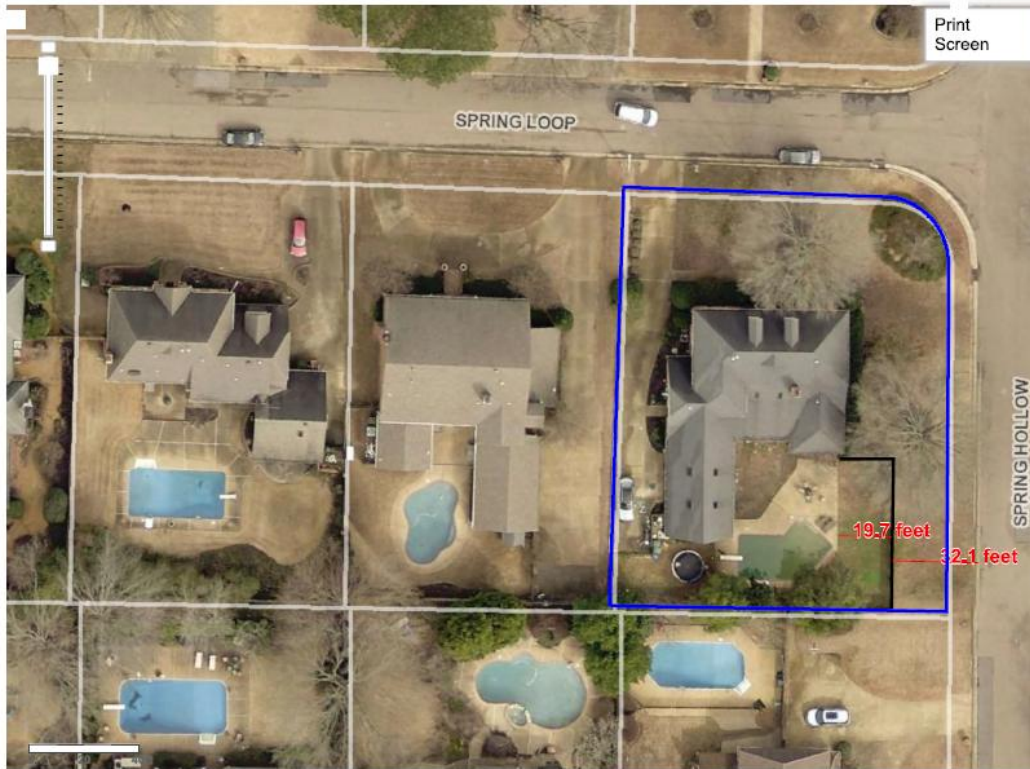
**PROPOSED MOTION:** To approve a variance to allow a 6' high fence within the required front yard setback (facing Spring Hollow Dr.), to encroach 8' feet for a length of approximately 55', on a corner lot at 9647 Spring Hollow Dr. in the "R" Single-Family Residential zoning district, subject to the board's discussion, staff comments contained in the staff report, and the site plan submitted with the application.



# ZONING MAP



### SITE PLAN



### PHOTO OF FENCE

This view shows how the fence extended to the side. IT si no way blocks the view of the street from someone driving up to the intersection and is also at least 30 ft from the curb where it is now.





APPLICANT'S JUSTIFICATION  
(See agenda packet for applicant's complete set of photos and presentation)



As you can see, there are 6 other houses on our street that have the fence built the same way as we have now built ours and it in no way is out of context with the rest of the homes and yards. In some of the examples, we sit back farther from the curb of the street than they do.

I do realize we did not follow the proper procedure in not getting a permit and getting a variance in advance. I apologize for that and will do whatever is decided here, but I humbly request the variance to be able to keep the fence as is in order to not become a hardship for my children and grandchildren. If it is not possible to grant the variance to the fence as it is, I do request consideration that we be allowed to move the fence back some distance, but not all of the way back flush with the house where it was located.

