

**BOARD OF ZONING APPEAL
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, August 11, 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 August 11, 2015. 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, Vice Chairman; Mr. Frank Uhlhorn; Mr. Hunter Browndyke; Ms. Patricia Sherman; Mr. Mike Harless; and Alderman John Barzizza

DEVELOPMENT STAFF PRESENT:

Mr. Cameron Ross, Economic and Community Development Director; Mr. Wade Morgan, Chief Planner; Ms. Sheila Pounder, Planner; Ms. Regina Gibson, Administrative Secretary, and Mr. Alan Strain, Attorney

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 June 9, 2015

Alderman Barzizza moved to approve the Board of Zoning and Appeals minutes of June 9, 2015, seconded by Ms. Sisson, with no further comments or discussions.

ROLL CALL: Mr. Uhlhorn – Yes; Ms. Sisson – Yes; Mr. Browndyke – Yes; Alderman Barzizza – Yes; Ms. Sherman – Abstain; Mr. Harless – Abstain; Chairman Evans – Yes.

MOTION PASSED

2. 1559 Lawton Trail – Request Approval of a Variance to Allow the Principal Structure to Encroach into the Required Rear Yard Setback (Case #:15-537)

BACKGROUND: DATE SUBDIVISION APPROVED: The Laurel Oaks Planned Unit Development was approved by the Planning Commission on October 5, 2004. The plan approved by the PC calls for a 26 foot rear yard building setback for those lots on the west line of the development. That setback distance was approved in order to provide a building setback that met the standard requirement in effect at that time for single family lots. The standard rear yard setback in 2004 was 20% of the lot's depth. The 130 foot deep lots in Laurel Oaks required a 26 foot rear yard. The rear yard setback has since been amended to a uniform 25 feet.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: Not Constructed.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family home with a rear yard setback of 20 feet. Based on the site plan submitted by applicant, the rear of the home would be 20 ft. 3.6 in. (after allowance for exterior brick) from the rear property line, so will encroach 5 feet into the required rear yard.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is for variances from the Planning Commission approved plat of the Laurel Oaks PUD, and from §23-567(b), which allows the PUD to modify the setback regulations of the zoning district in which the PUD is located. In the case of Laurel Oaks, a rear yard setback of at least 25 feet is required based on the uniform amendment applied to this property in 2009. The proposed new home and associated variance will extend approximately 5 feet into the setback.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of other extraordinary and exceptional situation or condition of the piece of property and undue hardship on the owner. The applicant indicates that variance is needed in order to use a portion of the rear yard as buildable space for the footprint of a new single family home. They note that “the setback hinders usable space needed for construction of the home.” In addition ‘Removing 6 feet from the rear of the home would change the home design thus affecting additional areas and eliminating 6 feet from the front of the home would shorten the single garage bay. Aesthetically this would make the home unappealing and disproportional to the surrounding homes’. See attached letter of justification from applicant.

STAFF COMMENTS:

1. The new home will encroach approximately 5 feet into the required rear yard. The requested variance will result in a 20 foot rear yard setback.
2. Provide documentation of approval of the proposed house plan and associated variance from the Laurel Oaks Home Owners Association Board of Directors.

PROPOSED MOTION: To approve a variance for 1559 Lawton Trail to allow the principal structure to encroach 5 feet into the required rear yard setback and establish a 20 foot rear yard setback on Lot 6 in the Laurel Oaks PUD, all subject to staff comments and the site plan submitted with the application.

Alex and Nicole Poston explained that this was their first house to build and they were not aware of the setback at the time of purchase. He was not aware of the setback issue until he tried to get the necessary permits. Mrs. Poston said she discussed their situation with the existing neighbors and had their approval for what they needed to do.

Ms. Sisson asked if there was anything exceptionable about the lot itself that is different than any other lot in the neighborhood. She further remarked that it appears to be the same size, the lot is flat, there are no streams running through it, and there are no drainage ditches or anything like that. Mr. Poston confirmed that none of these issues were the case for this lot.

Mr. Uhlhorn moved to approve a variance for 1559 Lawton Trail to allow the principal structure to encroach 5 feet into the required rear yard setback and establish a 20 foot rear yard setback on Lot 6 in the Laurel Oaks PUD, all subject to staff comments and the site plan submitted with the application, seconded by Ms. Sherman.

ROLL CALL: Ms. Sisson – No, this request does not meet the variance requirements specified by the city ordinance; Alderman Barzizza – No, for the same reason as Ms. Sisson; Ms. Sherman – Yes; Mr. Harless – No, because all of the other residents met the requirements and feels if this motion is granted then it will open this board up for future problems; Mr. Browndyke – Yes; Mr. Uhlhorn – Yes; Chairman Evans – No, this request does not meet the variance requirements specified by the city ordinance.

MOTION FAILED

3. 8590 Beaverwood Drive – Request Approval of a Variance to Allow the Principal Structure to Encroach into the Required Front Yard Setback (Case #: 15-538)

BACKGROUND: DATE SUBDIVISION APPROVED: Lot 24, 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: 1993

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION: NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to approve a setback encroachment error that occurred with the initial construction of a single family home in 1993. The construction of the home included an open porch on the front of the house with heated space above containing a small ledge and a Palladian window. Due to the irregular shape of the lot, the front setback was placed 80 feet from the front property line. The existing porch encroaches 3.5 feet into the required front yard setback.

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 other extraordinary and exceptional situation or condition of the piece of property and peculiar and exceptional practical difficulties. He notes that “the initial site plan was permitted in 1993 and approved by the Shelby County Building Department. The home was inspected thru the foundation, framing, and, and finalized and no setback encroachment was noticed until a final survey was performed in 2002”. See attached letter of justification from applicant.

STAFF COMMENTS:

1. The home was built in 1993 with the existing front setback encroachment.
2. Due to the irregular shape of the lot, the front setback was placed 80 feet from the front property line.
3. The existing porch encroaches 3.5 feet into the required front yard setback.
4. The requested variance will result in a 76.5 foot front yard setback.

PROPOSED MOTION: To approve a variance for 8590 Beaverwood Drive to allow the principal structure to be located 76 feet 5 inches from the front lot line, so as to encroach 3 feet 5 inches into the required front yard, all subject to staff comments and the site plan submitted with the application.

Chairman Evans pointed out that this house was built prior to the city changing the permitting requirements for homes and therefore this permit was issued through Shelby County about 20 years ago.

Mr. Ron Franz explained that this was just a mistake and if it didn’t have the window above it then it would have been in compliance.

Mr. Uhlhorn moved to approve the variance for 8590 Beaverwood Drive to allow the principal structure to be located 76 feet 5 inches from the front lot line, so as to encroach 3 feet 5 inches into the required front yard, all subject to staff comments and the site plan submitted with the application, seconded by Alderman Barzizza.

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

MOTION PASSED

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:18 p.m.