

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

Wednesday, October 23, 2013

The regular meeting of the Memphis & Shelby County Board of Adjustment was held in the City Council Chambers, City Hall, 125 North Main Street, at 1:30 p.m., Wednesday, September 25, 2013.

Present:

Mr.	Jimmy Burditt
Mr.	Frank Colvett, Jr., Chairman
Ms.	Lynda Raiford
Mr.	Timothy Rainey, Vice Chairman
Mr.	John Jackson III
Ms.	Madeline Savage-Townes
Mr.	Andre Jones

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Calvin Abram, OPD
Mr.	Brian Bacchus, OPD
Mr.	Greg Love, OPD
Mr.	Terry Langlois, OPD
Mr.	Nate Taylor, City Engineering
Mr.	John Cameron, City Engineer

A quorum being present, the Board proceeded to consideration of the days agenda. The minutes from the previous meeting were approved.

In some of the following cases, the application for a special exception, building permit, or sign permit was rejected by the Memphis and Shelby County Building Official or Office of Planning and Development 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. The Board approved the minutes from September 25, 2013.

WHEREAS, The Board is further of the opinion that to allow this request 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 impair the public health, safety, comfort, morals or welfare of the inhabitants of the County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the requested variation be and it hereby is approved.

AGAINST MOTION: 0

FOR MOTION: 6
Chairman Colvett, Bruditt, Jones, Jackson III, Raiford,
and Rainey

NOT VOTING: 0

ACTION IS TO APPROVE WITH CONDITIONS:

The 5-foot vinyl-coated chain link fence shall be erected in the location as indicated on the attached site plan.

WHEREAS, The Board is further of the opinion that to allow this request 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 impair the public health, safety, comfort, morals or welfare of the inhabitants of the County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the requested variation be and it hereby is approved.

AGAINST MOTION: 0

FOR MOTION: 6
Chairman Colvett, Burditt, Jackson III, Jones, Raiford
and Rainey

NOT VOTING: 0

ACTION IS TO APPROVE WITH CONDITIONS:

1. Changeable copy signs (automatic or manual) are not permitted.
2. Internal illumination (back lit) is permitted, but the sign shall not flash, revolve, oscillate, be animated, create an illusion of continuous movement, contain any automatic changeable copy, LED, or digital elements.
3. The requirement for irrigation of the landscaping at the base of the sign may be waived if the applicant can demonstrate to the satisfaction of the OPD that the applicant has an existing maintenance contract or similar documentation that will ensure the timely maintenance of the required landscaping.
4. The sign shall comply with the elevation and site plan submitted with this application. Any variation from the stamped "approved plan" may, at the discretion of the Planning Director, require the re-submission of the site plan for the approval by the Memphis and Shelby County Board of Adjustment.

3. **DOCKET:** **B.O.A 13-40 (CITY)**
- APPLICANT:** **MRC Development**
- PREMISES AFFECTED:** **750 Adams Avenue**
(Northwest corner of Adams Avenue and Manassas Street)
- USE DISTRICT:** Residential Urban (RU-4) District
- REQUESTING:** Variances to Subsections 2.9.2; 2.9.3 & 2.9.4 to allow office, retail, commercial and restaurant uses on the ground floor, including community service on the basement floor as accessory uses in a residential high-rise building
- ACTION OF THE BOARD:** Approved, with two (2) conditions
- APPEARANCES:** For Applicant: SR Consulting, LLC
(Cindy Reaves, Representative)
- For Opposition: None

THE RESOLUTION:

WHEREAS, MRC Development filed an application with the Board of Adjustment on Thursday, September 24, 2013, for variances to Subsections 2.9.2; 2.9.3 & 2.9.4 to allow office, retail, commercial and restaurant uses on the ground floor, including community service on the basement floor as accessory uses in a residential high-rise building; and,

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, October 23, 2013, after due notice; and

WHEREAS, The Board is of the opinion, and finds from the sworn testimony of the witness at the hearing, and the records on file, that the standards for variances in Chapter 9.22 of the Unified Development Code are being met; and

WHEREAS, The Board has determined that said variance would not be unduly detrimental to the other properties in the vicinity of the subject premises; and

WHEREAS, The Board is further of the opinion that to allow this request 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 impair the public health, safety, comfort, morals or welfare of the inhabitants of the County of Shelby; and, therefore, this application is approved, subject to two(2) conditions; and

NOW, THEREFORE, Be it resolved that the requested variances be and are hereby approved, subject to two(2) conditions.