Thank you for your consideration,

Brian Vandegrift



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: \_\_\_\_\_

RECEIVED

CITY OF GERMANTOWN

**BOARD OF ZONING APPEALS  
OFFICIAL APPLICATION FORM**

1. Date of Application: 11/5/2018
2. Action Requested (Circle one): Variance Use on Appeal Interpretation
3. Address of property where action is requested: 9647 Spring Loop Dr., Germantown, TN 38139
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"):  
Variance to allow fencing to extend away from being flush with the house structure on a corner lot.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Name of person and title submitting this request: Brian D. Vandegrift
6. Is this person the (circle one): Property Owner Agent/Representative Attorney
7. Address of person submitting request: 9647 Spring Loop Dr., Germantown, TN 38139  
Type text here
8. Telephone Number of person submitting request: 225-603-7656
9. Email Address of person submitting request: brian.vandegrift@gmail.com
11. Name, address, phone number and email address of all property owner(s): Brian D. and Gina F. Vandegrift  
9647 Spring Loop Dr., Germantown, TN 38139  
Brian - brian.vandegrift@gmail.com 225-603-7656 Gina - gina.vandegrift@gmail.com 225-603-1766
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 main purpose of this variance is to reduce a hardship on our family. Gina and I have 9 children and currently 4 grand-children, with a 5th on the way. We purchased this house when we moved here from Louisiana in June of 2016. We loved the location and proximity to schools as well as the fact that there were tons of families with similar aged children in close proximity. We also loved the pool, decking, and porch in the backyard. We thought when we bought the house that there was sufficient room in the back yard for our family as well as our pets. However, this is the first house we have owned with a pool, and the appearance of space just wasn't there in practice, so we decided that when we replaced an aging fence, to move it out from being flush with the house 16 ft to create some more space for the kids to be able to play in the back yard. Without this additional area, we would be left with only an area roughly larger than can accommodate a large trampoline. Also when we first bought the house, the area immediately off of the porch was grass, and framed in by the house and the pool. But shortly after moving in, we realized that anytime it rained this area basically became a swamp and mosquito breeding ground. Despite an investment in better drainage that didn't alleviate the problem, we decided to build a deck there that has been a great addition. So as a result, it only left that small grass area until we extended the new fence away from the house.

BZA Application  
Page 2

**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)

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



BZA Application  
Page 3

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

Small grassy area in the backyard

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)

Severe reduction of playing area for children and grandchildren and pets. Not to mention reduced property value for future potential owners due to extremely small backyard area.

**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: Brian D. Vandegrift  
Signature: [Handwritten Signature]

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

| Name                       | Business or Home Address                        |
|----------------------------|---|
| <u>Gina F. Vandegrift</u>  | <u>9647 Spring Loop Dr Germantown, TN</u>       |
| <u>Brian D. Vandegrift</u> | <u>9647 Spring Loop Dr Germantown, TN 38139</u> |

\*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:

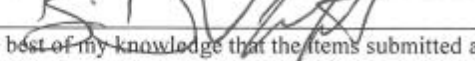
| Name  | Business or Home Address |
|-------|--------------------------|
| _____ | _____                    |
| _____ | _____                    |
| _____ | _____                    |
| _____ | _____                    |

BZA Application  
Page 5

**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.**

STAFF PRESENTATION:

ECD Director Cameron Ross made a staff presentation.

BOARD DISCUSSION:

Mr. Uhlhorn stated that corner lots have a hardship and should be considered on a case by case basis. Mr. Harless said that rather the ordinance should be amended, rather than to look at each of these on a case by case basis.

Mr. Uhlhorn said that this could be addressed in neighborhood covenants, allowing the city to review these. He would like for the Planning Commission and Board of Mayor and Aldermen to consider amending the ordinance to allow 8' high fences, especially for zero lot line developments like the Enclave.

