

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
January 10, 2012
6:00 p.m.**

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Andy Pouncey, Director of Economic and Community Development; Mr. Alan Strain, Attorney; Tony Fisher, IT Director; John Selberg, Fire Chief; Richard Hall, Chief of Police; Ms. Carmen Richardson, Secretary

Interested Individual(s) present:

Mr. Kevin Vaughn – 260 Revell Pointe, Collierville, TN 38017
Lou Katzerman – 4091 Viscount Avenue, Memphis, TN 38118
Lucy Cromer – 1930 Hampstead Lane, Germantown, TN 38139

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 2012 is as follows: Henry Evans

Motion: Dave Klevan Seconded By: Frank Uhlhorn

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

MOTION PASSED

2. Nomination for Vice-Chairman of the Board of Zoning Appeals for 2012 is as follows: Elizabeth Boyd

Motion: Frank Uhlhorn Seconded By: Dave Klevan

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

MOTION PASSED

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 December 13, 2011 Minutes

Dave Klevan made a motion to approve the minutes from the December 13, 2011, meeting that was seconded by Pat Sherman.

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

MOTION PASSED

SUBJECT: St. George’s School, 8250 Poplar Ave. - Request Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed Thirty Inches in Height in the “R” Residential zoning district

BACKGROUND: The property was formerly the home of St. George Episcopal Church and St. George’s Day School. In 2007 the church relocated to its current site on Germantown Rd. and St. George’s School took over the entire property.

PREVIOUS VARIANCES: March 12, 1996 – the BZA approved a Use on Appeal for expansion of the school area; March 10, 1998 – the BZA approved a Use on Appeal for expansion of the playground and one building; May 14, 2002, the BZA approved a Use on Appeal to allow the expansion of the existing school facilities and approved a parking variance to allow 13 spaces instead of the 18 that would be required by the Zoning Ordinance.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow the construction of a 4½ 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 4.5 foot tall, wooden, three-rail fence along the Poplar Ave. and Dogwood Rd. frontages.

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 “we need to provide a physical boundary that will enclose the campus to enhance the safety of our students while they are outside..... (W)e believe that installing the fencing on the north edge of the drainage easement and concrete swale along Poplar Avenue would be the most functional and aesthetically pleasing.” The applicant’s letter describing the proposed fence is attached.

STAFF COMMENTS:

1. The applicant has provided a site plan for the property, indicating the approximate location of the proposed fencing, and a diagram of the fence and gate design.
2. The proposed fence along Poplar Avenue is to be constructed along the north side of the drainage easement and concrete swale, which is approximately twenty feet from the property line and sidewalk. The proposed fence along Dogwood Road is to be constructed five feet behind the

property line/sidewalk, except at the retaining walls and as may be necessary to accommodate existing trees. The existing six foot-tall stockade fence along a section of the Dogwood Rd. frontage will be removed.

3. The applicant will present the fence plans to the Design Review Commission for approval of the design, material and paint, prior to construction.
4. The exact location, operation and emergency access devices of all gates shall be reviewed/approved by the city of Germantown, prior to construction.
5. The applicant will obtain a fence permit from the City of Germantown prior to construction.

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

**Kevin Vaughn, Representative
Township Development Services
260 Revell Pointe
Collierville, TN 38017**

Mr. Vaughn stated that he is proposing that existing fences on Dogwood be replaced with a uniform fence that would surround the entire campus. The location of the fence (five feet beyond sidewalk) not only keeps it away from the trees that are along Dogwood but also prevents interference with the play structures and other things that are on the campus. This location also prevents any alteration of an existing landscaping buffer that is located further east where soccer and play fields are located.

Mr. Vaughn said because of an extensive drainage easement that sits approximately twenty-five feet into the property (on Poplar), he is asking that the fence be brought up from forty feet to twenty-five feet. Per Mr. Vaughn, this will not only prevent the encroachment on a graded off playfield but will also raise the profile of the fence to drivers along Poplar Avenue providing a better view of the facility.

Mr. Vaughn said that he is asking that this variance be granted on the grounds of existing topography of the site which will allow a better, more aesthetic design.

