

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

**August 13, 2013**

**6:00 p.m.**

**COMMISSION PRESENT:**

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

**DEVELOPMENT STAFF PRESENT:**

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

**Interested Individual(s) present:**

Mr. Scott Burnett – 2079 Allenby, Germantown, TN 38139

Mr. Naher Elaina – 7991 C.D. Smith Road, Germantown, TN 38138

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

**ROLL CALL:** – Mr. Uhlhorn – absent; 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 June 11, 2013 Minutes**

Dave Klevan made a motion to approve the minutes from the June 11, 2013, meeting that was seconded by Pat Sherman.

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

**MOTION PASSED**

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**SUBJECT:** 1551 East Churchill Downs – Request a variance to allow a fence to exceed six (6) feet in height in the “R-1” Medium Density residential zoning district.

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Poplar Estates, Block J subdivision was approved by the Germantown Planning Commission on December 8, 1969.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The home was constructed in 1972.

**PREVIOUS VARIANCE REQUESTS:** The BZA on August 10, 2010, denied a requested variance to allow an existing fence to exceed six feet in height.

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow a wood fence along the rear and side lot lines to be up to 8 feet in height. The proposed fence will replace an existing fence that is 7 ft., 9 in. in maximum height.

The applicant obtained a permit from the City for a six foot tall fence on May 22, 2003. At some point after that, the homeowner added two (2) feet of lattice board to the top of the wood fence along the rear lot line. The Germantown Code Compliance staff notified the owner of the violation via letter on May 24, 2010. The owner then applied to the BZA for a variance to allow the additional height. The request was denied and the owner appealed the decision to Chancery Court.

The owner now proposes to replace the existing rear lot line fence with a solid, stockade-type fence that is 8 feet in height. In addition, the homeowner proposes to construct an 8 foot tall fence along a 24 foot section of the southern side lot line. The intent is for the new fence to follow the natural contour of the side lot line and connect to the 8 ft. rear lot line fence. The remaining approximately 74 feet of the fence will be 6 feet in height.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, “the maximum height of any fence shall be six (6) feet.” The applicants’ fence exceeds six (6) feet in height by an additional two feet.

**APPLICANT’S JUSTIFICATION:** The applicant is requesting the variance due to exceptional topographic conditions of the property. According to the applicant, there is a “4 foot inlet that drains from approximately 5 to 6 other homes. In order for the inlet to provide proper drainage, the grade of our lot is lower than surrounding lots. Thus, when a standard 6 foot fence is installed, because of this lowered grade at the rear of the property, homeowners around ours have complete view of our backyard, allowing us very little privacy.” The applicant further notes that the topographic change causes a hardship in that “homes around us have a more than normal view into our backyard leaving us with less than normal privacy expected from a standard 6 foot fence.”

**STAFF COMMENTS:**

1. The applicant requests a **two foot variance** to allow an eight foot tall wood fence along the rear property line and along a 24 foot section of the side (southern) property line.
2. If the variance approved, the existing fence and lattice extension along the rear lot line will be removed.
3. If the variance request is approved, the applicant must apply for a fence permit through the Department of Economic and Community Development.

**Scott Burnett, Son of Applicant**  
**2079 Allenby Road**  
**Germantown, TN 38139**

Mr. Burnett advised that he would like to withdraw his request for a variance to allow a fence to exceed six feet in height” at 1551 E. Churchill Downs. He said that he would like to have the Board consider it at a later time. With that the request for variance was withdrawn.

**SUBJECT:** 7991 C. D. Smith Rd. – Request Approval of a Variance to Allow an Accessory Structure to be a Distance Less than its Height from a Property line

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Tara Gardens Subdivision was approved by the Germantown Planning Commission in 1990.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** 1992

**PREVIOUS VARIANCE REQUESTS:** none.

**DISCUSSION:**

**NATURE OF VARIANCES REQUESTED:** The specific request by the applicant is to obtain permission for a 14 ft. tall storage building (11 feet tall at the mid-point) that was constructed 8 feet from the rear (south) property line and 5 feet, five inches from the side (east) property line. A variance for an encroachment of 5 feet, 5 inches into the required setback from the east property line and an encroachment of 3 feet into the required setback from the south property line is proposed.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** 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 attached application for the full justification): According to the applicant, the structure was built in 2004 and has not caused any complaints from his neighbors. He was unaware that a permit was required for the construction.

**STAFF COMMENTS:**

4. According to the applicant, the storage building was built in 2004. There is no record of a permit from either Germantown or Shelby County Construction Code Enforcement for its construction.
5. The homeowner was notified of the violation on June 11, 2013, and applied for a variance on July 7, 2013.
6. If the variances are approved, the homeowner shall apply for an accessory structure permit from the City of Germantown and Shelby County Code Enforcement.

**Maher Elaina, Applicant**  
**7991 C.D. Smith Road**  
**Germantown, TN 38138**

Mr. Elaina said that he did not know that a permit was needed, nor did not know that it had to be built back at a set distance from the property line. He further stated that he spoke with neighbors about the shed and they had no problems with it.

Chairman Evans asked Mr. Elaina if he constructed the shed himself. Mr. Elaina advised that he built it himself.

Mr. Salvaggio asked Mr. Elaina if there is an electrical meter on the structure. Mr. Elaina said no. He said that a wire is run from the house. Mr. Salvaggio said this was a main concern because without a permit, it would not have been inspected. Mr. Elaina said that if it is a problem he would be glad to unwire the structure.

Mr. Klevan asked Mr. Elaina when the structure was built. Mr. Elaina said 2004.

Ms. Sherman asked Mr. Elaina have the power lines been there since 2004. Mr. Elaina said no, he just put them up this year.

Chairman Evans asked Mr. Elaina was he totally unaware that a permit was needed for the structure itself. Mr. Elaina said [inaudible].

Mr. Klevan asked Mr. Elaina if there is enough land coming forward to move the structure so that it will be in compliance? Mr. Elaina said no. Mr. Klevan then asked if the structure would be in compliance if the roof was taken down. Chief Planner, Wade Morgan advised that it would be in compliance with the eight foot setback from the rear; the structure could be moved to the right with the allowance of an eight foot roof.

Alderman Owens asked Mr. Elaina what the floor of the shed is constructed of. Mr. Elaina said the floor is made of concrete blocks, not poured concrete.

Chairman Evans said that he intends to vote no on this variance requests for two reasons. The first being that a permit was not obtained. Chairman Evans further advised as a member of this Board, he has a consistent approach for not allowing people to construct something and then ask for forgiveness. The second reason is that there does not seem to be a hardship since the structure can be moved, eliminating the need for the variance.

Ms. Sherman stated that she too would be voting no. She said that her main concern is the safety of the existing wiring.

**PROPOSED MOTION:** To approve a variance at 7991 C. D. Smith Rd. to allow an existing accessory building to be located 5.5 feet from the side and 8 feet from the rear property line, as described in the plans submitted with the application, all subject to staff comments.

Dave Klevan moved to approve a variance at 7991 C. D. Smith Rd. to allow an existing accessory building to be located 5.5 feet from the side and 8 feet from the rear property line, as described in the plans submitted with the application, all subject to staff comments. Tony Salvaggio seconded the motion.

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

**Meeting Adjourned at 6:19 p.m.**