Mr. Brian Vandegrift apologized to the board for not following the proper procedures before having this fence moved. When they purchased the home 2 years ago, they thought they had enough yard. But realized after a couple of years during the rainy season that they were experiencing a swampy area. So, in order to utilize this area, they built a deck. Then they were left with no grassy area in their back yard and since they have 9 children and 5 grandchildren, they realized they needed a grassy area for the children to play.

After brief discussion, Chairman Clift called for a vote.

Mr. Uhlhorn moved to approve a variance to allow a 6' high fence within the required front yard setback (facing Spring Hollow Dr.), to encroach 8' feet for a length of approximately 55', on a corner lot at 9647 Spring Hollow Dr. in the "R" Single-Family Residential 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 Alderman Gibson.

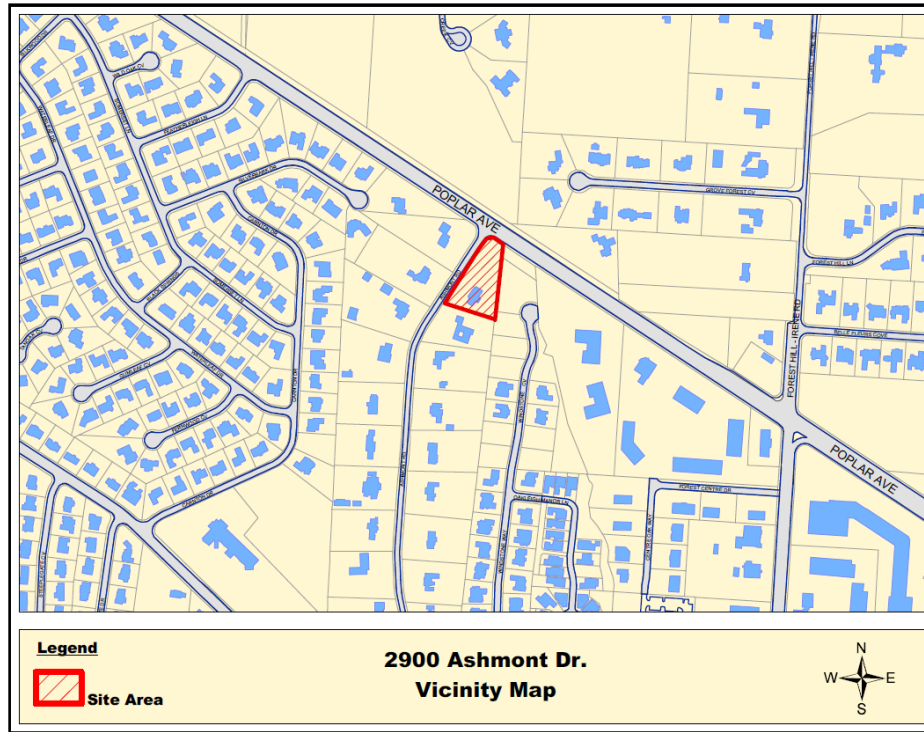
ROLL CALL: Mr. Harless - No, would be more inclined to see a compromise by taking out that one section so you don't have to rebuild the entire fence; even though the Board may not agree with ordinance, there is one in place and it needs to be adhered to; Mr. Uhlhorn – Yes; Ms. Bowden – Yes; Alderman Gibson – Yes; Chairman Clift – Yes, due to 2 front yards and it being an unusual lot.

MOTION PASSED

- 
7. 2900 Ashmont Dr. – Approval of a Variance to Allow an 8' High Fence in the Required Rear Yard Setback in the RE-1 Residential Estate Zoning District (Case No. 19-917)

INTRODUCTION:

|                           |  |
|---------------------------|--|
| Case Number:              | 19-917   |
| Location:                 | 2900 Ashmont Dr.   |
| Property Owner/Applicant: | Jose Gutierrez and Colleen Depete  |
| Representative:           | Prime Development Group – Michael Fahy, Agent                                      |
| Zoning District:          | "RE-1" Residential Estate Zoning District  |
| Description of Request:   | Approval of a variance to allow an 8' high fence in the required rear yard setback |



**BACKGROUND:**

**DATE OF ANNEXATION:** December 31, 1986, per Ordinance No. 1986-28.

**DATE SUBDIVISION APPROVED:** Germantown Village Subdivision, recorded on March 12, 1969. Plat book 37, page 19 (Lot 10).

