

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

Wednesday, March 26, 2014

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 2:00 p.m., Wednesday, March 26, 2014.

**Present:**

Mr.	Jimmy Burditt
Mr.	Frank Colvett, Jr., Chairman
Mr.	Daniel Dow
Mr.	Andre D. Jones
Mr.	Timothy Rainey, Vice Chairman
Ms.	Lynda Raiford

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Mr.	Josh Whitehead, Secretary
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**Also Present:**

Mr.	Calvin Abram, OPD
Mr.	Brian Bacchus, OPD
Mr.	Don Jones, OPD
Mr.	Greg Love, OPD
Mr.	Terry Langlois, OPD
Ms.	Marion Jones, OPD
Mr.	Chip Saliba, OPD
Mr.	Nate Taylor, City Engineering

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 February 26, 2013.

**CORRESPONDENCE CASES:**

1.     **DOCKET:**                             **B.O.A 95-76 (CITY)**
- APPLICANT:**                     **Aurora Cares, LLC and Bo Maynard**
- PREMISES AFFECTED:**       **6733 Quince Rd**  
  *(South side of Quince Road opposite Five Colonies Lane)*
- USE DISTRICT:**                 RU-2
- REQUESTING:**                 Revise the site plan approved by the Board of Adjustment (Docket #95-76) to remove three storage building and add a new storage building to be located at the southwest corner of the site near Highway 385
- ACTION OF THE BOARD:**        Approved
- APPEARANCES:**               For Applicant: Brenda Solomito (2067 Kirby Parkway)
- For Opposition: None

**THE RESOLUTION:**

**WHEREAS**, Aurora Cares, LLC filed an application with the Board of Adjustment on Wednesday, February 27, 2014 requesting to revise the site plan approved by the Board of Adjustment (Docket #95-76) to remove three storage buildings and add a new storage building to be located at the southwest of the site near Highway 385; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance in Chapter 9.22 of the Unified Development Code are being met; and

**WHEREAS**, The Board has determined that the submitted site plan is in keeping with the findings of fact as originally determined by the Board of Adjustment.

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

AGAINST MOTION: 0

FOR MOTION: 5  
Burditt, Colvett, Dow, Raiford, and Rainey

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS**

1. The submitted site plan is the approved plan and is to be marked and made part of the records of this case. Such approval is based in part upon the Board's evaluation and conclusion that the plan, as approved, eliminates or minimizes the potentially harmful characteristics or impact upon surrounding properties.
2. Any change or deviation from this plan, shall, upon the determination of the Planning Director, be resubmitted to the Board for its review and reaffirmation or addressed administratively by the Office of Planning and Development.

**CORRESPONDENCE CASES:**

2.     **DOCKET:**                                 **B.O.A 97-09 (CITY)**

**APPLICANT:**                             **AT&T (Foresite, LLC)**

**PREMISES AFFECTED:**                 **4146 McCain Rd.**  
  ***(East side of McCain Road; +/-633.50 feet north of***  
  ***West Raines Rd.)***

**USE DISTRICT:**                            **CMU-3 & CMU (FP) District**

**REQUESTING:**                            **Modify Approved Site Plan to expand the leased area**  
  **compound to accommodate an equipment shelter for**  
  **additional antennae**

**ACTION OF THE BOARD:**                 **Approved**

**APPEARANCES:**                         **For Applicant: Tony White (105 Andrews Circle)**

**For Opposition: Robert Willis (565 Indian Cove)**

**THE RESOLUTION:**

**WHEREAS**, AT&T (Foresite, LLC) filed an application with the Board of Adjustment on Wednesday, February 27, 2014 requesting to Modify Approved Site Plan to expand the leased are compound to accommodate an equipment shelter for additional antennae; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance in Chapter 9.22 of the Unified Development Code are being met; and

**WHEREAS**, The Board has determined that the submitted site plan is in keeping with the findings of fact as originally determined by the Board of Adjustment.

