

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

November 9, 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; 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:

Ms. Mikki Duffey – 2413 Sanders Ridge, 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 October 12, 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 – abstain; Alderman Hinely – yes; Mr. Klevan – yes; Mr. Salvaggio – yes; Ms. Sherman – yes; Chairman Evans – yes

MOTION PASSED

SUBJECT: Lot 5 of the Garner Woods subdivision – Request A Variance to Allow the Principal Structure to Encroach Into the Required Front Yard Setback in the “RE-1” Estate Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Garner Woods subdivision was approved by the Planning Commission in 2004. Construction of the subdivision infrastructure was only recently completed.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: NA.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct a single family dwelling on the lot. The applicant proposes an 80 foot front yard for the dwelling. The subdivision plat requires a 159 foot front yard, in order to comply with the zoning regulations on lot width and setback. A variance of 79 feet is requested.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-207(1) which requires a minimum lot width of 150 feet, measured at the building line, and from §23-208(1)(a), which requires a front yard setback of 60 feet.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. She states "there is excessive setback placed on Lot 5; drainage easement is excessive (and the) topography drops off".

STAFF COMMENTS:

1. The minimum front yard setback in the RE-1 district is 60 feet and the minimum lot width is 150 feet, measured at the building line. Lot 5's building line is 159 feet from the front lot line because that is the nearest point where a 150 foot lot width can be provided.
2. Garner Woods was originally planned and partially developed by Ken Sledd. The subdivision is now owned by the Bank of Bartlett. All of the lots are undeveloped.
3. The subdivision was planned so as to maximize the number of lots. Each lot is exactly the minimum area required by the zoning district. As a result, the street frontages of lots 4 and 5 are very narrow, which force the minimum building setback lines deeper into the lots.
4. Lot 4 has a similar configuration to Lot 5. A similar variance request on Lot 4 could be expected if the variance on Lot 5 is approved
5. The buildable area of Lot 5 is 12,232 square feet using the current setbacks, and 17,448 using the proposed variance.

Mikki Duffey, Representative
2413 Sanders Ridge
Germantown, TN 38138

Ms. Duffey began by advising that she and Landon Homes have a proposed home that they would like to build on lot five. Ms. Duffey said that she thinks the setback should be brought up to eighty feet to make it more aesthetically pleasing for the other lots in the cove, and also to situate the home providing a better fit on the lot. Per Ms. Duffey, building a home on this lot would be an absolute asset for the City because it will provide income from the real estate taxes.

Chairman Evans asked Ms. Duffey to clarify a question that was raised earlier. He asked Ms. Duffey if the ownership of this lot is currently in the hands of the person she is representing or is it still owned by the Bank of Bartlett. Ms. Duffey said that it is still owned by the Bank of Bartlett. She advised that she has contracts on all five lots that are prepared to close. Ms. Duffey further stated that one of the contingencies before lot five is closed is that the home to be built must fit on the lot.

Chairman Evans asked Ms. Duffey if she had a contract pending on all six lots or five lots. Ms. Duffey answered six. Chairman Evans then suggested that all attention needs to be focused on lot five only.

Ms. Boyd asked Ms. Duffey were the buyers not able to find lots that matched their floor plans elsewhere. Ms. Duffey replied by saying that in the City of Germantown, to have an acre lot in such a really nice area (inaudible) in every yard.

Chairman Evans asked Ms. Duffey if her buyers are interested in the acre lot or the house itself. Ms. Duffey said both; she advised that the house was actually built it in the Vesta Home Show where the setbacks were a lot different than they are in Garner Woods Cove. She further stated that it is very difficult to find acre lots in Germantown, which is what her buyers wanted.

Alderman Hinely asked Ms. Duffey what is her hardship. Ms. Duffey said that the hardship is the fact that the home does not fit. Per Ms. Duffey, if they can't build a home on that property they probably will not be able to sell that lot. Ms. Duffey further stated that consequently real estate taxes will not be realized for the City of Germantown. Alderman Hinely advised Ms. Duffey that the Board does not see this as a hardship. With that, she rephrased the question by asking why is this variance needed -- is it because of the topography of the lot or is there an issue with the easements. Ms. Duffey advised that there is a huge drainage easement at the rear of the lot. She said that if the home is not properly situated on the lot, it would encroach onto the easement and would be in the rear neighbor's back yard.

Chairman Evans asked Wade Morgan if the easement affected either this house design or the original building footprint. Mr. Morgan answered by saying that it does not affect the building footprint.

Ms. Duffey stated that the easement does not affect the building setbacks or the topography, but it does affect it as far as being able to build the house that the buyers want to put on this property.

Chairman Evans asked about hardship once again. He said the reason for hardship stated on the application was topography drop off and the unusual shape of the lot. Chairman Evans further stated that in reality, a house can be built on the lot, but you cannot build this particular house on that lot without a variance; there is a footprint in which a house can be built.

