

**BOARD OF ZONING APPEALS  
MUNICIPAL CENTER COUNCIL CHAMBERS  
September 14, 2010  
6:00 p.m.**

**COMMISSION PRESENT:**

Chairman Henry Evans; Alderman Carole Hinely; Mr. David Klevan; Mr. Ron Poe; Mr. Tony Salvaggio;  
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:**

Ms. Carol Hayden – 7294 Trailwood Lane, Germantown, TN 38138  
Mr. Jim Thannum – 9349 Poplar Grove Circle, Germantown, TN 38139  
Mr. Allen Hewitt – 9333 Walter Woods Lane, Germantown, TN 38139  
Mr. Christopher Schmidt – 6925 Red Fields Drive, Germantown, TN 38138  
Mr. Jim Crone – 3098 Kirby Downs Cove, Memphis, TN  
Mr. Larry Capstick – 7641 Willey Street, Germantown, TN 38138

---

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

**ROLL CALL:** – Ms. Boyd – absent; 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 August 10, 2010 Minutes**

Mr. Klevan made a motion to approve the minutes from the June 8, 2010, meeting; the motion was seconded by Alderman Hinely.

**ROLL CALL:** – Mr. Poe – yes; Ms. Boyd – absent; Alderman Hinely – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Ms. Sherman – yes; 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; and 2) encroach into a utility easement in the “R-1” Medium Density Residential zoning district

**BACKGROUND:**

**DATE SUBDIVISION APPROVED:** The 1<sup>st</sup> 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, but was withdrawn by the applicants at the suggestion of the BZA. On August 10, 2010, the BZA approved variances to allow the existing principle structure to encroach 2 feet into the required rear yard setback (from the south lot line) and to allow a part of the existing principle structure (kitchen addition) to encroach 4 feet, 10 inches into the side yard setback (from the west lot line). The applicant withdrew the third requested variance for the existing attached porch.

**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 request by the applicant is to obtain approval for 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.

**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. 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. The BZA approved variances allowing the existing dwelling, as originally built, to extend into the required rear yard and to allow an addition to the kitchen to extend into the required side yard. The issue of the covered porch extending to the west lot line and into a utility easement was withdrawn from consideration prior to a vote.
4. If the variance request is granted, the applicant must apply for a building permit through the Memphis/Shelby County Office of Construction Code Enforcement.

5. 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 began by advising that she has confirmed that the structure is eleven feet at its highest level (where it starts), but is actually closer to nine or eight and a half feet mainly due to necessary steps and the way that the property sits down in a hole. It is slightly less than six feet from the adjoining property just to the west.

Ms. Hayden stated that one of the things that she and applicant were told is that this structure is not an arbor because it had a roof over it also had electrical wiring. Ms. Hayden said that in a good faith effort and to show that they would like to try and come into compliance by getting this to be at least an arbor, the Jacksons have had all of the covering over it along with the electrical taken down; it has all been removed.

Mr. Evans thanked the Jacksons for their numerous appearances before the Board and also for their good faith effort.

Ms. Hayden thanked the Board for their kindness and assistance in helping her clients in getting their request for variances approved.

**PROPOSED MOTION:** 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.

Alderman Hinely made a motion 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. Patricia Sherman seconded the motion.

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

**MOTION PASSED**

---

**SUBJECT:** 9349 Poplar Grove Circle – Request a variance to allow the principle structure 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:** On June 8, 2010, the BZA approved a variance to allow an attached porch to encroach into a utility easement and denied a variance to allow an accessory structure (a detached carport structure) to be located a distance less than its height from the rear and side lot lines and to encroach into an easement. The minutes from that meeting are attached.

**DISCUSSION:**

**NATURE OF VARIANCE REQUESTED:** The specific requests by the applicant are to obtain approval of modifications to an existing detached carport accessory structure that was built by the homeowner. The existing carport structure is a free-standing, detached structure and 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.

The applicant proposes to modify the existing detached carport structure in the following ways, as a means to lessen the variances required and address concerns of the BZA expressed in their denial of the previous variance request:

1. Attach the carport structure to the principle structure (dwelling) in order to avoid the setback requirements of a detached accessory structure. Poplar Grove is a PUD and has reduced setback distances for dwellings. 9349 Poplar Grove Circle has no minimum setback from its south lot line (an interior lot).
2. Relocate the carport's supports out of the southern easement.

Two of the support posts (one existing and one proposed) will encroach 4 inches into the eastern utility easement. The open roof structure of the carport will encroach 2 feet into the eastern easement and 5 feet into the southern easement.

**SPECIFIC SECTIONS OF ZONING ORDINANCE:** The specific request is a variance from the general requirement to maintain easements free of encroachments that might obstruct access for maintenance.

