



CITY APPOINTEES
TIMOTHY RAINEY, ESQ., VICE CHAIR
JIMMY BURDITT
JOHN JACKSON III
ANDRE JONES

MEMPHIS AND SHELBY COUNTY
BOARD OF ADJUSTMENT

CITY BOARD EST. 1925 - COUNTY BOARD EST. 1931 - MERGED, 1970

JOSH WHITEHEAD, AICP, SECRETARY

CITY HALL - 125 N. MAIN ST., STE. 468 - MEMPHIS, TENNESSEE 38103 - (901) 576-6619



COUNTY APPOINTEES
FRANK COLVETT, JR., CHAIR
DANIEL DOW
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Date: December 17, 2014

To: Frank Colvett, Jr., Chairman
Timothy Rainey, Vice Chairman
Jimmy Burditt, Member
Daniel Dow, Member
John Jackson, III, Member
Andre Jones, Member
Lynda Raiford, Member
Madeleine Savage-Townes, Member

From: Josh Whitehead, Secretary

RE: History of Board of Adjustment

Mr. Chairman and Members of the Board:

In anticipation of the 2014 Annual Board Report, which I will present to the Board in January, I wanted to share with you the following important milestones in the Board's history that I have found in my preparation for the Annual Report. This memorandum is organized accordingly:

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I. Enabling and Local Legislation

February 10, 1921: Governor Alfred A. Taylor signs and approves Chapter 165 of the 1921 Private Acts, which was passed by the Tennessee General Assembly on February 2, 1921. This Act enabled the City of Memphis to adopt a Zoning Ordinance and Plan and created a Memphis Planning Commission to review and approve them. The Act also created an “Administrative Board” with no specific name or required number of members that would hear appeals from the denial by the Building Official based on the Zoning Ordinance and Plan. The Act stated that the powers of the Administrative Board could be delegated to the Planning Commission, but provided no guidance to the Administrative Board when considering appeals, which for the most part amounted to variances from the Code.

November 17, 1922: Pursuant to Chapter 165 of the 1921 Private Acts, the City of Memphis Board of Commissioners approved on Third and Final Reading a Zoning Ordinance and Plan (the zoning map) that created various “height and area” and “use” districts and allocated all parcels inside the City of Memphis into one of these districts. Section 17 of the ordinance specifically stated that the Planning Commission shall act as the Administrative Board which shall hear requests for “variation of the application of the use, height and area district regulations herein established in harmony with their general purpose and intent.”

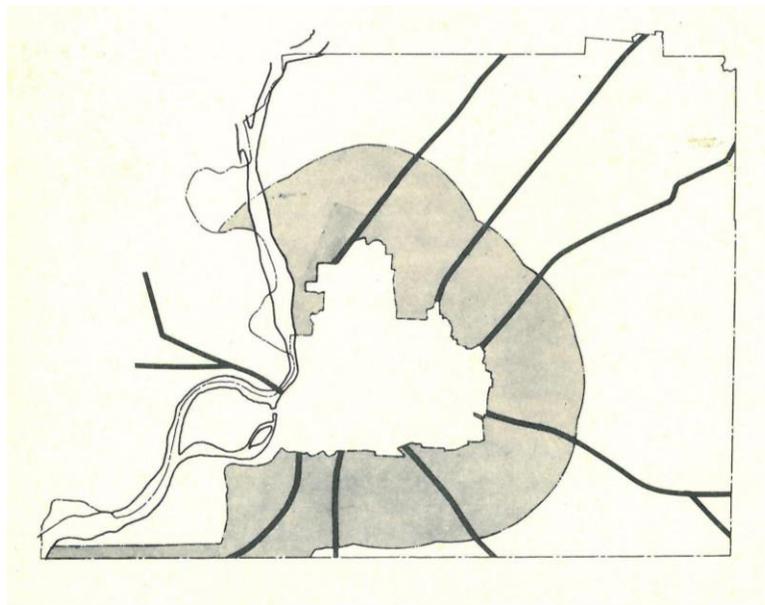


Original “use district map” from 1922

April 9, 1925: Governor Austin Peay signs and approves Chapter 426 of the 1925 Private Acts, which was passed by the Tennessee General Assembly on April 3, 1925. This Act specifically creates a Memphis Board of Adjustment to act as the “Administrative Board” cited in the 1921 Private Act. The Act stated that the Board was to have seven members and further required that the Board make a finding of a practical difficulty or unnecessary hardship to warrant the approval of a variance related to the permitted use of buildings or land.

July 16, 1925: The Memphis Board of Adjustment, pursuant to state and local legislation, meets for the first time.

June 29, 1931: Governor Henry Hollis Horton signs and approves Chapter 613 of the Private Acts of 1931, which was passed by the Tennessee General Assembly on June 25, 1931. This Act targeted the areas in the 5-Mile Zone outside of the City of Memphis in unincorporated Shelby County. Like the 1921 and 1925 Private Acts that dealt with the City of Memphis, it enabled the creation of a Zoning Ordinance and Plan, Planning Commission and a seven-member Board of Adjustment for the 5-Mile Zone.



This map was found on the cover of the Zoning Atlas for the 5-Mile Zone in 1963. Every time the City of Memphis annexed territory, the 5-Mile Zone would change.

Unlike the Memphis Private Acts, four of the seven-member Shelby County Board of Adjustment were explicitly listed as “ex officio officers:” the Chairman of the Board of County Commissioners (the old Board of Commissioners was the three-member executive arm of Shelby County government which was replaced with the Office of County Mayor), the Secretary of the Board of County Commissioners, the Chairman of the Quarterly County Court (the old Quarter Court was the 11-member legislative arm of Shelby County government which was replaced with the modern Shelby County Board of Commissioners) and the Chairman of the Memphis Board of Adjustment. The Act required that the Board make a finding of a practical difficulty or unnecessary hardship to warrant the approval of a variance related to the permitted use of buildings or land.

November 7, 1933: On Third and Final Reading, the Board of Commissioners of the City of Memphis pass a Zoning Ordinance and Plan for the 5-Mile Zone, which had been approved on October 16, 1933, by the Shelby County Quarterly Court. This Joint Ordinance-Resolution also established a Shelby County Planning Commission and Shelby County Board of Adjustment with jurisdiction in this area. Despite the date of this joint ordinance-resolution, the records of the Shelby County Board of Adjustment indicate that their first meeting took place two years prior, on September 24, 1931.

April 20, 1935: Governor Harry Hill McAlister signs and approves Chapter 625 of the Private Acts of 1935, which was passed by the Tennessee General Assembly on April 18, 1935. This Act enabled the creation of a Zoning Ordinance and Plan for the portions of unincorporated Shelby County *outside* of the 5-Mile Zone.

Two subsequent private acts passed in 1935, Chapters 706 and 707, speak to the relationship between the Planning Commission and Board of Adjustment created in 1931 for the 5-Mile Zone and the ones being created for the areas outside of the 5-Mile Zone. Chapter 706 specifically allows for the Planning Commission acting on behalf of the area inside the 5-Mile Zone to be the same as the Planning Commission created by the Act with jurisdiction outside of the 5-Mile Zone. However, Chapter 707 contains very different language when it came to the Board of Adjustment. Chapter 707 amended the 1931 Private Act to explicitly state that the Shelby County Board of Adjustment being created to hear appeals outside of the 5-Mile Zone be completely separate from the one hearing appeals inside the 5-Mile Zone and that the latter “adopt a name which shall be distinctive so that said board shall not be confused with any other county or city board of adjustment.”

Like the two pieces of enabling legislation before it, the 1935 Act required that the Board make a finding of a practical difficulty or unnecessary hardship to warrant the approval of a variance related to the permitted use of buildings or land.

April 20, 1936: Contrary to Chapter 707 of the 1935 Private Acts and ostensibly pursuant to Chapter 625 of the 1935 Private Acts, the Shelby County Quarterly Court approves a resolution abolishing the Shelby County Board of Adjustment created in 1931 and in its place established a Shelby County Board of Adjustment with jurisdiction throughout unincorporated Shelby County. See case materials for BOA 62-35 and BOA 69-135 on pages 11 and 13 in Section II below to see how the courts and legislative bodies sought to resolve the conflict between the enabling legislation and local legislation on this matter.

March 3, 1955: Governor Frank G. Clement signs and approves Chapter 142 of the Private Acts of 1955, which was passed by the Tennessee General Assembly on February 28, 1955. This Act amends the 1925 Private Act requiring the Memphis Board of Adjustment make additional findings when it hears appeals. The practical difficulties and unnecessary hardship language was replaced with “*peculiar and exceptional* practical difficulties” and “*exceptional or undue* hardship” (emphasis added). In addition, the Act required that these practical difficulties or hardships be based on “exceptional narrowness, shallowness or shape of...[the] piece of property or...exceptional

topographic conditions or other extraordinary and exceptional situation or condition of...[the] property.” Unlike the 1925, 1931 and 1935 Private Acts, the 1955 Act did not use the term “use;” instead, it allows the City Board to grant any variance “from [the] strict application [of the zoning ordinance].”

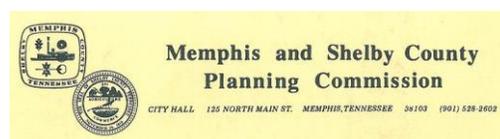
The 1955 Zoning Code, which was approved by the City of Memphis Board of Commissioners on May 31, 1955, essentially contained this language, but only for setback variances. For all other variances, the exceptional quality test was omitted. For them, only the hardship or practical difficulty test was required. For all variances, the following finding was also required, some of which is still found in the Board’s resolutions:

The Board shall, before making any exceptions or variations from the Ordinance in a specific case, first determine that it will not impair an adequate supply of light and air to adjacent property, or 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 respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Memphis. (1955 Zoning Ordinance, Sec. 1912 (D)(b)(3))

March 22, 1955: Governor Frank G. Clement signs and approves Chapter 353 of the Private Acts of 1955, which was passed by the Tennessee General Assembly on March 17, 1955. This Act allowed for the merger of the Memphis and Shelby County Planning Commissions and the Memphis, Shelby County and (nonexistent) 5-Mile Zone Boards of Adjustment. The Memphis and Shelby County Planning Commission was thereafter created on March 1, 1956. The use of the term “Planning Commission” would be used to not only describe the actual joint, volunteer commission, but also its staff. Interestingly, this staff was also responsible for providing support services to the Board of Adjustment.



For many years, the logo for the Memphis and Shelby County Planning Commission was comprised of the boundaries of the city limits of Memphis superimposed onto an outline of Shelby County. Unfortunately, due to frequent annexation by the City of Memphis, this required the logo to be changed every year or so (compare the logo to the left with the one below it). Eventually, the logo was replaced with the City and County seals, a variant of which the Office of Planning and Development, the successor agency to the Planning Commission, still uses to day.



April 20, 1963: The Shelby County Quarterly Court, perhaps in response to the legal challenge to the Board of Adjustment's ruling on case BOA 62-35 (see p. 11 in Section II), again passes a resolution attempting to abolish the old 5-Mile Zone Board of Adjustment and appoint a Shelby County Board of Adjustment with jurisdiction throughout unincorporated Shelby County.

May 4, 1970: A vote taken by Shelby County Quarterly Court culminates a joint City-County resolution-ordinance creating the Memphis and Shelby County Board of Adjustment, which was to replace the separate Boards on June 2, 1970.

July 27, 1970: The new, joint Memphis and Shelby County Board of Adjustment meets for the first time, taking over the duties of the old, separate, Memphis and Shelby County Boards of Adjustment. One of the first duties of this joint Board was to hear the backlog of cases in the 5-Mile Zone since no cases had been heard in this area since April 29, 1970, the date the Shelby County Circuit Court found that there was no zoning board in existence to hear cases in this area (see more details under Case BOA 69-135 on page 13 in Section II below).

December 7, 1999: On Third and Final Reading, the Shelby County Board of Commissioners approve an amendment to the zoning ordinance, that, among things, removes the ability of the Board of Adjustment to grant use variances. This ordinance had been approved on Third Reading by the Memphis City Council on November 18, 1999. The ordinance required all future use variances to be processed as Special Use Permits, which require Land Use Control Board review with final action by the City Council and/or Board of Commissioners. The ordinance was in clear contradiction to the three private acts that created the Board of Adjustment (1925, 1931 and 1935), all of which explicitly grant the Board the authority to vary the use of a piece of property.

August 27, 2012: The Shelby County Board of Commissioners, on Third and Final Reading, approve amendments to the Memphis and Shelby County Unified Development Code, which, since January 1, 2011, had served as the zoning regulations for the City of Memphis and unincorporated Shelby County. These amendments, which were also passed by the Memphis City Council on July 17, 2012, both clarified the required findings of fact of the Board to more closely resemble the enabling legislation of the City Board, as established in the 1955 Private Act, and returned the use variance authority to the Board, as established in the 1925, 1931 and 1935 Private Acts. To avoid the conflicts between the Board and legislative bodies articulated in many of the newspaper articles in this memorandum (see Section IV below), this amendment to the Unified Development Code limits the issuance of use variances in certain situations, such as in cases where a rezoning had been filed on the property within the previous 18 months, whether a Special Use Permit is required for the desired use under the Code and for requests for billboards.

