

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS**

January 11, 2011

6:00 p.m.

COMMISSION PRESENT:

Ms. Elizabeth Boyd; Mr. David Klevan; Ms. Patricia Sherman; Mr. Frank Uhlhorn; Mr. Tony Salvaggio; Alderman Palazzolo

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Andy Pouncey, Director of Economic and Community Development; Mr. Alan Strain, Attorney; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Trip Trezevant – 1273 Heron Oaks Cove, Memphis, TN
Ms. Mikki Duffey – 2413 Sanders Ridge, Germantown, TN 38138
Brett Hirsch – 2120 E. Glenalden Circle, Germantown, TN 38139
Mark Griffin – 2323 Johnson Road, Germantown, TN 38139
Brian Barbeito – 7110 Ivy Leaf Drive, Apt. 201, Germantown, TN 38138
Betty Duke – 2316 Dogwood Meadows Cove, Germantown, TN 38139
Nicole Kloek – 2296 Dogwood Meadows Cove, Germantown, TN 38139
Scott Davis – 3038 Steeplegate Cove, Germantown, TN 38139
Ryan Flannery – 8646 Tanoak Drive, Germantown, TN 38138

Alderman Palazzolo called the meeting to order and established a quorum.

ROLL CALL: – Ms. Boyd – present; Alderman Palazzolo – present; Mr. Salvaggio – present; Ms. Sherman – present; Mr. Klevan – present; Mr. Uhlhorn – present; Chairman Evans – absent

INTRODUCTION: During the first meeting of the calendar year, the members of the Board of Zoning Appeals elect a Chairman and a Vice Chairman from the seven (7) appointed members.

ELECTION OF OFFICERS:

1. Nomination for Chairman of the Board of Zoning Appeals for 2011 is as follows: Henry Evans

Motion: Dave Klevan Seconded By: Elizabeth Boyd

ROLL CALL: Mr. Klevan – yes; Ms. Sherman – yes; Mr. Salvaggio – yes; Ms. Boyd – yes; Mr. Uhlhorn – yes; Alderman Palazzolo – yes; Chairman. Evans – absent;

MOTION PASSED

2. Nomination for Vice-Chairman of the Board of Zoning Appeals for 2011 is as follows: Elizabeth Boyd

Motion: Frank Uhlhorn Seconded By: Dave Klevan

ROLL CALL: Ms. Boyd – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Alderman Palazzolo – yes; Mr. Uhlhorn – yes; Ms. Sherman – yes; Chairman. Evans – absent;

MOTION PASSED

Ms. Boyd reminded those in attendance that 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. She also reminded those appearing before the Board that the meeting is recorded and they would need to identify themselves, give their address and be sworn in for the record. She then swore in the staff.

Ms. Boyd stated that she would like to make note that the motions made in all meetings are of an affirmative nature. She stated this 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.

Approval of November 9, 2010 Minutes

Dave Klevan made a motion to approve the minutes from the October 13, 2009, meeting that was seconded by Pat Sherman.

ROLL CALL: Ms. Boyd – yes; Mr. Klevan – yes; Mr. Uhlhorn – yes; Mr. Salvaggio – yes; Alderman Palazzolo – abstain; Ms. Sherman – yes; Chairman Evans – absent

MOTION PASSED

SUBJECT: 6993 Poplar Avenue, The Market at Poplar Estates – Request approval of the Expansion of a Legal, Non-conforming Use in the “R” Residential zoning district.

BACKGROUND: The property currently is used for a plant nursery, the retail sale of gardening-related goods and 2 wireless transmission facilities (cell telephone towers). The property has been used as a plant nursery since prior to annexation by Germantown in 1965. Prior to being known as The Market at Poplar Estates, it was Stringer’s Nursery since 1974.

PREVIOUS VARIANCE REQUESTS: None for the requested uses. The Board of Zoning Appeals approved a Use on Appeal for a wireless transmission facility and a variance to allow the facility to be a distance less than its height from the property line on January 28, 1997.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The subject property was in use as a plant nursery when it was annexed by Germantown on July 28, 1965 and subsequently zoned to the “R” residential district. It is, therefore, considered a legal non-conforming use since a plant nursery is not a use permitted by the “R” zoning district. The use (plant nursery) may continue in operation, provided that no change in the use of the land is undertaken (section 23-666, Intent).

The specific request by the applicant is to construct additional buildings on the site. He proposes to add 4 to 5 new buildings that will be used for home and garden purposes, plus a “little café”. Eighty six additional parking spaces placed on the east and west sides of the existing entrance drive are proposed. A new entrance drive to Poplar, to the west of the existing drive, is proposed. In addition, he proposes 1 to 2 Koi ponds as entrance focal points.

SPECIFIC SECTIONS OF ZONING ORDINANCE: Sec. 23-666 (Intent) addresses the continuation of existing uses. It allows a business that was permitted to operate under zoning regulations that were in effect prior to a change in zoning to continue in operation and be permitted; provided that no change in the use of the land is undertaken by the business.

