

**BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
March 13, 2012  
6:00 p.m.**

**COMMISSION PRESENT:**

Mr. Henry Evans; Ms. Boyd; Mr. David Klevan; Alderman Palazzolo; Frank Uhlhorn; Patricia Sherman

**DEVELOPMENT STAFF PRESENT:**

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

**Interested Individual(s) present:**

Sammie Stover – 8833 Three Chimneys Drive E., Germantown, TN 38138

Jarred Wilder – 1020 Bray Station Road, Collierville, TN 38017

Bob Howard – 7265 Claiborne Drive, Germantown, TN 38138

Charles Goforth – 60 Germantown Court, Ste. 100, Memphis, TN 38018

Susan Wallace Glassman – 7787 Dogwood Road, Germantown, TN 38138

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

**ROLL CALL:** – Ms. Boyd – present; Alderman Palazzolo – present; Mr. Salvaggio – absent; Ms. Sherman – present; 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 February 14, 2012 Minutes**

Dave Klevan made a motion to approve the minutes from the February 14, 2012, meeting that was seconded by Elizabeth Boyd.

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

**MOTION PASSED**

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**SUBJECT:** 9137 Belle Fluers Drive – 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 3 of the Provence Place Subdivision was approved by the Germantown Planning Commission in May, 2004.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: not yet built.

PREVIOUS VARIANCES: none.

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The applicant is requesting a variance to allow the construction of a 6 foot tall brick fence, with 6 foot, 4 inch columns, within the required front yard. Approximately 66 feet of the fence will be within the required front yard. 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.

**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.

**SUMMARY OF APPLICANT’S JUSTIFICATION:** The applicant explains that “the front brick fence is part of the design of the house.”

**STAFF COMMENTS:**

1. The proposed brick fence is highlighted on the attached house site plan and front elevation.

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

**Sammie Stover, Applicant/Representative  
8833 Three Chimneys Drive E.  
Germantown, TN 38138**

Mr. Stover began by submitting a letter of approval received from Home Owner Association president, Mr. Richard Graham. He said because he [designer, Jeff Green] did not do his homework and consider appropriate setbacks is the reason why he is here tonight.

Chairman Evans advised Mr. Stover that we operate under regulations that give us some flexibility in terms of granting variances; the underlying issue is whether or not [inaudible] variance creates a hardship for the property owner. He further advised that as a Quasi-Judicial Body, to start granting these types of variances would set a standard that undermines the City’s basic Ordinance. Chairman Evans then asked what Mr. Stover’s comments/thoughts were on these particular concerns.

Mr. Stover said the hardship would be the topography of land and that the structure will create a small courtyard that will be used as a garden area.

Mr. Uhlhorn said that as a builder he recognized this type design where the walls are added on afterwards. He said the problem here is that we can’t grant this variance because it is a violation of the required setback for a front yard fence.

**Jarred Wilder, Representative  
1020 Bray Station Road  
Collierville, TN 38017**

Mr. Wilder advised because his client is an unexpected widow, she is requesting that the proposed structure for the courtyard area be constructed of brick instead of using hedges due to less maintenance. Chairman Evans said unfortunately, her desire to create less maintenance is not something that justifies a variance.

Mr. Klevan stated that he is not opposed to the proposed brick fence; the problem is that the variance allows you to create a fence that exceeds thirty inches in height and that’s it; there are no parameters after that. He said the problem is not that it looks good, but it’s the loop holes that exist.

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 a fence with the required front yard to exceed thirty inches in height at 9137 Belle Fluers Drive, subject to staff comments and the site plan filed with the application.

Elizabeth Boyd made a motion to approve a variance to allow a fence with the required front yard to exceed thirty inches in height at 9137 Belle Fluers Drive, subject to staff comments and the site plan filed with the application. Pat Sherman seconded the motion.

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

### **MOTION DENIED**

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**SUBJECT:** 7265 Claiborne Dr. – Request a Variance to Allow Fencing to Exceed Six Feet in Height in an “R” Residential zoning district

### **BACKGROUND:**

**DATE SUBDIVISION APPROVED:** Lot 21 in the Mimosa Gardens Subdivision, Section A was approved by the Germantown Planning Commission in 1964.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The principal structure was built in 1967.

