

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

**August 14, 2012**

**6:00 p.m.**

**COMMISSION PRESENT:**

Mr. Henry Evans; Ms. Elizabeth Boyd; Mr. Tony Salvaggio; Alderman Palazzolo; Frank Uhlhorn; Ms. Patricia Sherman; Mr. Dave Klevan

**DEVELOPMENT STAFF PRESENT:**

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

**Interested Individual(s) present:**

Belinda Bodie – 2749 1811 Auburn Avenue, Monroe, LA 70201  
Robert J. Pierce – 540 Atway Drive, Brandon, MS 39043  
John David Romine – 8539 Farmington Cove, Germantown, TN 38139  
William Hearn – 8534 Farmington Cove, Germantown, TN 38139  
Chris McDermott – 1999 Cordes Road, Germantown, TN 38139  
J. Harold Cagle – 1957 Cordes Road, Germantown, TN 38139  
David Cerbu – 2016 Cordes Road, Germantown, TN 38139  
Adam Cartwright – 78792 Summer Avenue, Bartlett, TN 38133

---

Chairman Evans 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 – 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 July 10, 2012 Minutes**

Elizabeth Boyd made a motion to approve the minutes from the July 10, 2012 meeting that was seconded by Alderman Palazzolo.

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

**MOTION PASSED**

---

**SUBJECT:** Farmington Park, 2107 Cordes Road – Request Approval of a Use on Appeal for a Wireless Transmission Facility in the “R” Residential zoning district

**BACKGROUND:** The master plan for Farmington Park was prepared in October, 1975 for the Shelby County School Board.

**PREVIOUS VARIANCES:** None.

**DISCUSSION:**

**NATURE OF USE REQUESTED:** Wireless Transmission Facilities (WTF) are allowed in residential zoning districts if they meet the criteria for a use on appeal and the specific site design and procedural requirements for a WTF. The site of the proposed WTF is on the north side of the park, in the location of an existing light pole for the soccer field. A 20 ft. by 30 ft. lease area to the east of the tower and adjacent to the tennis courts will contain the equipment for the C-Spire antennas and future antennas. C-Spire proposes to replace one of the existing 70 foot tall light poles with a 100 foot tall monopole tower. Lights would be re-installed at the 70 foot elevation and the additional 30 feet would be available for cellular antennas.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** Section 23-228 describes the criteria for a use on appeal within the R district: it must be

- 1) located on a route designated as either a major street or a collector street;
- 2) does not impair an adequate supply of light and air to adjacent properties;
- 3) does not unreasonably increase the congestion of public streets;
- 4) does not increase the danger of fire and endanger public safety;
- 5) in any other way impair the public health, safety comfort or welfare.

Section 23-86 describes the specific technical requirements for a WTF within a residential district:

- 1) the parcel must have a minimum of 200 feet of public street frontage;
- 2) the tower must be setback from property lines a minimum distance of the tower's height plus 10 feet;
- 3) all associated buildings and structures must meet the minimum setback distances of the zoning district;
- 4) the maximum tower height is 100 feet;
- 5) a minimum buffer strip of 50 feet is required on the outer perimeter of property;
- 6) the applicant's engineer must provide documentation that the WTF meets or exceeds the ANSI standards for radio frequency emissions.

In addition, the Planning Commission must review/approve a site plan, the Design Review Commission must review/approve a landscaping and fencing plan and the appearance of the tower, and the Board of Mayor and Aldermen must approve a development contract for the construction of the tower and the associated equipment compound.

**APPLICANT'S JUSTIFICATION:** see the attached application and letter.

**COMMENTS:**

1. The proposed wireless transmission facility meets the technical criteria of site location, setback and tower height requirements, buffer requirements, and ANSI standards.

2. If the use on appeal is approved by the Board of Zoning Appeals, the proposed tower shall proceed to the Planning Commission for site plan approval, the Design Review Commission for landscaping, fencing and other appearance items approval, and to the Board of Mayor and Aldermen for a development contract.