(Code 1986, § 25-386; Ord. No. 1998-2, 7-12-98; Ord. No. 2005-6, § 1, 2-28-05)

Sec. 23-667 (Continuation existing uses) goes on to address the expansion of a legal, non-conforming use, and allows that use to expand within the site, **provided there is a reasonable amount of space for the expansion and avoids nuisances to adjoining landowners:**

"Industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto in effect immediately preceding a change in zoning shall be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the activities of the industry or business which were permitted and being conducted prior to the change in zoning; provided that there is a reasonable amount of space for such expansion on the property owned or leased by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners."

"No building permit or like permission for construction or landscaping shall be denied to an industry or business seeking to expand and continue activities conducted by that industry or business which were permitted prior to the change in zoning; provided that there is a reasonable amount of space for such expansion on the property owned or leased by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners."

Section 23-667(b) allows a legal, non-conforming use to demolish and rebuild buildings:

"Industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to destroy present facilities and reconstruct new facilities necessary to the conduct of such industry or business subsequent to the zoning change; provided that no destruction and rebuilding shall occur which shall act to change the use classification of the land as classified under any zoning regulations or exceptions thereto in effect immediately prior to or subsequent to a change in the zoning of the land area on which such industry or business is located. No building permit or like permission for demolition, construction or landscaping shall be denied to an industry or business seeking to destroy and reconstruct facilities necessary to the continued conduct of the activities of that industry or business, where such conduct was permitted prior to a change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned or leased by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners."

Section 23-667(c) prohibits the legal, non-conforming use from expanding onto surrounding property:

"The provisions of section 23-666 and subsections (a) and (b) of this section apply only to land owned or leased and in use by such affected business, and do not operate to permit expansion of an existing industry or business through the acquisition of additional land."

Section 23-667(d) defines what is "reasonable space" for the expansion of the use as being the amount of space which would be required if the facility is subject to the most restrictive zoning classification that would permit the use. The C-2 General Commercial zoning district would allow the proposed uses and the proposed buildings. That district requires a 50 foot side yard setback and a 50 foot rear yard setback when adjoining single family zoned property (section 23-407(2) and (3).

(d) "Reasonable amount of space for such expansion on the property owned or leased by such business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners" as used in subsections (a) and (b) of this section shall mean the amount of space which would be required were such facility subject to the most restrictive

City of Germantown classification which would permit the use to which the land and/or building is being put and new construction were being undertaken.

APPLICANT'S JUSTIFICATION: The applicant notes that 85% of the property sits within TVA and Texas Gas easements, plus there are two cell phone towers (WTF) on the property.

STAFF COMMENTS:

1. The applicant submitted a Traffic Impact Study with the application. The study recommends to:
 - a. Retain and improve the full movement east drive.
 - b. Add a right in/right out west drive based on American Association of State Highway Transportation Officials (AASHTO) designs to accommodate heavy duty delivery and work trucks.
The City Engineer has reviewed the study and agrees with the recommendations.
2. Application of commercial zoning district (C-1 and C-2 district) requirements to the proposed buildings require 50 foot setbacks from the east property line. The site plan provides setbacks of between 12 and 25 feet for the 5 proposed buildings. Variances from the standard setback distances as described in section 23-407(2) and (3) are required.
3. The proposed buildings will require a total of 64 parking spaces. The site plan proposes 103 spaces.
4. The proposed western driveway is within a Texas Gas easement and will require approval from that company.
5. If the request is granted, the applicant must apply for Preliminary and Final Site Plan approval from the Planning Commission, then Preliminary and Final Plan approval (landscaping, lighting, building elevations and materials) from the Design Review Commission and Project Development Contract approval from the Board of Mayor and Aldermen through the Department of Economic and Community Development.
6. The legal, non-conforming use of the property is a plant nursery. That type of use can be considered to be the retail handling of any article, substance, or commodity related to the planting, maintenance, or harvesting of garden plants, shrubs, trees, packaged fertilizers, soils, chemicals, or other nursery goods and related products in small quantities to the consumer. Staff suggests that the applicant prepare a more detailed list, for Board of Zoning Appeals approval, of the types of goods and services that will be allowed within the proposed buildings.
7. According to the Shelby County Register, the applicant purchased the property in 2006. The property was formerly owned by Richard and Mary Stringer.

**Trip Trezevant
1273 Heron Oaks Cove
Memphis, TN**

Mr. Trezevant advised that he bought Richard Stringer's property approximately three years ago. He stated that a hundred truck/dumpster loads or more of trash and debris were removed. Per Mr. Trezevant, the four acres that is closest to the Nottoway subdivision was completely covered with trees, landscaping debris, etc. He further advised that he has spent approximately a hundred thousand dollars to fix up the existing building and probably another fifty thousand dollars for landscaping, a new gate, new brick columns, a fence, etc.

Mr. Trezevant stated that he has exceeded the proposed landscaping design that had been previously presented to the Design Review Commission. He feels that the City of Germantown and surrounding neighbors of the property should be more than pleased with what has been done so far.

