

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

February 8, 2011

6:00 p.m.

COMMISSION PRESENT:

Mr. Henry Evans; Ms. Elizabeth Boyd; Mr. David Klevan; Ms. Patricia Sherman; Mr. Frank Uhlhorn;
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:

Ms. Mikki Duffey – 2413 Sanders Ridge, Germantown, TN 38138
Ms. Nancy Griffin – 2323 Johnson Road, Germantown, TN 38139
Mr. Jason Arwine – 2323 Parker Circle, Germantown, TN 38139
Mr. Rodney Conelison – 2951 Leesburg Drive, Germantown, TN 38138
Mr. Tim Dixon – 2465 Howard Road, Germantown, TN 38138

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

ROLL CALL: – Ms. Boyd – present; Alderman Palazzolo – present; Mr. Salvaggio – present; Ms.
Sherman – present; Mr. Klevan – present; Mr. Uhlhorn – 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 she 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 January 11, 2011 Minutes

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

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

MOTION PASSED

SUBJECT: Lot 6 of the Garner Woods subdivision – Request Variances to Allow the Principal
Structure to Encroach Into the Required Front Yard and Rear Yard Setbacks 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 PRINCIPAL 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 1) a 50 foot front yard for the majority of the dwelling portion of the principal structure; 2) a 15 foot side yard setback from the west lot line; 3) a 25 foot front yard setback for the attached 2-story garage/rec room portion of the structure; and 4) a 25 foot rear yard setback for the attached 2-story garage/rec room. The subdivision plat requires a 60 foot front yard, a 25 foot side yard and a 50 foot rear yard. The proposed dwelling will encroach 35 feet into the required front yard, 10 feet into the required side yard, and 25 feet into the required rear yard.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from §23-208(1)(a), which requires a front yard setback of 60 feet, §23-208(2), which requires a side yard setback of 25 feet and §23-208(3), which requires a rear yard setback of 50 feet.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. She states "Lot 6 is an unusually shaped lot. Although it is an acre lot, 65% of the lot is not usable" and severely restricts the options in designing and building a house".

STAFF COMMENTS:

1. In the RE-1 district, the minimum front yard setback is 60 feet, the minimum side yard setback is 25 feet and the minimum rear yard setback is 50 feet.
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, Lot 6 is irregularly configured, with an unusable arm extending along Garner Woods Cove to Johnson Road. Approximately 35 percent of the lot is within the "arm".
4. The vehicle backing area to the north of the auto court encroaches into a 10 foot landscape easement along the Griffins' property line, that was required as part of the Planning Commission approval of the subdivision. The encroachment must be removed or the property owner should apply to the Planning Commission for modification of the easement.
5. A section of the auto court as designed could be considered as parking within the required front yard. The applicant should be aware that parking spaces within the required front yard are not permitted and that a driveway may not be over 18 feet in width except within 20 feet of the garage. The design of the auto court will have to be revised to accommodate those requirements.
6. A Grading Permit from the City of Germantown is required prior to the issuance of a Foundation or a Building Permit.

Mikki Duffey, Representative
2413 Sanders Ridge
Germantown, TN 38138

Since there were questions regarding the site plan for lot six, Chairman Evans asked Ms. Duffey to start out by addressing these concerns. Ms. Duffey advised at the last meeting she and associates did not

match the encroachment; they would like to stay within the fifty foot setback line. She stated that they were asking for ten feet before and now are asking for an additional ten feet on the west side of the house. She advised that the structure of the building is correct on the site plan; the only things that are not to scale on the drawing are the landscaping and the driveway.

Ms. Boyd stated that one of the main concerns is with the driveway. Ms. Boyd wanted to know if the parking pad could be shortened. Ms. Duffey said "oh yes, absolutely."

Mr. Klevan asked Ms. Duffey about the Griffins [next door neighbors]. Ms Duffey advised that she and associates meet with Mr. Griffin to survey the lot. She said that both parties agreed that the house could be moved ten feet to the left which would provide even more distance between the two properties.

After much discussion amongst Board members regarding proposed motion #1 it was decided that the motion should be re-worded to address the front yard setback and applicable exceptions for the garage and parking areas.

**Ms. Nancy Griffin, Neighbor
2323 Johnson Road
Germantown, TN 38139**

Ms. Griffin inquired about the landscaping. She was concerned about the location of an unsightly tree on the lot that is blocking her view. Chairman Evans suggested talking with Ms. Duffey on the matter; he advised that this is not an item that is before the Board tonight.

Proposed Motion 1: To approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure to encroach 10 feet into the required front yard setback, with the following exceptions: 1) the garage and recreation room (exclusive of parking areas) may encroach 35 feet and 2) the structure connecting the garage and habitable area may encroach 15 feet, all subject to staff comments and the site plan submitted with the application.

