

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, October 20, 2016 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

Staff members present were: Assistant Town Administrator, Athanasia Lewis; Assistant Town Administrator, Daniel Estes; Town Planner, Mr. Jaime Groce; Assistant Town Planner, Mrs. Nancy Boatwright; and Administrative Specialist, Mrs. Sandi Robbins.

Roll Call:

Chairman Counts asked Mrs. Robbins to call roll.

Kelsey – present, Luttrell – present, Hamilton – present, Oakes – present, Counts – present.

Quorum Present

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the September 15, 2016 meeting.

Hearing none, he called for a motion to approve the minutes as presented.

Motion by Commissioner Oakes, and seconded, to approve the minutes as presented.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton – yes, Oakes – yes, Counts – yes.

Motion approved

Approval of the Agenda:

Chairman Counts asked if there were any additions or changes to the Agenda.

Mr. Jaime Groce stated there are none that Staff has but the BZA may have a matter that would like to add to the agenda.

Chairman Counts stated there will be some training for the BZA after the meeting and all the Commissioners are encouraged to stay for the training.

Motion by Commissioner Hamilton, and seconded, to approve the agenda as amended.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton – yes, Oakes – yes, Counts – yes.

Motion approved

Formal Agenda:

BZA16-07 9907 Brooke Circle — Request a Variance to allow an accessory structure (pool) to be located within the required front yard and between the principal structure and the street, and to allow a fence greater than 48 inches in height to be located closer than 20 feet from the back edge of the curb.

Mrs. Nancy Boatwright gave the staff presentation. She stated the zoning regulations for accessory structures list exceptions that are regulated by other provisions in the Zoning Ordinance. Pools are listed but not actually regulated in the Zoning Ordinance. Staff has always held pools to the location requirements but not to the maximum number of accessory structures requirement. The Town has been consistent with the location of pools only in the side or rear yard.

She stated the applicant's rear yard is so small there is not room to fit a pool. The design of the subdivision is considered a traditional neighborhood with typically small lots and small yards. The 7,566 sq. ft. lot is also a corner lot so it has two front yards. If the lot was an interior lot then a pool could be located where it is proposed. The pool will be visible from the street, but there is nothing prohibiting activity or lawn furniture in the front yard. No neighbors have objected but there are some people in the audience who would like to speak about this item. She introduced a new exhibit 8 which is a letter she had received in support of the applicant's request.

She explained an alternative to the 6' fence at the proposed location is to install a 4' fence. The 6' fence would provide more of a deterrent to someone who may want to get in the pool from the street and would provide more privacy. The secondary front yard is perceived as a rear yard to the residents and some neighbors. There are several other fences in the same subdivision that encroach in the front yard and are also on corner lots. There doesn't seem to be any negative impact from those fences. She showed where these corner lots with the front yard fences were located in the subdivision and explained there was record of only one having a variance granted.

She stated the lot is a corner lot with two front yards and no real rear yard. The possible location for the pool is limited to a small area that would not likely accommodate even a small, 338-square foot pool. In order to meet the requirement that a fence or wall greater than 48" in height not be located closer than 20 feet from the back edge of the curb, the fence would have to be located approximately 11' from the residence, leaving little usable space. The condition caused by the size of the lot and the two front yards is not applicable, generally, to other property in Collierville within the R-1 District or other residential PDs, as most lots are not smaller, "traditional" form corner lots with two front yards. The variances will not authorize activities or uses other than those permitted by ordinance in the R-1 zoning district as pools and fences are allowed in residential districts. There are factors other than financial gain being considered, such as physical characteristics of the lot. The owner did not plat the property and therefore has not created the alleged hardship. The variances make possible a reasonable use of the property by requesting no further encroachment into the required front yard by the pool with the pool barrier (fence) surrounding it. The requested variances will not be detrimental to the public welfare or injurious to other property or improvements in the area as the pool will be at grade. If the fence meets the AASHTO requirements for sight distance requirements then the requested variance for the pool will

EXHIBITS

1. Applicants' cover letter with Standards for a Variance (rec'd 9/30/16)
2. Pool plan for 9907 Brooke Circle
3. Site plan of 9907 Brooke Circle with fence location
4. Oblique view of proposed pool and fence
5. Photos of applicants' property
6. Photos of surrounding properties
7. Location of surrounding properties
8. Neighbor's Letter in favor of applicant

not be detrimental to the public welfare or injurious to other property or improvements in the area as there are other fences in the neighborhood that are located a similar distance from the back of the sidewalk. The requested variances will not impair an adequate supply of light and air to adjacent property, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area. The requested variances will not interfere with or encroach upon a recorded public or private easement as the pool will not extend into the utility easement and fences are allowed within utility easements.

