

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

May 25, 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, May 25, 2016.

Present:

Mr.	Daniel Dow
Mr.	John Jackson III
Mr.	Aaron Petree
Mr.	Timothy Rainey (Chair)
Ms.	Madeleine Savage-Townes (Vice Chair)

Mr.	Josh Whitehead, Secretary
-----	---------------------------

Also Present:

Mr.	Calvin Abram, OPD
Mr.	Brian Bacchus, OPD
Mr.	Gene Burse, OPD
Mr.	Charles Finkley, OPD
Mr.	Don Jones, OPD
Mr.	Chip Saliba, 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.

REMANDED CASE:

1. **DOCKET:** **B.O.A. 15-63 (CITY)**
- APPLICANT:** Rhee Kang/Peck Signs
- PREMISES AFFECTED:** 1911 Poplar Avenue
- USE DISTRICT:** Commercial Mixed Use (CMU-3) District
- REQUESTING:** Remand hearing to permit the existing Sports
 Junction detached sign to remain at its current
 location with its current design
- ACTION OF THE BOARD:** Approve With Conditions
- APPEARANCES:** For Applicant: Malcolm Futhey
- For Opposition: None
- Shelby County Legal Counsel - Robert B. Rolwing

THE RESOLUTION:

WHEREAS, Rhee Kang/Peck Signs, filed an application with the Board of Adjustment on **September 24, 2015** for re-use of an existing detached sign with the addition of an LED component; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **October 28, 2015** after due notice; and

WHEREAS, The Board rejected said application; and

WHEREAS, the ANP, Inc. (owners and operators of the Sports Junction) appealed the decision of the Board to Shelby County Chancery Court; and

WHEREAS, the Chancellor ordered the case be remanded back to the Board of Adjustment based on a settlement proposal; and

WHEREAS, a remand hearing was held by the Board on May 25, 2016 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 variances in Sub-Section 9.22.6.A of the Unified Development Code are met with this proposal; 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 settlement proposal for a variance is hereby 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 compliance with the approved conditions occur within ninety (90) days of the action of the Board.

MOTION TO APPROVE WITH CONDITIONS

AGAINST MOTION:0

FOR MOTION:5
Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

CONDITIONS

1. The existing detached sign shall remain in its current location with its current appearance and size as illustrated in the attached photo with the exception that a pole cover or jacket with a minimum dimension (depth or width) of 12 inches shall be installed completely enclosing the support pole. The colors and materials of the pole cover or jacket shall be similar and complementary to the Sports Junction Building. No LED component is permitted.
2. A minimum of 60 square feet of landscaping shall be installed immediately east of the sign on the east edge of the drive aisle in a planter box above the existing asphalt.

The content and quantity of landscaping is subject to the approval of the Office of Planning and Development.

3. A Sign Permit must be obtained before any construction and installation commences. The Sign Permit application will contain a letter of approval from the Office of Planning and Development that includes the approved pole cover or jacket and landscaping location and design.
4. The required improvements above in Conditions 1 and 2 shall be completed within 90 days of the date of approval of the sign by the Board of Adjustment.

HELD CASE:

2. **DOCKET:** **B.O.A. 16-15 (City)**
- APPLICANT:** Your Home, LLC
- PREMISES AFFECTED:** 4435 Summer Avenue
 Southeast corner of Summer Ave and Sandridge
 Street
- USE DISTRICT:** Residential-6 (R-6) District
- REQUESTING:** Variance from Section 4.5.3 (Parking Ratios) to
 allow for a reduction in the required parking for the
 existing buildings from the required 75 spaces to
 the proposed 37 spaces. The facility will be offices
 for the owner. And to allow parking in the R-6
 zoning district.
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Mike Fahy
- Opposition: Connie Harris

THE RESOLUTION:

WHEREAS, Your Home, LLC, filed an application with the Board of Adjustment on **March 22, 2016** for a Variance from Section 4.5.3 (Parking Ratios) to allow for a reduction in the required parking for the existing buildings from the required 75 spaces to the proposed 37 spaces. The facility will be offices for the owner. And to allow parking in the R-6 zoning district; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 25, 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 variances 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 8 (eight) 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 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 EIGHT (8) CONDITIONS:

CONDITIONS:

1. 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. 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. 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.
4. A landscape plan shall be submitted and approved by OPD.
5. On-street parking shall not be permitted for use by visitors nor employees whom visit the site.
6. A six-foot (6') masonry wall shall be established along eastern and southern property boundaries.
7. Outdoor operations shall not be permitted.
8. Dumpster shall have a masonry wall enclosure.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

- 3. **DOCKET:** **B.O.A. 16-19 (City)**

- APPLICANT:** William C. and Caroline J. Crosby

- PREMISES AFFECTED:** 4108 Barfield Road

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

- REQUESTING:** Variance from Subsection 3.6.1A to allow an
encroachment into the side street setback

- ACTION OF THE BOARD:** Approve

- APPEARANCES:** For Applicant: Terry Johnson

- Opposition: None

THE RESOLUTION:

WHEREAS, William C. and Caroline J. Crosby, filed an application with the Board of Adjustment on **March 25, 2016** for a Variance from Subsection 3.6.1A to allow an encroachment into the side street setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 three (3) 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) CONDITIONS

CONDITIONS:

1. The applicant shall continue to comply with the Walnut Grove Subdivision Plat.
2. The property owner to the site shall continue to comply with all setback encroachments that have been identified within BOA16-19 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:5
Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING:0

NEW CASE:

4. **DOCKET:** **B.O.A. 16-23 (City)**
- APPLICANT:** Old Dominion Freight Line, Inc.
- PREMISES AFFECTED:** Northwest corner of Airways Boulevard and Spirit of 76 Dr.
- USE DISTRICT:** Residential Single Family-8 (R-8) District
- REQUESTING:** variance from Paragraph 4.9.7 B (2) to allow an increase in the size of a detached sign from 32 square feet to 40 square feet
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Cindy Reaves
Opposition: None

THE RESOLUTION:

WHEREAS, Old Dominion Freight Line, Inc., filed an application with the Board of Adjustment on **March 29, 2016** for a Variance from Paragraph 4.9.7 B (2) to allow an increase in the size of a detached sign from 32 square feet to 40 square feet; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 five (5) conditions.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted for the requested sign 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 (5) FIVE CONDTIONS:

CONDITIONS

1. Revise the site plan to demonstrate the setback from public rights-of-way.
2. Show the landscaped area on the revised site plan at the base of the sign and indicate that the area is equal or larger than two times the sign area.
3. Indicate the planted materials, that irrigation is provided to the landscaping, and the vision triangle on the site plan and, confirm that there is no obstruction.
4. Add a statement to the site plan that all other requirements of the sub-section 4.9.7 B are being met and that the proposed sign shall not include LED or changeable copy components.
5. The requested variance is approved subject to an approved site plan that is stamped and signed by the Planning Director. Revisions to the site plan shall be resubmitted to the Planning Director for his review and determination as to whether said changes can be addressed administratively or require action by the Board of Adjustment.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

RECUSED:0

NEW CASE:

5. **DOCKET:** **B.O.A. 16-24 (City)**
- APPLICANT:** Memphis Museums Inc.
- PREMISES AFFECTED:** 3050 Central Avenue
- USE DISTRICT:**
- REQUESTING:** Use Variance from Section 2.5.2 of the Unified
Development Code (UDC) to allow upper floor
expansions and an elevator addition to the Pink
Palace Museum
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Lee Askew
- Opposition: None

THE RESOLUTION:

WHEREAS, Memphis Museums Inc., filed an application with the Board of Adjustment on **April 6, 2016** a Use Variance to allow upper floor expansions and an elevator addition to the Pink Palace Museum; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Use 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:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

6. **DOCKET:** **B.O.A. 16-25 (County)**
- APPLICANT:** Dr. Ugly Tree Services, Eddie Perry
- PREMISES AFFECTED:** 8770-80 Phillip Rd. and Brief Rd.
- USE DISTRICT:** Residential Single Family-10 & Floodplain Overlay
(R-10[FP]) District
- REQUESTING:** Use variance from Section 2.5.2 to allow the
parking of chippers and other tree service vehicles
on a residentially zoned lot
- ACTION OF THE BOARD:** Approve
- APPEARANCES:** For Applicant: Eddie Perry
- Opposition: David Coker

THE RESOLUTION:

WHEREAS, Dr. Ugly Tree Services, Eddie Perry, filed an application with the Board of Adjustment on **April 19, 2016** seeking a Use variance from Section 2.5.2 to allow the parking of chippers and other tree service vehicles on a residentially zoned lot; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Use 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 two (2) years from the granting of the application.

