

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
October 11, 2011
6:00 p.m.**

COMMISSION PRESENT:

Mr. Henry Evans; Mr. David Klevan; Mr. Tony Salvaggio; Alderman Palazzolo; Frank Uhlhorn

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Alan Strain, Attorney; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Mr. Hector Rocha – 2928 Sandy Creek Drive, Germantown, TN 38138

Mr. Mark Hofmann – 2919 Old Elm Lane, Germantown, TN 38138

Mrs. Valerie Hofmann – 2919 Old Elm Lane, Germantown, TN 38138

Mr. James Bruce – 2918 Sandy Creek Drive, Germantown, TN 38138

Chairman Evans called the meeting to order and established a quorum.

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

Chairman Evans 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. He 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. He then swore in the staff.

Chairman Evans stated that he would like to make note that the motions made in all meetings are of an affirmative nature. He 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 September 13, 2011 Minutes

Dave Klevan made a motion to approve the minutes from the September 13, 2011, meeting that was seconded by Alderman Palazzolo.

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

MOTION PASSED

SUBJECT: 2928 Sandy Creek Drive – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height in Height in the “R” Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Germantown East Subdivision was approved in 1977.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1979.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow an existing wood fence that is eight (8) feet in height. The applicant has installed two (2) feet of wooden fence boards to the top of a six foot tall wood fence. The eight foot tall section is approximately 26 feet in length. The remaining fencing along the side property lines does not exceed six (6) feet in height. Photos of the fence, taken from the neighbor's yard, are attached.

The applicant was notified on August 25, 2011 by Code Compliance staff of the violation of the fence height regulations (see attached letter). On August 31, 2011, the applicant filed an application for a variance.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, "the maximum height of any fence shall be six (6) feet." The applicants' fence exceeds six (6) feet in height by an additional 2 feet.

APPLICANT'S JUSTIFICATION: According to the applicant, his 12 year-old son is disabled and likes to stand by the fence and watch the children playing in the adjacent yard. His son's height of 5 ft., 5 in. allows him to stand on a concrete drainage structure in the corner of the yard and be above the top of a six foot fence. Therefore, the applicant added fencing to the top of the existing fence in order to provide some privacy for his family and that of his neighbors.

STAFF COMMENTS:

1. The applicant is requesting a **two (2) foot variance** to allow an existing wood fence along a 26 foot section of the rear property line to exceed six feet in height.

Chairman Evans asked if there was anyone who would care to speak in favor of this variance request.

Hector Rocha, Applicant
2928 Sandy Creek Drive
Germantown, TN 38138

Mr. Rocha advised the main reason for erecting the fence was for privacy from neighbors in the rear. He said that because his son is mentally challenged, and stands approximately five to six feet tall, he likes to stand at the fence and watch the neighbors as they utilize the back yard and swimming pool area.

Mr. Salvaggio asked Mr. Rocha if his yard is elevated or do the two yards stand about the same. Mr. Rocha said that his yard sits higher than his neighbor's yard. Mr. Salvaggio asked how much of an elevation difference is there. Mr. Rocha said there is probably about three and a half feet difference.

Chairman Evans asked if there was anyone who would care to speak in against of this variance request.

Mark Hofmann, Neighbor
2919 Old Elm Lane
Germantown, TN 38138

Mr. Hofmann began by stating that he did not know if he is in favor or against this variance request. He said that he is kind of "on the fence" and has no issues with his neighbor. As he referred to the handwritten picture on the overhead, Mr. Hofmann pointed out a couple inaccuracies in terms of where the fence is. Per Mr. Hofmann, a tree is actually overlapping and is in the fence line; this is where the fence board was cut out because of a large maple tree branch coming through. He said it is hard to get to and could be sometimes problematic when trying to trim the branch.

Mr. Hofmann said what Mr. Rocha was saying in terms of his son was true; he does come out and pull on the tree limbs. Per Mr. Hofmann, that has never been an issue for him and his family.

Mr. Hofmann further stated that the fence height for the additional fencing is more than two feet. Per Mr. Hofmann, it looks more like three feet, which is really tall. He said aesthetically, the fence is not very pleasing. He feels that if a variance is granted, the additional fencing should go across the entire fence line and not just necessarily in one corner so that it will look more uniform.

Referring again to the overhead (picture from his back yard), Mr. Hofmann said there is about a three foot drop at the baseline of the fence. Per Mr. Hofmann, it is just about level from the back of the fence line to where the edge of his pool is. He said that you can't see immediately within the first six to eight feet over the fence line; you have to be fifteen to twenty feet back on Mr. Rocha's property to be able to see over the fence.

Valerie Hofmann, Neighbor
2919 Old Elm Lane
Germantown, TN 38138

Mrs. Hofmann said that she agrees with everything that her husband said. She stated, aesthetically, it is not pleasing to have half of a fence that is three to four feet higher than the six foot fence; it should be one full, uniform fence on the same posts.

