

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, August 12, 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; Mr. Frank Uhlhorn, Vice Chairman; Ms. Jennifer Sisson; Mr. Hunter Browndyke; Mr. David Klevan; and Alderman Forest Owens

DEVELOPMENT STAFF PRESENT:

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 July 8, 2014

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of July 8, 2014, seconded by Ms. Sisson, with no further comments or discussions.

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

MOTION PASSED

2. 9151 Orleans Walk Cove – Request a Variance to Allow a Swimming Pool to Encroach into an Easement in the “R” Residential zoning district.

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.
2. 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.

The homeowners/applicants have signed a hold harmless agreement with the Orleans Way HOA regarding the wall on the lot.

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.

Mr. Jay West represented the homeowners and explained that when he did the drawing and landscaping for them, the distance between the water's edge and the house was too tight. He asked the board to allow them to encroach into the easement so there would be more room between the pool and the house.

Mr. Wade Morgan explained that there would be a recording fee to the Register's office to re-record the plat and the homeowner is aware that this is required.

Chairman Evans called for a motion.

Mr. Klevan moved to approve a variance at 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 applicant, as discussed and subject to the comments contained in the staff report and seconded by Mr. Uhlhorn.

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

MOTION PASSED

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; The application was withdrawn from the July 8, 2014 BZA agenda to permit the applicant to meet with staff on modifications that would make a variance unnecessary.

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.
2. Staff met the homeowner on-site to discuss modifications that would bring the shed roof and storage structure into compliance with the setback requirements. Removal of a portion of the roof, as shown on the attached photo, will comply with the 10 ft. side yard setback requirement.

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 Drive 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.

Mr. George Crombie explained that he had met with Wade Morgan and was told what he needed to do to be in compliance and would comply with whatever the board directed him to do.

Chairman Evans explained that he consistently votes against requests when someone has not followed the process of getting permits in advance and then come before this board asking for forgiveness so for that reason he would be voting against this. Chairman Evans called for a motion.

Mr. Klevan moved to approve a variance for 2596 Meadow Run Drive to allow an existing metal shed roof to encroach four (4) feet into the required side yard setback in the “R” Residential zoning district, as discussed and subject to the comments contained in the staff report and seconded by Ms. Sisson.

ROLL CALL: Alderman Owens – Yes; Mr. Uhlhorn – Yes; Mr. Browndyke – Yes; Ms. Sisson – Yes; Mr. Klevan – Yes; Chairman Evans – No.

MOTION PASSED

4. 9253 S. Romano Way – Request Variance to Allow the Principal Structure to Encroach into the Required Front Setback in the “R” Low Density Residential zoning district.

BACKGROUND: DATE SUBDIVISION APPROVED: The Vinings subdivision was approved by the Planning Commission on August 3, 2004, and by the Board of Mayor and Aldermen on October 11, 2004 as Subdivision Development Contract No. 457. The conversion of the streets from public to private was approved by the Planning Commission on May 7, 2007.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: NA.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family dwelling on the lot, with the principal structure placed 57 ft., 2.5 in. from the front lot line. Due to the irregular shape of the lot and the easements located on the lot, the standard front setback would require the house to be placed an additional seven feet into the lot. The applicant proposes to situate the house so that seven feet of the northwest corner of the garage, containing approximately 154 sq. ft., extends into the required front yard.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-231(1), and §23-232(1)a, which requires a front yard setback of at least 40 feet, and a minimum lot width of 100 feet measured at the building line.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. He notes that “the lot is irregular in shape – from side to side and in order to build a home that fits the subdivision CC & R’s, we need a 50 foot front yard setback.”

STAFF COMMENTS:

1. The lot is irregular in shape and is constrained by a stormwater detention area in the rear and a drain easement along the side lot line.
2. In the R district, a lot must be 100 feet wide at the building line. On a lot such as this one, the effect is to push the building further into the lot, toward the detention area.

PROPOSED MOTION: To approve a variance for 9253 S. Roman Way to allow the principal structure to be located 57 ft. 2.5 in. from the front lot line, so as to encroach 7 feet into the required front yard, all subject to staff comments and the site plan submitted with the application.

Mr. Ronnie Faulkner w/Hallmark Builders explained that this particular lot is unusual because of the drainage easement and the lots that surround it to the left and right. He asked the board to allow him to position the house closer in line with the other houses in the neighborhood.

Chairman Evans called for a motion.

Mr. Uhlhorn moved to approve a variance for 9253 S. Romano Way to allow the principal structure to be located 57 ft 2.5 in. from the front lot line, so as to encroach 7 feet into the required front yard, as discussed and subject to the comments contained in the staff report and seconded by Alderman Owens.

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

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:23 p.m.