

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

August 26, 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, August 26, 2015.

Present:

Mr.	Frank Colvett Jr. (Chairman)
Mr.	Daniel Dow
Ms.	Joy Doss
Mr.	Aaron Petree
Mr.	Timothy Rainey (Vice Chairman)
Ms.	Lynda Raiford
Ms.	Madeleine Savage-Townes
Mr.	John Jackson III

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Gene Burse, OPD
Mr.	Troy Frasier, OPD
Mr.	Calvin Abram, OPD
Mr.	Brian Bacchus, OPD
Mr.	Don Jones, OPD
Mr.	John Walpole, CCE
Mr.	Darek Baskin, 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.

HELD CASE:

1. **DOCKET:** **B.O.A. 15-41 (CITY)**
- APPLICANT:** Jefferson F. & Barbara R. Michael
- PREMISES AFFECTED:** 28 Wood Grove Road
 *(East side of Wood Grove Road; +/-196.80 feet
 north of Walnut Grove Road)*
- USE DISTRICT:** Residential Single Family (R-10) District
- REQUESTING:** Variance from Sub-Section 3.6.1A to allow an
 encroachment into the required rear yard setback of
 twenty (20) feet to thirteen (13) feet for construction
 of a new work shop and storage room addition in
 Residential Single Family (R-10) District
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Berry Jones
- For Opposition: None

THE RESOLUTION:

WHEREAS, Jefferson F. & Barbara R. Michael, filed an application with the Board of Adjustment on **July 18, 2015**, for a variance from Sub-Section 3.6.1A to allow an encroachment into the required rear yard setback of twenty (20) feet to thirteen (13) feet for construction of a new work shop and storage room addition in Residential Single Family (R-10) District; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 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 (3) CONDTIONS

CONDITIONS:

1. The attached carport shall be five (5) feet from any 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 power line along the east property line.
3. The variance shall be bound to the approved site plan. Any modifications may be submitted to the Office of Planning & Development for review and approval by the Planning Director.

AGAINST MOTION:0

FOR MOTION:8

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

NOT VOTING0

HELD CASE:

2. **DOCKET:** **B.O.A. 15-43 (CITY)**
- APPLICANT:** 495 Tennessee LLC
- PREMISES AFFECTED:** 495 Tennessee Street
- USE DISTRICT:** South Main District in the Uptown Special Purpose District
- REQUESTING:** Variance to allow for a six foot encroachment into the unimproved right-of-way along the north and west side of the previously approved building for balconies.
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Mike Fahy
- Opposition: None

THE RESOLUTION:

WHEREAS, 495 Tennessee LLC filed an application with the Board of Adjustment on **July 22, 2015**, Variance to allow for a six foot encroachment into the unimproved right-of-way along the north and west side of the previously approved building for balconies; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 (4) four 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 (4) CONDITIONS

CONDITIONS:

1. These conditions do not supersede previously approved conditions of BOA 15-03, but instead are in addition to the previously approved conditions.
2. A modified class II buffer shall be installed along the north and west property line inside the public right-of-way with the City Engineer's approval.
3. The final design of the landscape buffer must be shown on the final plat and approved by OPD.
4. The encroachment for the balconies shall be limited to what is shown on the approved site plan.

AGAINST MOTION:0

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

NOT VOTING1
Chairman Colvett

NEW CASE:

3. **DOCKET:** **B.O.A. 15-44 (CITY)**
- APPLICANT:** Harold E. Crye Living Trust
- PREMISES AFFECTED:** 3070 Summer Avenue
- USE DISTRICT:** Residential Urban (RU-1) District
- REQUESTING:** Variance from Section 2.5.2 to allow the expansion
 of an existing mobile home park
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Harold Crye
- Opposition: None

THE RESOLUTION:

WHEREAS, Harold Crye filed an application with the Board of Adjustment on **July 22, 2015** for Variance from Section 2.5.2 to allow the expansion of an existing mobile home park; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 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 (3) CONDTIONS

CONDITIONS:

1. Parcel 2 on the site plan shall not contain any structures.
2. A final site plan must be submitted to OPD and approved by OPD. It shall contain the following:
 - a. Complete landscape plan
 - b. The required streetscape along Summer Avenue
 - c. Lot numbers and dimensions
 - d. Open spaces must be labeled
3. Each home must be set back at least five feet from the side lot line and 5 feet from the rear property line.

AGAINST MOTION:0

FOR MOTION:8

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

NOT VOTING0

NEW CASE:

4. **DOCKET:** **B.O.A. 15-45(CITY)**

APPLICANT: Jesus Arellano

PREMISES AFFECTED: 960 Maria Street

USE DISTRICT: Residential Single Family (R-6)

REQUESTING: A variance from UDC Subsection 2.7.2B
(Height of accessory structure), 2.7.2C
(Cumulative area of accessory structure),
4.6.7C (Height of fence in front yard) to allow
a four-foot encroachment into the side yard
setback.

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: David Milam

 For Opposition: None

THE RESOLUTION:

WHEREAS, Jesus Arellano filed an application with the Board of Adjustment on **July 23, 2015** A variance from UDC Subsection 2.7.2B (Height of accessory structure), 2.7.2C (Cumulative area of accessory structure), 4.6.7C (Height of fence in front yard) to allow a four-foot encroachment into the side yard setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 NINE (9) CONDITIONS

CONDITIONS:

1. The applicant shall be responsible for any costs and or repairs to carport if the utility easement needs to be accessed by MLGW or another entity authorized by MLGW.
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.
3. If runoff from the addition of the accessory structure and/or paving of the rear yard is increased and have a negative impact on the abutting properties, the homeowner of 960 Maria Street is responsible to remedy the issue without any financial contributions from the neighbors.
4. No vehicles shall be parked in the front yard at any time to include tractors (18 wheeler) on property.
5. The applicant shall comply with existing site plan and current building design as approved by the Board of Adjustments.
6. The applicant shall reduce the existing wrought iron fence to five (5) feet in height in the front yard of the property.

