

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS**

June 8, 2010

6:00 p.m.

COMMISSION PRESENT:

Chairman Henry Evans; Alderman Carole Hinely; Mr. David Klevan; Mr. Ron Poe; Mr. Tony Salvaggio;
Ms. Elizabeth Boyd

DEVELOPMENT STAFF PRESENT:

Mr. Jerry Cook, Director of Economic and Community Development; Mr. Alan Strain, Attorney; Mr.
Wade Morgan, Chief Planner; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Mr. Scott May – 1850 Poplar Crest Cove, Suite 200, Memphis, TN 38119

Mr. Allen Hewitt – 9333 Walter Woods Lane, Germantown, TN 38139

Mr. Jim Schmiedicke – 3085 Poplar Grove Lane, Germantown, TN 38139

Ms. Carol Hayden – 2877 7294 Trailwood Lane, Germantown, TN 38138

Mr. Bill Jackson – 7311 Trailwood Lane, Germantown, TN 38138

Ms. Loretta Hardy – 7311 Trailwood Lane, Germantown, TN 38138

Chairman Evans called the meeting to order and established a quorum.

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

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.

Approval of May 11, 2010 Minutes

Mr. Klevan made a motion to approve the minutes from the May 11, 2010, meeting that was seconded by
Alderman Hinely.

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

MOTION PASSED

SUBJECT: 9349 Poplar Grove Circle – Request variances to allow an accessory structure
1) to be located a distance less than its height from the rear and side property lines
and 2) to encroach into a utility easement; and 3) allow an attached porch to
encroach into a utility easement in the “R-H” Retirement Housing zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Poplar Grove PUD was approved in 2003.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 2004.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific requests by the applicant are to obtain approval for an existing detached carport accessory structure and an attached porch structure that were built by the homeowner. The carport structure is 13 feet 8 inches by 21 feet, 2 inches, and is 9 feet, 1 inch in height. It extends up to the rear (south) lot line and one foot from the side (east) lot line. There are 5 foot utility easements along both the east and south property lines. Therefore, the accessory structure encroaches 5 feet into the southern easement and 4 feet into the eastern easement.

The porch structure is 9 feet, 10 inches in height, 18 feet wide and extends out 7 feet from the house. The wood posts which support the porch abut the utility easement along the east property line, but do not extend into it. However, the open roof structure of the porch encroaches 2 feet into the easement.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-351(7)(a) which requires accessory structures over 8 feet in height to be located a distance equal to or greater than their height from the rear and side lot lines and to not extend into an easement. The carport requires a variance of 5 feet from the required setback distance from the south lot line and a variance of 4 feet from the required setback distance from the west lot line. The attached porch structure requires a variance of 2 feet for the encroachment into an easement.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape, resulting in undue hardship upon the owner. The applicant states "this is a small "zero lot line" lot" and the homeowners "need extra covered parking". The application includes a more detailed description of the carport and its history.

STAFF COMMENTS:

1. The applicant has provided photos of the structures and letters from the Poplar Grove HOA and nearby neighbors.
2. The applicant was first notified by Germantown Code Compliance of the violation on January 15, 2010, and again on March 19, 2010. Copies of the letters are included.
3. If the variance request is granted, the applicant must apply for an accessory structure permit through the Department of Economic and Community Development.
4. If the variance request is granted, the applicant shall complete a Hold harmless agreement stating that the City will not be responsible for any damage caused by work within the easements.

Scott May, Attorney
1850 Poplar Crest Cove, Ste. 200
Memphis, TN 38119

Mr. May began by saying that he was approached several months ago after the property owners had received notification from the City of Germantown for a code violation of an accessory structure. Mr. May stated that they were in violation for two reasons – one being that they did not have a building permit and two, there were some encroachments onto the easements. Mr. May then referred to a photo on the

overhead, pointing out that the brick wall is the exterior or eastern wall of the development. He said that this specific house is the first house that you would pass on the left as you come into the entrance of the development.

Mr. May advised that the property owners went to the Salvaggio Group to seek advice and the name of a contractor who could construct a cover for their deck. Mr. May said that when the contractor came over to discuss ideas, prices, materials, etc., it was understood that he would take care of everything, including permits.

Mr. May further advised that this structure (porch) was built in 2006 and because the property owners were extremely pleased with it, they had the second structure (carport) built in 2007 from the same materials. He said that the property owners have several cars including an antique restored vehicle and a race car that has to be stored inside their three car garage. Per Mr. May, the cars that the family uses on a daily basis are parked under the pergola/carport structure. Mr. May also advised that the property owners did go before the Homeowner's Association Architectural Review Committee and had their plans approved.

