

**BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
January 8, 2013  
6:30 p.m.**

**COMMISSION PRESENT:**

Mr. Henry Evans; Mr. David Klevan; Frank Uhlhorn; Patricia Sherman; Mr. Forrest Owens; Ms. Jennifer Sisson

**DEVELOPMENT STAFF PRESENT:**

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

**Interested Individual(s) present:**

Mr. Jeff Gaither – 2187 Sunset Road, Germantown, TN 38138

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Alderman Forrest Owens called the meeting to order and established a quorum.

**ROLL CALL:** – Mr. Uhlhorn – present; Salvaggio – absent; Ms. Sherman – present; Mr. Klevan – present; Alderman Owens – present; Ms. Sisson – present; Mr.; Chairman Evans – present

**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 2013 is as follows: Henry Evans

Motion: Dave Klevan Seconded By: Pat Sherman

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

**MOTION PASSED**

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2. Nomination for Vice-Chairman of the Board of Zoning Appeals for 2013 is as follows: Frank Uhlhorn

Motion: Dave Klevan Seconded By: Pat Sherman

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

**MOTION PASSED**

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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 November 13, 2013 Minutes**

Dave Klevan made a motion to approve the minutes from the November 13, 2012, meeting that was seconded by Pat Sherman.

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

### **MOTION PASSED**

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**SUBJECT:** 2187 Sunset Rd. - Request Approval of a Variance to Allow the Principal Structure to Encroach into the Required Front Yard

#### **BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Sunset Road Subdivision was approved by the Germantown Planning Commission in 1958.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** 1938 (according to Shelby County Assessor).

**PREVIOUS VARIANCE REQUESTS:** None.

#### **DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to obtain approval of a variance to allow the construction of a 12 ft. by 12 ft. addition that will be located 6.3 feet from the Western Ave. property line, which is a 33.7 foot encroachment into the required setback from that street. The applicant states the addition is intended to enlarge the kitchen.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from §23-232 (1)b which requires corner lots to have a front yard of at least 40 feet on each street.

**APPLICANT’S JUSTIFICATION:** According to the applicant, the wall of the addition will be flush with the exterior wall of the existing garage. He states “we have an older home with very small rooms; .....we are wanting to remodel and expand the original kitchen”.

#### **STAFF COMMENTS:**

1. The Sunset Road Subdivision required a 40 foot front yard setback on Sunset Road only. A setback from Western Street was not specifically set.
2. The proposed addition will maintain the setback of the garage from Western Street.
3. An air photo of the property and structure is attached.
4. If the variance request is approved, the applicant must apply for a building permit from the Shelby County Office of Construction Code Enforcement.

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

**Jeff Gaiher**  
**2187 Sunset Road**  
**Germantown, TN 38138**

Chairman Evans asked Mr. Gaither what the building that is immediately to the west of principal structure used for. Mr. Gaither said that is a shop where he keeps his “toys.” He further advised that he had put a shed roof on the back of the shop about three to four years ago. Chairman Evans asked Mr. Gaither if he obtained a permit for the shed. Mr. Gaither said no, he did not. Chairman Evans advised that without a permit, the shed is considered to be a non-conforming structure. He then asked Mr. Gaither if the “toys” that are stored in the shed used for his contracting business. Mr. Gaither said no; all of his work tools are kept in a trailer.

Mr. Owens asked Mr. Gaither how far is he from the property line to the west. Mr. Gaither said he thinks it is approximately fifteen feet.

Mr. Uhlhorn pointed out that the survey was not to scale; he said on the photographs, it appears that the house is closer to the eastern side. He then asked Mr. Gaither what is the distance between the house and shed. Mr. Gaither said fifteen feet. Mr. Uhlhorn then asked how much further to the east is the shed roof extended. Mr. Gaither said that it goes another eighteen feet. Mr. Uhlhorn said that the house appears to be so close to the property line as with the house next door.

Mr. Klevan referred to an overhead drawing (page 4) and asked where the property line is in relation to a parked blue van that is shown on the photo. Mr. Gaither said that the property line runs right alongside with where the van is parked (back of the fence).

Chairman Evans stated that many non-related questions were being asked regarding the secondary building because it was contemplated that a business was being operated from the residentially zoned property. He said at this point and time we will go back and address any questions about the variance that Mr. Gaither is requesting. Chairman Evans asked Mr. Gaither did he have any other comment or questions. Mr. Gaither said that he wanted to expand the original seven by ten kitchen because they now have eighteen month old twins.

Mr. Owens voiced his concerns regarding this property and the requested variance. He said that there may be additional variances that may be required and also, there is no permit for the adjacent shed. Mr. Owens recommended that applicant should come back next month with more information and measurements for the shed.

Mr. Uhlhorn stated that his concern is similar to Mr. Owens in that we have one structure out the nose and [inaudible] on the other; there might be something that we have to go back and address because we were unfamiliar with it.

Chairman Evans said whether the second building is or is not out of compliance does not necessarily have a bearing on the Board’s decision to grant or not grant the requested variance. Per Chairman Evans, some are hesitant about approving this variance tonight knowing that there are other issues on this property that cannot be resolved tonight. He advised Mr. Gaither that if a vote is taken, there are already two or three Board members who have expressed reservations about granting the variance; if it is turned down, Mr. Gaither cannot not re-apply for six months. Chairman Evans suggested that Mr. Gaither ask that this item be removed from the agenda tonight and also work with the staff to clarify questions. With that, Mr. Gaither requested that this item be withdrawn until next month.

**ITEM WITHDRAWN**

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**Meeting Adjourned at 6:55 p.m.**