

MINUTES OF THE REGULAR MEETING OF THE
MEMPHIS & SHELBY COUNTY BOARD OF ADJUSTMENT

Wednesday, August 25, 2021
Memphis City Hall
125 N. Main Street
Fifth Floor Conference Room

Present:

Ms. Mary Baker
Mr. Carson Claybrook
Ms. Joy Doss
Mr. J.T. Malasri
Mr. Timothy D. Rainey, Chair
Ms. Madeleine Savage-Townes, Vice Chair
Ms. Portia Scurlock

Mr. Josh Whitehead, Secretary

Other Staff Present:

Mr. Brian Bacchus, Division of Planning and Development (“DPD”)
Mr. Brett Davis, DPD
Mr. Jeffrey Penzes, DPD
Mr. Brett Ragsdale, DPD
Mr. Robert Rolwing, County Attorney’s Office
Ms. Teresa Shelton, DPD
Ms. Clarke Shupe-Diggs, DPD
Mr. Lucas Skinner, DPD
Mr. Seth Thomas, DPD

A quorum being present, the Board proceeded to consideration of the day’s agenda. **Vice Chair Savage-Townes** made the motion to approve the minutes from the previous Board Meeting; **Board Member Claybrook** seconded the motion. The minutes from the previous meeting were approved.

In some of the following cases, the application for a building permit or sign permit was rejected by the Memphis and Shelby County Building Official, Zoning Administrator or City or County Engineer because the request is prohibited by the applicable Unified Development Code. The interested party has filed an appeal within the time provided by statute and written notice of public hearing has been sent to the property owners in the neighborhood.

AGENDA ITEM: 1
DOCKET: [BOA 2021-69](#) (City)
LOCATION: 2854 Douglass Avenue
APPLICANT: Original Project Team, Inc.
(Representative: Austin Avery, III)
USE DISTRICT: Residential Urban (RU-1) District
REQUEST: Use Variance from Section 2.5.2 to allow a neighborhood food
pantry/soup kitchen
STAFF PLANNER: Brian Bacchus
STAFF RECOMMENDATION: Hold for one (1) month
This case was withdrawn by the applicant prior to the meeting; no action by the Board was required.

AGENDA ITEM: 3
DOCKET: [BOA 2021-84 \(City\)](#)
LOCATION: 1408 North Lexington Circle
APPLICANT: The Works, Inc.
 (Representative: Roshun Austin)
USE DISTRICT: Residential 6 (R-6)
REQUEST: Use variance from Section 2.5.2 to legitimize an existing duplex
STAFF PLANNER: Brian Bacchus
STAFF RECOMMENDATION: Approval with conditions
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

NOW THEREFORE, Be it resolved that the application be and is hereby **granted**, subject to the conditions provided for by staff and included in the staff report disseminated to the Board. Provided, however, that the request is **granted** for the specific purpose herein specified and shall not otherwise be deemed to vary or modify any of the provisions of the Unified Development Code, and other City or County Ordinance or State law applicable to these premises nor to any future use or development of said property, and provided further that a building permit and/or Certificate of Occupancy permit in conformity herewith shall be obtained within two (2) years.

Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: 7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)
AGAINST MOTION: 0
RECUSALS: 0
ABSTENTIONS: 0

Motion **passes**.

AGENDA ITEM: 4
DOCKET: [BOA 2021-85 \(City\)](#)
LOCATION: 1050 Tanglewood Street
APPLICANT: Austin Teunissen
USE DISTRICT: Residential 6 (R-6) within a Historic Overlay (Cooper-Young)
REQUEST: Variance from Paragraph 2.7.2A(1) to allow encroachments into the side yard and rear yard setbacks
STAFF PLANNER: Ayse Tezel
STAFF RECOMMENDATION: Approval with conditions
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: 7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)
AGAINST MOTION: 0
RECUSALS: 0
ABSTENTIONS: 0

Motion **passes**.

AGENDA ITEM: 5
DOCKET: [BOA 2021-86 \(City\)](#)
LOCATION: 4060 Westmont Road
APPLICANT: Shelby County Board of Education
 (Representative: Jim Williams with Williams Sign Co.)
USE DISTRICT: Residential 6 (R-6)
REQUEST: Variance from Item 4.9.6E(2)(h) to allow an electronic message sign at Chickasaw Middle School
STAFF PLANNER: Teresa Shelton
STAFF RECOMMENDATION: Approval with one (1) condition
ACTION BY THE BOARD: **Approval with one (1) condition**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 6
DOCKET: [BOA 2021-87 \(City\)](#)
LOCATION: 3795 Bishops Bridge Road
APPLICANT: Shelby County Board of Education
 (Representative: Jim Williams with Williams Sign Co.)
USE DISTRICT: Residential 8 (R-8)
REQUEST: Variance from Item 4.9.6E(2)(h) to allow an electronic message sign at
 Oakhaven Elementary School
STAFF PLANNER: Teresa Shelton
STAFF RECOMMENDATION: Approval with one (1) condition
ACTION BY THE BOARD: **Approval with one (1) condition**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 7
DOCKET: [BOA 2021-88 \(City\)](#)
LOCATION: 3125 Ladbrook Road
APPLICANT: Shelby County Board of Education
 (Representative: Jim Williams with Williams Sign Co.)
USE DISTRICT: Residential 8 (R-8)
REQUEST: Variance from Item 4.9.6E(2)(h) to allow an electronic message sign at
 Oakhaven High School
STAFF PLANNER: Teresa Shelton
STAFF RECOMMENDATION: Approval with one (1) condition
ACTION BY THE BOARD: **Approval with one (1) condition**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**