**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 and 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:**

6. The applicant has provided photos of the structures and an e-mail message from the Poplar Grove HOA.
7. If the variance request is granted, the applicant must apply for a building permit through the Memphis-Shelby County Office of Construction Code Enforcement.
8. 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.

**Jim Thannum, Applicant  
9349 Poplar Grove Circle  
Germantown, TN 38139**

Mr. Thannum started out by reminding everyone that he had appeared once before the Board to request a variance, but was denied. Mr. Thannum advised that since then, he has hired an architect to try to bring the structure into compliance. He further advised that they are making changes to remove anything in the utility easement on the south side. He said along the east side, one of the posts on the left hand side does encroach because it is eight inches wide, causing half of it to encroach on the easement.

Per Mr. Thannum, the structure will be attached to the house; for support and to ensure that it is safe, there will be a steel channel beam underneath.

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

Mr. Hewitt advised that the homeowner's association's Architectural Control Committee of Poplar Grove is entirely in favor of this structure. He advised that Poplar Grove subdivision has garages and not carports. Per Mr. Hewitt, Mr. Thannum's pergola has been approved; they do not want a covered carport which it is not.

**Christopher Schmidt, Architect**  
**6925 Red Field Drive**  
**Germantown, TN 38138**

Mr. Poe asked Mr. Schmidt about the two right posts being brought inward. He asked does this interfere with vehicles being able to get in to the right of the post. Mr. Schmidt replied by saying that it would be a small clearance, but enough for two vehicles. Mr. Poe said that he was under the impression that the drive and the pergola went up to the property line. He asked if the poles go perpendicular to the easement lines or perpendicular to the property line. Mr. Schmidt said that presently, the concrete goes all the way to the property line. Mr. Poe confirmed that there is concrete off to the right that is encroaching on the easements already. Mr. Schmidt said that there's concrete from a house right before you get to the drive; essentially there is concrete coming from the curb cut to a foot within the brick fence that separates the property from Johnson Road.

Mr. Poe said that he knows that the left side attached to the house is probably okay. He then asked Mr. Schmidt if there is any downside of the structural portion that can be prevented (the way it is designed). Mr. Schmidt explained that essentially it is a steel column with ties embedded into the concrete casing all within the two existing cedar 2x8's.

Chairman Evans thanked Mr. Thannum for his cooperation and willingness to work with the Board and Staff in finding a solution.

Mr. Thannum stated that working with the Planning Staff was absolutely a pleasure. He said that Wade Morgan made a lot of things possible and that without him it would not have happened.

**PROPOSED MOTION:** To approve a variance at 9349 Poplar Grove Circle to allow supports of the principle structure (carport) to encroach 4 inches into a utility easement and the structure overhang to encroach 2.5 feet into the eastern utility easement and 5 feet into the southern utility easement, subject to staff comments and the site and elevation plans submitted with the application.

Patricia Sherman made a motion to approve a variance at 9349 Poplar Grove Circle to allow supports of the principle structure (carport) to encroach 4 inches into a utility easement and the structure overhang to encroach 2.5 feet into the eastern utility easement and 5 feet into the southern utility easement, subject to staff comments and the site and elevation plans submitted with the application. Alderman Hinely seconded the motion.

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

**MOTION PASSED**

---

**SUBJECT:** 3015 Devonshire Way – Request a variance to allow pool equipment to be located in the required side yard in the "R" Residential zoning district.

**BACKGROUND:**

DATE SUBDIVISION APPROVED: Devonshire Gardens PD, Phase 2 was approved by the Germantown Planning Commission on September 19, 2001.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 2004.

PREVIOUS VARIANCE REQUESTS: None.

**DISCUSSION:**

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow existing pool equipment that is located in the side yard. The permit for the pool installation was issued on June 28, 2010 by the Code Compliance Division. The permit included specific instructions for the location of the pool equipment, as depicted on the permit rendering attached. The Code Compliance Division was notified that the pool equipment was installed in the side yard, and informed the pool company that a variance would be necessary to maintain the location of the pool equipment.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §Sec. 4-56 of the "Appurtenances and Accessories" portion of the private residential swimming pool ordinance, which states "appurtenances and accessories, such as, but not limited to, circulating pumps, water filters, water heaters, chlorination systems, etc., shall not be located in the required side yard between the front and rear lines of the principal building, and they shall be located a minimum of ten feet from the rear and side property lines, and no closer than five feet from any recorded easement on the premise." The pool equipment encroaches two feet (2) into the required side yard on the north side of the lot.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance due to exceptional narrowness and shape of the property which resulted in a peculiar difficulty when installing the equipment. According to the applicant, there is a "not another practical place for the equipment."