**DATE PRINCIPAL STRUCTURE APPROVED/BUILT:** 2015.

**PREVIOUS VARIANCE REQUESTS:** None.

**DISCUSSION:**

**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 VARIANCES REQUESTED:** The specific request by the applicant is for approval to allow an existing fence with varying heights up to 8’ high along the rear property line. In 2015, the applicant applied for a permit for a 6’ high fence to enclose a pool area in the rear yard. In December 2015, the pool and fence were inspected and approved by the City of Germantown Code Compliance. In November 2018, while inspecting a neighboring property, a Code Compliance Officer noticed newer sections of fencing that appeared to be 8’ high. From the adjacent property, the Code Compliance Officer measured the fence to be 7’10” high. On November 26, 2018, the City of Germantown Code Compliance sent a violation notice to the property owners, requesting they bring the fence into compliance. (See agenda packet for Code Compliance correspondence.)

**APPLICANT’S JUSTIFICATION:** The applicants indicate that the reason the variance is being requested is due to the exceptional narrowness, shallowness or shape (triangular lot adjacent to Poplar Ave.), exceptional topography conditions (significant elevation change), and other extraordinary and exceptional situation or condition of the piece of property (topography and seasonal vegetation compromise privacy), resulting in peculiar and exceptional practical difficulties (existing topography) and

