

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

Wednesday, March 27, 2019

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., March 27, 2019

**Present:**

Mr.	Carson Claybrook
Mr.	John Jackson, III
Mr.	JT Malasri
Mr.	Aaron Petree
Mr.	Timothy D. Rainey, Chairman
Ms.	Madeleine Savage-Townes, Vice Chairwoman
Ms.	Portia Trass-Scurlock

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

Mr.	Brian Bacchus, OPD
Mr.	Brett Davis, OPD
Ms.	Marion Jones, OPD
Mr.	Jeffrey Penzes, OPD
Mr.	Brett Ragsdale, OPD
Ms.	Somer Smith, OPD
Ms.	Staci Tillman, OPD

A quorum being present, the Board proceeded to consideration of the day's agenda. The Minutes from the previous meeting were approved.

In some of the following cases, the application for a building permit or sign permit was rejected by the Memphis and Shelby County Building Official or Planning Director 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.

1. **DOCKET:** **B.O.A. 19-19**
- APPLICANT:** Neighborhood Christian Centers, Inc.
- PREMISES AFFECTED:** 828 Semmes
- USE DISTRICT:** Residential Urban-1 (RU-1)
- REQUESTING:** Major Modification pursuant to Section 9.22.9 to allow a change in the permitted use as governed by Docket BOA 17-64
- APPEARANCES:** None
- ACTION OF THE BOARD:** Approved (Consent)

**THE RESOLUTION:**

**WHEREAS,** Neighborhood Christian Centers, Inc filed an application with the Board of Adjustment for a Major Modification pursuant to Section 9.22.9 to allow a change in the permitted use as governed by Docket BOA 17-64; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **March 27, 2019** 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 a variance in 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 the 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 for the requested variance. 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 shall be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years.

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree, Rainey, Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

2. **DOCKET:** **B.O.A. 19-21**
- APPLICANT:** Edgewater Terrace Apartments, L.P.
- PREMISES AFFECTED:** 1880 Sycamore View
- USE DISTRICT:** Residential Urban-2 (RU-2)
- REQUESTING:** Use Variance from Section 2.5.2 to legitimize an existing apartment use in a Residential Urban-2 district
- APPEARANCES:** None
- ACTION OF THE BOARD:** Approved (Consent)
- THE RESOLUTION:**

**WHEREAS,** Edgewater Terrace Apartments, L.P. filed an application with the Board of Adjustment for a Use Variance from Section 2.5.2 to legitimize an existing apartment use in a Residential Urban-2 district; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **March 27, 2019** 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 a variance in the Unified

Development Code are not being met; and;

**WHEREAS,** The Board has determined that said variance would be unduly detrimental to the other properties in the vicinity of the subject premises; and

**WHEREAS,** The Board is further of the opinion that to allow the 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 rejected.

**NOW THEREFORE,** Be it resolved that the application be and it hereby is not granted for the requested variance.

**MOTION FAILED**

AGAINST MOTION: .....0

FOR MOTION: .....7 Claybrook, Jackson, Malasri, Petree, Rainey,  
Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

- 3. DOCKET:** **B.O.A. 19-22**
- APPLICANT:** Michael Lyons
- PREMISES AFFECTED:** 1 South Prescott Street
- USE DISTRICT:** Residential Work (RW), governed by Goodwin-Prescott PUD, PUD 0-75
- REQUESTING:** Variance to Item 4.9.7C(2)(a) to permit an attached (wall) sign greater than 35 square feet in area and less than 35 feet in height on the front of the building facing South Prescott Street
- APPEARANCES:** None
- ACTION OF THE BOARD:** Approved with conditions (Consent)

**THE RESOLUTION:**

**WHEREAS**, Michael Lyons filed an application with the Board of Adjustment for a Variance to Item 4.9.7C(2)(a) to permit an attached (wall) sign greater than 35 square feet in area and less than 35 feet in height on the front of the building facing South Prescott Street; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, March 27, 2019** after due notice; and

**WHEREAS**, The Board is of the opinion, and finds from the records on file, that the standards for variances in 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 the request will not unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby; and, therefore, this application is approved with conditions on the consent agenda.