Per Mr. Trezevant, from the front of all the buildings all the way to Nottoway is ninety-five percent encumbered by easements; the only buildable area is where the buildings are now. Mr. Trezevant said he proposes to build the new structures in the same fashion of the existing buildings, which are approximately fifteen feet from the property line. He further stated that barter related type businesses such as green houses, a koi pond business, crafted concrete statues and bird baths, Gurley's A Garden and Perry-Cook Irrigation and Board of Magic will go in the new buildings.

Mr. Trezevant advised that a bunch of dilapidated green houses and huge piles of landscape debris were there before he bought the property. He said he removed twenty-something thousand square feet of green houses and now proposes to go back with twelve thousand square feet of residential type constructions; these buildings would house businesses such as a swimming pool company or outdoor patio furniture. Mr. Trezevant also stated that he would like to include a koi pond, similar to the one in Nottoway subdivision. He feels that this would look nice and serve as an enhancement to the property.

Ms. Boyd asked Mr. Trezevant if the proposed building would be one or two stories. Mr. Trezevant answered by saying two.

Mr. Salvaggio asked Mr. Trezevant will the proposed buildings exceed the height of the greenhouse. Mr. Trezevant replied by saying that he does not know how high tall the green house is; it'll be about a layer shorter than probably what's on the other side of it.

Alan Strain addressed Mr. Trezevant and explained that on his application it was indicated that the proposed buildings would be used for "home and garden with a little café." Mr. Strain said that Mr. Trezevant had not mentioned home use and café use. He wanted to know if Mr. Trezevant was withdrawing these intentions. Mr. Trezevant answered "no," unless the City just does not want the café there, then the café would be withdrawn.

Mr. Klevan asked Mr. Trezevant if there were some existing compliance issues regarding this property that are currently unsettled. Mr. Trezevant replied by stating that should not have been [inaudible]. Mr. Klevan then asked Mr. Trezevant if there is a business on the property called "Original Ink" that sells stationary, invitations and gifts. Mr. Trezevant answered by saying there is definitely a girl there who sells stationary and gifts; she also has bird houses, pots and plants, etc.

Ms. Boyd asked if there was anyone in the audience who would care to speak in favor of this request this evening. No one came forth.

Mr. Trezevant returned to the microphone and advised that what he was originally going to do on the property was to remove the trees and expand what they had already done with the green houses. Per Mr. Trezevant, to build the proposed houses will costs him a lot of money, but in essence will bring him zero net income. He said the bottom line is if ya'll [City of Germantown] want this then great; if you don't want this then that's great too. He'll be glad to do mulch yards and dirt bins.

Ms. Boyd asked Mr. Trezevant if he had addressed the fact that much of the property has easements on it. Mr. Trezevant replied by saying as for the buildings, there aren't any encroachments into the easements. Ms. Boyd said no, they are not as you have them proposed, but what about in terms of moving them away from the property line? Mr. Trezevant advised that right now, the existing buildings are fifteen feet from the property line. Per Mr. Trezevant, for consistency purposes, he will continue with the fifteen feet distance from the property line with the new building.

Andy Pouncey communicated that Mr. Trezevant's application, "Adding to a Non-Conforming Use" was one of the main reason for him [Trezevant] appearing before the Board tonight. Mr. Pouncey informed Mr. Trezevant that he had emailed him a letter on Friday advising the only non-conforming use here is plant/nursery, which is guided by the original use back in the sixties. Mr. Pouncey advised Mr. Trezevant that he really couldn't have any other use but the non-conforming use which is nursery. He further advised that this application has invited us to go out and check on the uses that are there now. Per Mr. Pouncey, Joe [Nunes] sent Mr. Trezevant a letter regarding the number of uses that are non-compliant right now. He informed Mr. Trezevant that he has ninety days to address those issues.

Mr. Trezevant intervened and advised that Mr. Nunes only mentioned one non-conforming use which is the lady who does the stationary.

Mr. Pouncey stated this is like the use situation in 2008 with the buildings across the grounds not being used as a plant/nursery. He further stated to expand the use only talks in terms of nursery, and that's it; not in the other "related" use.

Mr. Trezevant intervened again to advise the letter that was sent to him by Mr. Nunes stated that what's there now are plants, concrete and statues. Per Mr. Trezevant, the only thing that Mr. Nunes stated that was non-conforming was the stationary.

Mr. Pouncey said to Mr. Trezevant that it's for plant use and plant use only.

Mr. Trezevant then asked Mr. Pouncey if he could or could not do [sell] something such as patio furniture. Mr. Pouncey quoted:

"The American Planning Association defines plant nursery to be handling of any article, substance or commodity related to the plant, maintenance or harvesting of garden plants, shrubs, trees, packaged fertilizers, soils, chemicals and other nursery goods and related products in small quantities to a consumer. Our interpretation of "and related products" is specific to this definition that focuses on the core handling of plants.

