

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

August 10, 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. Katie Graffam, Economic Development Coordinator; Ms. Carmen Richardson, Secretary

Interested Individual(s) present:

Ms. Carol Hayden – 7294 Trailwood Lane, Germantown, TN 38138
Mr. Billy Jackson – 7311 Trailwood Lane, Germantown, TN 38138
Mr. Gail Burnett – 1551 E. Churchill Downs, Germantown, TN 38138
Mr. Jerry Herman – 1561 E. Churchill Downs, Germantown, TN 38138
Mr. Grady Saxton – 1544 W. Churchill Downs, Germantown, TN 38138
Mr. Mitch Major – 2971 Oaksedge Cove, Germantown, TN 38138
Mr. Eddie Kircher – 1889 Chadwick Manor Circle Cove, Collierville, TN 38017

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

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

Mr. Klevan made a motion to approve the minutes from the June 8, 2010, meeting that was seconded by Ms. Boyd.

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

MOTION PASSED

Approval of July 13, 2010 Minutes

Ms. Boyd made a motion to approve the minutes from the June 8, 2010, meeting that was seconded by Mr. Klevan.

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

MOTION PASSED

SUBJECT: 7311 Trailwood Lane – Request variances to allow the principal structure to 1) encroach into the required side yard setback; 2) encroach into the required rear yard setback; and 3) encroach 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: This property initially appeared on the June 8, 2010 BZA agenda for a variance for an encroachment of a porch into the side yard setback area and a utility easement. After some discussion, the BZA suggested the applicants withdraw their request, evaluate all the variances that are needed and return to a future meeting.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The planning staff met the homeowners and their attorney at the site on June 18, 2010 to measure the distances from the house to the property lines and determine what variances are needed. The attached site plan reflects those measurements.

The specific requests by the applicant are to obtain approval for 1) a 2 foot encroachment into the required rear yard setback from the south property line for the existing principal structure; 2) a 4 foot, 10 inch encroachment into the required side yard setback from the west property line for a portion of the principal structure; and 3) a 10 foot encroachment into the required side yard setback from the west property line (including a 5 foot utility easement) for an existing attached porch. Each variance is described in more detail in the following section:

SPECIFIC SECTIONS OF ZONING ORDINANCE: 7311 Trailwood is a corner lot, and is required to have 2 front yards, 1 rear yard and 1 side yard.

- 1) The house (principal structure) is 23 feet from the south property line, whereas section 23-257(3) requires a 25 foot minimum rear yard setback.
- 2) An approximately 14 foot wide section of the kitchen is 5 feet, 2 inches from the west property line, whereas section 23-257(2) requires a 10 foot minimum side yard setback. The applicant has indicated that there was previously a bay window in this location.
- 3) 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 porch structure is 23.5 feet wide and extends out 12.6 feet from the house. The standard side yard setback is 10 feet. 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.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape. The applicant states the “home improvements (were) made for medical reasons: enlarged kitchen area to accommodate wheelchair for elderly family member”. He goes on to note that it was the only place to expand and that the house had an unusual layout plan with a 30 in. hallway that leads to kitchen on one floor level. “All other rooms are step downs. More open

space from a small existing kitchen to a larger adequate family area. The impact of the expansion has increased the home's value".

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, with a second notice mailed on May 4, 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.

Chairman Evans asked if there was anyone who wished to speak in favor of this variance request.

Carol Hayden, Attorney
7294 Trailwood Lane
Germantown, TN 38138

Ms. Hayden began by apologizing on behalf of her clients. She advised that they had referenced a 2009 calendar and thought that the meeting was on Wednesday.

Chairman Evans asked Ms. Hayden to focus her attention on the porch itself. Per Chairman Evans, the Board is fairly comfortable with the kitchen area and the addition that is on the other side of the house; it is the third variance (the porch extension to the property line) that poses an issue this evening.

Ms. Hayden stated that the porch, which it is being called, is in fact a trellis. Taking a position as the homeowners, Ms. Hayden said that they do not want to be penalized because the builder that they hired in 2003 failed to pull a building permit. Ms. Hayden said that she would certainly be misleading the Board if she said that this was her client's greatest concern. They don't want to tear it down; in their opinion it is a trellis, used for the practical purpose of enjoying the patio area. Per Ms. Hayden, there is really no other excuse; there is nothing else they have to offer. There are no special needs for a trellis, they are not parking a car under it and basically, there's nothing special about it. If they are required to tear it down, her clients will try to go through the same process and take out a permit to build the same structure again.

Mr. Klevan asked Ms. Hayden if there is a cover over the trellis. Ms. Hayden replied by saying that there is simply a plastic cover. Mr. Klevan advised that by putting a cover over a arbor/trellis, makes it a structure. Ms. Hayden said that the cover could certainly be removed; their intent was to certainly have an arbor. The least of their concerns is whether or not they have a plastic covering that lies over the top.