Mr. Klevan asked Mr. Vaughn about the placement of gates. After much discussion between Mr. Klevan and Mr. Vaughn regarding the placement of a twenty foot gate within the twenty foot mark that is off of Poplar Avenue it was determined that concerns and issues will need to be addressed, especially those pertaining to emergency and service vehicles that would require entry through the gates.

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

No one came forward.

PROPOSED MOTION: To approve a variance to allow fencing and associated columns within the required front yards to exceed thirty inches in height at St. George's School, at 8250 Poplar Ave., subject to staff comments and the site plan filed with the application.

Frank Uhlhorn moved to approve a variance to allow fencing and associated columns within the required front yards to exceed thirty inches in height at St. George's School, at 8250 Poplar Ave., subject to staff comments and the site plan filed with the application. [inaudible] seconded the motion.

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

MOTION PASSED

SUBJECT: 2932 Johnson Road (Johnson Road Park) – Request a Variance to Allow an Extension to an Existing Wireless Transmission Facility to Exceed 100 feet in Height in the “R-E” Residential Estate zoning district

BACKGROUND: The WTF was approved in 2005 as Project Development Contract 1115.

PREVIOUS VARIANCES: On September 14, 2004, the BZA approved a variance to allow a 120 foot tall wireless transmission facility tower.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow two antennas, each twenty feet in height, to be added to the top of the existing tower. The new antennas will bring the tower’s total height to 140 feet. The new antennas will be only for the use of City of Germantown fire, police and public service communication and are part of a emergency communications master plan to assure both “talk- to” and “talk-from” capabilities within residential and light commercial buildings.

A new central communications tower within Morgan Woods/Cloyes Park near the center of Germantown, and a new tower near the northwest corner of the city are also part of the master plan.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-86(h)(3), which sets a maximum height for WTF towers of 100 feet. The existing tower is 120 feet in height (approved by a variance in 2004), and the proposed addition will increase the height to 140 feet, so that a variance of 40 feet is required.

APPLICANT’S JUSTIFICATION: The applicant explains that moving the City’s existing antennas to the top of the tower will “allow the EMS to better serve the citizens of Germantown, improving both the transmission and reception of EMS and other public services.”

STAFF COMMENTS:

1. The two new antennas will be for the use of City of Germantown emergency and public service communication.
2. The City’s antennas are currently at the 100 foot elevation on this tower. When the antennas are relocated, the 100 foot elevation space will be available for lease to other, private cell service providers.

**Tony Fisher, IT Director
City of Germantown**

Mr. Fisher began by stating that the City’s current radio system design was created over thirty years ago. He said since that time the City has experienced significant changes that have impacted public safety communications such as expansion of [inaudible], the construction of some commercial buildings that contain large amounts of concrete and steel and the installation of mobile phone towers, each impacting and causing interference to our radio signals. Per Mr. Fisher, in January, 2008 the Fire Department hired a communications company to figure out ways to improve the City’s radio system. He said although the group worked long and hard, the results/changes proved to be minimal. Mr. Fisher further advised that in

June, 2010, a City Public Safety group was hired. This committee recommended that a professional radio consultant be hired to assist in resolving the radio/communication problems. Mr. Fisher said that in December, 2010, the consulting firm Owens and Associates was brought in to analyze the current system and develop recommendations. Several designs such as the use of water towers and building a facility at the City's vehicle maintenance shop were looked at however, many proved to be undesirable because of nearby local plumbing antennas and the close proximity of homes in the area. Also, building a single facility in the middle of the City was considered. This would require a facility of two hundred and sixty feet in height with flashing lights to warn over passing air craft. Per Mr. Fisher, current sites that have been selected provide optimal public safety radar coverage for the City with minimal impact to the residents in the area; this design also allows the City to limit the number of facilities as it could take five to seven total, if they are kept below one hundred feet.

