

**BOARD OF ZONING APPEAL  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, June 9, 2015  
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 June 9, 2015. Chairman Evans called the meeting to order at 6:03 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, Vice Chairman; Mr. Frank Uhlhorn; and Alderman John Barzizza

**DEVELOPMENT STAFF PRESENT:**

Mr. Wade Morgan, Chief Planner; Ms. Sheila Pounder, Planner; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney

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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. This meeting is recorded and those appearing before the Board would need to identify themselves, give their address and be sworn in for the record.

Motions made in all meetings are of an affirmative nature and 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 May 12, 2015**

Mr. Uhlhorn moved to approve the Board of Zoning and Appeals minutes of May 12, 2015, seconded by Ms. Sisson, with no further comments or discussions.

**ROLL CALL:** Mr. Uhlhorn – Yes; Ms. Sisson – Yes; Alderman Barzizza – Abstain; Chairman Sisson – Yes.

**MOTION PASSED**

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**2. 2931 Belgrave Drive – Request Approval of a Variance to Allow a Fence to Exceed 6 feet in Height around the Rear Yard of a lot in the “R” Residential District (Case #: 15-506).**

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The Foster Ridge subdivision was approved by the Germantown Planning Commission on March 3, 1981.

**DATE PRINCIPLE STRUCTURE APPROVED/BUILT:** The home was constructed in 1982.

**PREVIOUS VARIANCE REQUESTS:** none

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to allow a wood fence along the rear and side lot lines to be up to 8 feet in height. The proposed 8 foot fence will extend for approximately 100 feet along the north lot line, abutting 7641 Foster Ridge, and approximately 150 feet along the west lot line, abutting 2918 Green Pastures Cove S.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, “the maximum height of any fence shall be six (6) feet.” The applicants’ fence exceeds six (6) feet in height by an additional two feet.

**APPLICANT’S JUSTIFICATION:** The applicant states “the neighbor’s yard to the north and west back yards are at a level where a standard 6 ft. height fence does not give adequate privacy to my back yard and pool areas. 8 ft. requested to give more privacy.” The applicant has provided several photos to illustrate the views from and into his back yard.

**STAFF COMMENTS:**

1. The applicant has provided several photos to illustrate the views from and into his back yard.
2. If the variance request is approved, the applicant must apply for a fence permit through the Department of Economic and Community Development.

**PROPOSED MOTION:** To approve a variance for 2931 Belgrave Drive to allow an eight foot tall fence along the west and north rear property lines, subject to staff comments and the plans submitted with the application.

Alderman Barzizza stated that he knew the applicant very well and recused himself from this item.

Mr. Stan White requested the board to grant him a variance to install an 8 foot fence in order to establish more privacy for him and his neighbor. He explained that a tree barrier use to exist until his neighbor had them removed and he doesn’t want to plant any trees due to the fact that this is a very wet area and he feels the roots from a tree would damage his pool.

Chairman Evans explained that he would be voting against this request because this board has an obligation to uphold the ordinance of the city. The Board of Mayor and Alderman have made it clear on more than one occasion that the 6 foot fence requirement is that which is desired in Germantown. It is understood that although there may be privacy issues there are still regulations under which this board operates and it indicates that they look at legitimate hardships before they are allowed to grant a variance for that reason. The hardship that was mentioned is one of privacy but the fact is the previous homeowner built this swimming pool the way they did, built the deck up, and whoever developed that subdivision had to do with topography that this board can not address. This board cannot get into a situation where they allow someone to build something and then claim it is a hardship. He felt that there were other options available to this homeowner that he had not yet considered so therefore he would vote no when the role is called.

Wade Morgan read a letter written by Anthony Bertasi Jr., 2918 Green Pastures Cove South stating his opposition to this variance request.

Mr. Bass Pannolla, 7641 Fox Ridge spoke in favor of the variance request.

Ms. Sisson moved to approve a variance for 2931 Belgrave Drive to allow an eight foot tall fence along the west and north rear property line, subject to staff comments and the plans submitted with the application, seconded by Mr. Uhlhorn

**ROLL CALL:** Ms. Sisson – No, for the same reasons as Mr. Evans; Mr. Uhlhorn – Yes; Chairman Evans – No

**MOTION FAILED**

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3. **1975 Prestwick Drive – Request Approval of a Variance to Allow an Accessory Structure to be placed in the Side Yard between the Front and Rear Lines of the Principal Building and within the Required Side Yard Setback on a lot in the “R” Residential District (Case #: 15-527).**

**BACKGROUND:**

DATE SUBDIVISION APPROVED: Duntreath Subdivision, Section D was approved by the Germantown Planning Commission in 1997.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1985.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of 2 variances from 1). § 23-236(1) which requires accessory structures that are placed between the front and rear lines of the principal building to be located beyond the required side yard setback of 10 feet; and 2). Section 23-236(2)a, which prohibits accessory buildings/structures from being located within a recorded easement.

NATURE OF VARIANCES REQUESTED: The specific request by the applicant is to approve an existing storage building that is 9.3 feet in height and located 3.5 feet from the side (south) property line. Accessory structures located between the front and rear lines of the principal building must be a minimum of 10 feet from the lot line (the side yard setback distance). Therefore a variance of 6.5 feet from the standard setback is necessary for the structure. In addition, the storage building extends 1.5 feet into the 5 foot-wide utility easement that runs parallel to the south lot line. Therefore, a second variance to allow a 1.5 foot encroachment into an easement is necessary.