Mr. Poe asked if a permit was pulled for the trellis/structure at the same time the kitchen was done. Ms. Hayden said that all of it was done at the same time. From what she understands, there was not a permit pulled for the kitchen addition or for the trellis. Ms. Hayden reiterated that the contractor who did the work had relocated to Florida and could not be contacted. She also reminded the Board that the homeowners had no idea that the permits were not properly pulled and that there were building inspectors in and out of the subdivision.

Ms. Boyd asked staff if the covering is removed, is there still an issue. Wade Morgan answered by saying yes, because of the nature of this particular matter, it would still be considered a porch because of our

zoning regulations. Trellises and pergolas have a maximum height of eight feet; this structure is approximately nine feet. He further advised that if the homeowner remove the cover and rebuild the structure so that is it no higher than eight feet, then yes it would be a permitted structure, even though it is all the way to the property line.

Ms. Hayden then explained that because her client's property sits in a hole is the reason why the structure is a foot over eight feet high. Per Ms. Hayden, it runs particularly mutual with the property.

Mr. Poe asked if the neighbor's property on the other side of the fence is higher or lower. Ms. Hayden replied by saying that it is substantially higher.

Mr. Poe then asked staff at what point does the City began to measure from the bottom up (do they measure from the yard next door)? Wade Morgan answered by saying that in a situation where a fence is placed on top of a retaining wall, we measure from the top of the retaining wall, from whatever ground level there is. Per Mr. Morgan, any structure on the homeowner's property would be measured from there to the front line.

Mr. Billy Jackson
7311 Trailwood Lane
Germantown, TN 38138

Mr. Jackson said that if they have to tear down the structure then they will, but they really would prefer not to. He further stated that they have a great little patio and would like to keep it if they could.

After proposed motions 1 and 2 were voted on and passed, it was decided by Chairman Evans and the Board that the variance for proposed motion 3 could not be amended tonight to include the structure cover. Mr. Evans further stated that the applicants could withdraw their request and come back next month.

Mr. Salvaggio advised that they could not remove the roof cover without causing problems to the electrical wiring. The wiring would be exposed to the elements.

With that, the applicants withdrew their request for a variance to allow a portion of the principal structure (an existing attached porch) to be located on the west lot line, and encroach five feet into a utility easement.

Chairman Evans asked if there was anyone who wished to speak in opposition of this variance request. (No one came forward)

PROPOSED MOTION 1: To approve a variance at 7311 Trailwood Lane to allow a portion of the existing principal structure to encroach 2 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application.

Ms. Boyd made a motion to approve a variance at 7311 Trailwood Lane to allow a portion of the existing principal structure to encroach 2 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application. Mr. Klevan seconded the motion.

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

MOTION PASSED

PROPOSED MOTION 2: To approve a variance at 7311 Trailwood Lane to allow a portion of the existing principal structure (kitchen addition) to encroach 4 feet, 8 inches into the required side yard setback, subject to staff comments and the site plan submitted with the application.

Ms. Boyd made a motion to approve a variance at 7311 Trailwood Lane to allow a portion of the existing principal structure (kitchen addition) to encroach 4 feet, 8 inches into the required side yard setback, subject to staff comments and the site plan submitted with the application. Mr. Klevan seconded the motion.

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

MOTION PASSED

PROPOSED MOTION 3: To approve a variance at 7311 Trailwood Lane to allow a portion of the principal structure (an existing attached porch) to be located on the west lot line, and encroach 5 feet into a utility easement, subject to staff comments and the site plan submitted with the application.

MOTION WITHDRAWN BY APPLICANT

SUBJECT: 1551 East Churchill Downs – Request a variance to allow a fence to exceed six (6) feet in height in the “R-1” Medium Density residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Poplar Estates, Block J subdivision was approved by the Germantown Planning Commission on December 8, 1969.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1972.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow an existing wood fence that is 7’9” in height. Running along the rear property line, the applicant has installed two (2) feet of lattice board to the top of a permitted wood fence. The permit for the fence was issued on May 22, 2003 by the Code Compliance Division, to be constructed at maximum height of six (6) feet. Approximately three (3) years ago, the applicant installed a portion of the lattice on the southwest corner of the rear fence. He recently completed the remaining lattice board, and was notified by Code Compliance of the violation via letter on May 24, 2010. The remaining fencing along the side property lines does not exceed six (6) feet in height.