Ms. Duffey responded by advising that the lot has an excessive setback compared to lots one, two, three and six. Per Ms. Duffey, the lot also has an excessive drop off at the rear of the property.

Chairman Evans asked Ms. Duffey what does she consider excessive. Ms. Duffey stated that there is at least a ten foot drop off back there. Chairman Evans then asked Jerry Cook to clarify/expound on Ms. Duffey's statement.

Mr. Cook advised that he had looked at the grading and drainage plan for lot four as part of the review of the application. He said that lot five from the cove back into the existing buildable area drops about three feet, which is not real excessive for this deep of a lot. He further advised that lot four drops off a lot more than lot five because of the drainage inlets and easements. Mr. Cook said that the rear of lot four is in a breach area of a pond; there is a minimum floor elevation established for a house to be built. Per Mr. Cook there is eighteen inches above the existing ground elevation. Mr. Cook advised that there is not much of an issue regarding the drop off from the cove back into the buildable areas of the lot.

Mr. Cook further stated that one of the things that the applicant did note and was also noted by Ms. Boyd was the criteria the Board looks at in terms of zoning applications. Justification for the application is not only topography issues but also to some degree unusual shapes of the lots. Per Mr. Cook, these lots are peculiar in that they are much deeper than they are wider because they are located on a cove; the required building setback pushes the structure further into the lot which makes it an unusual condition.

Mr. Cook advised that the other lots are pretty uniform in terms of their setbacks and does not merit the consideration that these two lots do.

Chairman Evans asked staff to explain why these setbacks have to be where they are and what was the discussion in the subdivision development regarding these two lots having setbacks that are so much further back. Mr. Morgan advised for lots four and five, the deep setbacks result from the requirement that a lot width for this zoning district be a hundred and fifty feet. Per Mr. Morgan, that width is measured at whatever the building line is. He said that since the lot is a triangle basically, in order to provide a distance of a hundred and fifty feet, the buildable area has to be pushed back further into the open area of the lot. Mr. Morgan said in the case of lot five, since it has only thirty-two feet of width at the front and then flares out going westward, the point in which it reaches one hundred and fifty feet width is actually one hundred fifty-nine feet back from that front property line. Mr. Morgan further advised that lots four and five are distinct from the other lots in the subdivision being that lot five only has thirty-two feet of width at the street and lot four having even less than that.

Mr. Klevan stated that when the Planning Commission approved the original subdivision plan one of the big considerations was the uniqueness of this piece of property which at the time was a family estate. He said that there were two lots in the rear of the drive which set back. Per Mr. Klevan the concern was more of a buildable footprint being adequate in size to put a house.

Mr. Klevan asked Ms. Duffey were there any previous thoughts of maybe going through the City's Planning Department to redraw the lot lines eliminating not only lot six but also to help eliminate all other problems. Ms. Duffey said that she wasn't sure what the bank (inaudible) removing lot six. Per Ms. Duffey, in a perfect world that is probably what should have been done. She said that she does not think that was a consideration of the bank.

Chairman Evans asked Ms. Duffey did she represent the bank. Ms. Duffey replied no, she's just trying to sell a lot and build a house...that's all.

Mr. Salvaggio asked Ms. Duffey what is the square footage of the house that is being proposed. Ms. Duffey said sixty-four hundred.

Ms. Boyd asked what the square footage of lot four is. Ms. Duffey replied the proposed home on lot four will probably end up being approximately sixty-five hundred square feet.

Ms. Boyd asked Ms. Duffey was the floor plan/footprint of the house on lot four similar to that one on lot five. Ms. Duffey answered by saying that the proposed house on lot four will be fairly close to the home on lot five. She advised that the plans for the home on lot four are not complete as of yet.

Mr. Salvaggio asked if the surrounding streets, Dogwood and Dogwood Meadows Cove are part of the same neighborhood. Mr. Morgan answered by advising that property to the west is zoned RE-1; the frontage along the east side of Johnson Road and the frontage of the subdivision is zoned RE.

Mr. Salvaggio and Ms. Duffey discussed the shape of the lot and its topography. Mr. Salvaggio stated that he thinks this development will be a challenge and that people are going to want to build "non-squared" houses on these type of lots. He also said that house desires are much different now; there are pie shaped lots with houses that are more linear and less layered.

Mr. Salvaggio said there is a topography issue because of the three foot elevation difference in the rear. He asked Ms. Duffey if there was an opportunity to shift the house and split the difference between the rear setback and the front setback. Ms. Duffey said they would not have to remove any trees on the back side because it's just vacant land with a few seedlings. However, per Ms. Duffey, in the back drop area there are a lot of trees that would be touching if the house is shifted.

