

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

July 14, 2009

6:00 p.m.

Chairman Boyd called the meeting to order at 6:00 p.m. The secretary called the roll to establish a quorum.

COMMISSION PRESENT:

Chairman Elizabeth Boyd; Mr. Henry Evans; Alderman Carole Hinely; Mr. Ron Poe; Lee Henwood

DEVELOPMENT STAFF PRESENT:

Mr. Josh Whitehead, Director of Planning; Mr. Alan Strain, Attorney; Mr. Wade Morgan, Chief Planner; Ms. Carmen Richardson, Secretary

Interested Individual(s) present:

Mr. Sammie Stover – 8833 Three Chimneys Drive, Germantown, TN 38138

Mr. David Blackburn – 8536 Poplar Pike, Germantown, TN 38138

Mr. Bill Dudley – 2828 Hunters Horn South, Germantown, TN 38138

Mr. Charles Salvaggio – 7744 Poplar Pike, Germantown, TN 38138

Ms. Amy Callaway – 1940 Malabar Drive, Germantown, TN 38138

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

ROLL CALL: – Mr. Evans – present; Mr. Henwood – present; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – present; Mr. Poe – present; Chairman Boyd – present

Chairman Boyd 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. She 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. She then swore in the staff.

Chairman Boyd stated that she would like to make note that the motions made in all meetings are of an affirmative nature. She 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 12, 2009, Minutes

ROLL CALL: -- Mr. Henwood – yes; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – yes; Mr. Evans – yes; Mr. Poe – yes; Chairman Boyd – yes

MOTION PASSED

Approval of June 9, 2009, Minutes

ROLL CALL: -- Mr. Henwood – abstain; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – yes; Mr. Evans – yes; Mr. Poe – yes; Chairman Boyd – yes

MOTION PASSED

SUBJECT: 8536 Poplar Pike - Request a variance in the required rear yard setback in the "R"
Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Fox Creek Subdivision, Section G, was approved in 1978.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The house was built in 1980.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow an addition to the roofline of the principal structure in an "R" Residential zoning district to encroach into the required rear setback. The proposed roofline will cover the existing patio and will be located twenty-five feet from the rear property line at its closest point.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is for a variance from Section 23-282 (3) of the Zoning Ordinance, which states that, "There shall be a required rear yard of not less than 40 feet or 20 percent of the average lot depth, whichever shall be less, but not less than 25 feet." The required rear yard setback for this lot is thirty feet. The proposed addition to the roofline will encroach five feet into the determined setback, or twenty-five feet from the rear property line at its closest point.

APPLICANT'S JUSTIFICATION: The applicant bases the variance request on the criteria of other extraordinary and exceptional situation or condition of the piece of property resulting in peculiar and exceptional practical difficulties. The applicant states, "The deck was there when we bought the house. We are wanting to cover the deck so we can enjoy it more. If the roof line does not cover the [entire] deck it will look odd."

STAFF COMMENTS:

1. The required rear yard setback is thirty feet. The proposed extension of the roofline to cover the existing patio is set back twenty-five feet at its closest point, for an encroachment of five feet.
2. The Board of Mayor and Aldermen recently approved an ordinance amendment to allow front porches to extend ten feet into the front yard setback.
3. The applicant has submitted photos of the existing deck. The applicant plans to reroof the house and extend the roof at the same time. Therefore, the roof will be made of the same material as the house.
4. If the variance is approved, the applicant shall contact the Department of Community Development and the Memphis / Shelby County Office of Construction Code Enforcement to acquire any necessary permits. Failure to obtain the permit within one hundred eighty (180) days will result in the cancellation of all variances.

Sammie Stover, Contractor
8833 Three Chimneys
Germantown, TN 38138

Mr. Stover started out by explaining that the covered structure would be eighteen feet and the setback from the front of the soffit would be twenty-five feet. He said really what they [he and owner] are asking for is about two feet. Mr. Poe asked if this would be the same structure and material that would be used to cover aesthetically. Mr. Stover responded by stating that they [he and company] would tie it into the

roof above (similar roof pitch) that exists right now so that it would be gabled right back to the house itself. Mr. Evans said that he thinks that there may be a bit of a problem. He said to Mr. Stover “you are asking for a particular variance, but are now telling us that you are not exactly sure as to how you are going to make it work.” He further stated that once the variance is granted, you can literally do anything. Mr. Evans said that this creates a problem for us trying to approve a variance that we are not exactly sure what’s going to be constructed within the variance’s scope.

David Blackburn, Owner
8536 Poplar Pike
Germantown, TN 38138

Mr. Blackburn explained that the main reason he wanted to do this right now was because he is going to be replacing the entire roof on the house (due to leaks). He would like to cover the existing deck while roofing is being done to the principal structure.

Bill Dudley, Neighbor
2828 Hunters Horn South
Germantown, TN 38138

Mr. Dudley stated that this is not considered a hardship. Mr. Dudley’s concern is if a variance is granted in this particular case, there will probably be other variances granted throughout the neighborhood that are not conducive to increasing property values. Mr. Dudley says that the roof replacement is totally a maintenance situation; covering the existing deck is clearly an intention for an addition onto the house. Mr. Dudley says that he is in total opposition of granting a variance.

