

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

June 12, 2012

6:00 p.m.

COMMISSION PRESENT:

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

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Mr. Andy Pouncey, Director of Economic and Community Development; Mr. Joe Nunes, Manager of Neighborhood Services; Ms. Carmen Richardson, Secretary

Interested Individual(s) present:

Mr. James D. Allison – 100 N. Main Street, Suite 3100, Memphis, TN 38103-0508

Ms. Carole Carvel – 7075 Poplar Pike, Germantown, TN 38138

Mr. and Mrs. Chuck Ward – 2045 Knoll Lane, 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 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 May 8, 2012 Minutes

Dave Klevan made a motion to approve the minutes from the May 8, 2012 meeting that was seconded by Patricia Sherman.

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

MOTION PASSED

SUBJECT: 7075 Poplar Pike – Request Approval of a Variance to Allow Accessory Structures to 1) Encroach into an Easement; and 2) be a Distance Less than its Height from a Property Line in the “R” Residential zoning district

BACKGROUND: The property is lot no. 1 of the Knoll Lane subdivision, which was approved by the Germantown Planning Commission on September 15, 1964. The principal structure was built in 1969 (according to the Shelby County Assessor records).

On October 21, 2011, Germantown received a call from a neighbor regarding construction on an accessory building in the rear yard of the property. Shelby County Code Enforcement officials investigated, determined that a permit had not been issued for the building, and issued a stop work order.

On October 22 and 24, 2011, complaints were received by Germantown that the construction on the building was continuing. The property owner (Ms. Carvel) was contacted by Germantown officials and instructed to cease the construction, and advised that she should apply for a variance.

Shelby County Code Enforcement subsequently took the matter to Shelby County Environmental Court. The Court instructed Ms. Carvel to pursue the administrative remedy of applying for a variance for the building.

On January 17, 2012, an incomplete application for a variance was filed. On May 11, 2012, the variance application was completed and placed on the Board of Zoning Appeals agenda.

PREVIOUS VARIANCES: none.

DISCUSSION:

NATURE OF VARIANCE REQUESTED: The applicant is requesting a variance to allow a two-story (20 ft. +/-), 18 ft. by 34 ft. accessory building to be located 5.96 feet from the side (west) lot line and 3.95 feet from the rear (south) lot line. The building encroaches 1.05 feet into a five-foot drainage and utility easement along the rear lot line. In addition, an 8 ft. by 3 ft. storage shed is located completely within the 5 ft. utility easement along the side (west) lot line.

The larger accessory building should be located 20 feet from all property lines in order to comply with current accessory building setback requirements. Its placement encroaches 14.04 feet into the setback area from the west lot line, and 16.05 feet into the required setback area from the south lot line. The smaller storage shed encroaches five feet into the setback area from the west lot line.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from section 23-236(b) of the Code of Ordinances, which states, "No accessory building or structure shall be located within a recorded easement. (b) An accessory building or structure with a height of eight feet or more may extend into the required rear yard, but shall be located a distance equal to at least the height of the structure from the rear and side lot lines. (c). An accessory building or structure with a height of less than eight feet may extend into the required rear yard, but shall be located a minimum of three feet, six inches from the rear and side lot lines."

APPLICANT'S JUSTIFICATION: The applicant's justification is shown below and is part of their application:

STAFF COMMENTS:

1. Records from the Shelby County Building Department indicate that approval was given prior to 1970 for a single story accessory building in the rear yard of the property. The records do not provide information on the location or size of the building.
2. A photo (#1) taken of the accessory building on 7/2//09 shows it having a single story. An air photo (#2) from February, 2011 also indicates a single story. Photos taken 10/21/11 (#3) and 11/14/11 (#4) show the construction of the second story.
3. An Accessory Structure permit from Germantown and a building permit from Shelby County Office of Construction Code Enforcement were not obtained for the structures. If the variances are approved, the applicant shall obtain appropriate permits from both agencies prior to commencing any further work on the structures.

Joe Nunes, Manager of Neighborhood Services
1920 S. Germantown Road
Germantown, TN 38138

Chairman Evans asked Mr. Nunes if the stop work notice that was issued in October, 2011 was verbal or in writing. Mr. Nunes said as he understood it, a written notice was given. Chairman Evans then asked if there is a copy available. Mr. Nunes said no, there is not. Chairman Evans wanted to know if construction was ongoing from October 21, 2011 to present day. Mr. Nunes stated that he's not sure however, until that date, work was being done on the structure until the stop work order was issued.

Ms. Boyd asked if a stop work order was also issued by Shelby County. Mr. Nunes advised that the only stop work order issued was by Shelby County. She then asked was it issued per our request. Mr. Nunes said it was actually initiated prior to our request.

