

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

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Alan Strain, Attorney; Ms. Sherry Rhea, Secretary

Interested Individual(s) present:

Mr. and Mrs. Benjamin Clements – 9507 Hedgegrove Cove, Germantown, TN 38139
Mr. Jason Brownlee – 10360 Herons Ridge Cove, Lakeland, TN 38002

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

ROLL CALL: – Mr. Uhlhorn – absent; Salvaggio – absent; Ms. Sherman – present; Mr. Klevan – present; Alderman Owens – present; Ms. Sisson – present; 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 February 12, 2013 Minutes

Dave Klevan made a motion to approve the minutes from the February 12, 2013, meeting that was seconded by Jennifer Sisson.

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

MOTION PASSED

SUBJECT: 9507 Hedgegrove Cove – Request Approval of Variances to 1) Allow Parking within the Required Front Yard; and 2) to Allow an Accessory Structure to be a Distance Less than its Height from a Property line

BACKGROUND:

DATE SUBDIVISION APPROVED: The Grove Park Subdivision, 1st Addition, Phase 2 was approved by the Germantown Planning Commission in 1996.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1999.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCES REQUESTED: The specific requests by the applicant are to obtain permission for 1) a parking area and 23 ft., 4 in. wide driveway located within the required front yard along Grovecrest Rd. and 2) a 9 foot, 9 inch tall pergola that was constructed 6 feet from the south property line and 9 feet, 2 inches from the west property line. A variance of 5 feet, 4 inches from the maximum driveway width is necessary; and variances for an encroachment of 3 feet, 9 inches into the setback from the southern lot line and an encroachment of 7 inches into the setback from the west lot line are necessary.

SPECIFIC SECTIONS OF ZONING ORDINANCE: Section §23-88(a) prohibits parking spaces within the required front yard and limits the width of the driveway to 18 feet. Section 23-236 requires accessory structures that are over 8 feet in height to be located a distance equal to their height, or more, from all property lines.

SUMMARY OF APPLICANT’S JUSTIFICATION (see the attachments for the full justification): According to the applicant, “only a small corner of the pergola is in violation of the setback requirement, not the entire structure.”

STAFF COMMENTS:

1. According to the applicants, the driveway was enlarged so as to provide a basketball court for their son. An in-ground basketball goal has been installed and expansion joints in the concrete identify the court area. However, there is no physical separation between the driveway and the court area to prevent its use as a parking space.
2. The homeowners were notified of the violation on February 4, 2013, and applied for variances on February 15, 2013.
3. The contractor, Brownlee Pool and Landscape, has provided a plan for landscaping the area adjacent to the basketball court/driveway addition.

If the variances are approved, the homeowners or their contractor shall apply for an accessory structure permit from the City of Germantown

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

Benjamin Clements, Applicant
9507 Hedgegrove Cove
Germantown, TN 38139

Mr. Clements advised that they have actually lived in Germantown for twelve years and this is the first time that they have had anything built on the property. He said because some parts of the driveway had cracked, Mr. Clements had contractor Jason Brownlee to repair the driveway when he poured the pad for a basketball goal. Mr. Clements explained further that he was not aware that he had two front yards (double frontage lot) and therefore did not think that it would be a problem to pour a concrete pad there. Per Mr. Clements, Mr. Brownlee added a pergola as a nice touch to the pool area. Again, he was unaware that he needed a permit to build the structure. Mr. Clements presented pictures of fourteen foot red maple trees that have been added for privacy purposes.

Mr. Klevan asked Mr. Clements about the “Stop-Work” notice that he received. Mr. Clements said that the letter was forwarded to the previous owner of the house and then came back to him the next week.

Pam Clements, Applicant
9507 Hedgegrove Cove
Germantown, TN 38139

Ms. Clements advised that she thought the letter was a bill and did not open it until the following week. Chairman Evans asked Mrs. Clements did she remember the date on which she opened the letter. Mrs. Clements said that she does not recall the exact date.

Mr. Klevan asked Mr. and Mrs. Clements who is Jason Brownlee. Mrs. Clements stated that Jason Brownlee is their contractor.