PROPOSED MOTION: To approve the request for a variance at 8536 Poplar Pike to allow an extension of the roofline to cover the existing patio and encroach into the required rear yard setback by five feet in the “R” Residential zoning district.

Mr. Evans moved to approve a variance at 8536 Poplar Pike to allow an extension of the roofline to cover the existing patio and encroach into the required rear yard setback by five feet in the “R” Residential zoning district; Mr. Henwood seconded the motion.

ROLL CALL: -- Mr. Henwood – yes; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – yes; Mr. Evans – no; Mr. Poe – yes; Chairman Boyd – yes

MOTION PASSED

SUBJECT: 8006 Farmington Blvd. - Request a variance to allow a fence to exceed six feet in height

BACKGROUND:

DATE SUBDIVISION APPROVED: The Farmington Subdivision, Section B, was approved in 1971.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: Currently under construction.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific requests by the applicant are to allow 1) a variance for a wood fence along the rear property line, which backs up to an open, concrete-lined drainage ditch, to be eight feet in height; and 2) the fence adjacent to the gate to be seven feet in height.

The primary reason for the fence is because the yard drops in elevation as it nears the ditch. The applicant will also need a variance for the wall at either entrance to the backyard to be seven feet in height. The wall has already been constructed. (See attached photos and site plan).

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is for a variance from § 6-102(a), of the Code of Ordinances, which states, "The maximum height of any fence shall be six feet." The proposed height of the fence is eight feet and the existing wall is seven feet.

APPLICANT'S JUSTIFICATION: The applicant bases the variance request on the criteria of exceptional topographic conditions resulting in peculiar and exceptional practical difficulties. The applicant states, "The grade of the yard lowers to the ditch. The fence will only be viewed by [the] rear neighbor." The applicant is requesting the seven foot wall located on the west side of the house due to the grade change on the property line, which goes up about two feet. (Refer to site plan).

STAFF COMMENTS:

5. The applicant is requesting a two foot variance to allow for a proposed wood fence that is eight feet in height and a one foot variance for the existing brick fence.
6. There is an existing six foot tall chain link fence along the ditch.
7. The rear yard slopes substantially towards the open ditch.
8. The homeowner states that the eight foot fence height is requested so as to keep their dogs (Labrador retrievers) from jumping over the fence.
9. The existing seven-foot tall brick fence within the side yard is at approximately the same elevation as the six-foot wood fence along the property line.
10. Should the Board of Zoning Appeals approve the request, the applicant shall obtain a fence permit for the fence from the City of Germantown Office of Code Enforcement. The permit must be obtained within one hundred eighty days of the approval unless otherwise expressly authorized by the Board of Zoning Appeals.

Mr. Henry Evans recused himself due to the fact that applicant has done work for him at his home in the past.

Charles Salvaggio (Representative)
The Salvaggio Group
7744 Poplar Pike
Germantown, TN 38138

Mr. Salvaggio stated that they [he and Group] are requesting this variance because a six foot fence at the front and even with the column toppings would not have looked aesthetically correct and it would not allow the homeowner to have adequate privacy. Mr. Salvaggio further stated that in the backyard, there is a seven foot drop. If homeowners were sitting on their patio, they would not be able to see the top of a six foot fence. Per Mr. Salvaggio, this is a hardship because the homeowners have added a substantial amount of landscaping to their backyard and would like to protect it. Also, an eight foot fence will give them more privacy and keep their large dogs from jumping into the ditch located behind the property.

Chairman Boyd asked for clarification about the exact nature of the fences to the west and to the rear. Mr. Salvaggio replied that the eight foot fence was to the west, and the City had a four foot chain linked

fence along the rear property line. Chairman Boyd then asked about the front part (columns) of the brick fence. Her concern was that the actual fence was built without coming to the BZA. Mr. Salvaggio explained that he did not think that a permit was necessary for replacing an existing fence and that a permit for the toppings and columns was pulled on the 19th of February, 2009.

Amy Callaway, Neighbor
1940 Malabar Drive
Germantown, TN 38138

Ms. Callaway asked Mr. Salvaggio if the fence would be placed in front of the vegetation, or behind it. Mr. Salvaggio responded by saying the fence will actually be behind the vegetation where the existing cyclone fence and ditch is now.

PROPOSED MOTION #1: To approve a variance at 8006 Farmington Blvd to allow a fence along the rear property line to exceed six feet in height (eight feet in height), as described in the application.

Alderman Hinely moved to approve a variance at 8006 Farmington Blvd to allow a fence along the rear property line to exceed six feet in height (eight feet in height), as described in the application; Mr. Henwood seconded the motion.

ROLL CALL: -- Mr. Henwood – yes; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – yes; Mr. Evans – recused; Mr. Poe – yes; Chairman Boyd – yes

MOTION PASSED

PROPOSED MOTION #2: To approve a variance at 8006 Farmington Blvd for an existing fence within the side yard to exceed six feet in height (seven feet in height).

Alderman Hinely moved to approve a variance at 8006 Farmington Blvd for an existing fence within the side yard to exceed six feet in height (seven feet in height). Mr. Henwood seconded the motion.

ROLL CALL: -- Mr. Henwood – yes; Ms. Sherman – absent; Mr. Klevan – absent; Alderman Hinely – yes; Mr. Evans – recused; Mr. Poe – yes; Chairman Boyd – yes

MOTION PASSED

Meeting Adjourned at 6:41 p.m.