

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, June 10, 2014
6:00 p.m.**

The regular meeting of the Board of Zoning and Appeal was scheduled and held in the Council Chambers of the Municipal Center on June 10, 2014. Chairman Evans called the meeting to order at 6:00 p.m. requesting the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT:

Mr. Henry Evans, Chairman; Mr. Frank Uhlhorn, Vice Chairman; Ms. Jennifer Sisson; Ms. Pat Sherman; Mr. Hunter Browndyke; Mr. David Klevan; and Alderman Forrest Owens.

DEVELOPMENT STAFF PRESENT:

Mr. Cameron Ross, Economic and Development Services Director; Mr. Wade Morgan, Chief Planner; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney

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.

1. Approval of Minutes for May 13, 2014

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of May 13, 2014, seconded by Ms. Sisson, with no further comments or discussions.

ROLL CALL: Mr. Uhlhorn – Yes; Ms. Sisson - Yes; Mr. Browndyke – Yes; Alderman Owens – Yes; Ms. Sherman – Yes; Mr. Klevan – Yes; Chairman Evans – Abstain.

MOTION PASSED

2. 7420 Oak Run Drive – Request Approval of a Variance to Allow Parking within the Required Front Yard.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Oak Run Subdivision was approved by the Planning Commission in 1978.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1981.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain permission for a parking area located within the required front yard. On November 7, 2013, Germantown Construction Inspectors noticed that the homeowner was widening the portion of the driveway beside the garage to create a parking pad. The parking pad was determined to be within the required front yard. The homeowner filed an application for a variance for the parking pad on February 4, 2014. 7420 Oak Run is a corner lot, with frontage on both Oak Run and Miller Farms Rd. The driveway is connected to Miller Farms Rd while the house faces Oak Run. The parking pad is parallel to the existing driveway, is 12 feet wide by 29.5 feet long, and is completely within the required front yard.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from §23-88(a) which prohibits parking spaces within the required front yard and limits the width of the driveway to 18 feet within 20 feet of the garage or carport.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of extraordinary situation or condition, resulting in peculiar and exceptional difficulties. He states “ I want to keep my 3rd car off of Miller Farms and off of Oak Run with plenty of space for children to walk on or around my property safely.” He states further that “my driveway and yard get a lot of foot traffic before and after school.”

STAFF COMMENTS:

1. The Zoning Regulations prohibit parking spaces within the required front yard, which is the area within 50 feet of the curbs of both Oak Run Dr. and Miller Farms Road, in this situation.

If the Board approves the requested variance, staff recommends that landscaping of between 18 and 36 inches in height be required along the east side of the parking pad, so as to buffer the view of the parked vehicle.

PROPOSED MOTION: To approve a variance for 7420 Oak Run Drive to allow the existing parking pad to encroach into the front yard setback, subject to staff comments and the site plan submitted with the application.

WITHDRAWN BY APPLICANT FOR 60 DAYS

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3. **2549 Horsham Drive – Request Approval of a Variance to Allow an Accessory Structure to be a Distance Less than its Height from the Property Line.**

BACKGROUND:

DATE SUBDIVISION APPROVED: The Woodlands of Forest Hill Subdivision was approved by the Memphis/Shelby County Land Use Control Board in 1985.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1989.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: **SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is approval of a variance from § 23-236, which requires accessory buildings or structures with a height of eight feet or more to be located a distance equal to at least the height of the structure from the rear and side lot lines.

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to approve an existing tree-house that is ten feet in height and located 8 feet from the rear property line and 4 feet from the side (north) property line.

APPLICANT’S JUSTIFICATION: The applicants are requesting the variance to enable them to complete the construction of a tree-house. Construction was begun, the applicant was notified by Code Compliance staff first on April 17, 2014, and again on May 8, 2014, that he needed to obtain a permit from Germantown for the structure. The homeowner submitted an application for a variance on May 15, noting that the current location is the only one with acceptable trees for the structure. See the application for additional reasoning.

STAFF COMMENTS:

1. If the Board approves the requested variance, the applicant shall apply for an accessory structure permit from Germantown.

PROPOSED MOTION: To approve a variance for 2549 Horsham Drive to allow an existing tree-house that is 10 feet in height to be located 8 feet from the rear lot line and 4 feet from the side lot line, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Mr. Andrew Fondaw explained that he and his father (lives in St. Louis, MO) decided to build a tree house for his children. Construction was started on April 8, 2014 and late Friday, April 11, 2014 he noticed on his water bill statement that he had to acquire a permit before construction. City of Germantown Code Compliance Officer arrived on Monday, April 14, 2014 to inform him that he was not in compliance with the City of Germantown Ordinance.

Mr. Larry Collins explained that his lot backed up to the applicant's lot and felt this structure was too close to his fence and would interfere with his privacy.

After much discussion Chairman Evans suggested that the applicant withdraw this request, work with his neighbor and staff and come back before this board next month. He further explained that if the board was asked to vote and this item failed to get approved then the applicant would not be able to come back before the BZA for six months.