MOTION TO APPROVE WITH (8) CONDITONS:

CONDITIONS

1. The applicant shall maintain and/or install a sight-proof wooden fence and landscaping. The landscaping shall be composed of a species of holly, at six feet in height, and spaced no more than 10 feet apart.
2. No processing of materials of any type shall be permitted on the property (i.e. wood chipping, log cutting, burning, grinding etc.), as part of the business operation;
3. No mulch, wood, manure, gravel, rocks or landscape materials shall be stored on the property, as part of the business operation;
4. A solid surface access driveway shall be installed leading from the roadway to the storage area's opening;
5. The hours of operation shall be limited from 7:00 a.m. to 7:00 p.m.;
6. Storage shall be limited to only the fenced area shown in the application, and not on the entire property; and,
7. The dimensions of the storage area shall be added to the approval.
8. The approved plan shall be stamped and signed by the Planning Director. Any changes to the plan shall be submitted to the OPD for review and determination of whether or not the site plan can be approved administratively or require a Major Modification application.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

7. **DOCKET:** **B.O.A. 16-26 (City)**

APPLICANT: Krystal V. LLC

PREMISES AFFECTED: 4395 Elvis Presley Boulevard

USE DISTRICT: Commercial Mixed Use (CMU-1)

REQUESTING: Variance to Paragraph 4.6.8A(1) of the Unified
 Development Code to permit a drive through lane
 to be placed between the street and building as part
 of the construction of a new Krystal Restaurant

ACTION OF THE BOARD: Approve with condition

APPEARANCES: For Applicant: Hank Wright

 Opposition: None

THE RESOLUTION:

WHEREAS, Krystal V. LLC, filed an application with the Board of Adjustment on **April 15, 2016** a Variance to Paragraph 4.6.8A(1) of the Unified Development Code to permit a drive through lane to be placed between the street and building as part of the construction of a new Krystal Restaurant; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 WITH (1) ONE CONDITION

CONDITION:

1. Any redevelopment of the site shall comply with the requirements of the Unified Development Code with the exception of the approved variance. Compliance will be determined during the Administrative Site Plan Review (ASPR) Process administered by the Office of Construction Code Enforcement.

AGAINST MOTION:0

FOR MOTION:5
Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

8. **DOCKET:** **B.O.A. 16-27 (City)**

APPLICANT: Jerry and Sharon Williams

PREMISES AFFECTED: 1279 Peabody Avenue

USE DISTRICT: Residential Work Historic Overlay (RW-H)

REQUESTING: Use Variance from Section 2.5.2 to allow a
 detoxification center

ACTION OF THE BOARD: None ***Withdrawn***

NEW CASE:

9. **DOCKET:** **B.O.A. 16-28 (City)**

APPLICANT: Melvin Harris

PREMISES AFFECTED: 4283 Gladstone Road

USE DISTRICT: Residential (R-6) District

REQUESTING: Variance from Subsection 3.6.1A to allow an
 Encroachment into the side and rear yard setback

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: None

 Opposition: None

THE RESOLUTION:

WHEREAS, Melvin Harris, filed an application with the Board of Adjustment on **March 30, 2016** a Variance from Subsection 3.6.1A to allow an Encroachment into the side and rear yard setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 WITH CONDITIONS

CONDITIONS:

1. The property owner of the property shall continue to comply with all setback encroachments that have been identified within BOA16-28 variance application.