**STAFF COMMENTS:**

1. The applicant is requesting a **2' variance** to allow existing pool equipment in the required side yard setback.

**Jim Crone, Representative**  
**Mid South Pools**  
**3098 Kirby Downs Cove**  
**Memphis, TN**

Mr. Crone began by advising that his company put the heater on the side wall because a heater cannot be placed under a window. He said that he is a Senior Designer for the company and this is what he understands it to be. Mr. Crone further stated that the equipment was placed there because it is a blank wall with no windows. He said that they certainly would not do anything like this knowing that it was done wrong. Mr. Crone said that he would need to speak with the City's code official about his recommendation of another location for the pool equipment.

Mr. Crone said if he is not mistaken, there are several other homes in this cove that have this same problem and were approved in the past.

Chairman Evans stated to Mr. Crone that one of the problems that the Board have is the fact that his company was given a permit and was told not put the equipment there, yet it was place there anyway.

Mr. Crone replied by saying that it really wasn't done like that. He said that they were under the impression that they had room to put it there; the set back was within the regulation. He stated that this was a mistake on the company's part and a misunderstanding with the code official. He said they

certainly wouldn't have placed it there if they had known it wasn't supposed to go there; he does not know where else they could have put it because it is an excellent location for the pool equipment.

Mr. Klevan asked Mr. Crone although he was not involved (as stated), does he know or not know if there is a window on the side wall. Mr. Crone replied by advising that he had not put his eyes on it, however, the superintendent said that there are no windows on that side of the house; he was told that all windows are in the back. Katie Graffam confirmed that there are no windows on the back side of the house. It was at this time that Mr. Crone advised that a heater cannot be placed under a window.

Chairman Evans said we have an officer of the City who is recommending a particular location; how can we decide on which position is right and which one is wrong.

Mr. Crone advised that he is a Master (inaudible) and that a heater cannot be put under a window.

Katie Graffam said that she does not know if this was actually relayed to the Code Officer, because it had not been told to her. She said that if it was relayed to the Code Officer, then he would have never suggested a position under the window. Maybe it was not known at the time the permit was done that there was a window on that side. Whatever the reason, nothing was ever communicated.

Wade Morgan advised also that there was nothing on the site plan to indicate that there was a window, therefore the code officer would not have known. Mr. Morgan said that had we been aware of some of the issues, we may have been able to offer some suggestions to resolve it.

Chairman Evans asked it could be confirmed tonight that there is no other location for the placement of the equipment other than where it exist.

Mr. Morgan answered by saying no, based on the information presented to us, we cannot make a recommendation. He said there could be some other locations, but he does not know for sure. He also said that he did not know, but it may be possible to separate the heater from the pool equipment.

Mr. Crone said even if the heater could be separated from the equipment, where would it go because there are windows all across the back of the house and on the other side of the house. He said to do this would cost the pool company thousands and thousands of dollars to relocate the heater/equipment.

Chairman Evans asked Mr. Crone did he agree that the work was not done in accordance to the permit. Mr. Crone said that he didn't think that there was a place for the equipment to go per the permit; he did not think that you locate the equipment when a pool permit is pulled.

Ms. Graffam advised that this is part of the pool permit approval and that it is also included with information sheet that is accompanied with the permit. Ms. Graffam then produced signed statement by representative, Andrew Burton of Mid South Pool Builders that reads in bold "Please make sure that the pool equipment is not located in the required side yard."

Chairman Evans said that we have an issue tonight with equipment being installed in an area non-according to the permit. Chairman Evans said to Mr. Crone that he is here tonight as a representative, yet you say that you weren't part of these discussions. Chairman Evans further stated that it will be awfully hard for the Board to reconcile these issues without some of those parties in front of us. He advised that he for one, is inclined not to approve this variance tonight (individually speaking), because he does not approve of someone pulling a permit and then unilaterally go and make a decision on their own.

Chairman Evans suggested that Mr. Crone consider pulling this off tonight's agenda to get some of the other parties here to speak on their behalf.

Mr. Crone then stated a concern about the expense to move the pool equipment. Chairman Evans advised that the state legislation for which we work, says that we are not allowed to consider any costs when making a decision.

Chairman Evans then asked Mr. Crone to make a request to pull this from tonight's agenda. Mr. Crone said yes, he will.

## **MOTION WITHDRAWN**

---

**SUBJECT:** 7641 Willey Road – Request a variance to allow an accessory structure to be located a distance less than its height from the side property line in the “R” Low Density Residential zoning district.

### **BACKGROUND:**

DATE SUBDIVISION APPROVED: Germantown Heights subdivision was approved in 1956.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1960.

PREVIOUS VARIANCE REQUESTS: None.

### **DISCUSSION:**

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval for an existing storage building. The 12 foot tall building is located in the southwest corner of the rear yard, 7 feet from the west lot line and 13 feet from the south lot line. It encroaches 5 feet into the required setback from the west lot line. In addition, there is a 10 foot-wide utility easement that extends at an angle 30 feet into the rear yard. The building is located within that easement.