7. The homeowner shall not install any earthscape elements that may allow parking in the front yard.
8. The accessory structure shall not be utilized as an auto repair service or any other type of business to include commercial storage.
9. The applicant shall not park commercial vehicles on the property.

AGAINST MOTION:1
Raiford

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

NOT VOTING0

NEW CASE:

5. **DOCKET:** **B.O.A. 15-46 (CITY)**

APPLICANT: Torrus Brooks

PREMISES AFFECTED: 2417 Jackson Avenue

USE DISTRICT: Residential Urban (RU-1) District

REQUESTING: Hold

ACTION OF THE BOARD: Reject

APPEARANCES: For Applicant: Jerry Johnson

 For Opposition: None

AGAINST MOTION: 5
 Dow, Jackson, Doss, Petree and Raiford

FOR MOTION: 3
 Chairman Colvett, Rainey and Savage-Townes

NOT VOTING 0

(Part II)

5. **DOCKET:** **B.O.A. 15-46 (CITY)**

APPLICANT: Torrus Brooks

PREMISES AFFECTED: 2417 Jackson Avenue

USE DISTRICT: Residential Urban (RU-1) District

REQUESTING:

1. A Use Variance to permit a Barber/Beauty Salon
2. A variance to Item 4.5.2C(1)(b) parking in the required front yard
3. A variance to sub-section 3.7.3A rear yard setback

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Jerry Johnson

For Opposition: None

THE RESOLUTION:

WHEREAS, Torrus Brooks filed an application with the Board of Adjustment on **July 23, 2015** for 1. A Use Variance to permit a Barber/Beauty Salon 2. A variance to Item 4.5.2C(1)(b) parking in the required front yard 3. A variance to sub-section 3.7.3A rear yard setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 eight (8) 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 (8) EIGHT CONDITIONS

CONDITIONS:

1. Revise the site plan to show an S-10 Streetscape Plate or an equivalent that is acceptable to the Office of Planning and Development along the Jackson Avenue and Spring Street frontages.
2. Remove the existing chain link fencing. If fencing is desired, replace the existing chain link fence with wrought iron or similar metal fencing along the north, east, and west property lines.
3. Remove or install adjacent to the subject property's south property line, a six foot tall, sight proof, and wooden fence with cap.
4. In conjunction with the fencing requirement in Condition 3 above, install a species of holly, spaced 10 feet on center, and install at a minimum height of six feet between the sidewalk and the east edge of the existing building.
5. All fencing and landscaping shall be shown on the site plan.
6. All required landscaping shall be irrigated.
7. The curb cut on Spring Street shall be limited to the use of the property owner and not for the use of the customers of the barber/beauty shop.

8. The requested Use Variance and other related variances are subject to the above conditions and an approved final site plan. Deviations from or changes to the approved site plan are subject to the approval of the Planning Director who may at his discretion forward said changes to the Board of Adjustment for their approval.

AGAINST MOTION:0

FOR MOTION:8

Chairman Colvett, Doss, Dow, Jackson, Raiford,
Rainey, Petree and Savage-Townes

NOT VOTING0

NEW CASE:

6. **DOCKET:** **B.O.A. 15-47 (CITY)**

APPLICANT: Visible Music College

PREMISES AFFECTED: 200 Madison Avenue
 (North side of Madison Avenue, +/- 175' east of
 Third St.)

USE DISTRICT: Sports and Entertainment (SE) District in the
 SCBID Special Purpose District

REQUESTING: A Variance from Paragraph 7.2.9E(1) of the South
 Central Business Improvement District Regulations
 to permit surface parking to be located between the
 new building addition and Madison Avenue

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Greg Price

 For Opposition: None

THE RESOLUTION:

WHEREAS, Visible Music College filed an application allow with the Board of Adjustment on **July 24, 2015** A Variance from Paragraph 7.2.9E(1) of the South Central Business Improvement District Regulations to permit surface parking to be located between the new building addition and Madison Avenue; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **August 26, 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 three (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) THREE CONDITIONS

CONDITIONS:

1. Revise the site plan to show an A-6 or A-7 streetscape plate between any on-site parking and Madison Avenue.
2. Revise the site plan to indicate the location of refuse containers and the method of screening of said containers.
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:7

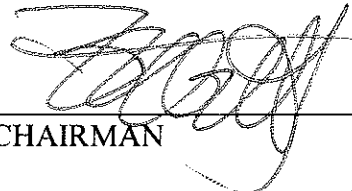
Chairman Colvett, Doss, Dow, Jackson, Raiford,
Petree and Savage-Townes

NOT VOTING0

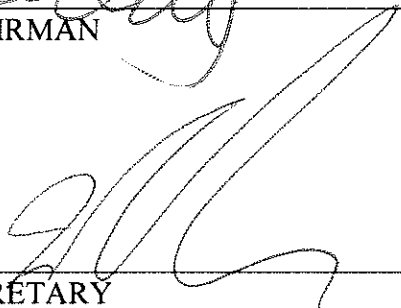
ADJOURNMENT:

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

MINUTES APPROVED: Sept. 23, 2015



CHAIRMAN



SECRETARY

