

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
December 13, 2011
6:00 p.m.**

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

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

Interested Individual(s) present:

Delia Bossler – 7130 Stout Road, Germantown, TN 38138
Clarissa Bossler – 7130 Stout Road, Germantown, TN 38138
Paula Chapman – 9540 Wolf River Boulevard, Germantown, TN 38139
Larry & Margo Hastings – 9576 Cherry Laurel, Germantown, TN 38139
Elaine Tuomanen – 1893 Dogwood Hollow, Germantown, TN 38139
Lynn C. Clay – 1458 Bell Manor Drive, Germantown, TN 38139

Ms. Boyd 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

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 8, 2011 Minutes

Dave Klevan made a motion to approve the minutes from the July 12, 2011, meeting that was seconded by Alderman Palazzolo.

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

MOTION PASSED

SUBJECT: 7130 Stout Road – Request a Variance to Allow Fencing within the Required Front Yard to Exceed Thirty inches in Height in an “R” Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: Lot 1 of the Ellis Woods Subdivision was approved by the Germantown Planning Commission on March 1, 1977.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The principal structure was built in 1978.

PREVIOUS VARIANCES: The Board of Zoning Appeals approved a use on appeal to allow horses on June 10, 2008.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow two existing entrance gates within the required front yard to exceed thirty inches in height in an “R” Residential zoning district on the 3.7-acre property. The gates are four feet, ten inches in height and located 34 feet from the edge of the pavement, whereas the Zoning Ordinance requires a 40 foot setback for fences and gates of that height. Fences and gates within 40 feet of the front property line are limited to thirty inches in height.

The homeowner was first notified by Code Compliance staff on May 25, 2011 of the violation, and was notified again by letter on August 31, 2011. The letter is included with this information packet. She filed a variance application on October 13, 2011.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §6-102(b) of the Code of Ordinances, which states, “fences over 30 inches in height are not permitted within the required front yards of lots”. The property’s R zoning sets 40 feet as the required front yard.

APPLICANT’S JUSTIFICATION: The applicant explains that “the natural surroundings and landscape of the property covers the view of the house from the street, causing it to be more secluded. It is a great safety factor to have the two gates at the end of the driveways because it provides more security since we’ve had three break-ins in the last two years.” She also notes that “the space in front of the house is not wide enough to place the main gates at fifty feet from the middle of the street”.

STAFF COMMENTS:

1. The applicant has provided a site plan for the property, indicating that the existing gates are temporary and are to be replaced by wrought iron electric gates that are part of a three-rail fence with brick columns.
2. A photo of one of the existing gates is shown below.

Applicant Delia Bossler stated that the space in front the house is not wide enough to place the main gates fifty feet from the middle of the street. She said the natural surroundings and landscape of the property covers the view of the house from the street causing it to be more secluded. Per Ms. Bossler, this is especially important being that family has had three break-ins in the last two months.

Daughter Clarissa Bossler reiterated Ms. Bossler’s position by explaining that where the gate is situated now is the most appropriate place to keep vehicles out.

Andy Pouncey suggested that Ms. Bossler work with City Planners to come up with an alternative solution.

Board Members advised that the request for variance did not appear to have sufficient votes to be approved and recommended that the item be withdrawn.

ITEM WITHDRAWN BY APPLICANT

SUBJECT: 9540 Wolf River Blvd. – Request Approval of a Variance to Allow Fencing on a Lot without a Principal Structure in an “R” Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Dogwood Grove Subdivision, 4th Addition, Phase 2 was approved by the Shelby County Commission on April 25, 1988. It was annexed by Germantown in 1992.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The principal structure was built in 1961. The structure was incorporated into the Dogwood Grove subdivision with its approval.

PREVIOUS VARIANCES: none

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow the construction of a six foot tall wood privacy fence along the north property line of a vacant lot. The applicants own lots 1, 12, and 13 of the Dogwood Grove Subdivision, 4th Addition. Lot 1 contains their dwelling, Lot 13 contains a barn/storage building and Lot 12 is a pasture for the applicants’ horse, goats and other animals. The fence is to be built on the north property line of Lot 12. However, fences and other accessory structures are only allowed on lots with a principal structure.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-236(6), which states “Accessory buildings, structures and other accessory items and uses are not allowed on lots that do not have a principal building”.