Chairman Evans asked if there was anyone who would like to speak in favor of this variance request.

Mr. James D. Allison, Attorney
100 N. Main Street, Suite 3100
Memphis, TN 38103-0508

Mr. Allison advised in 2011, the City of Germantown became aware of zoning violations for this building. It was uncertain at that time whether the matter should be grandfathered in or if Ms. Carol Carvel should apply for a variance. Mr. Allison said this structure was originally a one story building with a loft, not a roof on top. Per Mr. Allison, this structure remained on the property for a period of time until it was damaged by a storm. He said the structure was taken down for a brief period of time and in 2005, Ms. Carvel applied for a permit to begin reconstruction of the building. He advised that once construction began, Ms. Carvel had to leave to tend to her mother who was seriously ill at that time. He said over the next five years or so, some amount of work was done, however it was not until late 2010 or 2011 that full construction had started again.

Mr. Allison advised that the unfinished structure now has a roof on it. He said that Ms. Carvel's intentions are to make the structure attractive to all of the neighbors. With that, Mr. Allison submitted a letter of support from a neighbor to the west (Michael Dodd) and some photos. He said the photos were taken from an opposing neighbor's rear yard. Mr. Allison stated that the structure should not be a hindrance because the view is completely blocked by trees (as shown in photos). He further stated that the photos also show where the easement should be located. Per Mr. Allison, there is no easement on the property; it is simply a piece of ground that is reserved for the placement of a drainage easement if ever one should be built. He said he believes that the easement lies on the other side of the wall at the south end of Ms. Carvel's property line. He then referenced a 2005 letter that had been submitted which states that after a thorough search, the City was unable to locate an easement on or near this property.

Mr. Allison stated that he and Ms. Carvel would like to work with the City of Germantown. However, they do not want to be put through the expense of having to take the top off of the structure. Mr. Allison said that this undue hardship should be considered especially since the structure does not bother anybody.

Carole Carvel, Applicant
7075 Poplar Pike
Germantown, TN 38138

Ms. Carvel stated that the structure was not completed in 2005 because her mother was seriously ill and she had to go to Oklahoma to take care of her. She said that over the years she was constantly doing some type of work on the structure—painting, tiling, sheet rock, etc. Finally in 2010, Ms. Carvel said that once ongoing issues and obstacles ceased, she was able to concentrate on getting the building completed. She stated that there was much confusion as to whether she was supposed to stop working on the

structure. Per Ms. Carvel, Shelby County came out and gave her a warning after being notified by Germantown Administration. According to Ms. Carvel, the Shelby County Code person told her that she did not have to stop work at that time. Approximately three days later, another person from Shelby County came out to issue a stop work order to Ms. Carvel. She said that Germantown Code Officers George Dean and James Knight also came to her residence at the same time that Shelby County Code was there. Per Ms. Carvel, Mr. Dean and Mr. Knight told Shelby County Code Officer that a meeting had been set up to discuss a variance. She said that Germantown officers told her that she could go on and make the building whether-tight which is what she did. Ms. Carvel said that one day when she was not at home, the workers took it upon themselves to do some electrical work and put up some sheet rock. Ms. Carvel stated that she was not aware of a drainage easement on the south end of her property until May of 2002. With that, Ms. Carvel and her attorney referenced a letter written by George Brogdon (City of Germantown Community Services Director) dated May 2nd, 2002 and a document from Jerry Cook (former City of Germantown Director of Development) both regarding the failure to locate a drainage easement on her property. Ms. Carvel said that she feels the structure should be grandfathered in based on the given length of time and the history of the structure or a variance should be granted to avoid the possible hardship and the expense of removing the roof/top portion of the building.

Chairman Evans asked if there was anyone who would like to speak against this variance request.

Chuck and Lisa Ward, Neighbors
2045 Knoll Lane
Germantown, TN 38138

Mr. Knoll stated that Ms. Carvel is clearly in violation of Germantown's set back rules and regulations. Per Mr. Knoll, although Ms. Carvel was given verbal warning in Shelby County Court to stop working at that time, she disregarded the order and continued to build.

Mrs. Knoll said that she called Shelby County Code to report that Ms. Carvel was still working on the shed. Per Mrs. Knoll, Shelby County said they would not come back out; instead they suggested she report the incident to Germantown Code.

Mr. Knoll emphasized that there were no records for Shelby County or Germantown indicating that there was ever a two story structure located on this property. He said this is clearly a house; her main house is inhabitable due to flood problems. Per Mr. Knoll, Ms. Carvel is trying to move to a corner where there are no flood problems. Mr. Knoll said just because there is an issue/problem with the home does not give a person the right to build another house in the corner of the backyard violating setback rules.

