

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

**May 8, 2012
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. Andy Pouncey, Director of Economic and Community Development; Ms. Carmen Richardson, Secretary

Interested Individual(s) present:

Mr. Martin Bossler – 7130 Stout Road, 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 March 13, 2012 Minutes

Dave Klevan made a motion to approve the minutes from the March 13, 2012 meeting that was seconded by Alderman Palazzolo.

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

MOTION PASSED

Chairman Evans made an announcement that Agenda Item #3 (City of Germantown Fleet Services Building) had been withdrawn and would not be heard tonight.

Andy Pouncey announced that C-Spire (Agenda item # 4) would like to meet with residents and church members to give them a better understanding and provide in detail the coverage that will be provided by the tower and the accessibility for this same type service in adjacent areas. Item was withdrawn and deferred until next month.

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.

This request was initially presented to the BZA on December 13, 2011. After some discussion the BZA suggested the applicant withdraw the request from that agenda and allow staff to visit the site and offer suggestions on a suitable location for the proposed fence and gate. Staff's suggested location for a fence is shown in the attached photos (2 through 6). Mr. Pouncey is standing at the suggested location of the gate and fence.

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, and approximately 20 feet from the property line. 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 in photo no. 1.
3. Staff's suggested location for a fence is shown in the attached photos (2 through 6). Mr. Pouncey is standing at the suggested location of the gate and fence.

After much discussion on Agenda Item #2 (7130 Stout Road), it was determined that Board members had a different perspective and/or view on what was being presented by staff. There was much concern as to where the gate should be located.

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

Martin Bossler
7130 Stout Road
Germantown, TN 38138

Mr. Bossler advised that he and family have encountered several problems with the fence being located where it is at the present time. He said that as soon as the gates are opened, all that is there is a straight line. Mr. Bossler said the parking area for guest vehicles will be completely lost if he has to move the fence. He further stated that he would like to locate the gate twenty feet from the property line and then turn the fence in at ninety degrees. Per Mr. Bossler, putting it here provides more space to turn the cars around.

After Mr. Salvaggio suggested that it may be more appropriate to split the difference by placing the gate with a five foot offset, Chairman Evans announced that the Board is not here tonight to design or redesign; we are supposed to be here tonight to either approve or deny the variance. He said that he would not be voting to approve the gates where they are; this is what we had objection to the first time around. Chairman Evans said that if there is an opportunity to reconfigure the fence and the gates, then that is an issue that staff and Mr. Bossler would need to address, not the Board. He further stated that the Board's task is to look at what's before us and vote it up or down.

Mr. Klevan said that based on photo #6 (approximate locations of gate and fence) he was comfortable with voting for the variance. However, once presented, his interpretation changed and therefore would be voting "no."

Mr. Bossler said at this time he would like to look at some other opportunities/ways to design fence.

Mr. Pouncey said that he and staff would be glad to work with him.

Chairman Evans thanked Mr. Bossler for his patience and reassured him that staff and Board members would work hard to come up with a solution.

ITEM WITHDRAWN

Meeting Adjourned at 6:28 p.m