

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

April 9, 2013

6:00 p.m.

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

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

Interested Individual(s) present:

Mr. Jason Brownlee – 10360 Herons Ridge Cove, Lakeland, TN 38002

Mr. Benjamin Clements – 9507 Hedgegrove Cove, Germantown, TN 38139

Mr. Mark Pledge – 2281 Podesta Cove, Memphis, TN 38134

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 – 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 March 12, 2013 Minutes

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

ROLL CALL: Mr. Klevan – yes; Ms. Sisson – yes; Mr. Uhlhorn –abstain; Mr. Salvaggio – abstain; 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: The homeowners withdrew their requests for variances for the pergola and parking area/basketball court from the March BZA meeting, in order to evaluate modifications to the requests.

DISCUSSION:

UPDATES - The applicants and their landscape architect have revised their requests in the following ways:

Pergola – the total height will be reduced from 9 ft. 9 in. to 8 ft. 3 in. The change eliminates the need for a variance for the setback from the west property line. A variance of 3 inches for the additional height within the setback area from the southern property line is necessary.

Parking space/basketball court – no changes are proposed. The landscape architect has provided a site plan of the driveway prior to the addition of the basketball court/parking area describing the drainage conditions. It notes that the driveway edge was approximately 3 in. above the grade of the yard, and resulted in a low area remaining saturated. The basketball court/parking area can correct the problem.

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 8 foot, 3 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 a variance for an encroachment of 2 feet, 3 inches into the setback from the southern lot line is necessary, or a variance of 3 inches for the height above 8 feet.

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 plans for reducing the height of the pergola by 18 inches, and has provided a plan for landscaping the area adjacent to the basketball court/driveway addition.
4. If the variances are approved, the homeowners or their contractor shall apply for an accessory structure permit from the City of Germantown.

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

Jason Brownlee, Representative
10360 Herons Ridge Cove
Lakeland, TN 38002

Mr. Brownlee advised that he had been working with Wade Morgan on a viable solution for the pergola. Per Mr. Brownlee, the structure now has eight foot tall post and twelve foot tall beams; he proposes to cut the top edge of the posts off and lower the rafters down as much as he possibly can to eight feet. He is very concerned that there may be an issue of clearance; now there is six feet, ten inches of clearance from the patio to the rafter. Mr. Brownlee feels this could be a safety issue if he brings the pergola down exactly to eight feet. He said that he is trying to make it aesthetically pleasing and functional at the same time.

On behalf of the Board, Chairman Evans thanked Mr. Brownlee and Mr. and Mrs. Clements for working with staff on trying to come to a solution.

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

PROPOSED MOTION 2: To approve a variance at 9507 Hedgegrove Cove to allow an 8 foot, 3 inch tall pergola to be located 6 feet from the south property line, as described in the plans submitted with the application.

Dave Klevan moved to approve a variance at 9507 Hedgegrove Cove to allow an 8 foot, 3 inch tall pergola to be located 6 feet from the south property line, as described in the plans submitted with the application. Frank Uhlhorn seconded the motion.

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

MOTION PASSED

Jason Brownlee, Representative
10360 Herons Ridge Cove
Lakeland, TN 38002

Mr. Brownlee stated that the goal here has always been to add a basketball court, however, there were two issues to be dealt with. The first and primary is the drainage basin which sits at an angle on the driveway and is positioned in the middle of the court. An alternative was to put the court on the other/front side of the driveway which would not be aesthetically pleasing. Mr. Brownlee advised because the driveway sits approximately three inches higher than the side yard, water does not flow into the drain which is located in the center of the drive. As a result, the side yard would stay soggy and wet after a hard rain. The second issue was also with the driveway; there was a large section between the basin and the garage that had become crumbled and deteriorated and was in need of replacement.

Mr. Brownlee said that he and the applicants discussed the best way to solve these problems. He said the solution was to take the driveway and extend it so that the basketball court was adjacent to the walkway that goes to the backyard. Mr. Brownlee said that by doing this, he was able to work with the grade by basically filling in the low spots of the yard that are adjacent to the driveway allowing direct water flow from the side yard to the drainage basin.