Mrs. Knoll advised that the two story structure can clearly be seen from their back yard. She said because the unsightly structure is not even six feet from the fence, it looks like a two story building towering over their pool area.

Mr. and Mrs. Knoll stated that they are strongly opposed to the two story structure being built so close to their property.

Mrs. Boyd asked Mr. and Mrs. Knoll how many years have they lived at this address. Mr. Knoll said they have lived at this property since March of 1990. Ms. Boyd then asked Mr. Knoll was he there at the time when this was a single story structure. Mr. and Mrs. Knoll stated in 1990, the ground was all level with an eight by ten concrete slab which was not close to their fence.

Mr. Klevan asked Mr. Allison if a permit was issued for an eight by ten storage shed. Mr. Allison referenced a copy of the permit and said yes. Mr. Klevan then asked Mr. Allison was the permit issued

by Shelby County. Mr. Allison said he thought the permit may have been signed by a representative of Germantown.

Mr. Nunes helped to answer the question that had been presented by Mr. Klevan. Per Mr. Nunes, accessory structure permits are reviewed by the City of Germantown to make sure that the proposed detached structure is in compliance with the zoning regulations. Once Germantown signs off on it, the permit goes to Shelby County for the actual building permit.

Chairman Evans asked if the permit indicated where the shed should be located. Mr. Nunes examined the document and read that the shed should be fifteen feet from the rear property line and ten feet from the nearest side property line.

Mr. Klevan asked Mr. Allison in 2009, was the structure a completed one story building with a roof on it. Mr. Allison said yes, that is his understanding. Mr. Klevan then asked if at some point and time, did someone decide that it was okay, using the same permit, to tear the roof off and add a second story. Mr. Allison said the picture shows what it shows; he cannot answer who actually made this decision.

Mr. Pouncey said that Mr. Allison carefully stated that Ms. Carvel applied for a permit to reconstruct after the storm and then work was stopped because of Ms. Carvel's mother's health. Per Mr. Pouncey, Mr. Allison never said if the permit was granted, only that she applied. He then asked Mr. Allison was there a permit for the work on the accessory structure and did he have a copy of it. Mr. Allison said that he thinks the only permit that was pulled for the building in question here tonight is the one that was applied for and granted around October 27, 2009.

Mr. Allison then asked Ms. Carvel was the permit granted. Ms. Carvel said it is her understanding that the house was not inspected immediately after the permit was granted. Per Ms. Carvel, Shelby County Code Officer, Randy McCool did not come out to make an inspection of the structure until 2009. She further stated that Mr. McCool observed the building in question, but however, inspected another building that was near the gate in the backyard. Ms. Carvel said her permit was issued in 2005.

Chairman Evans asked Ms. Carvel was there a permit and if so, what did it say. Ms. Carvel said the permit reads eight feet by ten feet. Chairman Evans rephrased the question and asked if the permit is for an eight by ten foot building. Ms. Carvel's response was "no sir that is not correct." After much discussion and many questions regarding a permit that was issued in 2005 by Shelby County with measurements other than eight feet by ten feet for a two story building, it was determined that a copy of such permit could not be located. Mr. Nunes advised that he had a copy of the Germantown permit and a copy of the original Shelby County permit application, but no copy of a final permit. Chairman Evans asked Mr. Nunes what was requested on the application. Mr. Nunes said the October 27, 2005 application was for an "R" zoned storage building/building used for storage, eight feet by ten feet by eight feet.

Mr. Salvaggio asked Ms. Carvel was a permit pulled for this building. Ms. Carvel explained that when she went to Germantown to get the permit, the code officer had a drawing with measurements of eight feet by ten feet. Ms. Carvel said she quickly advised the code officer that this was not the correct size and provided him with a computerized drawing courtesy of Home Depot. Ms. Carvel then submitted the drawing to the Board for examination.

Chairman Evans asked Mr. Allison and Ms. Carvel, who the contractor was that worked on the two story building back in October, 2011. Ms. Carvel said she was the contractor. Chairman Evans then asked who the three men were working on the structure in photo #3. Ms. Carvel said they were men that she hired to help her construct the building.

Mr. Klevan (referring to photos #1 and #2) asked Ms. Carvel what led her to arbitrarily take off the roof and build another type structure without going to seek counsel and get a permit. Ms. Carvel stated that in

2005 it was discussed with code compliance that the structure would have a second level, just as the original building did.