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 1’9”.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance due to exceptional topographic conditions of the property. According to the applicant, there is a “4 foot inlet that drains from approximately 5 to 6 other homes. In order for the inlet to provide proper drainage, the grade of our lot is lower than surrounding lots. Thus, when a standard 6 foot fence is installed, because of this lowered grade at the rear of the property, homeowners around ours have complete view of our backyard, allowing us very little privacy.”

STAFF COMMENTS:

1. The applicant is requesting a **1'9" variance** to allow an existing wood fence along the rear property line.
2. Should the variance request be granted, the applicant must apply for a fence permit through the Department of Economic and Community Development.

Chairman Evans asked if there was anyone who wished to speak in favor of this variance request.

Gail Burnett, Applicant
1551 E. Churchill Downs
Germantown, TN 38138

Mr. Burnett advised that he has lived here since 1985 and before he began building anything, he called the Mayor/Alderman to get their approval. Mr. Burnett said that he has changed fences two or three times and didn't realize that Germantown had a Code Enforcement Unit until two or three years ago. Mr. Burnett further advised that mainly, it is because the drainage is so low there, that he can sit on his patio and see his neighbor's complete patio. He said that his back yard drops off approximately 6 feet in order for the drainage to work. Per Mr. Burnett, he has spoken to everyone on the cove and he has had no one to complain about the fence. Mr. Burnett said that he had some people doing some additional work but because of the "Stop Work Order" issued by Code Compliance, they had to stop. He plans to make the yard look very nice, increasing the value of his property and making the quality of life better.

Alderman Hinely said because of the six foot fence already being there and because of the topography, Mr. Burnett should have known that there was no privacy when he bought the property. Mr. Burnett stated that when he bought the home, he added six hundred fifty square feet to the property by building a patio. He said because his neighbor had a pool and three or four kids who were out there all of the time made him decide to add on to the height of the fence. Per Mr. Burnett, his neighbor approved the addition after seeing a drawing.

Mr. Evans referred to photos and asked if some of the lattice work was newer than other parts. Mr. Burnett said that he built the older part when he moved into the house. The newer part was installed when his neighbor cut down some thick bushes.

Mr. Klevan asked if the bushes provided a screen above the six feet fence line prior to coming down. Mr. Burnett said yes, that he was not able see the neighbor's house; when the neighbors took the bushes down, Mr. Burnett put up newer part of the fence.

Jerry Herman, Neighbor
1561 E. Churchill Downs
Germantown, TN 38138

Mr. Herman advised that the applicant's yard could not be seen because the trees and bushes were so high. He said that after the all of the trees were removed and the vegetation was cleared, Mr. Burnett leveled off his property and added a porch onto the back of his dwelling. Mr. Herman stated that he ran a line from the center of his fence directly to the top of Mr. Burnett's fence. Although the line was completely level with the eye view the back yard dropped off just so much. Per Mr. Herman, Mr. Burnett is basically looking at the inside of his neighbor's pool from his patio.

**Grady Saxton, Jr., Neighbor
1544 W. Churchhill Downs
Germantown, TN 38138**

Mr. Saxton advised that he is the neighbor that Mr. Burnett and Mr. Herman referred to that removed the bushes. He said that because it was rough and not well maintained, he had some guys to come in who basically restructured his entire back yard. Mr. Saxton further advised that when the bushes were removed, he and Mr. Burnett could see eye to eye. Mr. Saxton said that the six feet fence was not enough to provide any privacy. He feels that the lattice addition is aesthetically pleasing and does not have a problem with it.

Ms. Boyd asked if he or Mr. Burnett talked about adding more tall trees or bushes that would be more aesthetically pleasing than the fence addition. Mr. Saxton replied by stating again that he finds the fence and lattice work aesthetically pleasing.

Mr. Evans opposed the proposed motion to approve a variance to allow an existing fence along the rear property line to be seven feet, nine inches in height in the "R-1" Medium Density Residential zoning district. He said to request a variance when the work has been done without proper permitting and trying to make something "whole" after the fact is his reason for voting no. Also, should this request have come before the Board in advance he would have voted against it at that time.

Chairman Evans asked if there was anyone who wished to speak in opposition of this variance request.
(No one came forward)

PROPOSED MOTION: To approve a variance for 1551 East Churchill Downs to allow an existing fence along the rear property line to be 7 feet, 9 inches in height in the "R-1" Medium Density Residential zoning district, subject to staff comments.

Alderman Hinely made a motion to approve a variance for 1551 East Churchill Downs to allow an existing fence along the rear property line to be 7 feet, 9 inches in height in the "R-1" Medium Density Residential zoning district, subject to staff comments. Mr. Poe seconded the motion.