**PREVIOUS VARIANCES:** None

### **DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The applicant is requesting approval of approximately 34 feet of existing fence that exceeds the 6 ft. maximum height limit. The fence is a wood stockade fence.

The homeowner was notified of the violation by Code Compliance staff on December 28, 2011, and filed a variance application on February 2, 2012.

**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.”

**SUMMARY OF APPLICANT’S JUSTIFICATION:** The applicant bases the variance request on the exceptional topographic conditions of his lot. He states “Due to the slope of the lot, in order to have a six foot privacy fence from the pool deck the replacement fence needed to be 8 feet. For aesthetics, the width was limited to 34 feet.” See the attached application for more information.

### **STAFF COMMENTS:**

1. The homeowner constructed the section of fence in question. Photos of the fence are attached.

**BACKGROUND:**

DATE SUBDIVISION APPROVED: Lot 21 in the Mimosa Gardens Subdivision, Section A was approved by the Germantown Planning Commission in 1964.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The principal structure was built in 1967.

PREVIOUS VARIANCES: None

**DISCUSSION:**

NATURE OF VARIANCE REQUESTED: The applicant is requesting approval of approximately 34 feet of existing fence that exceeds the 6 ft. maximum height limit. The fence is a wood stockade fence.

The homeowner was notified of the violation by Code Compliance staff on December 28, 2011, and filed a variance application on February 2, 2012.

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."

SUMMARY OF APPLICANT'S JUSTIFICATION: The applicant bases the variance request on the exceptional topographic conditions of his lot. He states "Due to the slope of the lot, in order to have a six foot privacy fence from the pool deck the replacement fence needed to be 8 feet. For aesthetics, the width was limited to 34 feet." See the attached application for more information.

**STAFF COMMENTS:**

1. The homeowner constructed the section of fence in question. Photos of the fence are attached.

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

**Bob Howard, Applicant**  
**7265 Claiborne Drive**  
**Germantown, TN 38138**

Mr. Evans asked Mr. Howard when was the fence constructed. Mr. Howard said that he believes it was built in August. He advised that some of the fence had to be taken down while a pool was being installed; when the fence was being re-erected, an architect friend standing on the deck realized that the four feet fence allowed a person to look right over into the neighbor's yard. He also said the yard slopes dramatically down from the pool, right to left. Per Mr. Howard, this is strictly a matter of trying to create the perception of a six foot while standing on the pool deck.

Chairman Evans asked Mr. Howard at any point and time did it occur to him that a permit was needed to build an addition to fence that was already there. Mr. Howard said no, it did not. He stated that he did not think there was a restriction to the height of the fence at all.

Mr. Evans said he does not know how everyone else will proceed to vote on this however, he has been consistent with people who have built structures of any kind without a permit and then come in afterwards to ask for permission. He said he typically votes against those type variances and has consistently voted against eight foot fence variance request.

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

No one came forth.

**PROPOSED MOTION:** To approve a variance to allow a 24 foot-long section of existing, eight foot tall fence at 7265 Claiborne Dr., subject to the site plan filed with the application and staff comments.

Dave Klevan made a motion to approve a variance to allow a 24 foot-long section of existing, eight foot tall fence at 7265 Claiborne Dr., subject to the site plan filed with the application and staff comments. Elizabeth Boyd seconded the motion.

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

### **MOTION DENIED**

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**SUBJECT:** City of Germantown Fleet Services Building, 7726 Southern Avenue – Request Approval of a Use on Appeal for a Municipal Government Use in the “R-3” Residential zoning district

**BACKGROUND:** the site totals 2.74 acres in area and was acquired by the City in 2010.

PREVIOUS VARIANCES: none

### **DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The City of Germantown requests a Use on Appeal to allow a municipal use, to consist of a 11,935 square foot building for maintenance of the City’s fleet of vehicles and equipment. The building will contain an office area on the Southern Ave. frontage and 6 drive-through bays. A storm water detention basin is to be provided at the rear of the site adjacent to an existing lake.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is addressed under section 23-303 (Uses Permitted on Approval of the board of zoning appeals). That section lists various uses such as religious institutions, public and private schools, **municipal, county, state or federal uses**, and public utilities that are allowed within the R-3 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:** See attached letter from Charles Goforth.