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

**Conditions:**

1. The applicant shall re-record the approved general/final plan (Plat Book 279, Page 53) to add a third page to show the new sign and list the variance and conditions approved by the Memphis and Shelby County Board of Adjustment on March 27, 2019. The Board of Adjustment Case number will also be included on the plat. A new Office of Planning and Development (OPD) Certificate will be provided. The OPD Certificate will state this plat is being re-recorded to show the variance and conditions approved by the Memphis and Shelby County Board of Adjustment on March 27, 2019. If ownership has changed since the last re-recording, a new owner's certificate and notary certificate will be provided.

2. The submitted concept plan is the approved plan and is to be marked and made part of the records of this case. Such approval is based in part upon the Board's evaluation and conclusion that the plan, as approved, eliminates or minimizes the potentially harmful characteristics or impact upon the surrounding properties.
3. Any change or deviation from this plan, shall, upon the determination of the Planning Director, be resubmitted to the Board for its review and reaffirmation or addressed administratively by the Office of Planning and Development

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree, Rainey, Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

4. **DOCKET:** **B.O.A. 19-23**
- APPLICANT:** Samuel & Cynthia Smith
- PREMISES AFFECTED:** 1577 Hayne
- USE DISTRICT:** Single Family Residential-8 (R-8)
- REQUESTING:** Variance from Item 4.5.2C(1)(b) to allow required parking in the required forty (40) foot front setback
- APPEARANCES:** None
- ACTION OF THE BOARD:** Approved with conditions (Consent)

**THE RESOLUTION:**

**WHEREAS,** Samuel & Cynthia Smith filed an application with the Board of Adjustment for a Variance from Item 4.5.2C(1)(b) to allow required parking in the required forty (40) foot front setback; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **March 27, 2019** 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 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 the 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 for the requested variance. 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 shall be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years.

**Conditions:**

1. The applicant shall attach a colored rendering of the proposed enclosure area of the carport to be submitted with the approved site plan.
2. The new building facade shall be composed of material similar to the existing materials found on the house. The new façade shall contain at least one window facing the street.
3. The approved and stamped plan is the official plan. Any changes or deviations from the approved plan shall be submitted to the OPD for their determination as to process.

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree,  
RaineySavage-Townes and Scurlock)

ABSENT: .....1 (Doss)

5. **DOCKET:** **B.O.A. 19-24**

**APPLICANT:** Memphis Enterprises LLC / Blue Water Wash LLC

**PREMISES AFFECTED:** 3294 Poplar

**USE DISTRICT:** Commercial Mixed Use 1 (CMU-1) & Residential Single Family-5 (RS-6)

**REQUESTING:** Major modification pursuant to Section 9.22.9 to remove a curb cut and alter the site plan approved with Docket BOA 18-97 accordingly.

**APPEARANCES:** None

**ACTION OF THE BOARD:** Approved with Conditions (Consent)

**THE RESOLUTION:**

**WHEREAS,** Memphis Enterprises LLC / Blue Water Wash LLC filed an application with the Board of Adjustment for major modification pursuant to Section 9.22.9 to remove a curb cut and alter the site plan approved with Docket BOA 18-97 accordingly.; and

**WHEREAS,** a public hearing on this application was held by the Board at its regular meeting on **Wednesday, March 27, 2019** after due notice; and

**WHEREAS,** The Board is of the opinion, and finds from the records on file, that the standards for variances in 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 request will not unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis and County of Shelby; and, therefore, this application is approved with conditions on the consent agenda.

**NOW THEREFORE,** Be it resolved that the application be and it hereby is granted for the requested variances. 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.

**Conditions:**

1. Any change or deviation from the site plan upon the determination of the Planning Director shall be submitted to the Board of Adjustment for review and approval or administrative review and approval by the Office of Planning and Development.
2. The fence and gate on the eastern boundary of the neighborhood park adjacent to Century Street shall be of a high quality decorative metal material, such as wrought iron, powder coated aluminum, etcetera and measure between 4 and 8 feet in height from ground level.
3. There shall be no advertising signage, attached or detached, visible from Century Street.
4. Building elevations with exterior finishes identified shall be submitted to the Board of Adjustment for review and approval or administrative review and approval by the Office of Planning and Development.
5. Creative use of exterior insulating finishing system (EIFS) shall not make up more than 25% of any building elevation.
6. The eastern building elevation, which faces Century Street, shall have an exterior finish composed entirely of brick.
7. The existing curb cut on Century Street shall be closed with curb, gutter, and sidewalk.
8. There shall be only one (1) curb cut on Poplar Avenue and any other existing curb cut(s) shall be closed with curb, gutter, and sidewalk.
9. An eight (8)-foot in height brick wall must be constructed along the Century Street frontage in the location illustrated on the site plan.