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

**Belinda Bodie, Representative**  
**Faulk and Foster**  
**1811 Auburn Avenue**  
**Monroe, LA 70201**

Ms. Bodie stated that basically what they plan to do is replace a seventy foot c-line pole with a hundred foot cell tower. She advised that lights will be placed on the new tower at seventy feet and antennas will be at the hundred foot level. Ms. Bodie further advised that cabinets as opposed to shelters will be used for ground equipment. Per Ms. Bodie, the cabinets are typically four or five feet tall and resemble a small/mid-sized refrigerator. She said this would be one of the first towers owned by Faulk and Foster in the City of Germantown; all of their other sites are located on other people's structures. Ms. Bodie advised that given the hundred foot height limit, they were very limited on the areas that could be covered. She further stated that they have an existing effort which is to meet the needs of their customers, fit everything into their existing network and comply with the ordinances set by the people of Germantown. Per Ms. Bodie, another item of concern is lightning. While she can't predict what Mother Nature is going to do, safety is definitely a major concern. She advised that their towers are well grounded so if lightning strikes and their equipment is hit, the surrounding area will be protected. Ms. Bodie said that while residents do love their phones sometimes cell towers are not very popular. She said that due to the constant growth of people working from home and the use of smart phones, it has now become a necessity to move the towers closer in to residential areas. She further stated that this trend will continue in the future as people move away from their traditional land markings by using a wireless phone as their primary means of communication.

Ms. Boyd commented that coverage maps provided by Faulk and Foster did not really reflect much of an increase in coverage. She asked Ms. Bodie if more towers would be added in the future. Ms. Bodie advised that the City will be seeing other applications from Faulk and Foster that has not quite made it into the [inaudible] process yet. She further advised that there is a total of five sites, two of which they are working with MLGW to build new power lines. Ms. Boyd asked if these five sites will be efficient enough to cover this area. Ms. Bodie said no, there will be no locations in town.

Mr. Salvaggio asked Ms. Bodie approximately how many customers will benefit from the proposed tower.

**Robert J. Pierce, Representative**  
**540 Atway Drive**  
**Brandon, MS**

Mr. Salvaggio referred to his previous question but also wanted to know why this particular area was chosen. Mr. Pierce explained that this area was chosen because there is an opportunity of open land areas where there's a school or park, etc. and people were not [inaudible] where you can't put a cell tower.

Mr. Salvaggio asked if c-spire is currently on anyone's tower. Ms. Bodie referred to overhead drawing that indicated existing sites that are located on other carrier's structures.

Mr. Salvaggio asked if c-spire has investigated cell towers being next to or too close to other types of existing structures (any code compliance issues). Mr. Pierce stated they are currently on almost every structure that is there unless it is too close to one of our existing structures. Ms. Bodie said actually in this area the only existing structures would be the light poles which they are trying to incorporate into an

existing design that will have a dual purpose use for their equipment and for the existing lights/light pole as well. Mr. Salvaggio then asked will c-spire be able to sell or lease space on this tower. Ms. Bodie said typically, yes; she believes one of the conditions that will probably be imposed on them is to make this available for at least one additional period. A statement saying just that will certainly be submitted.

Chief Planner Wade Morgan advised that one consideration would be to require an additional carrier on the antenna so that it provides coverage to another cell company which would be beneficial to City residents.

Andy Pouncey further advised that co-location means less towers to us.

Mr. Klevan asked what the coverage area would be at the height of the light pole (seventy feet). Mr. Pierce stated that coverage would be a lot less because pole is below the tree line.

Ms. Boyd asked if the future expansion of the other five towers pick up the balance of the areas that are not covered. Mr. Pierce said no.

Chairman Evans asked with all of the space available in Cameron Brown Park, why is this likely to be more of a receptance based location versus erecting a tower in a residential areas. Mr. Pierce stated that they were already on the Cameron Brown site; there is a stronger aspect to make up that foot print that they would be proposing with the new site.