Mr. Fondaw requested to withdraw this item.

WITHDRAWN BY APPLICANT

4. 9151 Orleans Walk Cove – Request Approval of a Variance to Allow a Swimming Pool to Encroach into an Easement.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Orleans Way Planned Unit Development was approved by the Planning Commission in 2005.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: under construction.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: **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.

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a 20 foot by 40 foot swimming pool within the rear yard of the property, with a portion of the pool extending into the five-foot utility easement and a ten foot landscape easement along the rear lot line adjacent to Dogwood Road. The pool will be approximately two feet from the brick and stucco wall surrounding the subdivision. The applicant has provided letters from MLGW, ATT and Comcast stating their acceptance of the encroachment.

APPLICANT'S JUSTIFICATION: The applicants are requesting the variance to enable them to construct a useable pool in their rear yard. They note that relocating the pool closer to the house is not a viable option, as that would place the pool too close. See the application for additional reasoning.

STAFF COMMENTS:

1. MLGW, ATT and Comcast have provided letters stating their acceptance of the encroachment.

If the Board approves the requested variance, the applicant shall have the Orleans Way PUD plat revised to reflect the removal of the utility easement and the modification of the landscape easement.

PROPOSED MOTION: To approve a variance for 9151 Orleans Walk Drive to allow a swimming pool to encroach into a utility easement and a landscape easement, subject to the staff comments contained in the staff report and the site plan submitted with the application.

WITHDRAWN BY APPLICANT BEFORE MEETING

5. 8902 Cairn Ridge Drive – Request Approval of a Variance to Allow a Fence to Exceed Six Feet in Height.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Woodlands of Forest Hill Subdivision was approved by the Memphis/Shelby County Land Use Control Board in 1985.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1989.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 6-102, which limits the height of fences to six feet.

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to approve an existing fence that is 7 feet in height. The applicant owns a corner lot, and constructed a wood fence along their rear lot line, adjacent to the driveway of the abutting lot. A 12 foot-long section of that fenced is 7 feet in height. The homeowner was notified of the violation by Code Compliance staff on April 14, 2014, and applied for a variance on May 13, 2014.

APPLICANT’S JUSTIFICATION: The applicants are requesting the variance to provide better privacy in their rear yard. He notes that there is a 4.5 foot elevation difference between his yard and his neighbor’s driveway, and argues that a 6 foot tall fence does not adequately screen the neighbor’s garage and automobiles. See the application for additional explanation and photographs.

PROPOSED MOTION: To approve a variance for 8902 Cairn Ridge Drive to allow a 12 foot long section of fence to be a maximum of seven feet in height, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Mr. John Carlson explained that the elevation being the way it is. If the fence was any lower he would be able to see the neighbor’s vehicles as well as anything else that might be in his driveway.

After much discussion, Chairman Evans called for a motion.

Mr. Uhlhorn moved to approve a variance for 8902 Cairn Ridge Drive to allow a 12 foot long section of fence to be a maximum of seven feet in height, as discussed and subject to the comments contained in the staff report and seconded by Mr. Klevan

ROLL CALL: Mr. Uhlhorn – Yes; Ms. Sisson - Yes; Mr. Klevan – Yes; Ms. Sherman – Yes; Mr. Browndyke – Yes; Alderman Owens – Yes; Chairman Evans – Yes.

MOTION PASSED

6. 7685 Stout Road – Request Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed 30 Inches in Height.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Old Village Subdivision was approved by the Germantown Planning Commission in 1980.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1969.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from § 6-102, which limits the height of fences within the required front yard to 30 inches. The subject property fronts on both Stout Rd and Old Village Cove, so has front yards on both streets.

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a six foot tall fence with gate within the front yard area along Old Village Cove. The proposed fence and gate are to be 27 feet, 1 inch from the curb (17 feet, 1 inch from the property line). The standard setback for a six foot tall fence is 40 feet from the property line. Therefore, the proposed fence will encroach 22 feet, 11 inches into the front yard.

APPLICANT'S JUSTIFICATION: The applicant requests the variance to provide better privacy and security to her dwelling. She notes that the house was built in 1968 on a 14 acre tract. The property was subsequently subdivided. See the application for additional explanation and photographs.

STAFF COMMENTS:

1. If the Board approves the requested variance, the applicant shall apply for a fence permit from Germantown.

The property survey places the existing house 40.9 feet from Old Village Cove. Staff notes that the standard location for a six foot tall fence would be 11 inches from the exterior wall, and southern door, of the house.

PROPOSED MOTION: To approve a variance for 7685 Stout Road, to allow a six foot tall fence and gate to be constructed within the required front yard along Old Village Drive, 27 feet 1 inch from the curb, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Chairman Evans made an announcement that due to a death in the applicant's family this item would be moved to the next month's meeting being held July 8, 2014.

MOVED TO NEXT MONTH

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:45 p.m.