

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

October 12, 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:

Mr. Andrew Burton – 4511 Boyce Road, Memphis, TN 38117

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 September 14, 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: 3015 Devonshire Cove – 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: The applicant previously requested this variance at the September Board of Zoning Appeals (BZA) meeting. Due to scheduling conflicts, he sent a

representative in his place. The representative was unable to answer the BZA's questions and withdrew the variance request from the agenda.

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." **Additionally, the applicant has submitted a letter explaining the situation. As reported by the applicant, he "understood [the side yard setback] to be 10' from the house, not 10' from equipment to the property line."**

STAFF COMMENTS:

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

Mr. James Knight, Germantown Code Compliance Officer
878 Concordia Cove
Collierville, TN 38017

Chairman Evans asked Officer Knight to explain how the pool permit meeting transpired between him and Mr. Andrew Burton; what were his thoughts when he reviewed the plans at that time. Officer Knight stated that Mr. Burton presented the site plan with the pool equipment located as it is now. He then advised Mr. Burton that it could not be located there because it is in the required ten foot setback. Officer Knight said that he wrote the word "VOID" on the site plan and again advised that the equipment was not to go there.

Alderman Hinely asked Officer Knight if he offered any suggestions as to where he [contractor] should install the pool equipment. Officer Knight stated that he did not offer any suggestions because he is not a pool expert. Alderman Hinely then asked Officer Knight if he told Mr. Burton that the pool equipment could be placed under the rear window at the time of their meeting. Officer Knight said no, he did not.

Mr. Andrew Burton, Applicant
4511 Boyce Road
Memphis, TN 38117

Chairman Evans asked Mr. Burton to explain what happened when he came in to apply for the pool permit. Mr. Burton stated that initially, it was a misunderstanding. He advised that Officer Knight asked

how far it was from the house to the property line. Mr. Burton said that he told Officer Knight that he did not know because he did not measure it, but it is approximately seven feet. He stated that Officer Knight then replied that if it is seven feet, it cannot go there; you must have ten feet. Mr. Burton said that his understanding was that there must be ten feet from the house to the property line in order to place the pool equipment in that area. He advised that when he took the actual measurements and it was eleven feet, he felt that he was good to go and thus installed the pool equipment.

Mr. Klevan asked Mr. Burton if he called Officer Knight or someone at the City to let them know that he would like the placement for the pool equipment to be reconsidered or did he just go on and install the equipment although it was marked as "VOID" on the permit. Mr. Burton said that he went on and put the equipment in, which was a mistake.

Alderman Hinely asked Mr. Burton if there was a particular reason why he placed the equipment there. Mr. Burton advised that there was no particular reason except that the homeowner was particular about not wanting the equipment on that side of the house because they would have to put an additional fence there. Also, per Mr. Burton, it would cost approximately \$4,000 to the homeowner to run a gas line because all the utilities are located on the other side of the house.

Mr. Klevan asked Mr. Burton if there are gas lines where the compressors are. Mr. Burton answered no, not to use for a pool heater. Mr. Klevan also asked if new fencing would be required since the compressors are located outside the fence area that surrounds the pool pump and heater. Mr. Burton said yes, so that the homeowner would not have to look it.

Mr. Poe asked Mr. Burton if both the filtering system and the heating system equipment encroached into the side yard setback. Mr. Burton replied by saying no, the equipment sits on a pad of concrete that is eighteen to twenty-four inches placing it well within the required setbacks.

Mr. Poe then asked Mr. Burton about his testimony in regards to Officer Knight. He asked Mr. Burton to clarify as to if he misunderstood what Officer Knight said or was he relying solely on what he wrote on the permit. Mr. Burton said that he's pulled numerous permits with the City of Germantown and this was the first time that he has ever had this type of conversation. Mr. Burton further stated as he remembers the conversation, Officer Knight said ten feet from the house to the property line was needed in order to put pool equipment next to the house; not ten feet from the pool equipment to the property line. Per Mr. Burton, when he measured from the house to the property line, he was happy when he had eleven to eleven and a half feet to work with.

Mr. Poe asked Mr. Burton if he had ever built pools where (inaudible) or is this some history he had. Mr. Burton responded by saying that he's never had a history of asking for forgiveness, but have asked for amnesty prior to building the pool to get the water running off of the equipment adjusted.

Mr. Poe asked Mr. Burton what happens if his request is rejected. Mr. Burton said that he would jack hammer a lot of concrete, move the equipment to the other side and run a gas and electrical line from one side of the house to the other side of the house. Per Mr. Burton, the cost to do this would be approximately eight to ten thousand dollars.

Alderman Hinely asked Mr. Burton why the homeowners did not want the equipment on the other side of the house. Mr. Burton replied by saying that they [homeowners] were concerned with the costs that would be involved and also, they did not want to have to look at the equipment while swimming in the back yard.

Chairman Evans asked Mr. Burton once he decided to erect the surrounding fence, why didn't he inform the City that this is still the best position for the equipment. Mr. Burton stated that it was a mistake on his part because of his misunderstanding with Officer Knight and the fact that he thought that he was working with eleven feet.

Chairman Evans asked Mr. Burton when he pulled the permit and there was an area marked "VOID," did he feel an obligation to go back and recheck before he started to build. Mr. Burton answered well yeah, yes sir.

Alderman Hinely asked Mr. Burton how many pools had he installed in Germantown. Mr. Burton said in the last six years, approximately forty. Alderman Hinely asked if he'd ever had a problem with the location of the pool equipment. Mr. Burton stated that he's never had a conversation about it and that his signature is on every single permit. He said that if he could do it all over again, he would have asked for a variance.

Mr. Salvaggio asked Mr. Burton if he realized that "VOID" was written on the permit. Mr. Burton said that he did not recall, however he goes by the site plan and probably did not look at the permit. He further stated that he does believe that Officer Knight wrote "VOID" on the permit while he was sitting there because he stated that the distance from the house to the property line was around 7 feet.

Mr. Poe said he believed there was a miscommunication and that the driveway next door could have put distance between the two houses. He further stated that he is weighing on the fact that there would be change of hardship for the homeowner by incurring additional costs to relocate the equipment.

Mr. Salvaggio said that he hopes the contractor understands how important it is to know the lay of the land when working in the City of Germantown. He further stated that because this is Germantown, there is probably going to be more paperwork, which should be considered for notes and details by all parties. Also per Mr. Salvaggio, all City Ordinances and guidelines should be recognized and followed.

Ms. Sherman stated that she is going to vote yes, however she would like to stress the importance of communication in the future; don't take it for granted. She further stated that because of that measurement, we really need to communicate and make sure that everyone is tuned in to what they are doing.

Chairman Evans relayed that Mr. Burton had "dodged the bullet" tonight and should never again be back in front of the Board arguing the same type of case. He stated that he holds Mr. Burton responsible for this mistake and that his vote is no. Chairman Evans said the motion however does carry and the variance is approved.

PROPOSED MOTION: To approve a variance for 3015 Devonshire Cove to allow existing pool equipment to encroach two feet (2') in the required side yard setback in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application.

Dave Klevan made a motion to approve a variance at 3015 Devonshire Cove to allow existing pool equipment to encroach two feet (2') in the required side yard setback in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application. Alderman Hinely seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:30 p.m.