MAIN MOTION

AGAINST MOTION: 0

FOR MOTION: 6
Chairman Colvett Jr., Burditt, Jackson II, Jones,
Raiford and Rainey

NOT VOTING: 1
Savage-Townes

ACTION IS TO APPROVE WITH TWO (2) CONDITONS:

1. The Accessory Uses listed in Subsections 2.9.2A & B; 2.9.3A thru I and 2.9.4A thru H shall be permitted, except accessory dwelling unit, apiary, chickens, home occupation, private community center, gymnasium, fueling facility, park-and-ride facility, drive-thru facility, artisan manufacturing and the repackaging of goods for on-site sale.
2. The uses prohibited in Subsections 8.2.4A (1 & 2) & 8.2.4B of the Medical Overlay District shall apply to this principal use.

4. **DOCKET:** **B.O.A 13-41 (CITY)**

APPLICANT: **Kroger Limited Partnership**

PREMISES AFFECTED: **1745 Union Avenue**
(South side of Union Avenue; between Lemaster Street and Idlewild Street)

USE DISTRICT: Commercial Mixed Use-3

REQUESTING: Variance from Section 4.3.3 and Sub-sections 4.6.5B and 8.4.8D, of the Unified Development Code to allow:

- Variance to required Streetscape plate along Idlewild Street
- Variance to required buffer area along most southern property line
- Variance to required transparency

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant: Brenda Solomito
Mike Simpson

For Opposition: Tatine Darker (2)
Jim Strickland
Bruce VanWynngarden
Ron Belz
Mike Simpson (2)
Ron Bell
Dale Misourt

THE RESOLUTION:

WHEREAS, Kroger filed an application with the Board of Adjustment on Thursday, September 24, 2013, a variances from Section 4.3.3 and Sub-sections 4.6.5B and 8.4.8D, of the Unified Development Code to allow: Variance to required Streetscape plate along Idlewild Street, Variance to required buffer area along most southern property line, Variance to required transparency ; and,

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, October 23, 2013, after due notice; and

WHEREAS, The Board is of the opinion, and finds from the sworn testimony of the witness at the hearing, and the records on file, that the standards for variances in Chapter 9.22 of the Unified Development

Code are being met; and

WHEREAS, The Board has determined that said variances would not be unduly detrimental to the other properties in the vicinity of the subject premises; and

WHEREAS, The Board is further of the opinion that to allow this request 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 impair the public health, safety, comfort, morals or welfare of the inhabitants of the County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the requested variations be and hereby are approved

MAIN MOTION

AGAINST MOTION: 1
Raiford

FOR MOTION: 6
Chairman Colvett Jr., Burditt, Jackson III, Jones,
Savage- Townes and Rainey

NOT VOTING: 0

Note: John Jackson provided a disclosure of interest when he cast his vote. He has worked with Kroger on other projects in the past, but not this one.

ACTION IS TO APPROVE WITH CONDITIONS:

1. The applicant shall submit a site plan for a Memorandum of Conformance that adheres to the site plan as submitted with this application with the following exceptions.
 - a. Trash dumpsters shall be illustrated on the site plan and shall be screened with an opaque masonry material matching that of the principal structure. The screen shall be at least 6 feet in height and shall be located at least 25 feet away from any abutting single family residential district or meet the approval of OPD.
 - b. Access along Idlewild Street shall be constructed as a “right in-left out”. This access shall be constructed as illustrated in Option 1 modified with a raised cross-walk as submitted by the applicant. The design of the “right in-left out” drive shall intentionally prohibit southbound traffic exiting the subject site and shall adhere to the approved site plan. The curbs in this “right in-left out drive shall be at least six inches in height and the median between the right in and left out lanes shall contain landscaping.

2. A photometric plan illustrating compliance with Sub-Section 4.7.3A shall be submitted prior to issuance of a Use and Occupancy Permit.
3. This approval is conditioned upon the elevations as submitted with this application.
4. Engineering Comments Numbers 1, 8 and 9 are struck from this case. Engineering Comment Number 13 is hereby amended to add the phrase, "except for the south property line."

6. **REQUESTING:** Consideration of Petition to Rehear Case No. BOA 13-36

(3729 Elliston Road)

APPLICANT: Lisa Romero

ACTION OF THE BOARD: Rejected

APPEARANCES: For Applicant: None

For Opposition: None

THE RESOLUTION:

WHEREAS, Lisa Romero filed a Petition to rehear Case No. BOA 13-36; and,

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, October 23, 2013, after due notice; and

NOW, THEREFORE, Be it resolved that the requested petition for rehearing is hereby rejected.

AGAINST MOTION: 7
Chairman Colvett, Burditt, Jackson II, Jones, Raiford
Savage-Townes and Rainey

FOR MOTION: 0

NOT VOTING: 0

ACTION IS TO REJECT

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

MINUTES APPROVED: _____

CHAIRMAN

SECRETARY