

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

Wednesday, May 27, 2020

***PURSUANT TO STATE OF TENNESSEE EXECUTIVE ORDER NO. 16 SIGNED BY GOVERNOR
BILL LEE ON MARCH 20, 2020, THIS WILL BE A STREAMED MEETING WITH ELECTRONIC VOTING***

The telephonic meeting of the Memphis & Shelby County Board of Adjustment was held at 2:00 p.m., May 27, 2020.

Present:

Ms.	Mary Baker
Mr.	Carson Claybrook
Ms.	Joy Doss
Mr.	John Jackson
Mr.	J.T. Malasri
Mr.	Timothy D. Rainey, Chair
Ms.	Madeline Savage-Townes, Vice Chair
Ms.	Portia Trass Scurlock

Mr.	Josh Whitehead, Secretary
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Also Present:

Ms.	Somer Smith, OPD
Mr.	Jeffrey Penzes, OPD
Director	John Zeanah, Director, DPD

A quorum being present, the Board proceeded to consideration of the day's agenda. Board Member Rainey made the motion to approve the minutes from the April 22, 2020, Board Meeting. 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.

3. DOCKET:

B.O.A. 20-34 (City)

APPLICANT(S): TPB Real Estate, LLC

PREMISES AFFECTED: 4183 Summer Ave.

USE DISTRICT: Residential Single-Family- 6 (R-6)

REQUESTING: Modification to Docket BOA 70-29 (City) to revise rear parking lot configuration for a restaurant

ACTION OF THE BOARD: Approval with conditions

Conditions:

1. A Use Variance to allow the continuation of accessory parking, drive-thru & escape lanes with menu board, including existing light standards shall be permitted as illustrated on the site plan.
2. The fence along the east property line shall be a sight-proof wood fence a minimum of six (6) feet in height and the masonry wall shall be repaired to include the replacement of cap blocks along the entire length of the wall, including landscaping and new fencing as illustrated on the landscape plan.
3. The existing sidewalk shall be repaired and inspected for ADA compliance and existing access and circulation shall be maintained for the restaurant establishment.
4. The final site plan shall be subject to review and approval by staff and any change or deviation to 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.

THE RESOLUTION:

WHEREAS, TPB Real Estate LLLC., filed an application with the Board of Adjustment for a Modification to Docket BOA 70-29 (City) to revise rear parking lot configuration for a restaurant and;

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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.

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey, Savage-Townes, and Scurlock)

RECUSED: 0

4. DOCKET: B.O.A. 20-35 (City)

APPLICANT(S): TPA Group – Bradleigh Kaaber

PREMISES AFFECTED: Southeast corner of Airways and Holmes

USE DISTRICT: Commercial Mixed Use – 3 (CMU-3)

REQUESTING: Use variance from Section 2.5.2 to allow an accessory use (a parking lot) serving a proposed principal use on an adjacent lot (warehouse) not permitted in the subject site’s zoning district

ACTION OF THE BOARD: Approval with conditions

Conditions:

1. E. Holmes Rd. shall be dedicated 58’ from the center line.
2. 45.5’ from the center line of E. Holmes shall be improved with an S-11 Streetscape Plate, modified to include a 7.5’ strip of grass and a 5’ wide sidewalk as shown in the cross section above. 1 Tree C shall be planted every 30’ on center, on average. Neither the widening of Holmes, nor the installation of curbs and gutters, is required of the applicant. The requirement to install sidewalks along E. Holmes Rd. shall become null and void if the adjacent EMP portion of the site, where the warehouse is proposed to be located, is exempt from installing sidewalks.
3. A Type S-11 Streetscape Plate, modified to eliminate the 4.5’ grass strip between the sidewalk and street, shall be installed along Airways Blvd. as shown in the cross section above.
4. A Class III Type B buffer shall be installed along the southern property line.

5. The Ginkgo Tree designated on the landscape plan shall be replaced with a Tree B.
6. No parking stalls in the adjacent EMP portion of the site shall be placed in a manner that inhibits the circulation of traffic from the CMU-1 portion of the site.
7. 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.

