

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
February 12, 2013
6:00 p.m.**

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

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

Interested Individual(s) present:

Mr. Jeff Gaither – 2187 Sunset Road, Germantown, TN 38138
Rik Ditter – 9481 Gotten Way, Germantown, TN 38139

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

ROLL CALL: – Mr. Uhlhorn – present; Salvaggio – present; Ms. Sherman – present; Mr. Klevan – present; Alderman Owens – present; Ms. Sisson – absent; Mr.; 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 January 8, 2013 Minutes

Dave Klevan made a motion to approve the minutes from the January 8, 2013, meeting that was seconded by Frank Uhlhorn.

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

MOTION PASSED

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. This same request was considered by the BZA on the 1/8/13 agenda, but was withdrawn by the applicant to enable him to obtain the proper permits for an addition to the storage building. An Accessory Building permit was obtained on January 22, 2013.

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. The homeowner obtained an Accessory Building permit for the addition to west side of the storage building on January 22, 2013. The addition is 10 feet in height and 16 feet from the west property line.
5. 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 Gaither, Applicant
2187 Sunset Road
Germantown, TN 38138

Chairman Evans asked Mr. Gaither was there anything he would like to add other than what Mr. Morgan has already stated or to which he stated at the last Board meeting. Mr. Gaither said “no sir.”

Chairman Evans then asked the Board if there were any questions of Mr. Gaither. There were no questions.

Chairman Evans then stated that he appreciated Mr. Gaither on working with the staff and resolving the other issue.

Chairman Evans asked if there was anyone who would like to speak against of this variance request. No one came forth.

PROPOSED MOTION: To approve a variance at 2187 Sunset Road, to allow the principal structure to encroach 33.7 feet into the required front yard from Western Street, as described by the plans submitted with the application.

Dave Klevan made a motion to approve a variance at 2187 Sunset Road, to allow the principal structure to encroach 33.7 feet into the required front yard from Western Street, as described by the plans submitted with the application. Frank Uhlhorn seconded the motion.

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

MOTION PASSED

SUBJECT: 9481 Gotten Way – Request Approval of a Variance to Allow Pool Equipment and Appurtenances to be Located within the Front Yard

BACKGROUND:

DATE SUBDIVISION APPROVED: SECTION G of the DOGWOOD GROVE subdivision was approved by the Germantown Planning Commission in 1991.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1993.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to locate the swimming pool pump within one of the two front yards, at the southeast corner of the house. The pump would extend 5 feet into the required front yard, placing it 36.5 feet behind the sidewalk. The applicant proposes to enclose the equipment within a 30 inch tall cedar fence and screen it with evergreen plantings. In addition, the HVAC equipment would be located beside the pump.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from§23-236, which requires swimming pool equipment to be located behind the front line of the building.

APPLICANT’S JUSTIFICATION: According to the applicant, “the back of the home is not wide enough to allow for the pool pump equipment and too narrow to allow for sufficient patio space without locating pump and air conditioning equipment to side yard”. (front yard by Germantown regulations) In addition, the applicant explains that buried sprinkler system and back-flow preventer further limits the location for the pump.

STAFF COMMENTS:

1. The recent zoning ordinance amendment regarding swimming pool equipment allows pumps and similar equipment within 10 feet of a **side** lot line. It does not affect corner lots, with 2 front yards, as in this request.
2. The placement of air conditioning equipment is not addressed by City regulations.

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

Rik Ditter, Applicant
9481 Gotten Way
Germantown, TN 38139

Alderman Owens wanted to know for the record if the signatures submitted by Mr. Ditter were from surrounding homeowners. Mr. Ditter advised that those are immediate neighbors that face the side yard; the neighbor that faces the front yard is not on the list because they are out of town. They did however, give verbal permission as well.

Alderman Owens then asked Mr. Morgan if he received any complaints regarding this variance request. Mr. Morgan said that there had not been any complaints or phone calls whatsoever.

Mr. Salvaggio asked Mr. Ditter if he had decided to screen the pool equipment with a thirty foot cedar fence or evergreen plantings. Mr. Ditter said that that he has not made a decision yet, however, if the Board prefers, he could build the fence.

Chairman Evans asked Mr. Morgan if the ordinance requires either. Mr. Morgan said our fence ordinance would not allow a six foot fence in the required front yard. Chairman Evans then re-directed his question by asking if the ordinance regarding the placement of pool equipment specifies that it should be enclosed by a fence. Mr. Morgan said that if it were in a standard side yard then yes, there is a requirement to screen the equipment from the street.

Chairman Evans said still, is there a need to eliminate the “and/or” for the pool equipment screen. Mr. Salvaggio said that in his opinion, a fence seems to be more appropriate and is more permanent; plantings are nice but they tend to defoliate.

Chairman Evans asked if the request is approved based on the language “*to be fenced with thirty inch fence and screened with evergreen landscaping*” are we requiring the plantings as well as the fence. Mr. Morgan advised that the motion is based on the aerial photo and that also the narrative and plan indicates both.

Chairman Evans asked if there was anyone who would like to speak against of this variance request. No one came forth.

PROPOSED MOTION: To approve a variance at 9481 Gotten Way to allow the swimming pool equipment to be located within the required front yard along Dogwood Estates Drive, as described in the plans submitted with application.

Frank Uhlhorn made a motion to approve a variance at 9481 Gotten Way to allow the swimming pool equipment to be located within the required front yard along Dogwood Estates Drive, as described in the plans submitted with application. Pat Sherman seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:55 p.m.