Mr. Klevan asked if they were at the one hundred foot level at the Cameron Brown site. Mr. Pierce advised that they are on the Crown flag pole at the top which is approximately one hundred fifteen to twenty feet.

Chairman Evans asked if there was not another location in Cameron Brown that will give additional coverage in this area. Mr. Pierce said that is correct.

Mr. Klevan said considering the area that you are picking up now and if proposed tower is approved, where you would have to go to pick up the remainder. Mr. Pierce advised that there would not be any place to go because it would have to be a populated area.

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

**John David Romine, Resident**  
**8539 Farmington Cove**  
**Germantown, TN 38139**

Mr. Romine said residents' main concern is safety. He said the unfenced cell tower is within a foot of an athletic field that is used by four schools. He quoted various inserts from the Germantown Code of Ordinances (Chapter 9—Fences) regarding required security fencing around wireless transmission facilities. Mr. Romine stated that the proposed tower will cause an increase of lightning strikes in the surrounding area. He also mentioned that there is a question of a section of the athletic field being in a flood plain which makes this location more dangerous. Mr. Romine said that Faulk and Foster never addressed grounding details for the cell tower in the information that was handed out. Mr. Romine also stated that Faulk & Foster are proposing an underground [inaudible] trench and the concern there is being below flood plain elevation. He also said that another major concern is the loss of being able to play TSSAA for the state sanctioned games (soccer and lacrosse). Mr. Romine stated that the pole will be larger than the existing twelve inch pole. The propose tower pole will have a thirty point five inch radius and will also include a concrete pad that has to be bolted down. This in addition to a fence will take up more of the playing field thus jeopardizing the ability to have games played there. Mr. Romine also advised that there are growing concerns regarding unsupervised children playing adjacent to this electrical compound and also maintenance issues. He also provided pictures of how an existing cell tower owned

by c-spire and located right by Houston High School is being maintained; he said as you see there are boards missing and vines are growing in and around them. Per Mr. Romine, this violates the fencing Codes of Germantown. He advised that the existing cell towers were not initially within the buffer zone; they were at forty-seven feet, however, easements are no longer there. The easement from the tennis court has been reduced to one point nine two feet, separating the tennis court from the apartment complex. Per Mr. Romine, now there are only inches between the fifty foot requirement to his house.

Mr. Romine proposed that Germantown do the same great work that they did when planning for the City's coverage and have experts to inform us how to plan for optimal coverage with the least amount of impact on parks and residents. He advised that raising the antenna at Johnson Park eliminates the need for five to seven more towers and other triple A Cities that have these higher towers had to take a required minimum of three tenants.

**William Hearn, Resident**  
**8534 Farmington Cove**  
**Germantown, TN 38139**

Mr. Hearn said there is an electrical pole box located towards the tennis courts, opposite the side of the soccer fields. Per Mr. Hearn, provisions have not been made for the pole box to be moved. He said as of now there is a sixteen foot space between the existing light pole and the sideline of the soccer field. He said the location of the pole box along with the size of the proposed pole and concrete pad means that the center point of the pole will be perhaps ten feet away from the soccer games. Mr. Hearn advised that the soccer fields were built and designed for night games. When the current lighting was put in, it was designed to provide proper coverage over the field by putting two at each end of the field. Per Mr. Hearn, if one of the light poles are moved in and the lighting is placed at the same height, the lighting will be compromised and will be in a different perspective from all of the remaining lights on the field. According to Mr. Hearn, this could be dangerous to the players. He said unless there is a way to put the pole directly in the same spot where the poles are currently located, the lighting will be thrown off. Mr. Hearn further stated that because the tower itself contains the equipment, Section 25-416 i(1)(d) mandates a six foot security fence around all wireless transmission facilities. What is now down to potentially ten feet or less away from the soccer field will put the fencing possibly within six to seven feet away. Mr. Hearn also expressed a concern regarding tennis balls that end up directly where the equipment will be located. He said that a large net built around the equipment to keep the tennis balls out should be considered.