After much discussion regarding city ordinances for parking pads and the requirements thereof, several of the Board members voiced concerns regarding landscaping and green spaces.

Mr. Salvaggio said that his biggest concern is that an ordinance should be put in place to make sure that basketball courts not be placed in front yards. Mr. Uhlhorn expressed that the pad was clearly intended to be a basketball court and not a parking space. He asked if there was any discussion regarding landscaping at last month's meeting. Mr. Morgan advised that a plan in the packet included landscaping in the area adjacent to the perimeter. Mr. Brownlee stated that a landscape plan to help screen the side concrete pad was offered last month; it included shrubs, stones and trees so that the buffer will look really attractive. Chairman Evans said that he had a problem with this in that the ordinance does not say that it could be violated just because you hide it.

Mr. Klevan said that he would not be voting for the variance. His concern is not only setting a precedent for future cases such as this, but also, had Mr. Brownlee come and asked for permission to do this, it probably would have been denied based on the way the court was built. Mr. Klevan further stated that although there are options that can satisfy the need to have a basketball court there, we are not a recommending body.

Mr. Brownlee said that he based his concern on what type of space to put in this area; building a sports court by putting down a soft surface or a different material allows for twisted ankles and hurt feet now making it a safety/liability concern.

Chairman Evans said that he understands the concern, but as the Board does not approve variances or the hardship that may exist because you came to us and requested it. Unfortunately, because you consider this to be a liability is not one of the reasons that is before us tonight. Chairman Evans said that he will be voting no as well. As stated last time, he has a problem with those that come to us for forgiveness instead of asking for permission on the front end. He agreed with Mr. Klevan in that if this design had come to us on the front end, it would not have been approved and therefore, it will not be approved on the back end.

Mr. Brownlee asked if there was any way to get the City to correct the drainage inlet (angled, not flat) to where it is not a liability. Chairman Evans said that is an issue that would need to be addressed by the City's staff [Public Works], not something this Board would deal with.

Alderman Owens stated that he believes clearly the intent was for a basketball court and not a parking space. He further stated that the drainage issue was justification that a hardship existed.

Benjamin Clements
9507 Hedgegrove Cove
Germantown, TN 38139

Mr. Clements said that he, Mr. Morgan and Mr. Brownlee got together to try to figure out some different things to do with the basketball goal. Per Mr. Clements, the only option that they came up with was to pour an additional eight feet of concrete and then cut out a divide section about a foot long. He further advised that it had to be at least eight feet long to be usable as a basketball court. Mr. Clements said that any type of gravel or soft service would pose a liability, therefore additional concrete was poured in the side/front yard. He said that they were trying to make it safe so that there weren't any hazard for the kids to trip over.

Mr. Klevan asked if turning the goal completely around had been considered. Mr. Brownlee advised that the slope of the driveway would not allow enough room for the court.

Mr. Uhlhorn asked Mr. Brownlee to do the right thing and get the proper permits on future jobs in Germantown.

Chairman Evans asked if there was anyone else who would like to speak in favor or against this variance request. No one came forward.

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.

Frank Uhlhorn 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. Dave Klevan seconded the motion.

ROLL CALL: – Alderman Owens – yes; Mr. Klevan – no; Mr. Uhlhorn – yes; Ms. Sisson – yes; Salvaggio – yes; Ms. Sherman – yes; Mr.; Chairman Evans – no

MOTION PASSED

SUBJECT: 2344 Johnson Road – Request a variance to allow a fence to exceed thirty inches (30”) in height in the required front yard setback in an “R-E” Estate Residential Zoning District

BACKGROUND:

DATE SUBDIVISION APPROVED: The Johnson Road Subdivision was approved in January 1957. The resubdivision of lot 6 to create this lot was approved in July 2005.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 2007.