II. Important Cases

The following Board cases resulted in case law that have helped provide direction to the Board, in addition to the statutory law listed in Section I. Since its inception, the Board of Adjustment has been the subject of or party to eleven lawsuits that have resulted in written opinions by the Tennessee Court of Appeals and Supreme Court. In addition, the Board has been the subject of one federal case that was heard by the Sixth Circuit Court of Appeals. These cases, as well as a few others of import that were decided in the Circuit Court of Shelby County, are listed below.

BOA 29-38, 30-65 and 32-8 (City): In Cases BOA 29-38 and 30-65, Samuel W. Qualls pursued the establishment of a funeral home at the house at the southeast corner of Vance and what is now known as Danny Thomas, 479 Vance. The property was located within a commercial zoning district, but this district did not allow funeral homes.



*479 Vance in 1929; Danny Thomas is now immediately to the right
in place of the house on the right*

The Board rejected Mr. Qualls' request. He appealed. In *Qualls v Memphis*, 15 Tenn.App. 575 (1932), the Court of Appeals of Tennessee upheld the action by the Board holding that they acted properly and in accordance with the City's zoning ordinance. Mr. Qualls also claimed that his funeral home was denied based on the fact that he was African-American and that his funeral home would largely cater to black Memphians, in violation of the Fourteenth Amendment of the United States Constitution. This claim was based not only on testimony during the hearings, but also on the Board's minutes,

which contained disparaging remarks about African-American funerals. While such a finding in the official record would undoubtedly meet the intent requirement for a Fourteenth Amendment cause of action today, the Court of Appeals of Tennessee declined to rule inasmuch. Fourteenth Amendment claims were difficult prior to the passage of the Civil Rights Act of 1964.

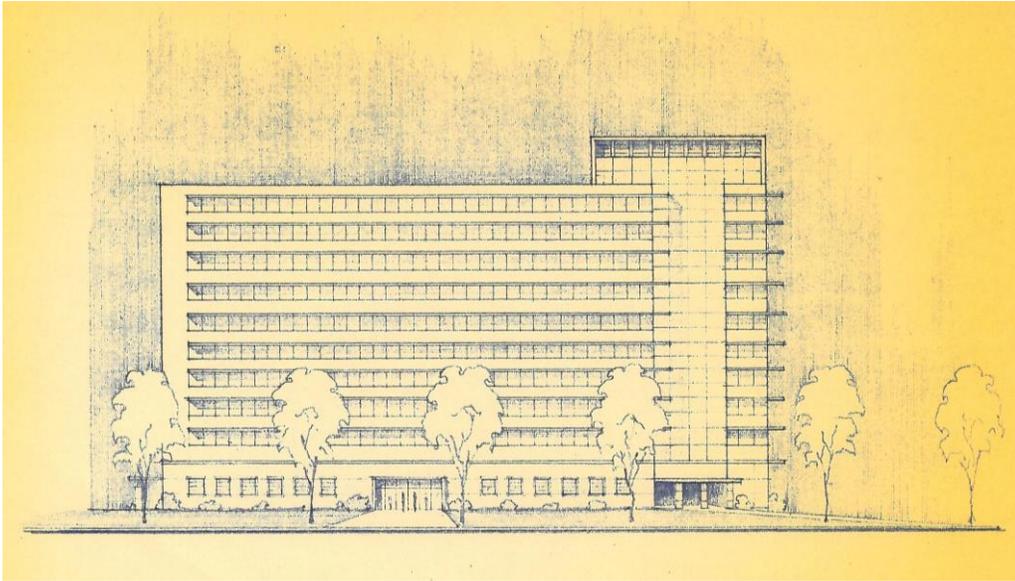
Subsequent to the Court of Appeals decision, Mr. Qualls resubmitted an application to the Board (Case BOA 32-8 (City)), but revised it so 479 Vance would be a funeral services showroom and not a place where funerals were actually conducted. The Board again rejected his application. Mr. Qualls sued. In its *Memphis v Qualls*, 16 Tenn.App. 387 (1933) decision, the Court of Appeals of Tennessee found that this particular use was not specifically prohibited in the subject zoning district and overturned the action of the Board. Interestingly, due to changing zoning restrictions, this site eventually did in fact become a funeral home. Mr. S.W. Qualls died on June 22, 1944, but his son's widow, Ms. Ceneta Qualls continued the business until she was forced to retire in 2008 at the age of 87 after a brutal attack. When it temporarily closed in 2008, it was one of the oldest continuously operated funeral homes in the city. The location is still in operation, under the name of Bond Funeral Directors (see photo below).



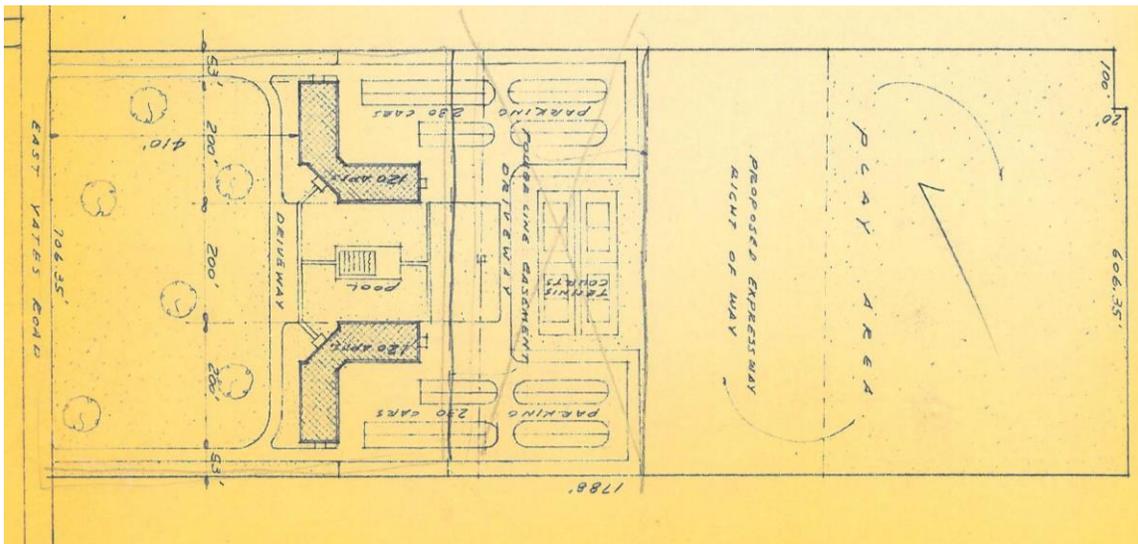
479 Vance today

BOA 52-103 (County): This case involved an Esso (Standard of New Jersey) gas station proposed in a residential district at the corner of US 51 and Millington Road, which was in the 5-Mile Zone at the time. The Board approved the request, but the neighbors sued. In its *Arendale v Rasch*, 32 Beeler 374 (1954) decision, the Supreme Court of Tennessee upheld the Board because the appeal was filed too late after the decision by the Board.

BOA 59-4 (County): This case involved twin ten-story apartment buildings with a combined 240 units on East Yates near Rich Road in a single-family residential district, which was in the 5-Mile Zone at the time.



Elevation of the proposed apartments indicate an architectural style popular at the time.



Site plan of the proposed apartments. East Yates is on the left. Note the “proposed expressway right of way” that bisects the apartments from the “play area” on the right.

The Board approved the request on February 12, 1959, and granted time extensions on August 13, 1959; March 6, 1960; July 14, 1960; March 9, 1961; April 12, 1962; February 14, 1963; July 11, 1963 and July 9, 1964. Finally, on September 4, 1964, a building permit was issued by the County Building Official. Four days later, the City of Memphis annexed the site into the City. The City Building Official revoked the permit and the developer sued. In *Schneider v Lazarov*, 20 McCanless 1 (1965), the Supreme Court of Tennessee upheld action of the City Building Official since rights had not yet vested (the

building had not commenced construction). In addition, the Court ruled that the County Board of Adjustment no longer had jurisdiction in this area and that any further appeals would go to the *City* Board of Adjustment. The Court noted with some dissatisfaction that the many time extensions had been done without public notice. No application was ever made to the City Board. Today, this area is predominated by single-family residential uses.

BOA 62-35 (County): This is by far the most cited case in this list. This case involved a request to construct a gas station in a single-family residential zoning district at the southeast corner of Poplar and June, which was in the 5-Mile Zone at the time. Based on this request, the City of Memphis Board of Commissioners and Shelby County Quarterly Court asked that the Memphis and Shelby County Planning Commission recommend an appropriate width of property along Poplar to be rezoned for commercial uses. The Planning Commission refused and instead drafted a policy statement that recommended that Poplar remain residential in nature from Highland to Collierville. Today, this 17-mile stretch contains billions of dollars of commercial and office space, perhaps due in part to the fact that the Board approved the use variance request at Poplar and June, in spite of the Planning Commission's recommendation.

The neighbors sued the Board, the property owner and Texaco, the purchaser. The judge for the Circuit Court of Shelby County, Judge Edward Quick, thoroughly reviewed the various private acts and ordinances affecting the authority of the Board. He was greatly dismayed that the enabling legislation for the 5-Mile Zone was not followed (see discussion above on Chapter 707 of the 1935 Private Acts on page 5). In its *Reddoch v Smith*, 18 McCanless 213 (1964), decision, the Supreme Court of Tennessee quoted Judge Quick's timeline of private acts and ordinances verbatim, but came to the same conclusion as did Judge Quick: that the County Board of Adjustment, while not the de jure board of adjustment for the 5-Mile Zone, was acting as the "de facto" board for this area.

On the more substantive matter of the variance, the Supreme Court found that the Board had been given "wide discretion" under its enabling legislation to "rezone" properties through its use variance abilities. The Court agreed with the Board that the fact that property owner Arthur Murray had marketed the site for eight years as single-family without selling it constituted a hardship. Incidentally, the plaintiff on this case, James Reddoch, would later become the defendant in a 1974 Tennessee Supreme Court case (*Jagendorf v Memphis*, 520 S.W.2d 333), when he attempted to rezone his property for the Bud Davis Cadillac dealership. Soon after the *Reddoch* decision was handed down, the property was developed as a Texaco station. It was later annexed into the City of Memphis and rezoned for commercial uses. Today, it is a Shell station (see photo on the next page).

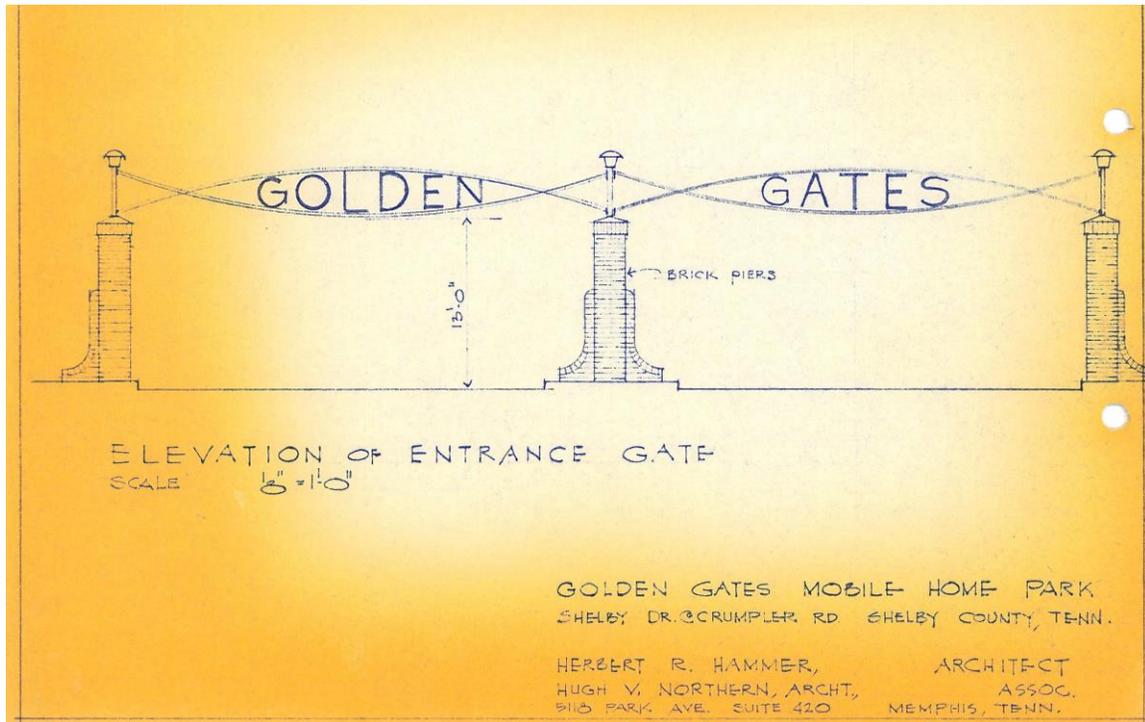


Reddoch gas station today

The *Reddoch* case exposed the significance of the enabling legislation of the Board. As discussed above, a 1955 private act was passed by the General Assembly requiring that a finding of “uniqueness” be found, along with the practical difficulty or hardship, in order for the Memphis Board of Adjustment to grant a variance. This uniqueness may be that the subject site is exceptionally narrow, shallow, topographically unusual, etc. However, the private acts affecting the Shelby County Board of Adjustment does *not* contain this requirement. This helps explain the *Reddoch* decision. This unusual wrinkle was somewhat resolved with the merger of the Memphis and Shelby County Boards of Adjustment in 1970. This is evidenced in *Barnett v Board of Adjustment* (1976, citation unknown), discussed below on Case BOA 74-221 (County) on page 17.