Elizabeth Boyd moved to approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure to encroach 10 feet into the required front yard setback, with the following exceptions: 1) the garage and recreation room (exclusive of parking areas) may encroach 35 feet and 2) the structure connecting the garage and habitable area may encroach 15 feet, all subject to staff comments and the site plan submitted with the application. Patricia Sherman seconded the motion.

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

MOTION PASSED

Proposed Motion 2: To approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure to encroach 10 feet into the required west side yard setback, subject to staff comments and the site plan submitted with the application.

Elizabeth Boyd moved to approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure to encroach 10 feet into the required west side yard setback, subject to staff comments and the site plan submitted with the application. Pat Sherman seconded the motion.

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

MOTION PASSED

Proposed Motion 3: To approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure (exclusive of parking areas) to encroach 25 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application.

Elizabeth Boyd moved to approve a variance for Lot 6 of the Garner Woods subdivision (9338 Garner Woods Cove) to allow the principal structure (exclusive of parking areas) to encroach 25 feet into the required rear yard setback, subject to staff comments and the site plan submitted with the application. Pat Sherman seconded the motion.

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

MOTION PASSED

SUBJECT: 2951 Leesburg Dr.- Request variance to allow a swimming pool to be located less than five feet from an easement in the “R-1” Residential Zoning District

BACKGROUND:

DATE SUBDIVISION APPROVED: The Waverly Crossing Subdivision was approved in 1996.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 2002.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to construct swimming pool within the rear yard of the property, with the pool being placed adjacent to the five-foot utility easement along the west lot line. The pool will be five feet from the west lot line, and ten feet from the south lot line. In addition, a retaining wall will be constructed within the utility easement.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of variances from § 23-262 (Swimming Pools), which requires pools to be a minimum of five feet from all property lines and recorded easements.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness, shallowness or shape. He states “due to the narrowness of our backyard, we would not be able to have a pool unless we can decrease the variance requirement by fifty percent. If allowed, our family could have a small but usable pool.”

STAFF COMMENTS:

1. The lot is unusually configured in that its width (146 feet) is greater than its depth (110 feet). The house is 25.9 feet from the rear lot line.
2. All concerned utility companies (AT&T, MLGW and Comcast) were contacted by the applicant and have provided letters indicating they have no objections to the pool being located adjacent to the easement.

3. The property owner shall enter into a Hold Harmless Agreement with the City, stating that the City of Germantown will not be responsible for any damage done to the pool or retaining wall arising from any work done within the utility easement. The agreement shall be completed prior to the issuance of a pool permit.
4. If approved, the applicant shall apply to the City of Germantown Neighborhood Services Division for a Pool Permit.

Jason Arwine, Contractor
c/o Hawaiian Pools
7549 Parker Circle
Germantown, TN 38138

Mr. Arwine advised as it currently stands, the proposed pool will have a body of water that is about sixteen feet wide which will encroach on an easement located in the back at the side property line placing the pool within five feet of the house. He further advised that "release of easement" letters were secured from Memphis, Light, Gas and Water, Comcast and AT&T stating that it is okay for Mr. Arwine and associates to encroach into the existing five foot utility easement. Mr. Arwine stated the primary reason for having the pool is because the Cornelisons see after his grandmother who lives next door. Per Mr. Arwine, it would be very convenient to have a pool right next door for therapy.

Mr. Pouncey stated that he had a concern regarding the grade. He asked Mr. Arwine had he discussed his grade, heights of walls, etc. with the homeowner. Mr. Arwine said "yes." Mr. Pouncey said from one end of the wall to the other is approximately seventy feet; what Mr. Arwine has is approximately two percent on grass which is about a foot and a half of wall. Per Mr. Pouncey, if the high point is in the middle it would drop nine inches or more from one side to the other. He then asked Mr. Arwine did he know how tall the wall is going to be and had he calculated how much water could be coming against this wall. He wanted to know if Mr. Arwine had considered everything (grading, water flow issues, etc) and also had he discussed these issues with the homeowners. Mr. Arwine stated "yes," there is a crown in the back yard; the swell takes the water around the garage to the north and then to the south side of the house. Mr. Pouncey asked Mr. Arwine how the water will be directed through where the pool is going to be; how does it get out. Mr. Arwine said catch basins were installed in the grass area near the proposed retaining wall. These basins will be buried and would run around the side of the house into a natural swell taking the water out to the street.

Mr. Klevan asked had he or homeowner spoken to any of the adjacent and/or rear neighbors.