Jason Brownlee
10360 Herons Ridge Cove
Lakeland, TN 38002

Mr. Klevan asked Mr. Brownlee if he owns the landscape and pool company. Mr. Brownlee said yes, he does. Mr. Klevan then asked Mr. Brownlee if he has built in Germantown before. Mr. Brownlee said yes, he has built swimming pools, patios and various other items. Mr. Klevan then stated that he assumed Mr. Brownlee is familiar with the codes and ordinances of Germantown. Mr. Brownlee apologized and said that although he is familiar with many of the codes, he went by Shelby County's requirements when he did the blue prints for the pergola.

Chairman Evans asked Mr. Brownlee when doing business in Germantown does he always go by Shelby County's regulations without bothering to check the Germantown Ordinances. Mr. Brownlee stated that typically, a permit is not required for a pergola unless it is attached to the house or is a closed roof structure. He did not realize that a permit needed to be pulled in this type situation.

Chairman Evans then asked Mr. Brownlee if he believed a permit was or was not necessary for the driveway. Mr. Brownlee explained that he also was unaware that this area was considered a side or front yard setback and that none of this was done intentionally.

Chairman Evans asked at what point and time in this process was the front/side yard concrete poured relative to the construction of the pergola—was it before, after or during. Mr. Brownlee advised that they were almost simultaneous; the court and backyard patio were poured about the third week in January; the driveway was poured after that, around the last week of January. Chairman Evans asked Mr. Brownlee did he remember when the construction inspector came out and notified him that the pergola was not in compliance—had the driveway been or not been poured? Mr. Brownlee advised that the driveway had been poured; there were stake post where the pergola was going to be built. Per Mr. Brownlee, the inspector told Mrs. Clements that there were issues with both the driveway and the pergola. He said that Mrs. Clements asked the inspector if they needed to stop work on the pergola and he said “no.” So therefore, we continued to work on the pergola.

Chairman Evans stated that if Mr. Brownlee had been here two months ago and asked for permission to build these two items, one of the things that would have been asked is “what's really the hardship and why is it necessary to build these things on your property.” Chairman Evans said that he is really having a hard time understanding what hardship would have been created if neither structure had been built.

Mr. Brownlee said that he really could not call it a hardship, however, the basketball goal was a big Christmas gift for the Clements' son. The intent was never to create a parking pad because they [Clements] have a circular drive in the front. Mr. Brownlee continued and said the question is what can we do for this now. He advised that a design plan has been put together to try to screen the side concrete pad so that it is not as obvious. Per Mr. Brownlee, shrubs, stones and a tree were placed down to make it look really nice.

Alderman Owens asked Mrs. Clements what was the purpose of Construction Inspector Bob Joralemon's initial visit. Mrs. Clements said that Mr. Joralemon stated that he had been notified about the concrete pad that had been poured. She then asked if letters of support from her neighbors had been received. Chairman Evans advised that staff and Board were indeed in receipt of the correspondence.

Alderman Owens stated that a hardship may have been created when Mr. Joralemon told them to proceed; they continued on based on the discrepancy to do so.

**Benjamin Clements, Applicant
(Returned to Microphone)**

Mr. Clements said although they did not have a hardship, there were two reasons as to why and where the two items were poured/built. Because the driveway is really sloped and a drain is built into the concrete is why the pad for the basketball goal was poured in that direction. Also, in that area, the concrete had cracked and settled about two inches. As for the pergola, the intention was not to put it so close to the neighbor's property; the pool layout/design has a small curve at the back that is meant to be a stone fire pit. Per Mr. Clements this area extends all the way back for symmetry.

Alderman Owens asked how wide the newly poured sidewalk is. Mr. Brownlee said it is approximately four to four and a half feet.

**Jason Brownlee
(Returned to Microphone)**

Per Mr. Brownlee, the reason for constructing the pergola was to create some privacy from the neighbors to the rear of the property that has a series of upstairs windows allowing them to view down to the pool area. Evergreens were put in the backdrop for additional privacy.

Mr. Klevan asked Mr. Brownlee if the post on the pergola are set in concrete or are they bolted down. Mr. Brownlee said that the posts are bolted down. Mr. Klevan said so therefore, to bring the structure into compliance would not be very costly; it should be a matter of sawing down the wood of the post to bring the height down and thus into compliance. Mr. Brownlee said because of the way the pergola is designed and built with the cross beams in the front would be a safety issue. To drop the front to a six foot height would be dangerous for a person over six feet tall to enter the structure.