BOA 66-35, 67-102 and 71-27 (City): These three cases involve the same apartment complex proposed on the west side of Range Line, south of Frayser Blvd, in a single-family residential district. Case BOA 66-35 involved the initial approval of the apartments, which was conditioned upon the construction of a 6-foot brick wall along the rear and side property lines of the site. Case BOA 67-102 involved the applicant requesting a waiver from the condition to construct a brick wall. The Board rejected this request. The applicant then sued. In its *Stevenson v Parker*, 1 Pack 485 (1969) decision, the Supreme Court of Tennessee found that the Board was justified in placing the condition on the property and the applicant was estopped from claiming that the Board had no authority to require the brick wall since it was the same Board that granted the zoning entitlement for the apartments in the first place. Case BOA 71-27, which was filed with the Board after the *Stevenson* decision, involved a request by the applicant to substitute a chain link fence for the brick wall. On April 28, 1971, the Board agreed to this request.

BOA 69-135 (County): This case brought about one of the most significant changes to the Board of Adjustment: the merger of the City and County Boards. The variance requested was to erect a mobile home park at the southwest corner of Shelby Drive and Crumpler in the agricultural zoning district. This property was, at the time, located in the 5-Mile Zone.

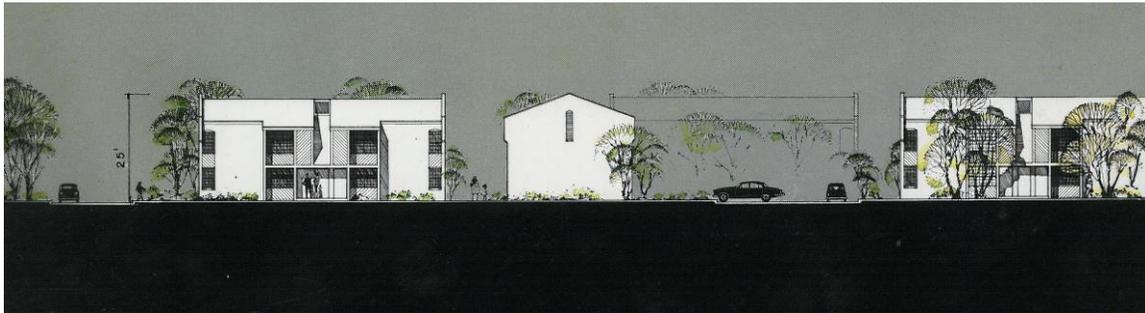


entrance to the mobile home park, which was to be called "Golden Gates"

The Board approved the request and the neighboring property owners appealed to the Circuit Court of Shelby County. The case was assigned to Judge Greenfield Polk, who handed down an order overturning the Board's decision because he found it did not have jurisdiction in the 5-Mile Zone. Judge Polk cited the "renowned" *Reddoch v Smith* decision throughout his order, acknowledging the fact that the Shelby County Board of Adjustment had been acting as the de facto board for the 5-Mile Zone. However, he also cited various authorities that the de facto doctrine may only apply to the authority claiming it if said authority acts in good faith and without knowledge that it is merely a de facto agency. Following that logic, Judge Polk found that the Shelby County Board of Adjustment's de facto authority in the 5-Mile Zone ended on May 8, 1964, the date the *Reddoch* case was handed down by the Tennessee Supreme Court. As to all of the cases decided since then, Judge Polk found that any party was estopped from appealing those cases, at least for the cases where the time to appeal had passed. Judge Polk's order was entered on April 29, 1970, which set off a series of events that lead to the lawful creation of the Memphis and Shelby County Board of Adjustment (see p. 7 in Section I above).

BOA 68-5, 68-17, 69-24 and 69-110 (City): These cases all involve the same piece of property, the parcel between the East Memphis Catholic Club on Helene and I-240, generally south of Quince and east of White Station. In 1968, the applicant submitted a

plan to construct 290 apartment units on this site, which was zoned exclusively for single-family residences. This case, BOA 68-5, was withdrawn by the applicant before the Board could vote on it. A revised plan was submitted later that year (Case BOA 68-17) with 304 units. This was rejected by the Board. The following year, the applicant submitted a revised site plan with 165 units, which was also rejected (Case BOA 69-24). The applicant then returned to the Board on December 22, 1969, and received approval for 165 units (Case BOA 69-110). The neighbors sued, claiming that the Board granted a use variance without identifying a true hardship. In *Glankler v Memphis*, 481 S.W.2d 376 (1972), the Supreme Court of Tennessee found in favor of the Board since the property had to be raised out of the 100-year flood plain, the cost of which made developing the property as single-family impracticable and thus a hardship.



cross-section of the approved apartments

Subsequent to the Supreme Court's ruling, the applicant returned to the Board with a correspondence application to request that the finished floor elevation for the apartment units be lowered from 274.9 feet above sea level to 270 feet. The applicant provided evidence that the actual floodwaters during storm events did not rise to the level indicated in the official 100-year floodplain map (see photo below).



The Board approved the request to change the condition to lower the finished floor elevation for the apartments. As a correspondence item, no notice was provided for this Board meeting. When the neighbors discovered this, they filed a petition for rehearing before the Board, which the Board granted. Provided with evidence that contradicted the

applicant's evidence on the actual flood level, the Board reversed its decision during a public hearing and re-set the finished floor elevation to 274.9 feet. The applicant sued in both state and federal courts, the latter based on inverse condemnation and substantive and procedural due process claims. These culminated in the Court of Appeals of Tennessee decision of *Rainey v Board of Adjustment*, 821 S.W.2d 938 (1991) and the Sixth Circuit Court of Appeals decision of *Rainey v Board of Adjustment*, 178 F.3d 1295 (1999); United States Supreme Court denied cert (120 S.Ct. 172). Both appellate courts found in favor of the Board, but these cases are of import because they represent, at 30 years from application date to final court disposition, the most time-consuming litigation in the Board of Adjustment's history. Interestingly, this property is now completely out of the 100-year flood plan and has been developed as a single-family, gated community (Newton Court Planned Development, OPD Case No. PD 05-310, recorded as Plat Book 224, Page 3).

BOA 70-36 (City): This case dealt with the eight-unit apartment building at the northeast corner of Summer and Graham. The owner had, on three previous occasions, attempted to rezone his property from multi-family residential to commercial to allow for the construction of a Shell station. On each occasion, the Memphis City Council rejected his request. Then, in 1970, he filed for a use variance with the Board of Adjustment. The Board approved his request. The neighbors filed suit. In *Houston v Board of Adjustment*, 488 S.W.2d 387 (1972), the Court of Appeals of Tennessee overturned the Board because they found that no hardship or practical difficulty existed. The Court was moved by the fact that evidence was presented that the apartment building had enjoyed a very high occupancy rate during the time in which the pertinent events transpired.



apartments at Summer and Graham today

BOA 74-109 (City): This case dealt with a variance for a piece of property on the west side of Millbranch, just north of the Interstate 55 overpass and south of Winchester. This same piece of property was the subject of a rezoning request that had been rejected by the Memphis City Council. The specific request to the Board was to allow a strip center to be built in a multi-family residential zoning district, which the Board approved. The Memphis City Council publicly expressed frustration with the Board, in part because their rezoning action was effectively overturned by the issuance of the use variance, but also because property near the subject site was co-owned by one of the Board's longtime members, John Shepherd. In fact, the City Council initially passed a resolution to file suit against the Board, but it was reversed because some Council Members felt that they should wait for a case where the facts indicated that the Board more clearly acted inappropriately (see pp. 23 and 23 in Section IV below). Instead, neighbors filed suit against the Board but the Circuit Court of Shelby County found in favor of the Board. Today, the shopping center's most notable tenant is Uncle Lou's Fried Chicken.



artist's rendering of the shopping center on Millbranch

BOA 74-221 (County): This case dealt with an outdoor firing range on Old Brownsville in what is now the City of Lakeland. The property was zoned M-3, Heavy Industrial. The Board approved the application, but on appeal, the Court of Appeals of Tennessee reversed finding that there was no hardship or practical difficulty in putting the land to a conforming use, and, perhaps even more importantly, that the property did not possess the required unique qualities for a variance (*Barnett v Board of Adjustment* (1976), citation unknown). Although the Court of Appeals did not discuss the private acts affecting the authority of the Board, it did review the local zoning ordinance that governed the Memphis and Shelby County Board of Adjustment at the time. With the merger of the two (technically three) older Boards of Adjustment, it is doubtful that the courts would require different findings of fact for one board to make, depending on the geographic location of the subject site. Therefore, it is likely that, based on the *Barnett* decision, courts in the future will first look at the zoning code in its review of a Board decision, and then rely on the doctrine of merger when reviewing the enabling legislation. The General Assembly passed the private act requiring a finding of uniqueness for the

City Board in 1955, the same year they passed the private act allowing for the merger of the City and County Board(s). It is fair to presume that the uniqueness findings would apply to the merged board. This is implicit in the *Barnett* decision.

BOA 77-119 and 79-35 (City): The subject of this case was the piece of property on the south side of Poplar just east of Ridgeway. It was most recently occupied by Sharky's Restaurant and before that, Steak and Ale. The original applicant on this site, in Case BOA 77-119, Houston's Restaurant, wished to erect a restaurant in an office zoning district. The Board rejected the request. The second applicant on this site, in Case BOA 79-35, Jolly Ox, pursued the same request but presented evidence that the small and shallow nature of the site prevented development for an office use. Jolly Ox was the name that Steak and Ale used in states that disallowed any reference to alcoholic beverages in a business' name. The Board granted Jolly Ox's variance. The Memphis City Council, which had recently approved a plan and rezoning for the Poplar Corridor which promoted office and multi-family uses exclusively in this area, filed suit with the Circuit Court of Shelby County (see pp. 31 and 33 in Section IV below). The Court found that the City Council lacked standing, so the suit was dismissed.

BOA 85-54 (City): This case dealt with an appeal of the Building Official's determination that a group home for the mentally disabled required a Special Use Permit in the single-family zoning district located at 1283 Holmes Road. The Board upheld the Building Official's determination, but in *SMS v Board of Adjustment*, 1986 WL 6790 (1986), the Court of Appeals of Tennessee disagreed and found that a Special Use Permit would not be required for this use, according to state law.

BOA 05-27 and 06-05 (City): These two separate cases both dealt with billboards that had been rejected by the Building Official. Case BOA 05-27 concerned a lot at 1740 S. Prescott at Interstate 240 and Case BOA 06-05 concerned a lot at 3206 Broad where Sam Cooper terminates between Vandalia and Malcomb. The applicant in both cases was William Thomas and the Building Official's basis for rejection was that both lots already had principal structures located on them. The zoning code considers billboards to be principal structures and it further limits one principal structure per lot.



The Board upheld the Building Official on both cases. Mr. Thomas filed suit. The Court of Appeals of Tennessee combined the lawsuits of both cases and upheld the Board's decisions (*Thomas v Shelby County*, 416 S.W.3d 389 (2011)). More information on these cases can be found on p. 65 in Section IV below.

sign at 1740 S. Prescott that still stands as of the writing of this memo

III. Secretaries and Chairmen of the Board

Since its inception in 1925, the Board has had twelve paid secretaries and nineteen volunteer chairmen. The Secretary acts as the lead staff person to the Board. While there were separate City and County Boards up until 1970, the Boards always had a common Secretary and staff. For many years, L.P. Cockrill served as Secretary. He was styled alternatively as "Planning-Engineer" and "Engineer-Secretary," reflecting his formal training as an engineer. He died while in office in 1948. There were no formal appointments to the position of Secretary until 1956, when the Memphis and Shelby County Planning Commission was created. From 1956 to 1970, the role of Secretary was filled by various members of the Planning Commission staff. Robert Stacey was appointed Secretary in 1968. He would serve as the first Secretary of the new Joint Board in 1970. By the time the Office of Planning and Development was created to replace the Planning Commission, the Board of Adjustment Secretary and staff were no longer in the Planning Commission and instead placed under the Division of Public Service, which also housed the Building Department. Robert Stacey retired in 1977 to focus on a company he had started in his spare time in 1963: Handy Maps. Anita Forrester was the second-longest serving Secretary, having served in that role for nearly 20 years until the Board was reunited with the planning department in 2001.

