

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

July 22, 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, July 22, 2015.

Present:

Mr.	Frank Colvett Jr. (Chairman)
Mr.	Aaron Petree
Mr.	Timothy Rainey (Vice Chairman)
Ms.	Madeleine Savage-Townes
Mr.	John Jackson III
Mr.	James Toles (Alternate)
Ms.	Lynda Raiford

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Troy Frasier, OPD
Mr.	Calvin Abram, OPD
Mr.	Don Jones, OPD
Mr.	John Walpole, CCE
Mr.	Jeff Hajek, OPD
Mr.	Brian Bacchus, 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. 14-70 (CITY)**
- APPLICANT:** Forrest Owens, Representative
- PREMISES AFFECTED:** 1288 Dovecrest Road
 *(East side of Dovecrest Road; 731.5 feet south of
 Macon Rd.)*
- USE DISTRICT:** Office General (OG)
- REQUESTING:** Use Variance from Section 2.5.2 to allow contractor
 storage (a request for a Use Variance to allow
 contractor storage at this location was rejected by
 the Board on March 25, 2015)
- ACTION OF THE BOARD:** Hold
- APPEARANCES:** For Applicant: Forrest Owens
 Toni Haas
- For Opposition: Lew Wardlaw

THE RESOLUTION:

WHEREAS, Thomas Szymanek, filed Petition for Use Variance from Section 2.5.2 to allow contractor storage (a request for a Use Variance to allow contractor storage at this location was rejected by the Board on March 25, 2015); and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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 with (7) seven 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 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) CONDTIONS

CONDITIONS:

- 1. A final site plan with elevations shall be submitted to the Office of Planning and Development prior to any building permit being issued.
- 2. Any structure constructed for this use shall match the character of the neighborhood. Metal buildings are not permitted on the site.
- 3. Hours of loading and unloading will be from 7am to 8pm.
- 4. The chain link fence in the front yard will be removed and replaced with a wooden sight proof fence according to the submitted site plan.
- 5. Replace the Loblolly Pines with Nellie Steven Hollies on the final site plan.
- 6. There shall be no storage of material outside of the proposed areas on the site plan.
- 7. No vehicles larger than the standard pick-up truck shall be stored outside on the site.

AGAINST MOTION:2
Chairman Colvett and Rainey

FOR MOTION:6
Dow, Jackson, Raiford,
Sharp, Toles and Savage-Townes

NOT VOTING0

HELD CASE:

2. **DOCKET:** **B.O.A. 15-27 (CITY)**

APPLICANT: Ronald & Sara Jerkins

PREMISES AFFECTED: 76 Mary Ann Dr.

USE DISTRICT: Residential-10 (R-10)

REQUESTING: Variance from Paragraph 3.1.1F(3) to allow a one foot encroachment into the 40 foot required setback on the recorded subdivision plat per (per UDC Section 3.2.9F)

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Tim Rainey

Opposition: None

THE RESOLUTION:

WHEREAS, Ronald & Sara Jerkins filed an application with the Board of Adjustment on **May 27, 2015**, Variance from Paragraph 3.1.1F(3) to allow a one foot encroachment into the 40 foot required setback on the recorded subdivision plat per (per UDC Section 3.2.9F); and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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 with (1) one 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) CONDITON

CONDITIONS:

1. Additional encroachment into the platted setbacks outside of the current footprint of the single-family structure shall not be permitted.

AGAINST MOTION:0

FOR MOTION:7
Chairman Colvett, Dow, Jackson,
Raiford, Sharp, Toles, and Savage-Townes

NOT VOTING1
Rainey

NEW CASE:

3. **DOCKET:** **B.O.A. 15-35 (CITY)**
- APPLICANT:** Keller-Williams Realty
- PREMISES AFFECTED:** 930 S. White Station Road
- USE DISTRICT:** Office General (OG) District
- REQUESTING:** Variance from Paragraph 4.9.7C (2) to allow an attached sign 110 sq. ft. in area on the parking lot side of the building where 35 sq. ft. is the maximum sign area in the Office General (OG) District
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Clarence Johnson
- Opposition: None