THE RESOLUTION:

WHEREAS, TPA Group filed an application with the Board of Adjustment for a use variance from Section 2.5.2 to allow an accessory use (a parking lot) serving a proposed principal use on an adjacent lot (warehouse) not permitted in the subject site’s zoning district; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, after due notice and;

WHEREAS, The Board is of the opinion, and finds from the records on file, that the standards for conditional use permits in the Unified Development Code are being met; and;

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

WHEREAS, The Board is further of the opinion that to allow 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 conditional use permit 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:..... 8 (Baker, Claybrook, Doss, Jackson, Malasri, Rainey,
Savage-Townes, and Scurlock)

RECUSED: 0

5. DOCKET: **B.O.A. 20-36 (City)**

APPLICANT(S): Spencer Nix

PREMISES AFFECTED: 1643 Quinn Rd

USE DISTRICT: Conservation Agriculture (CA)

REQUESTING: Variance from Section 10.5.2 to allow the construction of a home on an exempt tract less than four (4) acres in size without city water

ACTION OF THE BOARD: Approval with conditions

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. Any water well placement will need to be 100 feet or more from the disposal field which can be achieved with this lot. In addition, a variance for a water well will need to be brought before the Groundwater Control Board since the requirement is 4 acres for a septic system and a water production well.

THE RESOLUTION:

WHEREAS, Spencer Nix filed an application with the Board of Adjustment for a Variance from Paragraph 2.7.2A(4) to allow an accessory structure to extend forward of the front building and;

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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 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.

AGAINST MOTION: 0

FOR MOTION:..... 6 (Baker, Claybrook, Doss, Johnson, Malasri, and Scurlock)

RECUSED:..... 2 (Raines and Savage-Townes)

7. DOCKET: B.O.A. 20-39 (City)

APPLICANT(S): EJ Cox

PREMISES AFFECTED: 352 Grandview Road

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

REQUEST: Variance from Paragraph 2.7.2D(1) to allow an accessory dwelling unit that exceeds permitted size

ACTION OF THE BOARD: Approval with conditions

Condition:

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.

THE RESOLUTION:

WHEREAS, EJ Cox filed an application with the Board of Adjustment for a Variance from Paragraph 2.7.2D(1) to allow an accessory dwelling unit that exceeds permitted size and;

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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.

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey, Savage-Townes, and Scurlock)

RECUSED: 0

8. DOCKET: **B.O.A. 20-40 (City)**

APPLICANT(S): Hawaiian Pools & Landscape

PREMISES AFFECTED: 1518 West Crestwood

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

REQUEST: Variance from Section 2.7.6 to allow a swimming pool to encroach into a platted front yard setback

ACTION OF THE BOARD: Approval with Conditions

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.

THE RESOLUTION:

WHEREAS, Hawaiian Pools & Landscape filed an application with the Board of Adjustments for a variance from Section 2.7.6 to allow a swimming pool to encroach into a platted front yard setback; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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 not 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.

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey, Savage-Townes, and Scurlock)

RECUSED: 0

9. DOCKET: **B.O.A. 20-41 (County)**
APPLICANT(S): Belle Properties, LLC.
PREMISES AFFECTED: 2004 Wind Cliff Drive
USE DISTRICT: Conservation Agriculture

REQUEST: Variance pursuant to Section 3.2.9F to allow a side-yard encroachment of 18.9 feet into a platted side yard setback of 25 feet

ACTION OF THE BOARD: Approval with conditions

Conditions:

1. The variance is hereby approved pursuant to Sub-Section 3.2.9F to allow a side yard encroachment of 18.9 feet into a platted side yard setback of twenty-five (25) feet for a principal structure.
2. The final site plan shall be subject to review and approval by staff and any change or deviation to 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.

THE RESOLUTION:

WHEREAS, Belle Properties, LLC. filed an application with the Board of Adjustment for a Variance pursuant to Section 3.2.9F to allow a side-yard encroachment of 18.9 feet into a platted side yard setback of 25 feet; and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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.

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey, Savage-Townes, and Scurlock)

RECUSED: 0

The previous cases were approved on the Consent Calendar; the following cases involved individual public hearings.