Germantown Code Compliance staff noticed a new storage building in the yard and notified the homeowners on March 23, 2015, that an accessory structure permit was required for the building. The homeowners applied for a variance on May 6, 2015. The letter is attached.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance to permit the existing structure to remain in its current location. The homeowner notes that "the rear of my property makes it extremely difficult to place an accessory structure/shed in compliance with the Ordinance. ....the south east corner and east property line of the property drop a couple feet in elevation which floods during even moderate rain." See the application for additional reasoning. Photos of the rear yard are also provided.

STAFF COMMENTS:

1. If the Board approves the requested variance, the applicant shall apply for an accessory structure permit from Germantown.
2. Staff recommends that the homeowner be required to enter into a hold harmless agreement, if the encroachment into the easement is approved. The hold harmless agreement will provide that the City is not responsible for any damage to the building if work within the utility easement occurs.

PROPOSED MOTION 1: To approve a variance for 1975 Prestwick Dr. to allow an existing shed to encroach 6.5 feet into the required side yard setback area from the south lot line, subject to the staff comments contained in the staff report and the site plan submitted with the application.

PROPOSED MOTION 2: To approve a variance for 1975 Prestwick Dr. to allow an existing shed that is 9.3 feet in height to encroach 1.5 feet into an easement along the side (south) lot line, subject to the staff comments contained in the staff report and the site plan submitted with the application.

Mr. Bradley Wright apologized to the board for not understanding the permit process. He explained that his back yard slopes to the rear and is on the low side of the subdivision. All 5-6 different yards drain into this area of his yard, down the fence where it drops off, and this area floods when it rains. The shed has been painted so as to blend in so it is not so noticeable and plants placed around it to help screen it from the neighborhood.

After much discussion, Chairman Evans said that when the role is called that he would be voting no. The reason for that is because through the years he has consistently voted against variance requests where homeowners have built something without a permit and then come before this board for forgiveness. In this case, if he had come to this board in advance with this request and because of the particular location the board would have possibly not approved this request from the start. He felt like there were other options in the back yard even though it might mean that he would have to build up a foundation for the shed to sit on. Other options do exist and I will not be approving this variance.

Ms. Sisson, Mr. Uhlhorn, and Alderman Barzizza explained they would be voting in favor of this variance. They felt that there was a significant topographical issue that the homeowner has to deal with in his backyard that he did not create. Therefore they considered this case as a hardship.

Alderman Barzizza moved to approve the variance for 1975 Prestwick Dr. to allow an existing shed to encroach 6.5 feet into the required side yard setback area from the south lot line, subject to the staff comments contained in the staff reports and the site plan submitted with the application, seconded by Ms. Sisson.

**ROLL CALL:** Alderman Barzizza – Yes; Mr. Uhlhorn – Yes; Ms. Sisson – Yes; Chairman Evans - No

**MOTION PASSED**

Ms. Sisson moved to approve a variance for 1975 Prestwick Dr. to allow an existing shed that is 9.3 feet in height to encroach 1.5 feet into an easement along the side (south) lot line, subject to the staff comments contained in the staff report and the site plan submitted with the application, seconded by Mr. Uhlhorn.

**ROLL CALL:** Mr. Uhlhorn – Yes; Ms. Sisson – Yes; Alderman Barzizza – Yes; Chairman Evans - Yes

**MOTION PASSED**

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**4. 8598 Beaverwood Drive – Request Approval of a Variance to Allow an Encoachment in the Side Yard Setback of a lot in the “R” Single Family Residential District (Case #: 15-529).**

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** Lot 22, Oakmeade Subdivision (formerly Stonebridge Estates of Germantown was approved in 1989. This subdivision plat was approved for re-recording to change the name of the subdivision, provide new developer information, new private covenants, and to modify the lot line between Lot 16 and 17 in 1992.

**DATE PRINCIPAL STRUCTURE APPROVED/BUILT:** 1994

**PREVIOUS VARIANCE REQUESTS:** None

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific request by the applicant is to obtain approval to add on a carport to the principle structure that will attach to a new storage area to be built at the northwest corner of the existing dwelling. The carport would be at the end of the existing concrete driveway and placed five feet from west side property line.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from §23-232(2) which requires there to be one or more required side yards of not less than ten feet. The carport will encroach five feet into the west side yard area, so a variance of five 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 “due to the slope of the backyard and the location of the pool, there is not enough room in the yard.....”. See the application for additional information and reasoning.

**STAFF COMMENTS:**

1. Photos of the existing dwelling, side yards, and rear yard are attached.
2. Staff suggest the applicant provide the BZA information on the height of the carport and materials to be used (siding, shingles, paint color, etc.).
3. If the variance request is granted, the applicant must apply for a building permit through the Shelby County Construction Code Enforcement.

**PROPOSED MOTION:** To approve a variance for 8598 Beaverwood Dr to allow a carport addition to the principle structure to encroach five (5) feet into the required west side yard setback in the “R” Residential zoning district, subject to the staff comments and site plan filed with this application.

Mr. Daniel Brewer, representative for the homeowners requested that this item be withdrawn from tonight’s agenda until they are able to get approval from the Homeowners Association.

**WITHDRAWN BY APPLICANT**

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**ADJOURNMENT**

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:40 p.m.