

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

February 25, 2015

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, February 25, 2015.

Present:

Mr.	Daniel Dow
Mr.	Frank Colvett Jr. (Chairman)
Mr.	John Jackson, III
Mr.	Aaron Petree
Mr.	Timothy Rainey (Vice Chairman)
Ms.	Madeleine Savage-Townes
Mr.	Robert Norcross (Alternate)

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Troy Frasier, OPD
Mr.	Calvin Abram, OPD
Mrs.	Marion Jones, OPD
Mr.	Don Jones, OPD
Mr.	Terry Langlois, OPD
Mr.	Greg Love, OPD
Mr.	Jerry Caldwell, City Engineering
Mr.	John Walpole, CCE
Mr.	Chip Saliba, OPD

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.

HELD CASE:

1. **DOCKET:** **B.O.A. 14-62 (CITY)**
- APPLICANT:** Community Choice Financial
- PREMISES AFFECTED:** 3288 Austin Peay Hwy
- USE DISTRICT:** Commercial Mixed Use-2 (CMU-2)
- REQUESTING:** Appeal of written interpretation by building official
- ACTION OF THE BOARD:** Hold
- APPEARANCES:** For Applicant: None
- For Opposition: None

MOTION TO HOLD

HELD CASE:

2. **DOCKET:** **B.O.A. 14-64 (CITY)**

APPLICANT: Saeed Zarsheneas

PREMISES AFFECTED: 4912 Park Ave.
 (100 feet east of Ivy Rd.)

USE DISTRICT: Residential (R-6) District

REQUESTING: Variance from Sub-Section 3.6.1A to allow side
 yard setback encroachment

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Saeed Zarsheneas (4912 Park)

 For Opposition: None

THE RESOLUTION:

WHEREAS, Saeed Zarsheneas filed an application with the Board of Adjustment on **December 2, 2014** for Variance from Sub-Section 3.6.1A to allow side yard setback encroachment; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015** after due notice; and

WHEREAS, The Board is of the opinion, and finds from the sworn testimony of the witnesses at the hearing, and the records on file, that the standards for a Variance in Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted. Provided, however, that the Variance 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 WITH (2) TWO CONDITIONS

CONDITIONS:

1. Applicant is required to attach gutters and a down spout aimed away from neighbor's property
2. Due to concerns for maintenance, no further encroachment into the side yard setback is permitted

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Dow, Jackson, Petree, Norcross,
Rainey, and Savage-Townes

NOT VOTING0

HELD CASE:

3. **DOCKET:** **B.O.A. 14-67 (CITY)**
- APPLICANT:** Elean and Associates, Inc.
- PREMISES AFFECTED:** 995 East Parkway-South
(West side of East Parkway-South; +/-56 feet north of Walker Avenue)
- USE DISTRICT:** Residential Single-Family (R-6) & Commercial Mixed Use (CMU-1) Districts in Midtown Overlay (MD) District
- REQUESTING:** Site Plan Modification of a Use Variance (B.O.A. 78-12) granted for a parcel split by two (2) separate zoning districts to allow a new retail building in the Midtown Overlay (MD) Districts
- ACTION OF THE BOARD:** Hold
- APPEARANCES:** For Applicant: None
For Opposition: None

MOTION TO HOLD

- AGAINST MOTION:0
- FOR MOTION:7
Chairman Colvett, Dow, Jackson, Petree, Norcross,
Rainey, and Savage-Townes
- NOT VOTING0

HELD CASE:

4. **DOCKET:** **B.O.A. 14-70 (CITY)**

APPLICANT: Thomas Szymanek

PREMISES AFFECTED: 1288 Dovecrest Road
 *(East side of Dovecrest Road; 731.5' south of
 Macon Road.)*

USE DISTRICT: Office General-OG

REQUESTING: Use variance to allow contractor storage

ACTION OF THE BOARD: Hold

APPEARANCES: For Applicant: None

 Opposition: None

MOTION WAS TO HOLD:

AGAINST MOTION: 0

FOR MOTION: 7
 Chairman Colvett, Dow, Jackson, Petree, Raiford,
 Rainey, and Savage-Townes

NOT VOTING 0

NEW CASE:

5. **DOCKET:** **B.O.A. 14-74 (CITY)**

APPLICANT: Ronald Poe

PREMISES AFFECTED: 294 Pandora St.
(East side of Pandora St.; +/-125 feet south of Peg Ln.)

