

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

February 22, 2012

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 1:30 p.m., Wednesday, February 22, 2012

Present:

Mr.	Raymond Brown
Mr.	Jimmy Burditt
Mr.	Daniel Dow
Mr.	Andre Jones
Ms.	Olliette Murry-Drobot
Ms.	Lynda Raiford
Mr.	Timothy Rainey
Mr.	Andrew Trippel

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Norman Saliba, OPD
Mr.	Donald Jones, OPD
Ms.	Greg Love, OPD
Mr.	Brian Bacchus, OPD
Mr.	Josh Whitehead, Secretary
Mr.	Nate Taylor, City Engineer
Mr.	Robert Evans, County Engineer

A quorum being present, the Board proceeded to consideration of the days agenda. The minutes from the previous January 25, 2012 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:

1. **DOCKET:** B.O.A 12-01 (CITY)
- APPLICANT:** CFT Developments, LLC
- PREMISES AFFECTED:** 585 North Germantown Parkway
(West side of Germantown Parkway; +/-218.81 feet south of Trinity Road)
- USE DISTRICT:** Employment (EMP) District
- REQUESTING:** Variation to Article 3.1.4.A of the Unified Development Code to allow more than one principal building on a lot
- ACTION OF THE BOARD:** Approval with Conditions
- APPEARANCES:** For Applicant: Cindy Reaves
For Opposition: None

THE RESOLUTION:

WHEREAS, CFT Developments, LLC filed an application with the Board of Adjustment on February 1, 2012 requesting a variance to Article 3.1.4.A of the Unified Development Code to allow more than one principal building on a lot; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 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 Article 9 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 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the application be and it hereby is granted. Provided, however, that the variation 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

AGAINST MOTION:0

FOR MOTION:8

Chairman Raiford, Brown, Burditt, Dow, Murray-Drobot, Jones,
Rainey and Trippel

NOT VOTING:0

ACTION IS TO: APPROVE WITH CONDITIONS

CONDITIONS:

DOCKET # BOA 12-01

The Memphis and Shelby County Board of Adjustment on February 22, 2012 approved a variation to Article 3.1.4.A of the Unified Development Code to allow more than one principal building on a lot for Lot 1B subject to the following conditions:

1. The existing non-conforming off-premise advertising sign is permitted no build-back rights with the variation to Article 3.1.4.A of the Unified Development Code. Its build-back rights shall be governed by Article 4.10.14 of the Unified Development Code (Non-Conforming Signs).
2. Building setbacks shall be illustrated on the site plan.

NEW CASE:

2. **DOCKET:** B.O.A. 12-02 (CITY)
- APPLICANT:** Evangelical Christian School
- PREMISES AFFECTED:** 7600 Macon Road
(North side of Macon Road; +/-586 feet west of Starboard Drive)
- USE DISTRICT:** Conservation Agriculture (CA) District
- REQUESTING:** Increase the maximum height allowed within the Conservation Agriculture (CA) District from 30 feet to 80 feet
- ACTION OF THE BOARD:** Approval
- APPEARANCES:** For Applicant: David Baker, Fisher & Arnold
For Opposition: None

THE RESOLUTION:

WHEREAS, Evangelical Christian School filed an application with the Board of Adjustment on January 31, 2012 by requesting a variance to increase the maximum height allowed within the Conservation Agriculture (CA) District from 30 feet to 80 feet; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, January 31, 2012 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 Section 9 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 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 County of Shelby; and, therefore, this application is approved as submitted.

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 variation 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:8
Chairman Raiford, Brown, Burditt, Dow, Murray-Drobot, Jones,
Rainey and Trippel

NOT VOTING:0

ACTION IS TO APPROVE

NEW CASE:

3. **DOCKET:**

B.O.A. 12-03 (County)

APPLICANT:

Scott Quiseng

PREMISES AFFECTED:

9104 Riveredge Drive
(Northeast corner of Forest Hill-Irene Road and Riveredge Drive)

USE DISTRICT:

Conservation Agriculture (CA) District

REQUESTING:

Variance to Article 2.7.3.B.1. to allow an accessory dwelling unit/pool house building to exceed 700 square feet in area

ACTION OF THE BOARD:

Approval with Site Plan Conditions

APPEARANCES:

For Applicant: John Ruch

For Opposition: None

THE RESOLUTION:

WHEREAS, The Memphis and Shelby County Building Official rejected an application by Jon Ruch Builders for a building permit at the above address to construct an accessory dwelling unit/pool house building to exceed 700 square feet in the area; and

WHEREAS, Jon Ruch on behalf of the homeowner, Scott Quiseng filed an application with the Board of Adjustment on January 31, 2012 requesting a variance to Article 2.7.3.B.1 to allow an accessory dwelling unit/pool house building to exceed 700 square feet in the area; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 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 Section 9.22.6 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 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 County of Shelby; and, therefore, this application is approved as submitted.

