

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

May 10, 2011

6:00 p.m.

COMMISSION PRESENT:

Mr. Henry Evans; Ms. Elizabeth Boyd; Mr. David Klevan; Mr. Tony Salvaggio; Alderman Palazzolo

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Andy Pouncey, Director of Economic and Community Development; Mr. Alan Strain, Attorney; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Mr. Jason Brownlee – 9160 Highway 64, Lakeland, TN 38002

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

ROLL CALL: – Ms. Boyd – present; Alderman Palazzolo – present; Mr. Salvaggio – present; Ms. Sherman – absent; Mr. Klevan – present; Mr. Uhlhorn – 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 February 8, 2011 Minutes

Elizabeth Boyd made a motion to approve the minutes from the October 13, 2009, meeting that was seconded by Alderman Palazzolo.

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

MOTION PASSED

SUBJECT: 3250 Wetherby Cove South – 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 1 was approved by the Germantown Planning Commission in 2001.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 2006.

PREVIOUS VARIANCE REQUESTS: none.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow pool equipment to be located in the side yard. The permit for the pool installation was issued on December 27, 2010 to Jason Brownlee by the Code Compliance Division. The applicant was informed at that time that

the pool equipment had to be at least 10 feet from the property line. (permit and site plan are attached) On March 1, 2011, a Code Compliance Officer visited the site, noticed in the location where the pool equipment was to be installed there was only 10 to 11 feet between the house and the north lot line, informed the homeowner of the issue and discussed the matter with the pool installer. On March 30, 2011, the Code Officer re-visited the site and noted that the pool equipment connections had not been removed. The Code Officer then wrote a letter to the homeowners (Timothy and Cynthia Vandergriff) restating the violation. On April 1, 2011 Mr. Brownlee filed an application for a variance.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §Sec. 4-56 of the “Appurtenances and Accessories” section 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 will encroach three feet into the required side yard on the north side of the lot. In addition, there is a standard five-foot utility easement along the north property line. The equipment will be two feet from the easement (five feet is required).

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance due to exceptional narrowness and shape of the property which will result in undue hardship upon the owner. According to the applicant, “the house sits 11 feet from the property line, leaving only 1 ft. of available space” and “the distance to the property line does not provide for the necessary 4 ft. pad width”. In addition, “the owner does not want their pool equipment pad to be underneath their bedroom window”. The applicant also stated there is a not another practical place for the equipment, due to windows, doorways and other items along the rear side of the house.

BACKGROUND:

DATE SUBDIVISION APPROVED: Devonshire Gardens PD, Phase 1 was approved by the Germantown Planning Commission in 2001.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 2006.

PREVIOUS VARIANCE REQUESTS: none.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow pool equipment to be located in the side yard. The permit for the pool installation was issued on December 27, 2010 to Jason Brownlee by the Code Compliance Division. The applicant was informed at that time that the pool equipment had to be at least 10 feet from the property line. (permit and site plan are attached) On March 1, 2011, a Code Compliance Officer visited the site, noticed in the location where the pool equipment was to be installed there was only 10 to 11 feet between the house and the north lot line, informed the homeowner of the issue and discussed the matter with the pool installer. On March 30, 2011, the Code Officer re-visited the site and noted that the pool equipment connections had not been removed. The Code Officer then wrote a letter to the homeowners (Timothy and Cynthia Vandergriff) restating the violation. On April 1, 2011 Mr. Brownlee filed an application for a variance.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §Sec. 4-56 of the “Appurtenances and Accessories” section 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 will encroach three feet into the required side yard on the north side of the lot. In addition, there is a standard five-foot utility easement along the north property line. The equipment will be two feet from the easement (five feet is required).

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance due to exceptional narrowness and shape of the property which will result in undue hardship upon the owner. According to the applicant, "the house sits 11 feet from the property line, leaving only 1 ft. of available space" and "the distance to the property line does not provide for the necessary 4 ft. pad width". In addition, "the owner does not want their pool equipment pad to be underneath their bedroom window". The applicant also stated there is a not another practical place for the equipment, due to windows, doorways and other items along the rear side of the house.

**Jason Brownlee, Applicant
9160 Highway 64, Suite 12
Lakeland, TN 38002**

Mr. Brownlee stated that the purpose of this request is to put the pool equipment in a logical location that will fit the house/backyard to design. He advised that when he pulled the original permit, the Code Compliance officer referenced a ten foot required setback. Mr. Brownlee said that he assumed that this meant the pool itself, not the equipment. Per Mr. Brownlee, he has built two or three other pools in Germantown over the past few years and this was never an issue. Mr. Brownlee clarified that there is no pool equipment there now; once it was inspected on March 1st by a Code Compliance officer, no additional work was done from that point. Mr. Brownlee said that he tried to determine what was best for the property/lot. He advised that the side yard is the utility access easement for all the elements of the house. It is adjacent to the neighbor's house which also has their air conditioning unit, utility pad and pool equipment located there as well. Per Mr. Brownlee, it the most logical space to put the pool equipment. Mr. Brownlee further stated the only other valid space would be a landscape spot right outside the homeowner's master bedroom window.

Mr. Evans asked Mr. Brownlee why was this the only location. Mr. Brownlee advised that the entire yard slopes out in a way that has the utilities to the house all in that side yard; you would have to run gas and electric lines out in the yard with no other place to put it. Mr. Brownlee further advised that because the utility or control panel for the pool has to be mounted on a solid structure, a wall will need to be constructed or built ten feet off of the property line in the middle of the yard; the only other place for mounting the panel would be against the wall.

Mr. Pouncey asked what size the wall would be. Mr. Brownlee said that typically, it is a four foot tall solid masonry structure. Mr. Pouncey said that technically, because distance was not a factor, you could put the wall anywhere, correct? Mr. Brownlee stated that you could, however it would be unsightly and difficult to make function correctly in the yard. Per Mr. Brownlee, the panel cannot be placed against the required barrier/fence because it has to be at least ten feet away from the fence so you end up putting a ten foot soft line in between a barrier and [inaudible].

Mr. Salvaggio asked Mr. Brownlee if the electrical control panel could also be mounted on a channeled steel like an irrigation system would be. Mr. Brownlee said that he has never done that; he's always built the panel on wood mounted onto a solid wall mainly for stability.

Mr. Klevan asked Mr. Brownlee why he ignored the Code Officer's written directions [pool equipment location] on the December 27, 2010 permit application; he wanted to know why Mr. Brownlee took it upon himself to install the plumbing and pour the concrete pad in that particular location. Mr. Brownlee stated that he did not ignore the directions, but it was more of a misunderstanding. He said that when he discussed it with the Code Compliance officer, he thought that it was the pool that had to be ten feet away from the property line. Mr. Brownlee further stated that once this was brought to his attention, no more work done from that point.

PROPOSED MOTION: To approve a variance for 3250 Wetherby Cove South to allow pool equipment to encroach three feet into the required side yard setback and be less than five feet from an easement in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application.

Elizabeth Boyd moved to approve a variance for 3250 Wetherby Cove South to allow pool equipment to encroach three feet into the required side yard setback and be less than five feet from an easement in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application. Dave Klevan seconded the motion.

ROLL CALL: – Mr. Klevan – no; Mr. Uhlhorn – absent; Ms. Boyd – no; Mr. Salvaggio – no; Ms. Sherman – absent; Alderman Palazzolo – no; Chairman Evans – no

MOTION DENIED

Meeting Adjourned at 6:25 p.m.