APPLICANT’S JUSTIFICATION: The applicant explains that “the original fence (close to 18 years old) that is between my pasture and my neighbor has been cut to a shorter height by the new neighbor. I would like to regain my privacy I have always had plus be assured my animals stay in my pasture.”

STAFF COMMENTS:

1. A six foot tall wood fence was constructed on the property line by a previous owner of the lot to the north (Lot 11, 1893 Dogwood Hollow). The current owner of that lot removed the top two feet of a section of the fence. The ground-level photos reflect the current state of the fence.
2. The air photo reflects the fence as it existed in February, 2011.
3. The proposed six-foot fence will extend to the 40-foot front yard setback line.

Applicant Paula Chapman stated that she would like to change her existing wire fence to a wooden fence. She advised that the original fence which has been there for approximately 18 years was cut to a shorter height by a new neighbor. Ms. Chapman said approval of this variance would allow her to have privacy once again. Per Ms. Chapman, the new fence will ensure that animals that she keeps on her property are safe and will not escape.

Larry and Margo Hastings of 9576 Cherry Laurel also spoke in favor of the request for variance. Per the Hastings, there is no problem with erecting a new wooden fence on Ms. Chapman’s property.

Ms. Elaine Tuomanen of 1893 Dogwood Hollow spoke in opposition of the request. She stated that the structure would not allow her to see past it; the wooden fence, unlike the wire fence would block her view.

PROPOSED MOTION: To approve a variance on Lot 12 of the Dogwood Grove Subdivision, 4th Addition, Phase 2 to allow a fence on a Lot without a Principal Structure, subject to staff comments and the site plan filed with the application.

Frank Uhlhorn moved to approve a variance on Lot 12 of the Dogwood Grove Subdivision, 4th Addition, Phase 2 to allow a fence on a Lot without a Principal Structure, subject to staff comments and the site plan filed with the application. Alderman Palazzolo seconded the motion.

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

MOTION PASSED

SUBJECT: 1458 Bell Manor – Request a Variance to Allow Fencing within the Required Front Yard to Exceed Thirty inches in Height in an “R” Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Wilsford PUD was approved by the City of Germantown in April, 1994.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The principal structure was built in 1996.

PREVIOUS VARIANCES: none.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow the construction of a six foot tall wood fence within the required front yard, where thirty inches is the maximum allowed height for a fence. The Zoning Ordinance requires a setback of 40 feet from the property line for fences over 30 inches in height. The applicant proposes to construct a fence to connect the corner of the house to an existing wrought-iron fence that is part of the Wilsford PUD entrance wall. A 10 foot section of the fence will be at the front yard setback line (40 feet), and thus is allowed by current regulations. A twelve foot section, also six feet in height, will be within the required front yard and requires approval of a variance.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §6-102(b) of the Code of Ordinances, which states, “fences over 30 inches in height are not permitted within the required front yards of lots”. The property’s R zoning sets 40 feet as the required front yard.

APPLICANT’S JUSTIFICATION: The applicant explains that she is requesting the variance for her elderly mother who resides at the house and has alzheimer’s disease. “Alzheimer’s patients have a tendency to wander from their homes when in a lucid state. Mother frequently goes into the backyard to look at flowers, bird feeders and plants. We are wanting to enclose her back yard in an attractive manor to keep her from wandering and getting lost.”

STAFF COMMENTS:

1. The applicant has provided a site plan for the property, indicating the proposed fencing. Staff has highlighted the section which complies with current regulations and the section for which a variance is sought. An alternative location that complies with current regulations has been added.
2. The Wilsford PUD homeowners association has approved the fence.

Chairman Evans addressed the audience and asked was there any opposition to the variance request. Board Members then proceeded to vote on the request for variance.

PROPOSED MOTION: To approve a variance to allow fencing within the required front yard of 1458 Bell Manor to exceed thirty inches in height, subject to staff comments and the site plan filed with the application.

Dave Klevan moved to approve a variance to allow fencing within the required front yard of 1458 Bell Manor to exceed thirty inches in height, subject to staff comments and the site plan filed with the application. Pat Sherman seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:45 p.m.