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

AGAINST MOTION: 0

FOR MOTION: 5  
Burditt, Colvett, Dow, Raiford, and Rainey

NOT VOTING: 0

**ACTION IS TO APPROVE**

**REGULAR CASES:**

3. **DOCKET:** **B.O.A 13-60 (CITY)**
- APPLICANT:** **Inner Vision Memphis, Inc.**
- PREMISES AFFECTED:** **400 & 410 South Third Street, 0 East Butler Avenue,  
and 0 & 381 Abel Street**  
*(Northeast corner of South Third Street and Butler Avenue)*
- USE DISTRICT:** South Main Extended
- REQUESTING:** Variance to permit two drive-thru windows for restaurants where currently prohibited by Paragraph 7.2.2.D.5 of the Unified Development Code, and variances graphically incorporated within the interior of the site as shown on the site plan
- ACTION OF THE BOARD:** Approved
- APPEARANCES:** For Applicant: David Baker, Fishers Arnold, Inc.  
(9180 Hills Dr.)  
Gerald Robinson (410 S. Third St.)
- For Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Inner Vision Memphis Inner filed an application with the Board of Adjustment on Thursday, February 27, 2014, Variance to permit two drive-thru windows for restaurants where currently prohibited by Paragraph 7.2.2.D.5 of the Unified Development Code, and variances graphically incorporated within the interior of the site as shown on the site plan; and,

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014 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 a variance 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 other properties in the vicinity of the subject premises; and

**NOW, THEREFORE,** Be it resolved that the requested variance is hereby rejected, subject to conditions.

**MAIN MOTION**

AGAINST MOTION:	0
FOR MOTION:	6 Burditt, Colvett, Dow, Jones, Raiford and Rainey
NOT VOTING:	0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS:**

1. The variance to Paragraph 7.2.2D (5) shall run with the life of the building.
2. The applicant shall install a piece of urban art in the pedestrian plaza located at the intersection of South Third Street and East Butler Avenue. The piece of urban art will be subject to the approval of the head of the Office of Planning and Development (OPD).
3. Modify landscape plate A-7 to reflect a brick wall. Plate A-7 shall be provided along the entire length of the Abel street frontage except for the curb cut shown.
4. The applicant shall submit a final plan to OPD for review and approval that includes, but is not limited to, approval of a lighting plan for the site as required in the performance Model of Sub-Section 4.7.3A; identification of crosswalks within the site; a landscape plan for the site identifying the size, location and type of plant material for internal medians in the parking areas and landscaping along the street frontages; and location of menu board with speakers.
5. The northern parking area shall be used for on-site parking, no off-premise or event parking is permitted.
6. If metal is used on the façade of the building, then the façade of the building will be approved by the head of OPD. In addition, no bright blaze (such as burnt orange) or reflective colors may be used on the façade of the building including the roof.
7. A final plan reflecting these conditions shall be filed with OPD to process this case through the Memo of Conformance Procedure.

4. **DOCKET:** **B.O.A 14-03 (CITY)**

**APPLICANT:** **Kircher Uhlhorn Development, LLC**

**PREMISES AFFECTED:** **1796 Peabody Avenue**  
*(South side of Peabody Avenue; 300 feet west of South McLean Boulevard)*

**USE DISTRICT:** Single Family Residential with a Historic Overlay R-6 (H)

**REQUESTING:** Variation to permit direct driveway access to Peabody Avenue for two lots 57 feet in width where a minimum lot width of 100 feet is required by Sub-Section 4.4.3.A of the Unified Development Code for lots along an arterial street

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: Ron Harkavy, (6660 Poplar Avenue)

For Opposition: None

**THE RESOLUTION:**

**WHEREAS**, Kircher Uhlhorn Development, LLC filed an application with the Board of Adjustment on Thursday, February 27, 2014 for variation to permit direct driveway access to Peabody Avenue for two lots 57 feet in width where a minimum lot width of 100 feet is required by Sub-Section 4.4.3.A of the Unified Development Code for lots along an arterial street; and,

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance 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 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 with conditions; and



**NOW, THEREFORE,** Be it resolved that the requested variance is hereby approved, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE**

5. **DOCKET:** **B.O.A 14-04 (CITY)**

**APPLICANT:** **SSJ Properties, LLC**

**PREMISES AFFECTED:** **1028 Oakhaven Road**  
*(East side of Oakhaven, south of Poplar)*

**USE DISTRICT:** OG

**REQUESTING:** Variances from Sub-Section 3.2.9 (Building Setbacks)  
for an expansion of an office building

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: David Bray, (2750 Stage Plaza N.)