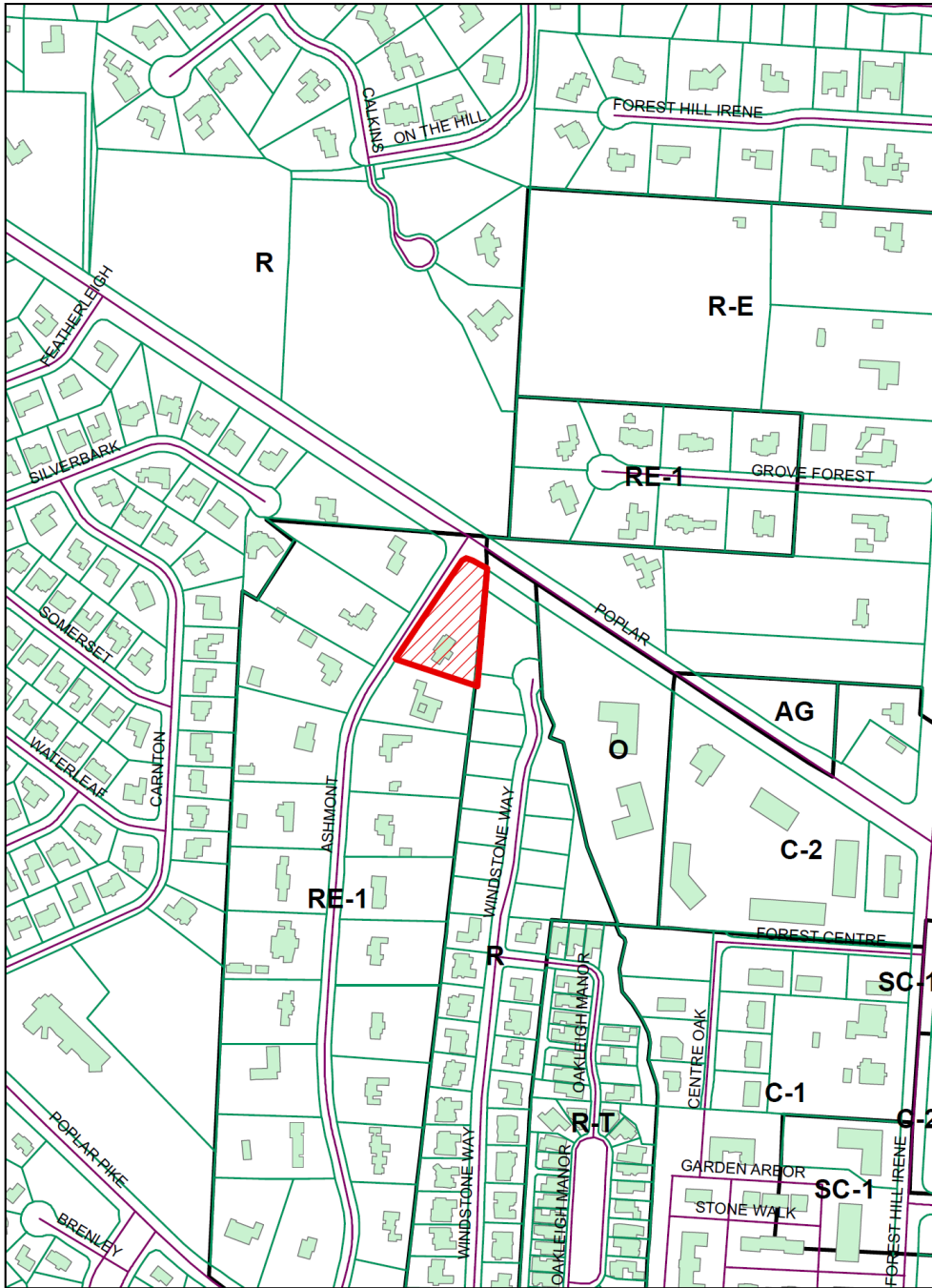


undue hardship upon the owner (little privacy due to topography). Please see the applicants' complete justification in the application, starting on p. 8 of this staff report.

STAFF COMMENTS:

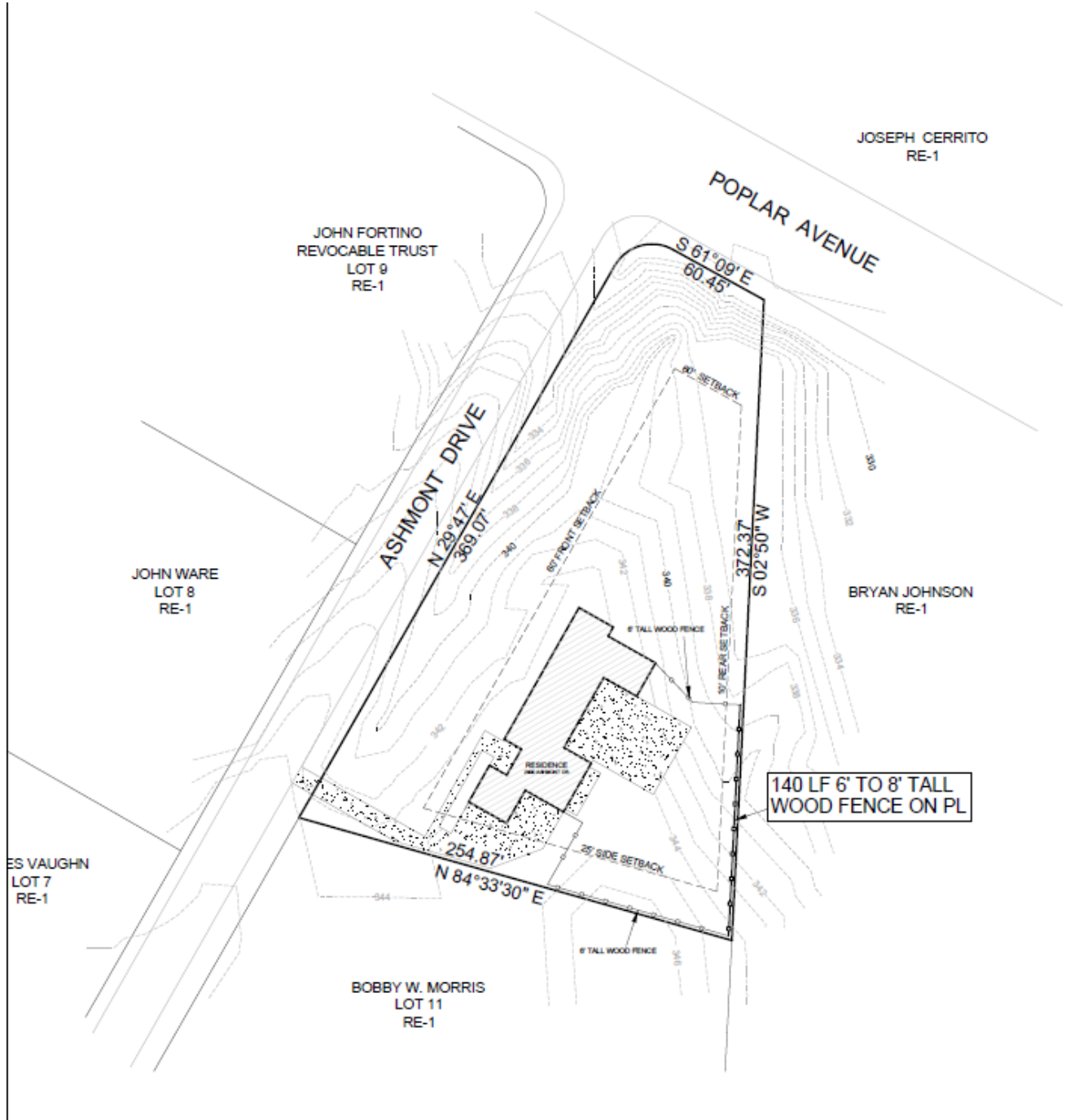
1. If the variances are approved, the applicant shall apply to the Neighborhood Services Division for a revised fence permit within 30 days of this approval.
2. If the variances are not approved, the applicant shall bring the fence into compliance within 30 days of the Board's action.

PROPOSED MOTION: To approve a variance to allow a fence up to 8' tall along a 140' long portion of the rear yard at 2900 Ashmont Dr. 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.



