

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

Wednesday, December 21, 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, December 21, 2016.

**Present:**

Mr.	Carson Claybrook
Mr.	Daniel Dow
Ms.	Joy Doss
Mr.	John Jackson
Mr.	Aaron Petree
Mr.	Timothy Rainey (Chair)
Ms.	Portia Scurlock
Ms.	Mary Sharp (Alternate)

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Mr.	Josh Whitehead, Secretary
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**Also Present:**

Mr.	Brian Bacchus, OPD
Mr.	Don Jones, OPD
Mr.	Chip Saliba, OPD
Mr.	Josh Whitehead, 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.



**NEW CASE:**

2.     **DOCKET:**                             **B.O.A. 16-70 (City)**
- APPLICANT:**                     Marketplace Development, LLC
- PREMISES AFFECTED:**         1442 Airways Boulevard
- USE DISTRICT:**                 Residential Urban (RU-1) and Commercial Mixed Use (CMU-3) Districts
- REQUESTING:**                   Use variance to allow a retail sales building to encroach into Residential Urban (RU-1) District and a variance from Sub-section 3.10.2B to allow reductions in the required parking setbacks of eight (8) feet
- ACTION OF THE BOARD:**         Approve
- APPEARANCES:**               For Applicant: J Wise & Hunter Smith-Marketplace Development, LLC
- Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Marketplace Development, LLC, filed an application with the Board of Adjustment for Use variance to allow a retail sales building to encroach into the Residential Urban (RU-1) District and a variance from Sub-section 3.10.2B to allow reductions in the required parking setbacks of eight (8) feet; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A & B of the Unified Development Code are being met; and;

**WHEREAS,** The Board has determined that said variances would not be unduly detrimental to the other properties in the vicinity of the subject premises; and

**WHEREAS**, The Board is further of the opinion that to allow the requests 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 on consent with three (3) conditions.

**NOW, THEREFORE**, Be it resolved that the application be and it hereby is granted for the requested variances 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 shall be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years from the date of granting said variances.

**MOTION TO APPROVE ON CONSENT WITH THREE (3) CONDITIONS:**

1. A pedestrian way leading to a set of double doors shall be provided from Trezevant Street as illustrated on the Site Plan.
2. The approval shall be contingent upon the submitted site plan. Any deviations shall be submitted to the Office of Planning & Development and processed in accordance with Section 9.22.9 of the zoning code.
3. The applicant shall only be required to obtain curb-cut permits from City Engineering, not a full set of engineered plans.

AGAINST MOTION: .....0

FOR MOTION: .....7

Claybrook, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

NOT VOTING .....0

**NEW CASE:**

3.     **DOCKET:**                                 **B.O.A. 16-72 (City)**
- APPLICANT:**                         Jackie Haire
- PREMISES AFFECTED:**             5197 Kingswood Cove
- USE DISTRICT:**                     Residential Single-Family-10 (R-10) District
- REQUESTING:**                     Variance from Sub-Section 4.67C to allow a fence of greater than four feet in height in the required front yard
- ACTION OF THE BOARD:**            Approve
- APPEARANCES:**                    For Applicant: Jackie Haire
- Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Jackie Haire, filed an application with the Board of Adjustment for a Variance from Sub-Section 4.67C to allow a fence of greater than four feet in height in the required front yard; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A of the Unified Development Code are being met; and;

**WHEREAS,** The Board has determined that said variance would not be unduly detrimental to the other properties in the vicinity of the subject premises; and

**WHEREAS,** The Board is further of the opinion that to allow this request will not unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby; and, therefore, this application is approved with one (1) condition.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted for the requested variance 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 date of granting the variance.

**MOTION TO APPROVE ON CONSENT WITH (1) ONE CONDITON:**

1. This approval is contingent upon the submitted site plan. Any deviations shall be submitted to the Office of Planning and Development.

AGAINST MOTION: .....0

FOR MOTION: .....7

Claybrook, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

NOT VOTING .....0

4. **DOCKET:** B.O.A. 16-73 (City)

**APPLICANT:** Gerardo Romero

**PREMISES AFFECTED:** 4200 and 4210 Prescott Road

**USE DISTRICT:** Residential Single-Family-8 (R-8) District

**REQUESTING:** Use Variance from Sub-Section 2.5.2 to allow horses to be raised in R-8 zoning

**ACTION OF THE BOARD:** Reject

**APPEARANCES:** For Applicant: Tim McCaskill

Opposition: Janet Brown  
James Brown  
Regina Teuscher

**THE RESOLUTION:**

**WHEREAS,** Gerardo Romero, filed an application with the Board of Adjustment for a Use Variance from Sub-Section 2.5.2 to allow horses to be raised in R-8 zoning; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A of the Unified Development Code are not being met; and;

**WHEREAS,** The Board has determined that said Use Variance will 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 not 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 was rejected.