**John Selberg, Fire Chief
City of Germantown**

Chief Selberg said that the City has been trying to maintain the current radio system for way too long. He advised that the current system equipment is very old and some of the parts are not maintained anymore by Motorola. Chief Selberg further stated that with the current system, there is a problem with reception throughout the City, particularly in some buildings such as UT Medical Group and other hospitals. He said we really need to find a way to provide antennas with good reception; the new system will eliminate the current problem of picking up transmissions from other areas such as Cape Girardeau, Missouri, and Huntsville, Alabama. He also advised that the proposed system will increase coverage to at least ninety-five percent throughout the City thus making it more reliable especially for safety purposes. Chief Selberg stated that the new system will allow firemen and police officers to be on the same frequencies thereby allowing both groups to communicate directly with each other. The proposed system will also meet current radio assistance standards by the FCC and will provide good infrastructure and foundation for future predecessors.

**Richard Hall, Chief of Police
City of Germantown**

Chief Hall began by addressing the noise and static that is heard on the radio. He said this is especially not good and is unsafe when responders are on the walkie-talkies entering a building. Per Chief Hall, the proposed system will not only aid in decreasing this type of interference, but will also eliminate the use of a voting receiver tower by allowing the fire department, police department and surrounding agencies to communicate on the same channel. Chief Hall spoke about "in building" coverage. He said that very high fields in the fire department and an ultra high frequency used by the police department causes an imprint of bands and waves that does not allow penetration of a building when there is a little over a foot of the wave width of [inaudible].

**John Selberg, Fire Chief
City of Germantown
(Returned to Microphone)**

Mr. Klevan asked Chief Selberg what constitutes the remaining five percent coverage or what would it take to get one hundred percent. Chief Selberg said that he does not exactly know. Per Chief Selberg, there are going to be some issues with reception especially for inside coverage in buildings. He said that for outside coverage, there should be one hundred percent coverage throughout the City of Germantown.

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

Lou Katzerman, Representative
Tower Ventures
4091 Viscount Avenue
Memphis, TN 38118

Mr. Katzerman stated that a variance would be needed in order to move the antennas up. This will improve the EMS coverage in the City of Germantown and will also allow another cellular carrier making this a win-win situation for everyone involved. Per Mr. Katzerman, customers such as residents in the Poplar and Forest Hill Irene Road area are having certain phone issues which generate the need for new towers with as much height as possible.

Chairman Evans emphasized that the additional extension that is being requested will be exclusively for the City of Germantown Public Safety.

Lucy Cromer, Resident
1930 Hampstead Lane
Germantown, TN 38139

Ms. Cromer stated that she has lived in Germantown for over thirty years. She agreed that police and fire departments are both in need of an extension of the existing wireless transmission facility. However, per Ms. Cromer, her only concern is that the City is possibly setting a precedent for private users. She said if this variance is approved we may be setting ourselves up for possible lawsuits in that private companies will come in and automatically demand that towers be raised an additional height just because it has been done in the past. She also stated that in theory, this is definitely what the City needs, however as things are done for the City of Germantown's public communications, it could well be used as a way for the private sector/enterprises to "piggy back" its way in and demand the same type requests.

Chairman Evans said to Ms. Cromer that her concern is not only noted, but is one that has been adamantly discussed. He said the intent of this Board is to make sure that a door is not opened to cell towers for commercial use that are going above the one hundred foot level in which the ordinance requires/stipulates for the City. Per Chairman Evans, attorneys have reviewed the language so that it will protect the City; it is to be used solely for Germantown's public safety and communications.

Andy Pouncey followed in on Chairman Evans by advising that part of his statement referred to *this* tower on *this* island when he said above one hundred feet. Per Mr. Pouncey, a certain distance pertains to this particular tower; however on the other tower (Morgan-Woods Park and Cloyes Park) the entire structure is being considered and will be referred to as a "Public Communications Facility."

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

No one came forward.

PROPOSED MOTION: To approve a variance to allow the addition of two antennas, each twenty feet in height and for the exclusive use of city of Germantown emergency and public services communications, to the existing 120 foot tall Wireless Transmission Facility tower at Johnson Road Park, subject to staff comments and the site plan filed with the application.

Dave Klevan made a motion to approve a variance to allow the addition of two antennas, each twenty feet in height and for the exclusive use of city of Germantown emergency and public services communications, to the existing 120 foot tall Wireless Transmission Facility tower at Johnson Road Park,

subject to staff comments and the site plan filed with the application. Frank Uhlhorn seconded the motion.