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. The applicant shall improve the existing six (6) foot in height wood panel fence, located on the southern side of the home, within the side yard setback, to limit visibility of the accessory structure located along the southern property line and the applicant shall plant a tree with a minimum height of six (6) feet and two-inch caliper along the southern property line within the front yard of the property to further limit visibility of the accessory structure

AGAINST MOTION:0

FOR MOTION:5
Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

10. **DOCKET:** B.O.A. 16-29 (City)

APPLICANT: Latino 901 Auto Sales

PREMISES AFFECTED: 4035 Summer Avenue

USE DISTRICT: Residential Urban-3 (RU-3) District

REQUESTING: Use Variance from Section 2.5.2 to allow auto sales

ACTION OF THE BOARD: Reject

APPEARANCES: For Applicant: David Bray
Brittany Migana
Oscar Migana

Opposition: None

THE RESOLUTION:

WHEREAS, Latino 901 Auto Sales, filed an application with the Board of Adjustment on **March 30, 2016** a Use Variance from Section 2.5.2 to allow auto sales; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are not being met; and;

WHEREAS, The Board has determined that said Use 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 not approved.

NOW, THEREFORE, Be it resolved that the application be and it hereby is rejected and that the decision of the Memphis and Shelby County Building Official be and hereby is upheld.

MOTION TO APPROVE

AGAINST MOTION:1
Savage-Townes

FOR MOTION:3
Dow, Jackson and Petree

NOT VOTING1
Rainey

NEW CASE:

11. **DOCKET:** **B.O.A. 16-30 (County)**

APPLICANT: Melissa Armstrong

PREMISES AFFECTED: Old Covington Pike-Block 47-Parcel 290; +/-127'
NE of Meegan Drive

USE DISTRICT: Residential (R-10)

REQUESTING: Use variance from Section 2.5.2 to allow farm and equestrian animals to graze and be raised on-site

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Tim McCaskill
Opposition: None

THE RESOLUTION:

WHEREAS, Melissa Armstrong, filed an application with the Board of Adjustment on **March 30, 2016** a Use variance from Section 2.5.2 to allow farm and equestrian animals to graze and be raised on-site; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Use 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 SEVEN (7) CONDITIONS

CONDITIONS:

1. The applicant shall submit a revised site plan which meets the conditional use permit guidelines.
2. The property owner shall maintain a 100-foot buffer around the entire site. This buffer shall not have any livestock grazing or entering the buffer area.
3. The applicant shall construct a home on the site prior to any animals being placed on the property.
4. The applicant shall install a five (5) foot-height split rail fence along the property's western boundary fronting Old Covington Pike and a six (6) foot-height fence along the entire northern, southern and eastern boundaries. This fence shall be installed at the 100-foot buffer line. The type of fence shall be identified on the revised site plan and approved by the Office of Planning and Development.
5. The leasing of stables or commercial uses for the property shall not be permitted.
6. The applicant shall not house more than one (1) horse per acre of land that is not included within the buffered area. This would net a maximum of 13 horses to the site. This condition is a modification of the Right to Farm Act requiring one (1) acre per horse within an agricultural zoning district.
7. The applicant shall submit all information to OPD prior to receiving a Board of Appeals letter of approval.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

NEW CASE:

12. **DOCKET:** **B.O.A. 16-31 (City)**

APPLICANT: Marketplace Development, LLC

PREMISES AFFECTED: 1974 Whitten Road

USE DISTRICT: Employment (EMP) District

REQUESTING: Variance from Item 2.6.3J (1)(b) for a reduction in required front yard setbacks of sixty (60) and forty-two (42) feet to thirty (30) and twenty (20) feet; to allow installation of fuel tanks and construction of a fuel canopy with gasoline pumps

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Wise Smith

Opposition: John Dudas

THE RESOLUTION:

WHEREAS, Marketplace Development, LLC, filed an application with the Board of Adjustment on **April 26, 2016** for a Variance from Item 2.6.3J (1)(b) for a reduction in required front yard setbacks of sixty (60) and forty-two (42) feet to thirty (30) and twenty (20) feet; to allow installation of fuel tanks and construction of a fuel canopy with gasoline pumps; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 with five (5) 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 FIVE(5) CONDITIONS

CONDITIONS:

1. The convenience store with gasoline pumps, including a fuel canopy shall be in accordance with Sub-Sections 2.6.3J and 3.10.2B of the zoning code, except underground fuel tanks shall be setback fifteen (15) feet from the right-of-way-line of Appling Farms Parkway.
2. The fuel canopy shall be architecturally compatible in color and materials with the principal building, including canopy columns to be wrapped and enclosed with the same brick as the convenience store building.
3. The building and fuel canopy elevation plans shall be submitted for review and approval by staff and incorporated into the approved site and landscape plans.
4. The dumpster enclosure and loading area shall be in accordance with Sub-Section 4.6.8(B) of the zoning code, and internal landscaping for small understory trees and shrubs near the building shall be incorporated into the landscape plan.
5. The variance shall be bound to the approved site plan. Any minor modifications may be submitted to the Office of Planning & Development for review and approval by the Planning Director.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

13. **DOCKET:** B.O.A. 16-32 (County)

APPLICANT: Michael Jones

PREMISES AFFECTED: Southern terminus of Mockingbird Drive, Tipton County, TN

USE DISTRICT: Conservation Agriculture (CA) District

REQUESTING: Variance from Subsection 9.7.3F to allow a street stub to constitute road frontage on the south end of Mockingbird Drive in Tipton County

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Stewart Brackstone
Michael Jones

Opposition: None

THE RESOLUTION:

WHEREAS, Michael Jones, filed an application with the Board of Adjustment on **April 25, 2016** seeking a Variance from Subsection 9.7.3F to allow a street stub to constitute road frontage on the south end of Mockingbird Drive in Tipton County; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Use 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 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 THREE (3) CONDITIONS

CONDITIONS:

1. Prior to the issuance of any building permit, the applicant shall provide to the satisfaction of the Planning Director, documentation that adequate utilities and public services are available to this site for the enjoyment of both current and future residents. Such services shall include but not be limited to, electric service, public water, or a well approved by the Health Dept., a copy of the subdivision plat dedicating Mockingbird Drive as a public street along with a notarized statement from a County Official that said street is available to this site for this purpose, a statement from a County Official that Fire Service is available, and a statement from the County Sheriff or similar official that police services are available to this site.

2. During the building permit review process, the applicant shall submit a “hold harmless” agreement to limit any liability of Shelby County Government due to the lack of access from Shelby County to this property.

3. The submitted plan shall be marked as the approved plan. Changes to the plan, including the addition of a second residential unit shall require the filing of either a Major or Minor Modification Application.

AGAINST MOTION:0

FOR MOTION:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

14. **DOCKET:** B.O.A. 16-34 (City)

APPLICANT: Monroe Associates, LLC

PREMISES AFFECTED: 320 Monroe Avenue

USE DISTRICT: Sports and Entertainment (SE) District

REQUESTING: Variance from Subsection 7.2.2C to allow a doggy daycare with outdoor runs within the Sports and Entertainment zoning district

ACTION OF THE BOARD: Approve

APPEARANCES: For Applicant: Cindy Reaves
Mike Todd
Opposition: None

THE RESOLUTION:

WHEREAS, Monroe Associates, LLC, filed an application with the Board of Adjustment on **April 26, 2016** a Variance from Subsection 7.2.2C to allow a doggy daycare with outdoor runs within the Sports and Entertainment zoning district; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, **May 25, 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 Use Variance in Sub-Section 9.22.6.A of the Unified Development Code are being met; and;

WHEREAS, The Board has determined that said Use 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:5

Dow, Jackson, Savage-Townes,
Rainey and Petree

NOT VOTING0

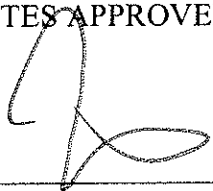
Conditions BOA16-34:

1. The applicant shall provide OPD with a revised site plan detailing the dimensions and location of the dog play area and fencing.
2. The applicant shall provide a landscape plan to be approved by OPD. This landscape plan shall take into consideration a buffer separating the fence from the street along the northern and southern property boundaries.
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.
4. The outdoor play area shall be cleaned daily and any noisome conditions shall be remedied immediately.

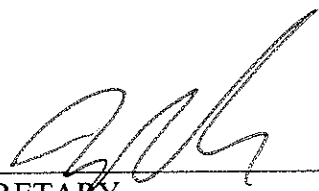
ADJOURNMENT:

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

MINUTES APPROVED: 7-27-16



CHAIRMAN



SECRETARY