A Germantown Code Compliance Officer on routine patrol noticed the structure and notified the homeowner on April 29, 2010 (copy attached). Planning and Neighborhood Services staff met with the homeowner (Larry Capstick) on-site to review the structure and discuss his options. Mr. Capstick subsequently filed the application for a variance on August 13, 2010.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-236(2) 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 storage building requires a variance of 7feet from the required setback distance from the west lot line and a variance to be located within an easement.

APPLICANT'S JUSTIFICATION: According to the applicant, the storage building is a replacement building for a previous structure that was originally built by the homeowner's (Colleen Capstick) grandfather approximately 40 years ago. The original building was wood, with a wood base, and rotted over the years. Mr. Capstick rebuilt the storage building so as to be more permanent and to accommodate drainage patterns. A more detailed justification from Mr. Capstick and a statement from Paul Bruns regarding the previous structures are attached.

### **STAFF COMMENTS:**

1. The applicant was notified of the violation on April 29, 2010 and applied for the variance on August 13, 2010.



2. Photos of the structure are attached.
3. If the variance request is approved, the homeowners shall enter into a Hold Harmless Agreement with the City, stating that Germantown will not be responsible for any damage to the structure due to work within the easement.
4. If the variance request is approved, the applicant must apply for an accessory structure permit through the Department of Economic and Community Development.

**Larry Capstick, Applicant**  
**7641 Willey Street**  
**Germantown, TN 38138**

Mr. Capstick started out by saying that this is part of a master plan for rebuilding and improving the value of the property where he has lived there for over 20 years. He advised that he has been working with Paul at Goodwind's Nursery on the layout. He said that there was a ten feet (approximately) wooden garden building here originally that was built by his wife's grandfather; it was at the point where it could not stand. He said that the final piece of this master plan was the garden and to control the water flow in the back yard. Per Mr. Capstick, railroad ties were used to level everything out because everything sloped drastically to the property line.

Mr. Capstick stated that they basically replaced the garden building. From an architectural view, they wanted to stay with the character of their screened porch. He further stated that because of very little garage storage, he rebuilt the structure to be a little bit higher to provide a shelf inside for additional storage. Per Mr. Capstick, from an architectural view, it doesn't look that high because it is set down about two feet lower than the tie walls.

Mr. Capstick apologized for not obtaining a permit prior to rebuilding the structure; he said that he was not aware that a permit was needed.

Chairman Evan asked if there were any plans to do anything else with the structure itself. Mr. Capstick replied by advising that it is really just a storage garden building for him/family.

Mr. Poe asked Mr. Capstick if he was aware that there was a utility easement back there. Mr. Capstick said that he was aware that there's utilities' running from Mr. Porter's yard all the way out to Willey Road because that's when the planned development, back in 1960, had to connect there.

Mr. Poe then asked Mr. Capstick if he built the structure or did he hire someone to build it for him. Mr. Capstick advised that he and a carpenter friend did the work. He further advised that he did hire a mason to do all of the brick work throughout.

Mr. Klevan asked Mr. Capstick if he poured the foundation and did he check to see if there were power lines underneath. Mr. Capstick answered by stating that all power lines are up above.

Mr. Poe asked Mr. Capstick if someone were on the roof, could they reach out and touch the lines. Mr. Capstick said that after he added the first addition onto his home, he asked them [MLGW] to raise the wires. MLGW raised the wires approximately six to eight feet.

Mr. Klevan asked about the excess height requirement for accessory structures. He said a year ago, the height requirement would not have been in violation, it would have been a utility easement violation.

Wade Morgan answered by explaining that it still would have been a violation under our previous accessory structure ordinance. Per Mr. Morgan, the only change to the accessory structure regulation is that the structure is less than eight feet in height; this one is more than eight feet, so there is no change to the regulation that would affect this.

Chairman Evans asked Staff if the thirty inch high retaining walls as stated in a letter from Code Compliance require a variance as well. Wade Morgan answered by saying no, retaining walls do not require permits.

**PROPOSED MOTION:** To approve a variance at 7641 Willey Road to allow an existing accessory structure to be located 7 feet from the west lot line and 13 feet from the south lot line and encroach into a utility easement, subject to staff comments and the site and elevation plans submitted with the application.

Patricia Sherman made a motion to approve a variance at 7641 Willey Road to allow an existing accessory structure to be located 7 feet from the west lot line and 13 feet from the south lot line and encroach into a utility easement, subject to staff comments and the site and elevation plans submitted with the application. Alderman Hinely seconded the motion.

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

**MOTION PASSED**

---

**Meeting Adjourned at 6:58 p.m.**