

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

November 28, 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, November 28, 2012

Present:

Mr.	Raymond Brown
Mr.	Jimmy Burditt
Mr.	Frank Colvett, Jr.
Mr.	John Jackson, III
Ms.	Lynda Raiford
Mr.	Timothy Rainey
Mr.	Daniel Dow

Mr.	Josh Whitehead, Secretary
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Also Present:

Mr.	Terry Langlois, OPD
Mr.	Don Jones, OPD
Mr.	Calvin Abram, OPD
Mr.	Gregory Love, OPD
Mr.	Chip Saliba, OPD
Mr.	Brian Bacchus, OPD
Mr.	Nate Taylor, City Engineering
Mr.	Bob Evans, County Engineering

A quorum being present, the Board proceeded to consideration of the days agenda. The minutes from the previous October 24, 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.

NOW, THEREFORE, Be it resolved that the requested microwave dish addition be and it hereby is granted. Provided, however, that the addition 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.

AGAINST MOTION:0

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

NOT VOTING:0

ACTION IS TO APPROVE

NOW, THEREFORE, Be it resolved that the requested 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.

AGAINST MOTION:0

FOR MOTION:7
Colvett, Jr., Brown, Burditt, Raiford, Dow, Jackson III,
and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH ONE CONDITION

The elevation and floor plan submitted with this application shall be stamped as the official copy. A substantial deviation from the application materials shall require a follow up submittal to the Board of Adjustment.

NEW CASE:

3. **DOCKET:** **B.O.A 12-37 (CITY)**
- APPLICANT:** **Janet Cotter**
- PREMISES AFFECTED:** **5262 Senca Avenue**
 (Northwest corner of Seneca and Wheaton)
- USE DISTRICT:** Single Family Residential (R-6) District
- REQUESTING:** Applicant seeks relief from section 2.7.6 of the UDC to permit construction of a swimming pool and fence within required front yard setback. Under new UDC guidelines proposed improvements would be permitted by 10 foot side (street) setback in R-6 District.
- ACTION OF THE BOARD:** Approved
- APPEARANCES:** For Applicant: Bray Davis
- For Opposition: None

THE RESOLUTION:

WHEREAS, Ms. Cotter filed an application with the Board of Adjustment on November 7, 2012 requesting relief from section 2.7.6 of the UDC to permit construction of a swimming pool and fence within required front yard setback. Under new UDC guidelines proposed improvements would be permitted by 10 foot side (street) setback in R-6 District; and,

WHEREAS, a public hearing on this application was held by the Board at its regular meeting on Wednesday, November 28, 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, subject to three(3) conditions; and

NOW, THEREFORE, Be it resolved that the requested variances are hereby granted. Provided, however, that the variances are granted for the specific purposes 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
Colvett, Jr., Brown, Burditt, Raiford,
Dow, Jackson III, and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH THREE(3) CONDITIONS:

1. Platted subdivision requires a 35-foot setback for this site as a “second” front yard.
2. Under new UDC guidelines the proposed improvements would be permitted by 10 foot side (street) setback in R-6 District.
3. As a corner lot, the proposed swimming pool would be placed in the side yard.

application is approved as submitted, subject to one(1) condition; and

NOW, THEREFORE, Be it resolved that the requested variances are hereby granted. Provided, however, that the variances are granted for the specific purposes 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
Colvett, Jr., Brown, Burditt, Raiford,
Dow, Jackson III, and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH ONE CONDITION:

1. The applicant shall submit a Landscape Plan to comply with the requirements of Articles 4.6.8.A.(2 &3) and 4.6.9 to provide a compact evergreen hedge or other type of dense foliage the entire length of the drive-thru lane and the right-of-way line, subject to review and approval by staff.

NOW, THEREFORE, Be it resolved that the requested variances are hereby rejected.

MOTION TO APPROVE

AGAINST MOTION:5
Colvett, Jr., Brown, Burditt, Jackson, Rainey

FOR MOTION:0

ABSTAINING:2
Dow and Raiford

MOTION TO APPROVE: FAILED

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
Colvett, Jr., Brown, Burditt, Raiford,
Dow, Jackson III, and Rainey

NOT VOTING:0

ACTION IS TO APPROVE WITH(6) CONDITIONS:

1. A Landscape Plan shall be subject to review and approval by staff prior to issuance of a Use and Occupancy permit.
2. A minimum of three(3) parking spaces shall be provided on-site, including one(1) handicap space.
3. The paint color of the building, including doors and trim lines shall match the dominant colors of the surrounding neighborhood.
4. The hours of operation shall be Monday thru Saturday, 9:00 a.m. until 9:00 p.m. and Sunday 3 p.m. until 7:00 p.m.
5. The Conditional Use Permit for a small neighborhood restaurant shall be allowed for a period of five(5) years from issuance of a Certificate of Occupancy.
6. A final Site Plan Approval shall be subject to review and approval by staff to include a sealed survey.

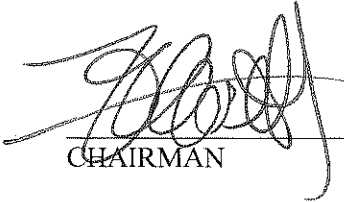
NEW ITEM:

The board also approved a motion to hold, until its next meeting, consideration of an amendment to its Rules of procedure by adding a new Rule V.4 which stipulates the length of time an applicant shall comply with a rejection.

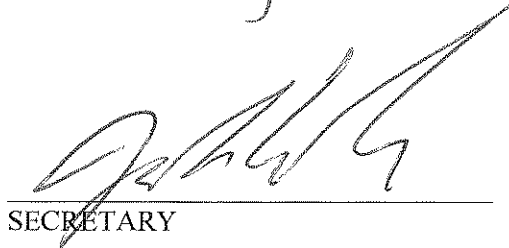
There being no further business, the meeting there upon adjourned.

MINUTES APPROVED:

Jan 23, 2013



CHAIRMAN



SECRETARY