

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

December 16, 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, December 16, 2015.

Present:

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

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Gene Burse, OPD
Mr.	Brian Bacchus, OPD
Mr.	Calvin Abram, OPD
Mr.	Don Jones, OPD
Mr.	Ted Illsley, OCCE
Mr.	Darek Baskin, City Engineering
Ms.	Chelsea Brown, 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.

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) CONDITIONS

CONDITIONS:

1. The applicant shall continue to comply with the UDC; however, BOA15-75 shall govern the rear yard setback of the property
2. The property owner to the site shall continue to comply with all setback encroachments that have been identified within BOA15-75 variance application.
3. 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:7

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

NOT VOTING0

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 (2) CONDITIONS

CONDITIONS:

1. The applicant shall continue to comply with the Site Plan as submitted to OPD and made part of this Staff Report

2. The property owner to the site should not carry out any other expansions into a zone where mobile home park use is not permitted.

AGAINST MOTION:0

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

NOT VOTING0

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) CONDITIONS

CONDITIONS:

1. The applicant shall continue to comply with the Walnut Grove Park Subdivision Plat; however, BOA15-77 shall govern the side yard setbacks of the property
2. The property owner to the site shall continue to comply with all setback encroachments that have been identified within BOA15-77 variance application.
3. 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: 7
 Chairman Colvett, Dow, Doss, Petree, Raiford,
 Rainey and Savage-Townes

NOT VOTING 0

NEW CASE:

4. **DOCKET:** **B.O.A. 15-78 (CITY)**

APPLICANT: Donald Watkins

PREMISES AFFECTED: 704 Vance Avenue

USE DISTRICT: CMU-3

REQUESTING: A variance from UDC Section 2.5.2 to allow used auto sales at the subject site

ACTION OF THE BOARD: Reject

APPEARANCES: For Applicant: Donald Watkins
 Marcell Hunt
 James Harvey

 Opposition: Maura Blade Sullivan
 Michael Shaw (740 Georgia)
 Henry Turley
 Steve Nash (769 Vance)
 Webb Brewer
 Loretta Phillips (704 Vance)

THE RESOLUTION:

WHEREAS, Donald Watkins filed an application with the Board of Adjustment on **November 18, 2015** A variance from UDC Section 2.5.2 to allow used auto sales at the subject site; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **December 16, 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 not being met; and;

WHEREAS, The Board has determined that said Variance 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 to allow 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 City of Memphis and County of Shelby; and, therefore, this application is denied.

NOW, THEREFORE, Be it resolved that the application be and it hereby is rejected.

MOTION TO REJECT

AGAINST MOTION:5	Chairman Colvett, Jackson III, Petree, Raiford and Rainey
FOR MOTION:3	Doss, Dow, and Savage-Townes
NOT VOTING0	

Also, variance from 3.2.9E(2)(e) and Item 7.2.2E (2)(b) to allow a new five story mixed-use building with 148 units on Lot 24 in the South Main District, with a five foot balcony encroachment for the balconies on the 2nd, 3rd and 4th floors on the south side of Butler Avenue and the east side of Tennessee Street; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **December 16, 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 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) CONDITIONS

CONDITIONS:

1. A building permit shall not be issued until the project has been approved through the ASPR process and a memorandum of conformance (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 on this project
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. Final elevation and façade will be approved by OPD during the ASPR process.
- 4. The City Engineer shall approve the design, number and location of curb cuts. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk. 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. An encroachment easement shall be required for the new balconies.
- 6. Lot 24 shall contain a maximum of 130 dwelling units.
- 7. The maximum building height on Lot 24 shall be five (5) stories.

AGAINST MOTION:0

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

NOT VOTING0

welfare of the inhabitants of the City of Memphis and 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 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) CONDITIONS

CONDITIONS:

A variance to the Unified Development Code Sub-section 3.6.1A and Sub-section 9.7.3C is hereby approved subject to an approved site plan and the following additional conditions below:

1. No garage of any type, attached or detached, shall be permitted any further forward on the lot than the rear façade of the new residential structure.
2. Any front facing garage shall be detached and shall be located behind the rear façade of the residential structure.
3. A minimum lot width of 47.20 feet shall be permitted for Lot 2 as shown on the approved B.O.A. Site Plan.
4. The site plan graphic shall indicate a 20 foot setback for a front porch, and a 28 foot setback for the front façade of the house.
5. Any driveway shall extend beyond, (past), the front façade of the residential structure.
6. A front porch shall be required for the structure on Lot 2.
7. The site plan presented to the Office of Construction Code Enforcement shall illustrate a raised ground floor foundation height of 18 inches measured from top of grade to the first finished floor.

8. All approvals are made subject to an approved site plan. Any deviations from the plan may, at the discretion of the Planning Director, be approved administratively by the Planning Director or returned to the BOA for their review and approval.

AGAINST MOTION:0

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

NOT VOTING0

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 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 Variances are 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 may 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 AS AMENDED

CONDITIONS:

1. The revised Site/Landscape Plan that is included below shall replace the Site/Landscape Plan adopted pursuant to Docket # B.O.A. 98-54.

AGAINST MOTION:0

FOR MOTION:7

Chairman Colvett, Doss, Dow, Jackson, Petree,
Rainey and Salvage-Townes

NOT VOTING0

MOTION TO ADD (1) CONDITION (**Motion 2****)**

CONDITIONS:

1. The existing non-used (closed) curb cut on Wilburn should be replaced with new curb, gutter and sidewalk.

AGAINST MOTION:7
Chairman Colvett, Doss, Dow, Jackson, Petree,
Rainey and Salvage-Townes

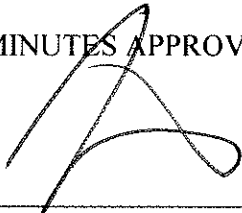
FOR MOTION:0

NOT VOTING0

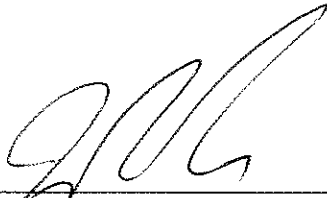
ADJOURNMENT:

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

MINUTES APPROVED: 1-27-16



CHAIRMAN



SECRETARY