Rodney Cornelison, Applicant
2951 Leesburg Drive
Germantown, TN 38138

Mr. Cornelison advised that he had not spoken to any neighbors. Mr. Klevan asked is there run off coming from either side. Mr. Cornelison said "yes," he thinks the main run off is behind the garage; ninety percent of the natural water run off is on the north side of the garage from the upper cove. He said they do get some run off from the south side, but nothing that is significant.

Mr. Pouncey asked Mr. Cornelison will he be tying into the City's sewer system when the pool is flushed out/cleaned. Mr. Cornelison answered "yes," a hard line will be run from the pool to the cleanout which goes directly to the sewer system.

Ms. Boyd stated she was a little concerned about filling the entire back yard with a pool. She wanted to know was there anything else the applicant could do to make the pool smaller and yet still be sufficient to their needs. Mr. Cornelison said that he could not answer this question because he is not a pool expert.

Per Mr. Cornelison, the main reason for getting the pool is because of his grandmother; this would be very sufficient for her because as of now, she has to be driven to the fitness center for therapy.

Mr. Klevan asked where the pool equipment would be located. Mr. Arwine said the pumps would be located behind the existing garage. He explained that this is the only location other than the side of the house, which is usually frowned upon.

Mr. Pouncey asked Mr. Arwine what size base the pool equipment will be on. Mr. Arwine advised that it will be a concrete pad that measures approximately four by seven feet.

Mr. Salvaggio asked if Mr. Arwine had any sort of formal or informal drain plan been done at all. Mr. Arwine said "informal, yes." Mr. Salvaggio then asked if the water flow from the adjacent properties had been calculated. Mr. Arwine stated that he has not calculated to see what the actual water-shed is. He said that his calculations were based on twenty-five years of experience. Mr. Salvaggio asked about the retaining wall. He wanted to know if it was addressed in the easement release letters from MLG&W, AT&T and Comcast that the retaining wall would be in the middle of the easement. Mr. Arwine said "yes, absolutely." Per Mr. Arwine, they all received copies of the plat.

Mr. Pouncey asked about the twelve inch catch basin square. He wanted to know where they are located and what size line would be run. Mr. Arwine advised that the two basins will be in the grass where the concrete pool deck meets the existing patio near the retaining wall. Each basin will have six inch pipe (PVC) which will go around the south side of the home into the existing that takes the water out to the street. Mr. Pouncey then asked what the grade of the pool is relevant to the grade of the house. Mr. Arwine said the grade of the existing patio is one step down out the back door; the finished elevation and the coping of the pool is going to be about five and a half inches below the fascia board of the house.

Mr. Pouncey asked if something is backed up in the drain basin, there will be approximately a couple of inches to work with before it gets in the house. Mr. Arwine said this is true, but the water will flow laterally because the pool deck itself, slopes away from the pool.

Mr. Salvaggio asked Mr. Arwine if he would be building the grade up behind the two foot proposed retaining wall or will a dam be built where the water is naturally shoved ground up. Mr. Arwine advised that the wall itself will be slightly higher than the existing grade at the bottom of the fence. Mr. Salvaggio then asked if the area in between the top of the two foot retaining wall measured from the depth of the pool going to be built up not to exceed the bottom [inaudible]. Mr. Arwine said "correct." He advised that there is also a French drain that will be installed behind the walls.

Mr. Pouncey asked what kind of wall is it. Mr. Arwine said that it will be a segmental block wall in which a seventy pound unit will be used.

Proposed Motion: To approve a variance at 2951 Leesburg Drive to allow a swimming pool to be closer than five feet to an easement, subject to staff comments and the site plan submitted with the application.

Frank Uhlhorn made a motion to approve a variance at 2951 Leesburg Drive to allow a swimming pool to be closer than five feet to an easement, subject to staff comments and the site plan submitted with the application. Dave Klevan seconded the motion.

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

MOTION PASSED

SUBJECT: 6988 Neshoba Road – Request Approval of a Variance to Allow Parking within the Required Front Yard in the "R" Residential zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Poplar Estates Subdivision, Section B, was approved by the Planning Commission in 1962.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 1964.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain permission for a parking area located within the required front yard. On December 23, 2010, Germantown Construction Inspectors noticed that the homeowner was having his drive inlet replaced without a permit and was widening the portion of the driveway beside the garage to create a parking pad. The parking pad was determined to be within the required front yard. The homeowner had the work completed, then on January 13, 2011 filed an application for a variance for the parking pad. 6988 Neshoba Rd. is a corner lot, with frontage on both Neshoba Rd. and Poplar Estates Parkway. The house is placed diagonally on the lot, with the driveway connected to Poplar Estates Parkway. The parking pad is parallel to the existing driveway, is 12 feet wide by 43 feet long, and encroaches 23 feet into the required front yard.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is approval of a variance from §23-88(a) which prohibits parking spaces within the required front yard and limits the width of the driveway to 18 feet within 20 feet of the garage or carport.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional narrowness or shape and other extraordinary situation or condition, resulting in peculiar and exceptional difficulties. He states " Due to the location of the residence upon the property, both sides of the house beyond the front line of the residence are fully exposed to adjacent property owners and public view. To comply with existing ordinances would require a second driveway be added to the property to access areas beyond the front line of the residence which also reduce distance to adjacent property lines." *(a second driveway would be necessary to comply with the regulations)*