Secretaries

Lawrence P. Cockrill	June 17, 1925 - Sept. 22, 1948
W.M. Perkins	March 28, 1956 - March 14, 1957
Robert Miller	March 27, 1957 - Oct. 23, 1957
Harry F. Higgins	Nov. 14, 1957 - May 23, 1962
Tom Wellman	Nov. 28, 1962 - May 27, 1964
Fred W. Davis	June 11, 1964 - August 8, 1968
Robert Stacey	Sept. 9, 1968 - August 24, 1977
James Springfield, Jr.	Sept. 28, 1977 - Sept. 23, 1981
Anita Forrester	Oct. 28, 1981 - June 27, 2001
Mary Baker	July 25, 2001 - July 28, 2010
Chip Saliba	August 25, 2010 - Oct. 27, 2010
Josh Whitehead	Nov. 17, 2010 - present

The lists on the next page include the Chairmen of the Boards over the years. As they indicate, the City and County Boards shared the same chairmen for 23 years (1931-1954). The longest tenure of any chairman was that of David Harsh with his nearly 20 years of service to the County Board, during 18 of which he also served as Chairman of the City Board. He resigned those posts when he was elected to the Shelby County Board of Commissioners, and was then subsequently elected chair of that body. His grandson would make their common middle name, Newby, popular among college students with the founding of Newby's Restaurant and Bar in 1975. David Harsh III would also make his grandmother's (and Chairman Harsh's wife's) name, Helen Westervelt, popular with the establishment of "Westy's" in the Punch District.

**Chairmen,
City Board of Adjustment**

Wassell Randolph	July 16, 1925 - July 13, 1928
E.B. Klewer	July 13, 1928 - May 27, 1936
David N. Harsh	May 27, 1936 - Dec. 20, 1954
John M. McGregor	Dec. 20, 1954 - Feb. 28, 1962
Perry Pipkin	Feb. 28, 1962 - Feb. 27, 1963
	Feb. 24, 1965 - Feb. 23, 1966
	Feb. 12, 1968 - Feb. 26, 1969
Jack Bland	Feb. 27, 1963 - Feb. 26, 1964
John S. Palmer	Feb. 26, 1964 - Feb. 24, 1965
	Feb. 22, 1967 - Feb. 12, 1968
	Feb. 25, 1970 - June 25, 1970
Roane Waring, Jr.	Feb. 23, 1966 - Feb. 22, 1967
James B. Adams	Feb. 26, 1969 - Feb. 25, 1970

**Chairmen,
County Board of Adjustment**

E.B. Klewer	Sept. 24, 1931 - May 28, 1936
David N. Harsh	May 28, 1936 - Feb. 9, 1956
Walter M. Simmons	Feb. 9, 1956 - Aug. 13, 1959
Charles L. Heckle	Aug. 13, 1959 - June 11, 1970

**Chairmen,
Joint Board of Adjustment**

Carl Langschmidt	July 27, 1970 - Jan. 27, 1971
Charles L. Heckle	Jan. 27, 1971 - March 22, 1972
John S. Palmer	March 22, 1972 - Jan. 24, 1973
	Feb. 27, 1974 - Jan. 25, 1975
	March 26, 1976 - Jan. 26, 1977
	Feb. 27, 1980 - March 25, 1981
	Feb. 24, 1982 - May 25, 1983
James W. Campbell, Jr.	Jan. 24, 1973 - Feb. 27, 1974
Rufus Jones	Jan. 25, 1975 - May 26, 1976
	Jan. 26, 1977 - Feb. 27, 1980
W. Richard Hall	March 25, 1981 - Feb. 24, 1982
	March 27, 1985 - Feb. 26, 1986
	Feb. 25, 1987 - March 23, 1988
	Aug. 23, 1989 - Feb. 28, 1990
	April 24, 1991 - Nov. 30, 1994
John S. Shepherd	May 25, 1983 - March 28, 1984
	Feb. 26, 1997 - June 25, 2008
Frank H. Colvett	March 28, 1984 - March 27, 1985
	Feb. 26, 1986 - Feb. 25, 1987
	March 23, 1988 - Aug. 23, 1989
	Feb. 28, 1990 - April 24, 1991
Lynda Raiford	Dec. 21, 1994 - Jan. 22, 1997
	June 25, 2008 - Jan. 23, 2013
Frank H. Colvett, Jr.	Jan. 23, 2013 - present

IV. Newspaper Clippings

These newspaper articles, many of which cover cases discussed in this memorandum, are organized chronologically.

November 22, 1972, *Commercial Appeal*, Case BOA 71-199 (City) (see also p. 16 in Section II above)

Subpenaing Of Councilmen To Be Decided At Hearing

Circuit Court Judge Irving Strauch has scheduled a hearing for 10 a.m. today to decide whether he has the right to issue subpoenas ordering City Council members to testify before the Memphis and Shelby County Board of Adjustment.

The hearing stems from a Dec. 22, 1971, zoning ruling by the Board of Adjustment. The board granted a zoning variance to permit construction of a service station and two buildings at the northwest corner of Cottonwood and Mendenhall roads, formerly a residential area. CA 11-22-72

Before the ruling, the requested zoning change from R-2 to C-1 had been denied twice by the City Council in 1967 and 1969.

Colonial Terrace, Inc., a holding company for First National Bank, last Feb. 28 objected to the board's ruling. The firm's attorney, Charles G. Black, filed a petition in Circuit Court asking Judge Strauch to remand the case to the board of adjustment, since Colonial had not been informed of the Dec. 22 public hearing on the requested zone change.

Colonial owns 7.868 acres of land about 500 feet north of the property in question.

Judge Strauch granted Mr. Black's request. But Mr. Black filed a motion yesterday asking the judge to issue subpoenas forcing council members to testi-

fy at the rehearing before the Board of Adjustment.

City Atty. Frierson Graves then entered an oral motion before the judge asking him to quash Mr. Black's subpoenas.

Mr. Graves informed councilmen of the legal action in their morning session yesterday and told them he would seek to have the action rescinded.

"I don't think I should allow you to be subject to subpoena . . . If any of you want to go or are interested you can go voluntarily," Mr. Graves said.

He said the chairman of the Board of Adjustment has the authority to subpoena witnesses, but that a Circuit Court judge cannot subpoena a witness to appear before another body.

Most councilmen agreed with Mr. Graves' decision, but Councilman Jack McNeil said he did not want the city to oppose residents seeking to block the requested variance.

Councilman Ed McBrayer, however, said that "for us to appear before the Board of Adjustment might do the applicant more good than the opponents" by offending board members.

The council has tried for several years to limit the power of the board. They particularly want to eliminate any changes in land usage — rather than minor exceptions to requirements — which they feel should be heard by the Planning Commission.

July 3, 1974, *Commercial Appeal*, Case BOA 74-109 (City) (see also p. 17 in Section II above)

U.A. July 3, 1974
**City Invites Court Fight
With Zoning Challenge**

By LEON MUNDAY

Inviting a legal battle, the City Council asked City Building Official Frank M. Bosak yesterday to block construction of a neighborhood shopping center approved last week by the Memphis and Shelby County Board of Adjustment.

The council unanimously rejected commercial zoning of the 2.1-acre tract on the west side of Millbranch south of Winchester two months ago. The property, zoned for garden apartments, is in front of the Winbranch Community Apartments.

The council has been feuding with the board for several years. Councilman Thomas H. Todd Jr., who brought up the Millbranch case, urged councilmen to "do something — even if it means a lawsuit."

Bosak said he had "no comment at this time" on the council's request. "It's something we need to discuss with the city attorney."

"We're certainly not going to be placed in the middle with the board of adjustment," said William C. Boyd, city public service director.

Councilman Fred Davis, an outspoken critic of the board, attempted to alter Todd's resolution to "direct" Bosak to refuse to issue a building permit. Davis abandoned his effort after being told the city charter prohibited the council from issuing orders to officials under the mayor's jurisdiction.

Todd said he would welcome a lawsuit "to try to find out where we stand on this type of abuse" by the board of adjustment. Councilman Billy Hyman said the Millbranch case was "particularly bad" because of traffic problems which would be created by commercial development.

Council Chairman Ed McBrayer said the Tennessee General Assembly had been asked to strip the board of some of its powers. A bill passed the House twice but died in the Senate, he said.

Under state law, the board has broad powers to grant exceptions and variances from zoning regulations. Courts have ruled that the board is a "judicial body" subject to reversal only by the courts, a spokesman for the board said.

Plans For Zoning Lawsuit Dropped By City Council

By JEFFERSON RIKER

The City Council yesterday reversed its decision and dropped plans to file a lawsuit challenging the authority of the Board of Adjustment in a disputed zoning variance case at Millbranch and Victoria.

A resolution asking Mayor Wyeth Chandler to bring the suit failed 8-1, with only Councilman Thomas H. Todd voting yes. Councilmen Billy Hyman, Robert Love and J. O. Patterson Jr. were absent. Councilman John Ford was out of the room.

Several councilmen said they still want to test the board's authority but feel they need a stronger case. The council and board have feuded for years.

The case at issue involved five residential parcels on the west side of Millbranch owned by Meredith McCullar, for which the board granted commercial zoning after the council had refused it.

Board member John S. Shepherd voted for the commercial zoning although he is co-owner of a parcel less than 150 feet away on the other side of Millbranch. That action brought charges of conflict of interest from the councilmen.

"We're not trying to do away with the Board of Adjustment, just limit their power," said Councilman A. D. Alissandratos during the council's morning executive session.

Councilmen Jack McNeil and Glenn Raines said they favor asking the Shelby County legislative delegation to amend the state law governing the board.

MEMPHIS PRESS-SCIMITAR, TUESDAY, JULY 30, 1974

Adjustment Board Split Into City-County Suggested

Mayor Wyeth Chandler today suggested City Council consider the possibility of splitting the Board of Adjustment into separate city and county bodies.

"By a simple ordinance passed by the Council we (city) can withdraw from the contract forming the city-county Board of Adjustment," Chandler told Council members attending a morning executive session at City Hall.

Chandler's suggestion comes in the wake of controversy over a June 26 Board of Adjustment action which allowed a zoning variation on five parcels of residential

property west of Millbranch at Victoria.

The board's variance permitted commercial use of the land parcels although the Council had earlier denied the rezoning measure.

Chandler said he felt the board's powers had gotten "too strong" and "should be curtailed."

Chandler said the board was designed to adjust

zoning decisions of the Council and not to overrule them.

Chandler said his action was not a judgment of

whether the board's actions had been "good or bad. It's a question of who is going to control (city) zoning," he said.

Zoning Board Has Reversed Council Again

Memphis and Shelby County Board of Adjustment once again has reversed City Council on a zoning matter.

It came before the board yesterday, with Carl H. Langschmidt Jr., attorney and former board chairman, representing Lehman-Roberts Construction Co. Langschmidt was seeking an exception from R-3 two-family residential zoning to permit an irregularly shaped lot at 1298 Saxon to be used as a parking lot.

Memphis and Shelby County Planning Commission had recommended approval, but on July 16, City Council denied the application. Then Langschmidt took it to the Board of Adjustment as a hardship case.

Some Council members were upset because the Board of Adjustment approved rezoning about two acres on the west side of Millbranch, south of Winchester, after Council had rejected this rezoning from apartment to commercial, by an 11-0 vote last May 7.

August 29, 1974, *Press-Scimitar*, Case BOA 74-109 (City)

City Council today passed a resolution calling on the Mayor to file suit against the Board of Adjustment because of the Millbranch rezoning. Later, some members of the Council went to the site, and said the rezoning, which had been recommended both by the Planning Commission, and then by the Board of Adjustment, didn't seem such bad zoning, and Council reconsidered the lawsuit resolution. Meredith L. McCullar, owner of the property, claimed it was a hardship not to be able to develop the property. Some neighboring property owners have since filed suit in Circuit Court, seeking to cancel the rezoning to commercial.

Planning Fighting Back From Building Boom's Knockout

By THOMAS R. STONE
Press-Scimitar Staff Writer

(Second of Three Articles)

For all practical purposes, long-range planning in Memphis and Shelby County died for awhile, according to one of the area's top planners, but now officials are fighting to breathe life back into it to enhance orderly growth.

According to John Dugan, principal planner for the Planning Commission, long-range planning is starting up again after years during which the emphasis was on current needs rather than the future.

"From 1970 to '74 was the big development boom," he said. "The governments threw planning to the winds, because they thought development was great.

"Planners became frustrated. This resulted in a big turnover in (Planning Commission) staff. The four principal planners in long-range planning left, because they could get no interest on the part of government to do it. Of a dozen or so professional planners, all but one or two left because there were no funds for comprehensive planning."

Because city and county government officials now realize the importance of

good planning for fiscal reasons (extending services to new developments is expensive), Dugan is hopeful that the future of long-range planning is brighter.