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree, Rainey, Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

6. **DOCKET:** **B.O.A. 19-25**

**APPLICANT:** Joseph & Meridith Haselwood  
**PREMISES AFFECTED:** 350 Shady Woods Cove  
**USE DISTRICT:** Residential Single Family-10 (R-10)  
**REQUESTING:** Variance from Paragraph 2.7.2B(2) to permit an accessory dwelling unit taller than 20 feet to be within 20 feet of a rear property line; variance from Item 2.7.3B(1)(b) to permit an accessory dwelling unit larger than 700 square feet on a residential lot of at least 10,000 square feet but less than 1.5 acres; variance from Paragraph 2.7.3B(6) to allow non-clerestory windows along a wall of an accessory dwelling unit within 10 feet of an abutting parcel zoned single-family residential  
**APPEARANCES:** None  
**ACTION OF THE BOARD:** Withdrawn by Applicant

7. **DOCKET:** **B.O.A. 19-27**

**APPLICANT:** Belz Investco GP – Ron Belz  
**PREMISES AFFECTED:** 845 North Main Street  
**USE DISTRICT:** Moderate Density Residential (MDR)  
**REQUESTING:** Change in nonconforming use permit to allow a microbrewery in an industrial structure  
**APPEARANCES:** None  
**ACTION OF THE BOARD:** Approved (Consent)

**THE RESOLUTION:**

**WHEREAS,** Belz Investco GP – Ron Belz filed an application with the Board of Adjustment for a Change in nonconforming use permit to allow a microbrewery in an industrial structure; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on **March 27, 2019** 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 change in nonconforming use permit in 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 the 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 for the requested change in nonconforming use permit. 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 shall be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years.

**Condition:**

1. Any change or deviation from the site plan or elevations upon the determination of the Planning Director shall be submitted to the Board of Adjustment for review and approval or administrative review and approval by the Office of Planning and Development.

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree, Rainey, .  
Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

8. **DOCKET:** **B.O.A. 19-28**
- APPLICANT:** Tariq & Faiqa Hasan
- PREMISES AFFECTED:** 1430 Poplar Avenue
- USE DISTRICT:** Residential Single Family Historic (R-6[H])  
Commercial Mixed Use-1 Historic (CMU-1[H])  
and Commercial Mixed Use-3 Historic (CMU-3  
[H]) Districts
- REQUESTING:** Variance from Paragraph 2.6.2C(3) to allow  
vehicular access from a secondary street and from  
Paragraph 2.6.2C(5) to allow required parking in  
excess of eight (8) 3spaces between the primary  
street and the principal private school building
- APPEARANCES:** None
- ACTION OF THE BOARD:** Approved (Consent)

**THE RESOLUTION:**

**WHEREAS**, Tariq & Faiqa Hasan filed an application with the Board of Adjustment for a Variance from Paragraph 2.6.2C(3) to allow vehicular access from a secondary street and from Paragraph 2.6.2C(5) to allow required parking in excess of eight (8) spaces between the primary street and the principal private school building; and

**WHEREAS**, a public hearing on this application was held by the Board at its regular meeting on **March 27, 2019** 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 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 the 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 for the requested variance. 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 shall be obtained from the Memphis and Shelby County Office of Construction Code Enforcement within two (2) years.

AGAINST MOTION: .....0

FOR MOTION: .....7 (Claybrook, Jackson, Malasri, Petree, Rainey, Savage-Townes and Scurlock)

ABSENT: .....1 (Doss)

**ADJOURNMENT:**

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

MINUTES APPROVED: April 24, 2019

  
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CHAIRMAN  
  
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SECRETARY