**Chris McDermott, Resident**  
**1999 Cordes Road**  
**Germantown, TN 38139**

Mr. McDermott asked if this was your house, right next to the tennis court, would you want a cell tower in your back yard. Per Mr. McDermott, there are a lot of other places that we can consider in Germantown to put the proposed tower. He said that it will be an eyesore and will affect the property values.

**J. Harold Cagle, Resident**  
**1957 Cordes Road**  
**Germantown, TN 38139**

Mr. Cagle advised that he has been a resident of Germantown since 1978. He said the City of Germantown was founded on the safety and education of kids. He said frankly, he was surprised that this proposal is even being considered. Mr. Cagle stated that he does not think that it belongs in our residential neighborhood and should be put in Cameron Brown Park.

**David Cerbu**  
**2016 Cordes Road**  
**Germantown, TN 38139**

Mr. Cerbu said that he personally would be concerned about the kid's welfare. He said that we will be putting this in the kid's playground, at a school, where they play. He wanted to know why can't tower be located a mile and a half in the other direction into the woods/forest. Per Mr. Cerbu, it can be as tall as you need it to be and not affect anyone.

Ms. Bodie (returned to microphone) said that she appreciated everyone's time and also appreciated the residents coming out and voicing their concern. She asked that the Board please look at their application and give it fair consideration.

Ms. Boyd stated that she would be voting no. She said [inaudible] it would be done as a result of adding this facility is not sufficient to cover all their remedies [inaudible].

Mr. Klevan stated that he would be voting against the request. He said that he does not have a problem with the actual Use on Appeal, however he does see problems down the road that will more than likely come through the Planning Commission. Mr. Klevan further stated that he sees so many issues with the site plan that he does not think will work. Per Mr. Klevan, it's better to nip this in the bud rather than get into a much more hostile discussion with residents who would be angrier than they already are tonight.

Ms. Sherman stated that she would also be voting no. She agrees with the residents in that it is a playground. She also is concerned about safety issues.

Chairman Evans said that as a Board, there is an obligation to pay attention to regulations under which we operate. He advised that there needs to be a hardship in order for the Board to approve a variance. He does not feel there is a hardship by putting this tower in this particular location. Chairman Evans said that he can understand c-spire's desire to increase their business and increase coverage however, he does not believe that the amount of coverage sufficiently overcomes the question of hardship. He also believes Germantown is a residential community and our ordinances are designed to protect residential nature and quality of life in or community.

Mr. Salvaggio made the suggestion that on future applications for cell towers in Germantown, staff employees might want to discuss more appropriate options/locations. No one wants to see a cell tower in their back yard. He said c-spire did a good job in trying to work with an existing structure; concealing it as much as possible, trying to blend it in. Mr. Salvaggio said that he would not be voting for this request; there are too many questions regarding the safety and welfare of the children.

**PROPOSED MOTION:** To approve a Use on Appeal for a wireless transmission facility for C-Spire at Farmington Park at 2107 Cordes Road, subject to staff comments and the site plan filed with the application.

Ms. Boyd moved to approve a Use on Appeal for a wireless transmission facility for C-Spire at Farmington Park at 2107 Cordes Road, subject to staff comments and the site plan filed with the application. Mr. Klevan seconded the motion.

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

## **MOTION DENIED**

---

**SUBJECT:** 7297 Stags Leap Circle – Request a variance to allow a fence to exceed six feet in height

Applicant Name: Adam Cartwright – Representative

Location: 7297 Stags Leap Circle

Current Zoning District: “R-T” Residential zoning district

Description of Request: To allow a fence to exceed six feet in height

### **INTRODUCTION:**

### **BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Vineyards PUD, Phase I, is a sixty (60) lot, single-family detached, zero lot line Planned Unit Development (PUD). The PUD was granted preliminary and final plan approval by the Planning Commission on April 5, 1994. The Board of Mayor and Alderman granted approval for Project Development Contract no. 966 on May 9, 1994.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The house was constructed in 1998.