Mr. Pouncey advised in order for Mr. Trezevant to get any type of approval tonight, it would be only for the core handling of plant material. Mr. Pouncey further advised that Mr. Trezevant's next step, if approved tonight, will be to appear before the Board of Planning Commission due to many sight related issues including a second access to Poplar which would require TDOT (Tennessee Department of Transportation) approval.

Again, Mr. Pouncey quoted:

"No building permit or like permission for construction and landscaping shall be denied to an industry of business seeking to expand and continue activities conducted by an industry [nursery] or business which were permitted prior to the change in zoning; provided that there is a reasonable amount of space where the expansion on the property owned or leased by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners."

Mr. Pouncey stated that in a letter to Mr. Trezevant, he expressed some concern that there is residential on both sides of Mr. Trezevant's property. He said the proposed buildings are in closer proximity to the residential buildings, namely the Madonna Learning Center. Mr. Pouncey explained that the use for Madonna has changed; it used to be The Church of Christ. Per Mr. Pouncey, there was an empty parcel on the other side which was also residential -- the two together makes for a nice sized subdivision. Mr. Pouncey said that the proposed two-story buildings within fifteen feet of a residential line is a major concern. He further explained that if Mr. Trezevant moves in the other direction, then there will be a

number of easements that he would have to deal with. Mr. Pouncey said Mr. Trezevant's proposal (a patio to be placed in front of each building maybe for storage purposes) would be right where a gas easement is located. Per Mr. Pouncey, there is an easement core drive through there which does not guarantee the right to have materials, buildings and so forth on it. He advised Mr. Trezevant that we [City of Germantown] would need something from Texas Gas Easement, MLGW and TVA saying that this is okay.

Mr. Trezevant advised that he has had half a dozen meetings with Jerry Cook and he loved his proposal. Mr. Trezevant said that he disagrees with Mr. Pouncey in that he can only sell the plants; he feels that he can also sell swimming pools, grills, patio furniture, lime salt, brown jordan, etc. Mr. Trezevant said that he does not care if he builds all of those buildings; he will just put in mulch bins and make a lot more money. Mr. Trezevant further stated that as far the gas easement, that's between him and Texas Gas. He said that he's got the easements and he knows what the easement says. Per Mr. Trezevant, the easement says that he can put patios and fences there; he can do exactly what he's done. He said the easement does not say that he can't build buildings and if the City does not want him to have the setbacks, then fine, he won't build the buildings; he'll just put back the temporary greenhouses and have just the nursery. Mr. Trezevant said that he has asked all of the neighbors at least a dozen times to meet with him, only five showed up. He further stated that a lot of time could have been saved for everyone if neighbors had told him to leave the greenhouses like they were before.

Mr. Klevan asked Mr. Trezevant did he initiate the meeting with the various subdivisions. Mr. Trezevant said "certainly." Mr. Klevan asked if the invite was in writing. Mr. Trezevant stated that he contacted the neighbors by making phone calls. Mr. Klevan asked hopefully with the presidents of the associations. Mr. Trezevant answered "no sir." Mr. Klevan asked Mr. Trezevant if a meeting ever took place. Mr. Trezevant replied by saying that no one ever showed up.

Mr. Trezevant asked for his item to be pulled from the agenda and with that, he withdrew his request.

Mr. Pouncey addressed the audience and stated that this item has really invited us to look closer at the property. Per Mr. Pouncey, there are not only piles of gravel and cans left over from the nursery, but there are also outside, non-conforming uses that the City has identified. He advised that the City is currently still in court with the other nursery location and that Mr. Trezevant has ninety days to comply before appearing in municipal court on this particular matter. Mr. Pouncey reassured residents that we would have our Code Compliance department to stay on top of everything.

REQUEST WITHDRAWN BY APPLICANT

The following three requests are all within the Garner Woods subdivision. Mr. Morgan presented the staff reports as a single item.

SUBJECT: Lot 5 of the Garner Woods subdivision – Request A Variance to Allow the Principal Structure to Encroach Into the Required Front Yard Setback in the "RE-1" Estate Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Garner Woods subdivision was approved by the Planning Commission in 2004. Construction of the subdivision infrastructure was only recently completed.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: NA.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family dwelling on the lot. The applicant proposes an 80 foot front yard for the dwelling. The subdivision plat requires a 159 foot front yard, in order to comply with the zoning regulations on lot width and setback. A variance of 79 feet is requested.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-207(1) which requires a minimum lot width of 150 feet, measured at the building line, and from §23-208(1)(a), which requires a front yard setback of 60 feet.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. She states “there is excessive setback placed on Lot 5; drainage easement is excessive (and the) topography drops off”.

