

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
January 13, 2009
6:00 p.m.**

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

Present:

Chairman Elizabeth Boyd
Alderman Carole Hinely
Mr. Henry Evans
Mr. Lee Henwood
Ms. Patricia Sherman

Absent:

Mr. David Klevan

The following Staff members were present:

Mr. Jerry Cook, Director of Economic &
Community Development
Mr. Alan Strain, Attorney
Mr. Wade Morgan, Chief Planner
Ms. Lauren Johnson, Land Use Planner
Ms. Carmen Richardson, Secretary

Absent:

Mr. Josh Whitehead, Planning Director

Interested Individuals present:

Ms. Angela Hinton, 9236 Liggon Green Lane, Germantown, TN

Alderman Hinely called the meeting to order and established a quorum.

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

INTRODUCTION: During the first meeting of the calendar year, the members of the Board of Zoning Appeals elect a Chairman and a Vice-Chairman from the seven (7) appointed members.

ELECTION OF OFFICERS:

1. Nomination for Chairman of the Board of Zoning Appeals for 2009 is as follows: Elizabeth Boyd – Chairman; Henry Evans – Vice Chairman

Motion: Henry Evans

Seconded By: Ms. Sherman

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

MOTION PASSED

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.

December 9, 2008 Minutes

Mr. Evans made a motion to approve the minutes from the December 9, 2008 meeting that was seconded by Alderman Hinely.

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

MOTION PASSED

DATE: January 13, 2009
FROM: Wade Morgan, AICP - Chief Planner
SUBJECT: 9236 Liggon Green Lane – Request a variance to allow a pool to be closer than five feet to a recorded easement

INTRODUCTION:

APPLICANT NAME: David Hinton – Owner

LOCATION: 9236 Liggon Green Lane – Lot 9 of Phase 1 of the Enclave PUD

CURRENT ZONING DISTRICT: “R-3” High Density Residential

DESCRIPTION OF VARIANCES REQUESTED:

A variance to allow a pool to be closer than five feet to a recorded easement.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Planning Commission approved a request for Outline Plan approval for the Enclave PUD on January 6, 2004. The Board of Mayor and Aldermen approved the Outline Plan for the Enclave Planned Unit Development on February 9, 2004. The Design Review Commission granted Final Plan approval of Phase 1 of the Enclave PUD on July 27, 2004. The Planning Commission approved the Final Plan of Phase 1 of the Enclave PUD on August 3, 2004. The Board of Mayor and Aldermen approved Subdivision Development Contract NO. 453 for Phase 1 of the Enclave Planned Unit Development on September 13, 2004.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 2008

PREVIOUS VARIANCES: The applicant requested variances to allow a swimming pool to encroach into one easement, and be closer than five feet to another easement, at the October, 2008, BZA meeting. The pool encroached three feet into the utility easement and was two feet from the drainage easement. The applicant withdrew the request from the agenda after discussion with the board.

DISCUSSION:

NATURE OF VARIANCES REQUESTED: Swimming pools are required to be placed a minimum of five feet from any easements. The subject property has a ten (10) foot-wide drainage easement along the rear (east) property line, a five (5) foot utility easement on the house side of that rear (east) drainage easement, and a fifteen (15) foot-wide drainage easement along the side (south) property line. The proposed pool will be located approximately one foot from the five-foot (5') utility easement and approximately one foot from the southern drainage easement. The previous variance request placed the pool within the utility easement and within five feet of the drainage easement. The pool has been re-designed into an "L" shape and shifted southward into the side yard, which has changed the variance requested.

SPECIFIC SECTION OF ZONING ORDINANCE:

Sec. 23-312 - Swimming pools

- (a) Swimming pools in the R-3 district shall be located behind the front line of the building, a minimum of five feet from all property lines and recorded easements.

APPLICANT'S JUSTIFICATION: The applicant bases the variance request on extraordinary and exceptional situation or condition of the property in that the existing easements greatly restrict the pool placement. Thus resulting in the peculiar and exceptional practical difficulties of severely limited pool and safety concerns.

STAFF COMMENTS:

1. The previous variance request placed the pool within the utility easement and within five feet of the drainage easement. The pool has been re-designed into an "L" shape and shifted southward into the side yard, which has changed the variance requested.
2. If the variance is approved, the property owners shall enter into a Hold Harmless Agreement with the City of Germantown because the swimming pool is less than five feet from the utility and the drainage easements.
3. If the variance is approved, the applicant must obtain a pool permit for the swimming pool from the City of Germantown Office of Code Enforcement, prior to construction of the swimming pool, but after entering into the Hold Harmless Agreement. The permit must be obtained within one hundred eighty (180) days of the approval unless otherwise expressly authorized by the Board of Zoning Appeals.
4. Sect. 4-56 of the Code of Ordinances states, "Appurtenances and accessories, such as, but not limited to, circulating pumps, water filters, water heaters, chlorination systems, etc., shall not be located in the required side yard between the front and rear lines of the principal building, and they shall be located a minimum of ten feet from the rear and side property lines, and no closer than five feet from any recorded easement on the premise."

Angela Hinton
9236 Lignon Green Lane
Germantown, TN

Ms. Hinton submitted a MLGW letter from MLGW releasing the utility easement. Chairman Boyd mentioned for the record, what constitute a "hardship." She advised that, in her personal opinion, this

does not constitute a hardship, but because of the two unusual easements, it does constitute a peculiar situation.

Mr. Evans stated that he shared empathy with Ms. Hinton for wanting a pool in her backyard. He also expressed appreciation for re-working the plans with her pool builder since October (re-configuring the pool design, and making it less objectionable). Mr. Evans said however, he believes that this type of request is outside the parameters of what the Board is actually authorized to grant, in terms of variance. He further advised that he has voted against this type of pool inclusion in small backyards ever since he has been on the Board. He does not believe this one is any different than those earlier requests. He said he expects that approval will be granted tonight; however, he will be voting no.

Alderman Hinely commented saying that she agrees with Mr. Evans to a certain extent, but because Ms. Hinton has a double drainage easement, as far as she is concerned, [Ms. Hinton] has a peculiar situation; most lots do not have double drainage easements. Alderman Hinely stated that because of this unusual situation, she would be voting yes.

Chairman Boyd asked if there are any questions or further comments.

PROPOSED MOTION: Ms. Sherman moved to approve a variance to allow a fence to exceed six feet (6'-0") in height in the "R" Residential Zoning District subject to staff comments, Mr. Henwood seconded the motion.

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

MOTION PASSED

Meeting adjourned at 6:15 p.m.