

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

September 26, 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, September 26, 2012

Present:

Mr.	Raymond Brown
Mr.	Jimmy Burditt
Mr.	Frank Colvett, Jr.
Ms.	Lynda Raiford, Chairman
Mr.	Timothy Rainey
Mr.	James Toles, Alternate
Mr.	Daniel Dow
Mr.	Andre Jones

Mr. Josh Whitehead, Secretary

Also Present:

Mr.	Terry Langlois, OPD
Mr.	Don Jones, OPD
Mr.	Calvin Abram, OPD
Mr.	Gregory Love, OPD
Mr.	Chip Saliba, OPD
Mr.	Nate Taylor, City Engineering

A quorum being present, the Board proceeded to consideration of the days agenda. The minutes from the previous August 22, 2012 meeting were approved, subject to corrections read into the record by Board Member Rainey.

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.

CORRESPONDENCE CASE:

1. **DOCKET:** B.O.A 12-21 (CITY)

APPLICANT: Wes Kraker

PREMISES AFFECTED: 214 Fleur De Lis Cove
(Approximately 627 feet west of *White Station Road*)

USE DISTRICT: Single Family Residential (R-10) District

REQUESTING: Petition to rehear a request for side yard variance that was denied by the Board of adjustment on 8/22/2012. The petition request is to review the required conditions and alterations to the structure in question

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant:
For Opposition:

**MOTION TO APPROVE THE PETITION FOR A REHEARING ON
OCTOBER 24, 2012**

AGAINST MOTION:0

FOR MOTION:8
Chairman Raiford, Brown, Burditt, Colvett Jr., Rainey, Sharp,
Dow, and Toles

NOT VOTING:0

ACTION IS TO APPROVE

NEW CASE:

2. **DOCKET:** **B.O.A 12-24 (CITY)**
APPLICANT: Gelcor
PREMISES AFFECTED: **5299 Summer Avenue**
(South side of Summer Avenue, 430 feet west of Virginia Run Cove)

USE DISTRICT: Commercial Mixed Use-3 {FP} District

REQUESTING: Variation to Article 4, Section 9.7.D.2.b.1 of the Unified Development Code to use an existing detached sign as an on-premise sign with a sign face of 360 square feet where a maximum sign face of 300 square feet is permitted according to Sign Zone 4 requirements

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant: Ron Harkavy, Attorney

For Opposition: None

THE RESOLUTION:

WHEREAS, Gelcor filed an application with the Board of Adjustment on August 31, 2012 requesting a variation to Article 4, Section 9.7.D.2.b.1 of the Unified Development Code to use an existing detached sign as an on-premise sign with a sign face of 360 square feet where a maximum sign face of 300 square feet is permitted according to Sign Zone 4 requirements; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the requested sign variation 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

AGAINST MOTION:0

FOR MOTION:8
Chairman Raiford, Brown, Burditt, Colvett Jr., Rainey, Toles, Dow
and, Jones

NOT VOTING:0

ACTION IS TO APPROVE

NEW CASE:

3. **DOCKET:** B.O.A 12-25 (CITY)

APPLICANT: Lacey Hibbard

PREMISES AFFECTED: 503 Princeton Cove
(West side of Princeton Forest Cove; +/- 124.85' north of Princeton Road)

USE DISTRICT: Residential Single Family-10 (R-10) District

REQUESTING: Variance to Section 2.7.6 of the UDC to allow a swimming pool to encroach to 3 feet from the rear property line where a minimum setback of 5 feet is required

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant: Kyle Erwin

For Opposition: None

THE RESOLUTION:

WHEREAS, Kyle Erwin filed an application with the Board of Adjustment on September 5, 2012, requesting a Variance to Section 2.7.6 of the UDC to allow a swimming pool to encroach to 3 feet from the rear property line where a minimum setback of 5 feet is required; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 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 County of Shelby; and, therefore, this application is approved as submitted.

NOW, THEREFORE, Be it resolved that the requested revision to the approved site plan 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

AGAINST MOTION:0

FOR MOTION:8
Chairman Raiford, Burditt, Brown, Colvett Jr., Dow, Toles,
Raine, and Jones

NOT VOTING:0

ACTION IS TO APPROVE WITH TWO CONDITIONS:

Conditions

1. All appeals and applications granted are for the property indicated on the application and the submitted site plan.
2. The granted variance is expressly conditioned upon the applicant obtaining the building permit requested or other order within two (2) years from the date of the decision of the board of adjustment.