**NOW, THEREFORE,** Be it resolved that the application is rejected for the requested Use Variance.

**MOTION TO REJECT**

AGAINST MOTION: .....8  
Claybrook, Doss, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

FOR MOTION: .....0

NOT VOTING .....0



**NEW CASE:**

5.     **DOCKET:**                             **B.O.A. 16-74 (City)**
- APPLICANT:**                     Nathan Strong
- PREMISES AFFECTED:**         1023 Jackson
- USE DISTRICT:**                 Residential Urban-3 (RU-3) District
- REQUESTING:**                 1) Use variance from Section 2.5.2 to allow a parking lot accessory to restaurant to be located within a residential district and 2) bulk variance from Item 3.10.2B(1)(b) to allow a building addition along the side street property line without windows
- ACTION OF THE BOARD:**         Approve
- APPEARANCES:**               For Applicant: None
- Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Nathan Strong, filed an application with the Board of Adjustment for a 1) Use variance from Section 2.5.2 to allow a parking lot accessory to restaurant to be located within a residential district and 2) bulk variance from Item 3.10.2B(1)(b) to allow a building addition along the side street property line without windows; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A 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 two (2) conditions.

**NOW, THEREFORE**, Be it resolved that the application be and it hereby is granted for the requested variance 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 date of granting the variance.

**MOTION TO APPROVE ON CONSENT WITH (2) TWO CONDITONS**

**CONDITIONS:**

1. This approval is contingent upon the submitted site plan (see attached). Any deviations shall be submitted to the Office of Planning and Development and processed in accordance with Sec. 9.22.9 of the Unified Development Code.
  
2. The applicant shall only be required to obtain a street cut permit from the Division of Engineering, not full set of engineered plans (see Engineering Comment No. 1 and 2 on page 13 of [the] staff report).

AGAINST MOTION: .....0

FOR MOTION: .....8  
Claybrook, Doss, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

NOT VOTING .....0

**NEW CASE:**

6.     **DOCKET:**                                     **B.O.A. 16-75 (City)**
- APPLICANT:**                               Church of Christ-Horn Lake Road
- PREMISES AFFECTED:**               3867 Horn Lake Road  
  *(Northwest corner of Horn Lake Road and Levi Road)*
- USE DISTRICT:**                           Residential Single Family (R-6) District
- REQUESTING:**                           Modification to an approved Site Plan to allow  
  construction of a new accessory building for a Family  
  Life Center
- ACTION OF THE BOARD:**               Approve
- APPEARANCES:**                       For Applicant: Bill Fuller
- Opposition: None

**THE RESOLUTION:**

**WHEREAS,** Church of Christ-Horn Lake Road, filed an application with the Board of Adjustment for a Modification to an approved Site Plan to allow construction of a new accessory building for a Family Life Center; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A of the Unified Development Code are being met; and;

**WHEREAS,** The Board has determined that said modification 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 modification 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 on consent.

**NOW, THEREFORE,** Be it resolved that the application be and it hereby is granted for the requested modification and that the decision of the Memphis and Shelby County Building Official be and hereby is overruled. Provided, however, that the modification 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 date of granting the modification.

**MOTION TO APPROVE ON CONSENT**

AGAINST MOTION: .....0

FOR MOTION: .....8

Claybrook, Doss, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

NOT VOTING .....0

**NEW CASE:**

7.     **DOCKET:**                                     **B.O.A. 16-76 (City)**
- APPLICANT:**                               Unity Masonic Lodge #95/Bill Fuller
- PREMISES AFFECTED:**                 642 Colonial Road
- USE DISTRICT:**                         Residential Single Family (R-10) District
- REQUESTING:**                         Modification of existing site improvements to allow building and parking expansion of the Masonic Lodge
- ACTION OF THE BOARD:**               Approve
- APPEARANCES:**                       For Applicant: William Fuller
- Opposition: None

**THE RESOLUTION:**

**WHEREAS**, Unity Masonic Lodge #95, filed an application with the Board of Adjustment for Modification of existing site improvements to allow building and parking expansion of the Masonic Lodge; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, December 21, 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 9.22.6A 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 for the requested modification 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 date of granting the modification.

**MOTION TO APPROVE ON CONSENT WITH (3) THREE CONDITONS:**

1. The existing wooden fence along the east property line shall be replaced with a new fence that meets the fencing standards of a Class III Buffer – Type A or Type B as found in the Unified Development Code.
2. Indian Hawthorn Shrubs shall be planted every 3 feet on center in front of the parking spaces facing Southern Avenue.
3. The applicant shall submit to the Office of Planning and Development a Final Site Plan and Final Landscaping Plan for the issuing of a Memo of Conformance. City Engineering review and approval of the Final Site Plan and Final Landscaping Plan is required by virtue of the site being located in the Cherry Bayou Sensitive Drainage Basin and the site being over an acre in area.

AGAINST MOTION: .....0

FOR MOTION: .....8

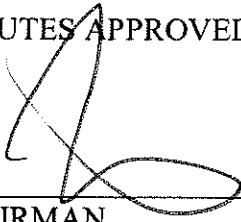
Claybrook, Doss, Dow, Jackson, Petree, Rainey,  
Sharp & Scurlock

NOT VOTING .....0

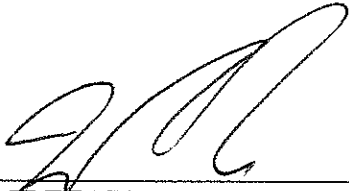
**ADJOURNMENT:**

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

MINUTES APPROVED: 1-25-17



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CHAIRMAN



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SECRETARY