STAFF COMMENTS:

1. The Zoning Regulations prohibit parking spaces within the required front yard, which is the area within 50 feet of the curbs of Poplar Estates Parkway and Neshoba Road, in this situation.
2. The parking pad is indicated in orange highlight on the attached site plan. A parking pad is allowed anywhere within the red dashed line
3. If the Board approves the requested variance, staff recommends that landscaping of between 18 and 36 inches in height be required along the east side of the parking pad, so as to buffer the view of the parked vehicle.

Tim Dixon, Applicant
2465 Howard Road
Germantown, TN 38138

Mr. Dixon began with an apology. He said that he didn't realize he was violating the law by putting the piece of concrete down. Mr. Dixon said that he was replacing the apron to the street because tree roots had come through. Per Mr. Dixon, the contractor that he hired assured him that he was licensed with the City of Germantown. Once his crew started the work, the contractor realized that his license was expired; the apron was however replaced. Mr. Dixon further stated the contractor had already ripped up the previous apron prior to an initial visit from a City inspector. He said that because rain, snow and freezing temperatures had been forecasted, he instructed the contractor to go ahead and finish the job.

Mr. Dixon said that his son-in-law drives a small service van in which he was parking at the end of the drive or on the street every day. He said when the van is parked here it obstructs the line of view, which Mr. Dixon feels is a safety hazard for his three small grandchildren. Mr. Dixon also advised that parking the van in this area tends to block the sidewalk on the Poplar Estates side; right now people have to walk into the traffic way in order to get around the van.

Mr. Uhlhorn asked Mr. Dixon was he on site when the inspector came out. Mr. Dixon said that he did come on site. Mr. Uhlhorn asked if the inspector put a "STOP WORK" order on the project. Mr. Dixon said that he did advise them to cease working, but a formal "STOP WORK" order was not issued.

Mr. Evans asked Mr. Dixon if the contractor finished the work after he was told to stop by the inspector. Mr. Dixon said "yes sir," he instructed the contractor to finish the work because he did not want to expose the concrete to the weather and elements. Mr. Evans then asked who the contractor was. Mr. Dixon could not recall any of the contractor's information. Wade Morgan said although there was nothing in the file, he could probably get information from the construction inspector.

Mr. Pouncey asked Mr. Dixon does he use his garage to park in. Mr. Dixon said that it is full of kids' toys.

Mr. Uhlhorn asked Mr. Dixon if he thought the inspector was kidding. He advised in the future, if a City inspector tells him to stop, he should heed his warning and take any advice that is given to him. Mr. Uhlhorn then asked Mr. Dixon did he used to live in this house or was this an investment property. Mr. Dixon said "no," the only investment is that he bought the house for his daughter who has three kids and is attending law school.

After much discussion between Board Members and Staff, it was determined that the parking pad would have been satisfactorily located had it been off the existing drive which turns in towards the front of the house; or it could have been a circular drive that would have come out on Neshoba where there is an inlet.

Chong Soo Pyun
6979 Neshoba Road
Germantown, TN 38138

Mr. Pyun's main concern is that this property is now occupied by Mr. Dixon's daughter and son-in-law. Per Mr. Pyun's letter, he would have acquiesced to Mr. Dixon's application as a neighbor, had he not been the absentee-owner of the property and had the Coles [applicant's daughter] not been a transient family.

Mr. Pyun stated the following in a letter addressed to the Board of Zoning Appeals:

In our view, this case is about absentee-owner of the property applying for a durable enhancement of his property right, in perpetuity, for a transient family in a well established neighborhood. Once the Coles [Mr. Dixon's daughter/family] have moved, our neighborhood may have to grapple with a "game-change" event with a new family, the game-change event that may be consequential to the Board's granting the Dixon application at this time.

Proposed Motion: To approve a variance for 6988 Neshoba Road to allow the existing parking pad to encroach into the front yard setback, subject to staff comments and the site plan submitted with the application.

Elizabeth Boyd moved to approve a variance for 6988 Neshoba Road to allow the existing parking pad to encroach into the front yard setback, subject to staff comments and the site plan submitted with the application. Dave Klevan seconded the motion.

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

MOTION DENIED

Meeting Adjourned at 7:07 p.m.