NEW CASE:

4. **DOCKET:** B.O.A. 12-26 (CITY)
- APPLICANT:** McDonalds Real Estate Company
- PREMISES AFFECTED:** 2342 Lamar Avenue
*(North east corner of Lamar Avenue and
Trezavant Street, north of Deadrick Avenue)*
- USE DISTRICT:** Commercial Mixed Use-3 (CMU-3) District
- REQUESTING:** An sign variance from section 4.9.14
- ACTION OF THE BOARD:** Approved
- APPEARANCES:** For Applicant: Cindy Reeves
For Opposition:

THE RESOLUTION:

WHEREAS, McDonalds Real Estate filed an application with the Board of Adjustment on August 31, 2012, by requesting a sign variance for additional height; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 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 requested variance for a 35' high detached pole sign 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

AGAINST MOTION:0

FOR MOTION:7
Chairman Raiford, Burditt, Dow, Toles, Colvett, Jr.,
Rainey, and Jones

NOT VOTING0

ACTION IS TO APPROVE

NEW CASE:

5. **DOCKET:** B.O.A. 12-27 (CITY)
- APPLICANT:** Independent Presbyterian Church
- PREMISES AFFECTED:** *4738 Walnut Grove Road
(Northwest corner of Walnut Grove Road)*
- USE DISTRICT:** Residential Dwelling (R-D) District
- REQUESTING:** Variance from item 4.9.7B (4)(a) to permit three signs where only two signs are permitted
- ACTION OF THE BOARD:** Approved
- APPEARANCES:** For Applicant: Brenda Solomito
For Opposition: None

THE RESOLUTION:

WHEREAS, Independent Presbyterian Church, filed an application with the Board of Adjustment for a variance from item 4.9.7B (4)(a) to permit three signs where only two signs are permitted on September 6, 2012; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 Chapter 9.6 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. 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.

ACTION IS TO APPROVE:

AGAINST MOTION:0

FOR MOTION:8

Chairman Raiford, Brown, Burditt, Colvett, Jr., Dow, Jones, Toles
and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH THREE CONDITIONS:

Conditions:

1. The applicant shall meet the General Standards of the UDC Subsection 4.9.6M, for two (2) wayfinding signs located at both ingress/ingress located along Avon Road. These signs shall be removed and reinstalled in accordance to the UDC no later than 180 days from approval of this sign variance.
2. The applicant shall remove two (2) steel sign posts which have a concrete base located along Walnut Grove Road at its intersection of Avon Road and at the western most ingress/egress to the subject site.
3. Amended sign variance condition to number 3. The applicant shall submit to OPD within 30 days of the Board approval a site plan calling out the three (3) locations of each permitted sign associated with this sign variance. The signs shall be placed as follows:
 - a. Two signs along the Walnut Grove Road frontage;
 - b. One sign at the intersection of Walnut Grove Road and Avon Road;
 1. This sign will be considered the permitted sign which is allowed on the Avon Road frontage.

NEW CASE:

6. DOCKET: **B.O.A. 12-28 (CITY)**
APPLICANT: Valero Refining Company
PREMISES AFFECTED: **321 Mallory Avenue**
(South side of Mallory Avenue and east of Interstate 55, immediately west of property.)
USE DISTRICT: Residential Single Family-15 (R-15) District
REQUESTING: Variation from UDC Section 2.5.2 for a truck terminal expansion

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant: Harvey Marcom
Andy Szaeo

For Opposition: Rita Morris
Gina Drake
Gail Kerr Moore
Yolanda Moore
Jacqueline Woods
Gina Drake (respoke)

THE RESOLUTION:

WHEREAS, Valero Refining Company, filed an application with the Board of Adjustment for a time extension on September 6, 2012; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 Chapter 9.6 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. 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.

ACTION IS TO APPROVE:

AGAINST MOTION:0

FOR MOTION:6

Brown, Burditt, Colvett, Jr., Dow, Toles
and Rainey

NOT VOTING:1

Chairman Raiford

ACTION IS TO APPROVE WITH THREE CONDITIONS:

Conditions:

1. This application and expansion of the truck terminal shall comply with the site plan as submitted;
2. The developer shall install and maintain a chain link fence bordering the expansion site that is consistent with material and color of existing truck terminal fencing;
3. The developer shall meet all applicable USDOT policies related to the expansion site for the truck terminal.

NEW CASE:

7. DOCKET:

B.O.A. 12-29 (CITY)

APPLICANT:

Mack Andrews

PREMISES AFFECTED:

**602 Brister Street
(East side of Brister Street approximately 300 feet
south of Southern Avenue)**

USE DISTRICT:

RU-3 (University Overlay District)

REQUESTING:

To allow an existing non-conforming structure to remain and be included as part of a 5 unit multiple family development, sharing parking and access drive. This application requests that the maximum front yard setback for the existing structure be increased from 20 feet to approximately 50 feet and that building frontage at less than the minimum required by the district be allowed.

ACTION OF THE BOARD:

Approved

APPEARANCES:

For Applicant: S. Berry Jones

For Opposition:

THE RESOLUTION:

WHEREAS, Mack Andrews, filed an application with the Board of Adjustment on September 6, 2012 to allow a variance from Section 3.7.2 an existing non-conforming structure to remain and be included as part of a 5 unit multiple family development, sharing parking and access drive. This application requests that the maximum front yard setback for the existing structure be increased from 20 feet to approximately 50 feet and that building frontage at less than the minimum required by the district be allowed; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 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. 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.