ROLL CALL: Alderman Hinely – yes; Mr. Klevan – no; Mr. Poe – yes; Ms. Boyd – no; Mr. Salvaggio – yes; Ms. Sherman – absent; Chairman Evans – no

MOTION DENIED

SUBJECT: 2971 Oaksedge Cove - Request a variance to allow the principal structure to encroach into the required rear yard setback in the "R" Low Density Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Willow Oak Estates subdivision was approved in 1977.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1980

PREVIOUS VARIANCE REQUESTS: None on record.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The homeowner requests a variance to make legal the encroachment of the existing attached carport. The issue came to light recently when the homeowner's contractor applied to the Office of Construction Code Enforcement for a building permit to enclose the carport and build an addition between the carport and rear of the house. The addition was to be within the building setback area, but the plans examiner could not approve a plan that would exacerbate a situation where part of the carport encroached into a setback area.

The house and carport have both been in their current location since at least 1984, according the City's air photos. It appears likely that the carport was built within the rear yard setback as part of the initial construction of the dwelling in 1980.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The attached carport section of the principal structure is 8.9 feet from the west property line, whereas section 23-232(3) requires a 25 foot minimum rear yard setback.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness, or shape. The applicant states the “

STAFF COMMENTS:

1. The carport is highlighted on the attached survey. The house and carport have both been in their current location since at least 1984, according the City's air photos.
2. Photos of the structure are attached.

Chairman Evans asked if there was anyone who wished to speak in favor of this variance request.

Mitch Major, Applicant
2971 Oaksedge Cove
Germantown, TN 38138

Mr. Major began by advising that when they bought the house in 2005 they had no idea that the carport was not officially a part of the principal dwelling. Per Mr. Major, they started the process to do some renovations on the house to enclose the carport in and make it look much more attractive. He said there was quite a bit of demolition work and time trying to do it the right way the first time, when they found out that this was illegal.

Mr. Klevan asked if Mr. Major had any recollection of whether or not the breezeway was originally a detached carport. Mr. Major said for everything that he could pull together, it appears that was all built when the house was constructed. Mr. Major advised that the reason this is a significant construction project is to actually make it appear as a garage built with the house as opposed to boxing it in.

Alderman Hinely asked Mr. Major if he had a survey done when he purchased the house. Mr. Major said that he's sure that he would not have closed on a house without having a survey done. Alderman Hinely advised that mortgage companies no longer demand that a survey be done, especially on a resale; she said that if a survey had been done it would have shown up.

Chief Planner Wade Morgan suggested that the proposed motion be changed from “existing attached carport” to “existing attached structure” to resolve the issue of whether or not it is a garage or carport.

Chairman Evans asked if there was anyone who wished to speak in opposition of this variance request. (No one came forward)

PROPOSED MOTION: To approve a variance at 2971 Oaksedge Cove to allow an existing attached structure to encroach 16.1 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application.

Ms. Boyd made a motion to approve a variance at 2971 Oaksedge Cove to allow an existing attached carport to encroach 16.1 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application. Mr. Klevan seconded the motion.

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

MOTION PASSED

SUBJECT: 7634 Neshoba Road – Request a variance to allow a fence to be constructed on a lot without a principal structure in the “R-1” Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Neshoba Grove subdivision was approved in 2008.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 2010.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant owns 2 abutting lots within the subdivision. Lot 6 has a dwelling and lot 7 is vacant. The specific request by the applicant is to build a fence on the vacant lot. The proposed fence will comply with the height and location requirements for fences.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-236(6) which prohibits accessory buildings, structures and similar items (which includes fences) on lots that do not have a principal building.

APPLICANT’S JUSTIFICATION: The applicant is making the request in order to have additional area for their grandchildren to play and for their dogs to run. They state the fence will be a 6 foot shadow box style with a cap and will match the other fences in the subdivision.

STAFF COMMENTS:

The fence is to be 6 feet in height and built with a top cap. It is to be 50 feet behind the Neshoba Rd. right-of-way, which is within the allowable area for a fence.

Chairman Evans asked if there was anyone who wished to speak in favor of this variance request.

Eddie Kircher, Contractor
1889 Chadwick Manor Circle Cove
Collierville, TN 38017

Mr. Kircher said that he just wanted to answer any questions that anyone may have about the proposed fence.

Chairman Evans asked Mr. Kircher about the cap on the fence, to be sure that it would not increase the height of the fence over six feet. Mr. Kircher replied that no, the height would not exceed six feet including the cap.

Chairman Evans asked if there was anyone who wished to speak in opposition of this variance request.
(No one came forward)

PROPOSED MOTION: To approve a variance at 7634 Neshoba Road to allow a fence to be built on a lot without a principal building, subject to staff comments and the site plan submitted with the application.

Ms. Boyd made a motion to approve a variance at 7634 Neshoba Road to allow a fence to be built on a lot without a principal building, subject to staff comments and the site plan submitted with the application. Alderman Hinely seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:48 p.m.