

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

May 12, 2009

6:00 p.m.

Mr. Henry Evans called the meeting to order at 6:00 p.m. The secretary called the roll to establish a quorum.

COMMISSION PRESENT:

Mr. Henry Evans; Alderman Carole Hinely; Mr. David Klevan; Mr. Lee Henwood; Mr. Ron Poe

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:

Ms. Suzanne Newman – 6464 May Creek Cove, Memphis, TN 38119

Mr. Harvey Matheny – 3175 Lennox Park Boulevard, Memphis, TN 38115

Mr. Reggie Dill – 7075 May Woods Lane, Germantown, TN 38138

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

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

Mr. 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.

Mr. 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 April 14, 2009, Minutes

Mr. Klevan made a motion to approve the minutes from the April 14, 2009, meeting that was seconded by Alderman Hinely.

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

MOTION PASSED

SUBJECT: 7283 Oakville Drive – Request a Variance to Allow the Principal Structure to Encroach into the Required Rear Yard

BACKGROUND:

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1999

PREVIOUS VARIANCES: None on file.

DISCUSSION:

NATURE OF VARIANCES REQUESTED: The homeowner proposes to construct a 12 foot by 20 foot screen porch over their existing brick patio in the rear yard, which will extend the principal structure into the rear yard. The Vineyards PUD requires a 25 foot rear yard setback for the subject and surrounding lots. The existing house is 31.6 feet from the rear property line, and the proposed screen porch addition will encroach 5.4 feet into the required rear yard. The principal structure will then be 19.6 feet from the rear property line.

SPECIFIC SECTION OF ZONING ORDINANCE:

Sec. 23-567(b)(1) – Except as modified by the approved outline plan, a planned development shall be governed by the regulations of the district or districts in which the planned development is located.

The Vineyards PUD plat sets 25 feet as the rear yard setback for the subject lot.

APPLICANT’S JUSTIFICATION: The applicant bases the variance request on the **other extraordinary and exceptional situation or condition of the piece of property**, resulting in **undue hardship upon the owner**. The applicant states “the natural area to the south provides a 150 ft. buffer between the rear of the property and adjacent property owners.” The applicant has also submitted additional justification, which is attached.

STAFF COMMENTS:

1. The Vineyards Homeowner’s Association has approved the proposed addition.
2. The applicant notes that the rear of the property faces south and there is no buffer from the west to offer protection from the sun. The proposed porch would provide relief from the heat and glare of the sun.

Ms. Suzanne Newman (Representative)
6464 May Creek Cove
Memphis, TN 38119

Ms. Newman started out by advising that her parents [applicants] moved in a couple of years ago. She said the issue here is because of the sun’s heat and glare, the applicants are not able to sit outside and enjoy the landscaping they have diligently worked on. She further advised that the applicants did get approval from the Vineyard’s Association Board. She made mention of an enclosed letter referencing their consent. Ms. Newman stated that the neighbor to the east also consented. However, the neighbors to the west had some concerns, but after coming over and speaking with the applicants, they seemed to be satisfied. Ms. Newman concluded by saying that because of the natural area in the back, she does not foresee any issues with the neighbors of Fox Grove Cove.

Board member Mr. Poe asked if the proposed addition was going to be similar to the principal structure. Ms. Newman responded by saying the room addition will be the upper level of the brick patio. The porch will be made of wood and screen as the bottom porch is; it will be painted to match the trim of the house and will tie into the roof.

Ms. Newman advised that she and applicants have not decided on a final design. She said that the idea right now is to trim it out from under the bottom, which is also sitting on brick. The patio is edged in brick and will be inset a little and then trimmed. She advised that the need for the 20 feet is to cover the three windows on the back of the house.

Mr. Evans asked do the covenants of the applicant's subdivision require a design to be submitted to the Homeowner's Association at the time of their approval. Ms. Newman replied by stating that she does not know the answer. She said that her parents did discuss it with the board but she does not know if they reviewed any plans. At that time, the letter of approval from the Neighborhood Association was presented and read by Wade Morgan. Per the letter, plans had not been reviewed by the Association.

Mr. Evans said that if the homeowner's association's approval is based upon a plan that was submitted to them, then our approval should be based on the same thing. Alderman Hinely said that she would like to clarify that the homeowner's approval was based on a discussion of a plan, not a written plan. Mr. Evans stated that the Board's concern is that once the variance is approved, the applicants can put anything there that will fit. It'll make no difference as to what it is because we have given you the variance to encroach. Per Mr. Evans, that is why we have plans submitted so that we know what we are improving. Mr. Evans advised that without a plan, he did not see how the request for a variance could be approved at this time. He suggested that the applicants withdraw their request and reappear before the Board next month. With that, the request was withdrawn by the applicant.

REQUEST WITHDRAWN BY THE APPLICANT.

SUBJECT: 7040 Stout Road – Request a use-on-appeal to allow horses in an “R” Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The subject property is part of Lot 15 of the Kirby-May Subdivision, platted by partition deed in plat book 17, page 71.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: No structure lies on the portion of the property subject to this application.