ACTION IS TO APPROVE:

AGAINST MOTION:0

FOR MOTION:7
Chairman Raiford, Brown, Burditt, Colvett, Jr., Dow, Toles
and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH TEN CONDITIONS:

Conditions:

1. The existing nonconforming residential curb cut serving the existing house to remain shall be modified to meet current City Standards.
2. This site will require additional sewer connections to support the proposed use. The developer will also be required to pay sewer development fees for each unit.
3. This site is located within the Black Bayou drainage basin which has been designated as a sensitive drainage area subject to intermittent local flooding during heavy storms. Drainage improvements, including on-site detention, shall be provided under a Standard Subdivision contract in accordance with Subdivision Regulations and the City of Memphis Drainage Design Manual.
4. Drainage data for assessment of on-site detention requirements shall be submitted to the City Engineer.
5. Required landscaping shall not be placed on sewer or drainage easements.
6. The two parcels within the site shall be consolidated by either plat or deed.
7. Type S-13 streetscape plate shall be constructed along Brister Street. The tree lawn shall be reduced from 10 feet to 8 feet. Two Type A trees shall be planted, one on each side of the private drive entrance. An illustration of the streetscape with dimensions shall be shown on the site plan approved by the Board of Adjustment.

8. The front yard setback for new townhouse buildings shall be reduced from 8 feet to 7 feet. The 7 foot setback may be measured from the back of the sidewalk if the additional 8 feet is dedicated or from the easement line if the additional land for the tree lawn is provided through a pedestrian easement.
9. A Phase 2 parcel shall be designated which includes the home that is being preserved and the portion of the site around it. Redevelopment of Phase 2 shall require approval of a revised site plan by the Board of Adjustment. Notice shall be provided to the University Neighborhoods Development Corporation prior to any action on the Phase 2 site plan by the Board of Adjustment.
10. The 2 parking spaces in front of the home in Phase 2 shall be removed or relocated behind the new building(s) when the Phase 2 parcel is redeveloped .

NEW CASE:

8. **DOCKET:** **B.O.A. 12-30 (CITY)**

APPLICANT: Babak Tabatabai

PREMISES AFFECTED: 2615 Broad Avenue
(*South side of Broad Avenue just 28 feet west of Collins Street*)

USE DISTRICT: Commercial Mixed Use-1 (CMU-1) District

REQUESTING: To allow a tattoo and design studio within the CMU-1 (Commercial Mixed Use-1) District

ACTION OF THE BOARD: Approved

APPEARANCES: For Applicant: Brice Timmons, Attorney
Brad Snyder
Beth Hyde
Donna Bahannon
Yvonne Burton
Larry Schmidt

For Opposition: Allen Krone, Attorney
Robert Taylor
Paul Woodward
Bill Turner
Carla Touliatos

THE RESOLUTION:

WHEREAS, Babak Tabatabai, filed an application with the Board of Adjustment to allow a tattoo and design studio within the CMU-1 (Commercial Mixed Use-1) District on September 5, 2012; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, September 26, 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 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. 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.

ACTION IS TO APPROVE:

AGAINST MOTION:1
Colvette, Jr.

FOR MOTION:5
Brown, Burditt, Dow, Toles
and Rainey

NOT VOTING:1
Chairman Raiford

ACTION IS TO APPROVE WITH EIGHT CONDITIONS:

Conditions:

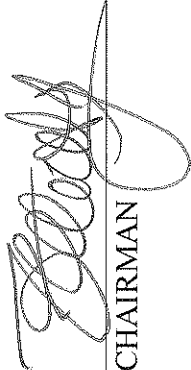
1. This Conditional Use Permit shall be granted to Babak Tabatabaia doing business as Ronin Design and Manufacturing (RDM). In such case that another proprietor seeks to utilize this site as a tattoo parlor or any use not allowed within the underlying zoning district he or she must seek the approval of such use from the appropriate governing body.
2. RDM will be required to close by 12:00 midnight, nightly.
3. RDM will be prohibited from using words or phrases in its name or primary signage that identify it as being a tattoo studio.
4. RDM will be required to comply with all local, state and federal regulations governing tattoo studios.
5. RDM will not accept walk-in customers for its tattoo business. All tattoo sessions shall be by appointment only which shall be scheduled at least two days in advance.

6. RDM shall operate an ancillary business as an art gallery such that the artistic character of the Broad Avenue Arts District will be maintained. Approximately 75% of the usable floor area shall be dedicated to Art Gallery and display area.
7. No more than two tattoo artists shall provide tattoo services simultaneously.
8. No body piercing shall occur on site.

ADJOURNMENT:

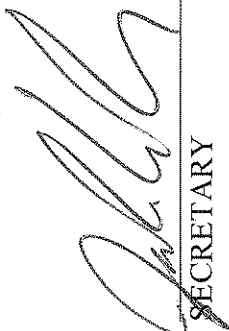
There being no further business, the meeting there upon adjourned.

MINUTES APPROVED: Oct 24, 2012



CHAIRMAN

Acting



SECRETARY