PREVIOUS VARIANCE REQUESTS: In 2007 the BZA approved a variance to allow a gate and associated columns within the required front yard to exceed 30 inches in height. The columns are 7 ft., 4 in. height (excluding the light fixture on top) and the gates vary in height from 3.5 ft. to 7.5 ft. The columns are 38 feet from the edge of pavement, which is 20 feet from the property line.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a 5 ft. tall iron fence within the front yard, across the entire frontage, and located 47 feet behind the property line. In addition, two radius sections of fence are to connect the existing gate structure to the proposed fence. Those sections would be as close as 35 feet to the front property line. The standard requirement is for fences within 60 feet of the front property line to be under 30 inches in height. The proposed fence exceeds that height by 30 inches. The majority of the fence encroaches 13 feet into the required front yard area, with the connecting section encroaching up to 25 feet.

SPECIFIC SECTIONS OF ZONING ORDINANCE: Section 6-102. General provisions.; (b) Fences over 30 inches in height are not permitted within the required front yards of lots, as specified in the zoning ordinance, with the exception of subdivision entrance features and attached fences/walls.. The property’s R-E zoning requires a 60 foot front yard.

SUMMARY OF APPLICANT’S JUSTIFICATION (see the attachments for the full justification): .”

STAFF COMMENTS:

1. The majority of the fence (straight section) is proposed to be 70 feet from the existing edge of pavement. The subdivision that created the lot dedicated 22 feet for the eventual improvement of Johnson Rd. to a collector street.
2. Diagrams of the proposed fencing and a photo of a section are attached.
3. If the variance is approved, the homeowners or their contractor shall apply for a fence permit from the City of Germantown.

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

**Mark Pledge, Representative
MSW Ornamental Iron Company
2281 Podesta Cove
Memphis, TN 38134**

Mr. Pledge said the current brick masonry structure with the gates is sixty feet from the roadway and twenty feet from the property line. He said that it would be aesthetically pleasing and inconspicuous because of large landscaping of shrubbery and trees that shrouds the view of the fence. He further stated that not only does the homeowner own two dogs that need to be contained, but also because this is a large estate, this will better secure the property.

Chairman Evans advised that the problem is not connecting the fence to the gate, but it is the location of the fence across the front. He wanted to know why it important to put the fence at the proposed line and not the line the does not require a variance. Mr. Pledge said there are some fairly large trees and existing landscaping close to this line and also this is the most feasible area and location for the fence. Chairman Evans asked if the trees are in the line to be approved or are they behind that line. Mr. Pledge said that there would be some trees in the way.

Mr. Salvaggio said that he has absolutely no problem with this design, however there is one a concern that he does have. Once the road is widened in the future, the fence may be too close to the road. Per Mr. Salvaggio, when the City's staff pre-plans everything to provide nice roads, a request like this then gives permission to [inaudible]. He further advised that he would not be able to vote for a fence along the red/proposed line; he said that is just makes sense to keep your property off of the road.

Mr. Klevan said that he has a problem with the fence coming straight across the proposed/red line and therefore will not be voting in favor of this request as it is now.

Mr. Pledge wanted to know if a permit for a thirty inch tall fence that he had already obtained was still good. Mr. Morgan said that since the permit is for a thirty inch fence located between the blue/standard line and the property line makes it still valid.

After much discussion about the fence location (proposed line versus standard line), and the radius section that connects the gates it was decided that if applicant considered moving the fence back to the blue/standard line, then there would be only be one variance (the connector) to consider tonight; or, if Mr. Pledge and the property owner want to maintain the fence at the red/proposed line, then the request would be voted up or down. Mr. Pledge stated that he and homeowner would like to put the gate at the blue line.

The variance request was then re-worded to address the location, height and radius section of the existing gate columns.

PROPOSED MOTION: To approve a variance at 2344 Johnson Road to allow a fence located in the required front yard, 47 feet from the front property line, to be up to five feet in height, as illustrated on the plans submitted with the application. In addition, two radius sections of fence may connect to the existing gate columns.

Frank Uhlhorn moved to approve a variance at 2344 Johnson Road to allow a fence located in the required front yard, 47 feet from the front property line, to be up to five feet in height, as illustrated on the plans submitted with the application. In addition, two radius sections of fence may connect to the existing gate columns. Jennifer Sisson seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:59 p.m.