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

MOTION PASSED

SUBJECT: Morgan-Wood Park and Cloyes Park (south side of Poplar Pike, east of Melanie Smith Lane) – Request Approval of a Use on Appeal for a Municipal Use Consisting of a Public Communications Facility in the “R” Residential zoning district

BACKGROUND: Cloyes Park totals 14 acres in area and was acquired from Harry and Rebecca Cloyes in 1976. There are currently two water wells, two lighted soccer fields, restroom facilities and one wireless transmission facility within the park. Morgan Wood Park is 14.38 acres in area and was acquired in 1975. It is primarily woods, with an asphalt pathway along the eastern boundary.

PREVIOUS VARIANCES: none

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The City of Germantown requests a Use on Appeal to allow a 180 foot tall facility that will support antennas only for the use of City of Germantown fire, police and public service communication. An equipment building will be placed at the base of the tower. The facility is proposed in response to Federal Communications Commission requirements for conversion to a narrow band communications system, and is part of a emergency communications master plan to assure both “talk-out” and “talk-in” capabilities within residential and light commercial buildings. The facility and equipment building are to be constructed beside the existing water well near the north-south access drive connecting Poplar Pike to Cross-Country Drive.

The City of Germantown hired a communications consultant to study the city’s mobile communications needs and make recommendations on improvements. The consultant recommended three sites for facility: a 100 foot tall facility in the northwest area of the City, a 120 foot tall facility in the east section (Johnson Road Park) and on the top of the water tower at the 165 foot elevation. Signal conflicts with existing cell antennas on the water tower have removed that location from consideration. The proposed central communications facility within Morgan Woods/Cloyes Park near the center of Germantown replaces that location.

The attached maps illustrate the three recommended sites and the coverage provided by each one. The goal is to provide coverage within commercial and residential buildings. In addition, City staff conducted a balloon test from the site by raising a balloon to the height of the tower to determine its visibility from surrounding property. Photos of the balloon are attached.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is addressed under section 23-228 (Uses Permitted on Approval of the board of zoning appeals). That section lists various uses such as religious institutions, public and private schools, and public utilities that are allowed within the R district provided they meet certain criteria: 1) located on a route designated as either a major street or a collector street; 2) impair an adequate supply of light and air to adjacent properties; 3) unreasonably increase the congestion of public streets; 4) increase the danger of fire and endanger public safety; 5) in any other way impair the public health, safety comfort or welfare.

APPLICANT’S JUSTIFICATION: The proposed site has the following characteristics:

1. The facility and associated antennas will be built by the City and will be **ONLY FOR CITY USE** by Police, Fire and Public Service Departments;
2. The site’s elevation of 377 ft. is very close to the highest elev. in city (397 ft.);
3. The site is near the geographic center of Germantown;
4. The site is part of a network of 3 towers to provide adequate “talk-out” and “talk-in” coverage from light commercial buildings and residential buildings;
5. Using the existing water tower for the City’s antennas is not possible because of interference between existing cell antennas and the City’s proposed antennas.
6. The current communications system has gaps in coverage area. There are recorded instances where communications into and/or out of non-residential buildings and sites (Target store, Shoemaker Financial building, Houston High School, UT Medical Building, Methodist Hospital) were not possible.
7. The communications facility complies with the Use on Appeal criteria:
 - a. Poplar Pike is a collector street;
 - b. The balloon test photos indicate that the facility will be visible from only a limited area outside City property;
 - c. Traffic to be generated during construction and maintenance will use the access road into the park and Poplar Pike;
 - d. Construction of the facility and associated antennas will increase public safety and improve public comfort and welfare by improving public safety communications.

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

No one came forward.

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

No one came forward.

PROPOSED MOTION: To approve Use on Appeal for a public communications facility for the sole purpose of public safety and public services communications only, to be constructed in Morgan Wood and Cloyes Parks, subject to staff comments and the site plan filed with the application.

Dave Klevan made a motion to approve a Use on Appeal for a public communications facility for the sole purpose of public safety and public services communications only, to be constructed in Morgan Wood and Cloyes Parks, subject to staff comments and the site plan filed with the application. Henry Evans seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:48 p.m