

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

July 23, 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, July 23, 2014

**Present:**

Mr.	Frank Colvett, Chairman
Mr.	Daniel Dow
Mr.	John Jackson III
Mr.	Andre D. Jones
Ms.	Lynda Raiford
Mr.	Timothy Rainey, Vice Chairman
Ms.	Madeleine Savage-Townes
Ms.	Emily Trenholm, Alternate

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

Mr.	Troy Frasier, OPD
Mrs.	Marion Jones, OPD
Mr.	Donald Jones, OPD
Mr.	Calvin Abram, OPD
Mr.	Terry Langlois, OPD
Mr.	Brian Bacchus, OPD
Mr.	Nate Taylor, City Engineer

A quorum being present, the Board proceeded to consideration of the days agenda. The minutes from the previous June 25, 2014, 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.

**HELD CASE:**

1. **DOCKET:** **B.O.A. 14-18 (CITY)**

**APPLICANT:** Ahmed Saffarini

**PREMISES AFFECTED:** 883 Barksdale St.  
*(Southwest corner of Barksdale St. and Nelson Ave.)*

**USE DISTRICT:** Residential Single Family-6 (R-6) District

**REQUESTING:** A Use Variance from Chapter 2.5 of the UDC to Allow a duplex structure (2 attached dwelling units on an undivided tract of land) in the Residential Single Family-6 (R-6) District and multiple bulk variances from the Unified Development Code

**ACTION OF THE BOARD:** Hold for 30 days

**APPEARANCES:** For Applicant: Patrick Bensinger (3675 Somerset Cv.)

For Opposition: Gordon Alexander  
Shannon Dixon  
John Browning

**MOTION TO HOLD**

AGAINST MOTION: ..... 0

FOR MOTION: ..... 8  
Chairman Colvett, Trenholm, Dow, Jackson, Jones,  
Railford, Rainey, and Savage-Townes

NOT VOTING: ..... 0

**ACTION IS TO HOLD**

**HELD CASE:**

2. **DOCKET:**

**B.O.A. 14-19 (CITY)**

**APPLICANT:**

Clear Channel Outdoor, Inc./Courtesy Outdoor Finance, LLC

**PREMISES AFFECTED:**

Northwest corner of North Second Street and Commerce Avenue

**USE DISTRICT:**

Mixed Use (MU) in Uptown District

**REQUESTING:**

Use Variance from Paragraph 4.9.8M(3)  
(Alteration, Expansion or Moving of an Off-Premise Sign)

**APPEARANCES:**

For Applicant: Brenda Solomito  
Sara Hall  
Don Nolan

For Opposition: None

**APPLICATION WITHDRAWN**

**NEW CASE:**

3.     **DOCKET:**                                   **B.O.A. 14-27 (CITY)**
- APPLICANT:**                                 The Bray Firm
- PREMISES AFFECTED:**                         629 N. Highland  
  *(South side of Summer Ave. and west side of N. Highland)*
- USE DISTRICT:**                               Commercial Mixed Use-3 (CMU-3)
- REQUESTING:**                               Setback encroachment for a convenience store expansion
- ACTION OF THE BOARD:**
- APPEARANCES:**                              For Applicant: David Bray
- For Opposition: Jeff Phillips (later withdrawn)

**THE RESOLUTION:**

**WHEREAS, David Bray** filed an application with the Board of Adjustment on **June 26, 2014**, by requesting setback encroachment for a convenience store expansion); and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 23, 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 variances Section 9 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 as submitted.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted and that the decision of the Memphis and Shelby County Building Official be and hereby is overruled. Provided, however, that the variation is granted for the specific purpose herein specified and shall not otherwise be deemed to vary or modify any of the provisions of any Zoning Ordinance, City/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 be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years from the granting of the application.

**MOTION TO APPROVE**

AGAINST MOTION: .....0

FOR MOTION: .....8  
Chairman Colvett, Trenholm, Dow, Jackson, Jones,  
Railford, Rainey, and Savage-Townes

NOT VOTING ..... 0

**ACTION IS TO APPROVE WITH CONDITIONS**

**CONDITIONS:**

1. The subject site shall comply with the site plan and landscape plan as submitted.
2. The subject site shall comply with the elevations as submitted.
3. The new building shall be of a comparable color and material as the existing/improved canopy.
4. The applicant shall eliminate the northeastern curb-cut located on North Highland Street and replace with a sidewalk, curb, gutter and landscaping.