She stated there will be two motions that will be made this evening. One for the pool and the other for the fence.

Chairman Counts asked if there were any questions of staff.

There was a discussion over the variance that was granted in 1998 for a solid brick fence at a neighboring property. That variance request is similar to the applicant's request with the exception of the applicant's fence will not be solid brick.

Chairman Counts asked with regard to Section 151.025, Exempted Accessory Uses, is there anything else Staff makes exception for location other than pools?

Mrs. Boatwright stated the other exception are accessory residential housing (CUP permit review), fences and walls (fence permit review), signs (sign permit process), and wireless communication facilities and antennas (administrative site plan review).

A discussion ensued about the zoning regulations exempting pools and the building codes requirements for building a pool. Staff interprets the location of the pool in a front yard as inappropriate. The BZA interprets the Zoning Ordinance and the Zoning Ordinance exempts pools. There is concern whether the BZA has any purview over the location of the pool.

Commissioner Hamilton asked if the 6' fence was uniform brick or is it height of brick and capping on the columns.

Mrs. Boatwright stated the columns are allowed to be taller than the 6' fence.

Chairman Counts asked if the pool encroached on any easement.

Mrs. Boatwright stated no.

Commissioner Hamilton asked if there is a definition for two front yards.

Mrs. Boatwright stated if a yard is on the street frontage it's considered a front yard as defined in the Zoning Ordinance.

Hearing no further questions, Chairman Counts called the applicant to the podium.

Mr. Chris Wood, 9907 Brooke Circle, stated they got the idea to get the private custom fence from their neighbor behind them who had gotten a variance for a fence, for their own back yard so they could have a private place to hang out outside and to increase the value of their property. They didn't want to go with a solid brick fence because it would cause the area to be too hot. They decided to go with a knee wall with 6' brick columns with wrought iron in between with landscaping all along the street side. They want the fence to be

uniform with the fence lines of the neighbor behind them. There will be no diving board or slides or anything that would be unsightly. Their whole idea is to add value to their home and neighborhood and not detract from that.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked if the plat of the house was the same at the time they bought the house.

Mr. Wood stated that is correct.

Chairman Counts asked if the applicant realized they would need to get a variance if they built their pool.

Mr. Wood stated they had not. It was actually brought to their attention by the builder they were working with.

Chairman Counts stated #5 on the standards for a variance “The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance” needs to be considered. In this case, the land had been zoned when the applicant bought it. He asked the applicant what his hardship will be if they don’t grant the variance.

Mr. Wood stated they have 10’ by 10’ of space in the part of the house that doesn’t face the street, which isn’t much space to do anything. The reason why they got this idea is because of their neighbor’s fence and where it is placed on their property. The only way they could put in a pool and surrounding decking would be to use the space in their yard similar to their neighbor. If the variance is denied they won’t be able to go forward with their plans. He stated the size of the pool is about 338 square feet which isn’t a big pool but the only way to maximize the space is to have the fence placed in the area they requested. The requested space is basically the same spot on their property as it is placed on their neighbor’s behind them.

There was a discussion over the placement and materials of the neighbor’s fence.

Chairman Counts asked if anyone from the public would like to make a statement.

Ms. Barbara Kelly, 1982 Almadale Place, she stated the applicant’s first step should have been to go before the HOA. The HOA has covenants that keep the subdivision looking nice and that they all have to follow. She described what some of the covenants were. She stated apparently he didn’t know it because he had only lived in the subdivision for 2 years. She believes the homeowners should have been informed of this before they went forward with this plan. She explained a similar situation she had in the past and how the HOA affected those plans. She stated they have a pool in the middle of the subdivision that everyone can use. She stated usually when you get older you move to a subdivision with smaller lots. She believes if the applicant really had in mind they wanted a pool they should have bought a house with one already built.