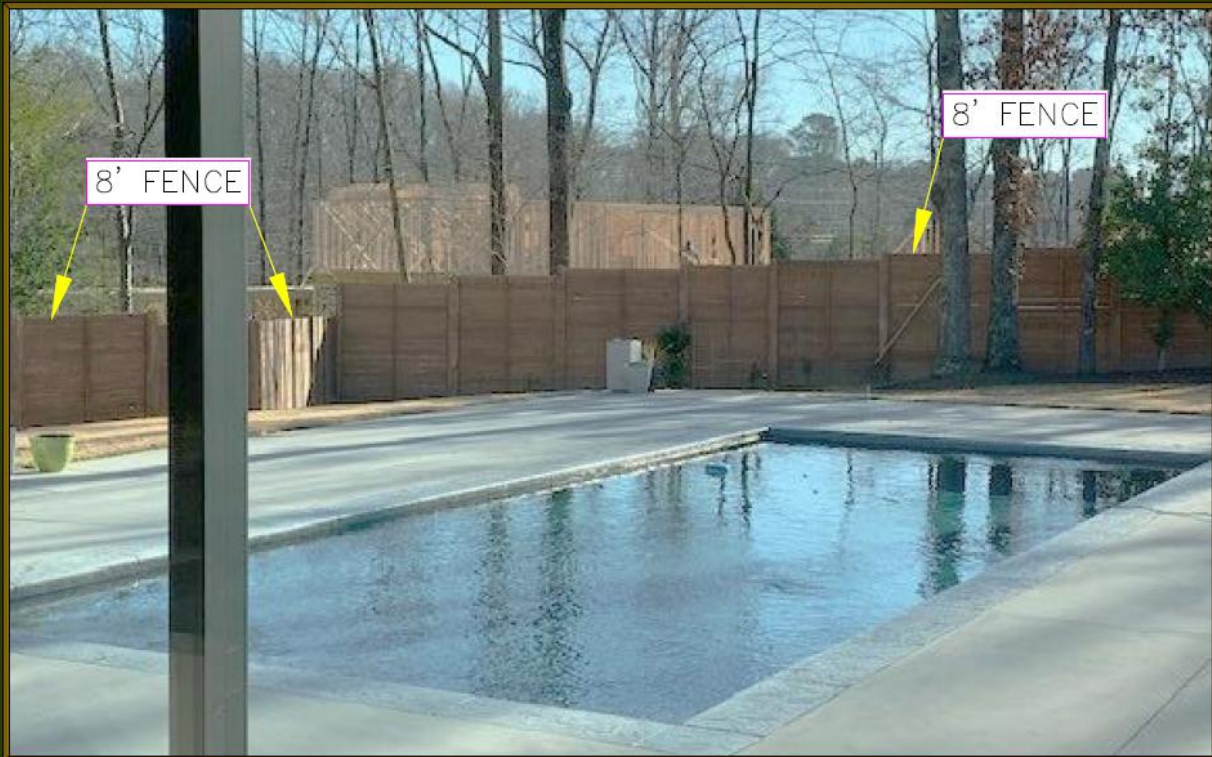
**ZONING MAP**

### SITE PLAN SHOWING FENCE



**PHOTOS OF FENCE**  
(See agenda packet for additional photos)

*Variance Request for 2900  
Ashmont Drive*



*View of fence & new house construction*

FEBRUARY 2019



*Variance Request for 2900  
Ashmont Drive*



*View of fence along east property line*

FEBRUARY 2019



# 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: January 22, 2019
2. Action Requested (Circle one):                      Variance                      Use on Appeal                      Interpretation
3. Address of property where action is requested: 2900 Ashmont Drive
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"):  
Variance to allow a 6 to 8 foot tall fence along the eastern property line of Lot 10 of the Germantown Village Subdivision as recorded in Plat Book 37, page 19
5. Name of person submitting this request: Michael J. Fahy
6. Is this person the (circle one):                      Property Owner                      Agent/Representative                      Attorney
7. Address of person submitting request: \_\_\_\_\_  
7520 Capital Drive, Ste. 200  
Germantown TN 38138
8. Telephone Number of person submitting request: 901-753-6840
9. Email Address of person submitting request: mfahy@pdg-m.com
11. Name and address of all property owner(s): \_\_\_\_\_  
Jose V. Gutierrez & Colleen Depete  
2900 Ashmont Drive, Germantown TN 38138
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 owners engaged a fencing company to replace an existing fence and the fence company installed a fence that "steps" down the sloping property, resulting in sections that are taller than 6 feet in height.

BZA Application  
Page 2

**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)

The subject property is a triangular property with minimal tree protection from wind and vehicular noise from Poplar Avenue, Ashmont and the adjoining development to the east.

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

The subject property has a 14 foot change in elevation from the southeast to the northeast property corner. The home is situated on the only flat area of the lot, while the rest of the property slopes down and away towards the east, Ashmont and Poplar Avenue. The adjoining property to the east continues to drop in elevation an additional 20 feet before the new house construction.

BZA Application

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

Due to the topography of the property, as well as the seasonal vegetation, the residence is exposed to both noise and light, resulting in limited privacy for the residence. The second floor and roof line of the new house under construction extends far beyond the top of the fence further reducing the privacy.