Mr. May stated that the same contractor was hired to build the second structure in 2007. Per Mr. May, again, he was to take care of everything, including permits. The property owners had no idea that this was not done until they received a notice from the City of Germantown. Mr. May said that he and property owners do not know why the contractor did not secure the proper permits; there is no way to find out because the contractor did not keep any records.

Mr. May advised that the south lot line is the center line of the stacked stone wall and that there is a five feet utility easement coming from the lot line northward into the structure. It is a utility easement but there are no utilities in it. Mr. May stated that if for some reason, you have to tear into the concrete and get into the easement, the poles can be unbolted and moved out on a temporary basis. The other easement runs north and south along the brick wall, which sits approximately one foot from the property line.

Mr. May advised that the two structures are not visible from the street; there are trees and bushes completely blocking their view.

Allen Hewitt, Neighbor
9333 Walter Woods Lane
Germantown, TN 38139

Mr. Hewitt advised that in July, 2007, the Thannums presented the plans to the Architectural Control Committee of Poplar Grove for the structure and it was approved by the three person committee. He also stated that there has been no opposition from any neighbors and the pergola is in compliance with the Poplar Grove subdivision.

Alderman Hinely asked Mr. Hewitt if both the porch and carport pergola were built to specs that were presented to the association. Mr. Hewitt answered by saying just the pergola. The porch was built sometime prior to them being involved. Alderman Hinely then asked if the pergola ended up with a cover over it. Mr. Hewitt said yes, but it has since been removed because it was not part of the original agreement with the association; it turned it from a pergola into a carport, which is not allowed in the subdivision.

Jim Schmiedicke, Neighbor
3085 Poplar Grove Lane
Germantown, TN 38139

Mr. Schmiedicke advised that he helped to form the Homeowner's Association Architectural Review Committee. He said that he also dealt with the developers at that time to make sure that all of the needs

and concerns of the neighbors and subdivision were taken care of and addressed. Mr. Schmiedicke said that he would like to speak for the neighbors that did not respond. Because he is so connected with all of the residents, he feels that they would be very happy to have the structure there.

Mr. Schmiedicke then stated that he would like to talk about RH housing and the zoning problem that the neighborhood is having. Mr. Schmiedicke said that all of the zoning requirements for the easements that we are looking at now were developed prior to RH zoning. The idea was to put more densely populated developments together for older citizens that did not particularly did not want to take care of a lot of yard work. In order to do that, the houses became zero lot lines and moved closer to fences and each other.

Mr. Schmiedicke further stated that by its very nature, this type of development requires a different set of rules to look at as far as easements and things of this matter go. In this particular case, there are encroachments on easements, however, one easement has never been used and the other easement, will have no use because the community has been built out in this area; there is nothing else that is going to be built there. Mr. Schmiedicke then spoke about the view of the structure from the road. He said that there are no neighbors to be concerned about and that the structure is inconspicuous enough not be noticed by people passing by. Mr. Schmiedicke then asked the Board to grant these particular requests.

Alderman Hinely asked Attorney Scott May about the cover that was once on the structure. She wanted to know now that the cover is off, why the property owners need a pergola there. Mr. May answered by saying that it protects the vehicles from the direct sunlight; the boards are fairly big and sets up series of shadows. Per Mr. May, it also looks much nicer than looking up the drive and seeing a couple of cars parked there.

PROPOSED MOTION 1: To approve a variance at 9349 Poplar Grove Circle to allow an existing accessory structure (carport) to be located 0 feet from the south lot line, one foot from the west lot line and encroach 5 feet into a utility easement, subject to staff comments and the site and elevation plans and photos submitted with the application.

Ms. Boyd motioned to approve a variance at 9349 Poplar Grove Circle to allow an existing accessory structure (carport) to be located 0 feet from the south lot line, one foot from the west lot line and encroach 5 feet into a utility easement, subject to staff comments and the site and elevation plans and photos submitted with the application; Alderman Hinely seconded the motion.

MOTION DENIED

PROPOSED MOTION 2: To approve a variance at 9349 Poplar Grove Circle to allow an existing attached porch structure to encroach 2 feet into a utility easement, subject to staff comments and the site and elevation plans and photos submitted with the application.

Ms. Boyd motioned to approve a variance at 9349 Poplar Grove Circle to allow an existing attached porch structure to encroach 2 feet into a utility easement, subject to staff comments and the site and elevation plans and photos submitted with the application; Alderman Hinely seconded the motion.

MOTION PASSED

SUBJECT: 7311 Trailwood Lane – Request variance to allow the principal structure to encroach into the required side yard setback and into a utility easement in the “R-1” Medium Density Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The 1st Addition to the Riverdale Park subdivision was approved in 1973.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1975

PREVIOUS VARIANCE REQUESTS: None

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval for an existing attached porch. The porch is attached to the western side of the house and extends to the top of the fence (which sits atop a 5-foot tall retaining wall) on the west property line. The standard side yard setback is 10 feet and there is also a 5 foot utility easement along the west property line. Therefore, the porch encroaches 10 feet into the required side yard and 5 feet into the utility easement.