STAFF COMMENTS:

1. The minimum front yard setback in the RE-1 district is 60 feet and the minimum lot width is 150 feet, **measured at the building line**. Lot 5’s building line is 159 feet from the front lot line because that is the nearest point where a 150 foot lot width can be provided.
 2. Garner Woods was originally planned and partially developed by Ken Sledd. The subdivision is now owned by the Bank of Bartlett. All of the lots are undeveloped.
 3. The subdivision was planned so as to maximize the number of lots. Each lot is exactly the minimum area required by the zoning district. As a result, the street frontages of lots 4 and 5 are very narrow, which force the minimum building setback lines deeper into the lots.
 4. Lot 4 has a similar configuration to Lot 5. A similar variance request on Lot 4 has been submitted for BZA approval.
 5. The buildable area of Lot 5 is 12,232 square feet using the current setbacks, and 17,448 using the proposed variance.
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SUBJECT: Lot 4 of the Garner Woods subdivision – Request A Variance to Allow the Principal Structure to Encroach Into the Required Front Yard Setback in the “RE-1” Estate Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Garner Woods subdivision was approved by the Planning Commission in 2004. Construction of the subdivision infrastructure was only recently completed.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: NA.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family dwelling on the lot. The applicant proposes an 152 foot front yard for the dwelling. The subdivision plat requires a 172 foot front yard setback, in order to comply with the zoning regulations on lot width and setback. A variance of 30 feet is requested.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-207(1) which requires a minimum lot width of 150 feet, measured at the building line, and from §23-208(1)(a), which requires a front yard setback of 60 feet.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. She states “Lot 4 has an easement that runs diagonally across the rear” and “results in a not very usable backyard and furthermore, the deep front yard does not match those of the other lots”.

STAFF COMMENTS:

1. The minimum front yard setback in the RE-1 district is 60 feet and the minimum lot width is 150 feet, **measured at the building line**. Lot 4’s building line is 172 feet from the front lot line because that is the nearest point where a 150 foot lot width can be provided.
2. Garner Woods was originally planned and partially developed by Ken Sledd. The subdivision is now owned by the Bank of Bartlett. All of the lots are undeveloped.
3. The subdivision was planned so as to maximize the number of lots. Each lot is exactly the minimum area required by the zoning district. As a result, the street frontages of lots 4 and 5 are very narrow, which force the minimum building setback lines deeper into the lots.
4. Lot 4 has a fifteen foot wide drainage easement extending diagonally across the rear yard, which further compromises the available buildable area.
5. A Grading Permit from the City of Germantown is required prior to the issuance of a Building Permit.
6. The submitted site plan has a 30 +/- foot wide driveway within the required front yard. The applicant is aware that the driveway as designed does not comply with the Zoning Regulations in that a driveway may not be over 18 feet in width except within 20 feet of the garage. The applicant has stated that the design of the driveway will accommodate those requirements.

SUBJECT: Lot 6 of the Garner Woods subdivision – Request A Variance to Allow the Principal Structure to Encroach Into the Required Front Yard Setback in the “RE-1” Estate Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Garner Woods subdivision was approved by the Planning Commission in 2004. Construction of the subdivision infrastructure was only recently completed.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: NA.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family dwelling on the lot. The applicant proposes a 50 foot front yard for the dwelling portion of the principal structure and a 25 foot setback for the attached garage portion of the structure. The subdivision plat requires a 60 foot front yard, in order to comply with the zoning regulations on lot width and setback. A variance of 35 feet is requested, and will accommodate the entire structure.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-207(1) which requires a minimum lot width of 150 feet, measured at the building line, and from §23-208(1)(a), which requires a front yard setback of 60 feet.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. She states "Lot 6 is an unusually shaped lot. Although it is an acre lot, 65% of the lot is not usable" and severely restricts the options in designing and building a house".

STAFF COMMENTS:

1. The minimum front yard setback in the RE-1 district is 60 feet and the minimum lot width is 150 feet, **measured at the building line**. Lot 6's building line is 60 feet from the front lot line.
2. Garner Woods was originally planned and partially developed by Ken Sledd. The subdivision is now owned by the Bank of Bartlett. All of the lots are undeveloped.
3. The subdivision was planned so as to maximize the number of lots. Each lot is exactly the minimum area required by the zoning district. As a result, Lot 6 is irregularly configured, with an unusable arm extending along Garner Woods Cove to Johnson Road.
4. The buildable area of Lot 6 is 13,342 square feet using the proposed variance.
5. A Grading Permit from the City of Germantown is required prior to the issuance of a Building Permit.

The applicant should be aware that parking spaces within the required front yard are not permitted and that a driveway may not be over 18 feet in width except within 20 feet of the garage. The design of the driveway will have to accommodate those requirements

Mikki Duffey, Representative
2413 Sanders Ridge
Germantown, TN 38138

Ms. Duffey advised that architect Brett Hirsch with Looney Rick Kiss Architects was present to answer questions.

Mr. Uhlhorn asked Ms. Duffey if the plans for lot four is the custom house that is being worked on (pre-sub). Ms. Duffey answered "no." Per Ms. Duffey, there is a different house that is going to be built there, but she and associates are in the process of working on it; they have not practiced yet. Mr. Uhlhorn stated that his opinion is that he'd rather see all at the sixty feet front yard setback rather than doing the one hundred feet across the lot in the back. Per Mr. Uhlhorn, if these houses sit way back then there's a good chance that lot four could potentially be looking at the side the house on lot three. He further stated that for the sake of continuity, to grant the variance for the first setback line to sixty feet would not only allow more room to build on these lots, but would also be uniform and thus look better. Ms. Duffey said that they were okay with this; no problem.