To help assure that planning problems, including an antiquated zoning ordinance, are solved, the Chicago consulting firm of Richard Babcock & Associates has been retained to do a two-year, \$80,000 study of the local planning process and its problems.

"The city ordinance is 21 years old," planning director Robert Miller said. "It was prepared in the early '50s and adopted in 1955. It is just not attuned to the developmental concepts of the late '70s and is not ready for us to take into the '80s."

The zoning ordinances tell planners, developers and officials what can and cannot be done in Memphis and Shelby County.

"They are basically antiquated and difficult to interpret and are lacking some of the vocabulary we now use," he said. "They sorely need to be brought up to date."

The county ordinance, adopted in 1961, is equally out-of-date, Miller said.

In addition to updating the ordinances, metropolitan government — consolidation

of city and county governments — also would help the planning process, he said.

"It seems to me it would probably be more efficient to deal with one government administering the planning and growth rather than two," Miller said. "We work for both governments and try to please both. We have two bosses. It would be a lot easier to have one."

The Babcock study came in the wake of a 1975 report by the American Society of Planning Officials, a planning information agency which was invited to survey local planning problems. The society said the local planning commission "has not been a very effective forum" for management of growth, that it spends too little time on long-range planning, and has an "inefficient, unwieldy and confusing" land development administration.

The Babcock firm was chosen, Miller said at the time, because of "long experience, success in cities of size comparable to Memphis, and because it depends heavily on local planning staffs."

On Sept. 21 of this year, the Babcock team released a three-volume, 580-page look at the local planning system.

The Board of Adjustment was one facet of the planning process which came under sharp criticism for granting variances

from zoning which the Planning Commission and legislative bodies had approved.

Robert Stacey, executive secretary of the eight-member adjustment board, which operates independently of the planning commission, doubts the study's worth because he said the board was never asked to provide facts for the study.

"We have never been involved — never been invited to participate in this process, or asked to verify any of the information," he said.

Attacking the study, Stacey points to its main criticism of the adjustment board, which says:

"The Board of Adjustment has for years heard, and on occasion granted, applications for use variances to the provisions of the Shelby County and City of Memphis zoning ordinances.

"Many of these applications are made to change the use on a particular parcel after the Court of Council, with or without the concurrence of the Plan(ning) Commission, has turned down a request to rezone the premises in order to permit the use sought.

"This 'double dip' practice has become sufficiently widespread that it constitutes a regular channel by which decisions at

the legislative level are reviewed again and often granted by the Board of Adjustment in what is theoretically its quasi-judicial capacity.

"There is no question that there is a strong current in the Memphis community for sharply curtailing, if not eliminating altogether, the practice of granting such use variances by the Board of Adjustment."

Stacey complained about the Babcock firm's use of the phrase "Many of these applications . . ."

"This is totally erroneous," he said. "Over the last five years, we've probably disposed of 1,600 to 1,800 cases, and three cases were to change such zoning. It was simply not an accurate statement, and it could have been easily determined by checking the records of this board before the report was written."

Stacey said he found a number of other things in the report that "are simply not true," but Miller defends the Babcock firm and its study.

"Babcock is a consultant who has dealt with private and public agencies throughout the country," Miller said. "He's very helpful because he's familiar with what they've done (in other cities) and what success they've had. His job is to tell us if

things are workable. We think we're very fortunate in having Mr. Babcock help us. He's one of the most renowned zoning lawyers-consultants in the country."

Fact-gathering for the Babcock study has a year to go, and the second year will involve getting cooperation from Memphians — businessmen, planners, government officials and developers who are serving on a committee to see how the study can best be used.

Once the study is completed, planners are hoping, the local zoning ordinance will be made more meaningful. City and county ordinances — which differ on a number of things such as required setbacks for commercial developments and sign requirements — will be standardized, so developers will have a better idea of what they can and can't do.

Loopholes should be eliminated; modern planning vocabulary installed; and, according to Miller, "a lot of problems will be resolved."

With new zoning ordinances on the books, zoning, and ultimately, long-range planning, should be better, but more must be done, officials said, to make the total planning package effective, including elimination of the Planning Commission as it exists today.

NEXT: (Restructuring the system.)

December 23, 1976, *Press-Scimitar* (continued from the previous page)

MEMPHIS PRESS-SCIMITAR, THURSDAY, APRIL 29, 1976

Poplar Residents Win Zoning Fight

East Memphis residents have won another battle in an attempt to keep strip commercial zoning from spreading westward along Poplar, west of Grove Park.

In a three-hour hearing before the Board of Adjustment yesterday, about 50 residents protested the proposed zoning variation to permit construction of a Memphis Bank & Trust Co. branch at 4424 Poplar, on the northwest corner of Poplar and East Cherry Circle.

For nearly four years, residents of the neighborhood, located two blocks west of the Laurelwood Shopping area, have successfully resisted various attempts to rezone to commercial about 30 acres at the site of the old Siena College campus on the south side of Poplar across from Cherry Road.

The applicants requested the zoning variation yesterday claiming "hardship." Charles Cobb, attorney for the applicants, said there was no reasonable market or financing available to sell the property because of an overabundance of residential-zoned property in the city.

It was learned during the hearing at City Hall that Sam Dattel, Memphis developer, had offered the property owners \$200,000 for the three acre parcel.

Memphis Bank & Trust had offered \$300,000 for the property, according to the testimony of a Memphis real estate agent.

John Walt, attorney for the residents, said if this is a hardship case, "then the rights of the neighborhood far outweigh the value they (owners) can get for their property."

The proposal was rejected by a 7-0 vote.

In other action, the board approved a special permit to allow a 48-acre expansion of a sanitary landfill on Sykes Road at the Millington city limit.

A representative for Browning-Ferris Industries of Memphis, landfill owner, said the expansion was needed because the present 47-acre landfill is almost filled.

April 29, 1976, *Press-Scimitar*
(rendering of rejected bank below)



Stacey Ends Term On Adjustment Panel

By THOMAS R. STONE
Press-Scimitar Staff Writer

After 13 years of overseeing the monthly meetings of the sometimes controversial Board of Adjustment, Robert Stacey today served as the board's executive secretary for the last time.

Stacey, 47, wrapped up a career with city and county government that he began in 1952. At that time he was one of a handful of people running the then-combined city and county planning departments, boards of adjustment and county building department on the first floor of the county courthouse.

In 1961, he became assistant secretary of both the city and county boards of adjustment, and in 1964, became executive secretary of both.

"It was funny," Stacey said. "All of these departments were supposed to be separate, but they were all run by the same people."

Gradually changes came about, and in 1970 the two adjustment boards were combined and he was named to head the new operation at City Hall.

The Board of Adjustment has the authority to grant variances to the zoning ordinances to citizens who feel they need exemptions, usually for "hardship" reasons.

Some planners and other officials have criticized the board for permitting the changes in zoning which were set by the Planning Commission — now the Land Use Control Board — the City Council and the County Court.

Stacey, who worked as an associate planner before getting the adjustment posts, said he thinks the board is necessary.

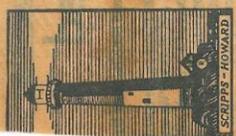
"Having had experience in both areas, I would tend to be of the opinion you definitely need both bodies — the planning and adjustment boards for a system of checks and balances," he said. The general holding of courts over the years throughout the country has been you've got to have bodies to grant certain types of relief."

When asked why he is retiring, Stacey said: "I'm tired."

He will not give up work, however, because he plans to open his own real estate and development consulting firm.

Stacey has been paid \$23,000 per year in the adjustment post and will receive a pension of about \$15,000 per year.

He will be replaced by Jim Springfield, who was assistant secretary until 1970, when he left. Springfield comes to the post from the Memphis Housing Authority where he had been in charge of urban renewal.



Memphis Press-Scimitar

FINAL EDITION
Dow Jones Industrial
Average: Up 2.08
At 3:00 P.M. EST
Markets on Pages 9X, 9Y
PRICE FIFTEEN CENTS

U.S. WEATHER FORECAST: Sunny through Thursday, high in low 90s; Low tonight low 70s. (Details on Page 2.)

97TH YEAR—NO. 261
MEMPHIS, TENN., WEDNESDAY, SEPTEMBER 7, 1977
TELEPHONES: WANT ADS
NEWS AND GENERAL CIRCULATION 526-8872
526-7801

Petition Seeks Okay to Move Elvis' Body to Graceland

By THOMAS R. STONE
Press-Scimitar Staff Writer

Attorneys for Elvis Presley's estate today applied for a zoning variance to permit the bodies of the singer and his mother to be moved from Forest Hill Cemetery to the grounds of Graceland, Presley's Whitehaven mansion.

Today was the deadline for application to be made with the Board of Adjustment for a request to be heard at the board's next meeting Sept. 28.

Sources said Vernon Presley, the late singer's father, began considering the move recently after three men were arrested near the Forest Hill Midtown mansion, which contains the bodies of Elvis and his mother. The three men reportedly planned to kidnap Presley's body and hold it for ransom.

A variance from the zoning regulations is needed because Graceland is in an R-1

residential district, and the city code does not permit burials in such zones.

"If the Board of Adjustment gave a variance, it would be no problem to get a (health) permit to move a body out there (to Graceland)," Dr. George Lovejoy, director of the Health Department, said.

The act regulating burials does not mention burials in residential areas. "And, therefore, if it is not mentioned, it is not permitted, and a variance would be needed," Lovejoy said.

In the Presley application for zoning variance, Bescher Smith, the attorney who filed it, cited the following as reasons for requesting the move:

- "It is impossible to provide adequate security for the protection of the bodies of Elvis A. Presley and his mother Gladys Smith A. Presley in their present resting place at Forest Hill Cemetery without creating a great deal of otherwise needless

expense to the estate, amounting to \$200 a day or more.

"There has already been one reported attempt to steal the body of Elvis Presley and hold it for ransom.

"The subject property (Graceland) contains an arch in excess of 13 acres, is completely enclosed by high walls and fences, and the property already employs a regular staff of security guards 24 hours a day."

"The alleviation of the problem at Forest Hill Cemetery would not create an additional problem on the subject property because the location chosen for the family burial site would be behind two walls and totally unable to be seen by the public unless opened to the public.

"In addition to the problems of expense to the estate, many people have been prevented from visiting the grave sites of their loved ones because of the crowds at Forest Hill Cemetery, which is also a cot-

cern of the executor and trustee, Vernon Presley.

"The location of the site itself on the subject property (Graceland) would not create any unusual hardship or difficulty because it would be set back far enough from adjoining property lines so as not to conflict with the comprehensive plan as established for the surrounding property."

The request is for burial sites "for not more than six persons," to be located 580 feet from the front property line and 50 feet from the south property line.

Chances of the Board of Adjustment approving the request are good, a source said, because Presley's home is expected to eventually become a shrine for his fans and the graves should be there for the public to visit.

"We have had calls from people who say it is causing a hardship for them because they cannot get in (the cemetery) to visit their loved ones," Dick Hackett, director

of the Mayor's Action Center, said the Presley family city government following Presley's death Aug. 16, 1976.

"The Presleys themselves have had difficulty time visiting the mansion, and we have to remove them with police protection whenever they go.

"I think they have very legitimate reasons for the move and I plan on speaking at the hearing in favor of it."

Memphis Funeral Home has had charge of the Presley family funeral arrangements and is expected to handle the move if it is permitted.

The bodies reportedly would be buried near a fountain on the south side of the Graceland mansion.

Visitors to the estate describe the fountain as being down a few steps from the home's kidney-shaped swimming pool. Around the southern side of the fountain area is a Grecian-style temple of eight Co-

riothian columns. Behind that is a curving wall containing four stained-glass windows which depict religious scenes.

Serene, classical staters and benches are nearby; and a statue of Jesus gazes down the fountain.

A source said crowds might someday be permitted to visit the grave site at Graceland but not to enter the mansion itself. The body of the singer's mother, who died from a bile, is to be moved from a hillside crypt nearby after her son's death.

Cemetery officials did not say whether the move would be made before the Sept. 28 hearing. The bodies which took place at night "was the first time after the death of the health department opened," the source said.

Officials said residents within 500 feet of the proposed Graceland burial site will have to be notified in case they wish to speak at the Sept. 28 public hearing in the City Council Chambers at City Hall.

September 7, 1977, Commercial Appeal front page

Zoning Variance Disputed By Land Use Control Panel

The Board of Adjustment went beyond its authority in granting a zoning variance for construction of a Jolly Ox restaurant at 6201 Poplar, the Land Use Control Board charged yesterday.

In a letter to Rufus Jones, chairman of the Board of Adjustment, the land use board said, "We are of the opinion that in the present case, the requisite hardship or unique circumstances were absent and that the alleged hardship was probably self-created and that your board, therefore, acted beyond its authority in granting the variance. We, therefore, urge you to reconsider your action and deny the variance."

The letter was signed by Mrs. Wanda Goodman, vice chairman of the land use board, which makes recommendations on zoning matters to the City Council and county Board of Commissioners. The Board of Adjustment has the power to grant variances and its decisions are subject to review only by the courts.

