

BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
September 13, 2011
6:00 p.m.

COMMISSION PRESENT:

Ms. Elizabeth Boyd; Alderman Palazzolo; Mr. Tony Salvaggio; Ms. Patricia Sherman; Mr. David Klevan;
Mr. Frank Uhlhorn

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Ms. Marie Burgess, Planner; Mr. Alan Strain, Attorney; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Dennis Smith – 7352 Magnolia Ridge Drive, Germantown, TN 38138
Dr. Sunil Malhotra – 9078 Forest Hill-Irene Cove, Germantown, TN 38139

Ms. Boyd 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 – absent

Ms. Boyd 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. She 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. She then swore in the staff.

Ms. Boyd stated that she would like to make note that the motions made in all meetings are of an affirmative nature. She 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 July 12, 2011 Minutes

Dave Klevan made a motion to approve the minutes from the July 12, 2011, meeting that was seconded by Pat Sherman.

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

MOTION PASSED

SUBJECT: 7352 Magnolia Ridge Drive – Request a variance to allow a pergola exceeding eight feet in height to be located a distance less than its height from the lot line in the “R” Low Density Single-Family Dwelling zoning district

BACKGROUND:

DATE SUBDIVISION APPROVED: The Timbers Subdivision was approved in 1977.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: 1979.

PREVIOUS VARIANCE REQUESTS: None.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow an existing pergola that exceeds eight feet in height to remain in place. A six foot privacy fence exists between the homeowner and the adjacent neighbor; however, the applicant constructed the pergola to provide additional privacy for the pool and patio. The pergola is located in the rear yard setback, is nine feet in height, six feet wide, and 30 feet long. According to the graphic provided by the applicant (included in this packet), the pergola is also located within the five foot utility easement. If the Board grants the variance, the applicant must enter into a hold harmless agreement. Code Compliance cited the homeowner for the violation on April 6, 2011 (letter included), and the homeowner applied for the variance on April 12, 2011. The application has been delayed until now as the homeowner has been out of town.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from section 6-103(B) which limits pergolas to eight feet in height and section 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.

APPLICANT'S JUSTIFICATION: The applicant is requesting the variance based on the criteria of exceptional topographic conditions with a "grade change of approximately 20 feet in approximately 19 feet." According to the applicant, "Because of the backyard slope we cannot build a fence within regulations to give privacy to (the) pool and patio area."

STAFF COMMENTS:

1. The applicant was notified by Code Compliance staff on April 6, 2011 of the violation and advised of her options to correct it. She applied for a variance on April, 2011.
2. Photos of the pergola and graphic sections of the rear yard are attached.
3. Should the variance request be granted, the applicant must apply for a permit through the Department of Economic and Community Development.
4. Since the pergola encroaches into the utility easement along the rear lot line, the homeowner shall enter into a hold harmless agreement addressing potential work within the easement.

Mr. Dennis Smith, Applicant
7352 Magnolia Ridge Drive
Germantown, TN 38138

Mr. Smith advised that he and family have lived at this address since 2005. He said that every time his neighbor pulls in, he feels that he [neighbor] is looking down at them while sitting on the patio or swimming in the pool. Mr. Smith stated that in an effort to create a buffer, he built the arbor/trellis that matches the existing structure over the patio. Mr. Smith further advised that the elevation change between the two yards is approximately 20 feet within a 19 foot run. Per Mr. Smith, he did not know that he was supposed to obtain a permit from Germantown's Office of Code Compliance before building the structure.

Ms. Boyd asked Mr. Smith did he build the pergola himself or did he have someone construct it for him. Mr. Smith said that he designed it himself and had the people who mowed his lawn to help him build it. He said that none of his neighbors seem to have a problem with the finished product.

Board Members brought up the question as to whether the applicant was aware of a “Hold Harmless Agreement.” Ms. Boyd advised Mr. Smith that if this variance is approved, he would need to have this form along with other documentation signed by the City of Germantown.

PROPOSED MOTION: To approve a variance at 7352 Magnolia Ridge Drive to allow an existing pergola to be located four feet, six inches from the rear lot line and exceed the maximum permitted height by one foot, for a maximum height of nine feet, subject to staff comments.