AGAINST MOTION: **0**

RECUSALS: **0**

ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 8
DOCKET: [BOA 2021-89 \(City\)](#)
LOCATION: 2100 Elvis Presley Boulevard
(northeast corner of Elvis Presley and Elliston)
APPLICANT: Robert McCormick
USE DISTRICT: Commercial Mixed Use 3 (CMU-3)
REQUEST: Use variance from Section 2.5.2 to allow for the parking of tractor trailers and heavy trucks
STAFF PLANNER: Clarke Shupe-Diggs
STAFF RECOMMENDATION: Hold for one (1) month
ACTION BY THE BOARD: **Hold for one (1) month**

Motion to **hold in abeyance for one (1) month.**

FOR MOTION: 7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)

AGAINST MOTION: 0

RECUSALS: 0

ABSTENTIONS: 0

Motion **passes.**

AGENDA ITEM: 9
DOCKET: [BOA 2021-90 \(County\)](#)
LOCATION: 8919 Forest Meadow Drive
APPLICANT: Clark and Amy Barton
 (Representative: Lew Wardlaw)
USE DISTRICT: Conservation Agriculture (CA)
REQUEST: Variance from Sub-Section 3.6.1A to allow an attached garage to encroach into the required side yard setback
STAFF PLANNER: Seth Thomas
STAFF RECOMMENDATION: Approval with conditions
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

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WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 10
DOCKET: [BOA 2021-91 \(City\)](#)
LOCATION: 3125 Ladbroke Road
APPLICANT: Shelby County Board of Education
 (Representative: Jim Williams with Williams Sign Co.)
USE DISTRICT: Residential 8 (R-8)
REQUEST: Variance from Item 4.9.6E(2)(h) to allow an electronic message sign at
 Oakhaven Middle School
STAFF PLANNER: Teresa Shelton
STAFF RECOMMENDATION: Approval with one (1) condition
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 11
DOCKET: [BOA 2021-92](#) (County)
LOCATION: 6941 Sledge Road
APPLICANT: Harris Chapel Church of God in Christ
 (Representative: Randy Hill with Williams Sign Co.)
USE DISTRICT: Conservation Agriculture (CA)
REQUEST: Variance from Item 4.9.6E(2)(h) to allow an electronic message sign
STAFF PLANNER: Lucas Skinner
STAFF RECOMMENDATION: Approval with conditions
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: 7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)
 AGAINST MOTION: 0
 RECUSALS: 0
 ABSTENTIONS: 0

Motion **passes**.

AGENDA ITEM: 14
DOCKET: [BOA 2021-95 \(City\)](#) (correspondence to Docket BOA 2021-59)
LOCATION: 1030 Novarese Street
(northeast corner of Novarese and Berclair)
APPLICANT: Waring Parks Flats, LLC
 (Representative: Cindy Reaves with SR Consulting, LLC)
USE DISTRICT: Commercial Mixed Use 1 (CMU-1)
REQUEST: Modification to the conditions of approval of Docket BOA 2021-59 to change the fence material specification from cedar to wood in general to allow the new fencing to match the existing pine fence
STAFF PLANNER: Jeffrey Penzes
STAFF RECOMMENDATION: Approval with conditions
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 15
DOCKET: [BOA 2021-96 \(City\)](#) (correspondence to Docket BOA 2019-80)
LOCATION: 3440 Southern Avenue and an adjacent parcel
(northwest corner of Southern and Ellsworth)
APPLICANT: Southern Avenue Properties, LLC
 (Representative: Cindy Reaves of SR Consulting, LLC)
USE DISTRICT: Commercial Mixed Use – 1 (CMU-1) within University District Overlay
 (UDO) – Shopfront Frontage
REQUEST: Two-year extension of Docket BOA 2019-80
STAFF PLANNER: Brett Davis
STAFF RECOMMENDATION: Approval
ACTION BY THE BOARD: **Approval**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

WHEREAS, The Board is further of the opinion that to allow the request would **not** be unduly detrimental to the other properties in the vicinity of the subject premises and will **not** unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect to impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby.

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Amendments made by the Board to the conditions as presented by staff and included in the staff report: **none**.

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
 AGAINST MOTION: **0**
 RECUSALS: **0**
 ABSTENTIONS: **0**

Motion **passes**.