Mr. Salvaggio asked about the measurements of the structure. Ms. Carvel said that everyone has different measurements, but the actual building measurements are sixteen feet by thirty-three feet. Mr. Salvaggio then asked if there was a permit or an application anywhere that shows these measurements. Ms. Carvel said that she has spent almost eleven years trying to get information from Gene Anderson's file. Although she has tried repeatedly under the Freedom of Information Act, she was finally told that the file does not exist.

After much discussion about the processes and steps of properly obtaining a permit through Germantown and Shelby County, Mr. Salvaggio stated that this just does not happen; between these two review processes, the final product is going to be a permit with accurate information and correct measurements. Mr. Salvaggio said that he was still unclear—is this permit (eight feet by ten feet measurements) for this structure or is it for an infrastructure. Ms. Carvel advised that the permit was for a portion of the structure that was going to be put back.

In summary, Mr. Allison said that he had listened very carefully to the questions that the Board has asked and understands their concerns. He said that this all probably sounds like an excuse, but it is not. Per Mr. Allison, from the beginning of 2005 when the application for a permit was made, up until last year, the only work that had been done was the addition of the roof, which was done to secure the structure from the rains and elements. Mr. Allison further stated that there was some amount of confusion. He said that he can't explain why Gene Anderson indicated on the application that the structure would be either five feet or fifteen feet from the rear property line, ten feet from the nearest side property line and five feet from all easements. Mr. Allison said that Gene Anderson is not here to explain this, but yet his signature is this document. Per Mr. Allison, it is obvious what's written here is not what exist on Ms. Carvel's property today. Mr. Allison stated that he thinks things were confused and not done properly and he is not going to excuse what is obvious to the Board. He said the fact is what Ms. Carvel has there now is in violation of the zoning ordinances; it was put up in a manner that perhaps a more prudent person would have used caution. Photos show that neighbors (Mr. and Mrs. Ward) can see the building from various points of view on their rear property; however, according to Mr. Allison, this shouldn't bother them since the structure has been there for such a long time. He believes it would be a true hardship to make Ms. Carvel remove the top portion of the structure in its entirety so that it is far enough away from the existing property line. Mr. Allison said the structure should be grandfathered in or a variance should be granted for undue hardship.

Chairman Evans advised Mr. Allison that the Board would be voting on two separate motions tonight. He further advised that he would be voting against this variance; he does not believe the Code of Ordinances for the City of Germantown allows this type of structure. If this permit was pulled and if this item had come before the Board prior to the two story structure being there, he would have voted against it then. Chairman Evans stated that he also has a real problem with someone asking for permission after the fact. Per Chairman Evans, he has been pretty consistent in voting "no" on those types of issues, which he intends to do again tonight.

Ms. Boyd said that she agreed with Chairman Evans and said that she would be voting "no" as well.

Mr. Klevan stated that he would be voting "no." He said the only piece of evidence that he sees is the City's documentation for the approval of an eight by ten by eight storage building. This was the only concrete evidence that was submitted. He believes however, the rest of it was approved by the applicant with no other (inaudible). Per Mr. Klevan, this was a blatant disregard for Germantown's codes and therefore would be voting "no."

Mr. Uhlhorn said that he has been on the Board of Zoning Appeals for a long number of years and this is the most contrived and convoluted story that he has heard in his time. He said Ms. Carvel had a

“cavalier” attitude by continuing to work when she had been told to stop. Per Mr. Uhlhorn, six hundred and twelve feet times two are the measurements of a house. Speaking from a builder’s point of view, Mr. Uhlhorn said that criminal charges could be brought against the applicant for her blatant disregard of Germantown’s Ordinances.

Mr. Salvaggio said that he agreed with Mr. Uhlhorn. He believes this permit (eight feet by 10 feet) was not in any way pulled for the structure in question. As a general contractor, Mr. Salvaggio said that he would lose his license if he was to have done something like this.

Ms. Sherman stated that she will be voting “no” based on the fact that the structure is out of compliance and there was no permit pulled.

PROPOSED MOTION 1: To approve a variance to allow an existing accessory structure (two-story building) at 7075 Poplar Pike to encroach into an easement; and be a distance less than its height from a property line, subject to staff comments and the site plan filed with the application.

Elizabeth Boyd made a motion to approve a variance to allow an existing accessory structure (two-story building) at 7075 Poplar Pike to encroach into an easement; and be a distance less than its height from a property line, subject to staff comments and the site plan filed with the application. Dave Klevan seconded the motion.

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

PROPOSED MOTION 2: To approve a variance to allow an existing accessory structure (storage shed) at 7075 Poplar Pike to encroach into an easement, subject to staff comments and the site plan filed with the application.

Elizabeth Boyd made a motion to approve a variance to allow an existing accessory structure (storage shed) at 7075 Poplar Pike to encroach into an easement, subject to staff comments and the site plan filed 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.