Mrs. Goodman said the law requires that variances "be granted only in unique and individual cases of practical difficulties or unnecessary hardship resulting from a literal application of the zoning ordinance."

She said the Jolly Ox case does not meet the requirements of the law. The Board of Adjustment last week voted 8-0 to allow a variance in the office district to permit construction of the restaurant.

"We remind you that the granting of a variance is an exercise of administrative power, not legislative authority, and that

the power to amend the O-2 office district regulations is strictly legislative," Mrs. Goodman wrote.

Granting a variance without a showing of unnecessary hardship or unique circumstances has been ruled "an improper exercise of the legislative power to amend a zoning ordinance," Mrs. Goodman continued.

The Board of Adjustment also may have overlooked a provision in the law concerning self-created hardship, she said.

"If the applicant in this case purchased the land in question subject to the ordinance from which it seeks relief, then the alleged hardship was self-created and application for a variance should, therefore, be denied."

Mrs. Goodman said the location of the proposed restaurant near Poplar and Massey was designated an office district several years ago to "keep strip commercial off."

"The traffic situation on Poplar is horrendous right now," she said.

The Land Use Control Board last week voted to formally ask the Board of Adjustment to rescind the variance.

"I'm certain we will consider the letter at the next board meeting," Jones said. "I don't say we will reconsider the action taken."

THE COMMERCIAL APPEAL

A Scripps-Howard Newspaper

MICHAEL GREHL, Editor

Published by The Memphis Publishing Co.
495 Union Ave., Memphis, Tenn. 38101

JOSEPH R. WILLIAMS, Business Manager

The Memphis Commercial Established 1889
The Appeal Established 1840
The Avalanche Established 1867

Consolidated July 1, 1894

Page 4 ****

Friday, March 16, 1979

A Community Hardship

A CITY COUNCIL majority wants the law to pull the bridle to restrain the Board of Adjustment. It's past time. The board has been free to graze in too many pastures.

The council has voted to hire a private attorney to file suit charging that the board exceeded its authority in granting a zoning variance to permit the construction of a restaurant on Poplar near Massey. The action came on a request from the Land Use Control Board which had designated the area for office buildings, apartments and townhouses several years ago. The land use panel held that the case lacked "the requisite hardship or unique circumstances" warranting a zoning variance, and that, "the power to amend the . . . office district regulations is strictly legislative."

Any hardship the developers might have claimed may have been "self-created," according to a land use board spokesman. Mrs. Wanda Goodman, vice chairman, said, "If the applicant in this case purchased the land in question subject to the ordinance from which it seeks relief, then the alleged hardship was self-created." That is also against the law.

THE PARTICULARS of this case may well be left for the courts to decide. But the issue is much larger than another steak and salad-bar restaurant on Poplar. The Board of Adjustment has too often attempted to make development policy for this community. If its powers were as imperial as sometimes assumed, there would be no need for a planning agency, or a zoning commission, or the City Council.

Curiously, Mayor Chandler has opposed the council lawsuit, saying the

board had not had a chance to defend itself. Yet in 1970, when Chandler was a member of the council, he declared when voting for an ordinance reorganizing the board, "We're going to change the ordinance to eliminate as far as we can the board changing the use of land." It has done so ever since.

THE RESULTS OF the board's work can be seen in the glut of commercial strips along the city's major thoroughfares, and the traffic horrors they have imposed. Indeed, Poplar east of White Station was to have been preserved as the last pastoral passage until the board interdicted planning with the first zoning variances. It is communitywide hardship that is at stake.

The state Supreme Court upheld the board's right to adjust zoning in 1969, "when it finds that such regulations impose unnecessary restraint or hardship." It has been less than diligent in upholding that mandate.

In 1974 the board overturned specific actions by the planning commission, the City Council and the neighborhood to block a shopping center on Millbranch near Winchester. It refused to reconsider even after it was learned that a member of the board owned property within the development site. The City Council threatened to sue then (with the mayor's "100-per-cent" support), but backed down.

THIS TIME THE council should see it through. Councilman Jeff Sanford has put it succinctly: "Do we zone for the benefit of the community or to bail people out of bad investments?" That is the point. And apparently only a court test can answer his question.

City Council Retains Its Own Attorney for Suit Against Board of Adjustment

Despite strong protests by Mayor Weth Chandler and the city attorney, the City Council voted 9-3 to hire its own lawyer for an unprecedented lawsuit against the Board of Adjustment.

Attorney David Caywood was retained at a maximum fee of \$4,000, including all appeals, to challenge a recent ruling by the Board of Adjustment that allowed a zoning variance to permit construction of a \$2 million restaurant at 6201 Poplar.

Several Council members have charged that the Board overstepped its authority by granting the variance after it was denied by Council. The lawsuit will be unprecedented in that city and county attorneys will be required to defend the Board of Adjustment against the suit by Council's attorney.

front, but without the study's controversial recommendation that the city purchase Treasure Island in McKellar Lake.

The Council has been at odds throughout the years with the Board of Adjustment over zoning variations, usually contending that the board goes beyond granting exemptions for hardship cases. In the latest case, the Land Use Control Board protested to Council about the Board of Adjustment's zoning variance for Steak & Ale of Tennessee Inc. to permit construction of a Jolly Ox restaurant in an area zoned O-2 for office use.

J.O. Patterson said it is time to draw the line for the Board of Adjustment to deter-

mine where the powers should be. He said he would like the duties and responsibilities of the Council on zoning made clear by a court ruling.

City Attorney Cliff Pierce said the mayor would have to sign the contract with Caywood to make it legal, because the Council does not have the power to make contracts under the charter. Councilmen Ed McBrayer asked Pierce what the Council could do if Chandler refused to sign, and Pierce said the Council would have to face that situation if it came up. The mayor later said he would sign if Pierce said it is legal.

Caywood said he would seek a declaratory judgment and could use previous cases to show a constant pattern of abuse of authority by the Board of Adjustment.

Chandler, in a rare appearance before the Council at its public meeting, said he had no interest in the matter other than a desire for Council to hear both sides of the issue before rushing into a lawsuit. The mayor said he wanted to find out if the board had abused its authority, but he said the Council had asked for no comment from members of the board and had not read minutes of the meeting.

"In opinion, it was a completely a legal decision," Chandler said.

Oscar Edmonds, Halloran and Billy Hy-

man voted against the suit, with A.D. Alissandratos, Fred Davis, Bob James, McBrayer, Patterson, Ed Raines, Sanford, Tom Todd and Chairman Pat Vander Schaff voting for it. John Ford was absent.

Davis led opposition to Halloran's conflict of interest ordinance, saying he would vote against it on first reading even though ordinances usually go to third reading before a decisive vote is taken. The ordinance by Halloran includes a provision that any source of income totaling \$250 in a year must be reported, and the ordinance includes non-paid appointees to city boards and commissions as well as elected officials.

The vote was 5-5 to send the ordinance back to the committee for further study, and Glenn Raines, who became acting chairman in the absence of Mrs. Vander Schaff, had to cast the deciding vote. Others who voted to return it to the committee were Alissandratos, Davis, James, Todd and Patterson, with Edmonds, Halloran, Hyman, McBrayer and Sanford voting no.

Businessman Jack Belz spoke against purchase of Treasure Island, saying he feared the Council might use it for pleasure boating. He said the island is badly needed for industrial use and that "floating" of barges is done on the west side of the island.

March 21, 1979, *Press-Scimitar*,
Case BOA 79-35

Adjustment Board Torpedoes Goals of Zoning, Critics Say

(First of two articles.)

By BRENT MANLEY
Press-Scimitar Staff Writer

If members of the Memphis & Shelby County Board of Adjustment feel about as popular as the tax collector these days, they have good reason.

From the City Council to neighborhood associations and the Land Use Control Board, the mere mention of the Board of Adjustment stirs increasingly bitter criticism.

"They have really gummed up the works," said John Elkington, chairman of the Land Use Control Board. "They really need to examine what they're doing."

Not everyone is unhappy with the board, but its critics say the board is single-handedly rezoning the city, to the detriment of a myriad of planning efforts.

Changes in zoning are the exclusive province of the Land Use Control Board and the City Council.

The Board of Adjustment, established in 1925, was constituted as a mechanism for handling unique circumstances and hardship cases for which there could be no relief under written codes.

At issue is the board's alleged abuse of a power possessed by no other entity in the county — to permit land uses which conflict with zoning laws.

Dozens of such decisions have produced happy applicants and the board's defenders say that makes for economic progress in Memphis.

Nevertheless, say the board's detractors, every time the board allows a restaurant in an area zoned only for office use, or a truck terminal in a residential area, carefully considered plans for the orderly growth of the city are eroded.

What further infuriates critics of the board are these facts:

- The board is, in a sense, untouchable. It is the final governmental appeal source in land-use cases. If you don't like what the board has done, you have to go to court.

- The board makes no use of the professional planning staff of the Memphis & Shelby County Office of Planning and Development, which advises the Land Use Control Board and the Council on matters of land use. The Board of Adjustment has a four-member staff whose time is largely taken up preparing the agenda for the board's monthly meetings.

- Increasingly, applicants for land-use

changes are going directly to the Board of Adjustment, bypassing the LUCB and the Council, either of which can grant a change in land use by changing the zoning.

"We now have a new procedure for zoning property commercial in Memphis," said Councilman Pat Halloran, "and it's a problem somebody's going to have to deal with."

Strictly speaking, the Board of Adjustment cannot change zoning, but its critics insist that it is, in effect, rezoning the city. The majority of the controversial decisions of the board involve its permitting commercial-type land uses in areas zoned for something else.

"Half the (zoning) cases we hear," said Wanda Goodman, a member of the Land Use Control Board, "don't make any difference because the Board of Adjustment will change them. You can't plan well when you've got something like that coming along behind you and changing everything."

All the griping, said chairman Rufus Jones of the Board of Adjustment, emanates from a "distinct minority" and he defends the board's actions as necessary to the growth of the city.

"The board has done a tremendous job of considering unique and individual circumstances," Jones said. "I don't think you're getting blind, off-the-cuff decisions each month. Regardless of what you do, you're going to have some people objecting to it."

"It would be a disservice to the applicants and the potential growth of the city if there could be no variances or adjustments on property."

No one argues that the board is not needed, but critics say that in granting use variances, the board has gone too far.

The minimum setback laws provide a good example. On property zoned for residential use, a man planning to build a home on an oddly shaped lot might find that he could not meet setback requirements.

No department in city or county government could issue a building permit for the home and the property owner would be forced to leave his land vacant or construct a house too small for practical use.

Through the Board of Adjustment, the property owner can obtain a variance from the setback requirements and make use of his land.

The board can also allow the construction of buildings which exceed maximum height restrictions or permit a development with a lesser number of parking spaces than required by law.

Those activities are fine, say critics of the board: in each case the land use is consistent with the zoning. Only a minor shortcoming in dimensions is at issue.

It is when the board OKs a different use than is permitted by the zoning regulations — a transmission shop in an area zoned for neighborhood shopping — that its members have gone astray, the critics say.

Exactly when the board began exercising that power is lost in the catacombs which contain city and county records, but concern over the activity has been evident in varying stages of intensity for more than a decade.

"We've tried for years for get something done about this in the Legislature," said Ed McBrayer, chairman of the Council's land use committee, "and it's never been done and won't be done as far as I can see."

In an effort to straighten things out, the Council — at McBrayer's urging — has filed suit against the Board of Adjustment seeking to clarify the board's authority in land-use cases.

McBrayer and others contend the board should be stripped of its power to grant such use variances.

Mike Ritz, director of the Memphis & Shelby County Office of Planning and Development, said:

"This office, before I got here and in the two years since I've been here, has advocated that the use-variance powers of the (adjustment) board should not be available to it."

"In essence, what they're doing tends to contravene zoning policies of the legislative bodies (the Council and the County Commission)."

Elkington said the Land Use Control Board and the Council constantly strive to avoid strip commercial zoning — like that found on Summer Avenue — through the entire city.

He said, however, that if the Board of Adjustment continues to operate unchallenged, "every major thoroughfare in Memphis will be a commercial thoroughfare. It's a horrendous problem."

TOMORROW: The effects of random "re-zoning."

Restaurant Rezoning Was Last Straw for Critics of Board

(Second of Two Articles)
By BRENT MANLEY
Press-Scimitar Staff Writer

To critics of the Memphis & Shelby County Board of Adjustment, the celebrated Jolly Ox case symbolizes all that is wrong with the board and its allegedly misdirected sense of purpose.

That case, said Wanda Goodman, a member of the Land Use Control Board, "was the straw that broke the camel's back."

One of many who have complained that the Board of Adjustment should never even consider land-use variances is Mrs. Goodman, who said: "We have taken and taken and taken the variances, and you reach a point where you can't take any more."

Mrs. Goodman's complaints to the Board of Adjustment set off a chain of events which resulted in the City Council's firing suit against the board in an attempt to clarify the board's authority in Jolly Ox and similar cases.

