

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
June 11, 2013
6:00 p.m.**

COMMISSION PRESENT:

Mr. Henry Evans; Mr. David Klevan; Alderman Forrest Owens; Mr. Tony Salvaggio

DEVELOPMENT STAFF PRESENT:

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

Interested Individual(s) present:

Mr. Shad Berry – 8411 Sandy Berry Cove, Germantown, TN 38138

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

ROLL CALL: – Mr. Uhlhorn – absent; Salvaggio – present; Ms. Sherman – absent; 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 May 14, 2013 Minutes

Dave Klevan made a motion to approve the minutes from the May 14, 2013, meeting that was seconded by Jennifer Sisson.

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

MOTION PASSED

SUBJECT: 2500 Horsham Drive – Request Approval of a Variance to Allow a Swimming Pool to be Located Less than Five Feet from an Easement

BACKGROUND:

DATE SUBDIVISION APPROVED: The Woodlands of Forest Hill Subdivision, Section A, was approved in 1983.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1989.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct swimming pool within the rear yard of the property, with the side of the pool being placed within 2 feet from the five-foot utility easement along the rear lot line. The pool will be five feet from the west lot line, and ten feet from the south lot line. In addition, a portion of a retaining wall will be constructed within the utility easement.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 23-262 (Swimming Pools), which requires pools to be a minimum of five feet from all property lines and recorded easements.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional topographic conditions resulting in peculiar and exceptional practical difficulties. The applicant notes that the house is built on a hill, so that a retaining wall was required for the length of the house. The retaining wall restricts the space available for a swimming pool. In addition, a pool that complied with the standard setback requirements would not be sufficiently wide for the safe installation of a diving board. See the application and attachment for additional information.

STAFF COMMENTS:

1. The property owner shall enter into a Hold Harmless Agreement with the City, stating that the City of Germantown will not be responsible for any damage done to the pool or retaining wall arising from any work done within the utility easement. The agreement shall be completed prior to the issuance of a pool permit.
2. If approved, the applicant shall apply to the City of Germantown Neighborhood Services Division for a Pool Permit.

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

Shad Berry, Applicant
8411 Sandy Berry Cove
Germantown, TN 38138

Mr. Berry advised that he plans to close on the house at 2500 Horsham Drive in August, 2013. He said that the existing steps on the retaining wall interfere with the pool width/design and does not allow a diving board for the pool. Mr. Berry further stated that he would like to build the pool properly, mainly for resale purposes.

Mr. Klevan asked Mr. Berry if he was familiar with the "Hold Harmless" agreement. Mr. Berry said that he understands the "Hold Harmless" agreement and has no problem with it; he will be sure to avoid all buried utility cable lines.

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 2500 Horsham Drive to allow a swimming pool to be closer than five feet to an easement, subject to staff comments and the site plan submitted with the application.

Dave Klevan moved to approve a variance at 2500 Horsham Drive to allow a swimming pool to be closer than five feet to an easement, subject to staff comments and the site plan submitted with the application. Tony Salvaggio seconded the motion.

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

Meeting Adjourned at 6:08 p.m.