For Opposition: None

**THE RESOLUTION:**

**WHEREAS**, SSJ Properties, LLC filed an application with the Board of Adjustment on Thursday, February 27, 2014 for variances from Sub-Section 3.2.9 (Building Setbacks) for an expansion of an office building; and,

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance 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 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; and

**NOW, THEREFORE,** Be it resolved that the requested variance is hereby approved, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS:**

1. The final landscape plan shall be approved by the planning director.
2. Curb cut modifications shall be approved by the city engineer.

6. **DOCKET:** **B.O.A 14-05 (CITY)**

**APPLICANT:** **Stephen & Linda Meyer**

**PREMISES AFFECTED:** **2746 Twisted Oak Cove N.**  
*(Eastern terminus of Twisted Oak Cove North)*

**USE DISTRICT:** R-8

**REQUESTING:** Variance to the required rear yard setback (3.6.1) to allow the construction of an attached sun room to encroach to within 7' of the rear property line, where a setback of 20' is required

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: Mitch McNeely, (810 Cedar Trace Cv.)  
Hernando, MS

For Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Stephen & Linda Meyer, filed an application with the Board of Adjustment on Thursday, February 27, 2014 for Variance to the required rear yard setback (3.6.1) to allow the construction of an attached sun room to encroach to within 7' of the rear property line, where a setback on 20' is required; and,

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a setback variance in Chapter 9.22 of the Unified Development Code are being met; and

**WHEREAS,** The Board has determined that said setback variance would not be unduly detrimental to 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 with conditions; and

**NOW, THEREFORE,** Be it resolved that the requested variance is hereby approved, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS:**

1. The applicant shall provide architectural elevations to indicate that the building wall and roofing materials are compatible with the existing house.

2. The approved variance runs with the land and is conditioned upon its compliance with the approved site plan. The approved site plan shall be marked as such and presented to the Office of Construction Code Enforcement for the required permits. Deviations from the approved plan, may, at the discretion of the Planning Director, be addressed administratively or resubmitted to the Board of Adjustment for their review and approval.

7. **DOCKET:** **B.O.A 14-06 (CITY)**

**APPLICANT:** **Edwin Wallis, III**

**PREMISES AFFECTED:** **60 St. Albans Fairway**  
*(+/-225 feet west of the Centerline of Devon Way at St. Albans)*

**USE DISTRICT:** R-10

**REQUESTING:** Variance from the Hedgemoor Subdivision Plat as illustrated in Plat Book 9, Page 24 to allow a reduction in from yard setback from 85 to approximately 51 feet. (UDC, Section 3.2.9F).

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: Charles Shipp

For Opposition: None

**THE RESOLUTION:**

**WHEREAS**, Edwin Wallis, III filed an application with the Board of Adjustment on Thursday, February 27, 2014 for variance from the Hedgemoor Subdivision Plat as illustrated in Plat Book 9, Page 24 to allow a reduction in from yard setback from 85 to approximately 51 feet. (UDC, Section 3.2.9F); and,

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance 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 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; and

**NOW, THEREFORE,** Be it resolved that the requested variance is hereby approved, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS:**

1. The proposed improvements shall be identical to the elevations as submitted.
2. There shall be no windows along the northernmost 10 feet of the eastern façade.

8. **DOCKET:** B.O.A 14-07 (CITY)

**APPLICANT:** McDonald's Corporation

**PREMISES AFFECTED:** 2681 Frayser Blvd.  
*(South side of Frayser Boulevard; +/-218.58 feet east of Range Line Road)*

**USE DISTRICT:** CMU-1

**REQUESTING:** Variance from Sub-Section 4.6.8.A(4) to allow a drive-thru window facility on the east side of a new restaurant building facing a restaurant district; and a use variance for the R-6 District portion of parcel to allow a Class III (modified) Landscape buffer-only

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: Loy Taylor, (4631 Barkley Estates Dr.)