THE RESOLUTION:

WHEREAS, Keller-Williams Realty filed an application with the Board of Adjustment on **June 15, 2015** for a variance from Paragraph 4.9.7C (2) to allow an attached sign 110 sq. ft. in area on the parking lot side of the building where 35 sq. ft. is the maximum sign area in the Office General (OG) District; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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.A 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 with (1) one 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) CONDTION

CONDITIONS:

1. The sign shall adhere to the submitted rendering made part of this application.

AGAINST MOTION:3
Chairman Colvett, Jackson and Savage-Townes

FOR MOTION:5
Dow, Raiford, Rainey, Sharp
and Toles

NOT VOTING0

NEW CASE:

4. **DOCKET:** **B.O.A. 15-36(CITY)**

APPLICANT: Andrew and Denise Douzani

PREMISES AFFECTED: 118 St. Andrews Fairway

USE DISTRICT: Residential-10 (R-10)

REQUESTING: Variance to allow an encroachment of a structure into the rear yard setback (UDC Section 3.6.1)

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Tim McCaskill

For Opposition: None

THE RESOLUTION:

WHEREAS, Andrew and Denise Douzani filed an application with the Board of Adjustment on **June 15, 2015** a variance to allow an encroachment of a structure into the rear yard setback (UDC Section 3.6.1); and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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 (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

CONDITIONS:

1. The applicant’s home shall continue to legally encroach no greater than four-feet into the rear yard setback as the survey identifies
2. Any changes to the site plan that affect the setback encroachments shall be reviewed by the Office of Planning and Development and may require approval action by the Board of Adjustment.

AGAINST MOTION:0

FOR MOTION:8

Chairman Colvett, Dow, Jackson, Raiford,
Rainey, Sharp, Toles and Savage-Townes

NOT VOTING0

NEW CASE:

5. **DOCKET:** **B.O.A. 15-37 (CITY)**
- APPLICANT:** James R. Burditt
- PREMISES AFFECTED:** 4400 Charleswood Avenue
- USE DISTRICT:** Residential Single Family (R-10) District
- REQUESTING:** Variance from Sub-section 3.6.1A to allow
 construction of a porte-cochere' to encroach 2.7 feet
 into the required side yard setback of five (5) feet
- ACTION OF THE BOARD:** Approve with one (1) condition
- APPEARANCES:** For Applicant: James R. Burditt
- For Opposition: None

THE RESOLUTION:

WHEREAS, James R. Burditt filed an application with the Board of Adjustment on **June 24, 2015** for a Variance from Sub-section 3.6.1A to allow construction of a porte-cochere' to encroach 2.7 feet into the required side yard setback of five (5) feet; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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.A. 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 with one (1) condition.

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 (1) ONE CONDITION

CONDITION:

1. Encroachments into the western side yard setback shall adhere to the submitted site/survey plan. Any alterations shall be submitted to the Office of Planning and Development for review.

AGAINST MOTION:0

FOR MOTION:8

Chairman Colvett, Dow, Jackson, Raiford,
Rainey, Sharp, Toles and Savage-Townes

NOT VOTING0

NEW CASE:

6. **DOCKET:** **B.O.A. 15-38 (CITY)**

APPLICANT: Ken Robinson

PREMISES AFFECTED: 1097 Stage Avenue

USE DISTRICT: Residential Urban – 3 (RU-3) District &(FP)

REQUESTING: Use variance from Section 2.5.2 of the UDC to
 legitimize an existing office use in an RU-3 and
 RU-3(FP) district

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Nathan Bicks

 For Opposition: None

THE RESOLUTION:

WHEREAS, Power Center Community Development Corporation filed an application allow with the Board of Adjustment on **May 27, 2015** for Use variance from Section 2.5.2 of the UDC to legitimize an existing office use in an RU-3 and RU-3(FP) district; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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 with four (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 (4) FOUR CONDITIONS

CONDITION:

1. No outdoor storage or display.
2. All signs shall meet the RU-3 district sign regulation.
3. 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.
4. The existing natural vegetative buffer along the eastern, southern and western edge of the parcel shall remain as a buffer.

