

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, July 8, 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 July 8, 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; Ms. Jennifer Sisson; Ms. Pat Sherman; Mr. Hunter Browndyke; and Mr. David Klevan

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 June 10, 2014

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of June 10, 2014, seconded by Ms. Sisson, with no further comments or discussions.

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

MOTION PASSED

2. 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.

Julie Abushanab explained when they purchased this property that it was in really bad condition. She was just trying to improve the appearance and didn’t realize that she needed a permit. She asked the board to grant her permission to install a fence that would provide privacy for her as well as the neighbors.

After much discussion the board explained that if they voted on this item and it is turned down, she would not be able to bring it back to them for six months. If she were to withdraw, work with staff, and return next month with a definitive line as to show exactly where the fence will be built then they would be able to proceed.

Julie Abushanab requested to withdraw this item until next month’s meeting.

WITHDRAWN BY APPLICANT

3. 2596 Meadow Run Drive – Request Approval of a Variance to Allow an Encroachment into the Required Side Yard Setback.

BACKGROUND: DATE SUBDIVISION APPROVED: Section F of the Fox Creek subdivision was approved in 1978.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1980

PREVIOUS VARIANCE REQUESTS: None

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval of a shed roof that he attached to the south side of his dwelling. The shed roof is irregular in shape and is six feet from the property at the closest point. The applicant points out that the shed roof provides a cover for a standby generator that has been in that location for several years. He notes that he used existing brick columns for support for the roof.

The homeowner was notified on May 13, 2014, by Code Compliance staff that the shed roof “lean-to” was less than 10 feet from the property line, and was not permitted by the zoning regulations. A second notice was sent on May 23, 2014. The variance application was filed on June 2, 2014.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-257(2) which requires there to be one or more required side yards of not less than ten feet. The shed encroaches four feet into that side yard area, so a variance of four feet is required.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape, resulting in peculiar and exceptional practical difficulties.

The applicant states “this location for the generator is the only place to position it to allow for sharing of electricity with my neighbor, getting power into my house”. See the application for additional information and reasoning.

STAFF COMMENTS:

1. Photos of the dwelling and the shed addition are attached.

If the variance request is granted, the applicant must apply for a building permit through the Department of Economic and Community Development.

PROPOSED MOTION: To approve a variance for 2596 Meadow Run Dr to allow an existing metal shed roof to encroach four (4) feet into the required side yard setback in the “R” Residential zoning district, subject to the staff comments and site plan filed with this application.

George Crombie explained that he has been a resident in this house for 28 years and was just trying to attach a roof over an existing storage area to protect and secure his generator where it has been located for a few years now.

After much discussion the board explained that had this item been presented to them before it was constructed it would not have passed and he would have been instructed to work with staff and find a way to disconnect this structure from the house. Therefore, they have a real problem with granting permission after the fact. They also explained that this item did not qualify as a hardship under the State guidelines either. It was suggested that this applicant withdraw this item from tonight’s agenda, work with the staff, and if he can meet all of the necessary requirements, he may not need to bring this item back to this board at all.

Mr. Crombie requested to withdraw this item.

WITHDRAWN BY APPLICANT

4. 2859 Belfort Drive – Request Approval of a Variance to Allow a Fence within the Required Front Yard to Exceed Thirty Inches in Height.

BACKGROUND: SUBDIVISION: Section B of the Oakleigh Subdivision was approved in 1987.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1988

PREVIOUS VARIANCES: none

DISCUSSION: NATURE OF VARIANCE REQUESTED: The applicant was granted approval to build a six-foot (6’) solid fence.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is for a variance from § 6-102(b) of the Germantown Code of Ordinances, which states, “Fences over 30 inches in height are not permitted within the required front yards of lots as specified in the zoning ordinances...” Section 23-257 (1)(a) of the Zoning Ordinance states that, “there shall be a required front yard of not less than forty (40) feet” for any lot within the “R-1” Residential District.

The fence is located 15 feet from the property line (rear of sidewalk), which is a 25 foot encroachment into the front yard setback from Waterleaf Drive. A variance of 25 feet is required to permit the fence.

A permit to construct a six-foot tall fence was issued on March 19, 2014. The permit indicated the fence was to be built at the front line of the house. On April 21, 2014, a Germantown Code Compliance officer inspected the fence, noticed that it extended into the front yard and informed the homeowner of the issue and explained what they must do to correct the situation. On May 19, 2014, the property owner obtained an application for a variance. The application was filed on May 25, 2014.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on “other extraordinary and exceptional situation or condition” which has resulted in a hardship upon the owner. They state that the yard area was enclosed for the safety of their daughter with special needs. See the application for a full explanation.

COMMENTS:

1. The required front yard setback for the “R” Residential zoning district is forty feet (40’). The proposed fence is set back 15 feet from the property line.

Should the Board of Zoning Appeals approve the request, the applicant shall obtain an amended fence permit for the fence from the City of Germantown Office of Code Enforcement. The permit must be obtained within one hundred eighty (180) days of the approval unless otherwise expressly authorized by the Board of Zoning Appeals.

PROPOSED MOTION: To approve the request for a variance at 2859 Belfort Drive to allow a fence to exceed thirty inches in height in the required front yard setback from Waterleaf Drive, as shown on the site plan filed with the application and subject to the comments in the staff report.

Jessica Vinson explained they had just moved to Germantown. They specifically moved here for their four year old daughter that has special needs and have enrolled her into one of Germantown’s special needs program. They found this house and felt it would accommodate their child’s need. She explained that their daughter doesn’t walk very well, is developmentally delayed, and is non verbal so their first concern is for her safety. There is a really big drop off approximately 6 ft to 10 ft drop off into the neighbor’s yard behind them as well as a big hill on the side yard. Sections of this fence were already built and they just added to it to protect their daughter. It was never their intention to break any rules and asked that the board approve their request.

After much discussion, Chairman Evans called for a motion.

Mr. Klevan moved to approve a variance at 2859 Belfort Drive to allow a fence to exceed thirty inches in height in the required front yard setback from Waterleaf Drive, as shown on the site plan file with the application, as discussed and subject to the comments contained in the staff report and seconded by Ms. Sherman.

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

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 7:00 p.m.