USE DISTRICT: Residential-10 (R-10) District

REQUESTING: Variance from Sub-Section 3.6.1A to allow side yard setback encroachment

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Ronald Poe

Opposition: None

THE RESOLUTION:

WHEREAS, Ronald Poe filed an application with the Board of Adjustment on **December 29, 2014** for variance from Sub-Section 3.6.1A to allow side yard setback encroachment; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015** 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (1) condition.

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 Variance 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 WITH (1) CONDITION

CONDITION:

- 1.) Due to maintenance concerns, no further encroachment into this side yard setback is permitted.

AGAINST MOTION:7
Chairman Colvett, Dow, Jackson, Petree, Norcross,
Rainey and Savage-Townes

FOR MOTION:0

NOT VOTING0

NEW CASE:

6. **DOCKET:** **B.O.A. 15-01 (CITY)**
- APPLICANT:** John Carnes
- PREMISES AFFECTED:** 4122 Barton Drive
 *(Approximately 195 feet north of the intersection
 of Barton Drive and Raines Road)*
- USE DISTRICT:** Residential Urban (RU-3) District
- REQUESTING:** Variance from Section 2.5.2 to allow a
 Philanthropic institution (Youth Program and
 Neighborhood Center) within the RU-3 District
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: John Carnes
- Opposition: None

THE RESOLUTION:

WHEREAS, John Carnes filed an application with the Board of Adjustment on **December 2, 2014** for Variance from Section 2.5.2 to allow a Philanthropic institution (Youth Program and Neighborhood Center) within the RU-3 District; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015** after due notice; and

WHEREAS, The Board is of the opinion, and finds from the sworn testimony of the witnesses at the hearing, and the records on file, that the standards for a Variance in Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted. Provided, however, that the Variance 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 WITH (2) TWO CONDITIONS

CONDITIONS:

1. A detailed landscape plan shall be provided and shall meet the approval of OPD prior to the issuance of a Certificate of Occupancy Permit
2. Youth activities, except for special events, shall be limited to the interior and rear yard of the site

AGAINST MOTION:0

FOR MOTION:6
Chairman Colvett, Dow, Petree, Jackson, Norcross,
and Savage-Townes

NOT VOTING1
Rainey

application is approved subject to (2) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH TWO (2) CONDITIONS (AS AMENDED)

CONDITIONS:

1. The structure can be modified, expanded or re-built under the bulk regulations of the R-10 district.

2. This variance is for a two-family structure and use only.

AGAINST MOTION:0

FOR MOTION:7
Chairman Colvett, Dow, Jackson, Petree, Norcross,
Raiford, and Savage-Townes

NOT VOTING0

NEW CASE:

8. **DOCKET:** **B.O.A. 15-03 (CITY)**
- APPLICANT:** 495 Tennessee, LLC
- PREMISES AFFECTED:** 495 Tennessee Street
- USE DISTRICT:** South Main use district in the South Central
 Business Improvement District
- REQUESTING:** A variance from the density requirements of Item
 7.2.2E(2)(b) to establish an 150 unit mix use
 building and a variance for a 2 foot encroachment
 into Tennessee St. ROW.
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Mike Fahy
- For Opposition: None

THE RESOLUTION:

WHEREAS, 495 Tennessee, LLC filed an application with the Board of Adjustment on **November 25, 2014** for variance from the density requirements of Item 7.2.2E(2)(b) to establish an 150 unit mix use building and a variance for a 2 foot encroachment into Tennessee St. ROW.; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (4) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH ONE (4) CONDITIONS

CONDITIONS:

1. A building permit shall not be issued until the project has been approved through the ASPR process and 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 existing historic Tennessee Brewery building's structure and façade must be preserved.
4. Final elevation and façade will be approved by OPD during the ASPR process.

AGAINST MOTION:0

FOR MOTION:6
Chairman Colvett, Dow, Jackson, Petree, Rainey,
and Savage-Townes

NOT VOTING1
Norcross

*****Amended to clarify that the number of units is up to 150 (not 148)*****

NEW CASE:

9. **DOCKET:** **B.O.A. 15-04 (CITY)**
- APPLICANT:** New Hope Baptist Church
- PREMISES AFFECTED:** 2731 Enterprise Ave.
- USE DISTRICT:** R-6 Zoning District
- REQUESTING:** A Use Variance from UDC Section 8.4.11 Streetscape Plate and Section 4.6.5 landscape buffer
- ACTION OF THE BOARD:** None
- APPEARANCES:** For Applicant: Louis Haynes
- For Opposition: None

THE RESOLUTION:

WHEREAS, New Hope Baptist Church filed an application with the Board of Adjustment on **November 25, 2014** for a Use Variance from UDC Section 8.4.11 Streetscape Plate and Section 4.6.5 landscape buffer; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (7) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH ONE (7) CONDITIONS

CONDITIONS:

1. 1 The applicant shall comply with the site plan and landscape plans as approved by OPD, prior to receiving a building permit and comply with site plan as approved by OPD any major modification shall be heard by the Board of Adjustments.
2. The applicant shall install a minimum of a 6-foot-wide Class III buffer to the parking lot along the properties eastern and western boundaries.
3. The applicant shall plant a minimum of 29 Green Pillar Pin Oak off centered within the Class III buffer and not to include the existing plantings to the site.
4. The applicant shall close the unused drive aprons along Enterprise Avenue and Select with sidewalks and curb and gutter fronting the site.
5. The site shall be allowed to construct an expansion to the existing structure that may encroach up to five feet into the front yard setback.
6. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
7. The Developer shall be responsible for the repair and/or replacement of all existing curb and gutter along the frontage of this site as necessary.

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Dow, Jackson, Petree, Rainey,
Norcross, and Savage-Townes

NOT VOTING0

NEW CASE:

10. **DOCKET:** **B.O.A. 15-05 (CITY)**

APPLICANT: Veronica Phillips Rooms and More, LLC

PREMISES AFFECTED: 727 East Regent Place
(South side of East Regents Avenue 233 feet east of Pond Street)

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

REQUESTING: Variance from Section 2.5.2 to allow a Transitional Home

ACTION OF THE BOARD: Reject

APPEARANCES: For Applicant: Veronica Phillips
David Bray

For Opposition: Helen Ward
Bernice Murphy
Patricia Griffin
Everlina Yarbrough
Chris Murphy

THE RESOLUTION:

WHEREAS, Veronica Phillips Rooms and More, LLC filed an application with the Board of Adjustment on **January 28, 2015** for variance from Section 2.5.2 to allow a Transitional Home; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, after due notice; and

WHEREAS, The Board has determined that the site plan would be unduly detrimental to the other properties in the vicinity of the subject premises; and

WHEREAS, The Board is further of the opinion that this request will 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, the appeal is not approved.

NOW, THEREFORE, Be it resolved that the appeal be and is hereby is denied.

MOTION TO APPROVE

AGAINST MOTION:7
Chairman Colvett, Dow, Jackson, Petree, Rainey,
Norcross, and Savage-Townes

FOR MOTION:0

NOT VOTING0

NEW CASE:

11. **DOCKET:** **B.O.A. 15-06 (CITY)**

APPLICANT: LWA, LLC

PREMISES AFFECTED: 2906 Covington Pike
(East side of Covington Pike, 658 feet south of Stage Road)

USE DISTRICT: Commercial Mixed Use (CMU-2)

REQUESTING: Variances to portions of Chapter 4.9 (Signs) to permit an integrated Center Sign to be erected on the east side of Covington Pike between the Auto Zone detached sign and the Express Oil Change detached to advertise businesses in a newly-constructed building with limited site frontage on Covington Pike

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: David Bray

For Opposition: None

THE RESOLUTION:

WHEREAS, LWA, LLC filed an application with the Board of Adjustment on **January 28, 2014** for variances to portions of Chapter 4.9 (Signs) to permit an integrated Center Sign to be erected on the east side of Covington Pike between the Auto Zone detached sign and the Express Oil Change detached to advertise businesses in a newly-constructed building with limited site frontage on Covington Pike; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (3) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH (3) CONDITIONS

CONDITIONS:

1. Full compliance shall be required with any other requirements of the Sign Ordinance not specifically granted a variance by this approval. Variances granted by this approval are to the following portions of the Sign Ordinance (Chapter 4.9) of the Unified Development Code: Paragraph 4.9.6A (4); Item 4.9.7D(4)(b); Sub-Section 4.9.6C; and Paragraph 4.9.7G(1).
2. All dead or dying landscaping installed in Phase 6 shall be replaced prior to a sign permit being issued by the Office of Construction Code Enforcement.
3. The Phase 6 Final Plat shall be re-recorded to memorialize the action of the Board of Adjustment including all sign and landscaping details illustrated graphically on the final plat.