Frank Uhlhorn moved to approve a variance at 7352 Magnolia Ridge Drive to allow an existing pergola to be located four feet, six inches from the rear lot line and exceed the maximum permitted height by one foot, for a maximum height of nine feet, subject to staff comments. Dave Klevan seconded the motion.

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

MOTION PASSED

SUBJECT: 9078 Forest Hill-Irene Cove – Request Approval of a Variance to Allow the Principal Structure to Encroach into the Required Rear Yard within the “R” Residential Zoning District

BACKGROUND:

DATE SUBDIVISION APPROVED: The Drinnon subdivision was approved in 2003.

DATE PRINCIPAL STRUCTURE APPROVED/BUILT: 2011

PREVIOUS VARIANCE REQUESTS: None

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to obtain approval to construct a screen enclosure over the swimming pool and sauna in his rear yard. The enclosure will have a metal frame connected to the rear side of the house and extending to within 12 feet of the rear (north) lot line. The structure is proposed to be 112 feet in width and 14 feet in height along its northern wall (closest to the rear lot line). A 3D view of the structure and photos of completed projects from the installer’s website are attached.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §23-232(3), which requires a rear yard of not less than 25 feet for the principal structure and allows an unheated rear porch to extend into the required rear yard by up to ten feet, which results in a 15 foot minimum rear setback for a porch. The proposed screen enclosure can be considered a porch and its 12 foot setback from the rear lot line requires a 3 foot variance.

APPLICANT’S JUSTIFICATION: The applicant is requesting the variance based on the criteria of other extraordinary and situation or condition of the piece of property. He states “we are asking for a backyard setback of 12 ft. rather than 15 feet. The daughter is deathly allergic to flying insects and wasps. The owner wants to put a screen room over the pool and backyard so the daughter can use the space.”

STAFF COMMENTS:

1. Photos of the dwelling's rear yard are attached.
2. If the variance request is granted, the applicant must apply for a building permit through the Memphis/Shelby County Office of Construction Code Enforcement.

Dr. Sunil Malhotra, Applicant
9078 Forest Hill-Irene Cove
Germantown, TN 38139

Dr. Malhotra stated that the reason for this variance request (screen enclosure) is because his daughter is highly allergic to insect bites. He advised that if the screen is built without the variance, it will be unsafe in that there will be no access from one side to another. He also advised that by exiting the spa would place a person very close to the pool making it a hazardous situation because of the surrounding water; someone could possibly fall into the pool. Per Dr. Malhotra, the ideal situation would be to get out from the north end of the spa.

Ms. Boyd asked Dr. Malhotra when the house was constructed, was it accidentally built too far back or did he not realize where the line was. Dr. Malhotra said that the architect who built the house gave him a general outline of the porch but did not know however, about Germantown's rear yard setback requirements.

Ms. Boyd asked Dr. Malhotra if there are any neighbors that live on the rear property behind his house. Dr. Malhotra said yes; they are behind a wall in the back that covers the whole area.

Ms. Boyd then asked Dr. Malhotra if he had talked with any of his neighbors about this variance request. Dr. Malhotra stated that as far as he knew, they were all okay.

Ms. Boyd asked Dr. Malhotra how he plans to keep such a structure clean. Dr. Malhotra advised that this structure is made to keep everything out. He said maybe he would power wash it or use some other type of similar system to keep it clean.

Mr. Salvaggio asked Dr. Malhotra if he would have a green space inside or would he extend the porch to the edge of the screen structure. Dr. Malhotra said there will be grass inside the enclosure.

Alderman Palazzolo asked Dr. Malhotra if the structure would withstand the weight from elements such as snow and ice. Dr. Malhotra said definitely. He advised that the contractor builds these type structures all over the nation and that it is built to handle the snow. Dr. Malhotra further stated that he was assured that the structure is strong enough so that it would not droop or sag.

PROPOSED MOTION: To approve a variance for 9078 Forest Hill-Irene Cove to allow a screen enclosure addition to the principal structure to encroach three (3) feet into the required rear yard setback in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application.

Tony Salvaggio moved to approve a variance for 9078 Forest Hill-Irene Cove to allow a screen enclosure addition to the principal structure to encroach three (3) feet into the required rear yard setback in the "R" Residential zoning district, subject to the staff comments and site plan filed with this application. Pat Sherman seconded the motion.

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

MOTION PASSED

Meeting Adjourned at 6:27 p.m.