AGAINST MOTION:0

FOR MOTION:8

Chairman Colvett, Dow, Jackson, Raiford,
Rainey, Sharp, Toles and Savage-Townes

NOT VOTING0

NEW CASE:

7. **DOCKET:** **B.O.A. 15-39 (CITY)**
- APPLICANT:** Northeast Housing Inc./Alliance Healthcare Services
- PREMISES AFFECTED:** *(North side of Ridgemont Avenue; +/-620' east of New Allen Road)*
- USE DISTRICT:** Commercial Mixed Use-1 (CMU-1) District
- REQUESTING:** Use variance (UDC, Section 2.5.2) to legitimize the legal nonconforming use and to allow building expansion
- ACTION OF THE BOARD:** Approve, with three (3) conditions
- APPEARANCES:** For Applicant: Bridgett McCall
- For Opposition: None

THE RESOLUTION:

WHEREAS Northeast Housing Inc./Alliance Healthcare Services filed an application with the Board of Adjustment on **June 25, 2015** for a Use variance (UDC, Section 2.5.2) to legitimize the legal nonconforming use and to allow building expansion; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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.A 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, with (3) three 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) THREE CONDITIONS

CONDITIONS:

1. A six foot tall, sight proof, wooden fence with cap shall be installed along the east boundary line beginning at the front façade of the assisted living facility and continuing to where the east property line meets the north property line.
2. A six foot tall, sight proof, wooden fence with cap shall be installed along the north property line between the east and west property lines.
3. 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.

AGAINST MOTION:0

FOR MOTION:8

Chairman Colvett, Dow, Jackson, Raiford,
Rainey, Sharp, Toles and Savage-Townes

NOT VOTING0

NEW CASE:

8. **DOCKET:** **B.O.A. 15-40 (CITY)**
- APPLICANT:** James C. Ashley, Jr. and Alex Vergos
- PREMISES AFFECTED:** 322 N. McLean Boulevard
- USE DISTRICT:** Residential Single Family-6 (R-6) Historic (H) District
- REQUESTING:** Variances from Paragraphs 2.7.2A (4) & (5) to allow construction of a new detached garage to encroach 3.4 feet and 2.4 feet, respectively; into the required side and rear yard setbacks of five (5) feet
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: John Catmur
- For Opposition: None

THE RESOLUTION:

WHEREAS James C. Ashley, Jr. and Alex Vergos filed an application with the Board of Adjustment on **May 28, 2015** for Variances from Paragraphs 2.7.2A (4) & (5) to allow construction of a new detached garage to encroach 3.4 feet and 2.4 feet, respectively; into the required side and rear yard setbacks of five (5) feet; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **July 22, 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.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 City of Memphis and County of Shelby; and, therefore, this application is approved, with (3) three 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) THREE CONDITIONS

CONDITIONS:

1. The garage shall be at least five (5) feet from overhead utility lines in accordance with Memphis, Light, Gas & Water (MLGW) requirements.
2. The structure shall not encroach into any existing utility easements, including the overhead electric along the south property line.
3. The final site plan shall be subject to approval by the Memphis Landmarks Commission.

AGAINST MOTION:0

FOR MOTION:8


Chairman Colvett, Dow, Jackson, Raiford,
Rainey, Sharp, Toles and Savage-Townes

NOT VOTING0

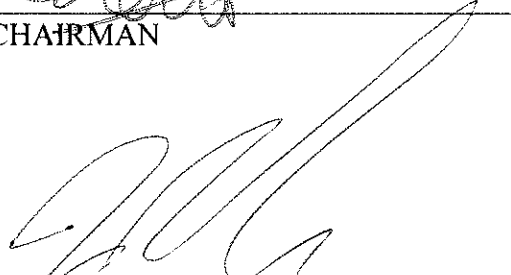
ADJOURNMENT:

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

MINUTES APPROVED: 8-26-15



CHAIRMAN



SECRETARY