

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

March 23, 2016

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, March 23, 2016.

Present:

Mr.	Daniel Dow
Mr.	John Jackson III
Mr.	Carson Claybrook
Mr.	Timothy Rainey (Chair)
Ms.	Madeleine Savage-Townes (Vice Chair)
Ms.	Portia Scurlock
Ms.	Margaret Pritchard (Alternate)

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Brian Bacchus, OPD
Mr.	Gene Burse, OPD
Mr.	Calvin Abram, OPD
Mr.	Don Jones, OPD
Mr.	John Walpole, OCCE
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.

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 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 variance.

MOTION TO APPROVE WITH (3) CONDITIONS:

CONDITIONS:

1. The applicant shall continue to comply with the PD04-315cc, Oaklawn Estates PD; however, BOA16-08 shall govern the side 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 PD04-315cc Planned Development 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
Dow, Claybrook, Jackson, Savage-Townes,
Rainey, Scurlock and Pritchard

NOT VOTING0

MOTION TO APPROVE

AGAINST MOTION:7
Dow, Claybrook, Jackson, Savage-Townes,
Rainey, Scurlock and Pritchard

FOR MOTION:0

NOT VOTING0

NEW CASE:

3. **DOCKET:** **B.O.A. 16-10 (City)**
- APPLICANT:** Scott Rose
- PREMISES AFFECTED:** 1572 Eastmoreland Avenue
 North side of Eastmoreland Avenue; +/-120' west
 of Avalon Street
- USE DISTRICT:** Single Family Historic (R-6[H]) District
- REQUESTING:** Variance from Sub-Section 3.2.9F of the UDC to
 allow a front yard setback encroachment of 4.5
 feet into required setback of 35 feet in the
 Residential Single Family Historic (R-6[H]) District
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Scott Rose
- Opposition: None

THE RESOLUTION:

WHEREAS, Scott Rose, filed an application with the Board of Adjustment on **February 19, 2016** for a Variance from Sub-Section 3.2.9F of the UDC to allow a front yard setback encroachment of 4.5 feet into required setback of 35 feet in the Residential Single Family Historic (R-6[H]) District; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **March 23, 2016** 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.

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

AGAINST MOTION:0

FOR MOTION:7

Dow, Claybrook, Jackson, Savage-Townes,
Rainey, Scurlock and Pritchard

NOT VOTING0

NEW CASE:

4. **DOCKET:** **B.O.A. 16-11 (City)**
- APPLICANT:** Sugar Services Corporation
- PREMISES AFFECTED:** 15 G.E. Patterson Avenue
 Southeast corner of G.E. Patterson Avenue and
 Tennessee Street with Parcel ID 002091 00002C
 and 002091 00020
- USE DISTRICT:** Bluffview
- REQUESTING:** Variance from Section 7.2.5 and Article 10 of the
 UDC to allow the demolition of an existing
 structure and to build a new structure
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Dan Barton

 Opposition: Alex Turley
 Don Hutson

THE RESOLUTION:

WHEREAS, Sugar Services Corporation, filed an application with the Board of Adjustment on **February 23, 2016** a Variance from Section 7.2.5 and Article 10 of the UDC to allow the demolition of an existing structure and to build a new structure; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **March 23, 2016** 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) 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. 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.
2. 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.
3. No building permit shall be granted until a full set of engineered plans are approved by the City Engineer.
4. The City Engineer shall approve the design, number and location of curb cuts. Any existing nonconforming curb cuts and/or sidewalks 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 sidewalk, curb and gutter along the frontage of this site as necessary.

AGAINST MOTION:0

FOR MOTION:7

Dow, Claybrook, Jackson, Savage-Townes,
Rainey, Scurlock and Pritchard

NOT VOTING0

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) 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. The City Engineer shall require a full set of engineered plans, signed and sealed by a registered engineer in the State of Tennessee on this project.
2. No building permit shall be granted until a full set of engineered plans are approved by the City Engineer.
3. The City Engineer shall approve the design, number and location of curb cuts. Any existing nonconforming curb cuts and/or sidewalks shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
4. The variance is conditioned upon the submitted site and landscaping plan contained in the staff report. Any modification shall be submitted to the Office of Planning & Development for review and approval.

AGAINST MOTION:0

FOR MOTION:7

Dow, Claybrook, Jackson, Savage-Townes,
Rainey, Scurlock and Pritchard

NOT VOTING0

NEW CASE:

6. **DOCKET:** B.O.A. 16-13 (City)
- APPLICANT:** Wise Smith
- PREMISES AFFECTED:** Southeast corner of Mt. Moriah Road and S. White Station Road extending to Woodlark Avenue
- USE DISTRICT:** Commercial Mixed Use-1, General Office and Single Family Residential-8 Districts
- REQUESTING:** 1. Use Variance from 2.2.2 and 2.5.2 of the UDC to permit a commercial building and accessory uses in the R-8 and O-G zoning districts; 2. Setback variance from 3.10.2B to allow the commercial building to encroach into the 20' setback from Mt. Moriah and 3. Setback variance from 2.6.3J (1)(b) to allow an underground tank to encroach into the 20' setback from Mt. Moriah
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Wise Smith

Opposition: None

THE RESOLUTION:

WHEREAS, Wise Smith, filed an application with the Board of Adjustment on **February 22, 2016** requesting a 1. Use Variance from 2.2.2 and 2.5.2 of the UDC to permit a commercial building and accessory uses in the R-8 and O-G zoning districts; 2. Setback variance from 3.10.2B to allow the commercial building to encroach into the 20' setback from Mt. Moriah and 3. Setback variance from 2.6.3J (1)(b) to allow an underground tank to encroach into the 20' setback from Mt. Moriah; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **March 23, 2016** 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 (8) 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 five (5) years from the granting of the application.

MOTION TO APPROVE WITH (8) CONDITIONS

CONDITIONS:

1. A Final Certificate of Occupancy must be obtained from the Building Official by March 23, 2021. Additional requests for time extensions shall not be considered unless the applicant can show, to the satisfaction of the Planning Director that substantial progress towards the completion of the project has been reached.
2. Any Final Site Plan on this site shall follow the MOC process with full site plan review by the OPD and the City Engineer's Office.
3. 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.
4. No building permit shall be granted until a full set of engineered plans are approved by the City Engineer.
5. This site is located within the Ridgeway Drainage Basin, a highly sensitive basin. The City Engineer shall approve the design, number and location of curb cuts. Any existing nonconforming curb cuts and/or sidewalks 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 sidewalk, curb and gutter along the frontage of this site as necessary.

6. A detailed landscaping plan shall be provided subject to the review and approval of the OPD.
7. A detailed lighting plan showing candle foot levels of zero (0) at the north, east and south property lines shall be required.
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:6

Dow, Claybrook, Jackson, Savage-Townes,
Scurlock and Pritchard

NOT VOTING1

Rainey (recused)

ADJOURNMENT:

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

MINUTES APPROVED: April 27, 2016



CHAIRMAN



SECRETARY