Ms. Angie Wood, 9907 Brooke Circle, stated the hardship regarding the pool and fence is they have kids and an open back yard that is right next to Wolf River & Houston Levee. A lot of people cut through this lot and there are a lot of strangers in the neighborhood because of this. Personally, as a mom, she would like to have a fence. It would also be good for when they sell the house because it might deter people if they think they couldn’t enclose their back yard. When they first looked at the house their first thought was to put up a fence which they assumed they could because neighboring properties in the subdivision have fences. The pool came as an idea because they wanted something nice to sit out around and have fun with. She stated they did look in the HOA rules to make sure the fence would be okay. There wasn’t any language as far as she could tell prevents them from getting a pool.

Commissioner Luttrell stated it seems as though corner lots and lots at the end of a cul de sac have the most issues in regards to how a structure sits on the property. When looking at the applicants two front yards, he would consider the part they want to build on to be a side or back yard. He believes part of the hardship is how the house is placed on the property or where the lot is located.

Commissioner Oakes stated that he is not sure he agrees with the hardship of the pool but the fact they have people cutting through their yard. A fence would definitely put a stop to that. From his perspective, that is more of a hardship than whether or not they have the pool.

Commissioner Hamilton stated the definition of two front yards throws this into challenging of rules, thoughts and requirements. He looks at the property immediately behind the applicant's that had a variance approved for a solid brick fence. He empathizes with the situation and thinks the design and the builder's efforts have made it appealing and minimally invasive to the codes. He believes there are two issues, the pool and primarily the fence because, if the fence is allowed in the front yard, then there should be reason to justify the pool.

Commissioner Kelsey stated this board has granted a variance in the past for a very similar situation, for a 6' fence. He believes this is a hardship and a very unique situation because technically speaking they don't have a rear yard. In his opinion he views the applicant's request being located in a side or rear yard, but because of technical standards it is called the front yard. Since a fence was approved in the past it should be approved again now. He doesn't believe by allowing the pool in this situation will set a precedent because of the unique situation of the house and the lack of a rear yard. He doesn't see how they could not grant this variance.

There was a discussion over if the BZA sets precedents or if each variance is taken on a case by case basest.

Chairman Counts stated most of the problems comes from corner lots because of the 2 front yards which create difficulties. He sees two separate issues, the pool and fence because of the section of the Zoning Ordinance of the exemption for fences and pools. He stated the fences are clearly covered by other rules so they have lots of guidance to what to do with fences. Pools are exempted from the Zoning Regulations. In his opinion they have no business ruling or making any determination about the location of the pool. He stated the side yard issue creates a problem. He believes it's not the 6' fence that is the issue but instead the setback from the curb. He would be willing to grant the variance for the fence because it is a side yard.

Commissioner Oakes stated he agrees that the fence is what the BZA needs to deal with. What goes behind the fence is not within the BZA purview.

A discussion ensued over what defines a hardship, how difficult it is supposed to be to get a variance, and can this variance be justified.

There was a discussion over if the BZA should make a motion for the pool to be placed in the front yard.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Hamilton, and seconded, to approve the applicant's request for a variance to allow a fence greater than 48 inches in height to be located 7 feet from the back edge of the curb at 9907 Brooke Circle, per Exhibits 1, 2 & 3, subject to the following conditions.

- 1. An exhibit showing the exact location of the fence shall be provided to Development Department staff for review for compliance with the AASHTO intersection sight line requirements.***

- 2. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.*

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton – yes, Oakes – yes, Counts – no.

Motion Approved.

Motion by Commissioner Kelsey, and seconded, to approve the applicant’s request for a variance to allow an accessory structure (pool) to be located within the required front yard and between the principal structure and the street at 9907 Brooke Circle, per Exhibits 1, 2 & 3, subject to the following conditions.

- 1. The pool fence shall meet all Building Code requirements for a pool enclosure.*
- 2. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.*

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton – no, Oakes – yes, Counts – abstain.

Motion Approved.

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mr. Groce stated there was none.

Hearing no further business, Chairman Counts adjourned the meeting at 6:06 pm

Commissioner Carr Kelsey, Secretary