1. DOCKET:	<u>B.O.A. 20-21 (City)</u>
APPLICANT:	Octapharma Plasma, Inc.
PREMISES AFFECTED:	4212 Elvis Presley Blvd.
USE DISTRICT:	Commercial Mixed Use – 3 (CMU-3)
REQUESTS:	-Conditional Use Permit for a blood plasma donation center and -Variances from: <ul style="list-style-type: none">-Section 4.3.3 to reduce the minimum width of the required streetscape plate along Marlin Road-Sub-Section 4.5.3B to reduce the minimum number of required off-street parking spaces-Paragraph 4.5.5D(4) to exempt the eastern row of parking from the terminal island requirement

ACTION OF THE BOARD: Approval with Conditions

APPEARANCES: Support: Nathan Bicks

Conditions:

1. The existing nonconforming detached sign shall be removed.

2. No detached signs, window signs, changeable copy signs, banner signs, roof signs, temporary signs, feather signs, reader board signs, or portable signs shall be permitted. A maximum of two wall signs shall be permitted.
3. That portion of the site within 54 feet from the centerline of Elvis Presley Boulevard – including a 30-foot radius at Marlin Road – shall be dedicated and improved in accord with the approved plans.
4. The minimum number of required off-street parking spaces and minimum width of required streetscape plates shall be equivalent to those shown on the approved plans

THE RESOLUTION:

WHEREAS, Octapharma Plasma, Inc. filed an application with the Board of Adjustment for a Conditional Use Permit for a blood plasma donation center and Variances from the individual sections of the Unified Development Code cited in the caption above.

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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 to impair the public health, safety, comfort, morals or welfare of the inhabitants of the County of Shelby; and, therefore, this application is hereby approved with conditions.

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

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey,
Savage-Townes, and Scurlock)

RECUSED: 0

2. DOCKET: **B.O.A. 20-32 (County)**

APPLICANT(S): Moatesem Itayem

PREMISES AFFECTED: 4599 Mill Branch Rd

USE DISTRICT: Commercial Mixed Use – 3 (CMU-3)

REQUESTING: Variances from:
- Section 2.5.2 to permit container buildings in the Commercial Mixed Use – 3 zoning district;
- Sub-Section 2.7.1J to permit shipping containers to be used as accessory structures in a commercial zoning district;
- Paragraph 2.7.2A(1) to permit accessory structures to be located closer than five feet to side and rear property lines;
- Paragraph 2.7.2A(2) to permit accessory structures to be located closer than five feet to other structures on the same lot;
- Paragraphs 2.7.2A(3), 2.7.2A(5), and 2.7.2B(2) to permit accessory structures to encroach into required side and rear setbacks; and
- Sub-Section 2.7.2C to permit the cumulative square footage of accessory structures to exceed 75% of the total square footage of the principal structure

ACTION OF THE BOARD: Approval with conditions as amended

APPEARANCES: Support: Cindy Reaves, James Stimson, Jr. and Moatesem
Opposition: Dr. Yvonne Nelson

Amended Conditions:

1. All storage within close proximity of the sidewalk shall be removed.
2. A revised site/landscape plan shall be submitted to the Office of Planning and Development.
3. No more than eight shipping containers shall be allowed on site.

THE RESOLUTION:

WHEREAS, Moaesem Itayem filed an application with the Board of Adjustment for variances from the individual sections of the Unified Development Code cited in the caption above;

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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 as amended.

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.

AGAINST MOTION: 0

FOR MOTION:..... 8 (Baker, Claybrook, Doss, Johnson, Malasri, Rainey, Savage-Townes, and Scurlock)

RECUSED: 0

6. DOCKET:	<u>B.O.A. 20- 37(City)</u>
APPLICANT(S):	St. Charles Place, LLC. - Charles Boone
PREMISES AFFECTED:	2798 New Brunswick Road
USE DISTRICT:	Commercial Mixed Use – 3 (CMU-3)
REQUESTING:	Variance from 4.9.8A(4) to allow the accessory use of parking on a lot that contains the principal use of an off-premise advertising sign (billboard)
ACTION OF THE BOARD:	Rejection
APPEARANCES:	Support: Wesley Wooldridge

THE RESOLUTION:

WHEREAS, St. Charles Place, LLC. filed an application with the Board of Adjustment filed a variance from 4.9.8A(4) to allow the accessory use of parking on a lot that contains the principal use of an off-premise advertising sign (billboard); and

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on **Wednesday, May 27, 2020**, 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 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, and increase the danger of fire or endanger the public safety, and unreasonably diminish or impair established property values within the surrounding area, and 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 hereby rejected.

NOW THEREFORE, Be it resolved that the application is not granted for the requested variances.

AGAINST MOTION: 4 (Baker, Jackson, Rainey, and Scurlock)

FOR MOTION:..... 4 (Claybrook, Doss, Malasri, and Savage-Townes)

RECUSED: 0

ADJOURNMENT:

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

MINUTES APPROVED:_____

CHAIRMAN

SECRETARY