**NEW CASE:**

4. **DOCKET:** **B.O.A. 14-28 (CITY)**
- APPLICANT:** MLB-Uptown, LLC
- PREMISES AFFECTED:** 120 N Second Street  
*(Northwest corner of Greenlaw Avenue & North Second Street)*
- USE DISTRICT:** High Density Residential (HDR) District (Uptown Special Purpose District)
- REQUESTING:** A variance to Item 7.3.6C (1)(a) to request the front “build-to-line” be increased from 15 feet as shown on the recorded subdivision plat to 34 feet 6 inches on Lot 9, Malone Park Subdivision, Section B to permit construction of a retaining wall to provide a more useable side yard along Greenlaw Avenue
- APPEARANCES:** For Applicant: Brett Hersh  
  
For Opposition: None

**THE RESOLUTION:**

**WHEREAS, MLB-Uptown, LLC** filed an application with the Board of Adjustment on **July 23, 2014** to increase the front “build-to-line” on Lot 9, Malone Park Subdivision, Section B from 15 feet to 34 feet 6 inches; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 23, 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 variances Section 7.3.6C (1)(a) 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 with conditions.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted and that the decision of the Memphis and Shelby County Building Official be and hereby is overruled. Provided, however, that the variation is granted for the specific purpose herein specified and shall not otherwise be deemed to vary or modify any of the provisions of any Zoning Ordinance, City/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 be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years from the granting of the application.

**MOTION TO APPROVE**

AGAINST MOTION: .....0

FOR MOTION: .....8

Chairman Colvett, Trenholm, Dow, Jackson,  
Jones, Railford, Rainey, and Savage-Townes

NOT VOTING .....0

**ACTION IS TO APPROVE WITH CONDITIONS**



**CONDITIONS:**

1. Approve a variance to Item 7.3.6C (1)(a) to establish new a front “build-to-line of 34 feet 6 inches on the Greenlaw Frontage of Lot 9, Malone Park Subdivision, Section B is based solely on the fact the remediation of the site created topographic constraints along the Greenlaw Avenue frontage of Lot 9, and the fact that the land use restrictions create certain protocols for the disturbance or damage to the clay cap.
2. The applicant shall re-record the final subdivision plat to add a notation reflecting the variance and conditions of the Board of Adjustment approval.
3. The retaining wall shall be constructed 15 feet at the former front “build-to-line” along Greenlaw Avenue frontage of Lot 9.
4. The retaining wall shall be three feet in height and constructed of the same brick used on the water table (foundation) of the house to be constructed on Lot 9 and shall contain a 2 foot wrought iron rail subject to the approval of the Planning Director. The retaining wall shall be built to the dimensions and specifications indicated on the drawings contained in this staff report. The applicant shall submit revised retaining wall drawings for approval by the Planning Director and the approved drawings shall be included on the re-recorded final subdivision plat.
5. The applicant and /or builder will take all necessary precautions to insure the two foot clay cap is not disturbed or damaged when installing the retaining wall or follow the protocols indicated in the land use restrictions on pages 10-11 if the clay cap is disturbed or damaged.
6. 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 site plan, as approved, eliminates or minimizes the potentially harmful characteristics or impact upon the surrounding properties.
7. Any change or deviation from this site 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.

**NEW CASE:**

5. **DOCKET:** **B.O.A. 14-29 (CITY)**
- APPLICANT:** Jennifer Peregoy
- PREMISES AFFECTED:** 3549 Mynders  
*(Southwest corner of Mynders Ave. and Brister St.)*
- USE DISTRICT:** Commercial Mixed Use-1 (CMU-1)
- REQUESTING:** Seven story apartment building with multiple  
variances from the Unified Development Code's  
University District Overlay Sub-Section 8.3.6D
- APPEARANCES:** For Applicant: Memphis Student Housing, LLC  
  
For Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Jennifer Peregoy filed an application with the Board of Adjustment on **June 26, 2014**, by requesting for Seven story apartment building with multiple variances from the Unified Development Code's University District Overlay Sub-Section 8.3.6D;

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 23, 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 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 as submitted.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted and that the decision of the Memphis and Shelby County Building Official be and hereby is overruled. Provided, however, that the variation is granted for the specific purpose herein specified and shall not otherwise be deemed to vary or modify any of the provisions of any Zoning Ordinance, City/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 be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years from the granting of the application.

**MOTION TO APPROVE**

AGAINST MOTION: .....0

FOR MOTION:

.....8  
NOT VOTING Chairman Colvett, Trenholm, Dow, Jackson, Jones,  
Railford, Rainey, and Savage-Townes

.....0

**ACTION IS TO APPROVE WITH CONDITIONS:**

**CONDITIONS**

1. A building permit shall not be issued until an MOC is issued for this site and plans are approved by the City Engineer's office. The City Engineer will require a full set of engineered plans, signed and sealed by a registered engineer in the State of Tennessee.
2. These variances are conditioned upon the site plan and building elevations submitted with this application. 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.
3. The south and west elevations must look similar to the submitted north and east elevations. OPD will give the final approval of these elevations before a MOC will be granted.