Chairman Evans said that it would have been helpful if the architects on this particular matter would have been present to answer some of the questions that are being raised tonight. He further stated that there is a real concern about what we want to do on the item before us and the impact it may have on the other

lots in the subdivision; to what extent we may or may not have on any other options when we do get to those lots.

Chairman Evans asked Ms. Duffey if there is any way she could meet with all participants in the next month to see if there are any other options that are available before the Board votes this up or down.

Ms. Duffey advised that she and her cohorts discussed the matter and would be willing to accept twenty-five feet less of a setback than what is being requested.

Mr. Klevan advised that whatever is done there (lot five) unfortunately is going to predicate what happens next door. He further stated that although we are asked to vote on this one item, there's really more to it than that. Mr. Klevan said that it would be in Ms. Duffey's best interest to pull this item and come back next month.

Ms. Boyd suggested that Ms. Duffey withdraw the item and maybe look at bringing lots four and five together as one item.

Alderman Hinely advised Ms. Duffey that if this item is voted down, she will not be able to bring this particular item before the Board for at least six months.

Chairman Evans said that it would be better for Ms. Duffey and also better for the Board if the whole package was to be presented, instead of piecing it together. With that Ms. Duffey withdrew her request.

MOTION WITHDRAWN BY APPLICANT

SUBJECT: Existing Structure Variance Requests

BACKGROUND:

In the past several years, the Board of Zoning Appeals has received applications for variances for structures built without building permits. Also, variances were needed in order to make the structure(s) legal. The Board of Zoning Appeals noted that penalties should apply to such requests, so as to deter future requests.

The staff has reviewed this issue with the City Attorney and the Building Official of the Memphis and Shelby County Office of Code Construction. The following recommendations are made to the Board of Zoning Appeals for consideration and recommendations to the Board of Mayor and Alderman:

Fees: Amend the Resolution of Fees adopted by the Board of Mayor and Alderman to include the following: (a) Variance application fee for existing structure(s) without approved building permit will be \$300.00, (b) Use on Appeal application without approved permits will be \$600.00, (c) Cost of building permit will be double the fee for structures built without approved permits.

The additional fees will act as a penalty for these applicants who construct a structure(s) without building permits and request variances to correct violations, which could have been avoided if a building permit was applied for prior to construction.

Also, a database will be established to identify repeat offenders. Any person/applicant/contractor in violation more than twice (2) will be prosecuted as the law permits which may include summons to City Court for violation of City Ordinance.

Mr. Cook began by advising that in years past, the Board of Zoning Appeals received various applications requesting variances after a structure has been built. The applicant is now in violation of the setback requirements, location requirements, etc. and has to come before the Board of Zoning Appeals when in

fact he/she should have addressed this on the front end by discussing this matter with the building department or the Department of Community Development.

Mr. Cook further stated that one of the things that the Board of Zoning Appeals has been looking at is adjusting the fee structure to address not only the various applications, but also those applications that come to the Board of Zoning Appeals after the fact; the additional work that has to be done (looking at the structure, the drainage, the grading of the property and the impact on the adjacent and surrounding property) certainly would validate an increase in fees.

Mr. Cook proposed that the application fee for a variance request be doubled to a total fee of three hundred dollars (one hundred and fifty dollars times two). He also recommended that the Use on Appeal application fee be increased to six hundred dollars and that the building permit fee also be doubled.

Mr. Cook also recommended that a data base be established on applicants and contractors who are repeat offenders. Per Mr. Cook, not only will fees be doubled for repeat offenders, but it is possible that they will be dealt with in Germantown's City Court.

Mr. Cook advised that ideas of getting the word out and notifying residents, builders, developers, etc. are being discussed (if the motion passes). Per Mr. Cook, Germantown's website, Council of Neighborhood Associations, postcard type notices with utility bill, and providing information to the Home Builders Association are avenues that being considered.

Ron Poe made a motion to recommend to the Board of Mayor and Alderman that the Resolution of Fees be amended as follows: (a) Variance application fee for existing structure(s) without approved building permit will be \$300.00, (b) Use on Appeal application without approved permits will be \$600.00, (c) Cost of building permit will be double the fee for structures built without approved permits. Alderman Hinely seconded the motion.

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

MOTION PASSED

OLD BUSINESS

Gary Smith
1770 Great Oaks Gove
Germantown, TN 38138

Mr. Smith stated that he is on the Board of Directors for the Neighborhood Association of Poplar Estates. He advised that he and the association were not notified about a previous agenda item (6993 Poplar Avenue—The Market at Poplar Estates). He said that they heard about it through another neighborhood association.

Chairman Evans instructed Mr. Smith to leave his name and contact information with Wade Morgan to ensure that they are properly notified in the future.

NEW BUSINESS

Wade Morgan reminded Board members about reapplying for The Board of Zoning Appeals next year. He urged those to whom this would apply to contact him or Dotty Johnson for more information.

Meeting Adjourned at 6:48 p.m.