****PUBLIC HEARINGS****

AGENDA ITEM: 2
DOCKET: [BOA 2021-83 \(City\)](#)
LOCATION: 587-619 Houston Street
APPLICANT: Houston Street Properties, LLC
(Representative: Cindy Reaves with SR Consulting)
USE DISTRICT: Commercial Mixed Use 1 (CMU-1)
REQUEST: Variances from Sub-Section 8.3.6D, Paragraph 8.3.10B(3), 8.3.10C(4), 8.3.10E(3), Sub-Item 8.3.12G(2)(a)(ii) and Sub-Section 4.6.5B related to an apartment building
STAFF PLANNER: Clarke Shupe-Diggs
STAFF RECOMMENDATION: Approval with conditions
This item was held in abeyance by the Board during its meeting on July 28, 2021.
TESTIMONY PROVIDED BY: **Cindy Reaves (for applicant)**
Seth Channing (for applicant)
ACTION BY THE BOARD: **Approval with conditions**

THE RESOLUTION:

WHEREAS, an application was filed by the party listed above for the request listed above;

WHEREAS, a public hearing on this application was held by the Board; and

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for this request, as found in the Unified Development Code, are **being met**; and

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Amendments made by the Board to the conditions as presented by staff and included in the staff report:

1. Amend Condition 1(d) to read: A ~~5-foot~~ **4-foot** minimum parking setback along the side (west) property line, as shown on the site plan.
2. Amend Condition 1(e) to read: A ~~5-foot~~ **4-foot** wide Class III, Type C landscape buffer lining the side (west) property line, as shown on the landscape plan. Tree C, as described in Section 4.6.9 of the UDC, shall be installed due to the proximity of overhead powerlines.

3. Add a new Condition 1(f) that reads: **Two (2) parking spaces may encroach into the parking setback as shown on the site plan.**

Motion to **approve**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
AGAINST MOTION: **0**
RECUSALS: **0**
ABSTENTIONS: **0**

Motion **passes**.

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AGENDA ITEM: **12**
DOCKET: [BOA 2021-93 \(City\)](#)
LOCATION: 6557 Summer Avenue and an adjacent parcel
APPLICANT: Rodolfo Ramirez
(Representative: Edward Simmons, Jr., of the Ed Simmons Co.)
USE DISTRICT: Highway Business (Bartlett parcel) and Commercial Mixed Use – 1 (Memphis parcel), both within Fletcher Creek Overlay
REQUEST: Variance from Sub-Section 2.7.2C to permit the cumulative area of accessory structures to exceed 75% of the total area of the principal structure
STAFF PLANNER: Brett Davis
STAFF RECOMMENDATION: Rejection
TESTIMONY PROVIDED BY: **Edward Simmons, Jr. (for appellant)**
Rodolfo Ramirez (for appellee)
Chan Hauw Ki (for opposition)
Alison Broady (for opposition)
ACTION BY THE BOARD: **Hold for two (2) months**

Motion to **hold in abeyance for one (1) month**.

FOR MOTION: **7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)**
AGAINST MOTION: **0**
RECUSALS: **0**
ABSTENTIONS: **0**

Motion **passes**.

AGENDA ITEM: 13
DOCKET: [BOA 2021-94 \(City\)](#)
LOCATION: 1956 Dunn Avenue
APPLICANT: Charles C. Shoaf, III
USE DISTRICT: Residential 8 (R-8)
REQUEST: Use variance from Section 2.5.2 to legitimize a used trucking business
STAFF PLANNER: Brian Bacchus
STAFF RECOMMENDATION: Rejection
This request was previously heard by the Board as Docket BOA 2019-102 (City) on October 23, 2019. The six-month probation period during which re-filing the same request is prohibited, as outlined in Article VII, Sec. 2 of the Board's Rules of Procedure, has passed.
ACTION BY THE BOARD: None taken, as the applicant failed to attend. This matter will be re-docketed for the Sept. agenda.



OTHER BUSINESS

AGENDA ITEM: 16
REQUEST: [Amend Articles VI and XI of the Board's Rules of Procedure to explicitly spell out the process by which Board-initiated reconsiderations are processed and amend Article XII to state that Robert's Rules of Order governs in instances where the Board's Rules are silent](#)
STAFF PLANNER: Josh Whitehead
STAFF RECOMMENDATION: Hold for one (1) month, in accordance with Article XII of the Rules of Procedure
ACTION BY THE BOARD: Hold for one (1) month

Motion to hold in abeyance for one (1) month.

FOR MOTION: 7 (Baker, Claybrook, Doss, Malasri, Rainey, Savage-Townes and Scurlock)

AGAINST MOTION: 0

RECUSALS: 0

ABSTENTIONS: 0

Motion passes.

ADJOURNMENT:

There being no further business, the meeting there upon adjourned.

MINUTES APPROVED: _____

CHAIRMAN

SECRETARY