The porch structure is 23.5 feet wide and extends out 12.6 feet from the house. The wood posts of the fence also support the porch.

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, and from the requirement that structures may not extend into an easement. The porch addition requires a variance of 10 feet from the required side yard setback and a variance of 5 feet for the utility easement encroachment.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape. The applicant states "the house as purchased by the current owner was situated on (the) property with very small amount of land on west and south sides".

STAFF COMMENTS:

1. Photos of the structure are attached.
2. The applicant was first notified by Germantown Code Compliance of the violation on March 31, 2010. Copies of the letters are included.
3. If the variance request is granted, the applicant must apply for a building permit through the Memphis/Shelby County Office of Construction Code Enforcement.
4. If the variance request is granted, the applicant shall complete a "hold harmless" agreement stating that the City will not be responsible for any damage caused by work within the easement.

Carol Hayden, Attorney
7294 Trailwood Lane
Germantown, TN 38138

Ms. Hayden advised that the homeowners bought this home in 2002 and the development was established in 1975. Before the homeowners moved into the home they had some windows replaced. In 2002 they asked the window replacement person to recommend a contractor who could add this porch area and extend the kitchen. The contractor that was recommended was Mr. Ronnie Faulk. Per Ms. Hayden, they have not been able to locate Mr. Faulk and unfortunately did not keep a copy of the contract. At the time, the homeowners believed that Mr. Faulk had pulled the appropriate building permits. She also said that

back in 2002, the homeowners would see code enforcement in the area; they assumed that code was inspecting the renovations to their property.

Ms. Hayden further advised that the easement that runs along side their house is not being used. She said that there is a utility pole located on the property to the west. Per Ms. Hayden, all easements, utility lines, transformers, etc. run through that property as opposed to the Jackson's property whenever there have been electrical issues.

Ms. Hayden said that she has spoken with most of the neighbors and they have no objections to the variance being granted. At that time she named of a list of neighbors who had written emails and letters advising that they were okay with the Board granting a variance for the porch structure.

Ms. Hayden wanted to address the required front yard setback of ten feet. She said that the Key property to west of the Jacksons is approximately twenty feet or greater, which gives them a great deal of clearance in the case of a house fire and the closeness of the homes; a safety factor should not be a concern.

Mr. Poe asked Ms. Hayden if there was another pergola in the back yard of the house. Ms. Hayden said yes, it is a trellis. Mr. Poe asked if it was also built at the same time and Ms. Hayden said yes. Mr. Poe then asked does it also go to the back fence line; Ms. Hayden responded by saying no.

Mr. Poe then asked Ms. Hayden if the cover over the porch is setting on top of the fence. Ms. Hayden advised that the cover extends almost to the fence and that the fence is not the structure which supports the porch covering; it is supported by four by fours.

Mr. Evans asked Ms. Hayden why the property owners decided to extend the pergola all the way to the fence as opposed to extending it only to the setback line. Ms. Hayden said that property owners had talked with the builder who told them that's where they could extend it to and also, that is where the patio poured out to.

Bill Jackson, Property Owner
7311 Trailwood Lane
Germantown, TN 38138

Mr. Salvaggio asked Mr. Jackson if he would be willing to alter the structure by reducing the size to eliminate the encroachment. Mr. Jackson said if he had to do that, he would; he would not want to but he will if that is what's required.

Mr. Poe had several questions about the other setbacks, the breakfast area, and permits for other areas of the principal structure. He voiced his concern about there being a larger issue at hand than just the porch. Mr. Evans then advised that the property owners had not been cited for any of the other issues; what we have before us tonight is simply a request for a variance for the porch.

Loretta Hardy, Property Owner
7311 Trailwood Lane
Germantown, TN 38138

Ms. Hardy advised that the reason why they built the covered porch is because this area was previously a "mud hole." The contractor told them that the cover would accommodate gutters that were added around the house to deter rainwater.

Mr. Poe asked if there was a poured concrete patio that extends all the way out to the five feet retaining wall. The Jacksons answered yes. Ms. Hayden said that this was pre-existing; it was there when the Jacksons purchased the home. They just added the pergola/porch.

Mr. Evans advised that we [Board and staff] are not in a position tonight to give opportunities or make any changes. He recommended that the applicants withdraw their request and come back with a different offer next month. He further advised the applicants that they were still non-compliant and will continue to be on notice by the City's Office of Code Compliance. With that, the applicant withdrew their request.

REQUEST WITHDRAWN BY APPLICANT

Meeting Adjourned at 6:59 p.m.