After much discussion amongst Board members about amending the front yard setback to sixty feet on lots four and five, Ms. Boyd asked Ms. Duffey if there would be an issue with working this in with her existing plans and existing customers. Ms. Duffey said that no, it would not be an issue.

Brett Hirsch, Architect
2120 E. Glenalden Drive
Germantown, TN 38139

Mr. Hirsch addressed his concern regarding lot six. He advised that the fifty foot setback is the proposed bearings that his company/builders are asking for. Mr. Hirsch stated that the proposed sixty foot setback works well for lots four and five. Even though these are going to be voted on separately, there are some other constraints that are being dealt with on lot six.

Ms. Boyd asked if there was any one in the audience who would like to speak in opposition to this request.

Mark Griffin, Neighbor
2323 Johnson Road
Germantown, TN 38139

Mr. Griffin began by advising that he at first objected to the street being so close to his property. He said that his house is only fifty feet from the property line where the curb goes into the subdivision. Mr. Griffin's main concern is the proposal of moving lot six back by ten feet putting the house closer to his property line. He said if this could be prevented then he really does not have any objections. Mr. Griffin further stated that if the house on lot six could be built within the existing zoning restrictions, then he does not have a problem.

Mr. Uhlhorn asked Mr. Griffin about his side yard setback (twenty-five feet from the property line). He wanted to know if this is where the offset ends. Mr. Griffin said that his house is just in front of the offset of lot six; the back of the house almost comes to where the offset is. Per Mr. Griffin, this is where applicant is proposing to be located five feet closer. Mr. Uhlhorn said that he just wanted Mr. Griffin to understand that the house would not be built on the property line; it would be the setback to the property line and then four or five feet to his house. Mr. Griffin stated all that he is asking is that the lot not be set back ten feet and to be built within the existing footprint.

Mr. Salvaggio asked Mr. Hirsch about the north corner of lot six. He wanted to know what the distance is if you are not actually on the building setback line. Mr. Hirsch said "thirty-five feet." Mr. Salvaggio then asked was there a twenty-five feet setback at the southwest corner of the property. Mr. Hirsch said "yes." Mr. Salvaggio wanted to know if there was an opportunity to shift the house over in [inaudible] and maintain the proposed fifty foot. Mr. Hirsch said with some modifications, shifting the house southwest would work in keeping the fifty foot rear yard setback. He further stated that because of the challenge that it poses, a bigger benefit on lot six is not only getting the fifty foot setback on the front but situating the garage location as well. Per Mr. Hirsch, what he and associates are asking for a twenty foot variance from an accessory use (garage) on lot six. He said if you look at the zoning ordinance, this should be fifty feet because technically, that is considered a rear yard. Mr. Hirsch stated that he would like to address the garage location on lot six because this is a more significant change than what's been discussed on lots four and five.

Ms. Boyd asked Mr. Pouncey if lots four and five could be taken care of tonight with the possibility of re-working lot six.

Mr. Uhlhorn asked Mr. Hirsch if the Board grants the variance for lot six, can you work with a fifty foot rear yard setback, a fifty foot front yard setback, by building that fifty foot [inaudible] Mr. Hirsch said that would work for the primary structure. Mr. Hirsch further stated when you look at the average buildable area across all of the lots, (taking lot one out because its two acres verses one), this is so far significantly less. Per Mr. Hirsch, you can put a house on it, but it is not going to compare to any of the other homes that are going to be built on the other four lots because of the footprint of the buildable area. He advised that he and associates are trying to gain the piece of property that has been rendered useless under current zoning just to place the accessory structure (garage) where the twenty-five foot front yard

and the twenty-five foot rear yard setbacks are being asked for; that would leave the fifty foot rear for the primary structure so that we work with the fifty foot on the front.

Mr. Griffin returned to the podium and asked Mr. Hirsch if he could move the house southwest, keep the fifty feet on the back and stay within the current zoning restrictions for the garage. Mr. Hirsch replied by advising that they could not make it work with the current zoning on the garage. Mr. Griffin then asked Mr. Hirsch what exactly is he asking for. Mr. Hirsch said the because of the zoning the rear yard is going to be fifty and based on the district we are in, the front yard will be sixty. Per Mr. Hirsch, these two overlap creating an entire piece of the lot that is unbuildable. He further advised that there is so much of lot six that has been rendered useless at this point. Mr. Hirsch stated that he would like to take back some of this space; the buildable area will be used for the primary residence and the accessory structure will be built in the idle space.

Mr. Griffin said that he still objects; he feels that this is still an acre lot according to Germantown statute with plenty of room to build a different house without putting the garage so close to him. Mr. Griffin also feels that lot six is elevated from where his property is; to build a two-story house would look unsightly.

Mr. Klevan stated that the initial problem last month was lot five being approved but leaving lot four out which created a series of problems for lot four. He continued by saying lot six was not an issue other than building footprint. Mr. Klevan said that it sounds like a technical thing that needs to be worked out. He said the bigger issue is dealing with lots four and five as individual ordinances, however lot six needs to be worked out and this is not the time or place to do that.