PREVIOUS USES-ON-APPEAL: Although there are no applications on record for 7040 Stout Road, the owner of 7130 Stout Road received a use-on-appeal from the Board of Zoning Appeals on June 10, 2008, to allow horses on that property. If the Board approves this request, the applicant will submit a plat to the City of Germantown to incorporate the subject property into Lot 1 of Ellis Woods Subdivision (7130 Stout) and splitting it from the rest of the Germantown Christian Center property.

DISCUSSION:

NATURE OF REQUEST: The applicant is requesting a use-on-appeal to allow horses for personal use on land that is currently under contract between the Germantown Christian Center (seller) and Delia Bossler (buyer), owner of 7130 Stout Road which abuts the subject property to the east (see vicinity map). A use-on-appeal to allow horses at 7130 Stout Road was approved by the Board of Zoning Appeals on June 10, 2008. That use-on-appeal applies only to the property that was indicated in the site plan submitted with that request; in other words, Lot 1 of the Ellis Woods Subdivision. Although the subject property will be merged into 7130 Stout Road if this application is approved, an additional use-on-appeal approval from the Board is required since this application covers property not included as part of last year's request.

SPECIFIC SECTION OF ZONING ORDINANCE: According to the City of Germantown Office of Code Compliance, horses are allowed as a legal permitted use in the estate residential districts (“AG” Agriculture, “RE-10” and “RE” Residential Estate). Horses are also allowed as a legal nonconforming use (“grandfathered” use) in the non-estate residential districts if they existed prior to annexation and/or enactment of zoning provisions.

Horses have been approved as a use-on-appeal for residential properties in the past, including 7130 Stout

Road, which abuts the subject site to the east. This is in accordance with City of Germantown policy (please see enclosed document entitled "Allowability of Horses in Germantown"). Uses-on-appeal do not require the same level of scrutiny from the Board that is required for variances (please see enclosed excerpt from "Tennessee Planning Commissioner Training Handbook: A Closer Look at Zoning"). According to Tennessee law, the Board of Zoning Appeals shall determine whether the proposed use is compatible with the zoning district's intent and purpose. The intent and purpose of the "R" Residential zoning district can be gleaned from the following provisions:

Sec. 23-226. Scope of division.

The regulations set forth in this division shall apply to the district designation of the R residential district. The R district is to be a low density, single-family district consisting of lots of a minimum size of 15,000 square feet.

Sec. 23-227. Use regulations.

Within the districts designated as R residential districts, the following, activities are permitted: Single-family detached dwellings; accessory buildings and accessory uses customarily incidental to the aforementioned use including, but not limited to, satellite dish receiving antenna.

STAFF COMMENTS:

1. The property located to the south of the subject property currently contains several horses that were on site at the time the area was annexed into the City of Germantown. As stated before, the property to the east of the subject property is approved for horses. The property to the west of the subject property will remain the Germantown Christian Center.
2. The total acreage of the proposed combined lot is 7.57 acres. This exceeds the minimum lot size in two of the three zoning districts that allow horses by right. The minimum lot size in the "AG" Agricultural zoning district is 5 acres and the minimum lot size in the "RE" Residential Estate zoning district is 2 acres. The minimum lot size in the "RE-10" Residential Estate zoning district is 10 acres, but this is a paper zoning district as no parcels are presently zoned "RE-10."

Harvey Matheny (Applicant)
Kimley-Horn and Associates, Inc.
3175 Lenox Park Boulevard
Memphis, TN 38115

Mr. Matheny began by stating that they [Kimley-Horn] had applied for the allowance of use-on-appeal for horses on the property located at 7040 Stout Road. He advised that after further discussion with staff and clarification about a second property located at 7140 Stout Road, he now has a better understanding of the ordinance and the part that pertains to where the horses are to be stabled. He said that the plan that was approved by the Board last year has not changed; the Bossler family still intends to have a stable on their property, behind the garage. Mr. Matheny then advised that they [Kimley-Horn] would like to withdraw their request for variance, because it appears that the ordinance does not pertain to what they are requesting.

Mr. Reggie Dill (Neighbor)
7075 May Woods Lane
Germantown, TN 38138

Mr. Dill started by saying that he understands the withdrawal, and he understands that it is on the basis of the intent to sell the property to Mark Bossler. He said that because the variance was likely requested from them [Bossler's], a stable will be erected behind the house. Mr. Dill said that he will also ask the Board to consider that he has knowledge that an arena of some type was also to be erected; whether it is allowed in the blue section [7130 Stout Road] or in the red section [7040 Stout Road] might be an issue.

He further stated that this property has been up for sale for quite a while. He said that he knows the minister quite well and he has discussed this issue with the church. Mr. Dill concluded by saying that his intention is not to come back and object to a horse variance, but while he has the Board's attention tonight, he would like to ask the Board to consider that any type of approval not be a "forerunner" to a change in variance for this area.

REQUEST WITHDRAWN BY THE APPLICANT.

Meeting Adjourned at 6:25 p.m.