That experience about two months ago was this: Steak & Ale of Tennessee Inc., owner of Jolly Ox restaurant, purchased property in the 6200 block of Poplar as site for a office and multi-family dwellings, meaning that without a zoning change no free-standing restaurant would be allowed on that site.

Normally, developers seek relief in such cases from the Land Use Control Board, which has the power to change the zoning or to allow a planned unit development, which would permit a restaurant.

If the LUCB says no, the next step is usually the City Council, to which many LUCB decisions are appealed.

Board of Adjustment decisions, by law, are appealed through court action, and the LUCB and the City Council are not involved.

In this case, Steak & Ale, a Dallas-based firm, applied directly to the board of Adjustment, which

agreed to allow construction of the restaurant in the office district.

The applicant had argued before the Board of Adjustment that ownership of the land, if restricted to office use only, would impose a hardship because offices currently aren't needed there.

Objections to the Board of Adjustment's approval of the application covered more than one point:

- Some Council and Land Use Control Board members were incensed that the applicant had bypassed the normal processes for starting his development.

- Steak & Ale had bought the property only months earlier and should have been aware the zoning did not permit a free-standing restaurant.

Thus, it was argued, the hardship was self-imposed and should not have been considered in granting the change.

- Most importantly, all recommendations of the city's professional planners and the wishes of the Council and Land Use Control Board for the area in question were ignored by the board of Adjustment.

The last point, critics of the board say, serves to illustrate the potential damage to the city that could result from the granting of land-use changes which are contrary to planning efforts.

Most of the property on Poplar between Interstate 240 and the city limits is empty, and in the past the Council and city planners have methodically arrived at what they considered the best plans for the area.

"Through zoning decisions," said one observer, "what you had in effect was a plan. They knew that because Poplar carries so much traffic, it would be unreasonable to try for single-family use of the land. But if you allow commercial use, each busi-

ness would want its own curb cuts and free-standing signs, and traffic out there would bog down."

It was decided that the most practical zoning would be for office and apartment use.

The result can be seen in the vast difference between Poplar on either side of the interstate highway.

To the west, there is strip commercial use and bumper-to-bumper traffic. To the east, traffic is heavy but manageable.

"You think it's bad now," a city official said. "Can you imagine what it would be like with curb cuts every 50-100 feet and people trying to cross opposing lanes of traffic to enter one of those commercial establishments? You'd turn a bad situation into an impossible one."

Thanks to the Board of Adjustment, critics charged, that is just what might happen.

The board has already granted three commercial uses — the Jolly Ox, another restaurant and a clothing store — in the area, establishing a precedent which concerns planners and city officials alike.

"It's just a matter of time before there are other applications," said a City Hall observer. "Pretty soon, the Council may just have to zone the whole area commercial."

While the Jolly Ox case has stolen much of the limelight, observers say it is but one of many cases which threaten to undermine the planning efforts of the city and county.

Many areas in midtown have been hurt by Board of Adjustment decisions, according to Stoy G. Bailey, president of the Rozelle-Annesdale Area Association.

He said the board's decision to allow a truck terminal in a residential midtown neighborhood has depressed property values and has threatened to stymie the rebirth of an important part of the city.

"I worry about this because we're dealing with things that are of little or no significance to the Board of Adjustment," Bailey said. "But they're very important to us."

Martin Lipinski, president of the Mid-Town Council and city planners have methodically arrived at what they considered the best plans for the area.

"Through zoning decisions," said one observer, "what you had in effect was a plan. They knew that because Poplar carries so much traffic, it would be unreasonable to try for single-family use of the land. But if you allow commercial use, each busi-

Council of Neighborhood Associations, said, "we recognize the value of commercial businesses. Many times they can attract new residents. What we're worried about is commercial intrusion into residential areas."

One controversial case in the midtown area involved the University Club at 1364 Central and Residents filed suit when the Board of Adjustment granted a use variance to permit the club to raze two homes to install tennis courts.

"That property had just been rezoned for single-family use about a year before," Lipinski said, "and wham, bang, the board grants variances."

There, key staff personnel from the Metro Planning Commission work with and advise the Board of Zoning Appeal, Nashville's counterpart to the Board of Adjustment.

Further, the city's zoning regulations prohibit the Board of Zoning Appeal from hearing any case which has not been before the planning commission.

Critics of the Board of Adjustment believe input from professional planners would go a long way toward solving current problems.

"There is no expert staff in planning working with the board," said Mrs. Goodman. "That doesn't make good sense. Their powers are so broad they should have some expertise in planning."

Elkington said, "We need to have some kind of coordination so they can improve their decisions. We can resolve this issue to the betterment of the community without more confrontation."

"We're all interested in good planning — I hope."

said, "On most of the cases, I can live with the decisions of the board, and Memphis can live with them."

"We're just eight ordinary folks sitting up there listening to what ordinary folks have to tell us. Pure planning can't accomplish everything. You've got to have some flexibility built in."

Just how far that flexibility should extend may be defined in Circuit Court, where the Council is seeking a declaratory judgment on the jurisdiction of the Board of Adjustment.

If the Council wins, the board's powers will be restricted. Many observers believe a better solution would be one of cooperation between the board and professional planners — the kind of setting found in Nashville.

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THE COMMERCIAL APPEAL

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Page 6

Saturday, October 6, 1979

Where Buffalo Roam

A SINGLE ZONING variance 15 years ago changed Poplar east of White Station from an attractive, middle-class residential neighborhood to a commercial circus. And those distant planners who held that Poplar should remain a pastoral passage through the city have the last laugh every day in the traffic mess it has become.

What Memphis must do now is see to it that Poplar did not die in vain.

That's what John Elkington meant when he told a meeting of Memphis real estate brokers and developers that their interests in the future must be reconciled with the larger interests of the community. He said the time is over for the "buffalo hunter's mentality" in which land owners could do as they wanted with property, leaving the consequences to the city which followed them with makeshift policy.

Elkington thinks the shoe will fit better on the other foot. He should know. He's chairman of the Land Use Control Board — and a developer.

WHAT HAPPENED to Poplar is a case in point. In 1964, the Board of Adjustment overturned rulings by the Memphis and Shelby County Planning Commission and the local legislative bodies, then the City Commission and County Court, to allow landowner Arthur Murray to build a service station at Poplar and June. It was the first commercial encroachment on the residential north side of Poplar. By 1968 there were six service stations, seven businesses, a number of apartment developments, a hamburger stand and a motel in the area. A planning commission member observed at the time, "Once that piece of property (Murray's) was zoned commercial, it changed the nature" of the neighborhood.

And things got worse.

By the early '70s, after the city had adopted "multiple centers" planning designed to concentrate commercial development in certain defined areas, developers had started leap-frogging the White Station "subcenter," landing across the Poplar-Interstate-240 interchange and galloping east, with the Board of Adjustment and its strip zoning techniques in tow.

And Elkington's "buffalo hunters" still roam that and many other parts of the city and county.

He argues now that shaping this community's future growth must be a partnership of five essential groups: local government, neighborhood and community associations, developers, the financial and business communities and institutional organizations. "It has become increasingly apparent," Elkington said, "that everything we do as planners will depend on whether planning shows sensitivity to the total community."

THAT IS SOUND philosophy. What's difficult is putting it to work. Local government has adopted all sorts of planning policy and written new zoning laws. Planning commissions have acted to enforce them and groups of citizens have fought to save them.

But too often policy and law have surrendered to other interests and influences at work in the political arenas or at the Board of Adjustment.

Firmer policies and tougher laws are needed, not to stop development but to encourage it where everybody benefits the most. The growth and energy of neighborhood associations across the city indicates there would be new popular support for such an effort.

Clearly, the place to begin is with the runaway powers of the Board of Adjustment. The City Council lost a recent court test with the board (in another Poplar zoning variance) but the council has other remedies. The board is a creature of this municipality, first established by private act of the legislature in 1925 and restructured as a joint city-county agency by private act 30 years later. The council should go back to the legislature in January to mandate the restraints the board has refused to exercise itself.

It may even require an amendment to the city charter through a public referendum. That's all right, too. It's past time the people of Memphis had the final word on all of this. It is our range.

Board of Adjustment Back on the Hit List

Every year for the past five, the City Council has appealed to the General Assembly to curb the powers of the Memphis & Shelby County Board of Adjustment.

Every year, the Legislature has said no.

By this time it must seem akin to beating one's head against a brick wall. Despite the lack of success, the Council again has included in its package of legislative proposals a bill to eliminate the use-variance powers of the board.

But even its most enthusiastic advocates give the bill virtually no chance for passage.

"The legislators I've talked to lead me to believe there is no chance at all," said Wanda Goodman, a member of the Land Use Control Board and an outspoken critic of the Board of Adjustment.

Critics of the board claim that, by granting land uses contrary to zoning laws, it is in effect "rezoning" much of the city — to its serious detriment.

Sparked by a celebrated use-variance case involving a restaurant in East Memphis, the Council last year voted to sue the board to get a definitive ruling on its exact powers.

The suit, unsuccessful on its first round in court, eventually was dropped by the Council.

Mrs. Goodman said the Council's annually rejected legislative attempt amounts to little more than lip service toward the correction of a serious problem.

"The Council is saying, 'At least we're doing something, folks. We're trying,' " Mrs. Goodman said, adding that the effort is not enough.

"The Council and the County Commission should put pressure on the mayors to appoint the right people to the board," she said.

Current board members are competent, she said, but "as far as understanding their role and the effects their decisions have on neighborhoods, I don't think they care that much."

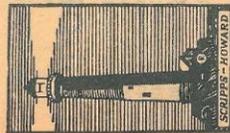
Despite his equally strong views on the board and its role in the planning process, Councilman Ed McBrayer said he disagrees with Mrs. Goodman's "clean slate" approach.

"I have no personal criticism of the people on the board," said McBrayer, who initiated the Council's suit against the board. "I'm sure they're doing what they think is right.

McBrayer said he will go to Nashville this year to try to persuade lawmakers to approve the bill, as he has every year so far — despite the odds.

The primary cause of the bill's annual demise, McBrayer said, is the influence of developers, who naturally would prefer the flexibility in land use laws which now exists.

"Let's face it," he said. "Developers have friends among the legislators. There's nothing sinister about it, but they just want to keep it like it is."



Memphis Press-Scimitar

MID-SOUTH EDITION

WEATHER FORECAST: Fair and mild tonight, partly cloudy tomorrow. Low near 40, high upper 50s. (Details on Page 2).

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100TH YEAR—NO. 64

SCIPPS-HOWARD

Board of Adjustment Faces Fight to Keep Its Powers

By BRENT MANLEY
Press-Scimitar Staff Writer

Tennessee's three other major cities have avoided the bickering over land zoning stirred up by decisions of Memphis' Board of Adjustment, a body which has been the target of charges that it undermines the city's planning efforts. Though it appears Memphis may not be able to avail itself of the remedies applied in Nashville, Knoxville and Chattanooga at least one member of the City Council is looking at what other cities have done. "If there's any way we can legally stop the Board of Adjustment from doing what it's doing, I'll introduce it (an ordinance) as fast as I can get it drawn," said Council-

man Ed McBrayer, one of the city's most outspoken critics of the adjustment board. Other members of the City Council plus members of the Land Use Control Board claim the Board of Adjustment is undermining the efforts of city planners and bypassing Council intent by in effect randomly changing zoning contrary to established plans and policies.

Of interest to McBrayer is legislation in the state's other major cities which prevents their adjustment agencies from granting use variances on property—that is, allowing owners to use land for purposes not permitted by zoning plans. That is the issue which has kept the heat of



criticism on the Memphis board for more than a decade. A Knoxville official, informed of the situation in Memphis said, "I thought we had a rat race around here. I'd hate to get into something like that."

The Board of Adjustment cannot actually change the zoning on a piece of prop-

erty, but it does have the power to permit land uses outside those permitted by the zoning for the property. For example, allow a developer to build an industrial or land zoned for single family dwellings only. That might or might not harm the neighborhood, but city planners say the deci-

City Councilman Ed McBrayer

sion should be left to the Council and the Land Use Control Board.

They argue further that as the use variances granted by the board mount up, the overall planning for the city is undermined. Concerns in Nashville, Knoxville and Chattanooga fostered their differences over the matter.

In Nashville, the Board of Zoning Appeals at one time operated like the Board of Adjustment in Memphis, allowing land uses which were contrary to those permitted by the zoning.

Lester Marcum, a 20-year veteran planner with the Metropolitan Planning Commission, said, "What you were seeing was

history in operation. They (members of the Board of Zoning Appeals) felt that as long as it didn't really hurt a neighborhood, it didn't matter whether what they were doing was part of their powers or not.

"It was like they all knew 'Fred' and nobody minded if he put his plumbing business in the back of his house," he said.

"That was fine when Nashville was a sleepy little town. It seemed to work well. But times changed and we boomed a lot for a while and it wasn't good anymore.

