

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

July 13, 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; Ms. Patricia Sherman

DEVELOPMENT STAFF PRESENT:

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

Interested Individual(s) present:

Mr. Brandon Wellford – 3366 Hollow Creek Road, Germantown, TN 38138

Mr. Floyd Allen Black – 3407 Crestwyn Drive, Germantown, TN 38138

Ms. Carol Hayden – 7294 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 – present; 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 June 8, 2010 Minutes

Errors found in the June 8th, 2010 minutes were discussed at the Board of Zoning Appeals Executive session. It was recommended by Chairman Evans and agreed to by the members, that approval of the minutes would be deferred until our next meeting on August 10th, 2010.

SUBJECT: 3393 Crestwyn Drive – Request a variance to allow a fence on a lot without a principal structure in the “RE-1” Residential Estate zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: Winchester-Forest Hill Estates subdivision was approved by the Shelby County Commission in 1968. On June 6, 2000, the Board of Mayor and Aldermen (BMA) approved on the third reading the annexation of 1,450 acres of land from unincorporated Shelby County into the City of Germantown. The variance request is within the annexation area.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: Vacant land.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow fencing along the southern border of a vacant lot. The applicant also proposes to place an agricultural gate on the existing driveway, to connect with the existing fence in the front yard. The existing fence in the front yard setback is located 4.5' from the edge of the pavement and is approximately 3.8' in height. It was built prior to annexation and is considered a legal, nonconforming structure.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-12(6) of the Code of Ordinances, which states, "accessory buildings, structures and other accessory items and uses are not allowed on lots that do not have a principal building." A fence is considered an accessory structure.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance due to an extraordinary and exceptional situation of the property that results in peculiar and exceptional practical difficulties. According to the applicant, he would like to complete the fencing along the property lines to use the property for horse riding.

**Brandon Wellford, Property Owner/Applicant
3366 Hollow Creek Road
Germantown, TN 38138**

Mr. Wellford began by advising that there are two main reasons for him wanting to move the fence. One is to provide a form of therapy (horseback riding) for his son. He advised that other stables in Germantown will not allow this because of the liability and the insurance requirements. His second reason is an issue regarding the northern section of the property; there's a drainage ditch there and the area tends to frequently flood. Per Mr. Wellford, the development will need to be pushed towards the south. He advised that there is a significant elevation difference on this side. Mr. Wellford said from the area on the north to the main area on the property there is about six feet; the neighbor's property is about ten feet higher than that low spot.

Mr. Wellford stated that at the last meeting, he was advised to talk with his neighbor and try to work something out. He advised that since then, he has written a letter to him asking for an alternate solution to the situation. Per Mr. Wellford, two months have gone by and he has heard nothing from Mr. Black. Mr. Wellford said that as long as Mr. Black can prevent the fence from being erected along his property line, he has free access to that driveway. Although he has offered Mr. Black a solution to be able to continue to use the driveway, Mr. Wellford said that he does need an easement agreement and a legal document to confirm that.

Mr. Wellford further stated that Mr. Black firmly believes that he has some type of permanent easement rights across the lot. He advised that he had two senior real estate attorneys tell him without reservation there are absolutely no easement rights that Mr. Black has to that piece of property.

Mr. Poe asked Mr. Wellford to clarify a statement that he made at the last meeting regarding the termination of his easement agreement at will. Mr. Wellford replied by saying that he was not prepared to offer a permanent easement across the property, since Mr. Black does have an alternative access. It stipulated in the easement agreement that he could terminate within 90 days notice. Mr. Poe asked Mr. Wellford about the letters of petition that was mailed to his neighbors. He said by offering a statement of "continued access" would be incorrect. Mr. Wellford said that "continued" can be unlimited to a certain degree; it may not be forever or it could be forever. Mr. Poe said that his point was to clarify the fact that the petition Mr. Wellford had all of his neighbors to sign gave the impression that he is offering Mr. Black a continued access.

Chairman Evans asked if there was anyone else who wished to speak in support.

James Miller, Neighbor
3330 Hollow Creek
Germantown, TN 38138

Mr. Miller stated that he is an adjoining neighbor and is in total support of the variance for Mr. Wellford's fence.

Chairman Evans asked if there was anyone who wished to speak in opposition.

Floyd Allen Black
3407 Crestwyn Drive
Germantown, TN 38138

Mr. Black began by advising that he owns property on the south side of the boundary line. He said that he used to own both lots but lost one in foreclosure. He stated that he bought the lots because of the location and the two thousand square foot barn with additional parking in the back. Mr. Black stated that Regions Bank sold it "where is" and "as is" and that the road to access the rear parking area has always been used by him as well as property owners prior to him.

Mr. Black also advised that since the last meeting he did not receive anything regarding the letter requesting an alternative solution from Mr. Wellford. He stated that Mr. Wellford put up "No Trespassing" signs within two days after the last Board of Zoning Appeals meeting. He said that Code Enforcement came out two different times to view the situation. Mr. Black said that he did ask Code Enforcement about the possibility of putting the road on the other side of the property; per Mr. Black, they stated that it is possible. Mr. Black advised that after looking at it, Code Enforcement questioned whether there could even be a vehicle there because of a swimming pool between him and the path on the back side.

Mr. Black further stated that he has had no words of discontent with anyone in regards to this matter. He said that the agreements that Mr. Wellford originally sent to him were agreeable, but one of the things that he failed to mention this time was that he would be willing to share the cost of maintenance. Mr. Black said to pay a cost and then turn around to be forced to give up any rights to access within 90 days or, anytime Mr. Wellford decides to is not a fair offer in his mind.

Mr. Black said that it would be inconducive to build a fence right up to the property borderline because of the difference of elevation. Per Mr. Black it would also be inconducive and negligent to ride a horse on an asphalt road. He further stated that he has a couple of dogs that have really enjoyed the use of his backyard; he has shock collars and an invisible fence to keep them inside the yard. He advised that one of his dogs barks a lot which might frighten a horse and cause an accident. Mr. Black said that he would think that someone riding a horse would use the distance where the fence would be as a buffer.

Mr. Black stated that he respectfully wished the Wellfords the best and that there is no discontent or hard feelings against them or anyone else. He then thanked the Board for giving him the opportunity to speak.

PROPOSED MOTION: To approve a variance at 3393 Crestwyn Drive to allow a fence and gate on a vacant lot, subject to staff comments and the site plan filed with this application.

Ms. Boyd made a motion to approve a variance at 3393 Crestwyn Drive to allow a fence and gate on a vacant lot, subject to staff comments and the site plan filed with this application. Alderman Hinely seconded the motion.

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

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 from her understanding, her clients were supposed to be at tonight's meeting. However, they are not present and she has yet to hear from them. She said that she would have to believe that an emergency arose and they did not have the opportunity to give her a call. Ms. Hayden stated that she would be at a disadvantage without her clients being here to better speak as to why they are requesting a variance.

Mr. Evans advised Ms. Hayden that she has the option of withdrawing the item and putting it back on next month's agenda.

Ms. Hayden wanted to clarify something from the last meeting. She advised that the trellis was built onto the fence. She said that at the previous month's meeting, she corrected herself and said that the trellis was not attached to the fence because the homeowners told her that it was on a separate post. However, Ms. Hayden said in her opinion, the posts looked like they are on the fence. She further stated that she does not want to misrepresent anything in any way, shape or form; the trellis is attached to the fence, because the posts are on the fence.

Ms. Hayden then withdrew her request.

REQUEST WITHDRAWN BY APPLICANT

Meeting Adjourned at 6:27 p.m.