Mr. Griffin said that he understands that, but the lot was purchased knowing what the zoning restrictions are. He suggested living within the current zoning restrictions without any changes. He stated that other changes had already been made to the entire subdivision just to accommodate this particular property. Mr. Griffin further stated that he does not have a problem with moving the house closer to the cul-de-sac.

After discussion between Ms. Duffey and Mr. Griffin, Wade Morgan suggested tabling the issues with lot six and getting together at some point with both parties to look at the available setbacks and the planning guide to see if we shift a little bit for a closer fit to the rear yard setback, what kind of changes would need to be made to the front. He further stated that we want to see if a variance is needed and to what portions it would apply.

Ms. Boyd asked if there was anyone else would like to speak in regards to lots four and five.

Brian Barbeito
7110 Ivy Leaf Drive, Apt. 201
Germantown, TN 38138

Mr. Barbeito asked about the width and circumference of a circular drive. He wanted to know what dimensions are allowed in the City of Germantown.

Mr. Morgan advised that the ordinance limits the driveway width to eighteen feet. He further advised that it would be measured from the outer edge of the landscape circle to the outer edge of the drive. Mr. Barbeito asked Mr. Morgan if the eighteen feet was measured from the center of the circle. Mr. Morgan answered by advising that it is eighteen feet of pavement.

Betty Duke, Neighbor
2316 Dogwood Meadows Cove
Germantown, TN 38139

Ms. Duke began by advising that her property backs up to lot five. She beseeched the Board not to approve "something like this." She stated this is the most ridiculous proposal that she has ever seen in the

City of Germantown. Ms. Duke feels that it was absurd that a little sliver was ruled as part of that [the part of lot six that is rendered useless]. She said that the Board should look more carefully as these slivers as they come up because they don't count; not to mention the front part is a two acre lot which is now a mosquito trap sitting on Johnson Road. She said that she does not know who will take care of it when the subdivision is complete.

Ms. Duffey stated that the owner of lot one would be responsible. Ms. Duke asked Ms. Duffey if he was going to put a fountain or koi pond there. Ms. Duffey said that she did not know.

Ms. Duke further stated that she is concerned about the height of the house behind her. Per Ms. Duke, her house sits down significantly lower. We're getting [inaudible] and it's going to get worse. Ms. Duke said that she hopes that the Board will be more careful in the future when looking at these properties; the smaller things should be considered as well as the real [inaudible] that other people may have. Ms. Duke thanked the Board for their time.

Ms. Boyd stated that Ms. Duke's comments were exactly right. She said for the record, it is the Planning Commission who actually approves the subdivisions.

**Nicole Kloek , Neighbor
2296 Dogwood Meadows Cove
Germantown, TN 38139**

Ms. Kloek advised that she and family moved into their house a year and a half ago. She thanked the staff for sending out postcards and notifying them of tonight's meeting. Ms. Kloek further advised that she lives next door to Ms. Duke. The corner of her lot touches diagonally with the corner of lot five and the Griffins back yard backs up to her back yard. She agreed with Ms. Duke and Mr. Griffin in that the proposed house will be sitting up higher. Ms. Kloek said that they bought the house especially for the yard and the land (one acre). She said that on that particular corner she has a huge, raised, double level flower bed. As of now, she can work in her flower bed in privacy. Ms. Kloek feels if they move the house back any farther she will be on display in this corner. She hopes that the contractors/builder will "stick to what it is." Ms. Kloek advised that they moved to Germantown just so they would not have these type of issues.

**Scott Davis, Neighbor
3038 Steeplegate Cove
Germantown, TN 38139**

Mr. Davis stated that they are looking to move closer to the street to remain as neutral as possible and keep the aesthetics to what [inaudible]. Per Mr. Davis, it will be a very nice house; maybe something can be changed with the sixty foot setback across the board which will really help add to the continuity of the lots and also will pull him further away from neighboring property.

PROPOSED MOTION: To approve a variance for Lot 5 of the Garner Woods subdivision (9324 Garner Woods Cove) to allow the principal structure to be located 60 feet from the front property line, subject to staff comments and the site plan submitted with the application.

Frank Uhlhorn moved to approve a variance for Lot 5 of the Garner Woods subdivision (9324 Garner Woods Cove) to allow the principal structure to be located 60 feet from the front property line, subject to staff comments and the site plan submitted with the application. Pat Sherman seconded the motion

ROLL CALL: – Mr. Uhlhorn – yes; Alderman Palazzolo – recused; Ms. Boyd – yes; Ms. Sherman – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Chairman Evans – absent

MOTION PASSED

PROPOSED MOTION: To approve a variance for Lot 4 of the Garner Woods subdivision (9316 Garner Woods Cove) to allow the principal structure to be located 60 feet from the front property line, subject to staff comments and the site plan (as revised to comply with driveway width requirements) submitted with the application.