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Dow, Jackson, Petree, Rainey,
Norcross, and Savage-Townes

NOT VOTING0

NEW CASE:

12. **DOCKET:** **B.O.A. 15-07 (CITY)**

APPLICANT: The Krystal Company

PREMISES AFFECTED: 3227 Poplar Avenue
(Southwest corner of Poplar Avenue and Greer)

USE DISTRICT: Commercial Mixed Use-1 (CMU-1)

REQUESTING: Variance from Sub-Section 4.6.8A (1) [Drive-thru facilities] to allow a drive-thru window and lane between the street right-of-way and the associated building

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Bob Zigonfoot

For Opposition: None

THE RESOLUTION:

WHEREAS, LWA, LLC filed an application with the Board of Adjustment on **January 28, 2014** for variances to portions of Chapter 4.9 (Signs) to permit an integrated Center Sign to be erected on the east side of Covington Pike between the Auto Zone detached sign and the Express Oil Change detached to advertise businesses in a newly-constructed building with limited site frontage on Covington Pike; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (9) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH (9) NINE CONDITIONS

CONDITIONS:

1. The new development shall be in accordance with the submitted site plan. 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.
2. Landscape plantings shall be installed and maintained along the drive-thru lane in accordance with the submitted site plan, located between the drive-thru lane and the adjacent right-of-way of Greer Street. Such screening must be a compact evergreen hedge or other type of dense foliage as permitted in Section 4.6.9. At the time of installation, such screening must be at least 36 inches in height and reach a height of 48 inches within two years of planting.
3. A streetscape Type S-10 or equivalent shall be applied to the frontage along Poplar Avenue inside the area identified as "landscape buffer" on the submitted site plan.
4. The developer shall be responsible for the repair and/or replacement of all existing curb and gutter along the frontage of this site as necessary
5. All garbage, refuse containers and loading facilities shall be completed screened from view from all adjacent properties and the public roads.
6. All outdoor lighting shall be directed downward to the extent possible and shall not glare into public right-of-ways or onto adjacent properties.
7. Banners, streamers, florescent or balloon signs or similar advertising devices, including LED, changeable copy or reader board signs shall be prohibited.

8. Temporary, roof, portable or graphic signs, including window graphic signs shall not be permitted.
9. Required landscaping shall not be placed on sewer or drainage easements.

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Dow, Jackson, Petree, Rainey,
Norcross, and Savage-Townes

NOT VOTING0

NEW CASE:

13. **DOCKET:** **B.O.A. 15-08 (CITY)**

APPLICANT: Yong Wood Cho/Stanley G. Hill

PREMISES AFFECTED: 6456 E. Shelby Dr.
(Northeast corner corner of Shelby Drive and Kirby)

USE DISTRICT: Commercial Mixed Use-2 (CMU-2)

REQUESTING: Variance from Section 2.7.1 [Accessory Structures and Uses] to allow an accessory structures (ATM) to be located in the required front setback

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Stanley Hill
Joe Wiseman

For Opposition: None

THE RESOLUTION:

WHEREAS, Yong Wood Cho/Stanley G. Hill filed an application with the Board of Adjustment on **January 27, 2015** variance from Section 2.7.1 [Accessory Structures and Uses] to allow an accessory structures (ATM) to be located in the required front setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**, 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 Sub-Section 9.22.6.B 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 City of Memphis and County of Shelby; and, therefore, this application is approved subject to (6) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH SIX (6) CONDITIONS

CONDITIONS:

1. The subject site shall comply with a revised site plan which does not conflict with BOA08-22 site plan;
2. The second ATM Kiosk shall be located six (6) feet from the right-of-way line of Kirby Parkway and (1) 120 feet from the Kirby Parkway curb-cut or (2) a raised curb between and the drive-thru lane and the convenience store driveway shall be installed.
3. The operator shall provide an adequate trash facility and maintain the area around the kiosk in a clean and orderly fashion;
4. The facility shall be maintained in a manner consistent with the safe and efficient circulation of pedestrian and vehicular traffic. Access and circulation shall be illustrated on the site plan;
5. Landscaping shall be provided at the base of the structure. Bollards may be located outside the landscape area;
6. A detailed site plan shall be submitted in accordance with conditions, including required landscaping properties.