James Bruce, Neighbor
2918 Sandy Creek Drive
Germantown, TN 38138

Mr. Bruce began by saying that he agrees with what Mr. Hofmann said. Per Mr. Bruce, it is not as much an issue with the fence as it is the aesthetics and Mr. Rocha's blatant disregard for Germantown's Code of Ordinances. Mr. Bruce advised that he has lived at his residence for eleven years and Mr. Rocha has lived at his address for approximately six or seven years. He said that he and his wife actually looked at buying the house now owned by Mr. Rocha prior to purchasing their home.

Referring to his handout, Mr. Bruce directed everyone's attention to a photo of a white fence in the rear of Mr. Rocha's property. He said that he would challenge the City to find where a permit was properly obtained for this fence as well. Mr. Bruce further stated that a storage building, also located in Mr. Rocha's rear yard is not aesthetically pleasing at all. He said the structure is in compliance now, however, as of last week and for several years it was located right up against the fence in violation of the three foot rule. Mr. Bruce also challenged the City to find a permit for an expansion that was done approximately six years ago to Mr. Rocha's bedroom. He said there is just an absolute pattern that Mr. Rocha has continued to exhibit.

Mr. Bruce then mentioned a red wall that was erected by Mr. Rocha. He said that Mr. Rocha apparently spoke with someone in Code Compliance and was given a permit because it is considered an "*open air arbor with a single wall.*" Mr. Bruce feels again, because of the non-pleasing aesthetics, this along with everything else will hurt his property value. He said that he understands that Mr. Rocha wants privacy, as he too wants privacy; however, he feels that things should be done aesthetically to where they do not negatively impact the property values of the neighbors. Per Mr. Bruce, he is not necessarily against Mr. Rocha having the fence, but as Mr. and Mrs. Hofmann stated, it needs to be more uniform and be done in a more professional manner.

Mr. Hofmann (returned to microphone) asked since one of the issues is privacy, if extending the fence was the only option. He said for example, planting nice barrier hedges or some other vegetation that would look more aesthetically pleasing and not necessarily affect the topography of the land would be something to consider that would allow more privacy.

Chairman Evans explained to Mr. Hofmann that we [Board] are not here tonight to negotiate alternatives. Per Chairman Evans, we have a variance request that has to be voted up or down. Chairman Evans advised the options that may or may not exist is something that the neighbors can work out if appropriate, according to the outcome of tonight's meeting.

Mr. Hofmann said that he understood and that he brought it up only as a point that there are other options to be considered, thus satisfying a zoning variance. Chairman Evans, said thank you, we understand.

Chairman Evans asked Mr. Rocha if he had any other comments. Mr. Rocha (returned to microphone) said that from the first time since he moved into his home, things always seem to come up. He feels that he is constantly being spied on by Mr. Bruce. Per Mr. Rocha, the City is there all of the time because of Mr. Bruce. He advised that the white fence was erected for the safety of his children. He further advised that he spoke with his neighbor in the back about the fence in question. The reason he did not build the fence all the way across was because neighbor was getting ready to put his home on the market. Mr. Rocha said he built the partial fence mainly for privacy; he does not feel comfortable with Mr. Bruce being able to see/look across at him at all of the time.

Mr. Salvaggio advised Mr. Rocha and Mr. Bruce as neighbors, they should try and work together. Mr. Salvaggio stated that he does not like to see neighbors fighting over things as silly as fences. Per Mr. Salvaggio, when things aren't done in a certain order, neighborly consideration should sometimes come into play; when tempers flare, this only adds to the problems that we already have.

Mr. Klevan stated that he will be voting no against the variance request. Per Mr. Klevan, when you have an ordinance and a variance is made, in most cases this sets precedence. Mr. Klevan said that if we were to allow something like this to take precedence, then others would follow; that's why you have ordinances.

Mr. Uhlhorn stated that he could certainly appreciate the fact that Mr. Rocha has a unique situation. He said that he could not fathom what Mr. Rocha has endured. Per Mr. Uhlhorn, although he is the most liberal member on the Board, there was nothing that he could do to help Mr. Rocha out.

Chairman Evans stated that he intended to vote no as well. He said that he has consistently voted no on items that come before the Board where people have done something without getting the appropriate permits in advance. Chairman Evans also stated that he has also consistently voted against eight foot fences.

PROPOSED MOTION: To approve a variance for 2928 Sandy Creek Drive to allow an existing fence along a 26 foot section of the rear property line to be eight feet in height in the "R" Residential zoning district, subject to staff comments and the site plan filed with the application.

Dave Klevan moved to approve a variance for 2928 Sandy Creek Drive to allow an existing fence along a 26 foot section of the rear property line to be eight feet in height in the "R" Residential zoning district, subject to staff comments and the site plan filed with the application. Alderman Palazzolo seconded the motion.

ROLL CALL: – Klevan – no; Mr. Uhlhorn – no; Ms. Boyd – absent; Mr. Salvaggio – no; Ms. Sherman – absent; Alderman Palazzolo – no; Chairman Evans – no

MOTION DENIED

Meeting Adjourned at 6:48 p.m.