Frank Uhlhorn moved to approve a variance for Lot 4 of the Garner Woods subdivision (9316 Garner Woods Cove) to allow the principal structure to be located 60 feet from the front property line, subject to staff comments and the site plan (as revised to comply with driveway width requirements) submitted with the application. Pat Sherman seconded the motion.

ROLL CALL: – Ms. Sherman – yes; Mr. Uhlhorn – yes; Ms. Boyd – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Alderman Palazzolo – recused; Chairman Evans – absent

MOTION PASSED

After votes on lots four and five, Ms. Boyd asked Ms Duffey if she wanted to pull lot six to see what she and associates could come up with. Ms. Duffey said “I do” and with that, she withdrew her request.

REQUEST WITHDRAWN BY APPLICANT

SUBJECT: 2316 Johnson Road – Request a variance to allow a fence to exceed thirty inches (30”) in height in the required front yard setback in an “R-E” Estate Residential Zoning District

BACKGROUND:

DATE SUBDIVISION APPROVED: The Johnson Road Subdivision was approved in January, 1957. The resubdivision of lot 4 to create this lot was approved in May of 1959.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The house was built in 2007.

PREVIOUS VARIANCES: none

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow a fence to exceed thirty inches (30”) in height in the required front yard setback of the “R-E” Residential Estate Zoning District. The proposed entrance gate is to consist of brick and stone columns that are six feet in height, with steel fencing and gates. The entrance feature will be 27 feet from the property line (45 feet from the existing edge of pavement) at its closet point.

SPECIFIC SECTIONS OF ZONING ORDINANCE: Section 6-102. General provisions.

(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 R-E district requires a 60 foot front yard.

APPLICANT’S JUSTIFICATION: The applicant bases the variance request on an exceptional narrowness, shallowness, or shape of the property, as well as exceptional topographic conditions resulting

in peculiar and exceptional practical difficulties. The applicant notes that additional trees would have to be removed in order to place the gate beyond the 60 foot setback line, and also states that the entrance drive is curved and the gate would not be parallel to Johnson Rd. if constructed more than 60 feet behind the property line. Furthermore, the proposed gate will maintain uniformity with neighboring properties' gates and will improve the curb appeal of the subject property.

COMMENTS:

1. The required front yard setback for 2316 Johnson Road is sixty feet (60'). The proposed gate is setback 27 feet from the property line (45 feet from the edge of pavement).
2. The decorative elements of the gate extend to 7 feet in height. That exceeds the maximum fence height of 6 feet, but such elements are allowed to provide proper design of the fence.
3. If the variance is approved, the applicant shall contact the Department of Community Development to acquire a fence permit (fee is \$30). Failure to obtain the permit within one hundred eighty (180) days will result in the cancellation of all variances.

**Ryan Flannery, Representative
8646 Tanoak Drive
Germantown, TN 38138**

Mr. Flannery advised that if a gate was to be built properly, it would not be parallel to Johnson Road due to the driveway curbing to the left. He also advised that there are two trees in the sixty-five to seventy feet area that will have to come down as well. Mr. Flannery said the furthest he would need to go back before the drive starts to turn and to avoid those trees is right at forty-five to fifty feet from Johnson Road.

Mr. Salvaggio asked Mr. Flannery if he is a contractor. Mr. Flannery stated that he represents the owners, Mr. and Mrs. Clothier. He further stated that he works for Custom Fence in Collierville and that the gate would be similar to one constructed for Dr. Jergan and the columns were duplicated from a subdivision at Forest Hill Irene and Forest Irene Cove.

Ms. Boyd asked if there was anyone who wished to speak in favor of this request. No one came forth.

Ms. Boyd then asked was there anyone who would like to speak in opposition of the request. Mr. Griffin returned to the microphone. He wanted to know how far the normal setback is and what exactly is being proposed for this particular property.

Mr. Morgan advised the normal setback is sixty feet from the property line; in this case a variance of forty-feet from the pavement is being requested, which is actually twenty-seven feet from the property line resulting in a seventy-three foot encroachment. Mr. Griffin then asked Mr. Morgan if the gates next door are already that close. Mr. Morgan said "yes," they are the same distance as the proposed gate.

Mr. Griffin asked Mr. Flannery if it is just a gate. Mr. Flannery said it's a gate that is double wide. Mr. Griffin then advised that he has no objections to this variance request.

Proposed Motion: To approve a variance at 2316 Johnson Road to allow a fence to exceed thirty inches (30") in height by a maximum of 3.5 feet in the required front yard set, subject to comments contained in the staff report.

Dave Klevan moved to approve a variance at 2316 Johnson Road to allow a fence to exceed thirty inches (30") in height by a maximum of 3.5 feet in the required front yard set, subject to comments contained in the staff report. Pat Sherman seconded the motion.

ROLL CALL: – Mr. Uhlhorn – yes; Ms. Boyd – yes; Alderman Palazzolo – yes; Ms. Sherman – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Chairman Evans – absent

MOTION PASSED

Meeting Adjourned at 7:42 p.m.