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 variation 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:8

Chairman Raiford, Brown, Burditt, Dow, Murray-Drobot, Jones,
Rainey and Trippel

NOT VOTING:0

ACTION IS TO APPROVE WITH THE FOLLOWING:

SITE PLAN CONDITIONS:

1. A pool house/accessory dwelling unit shall allow a maximum of 1,500 square feet with a maximum of 2,000 square feet of heated floor area space.
2. The front yard setback for the pool house/accessory dwelling unit building shall be setback a minimum of thirty (30) feet from Eagle Spring Cove.
3. The small storage building shall be removed or shall be setback a minimum of five (5) feet from the north (rear) property line and a minimum of thirty (30) feet from Eagle Spring Cove.

NEW CASE:

4. **DOCKET:** B.O.A. 12-04 (CITY)

APPLICANT: Alco Management, Inc.

PREMISES AFFECTED: 5459 Hudgins Road
(West side of Hudgins Road; +/-132.97 feet south of Prado Avenue)

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

REQUESTING: Revise site plan to include minor improvements (single story office building, relocate mailboxes, add fence along property frontage, add playground, revise parking layout)

ACTION OF THE BOARD: Approval with Conditions

APPEARANCES: For Applicant: Alco Management, Inc.
For Opposition: Janet Thomas & Clara Parker

THE RESOLUTION:

WHEREAS, Alco Management, Inc. filed an application with the Board of Adjustment on February 1, 2012 by requesting a variance to revise site plan to include minor improvements (single story office building, relocate mailboxes, add fence along property frontage, add playground, revise parking layout); and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 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 Section 9 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 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 County of Shelby; and, therefore, this application is approved as submitted.

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 variation 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:1
Brown

FOR MOTION:7
Chairman Raiford, Burditt, Dow, Murray-Drobot, Jones, Rainey,
and Trippel

NOT VOTING:0

ACTION IS TO APPROVE WITH THE FOLLOWING CONDITIONS:

1. Demolish the existing, small (500-700 sq. ft.) office building and accessory shed and replace them with one new office building. The new building is proposed for the same location as the existing office building, has a similar foot print, and will be similar in design matching the character of the apartment buildings on site.
2. Erect decorative fencing along the frontage of the site and chain link fencing along the northern and southern boundaries.
3. Reposition mailbox-station and add canopy.
4. Add playground.
5. Revise site plan to reflect minor pedestrian walkway improvements and current parking layout and as illustrated on site plan.

THE VARIANCES ARE APPROVED WITH THE FOLLOWING CONDITIONS.

1. Fencing shall be replaced along both the northern and southern property boundary of the subject site; fencing along the southern boundary may be chain link; however, fencing along the northern boundary shall be an 8 foot wooden sight-proof fence with flush/finished side facing the subject site. Fencing along the northern and southern boundaries shall connect with fencing that traverses both the western and eastern property boundaries. The intent of this condition is to define the property boundaries as well as help to provide a secured site and provide sensible pedestrian routes and prevent trespassing.
2. Prior to final plan approval the applicant shall illustrate elevations for: fencing (particularly fencing proposed for the area along the frontage of the property), and the proposed, new office building. These elevations shall be illustrated and made a part of the final plan submittal and shall meet the approval of OPD.
3. The location of trash dumpsters shall be illustrated on the site plan and shall be enclosed by sight-proof fencing or opaque walls of at least 8 feet in height that ***sufficiently screen the dumpsters from view. An equivalent alternative plan for screening the trash dumpsters may be considered by OPD.***

NEW CASE:

5. **DOCKET:** B.O.A. 12-05 (CITY)
- APPLICANT:** Gerardo Cruz/Jazmin Cruz
- PREMISES AFFECTED:** 3454 Swanson Cove
(West side of Swanson Cove and Cedrick Avenue)
- USE DISTRICT:** Residential Single Family-6 (R-6) District
- REQUESTING:** A variance to Section 3.6.1 to allow 1.5 foot encroachment into the required 5 foot side yard setback for a newly built carport
- ACTION OF THE BOARD:** Approval
- APPEARANCES:** For Applicant: Jazmin Cruz
For Opposition: None

THE RESOLUTION:

WHEREAS, Gerardo Cruz/Jazmin Cruz filed an application with the Board of Adjustment on January 31, 2012 by requesting a variance to Section 3.6.1 to allow 1.5 foot encroachment into the required 5 foot side yard setback for a newly built carport; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 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 Chapter 9.22 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 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 County of Shelby; and, therefore, this application is approved as submitted.

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 variation 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
Burditt, Dow, Murray-Drobot, Jones, Rainey, and Trippel

NOT VOTING:1
Chairman Raiford

ACTION IS TO APPROVE WITH THE FOLLOWING CONDITION:

1. Demolish the existing storage building and if rebuilt, rebuild according to current Zoning and Building Code requirement.