2. **Resulting in:**

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

The owner has no viable remedies due to the existing topography of the subject property and the elevated light and noise caused by the streets and new house construction.

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

A 6 foot tall fence would not provide adequate privacy due to the topography of the property. A 6 foot tall fence would provide very little privacy from the adjoining house under construction as well as light & noise from Ashmont & Poplar Avenue.



BZA Application  
Page 4

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: Jose V. Gutierrez & Collen Depete

Signature: 

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

| Name        | Business or Home Address |
|-------------|--------------------------|
| <u>none</u> | <u></u>                  |
| <u></u>     | <u></u>                  |

**\*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:

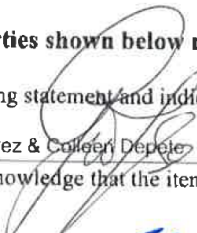
| Name    | Business or Home Address |
|---------|--------------------------|
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| <u></u> | <u></u>                  |
| <u></u> | <u></u>                  |
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BZA Application  
Page 5

15. **Certification**

**All applicable parties shown below must sign the application:**

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

I, Jose V. Gutierrez & Colleen Depete  Colleen Depete (property owner), attest to the best of my knowledge that the items submitted above are correct and accurate.

I, Michael J. Fahy  (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.**

**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.**

STAFF PRESENTATION:

ECD Director Cameron Ross made a staff presentation.

BOARD DISCUSSION:

Mr. Mike Fahy with Prime Development Group explained this was an unusual site. Mr. Johnson, who is building the house to the rear, put in a retaining wall. If he had not done this, his home would have been towering over the subject piece of property. The view from his client's yard would be Mr. Johnson's first floor, instead of the second floor as it is now. Mr. Johnson also wrote a letter of support on this matter that is in the file for your reference. Behind the fence, this property drops about 8-9 feet and the property owner has plans to install more vegetation for added privacy. This property is at the end of the subdivision, coming to a point at Poplar Ave. The fence helps with the noise coming from Poplar Ave. The fence is not visible from Poplar Ave. He asks the board to grant this request, due to the unusual topography and shape of the property.

Mr. Uhlhorn said he felt it was a topography hardship. The drop-off on the lot to the rear is enormous.

Alderman Gibson said that this request meets the criteria of an exceptional topographical issue. The property is unique, and she commends the applicant for the structure he has put there. The entire property is exceptional and unique in the best sense of the word.

After brief discussion, Chairman Clift called for a vote.

Mr. Uhlhorn moved to approve a variance to allow a fence up to 8' tall along a 140' long portion of the rear yard at 2900 Ashmont Dr. 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; Ms. Bowden – Yes, based on the comments previously made by Alderman Gibson; Mr. Harless – No, because the ordinance states that a 6' fence is what is allowed in Germantown. Mr. Uhlhorn mentioned the Enclave and others have come to this Board, because they don't want their neighbors looking into their back yard and pool area. He understands that the applicant has a topography issue; however, the applicant could install trees and bushes to fix the problem; Alderman Gibson – Yes; Chairman Clift – Yes, due to the lot being an odd, triangular shape and the substantial problems with topography, being that the lot drops 14 ft.

MOTION PASSED

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OLD BUSINESS: Chairman Clift asks if there were any old business and there was none.

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NEW BUSINESS: Mr. Uhlhorn suggested a future discussion on this fence issue. Mr. Harless asked to look at other communities what they are doing with double frontage lots. Alderman Gibson said they would discuss this. Cameron Ross agreed to do the research and come back to this Board with some recommendations.

Mr. Ross mentioned the new security protocols would be taking effect and wanted to make everyone aware of this before the next meeting. He also said that staff would be preparing a memo for each of the boards/commissions to go out with the packets over the next several times until it becomes common practice.

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ADJOURNMENT:

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 7:03 p.m.

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Ms. Rhea Clift, Vice Chairman  
Board of Zoning Appeals

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