**PREVIOUS VARIANCE REQUESTS:** On April 14, 2009, the BZA approved a variance to allow the fence surrounding the patio to be 4 ft. in height.

### **DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow a fence along the east and south property lines to be eight feet in height.

**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 feet,” The property line fence, as proposed, would be 2 feet greater than allowed.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance due to exceptional narrowness of the property that results in peculiar and exceptional practical difficulties. According to the applicant, the houses in the Vineyards are very close together and the greater fence height will provide the homeowner more privacy on their patio and rear yard area. .

### **STAFF COMMENTS:**

1. The applicant is requesting a two foot variance to allow a fence of eight feet in height. The attached site plan highlights the proposed fence .
2. The Vineyards Homeowners’ Association has approved the homeowners’ request for the fence.
3. The proposed 7 foot tall brick wall along the south side of the patio is considered a wall for a rear porch, since it is part of a permanently covered area, and does not require a variance.
4. The applicants must apply for a fence permit through the Department of Economic and Community Development, if the variance is approved.

Mr. Uhlhorn advised that he built the house located at 7297 Stags Leap Circle and thereby recused himself.

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

**Adam Cartwright, Representative**  
**Jones Brothers Tree & Landscape**  
**7892 Summer Avenue**  
**Bartlett, TN 38133**

Mr. Cartwright began by advising that the existing six foot, nine inch fence will be replaced with another wooden fence. He said that the homeowner has asked him to build a level fence around their yard which slightly drops off in some areas. Per Mr. Cartwright, once fence is built at some point (across the back) it will go above seven feet. He said that he is looking to build a fence that similar in nature, not to change the design.

Chairman Evans asked Mr. Cartwright to clarify—does the homeowner wants to actually increase the fence by three inches. Mr. Cartwright said they are wanting to replace their fence, increasing it three inches across the back from seven feet six inches to and even eight feet.

Ms. Boyd asked Mr. Cartwright if he is the fence builder. Mr. Cartwright advised that he is the contractor and has a subcontractor building the fence. Ms. Boyd then asked if the person who bought the house knew that this was a small yard [inaudible]. Mr. Cartwright said yes, they were trying to get as much privacy as possible.

Mr. Salvaggio asked if the proposed fence is made of brick or wood. Mr. Cartwright said it is a wood fence; when this request was originally submitted, it was for a brick wall. Mr. Morgan advised at that time that there was no need to request a variance for the brick wall since it was attached to the building.

Mr. Klevan said the applicant is requesting a two foot variance to allow for an eight foot fence height, however, Mr. Cartwright is asking for a seven feet increase. Mr. Cartwright said that he realized when he built the seven foot across the back that he needed to exceed that; he is asking for eight feet. The reality is that he cannot build an eight foot within the column. Mr. Klevan said but the column is seven foot. Mr. Cartwright advised that the fence begins to drop off as it goes down the yard and actually changes elevation almost eight inches from a ground level stand point; seven foot in the back corner suddenly will become taller as you get closer to the street.

Chairman Evans stated for the record, he could see no basis for an eight or seven foot fence in this area. He feels that if you buy a small lot you should accept the shortcomings that come with it.

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 at 7297 Stags Leap Circle to allow a fence along the east and south property lines to be eight feet in height, subject to staff comments and the site plan filed with this application.

Ms. Boyd made a motion to approve a variance at 7297 Stags Leap Circle to allow a fence along the east and south property lines to be eight feet in height, subject to staff comments and the site plan filed with this application. Ms. Sherman seconded the motion.

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



**MOTION DENIED**

---

Chairman Evans announced that the Board will not be meeting in December.

**Meeting Adjourned at 7:02 p.m.**