Ms. Sisson said that we [Board] look at what kind of authority is given to make exceptions to the ordinances is why the matter of a hardship is so relevant. She asked was the driveway with the drainage issue ever corrected. Mr. Brownlee explained that before construction the land was pretty much a marsh area with very low spots. The drain is physically in the driveway which is higher than the grass grade below, preventing proper drainage from the side yard. Per Mr. Brownlee, by building it up, grading it out and making more room, they were now able to attach the work and extend to [inaudible].

Ms. Sherman asked if this variance is approved, will the landscape plan still be in place. Mr. Brownlee said yes, that is correct; he has been discussing the plans with Chief Planner, Mr. Wade Morgan.

Mr. Klevan commented that a large amount of time is being spent on this particular request so that a valid case of forgiveness could be made. Per Mr. Klevan, applicants usually come here to ask for forgiveness or permission. He said in this instance, since permission was not sought after it now falls back on forgiveness. Mr. Klevan explained that unfortunately this is the bad side because of rules and regulations that we have to follow. He further stated that he trust both the Clements' and Mr. Brownlee's intent however he is struggling to find ways to be accommodating without being [inaudible].

Mr. Klevan said that he has less issue with the driveway than with the pergola. He believes with minor adjustments very little cost, the pergola can be altered and thus brought into compliance. Because the

driveway on the other hand will be costly and expensive to modify, Mr. Klevan advises that he is therefore leaning more towards forgiveness on this violation and less on the pergola.

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

PROPOSED MOTION 1: To approve a variance at 9507 Hedgegrove Cove to allow a driveway that is 23 feet, 4 inches in width, including and existing parking space, located in the required front yard, as illustrated on the plans submitted with the application.

Dave Klevan made a motion to approve a variance at 9507 Hedgegrove Cove to allow a driveway that is 23 feet, 4 inches in width, including and existing parking space, located in the required front yard, as illustrated on the plans submitted with the application. Patricia Sherman seconded the motion.

After the first motion was made and seconded, Chairman Evans thanked Mr. and Mrs. Clements for their presence. He said that he would be voting against both motions for multiple reasons. He further explained that the regulations we operate under do not allow us to consider any cost when trying to make things right and with the actions that we may take. Chairman Evans said that for ten years he has consistently voted against requests like this one—doing something and then coming before the Board to ask for forgiveness. He said had you of come to us for permission, based on what has been presented tonight, would we have approved these request? Chairman Evans said he thinks the answer is no based on what this Board has done in the past and base upon our ordinances which we are to uphold.

Chairman Evans stated that his third problem is that there is a contractor involved. Per Chairman Evans, a contractor is supposed to know the ordinances for the City of Germantown. He realizes that the applicants trusted Mr. Brownlee in that he relied on Shelby County's rules and regulations, but unfortunately, that is not a forgivable offense.

Alderman Owens sympathized with the Clements' in that they added on to their driveway in order to correct a drainage problem as well as the fact that there is an issue with the pergola. He said that he could understand a little bit of a hardship however, the two requests are probably not going to be approved tonight.

Chairman Evans said that if this is turned down tonight, the applicants cannot submit for reconsideration for a total period of six months. He further advised that there are appeal processes through Chancery Court. Chairman Evans also said that applicants can withdraw their requests. If withdrawn however, they are still in violation and would be expected to correct the pergola and the driveway. He said if there is a possibility that corrections can be made, applicants can withdraw the requests and come back before the Board next month.

After Mr. Clements inquired about requirements for the basketball goal, Chairman Evans advised that as long as the goal is in concrete and is in evidently attached to the driveway makes it a major issue; if there is any way to correct these violations by working with staff for the next three to four weeks, withdrawing both requests may be in the Clements' best interest tonight.

Alderman Owens encouraged Mr. and Mrs. Clements to work with staff to try and find a solution.

With that, Mr. Clements withdrew both requests.

Meeting Adjourned at 6:48 p.m.