For Opposition: None

**THE RESOLUTION:**

**WHEREAS,** McDonald's Corporation filed an application with the Board of Adjustment on Thursday, February 27, 2014 for variance from Sub-Section 4.6.8.A(4) to allow a drive-thru window facility on the east side of a new restaurant building facing a restaurant district; and a use variance for the R-6 District portion of parcel to allow Class III (modified) landscape buffer-only

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance 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 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 with conditions; and



**NOW, THEREFORE,** Be it resolved that the requested a variance is hereby approved, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS:**

1. A raised median shall be provided between the drive-thru lanes and drive aisles to begin at the first menu-board extending to the last pick-up window.
2. A Class III (modified) Landscape Buffer shall be installed, preserved and maintained along the east and south property lines with one (1) row of evergreen trees and a cypress sight-proof wood fence six (6) feet in height. Evergreen shrubs shall be installed to surround the trash enclosure and storage area on three (3) sides.
3. A Use Variance shall be applied to the Residential Single Family (R-6) District portion of this parcel to allow a Class III (modified) landscape buffer-only as reflected on the site plan.

9. **DOCKET:** **B.O.A 14-08 (CITY)**

**APPLICANT:** **Patrick Surratt**

**PREMISES AFFECTED:** **1141, 1155, 1157, 1165, 1167 Vance Avenue and 1162 Peabody**

**USE DISTRICT:** RU-3

**REQUESTING:** To allow Social Service uses within the RU-3 zoning district

**ACTION OF THE BOARD:** Approve

**APPEARANCES:** For Applicant: Ron Nortuary  
Patrick Surratt  
Lou Choda (1210 Peabody Ave.)  
Ralph Chalmers  
Brenda Solomito

For Opposition: Harriet Schneider (1660 North Parkway)

**THE RESOLUTION:**

**WHEREAS**, Patrick Surratt filed an application with the Board of Adjustment on Thursday, February 27, 2014 to allow Social Service uses within the RU-3 zoning district; and,

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, March 26, 2014, 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 a variance 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 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 with conditions; and

**NOW, THEREFORE,** Be it resolved that the requested variance is hereby approved with conditions, subject to conditions.

AGAINST MOTION: 0

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

NOT VOTING: 0

**ACTION IS TO APPROVE WITH CONDITIONS:**

1. Any and all uses permitted by right in the Residential Urban-3 (RU-3) District plus the following additional uses:
  - 2.9.3 Civic Use Categories**
    - a. Neighborhood Resource Center
    - b. Philanthropic institution
    - c. Adult day-care program
    - d. Family day care home (5 to 7 persons)
    - e. Transitional Home (No programs to or for sex offenders)
  - 2.9.4 Social Services Use Categories** \*all uses require meeting minimum parking standards per Article 4 of the UDC
    - a. Blood plasma donation center
    - b. Medical, dental or chiropractic clinic/office, massage therapy, or outpatient surgery center
    - c. Rehabilitative clinic
    - d. Work release center
2. Each lot within the BOA will be developed and maintained as separate and each building thereon shall maintain the existing foot print as submitted to OPD on February 13, 2014.
3. Any existing accessory structure that does not meet the minimum set back required by the city shall be removed or rebuilt to code specific requirements if the structure requires 50 percent or more of repair or another structure replaces the existing structure.

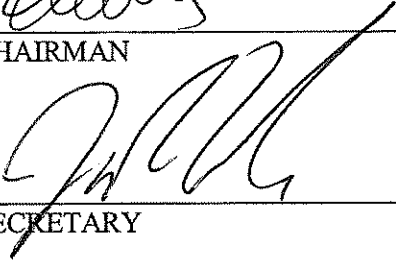
4. The number of curb cuts shall remain the same otherwise any additional means of ingress and egress shall be subject to the approval of the City Engineer.
5. Each lot shall provide a minimum of two on-site parking spaces.
6. Within twenty-four months of final approval by the Board of Adjustment, the Office of Planning and Development may ascertain that any of the lots require additional on-site parking; the applicant shall amend the site plan accordingly at the expense to the applicant.
7. The applicant shall provide a landscape plan and final site plan, to be approved by OPD, prior to receiving a Use and Occupancy permit.
8. All refuse dumpsters shall be completely screened from view from all adjacent properties and all public roads.
9. The applicant shall construct a six (6)-foot height wooden fence per code and the wooden fence shall delineate each property and be maintained by the applicant.
10. The design and material of signs shall be consistent with the proposed buildings subject to approval by the Office of Planning and Development

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

MINUTES APPROVED: April 23, 2017



CHAIRMAN



SECRETARY