### **COMMENTS:**

1. The segment of Southern Ave. functions as a collector street and serves existing municipal uses including the Animal Shelter, Public Services Complex and City Water Treatment Plant, and New Bethel Baptist Church, an institutional use.
2. The building is 170 feet from the north property line and 100 feet from the east property line. The building’s parking area is 550 feet from the nearest existing residential buildings, and further buffered by a pond at the rear of the site so that the supply of light and air to adjacent properties is not impaired, and public health, safety and welfare are not impaired.

3. The City's current vehicle maintenance facility is located approximately 400 feet to the west, also on Southern Ave. Traffic will continue to use Southern Ave., so use of the proposed site for a vehicle maintenance facility will not add to congestion on the street.

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

**Charles Goforth, Representative**  
**Barge Waggoner Sumner & Cannon, Inc.**  
**60 Germantown Court, Suite 100**  
**Memphis, TN 38018**

Mr. Goforth advised that the old fleet services facility will be part of the warehouse building where goods will be stored. Per Mr. Goforth, as of now, a fire truck will not fit in the present fleet services spaces. If a fire truck is being worked on, it has to sit out front and the door has to be open during the repair process. Mr. Goforth also advised that the property is in a residential classification and needs a special exception to allow its use. He said the property is uniquely located because it is right by the railroad. Per Mr. Goforth, the building has been completely shifted to the front and the lake is in the back. He said there will be a retention basin between the building and the lake to catch the silt and storm water. Also, an oil water separator will be put in the area just outside the building to make sure that retained runoff does not contain any gasoline or other contaminants that may go into the system. Mr. Goforth further stated that the front of the proposed building and the roof will match the existing public services building and water plant. He said the new fleet maintenance building will have six bays with an awning on both sides to provide minimal shelter; there will patches right above the awnings to allow light into the building.

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

**Susan Wallace Glassman, Resident**  
**7787 Dogwood Road**  
**Germantown, TN 38138**

Ms. Glassman stated that her property is going to be the most impacted if this variance is granted. She advised that she is not for, nor is she opposed to the variance; she only wants some additional information from Mr. Goforth. She is in hopes that the Planning Commission will keep an eye on this particular project because Dogwood Road is the last bit of that type of property left in Germantown. Per Ms. Glassman, the property is not just special because of the way it looks on the Dogwood side, but behind it as well. She advised that there are not only people who have horses, but a pond is located there as well. Ms. Glassman said she wants to make sure this facility is not only far away from the Dogwood property area but also that some sort of barrier would be erected as well. Per Ms. Glassman, she and residents have talked with the City about taking some of the property so there would be adequate space for the residents on the other side of the pond. She further stated that she and residents are also very concerned about the noise level.

Chairman Evans advised that the actual design features relative to this facility are the responsibility of the Planning Commission. He said all that we will do tonight is authorize the use on appeal, which certainly does fit our criteria for the proposed facility.

Mr. Goforth (returned to microphone) responded to Ms. Glassman by advising that plans have been submitted for Planning Commission approval at the April 3<sup>rd</sup>, 2012 meeting. Per Mr. Goforth, the Finance Department will be setting up a meeting with residents prior to that meeting.

Mr. Klevan encouraged Ms. Glassman to come and sit in on the discussion regarding the new facility at the upcoming Planning Commission Sub Committee meeting which is to be held on next Wednesday evening at 5:30 p.m.

Mr. Goforth further advised that landscaping plans have been scheduled to go before the Design Review Commission as well.

**PROPOSED MOTION:** To approve Use on Appeal for a municipal use, consisting of a fleet services maintenance facility, at 7726 Southern Ave., subject to staff comments and the site plan filed with the application.

Elizabeth Boyd made a motion to approve Use on Appeal for a municipal use, consisting of a fleet services maintenance facility, at 7726 Southern Ave., subject to staff comments and the site plan filed with the application. Alderman Palazzolo seconded the motion.

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

**MOTION APPROVED**

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**Meeting Adjourned at 6:29 p.m**