NEW CASE:

6. **DOCKET:**

B.O.A. 12-07 (COUNTY)

APPLICANT:

Sheila and Ralph Templeman

PREMISES AFFECTED:

**4708 Benjestown Road
(East side of Benjestown Road; +/-780.75 feet
north of Circle Road)**

USE DISTRICT:

Conservation Agriculture (CA) District

REQUESTING:

1. A Use Variance allow A Live/Work Use with Outdoor Storage in the Conservation Agriculture (CA) Zoning District
2. A variance to permit an Accessory Dwelling Unit in front of the Principal Dwelling Unit

ACTION OF THE BOARD:

1. Approval: Motion 1 – Variance for the location of a Accessory Dwelling Unit
2. Rejection: Motion 2 – Use Variance Request

APPEARANCES:

For Applicant: David Bray & Sheila Templeman

For Opposition: Mark Garrard & Rodney Wilson

THE RESOLUTION:

WHEREAS, On January 18, 2012, the Memphis and Shelby County Building Official cited Sheila and Ralph Templeman for operating a business in a Residential District; and

WHEREAS, Shelia & Ralph Templeman filed an application with the Board of Adjustment on February 1, 2012 requesting a variance for: A Use Variance to allow a Live/Work Use with Outdoor Storage in the Conservation Agriculture (CA) Zoning District ; and

WHEREAS, During review of the application, the Staff of the Office of Planning and Development determined that an additional variance was needed to address the location of an existing accessory dwelling unit on the site which is in violation of Section 2.7.3 of the Unified Development Code; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 after due notice; and

WHEREAS, the Board determined that each of the two variances should be voted on separately; and

WHEREAS, With respect to Motion 1, a variance to allow an *Accessory Dwelling Unit in the Front of the Principal Dwelling Unit*, 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 Chapter 9.22 of the Unified Development Code are being met; and

WHEREAS, With respect to the variance to allow an *Accessory Dwelling Unit in the Front of the Principal Dwelling Unit*, 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 request to allow an *Accessory Dwelling Unit in the Front of the Principal Dwelling Unit*, 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the variance to allow an *Accessory Dwelling Unit in the Front of the Principal Dwelling Unit* be and it hereby is granted. Provided, however, that the variation 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.

WHEREAS, With respect to Motion 2, a variance to allow a *Use Variance for a Live/Work Use with Outdoor Storage*, 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 Chapter 9.22 of the Unified Development Code are not being met; and

WHEREAS, With respect to the variance to allow a *Use Variance for a Live/Work Use with Outdoor Storage*, the Board has determined that said variances 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 the request to allow a *Use Variance for a Live/Work Use with Outdoor Storage*, 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the application to allow a *Use Variance for a Live/Work Use with Outdoor Storage* be and it hereby is not granted and that the decision of the Memphis and Shelby County Building Official be and hereby is sustained.

1. MOTION TO APPROVE

AGAINST MOTION:0

FOR MOTION:8
Chairman Raiford , Brown, Burditt, Dow, Murray-Drobot,
Jones, Rainey, and Trippel

NOT VOTING:0

2. MOTION TO REJECT

AGAINST MOTION:6
Chairman Raiford, Brown, Burditt, Murray- Drobot, Jones,
and Rainey

FOR MOTION:0

NOT VOTING:2
Dow and Trippel

ACTION IS TO APPROVE MOTION 1 AND TO REJECT MOTION 2

NEW CASE:

8. **DOCKET:**

B.O.A. 12-08 (CITY)

APPLICANT:

Flinn Broadcasting Corporation

PREMISES AFFECTED:

**3940 Jackson Avenue
(Northwest side of Jackson Avenue; +/-1,158 feet
south of Brighton Road)**

USE DISTRICT:

**Residential Urban (RU-3) & Flood Plain (FP)
District**

REQUESTING:

- 1) Variance to Article 9.7.3. A.1. b. to permit an exempt tract of land without the required fifty (50) feet of public road frontage
- 2) Variance to Article 9.22.6 to allow a Use and Height Variance for existing radio communication towers

ACTION OF THE BOARD:

Approval

APPEARANCES:

For Applicant: Shea Flinn

For Opposition: None

THE RESOLUTION:

WHEREAS, The Office of Planning & Development accepted an application from Flinn Broadcasting Corporation requesting a 1) Variance to Article 9.7.3. A. 1. b. to permit an exempt tract of land without the required fifty (50) feet of public road frontage, and 2) Variance to Article 9.22.6 to allow a Use and Height Variance for existing radio communications towers; and

WHEREAS, Flinn Broadcasting Corporation filed an application with the Board of Adjustment on February 1, 2012 requesting a 1) Variance to Article 9.7.3. A. 1. b. to permit an exempt tract of land without the required fifty (50) feet of public road frontage, and 2) Variance to Article 9.22.6 to allow a Use and Height Variance for existing radio communication towers; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, February 22, 2012 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 Section 9.22.6 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 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the application be granted and that a decision of the Memphis and Shelby County Building Official be hereby rendered; provided, however, that the variation 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

Chairman Raiford, Burditt, Dow, Murray-Drobot, Jones, Rainey,
and Trippel

NOT VOTING:

Brown - Recused

ACTION IS TO APPROVE

ADJOURNMENT:

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

MINUTES APPROVED Lynnda Raudjund 3/28/12

Lynnda Raudjund (Lynnda Raudjund)
CHAIRMAN

[Signature]
SECRETARY