AGAINST MOTION:1
Colvett

FOR MOTION:6
Norcross, Dow, Jackson, Petree, Rainey,
and Savage-Townes

NOT VOTING0

NEW CASE:

14. **DOCKET:** **B.O.A. 15-10 (CITY)**
- APPLICANT:** Turkey Lake LLC (Brett Mosley)
- PREMISES AFFECTED:** 0 Old Millington Rd. & O Benjestown Rd.
- USE DISTRICT:** Floodway (FW) and Conservation Agriculture with Floodplain (CA) and (FP) District
- REQUESTING:** Appeal of Planning Director's determination that timber harvesting requires a Special Use Permit in the (FW) and (CA) Districts
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: David Hilsden
For Opposition: None

THE RESOLUTION:

WHEREAS, Turkey Lake LLC (Brett Mosley) filed an application with the Board of Adjustment on **December 19, 2014**, requesting an appeal of the Planning Director's determination that timber harvesting requires a Special Use Permit in the (FW) and (CA) Districts; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **February 25, 2015**; 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 Sub-Section 9.23.1 (c) 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 City of Memphis and County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH (7) SEVEN CONDITIONS:

CONDITIONS:

1. Any trees in the Floodway and Conservation Agriculture Districts that are cut as a result of this appeal, shall retain a stump height of at least 18 inches in height.
2. No trees under 6 inches in caliper shall be cut and the disposal of associated debris into a water course shall be prohibited.
3. The applicant shall submit a Notice of Intent for the subject property(s) to the Manager of the OPD East office for his review and approval.
4. A site plan meeting the requirements of the Tree Matrix at Sub-section 6.1.2.C for agricultural uses shall be filed with the Manager of OPD East.
5. The plan in #3 above, shall include a requirement that the boundaries of the areas to be cleared be drawn on the plan by and marked in the field by licensed engineer.
6. Removal of trees in the Floodway District shall follow Best Management Practices as described in the following Manual: "A GUIDE TO FORESTRY, BEST MANAGEMENT PRACTICES IN TENNESSEE, Tennessee Department of Agriculture, Division of Forestry, 2003.
7. A. Adhere to the permitting requirements of the appropriate regulating bodies.
B. Provide letters from the Corps of Engineers and any other appropriate governing bodies within the State of TN describing what role if any said agencies will have relating to the removal of trees in the Floodway and Floodplain.

AGAINST MOTION:0

FOR MOTION:6

Chairman Colvett, Dow, Jackson, Petree, Norcross,
and Savage-Townes

NOT VOTING1

Rainey

NEW CASE:

15. **DOCKET:** **B.O.A. 15-11 (CITY)**
- APPLICANT:** Orion Federal Credit Union
- PREMISES AFFECTED:** 821 Poplar Avenue
(Southwest corner of Poplar Avenue and N. Dunlap Street)
- USE DISTRICT:** Commercial Mixed Use-3 (CMU-3) District
- REQUESTING:** Variances from the requirements of the Medical Overlay District, Section 8.2.5 Building Envelope Standards for an Urban Frontage: 1. Required Building Frontage, 2. parking Setback, 3. Transparency, 4. Building Entrance, & 5. Blank Wall
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Matt Seltzer

For Opposition: None

THE RESOLUTION:

WHEREAS, Orion Federal Credit Union filed an application with the Board of Adjustment On December 29, 2014 for variation to Paragraph 3.10.2B(1) of the Unified Development Code Variances from the requirements of the Medical Overlay District, Section 8.2.5 Building Envelope Standards for an Urban Frontage: 1. Required Building Frontage, 2. parking Setback, 3. Transparency, 4. Building Entrance, & 5. Blank Wall; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **January 28, 2015**, 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 Sub-Section 9.22.6.B of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Variance and alternative landscaping compliance 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 City of Memphis and County of Shelby; and, therefore, this application is approved.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted Provided, however, that the Variance 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 WITH (2) TWO CONDITIONS

CONDITIONS:

1. The applicant shall submit a site plan that incorporates the approved variances and meets requirements of the Medical Overlay District to the OPD. Once approved, this site plan shall be the binding document for the development of this site, and changes shall be subject to the review of the Planning Director and may at the discretion of the Planning Director be returned to the Board of Adjustment for their approval.

2. The Final Site Plan shall be reviewed utilizing the Memo of Conformance process.

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Dow, Jackson, Petree, Rainey,
Norcross, and Savage-Townes

NOT VOTING0

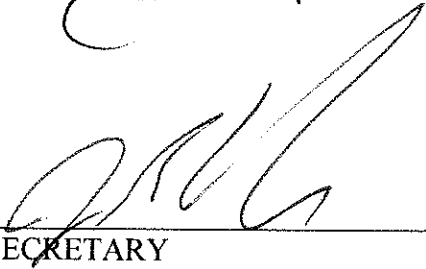
ADJOURNMENT:

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

MINUTES APPROVED: 3-25-15



CHAIRMAN



SECRETARY