4. Provide streetscape plate S-2 along Mynders Avenue and Brister Street. Type C trees will be planted 30 feet apart on average in street grates.
5. A three feet landscaping strip between the sidewalk and building will be installed along the Mynders Avenue and Brister Street and planted with Type-A Shrubs.
6. A detailed landscape plan shall be submitted and approved by OPD prior to issuance of a building permit.
7. Minimum floor to ceiling height shall be 9 feet as measured from finished floor to interior finished ceiling on the upper floors.
8. All mechanicals on the property must be shielded from sight.
9. Racks for 8 bicycle parking spaces will be provided on site.

**NEW CASE:**

6. **DOCKET:** **B.O.A. 14-30 (COUNTY)**

**APPLICANT:** Michael A Lightman & Steven L. Black

**PREMISES AFFECTED:** 0 Raleigh-Lagrange Rd.  
*(North side of Raleigh-Lagrange Rd. +/-1,800 west of Pisgah Rd.)*

**USE DISTRICT:** Conservation Agriculture (CA) District

**REQUESTING:** Relief from UDC Subsection 9.7.3 A(2)(b) requiring that a parcel in excess of 20 acres in size must have a minimum of 50 feet of road frontage on a public road

**APPEARANCES:** For Applicant: Robert Reaves

For Opposition: None

**THE RESOLUTION:**

**WHEREAS**, Michael A Lightman & Steven L. Black filed an application with the Board of Adjustment on **June 25, 2014**, by requesting relief from UDC Subsection 9.7.3 A(2)(b) requiring that a parcel in excess of 20 acres in size must have a minimum of 50 feet of road frontage on a public road;

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 23, 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 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 as submitted.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted and that the decision of the Memphis and Shelby County Building Official be and hereby is overruled. Provided, however, that the variation is granted for the specific purpose herein specified and shall not otherwise be deemed to vary or modify any of the provisions of any Zoning Ordinance, City/County Ordinance or State law applicable to these premises nor to any future use or development of said property, and provided further that the subdivision plat shall be recorded within two (2) years from the granting of the application.

**MOTION TO APPROVE**

AGAINST MOTION:

.....0

FOR MOTION:

.....7

Chairman Colvett, Burditt, Dow, Jackson, Jones,  
Rainey, and Savage-Townes

NOT VOTING

.....0

**ACTION IS TO APPROVE SUBJECT TO CONDITIONS**

**CONDITIONS:**

1. No building permit will be issued for this parcel until such time as it can be brought into conformance with section 9.7 of the UDC.
2. The approved variance runs with the land and is conditioned upon its compliance with the approved site plan and elevations.
3. 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.
5. Revise the plot plan to highlight the northern portion of the parcel and label as the Subject Tract and the Board of Adjustment Case Number.

**NEW CASE:**

**NEW CASE:**

7. **DOCKET:** **B.O.A. 14-31 (CITY)**

**APPLICANT:** Jeff Stamm

**PREMISES AFFECTED:** 124 E GE Patterson Avenue  
*(Northeast corner of E. GE Patterson Avenue and Mulberry Street)*

**USE DISTRICT:** South Main (SM)

**REQUESTING:** Appeal an administrative decision by the Planning Director rejecting the site plan for the Double J Smokehouse and Saloon Pursuant to Chapter 9.13 (Special District Administrative Site Plan Review) for a development within the SCBID Special Purpose District

**APPEARANCES:** For Applicant: James Harris  
Markus Harris  
Don Adams  
Craig Flood  
Jeff Stamm

For Opposition: Mark Grawemeyer (520 S. Main)  
Brian Douglas (465 S. Main)  
Tanja Mitchell (626 N. Main)  
Terry Woodard (449 Tennessee)  
David Randle (187 GE Patterson #501)

**MOTION TO HOLD**

AGAINST MOTION: .....0

FOR MOTION: .....7  
Chairman Colvett, Burditt, Dow, Jackson, Jones, Rainey, and Savage-Townes

NOT VOTING .....0

**ACTION IS TO HOLD**

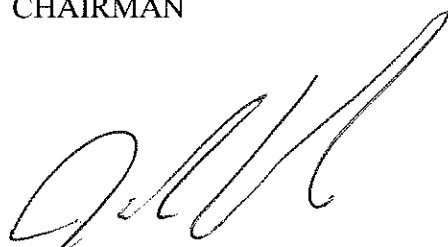
**ADJOURNMENT:**

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

MINUTES APPROVED: 8-27-14



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CHAIRMAN



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SECRETARY