"But habits are hard to break. I suspect you're still seeing a lot of this in Memphis."

Turn to Page 2 — OTHER CITIES

January 24, 1980, *Press-Scimitar*, front page (continues on the following page)

Other Cities Find Ways to Limit Zoning Variances

From Page 1

Marcum said the turning point was when the metropolitan government in Nashville rewrote its zoning laws to provide strict standards applying to requests for use variances.

With the advent of the new zoning laws, Marcum said, the Board of Zoning Appeals continued to grant use variances "until they got sued regularly and they quit doing it. The courts consistently overturned the board."

Even today, Marcum said, there apparently remains a tendency on the board to stray. On some cases before the Board of Zoning Appeals, he said, the planning commission will enter an advisory opinion.

"It's almost like a form letter," Marcum said, "reminding them it (granting use variances) is not within the purview of their powers. It works."

In Chattanooga, T.D. Harden, executive director of the Chattanooga-Hamilton County Regional Planning Commission, said the Board of Zoning Appeals has never had the power to grant use variances and has never tried.

"I serve on the board," Harden said, "and I wouldn't let it happen and we have an attorney who wouldn't let it happen."

Restrictions on the Board of Zoning Appeals are written into Chattanooga's zoning ordinance, Harden said. The board's activities are limited, he said, to settling disputed interpretations of zoning laws and granting non-use variations in developments — such as requirements on parking or on the necessary distance of a building from the front property line.

In Knoxville, H.L. Armstrong, director of the city's code administration department, said the East Tennessee city has two bodies similar to the Board of Adjustment in Memphis.

Armstrong said neither the Board of Zoning Appeals, which serves citizens of Knoxville, nor the Board of Adjustments and Enforcement, serving Knox County, has the authority to grant use variances.

"They have tried on occasion," Armstrong said, "but they do not have that power. We have some hot ones (zoning cases) here every month and some of them end up in court. If we had the type setup that you folks have in Memphis (with the Board of Adjustment overturning Council zoning decisions) we'd never get one settled. They'd all end up in court."

The legal approach was tried briefly by the Council, which filed suit against the Board of Adjustment last year over the celebrated Jolly Ox restaurant case, in which the board permitted a commercial use on Poplar in an area zoned for office use only.

Council members, however, lost their zeal for the suit upon losing the first round in court. The effort was dropped.

Members of the Board of Adjustment have consistently defended their interpretation of the laws governing their activities, maintaining they are within their powers to grant use variances despite arguments to the contrary from councilmen and others.

City Attorney Cliff Pierce, said, in fact, that while he believes the board has erred on occasion, it has fared well against legal challenges to its authority.

"They (the Board of Adjustment) have an extremely good record in court," Pierce said.

Most Council members appear to agree that the powers of the Board of Adjustment cannot be restricted at the local level because they come from a state-approved private act of 1931.

The city charter and the accompanying power of the city to write zoning laws were approved by the Legislature, a circumstance which has led many observers to believe the situation may never be changed.

Developers and zoning attorneys would prefer that the Board of Adjustment keep its power — thus providing an extra avenue of appeal if development plans are thwarted by the Council or Land Use Control Board.

For more than a decade, the developer-zoning attorney factions have convinced legislators considering changes in the law affecting the board that the matter would be better left alone.

Not everyone is convinced the fight is hopeless, however. "Sooner or later we'll get it through," McBrayer said.

But no one is holding his breath waiting for a change. "From a practical standpoint," Councilman Billy Hyman said, "I don't think you're ever going to get that piece of legislation passed in Nashville."

Meanwhile, McBrayer said, he will be examining local legislation in other cities.

"I don't think we could do what they have done in Nashville," he said, "but if there's a way to do it, I want to. If it makes sense and would work here, then I'll introduce it."

Land use often guided by 'hardship'

By PEGGY MCCOLLOUGH

The "hardship" applications keep coming in to the Board of Adjustment and the board keeps approving 95 percent of them during the past 16 months, a record check shows.

The powerful quasi-judicial board, set up to be a last resort panel for zoning matters, is overstepping its bounds by determining land use in the city, claim the Land Use Control Board and the City Council. The Board of Adjustment hears appeals of administrative decisions on zoning matters and grants zoning variations for "hardship" cases.

"In as far as the percentage of approval," said Frank H. Colvett, board chairman and owner of GreenScape, a landscape contracting firm, "... I prefer to think that only the cases that we had reason to approve ever got there.

"One of the findings that we have to make is that it is not a self-

created hardship."

But some applications approved have been from people who bought property knowing it wasn't zoned for their needs, and the Board of Adjustment was their first stop, not their last resort.

Example: A woman bought a house in a residential neighborhood, intending to use the house as a day-care center. The house's plumbing had been stolen, so the owner listed that as "hardship" and requested a zoning variance from the Board of Adjustment. She won. But Colvett said he couldn't comment because the decision won't be final until later this month — 30 days after the approval.

Yet such cases push up the board's "yes rate" at its monthly meetings. The explanations send the Office of Planning and Development (OPD) and the City Council into a spin month after month.

The Board of Adjustment staunchly defends its right to hear any application filed, as long as it is filled out properly.

Developers and other applicants prefer the Board of Adjustment not only because of its approval rate, but because its application fees are usually cheaper — a maximum of \$500 compared to Land Use Control Board fees up to \$1,500 for large developments, plus a \$170 charge to go before the City Council — and its decisions are faster, made within a month, compared to three months otherwise.

"It's cheaper, it's faster and more sure," said Councilman Barbara Sonnenberg. "But... as I see it, their function is not to take the place of the Land Use Control Board and the council."

Many of the board's cases are requests to put mobile homes on residential property and appeals for bulk variances, such as requests to build higher or to have

fewer parking spaces than zoning allows.

But a large number of its cases also are requests for use variances, use of property for a purpose other than that for which it is zoned.

Last month, Dalcor Properties of Huntsville, Ala., went before the board, asking to build a 398-unit apartment complex on 60 acres of single-family residential land at McVay and Messick roads. Residents — some angry, others scared — packed the meeting room to fight the development.

Dalcor admitted that its hardship was that it could not get a "reasonable return" for its money with a single-family development and that it had only a short-term option to buy.

In an unusual turn of events, Dalcor lost its "hardship" rezoning bid in a marathon session marked by residents' objections. But that case again grabbed the

Board of Adjustment zoning variance application:

Location: 5171 Hillbrook Road
 Present Zoning: R-56 Single-family Residential
 Requesting: Construction of a building for designing, display and selling of monuments. Further variance to allow outside display, and a variance to allow parking to be located in the required front yard setback.

Unnecessary hardship under existing zoning: We cannot obtain permission to build this type of building under the existing zone without special permission from this board.

Unusual characteristics of this property: (Properties in the area are) used for both commercial and residential purposes. This is not a closely knitted neighborhood and the land owners use it for various purposes.

How were these problems created: Given a citation by a city official. We were told someone filed a complaint in the Mayor's Action Center.

Decision: Variance approved.

attention of the OPD and the City Council.

However, the council's record of approving cases isn't much better than the board's. A check of council records last year showed that it approved 90 percent of the requests from developers to use residential property for commercial or office uses, regardless of OPD staff recommendations.

So the tug-of-war for land use

authority is more over territory than approval rates. The Land Use Control Board and City Council have argued for years that the Board of Adjustment should not hear use-variance cases because the large OPD staff is better prepared to study plans and their relationships and effects on other properties and future zoning (See APPEALS on Page B7)

March 13, 1984, Commercial Appeal (continues on the following page)

Appeals panel holds ground on land use approval rate

(Continued from Page B1)
plans, staff members said.

The Board of Adjustment is an "appeal board," Mrs. Sonnenberg said. "Seems to me it (an application) should be an appeal of something after it has happened, not before."

Ralph Smith, OPD's deputy director of land use control, has sent scathing letters to the Board of Adjustment objecting to its practice of hearing use-variance cases and agreeing with some "hardships" listed on applications.

"(The board has) gone everywhere from permitting monument sales (on residential property) all the way up to industrial uses in agricultural areas, which have the same uses as residential," Smith said.

"There is the possibility of a real conflict in the growth and direction of the city (and a question of) who is actually determining the land use direction of the city.

"What the board does could have some very far-reaching implications. It is one of the most powerful boards in the city, from a land use standpoint."

Most of the use-variances cases heard by the board are on small pieces of property, Smith said. But, he added, "if you take a little piece of property in the county and allow it to go industrial, that is the start of an industrial area."

Sitting on the Board of Adjustment are eight members, four appointed by the city mayor and four by the county mayor for three-year terms. Some members have served multiple terms.

The city appointees are chairman Colvett; Jayne Creson, employed in her doctor-husband's office; Clinton R. Pearson, trust division of the National Bank of Commerce, and Waymon Welch of Welch Realty Co.

County appointees are Barney Golding, retired; W. Richard Hall, engineer with Continental Engineers Limited; Frankye B. Jordan, employee at Defense Depot of Memphis, and John S. Shepherd, real estate appraiser.

Colvett said criticism of the board may stem from a lack of understanding of its purpose. The board was set up to offer relief from excessive restrictions of

zoning regulations that might be unnecessarily hard on a particular piece of property because of a unique situation, he said.

He says the board is the first step in "the legal court appeals system (for) the citizens."

The board is limited in what it can do and consider by a series of "musts." The board must, by law, hear any case put before it and must approve any case where it "finds certain things to be true — hardship or certain problems with the property . . . and can do so without interfering with air, light and safety." A prime hardship example, Colvett said, would be an odd-shaped, small lot that could not be built on under current codes.

The Board of Adjustment's three-member staff usually inspects the properties in question, said staff head Anita Forrester, but the reports are not recommendations. Board members also visit sites, Colvett said.

For the past 1½ years, the Board of Adjustment has taken OPD comments on cases involving use variance and signs, but OPD usually has less than a week to study a case — not enough time for a thorough study, Smith said. OPD staff studies Land Use Control Board cases for at least a month.

OPD staff comments range from cautioning the board that a case belongs before the land use board to tirades on the havoc that approval could cause to gentle reminders of past studies and future plans for areas.

"We've tried everything" to get the board's attention, Smith said. But nothing has worked.

A sampling:

- In December, 1097 East Raines, residential property, was approved by the Board of Adjustment for a real estate office. The property is offices and businesses. Smith had told the board the area "has been the subject of several board office use variations. The continual granting of use variations has, in effect, rezoned this strip into office."

- Also in December, a house at 2388 Ketchum was approved for use as beauty shop despite Smith's objection: "A comprehensive land use plan was approved by the City Council in June 1983. The plan's future land use map designates the property for single family

residential use . . . Commercial use of the subject property could create a hazardous traffic situation."

The Board of Adjustment's staff report considered the applicant's predicament: Before gaining approval for the shop, the owner "obtained all the proper state and local business permits to operate a beauty shop and incurred considerable expense in renovation and remodeling costs to provide necessary facilities for a beauty shop operation."

City Council has rebuked the board for its land use decisions going back almost to the establishment of the board by the state legislature in 1931. The council even filed suit against the board in 1979, charging that the board exceeded its authority in granting a zoning variance to permit the construction of a restaurant on Poplar near Massey.

However, a Circuit Court judge ruled that the council could not bring suit because its members would not be hurt.

In 1974, the Board of Adjustment overturned actions by the planning commission, the City Council and the neighborhood and allowed a shopping center on Millbranch near Winchester. The board refused to reconsider even after it was learned that an adjustment board member owned property within the development site.

Colvett thinks the board is unfairly attacked. "The board realizes that it holds the private fortunes of people in front of it and wishes to use that power . . . even-handedly for everybody."

"The board is very serious in what it does and we feel that we perform a real function for the city and the county."

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MICHAEL GREHL
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"Give light and the people
will find their own way."

A6

Wednesday, May 16, 1984

Editorials

LAND USE: The Board of Adjustment can't say "no" — its powers must be curbed.

MAIL FOR THE POOR: Cutting back service is a callous, ridiculous idea.

Adjustment needed

DECISIONS ON HOW land should be used are basic to the prudent growth of Memphis and the quality of life here. The decisions of Memphis' Board of Adjustment offer, instead, examples of unchecked power and insensitivity to the total community.

The board has made a mockery of land-use policy. And it is sending a clear message to large and small landowners alike that they need not worry about disrupting zoning patterns and stable neighborhoods if there's a dollar to be made.

The review of proposed building projects involves the Land Use Control Board, the Office of Planning and Development, the City Council and County Commission, which have set zoning policies to provide stability and managed growth.

The Board of Adjustment — established by the legislature in 1925 and restructured as a joint city-county agency in 1970 — was intended only to provide landowners a final appeal from the decisions of those other governmental bodies. It was not created to rewrite land-use policy.

The board has been so promiscuous in saying "yes" to the appeals of developers, however, that it has both compromised its own responsibilities and undermined the ability of the legislative bodies to make effective zoning policy.

The record of the last 20 years indicates that the board might more properly be called the "Board of Speculation." Among the abuses of power that have trampled community planning and development policy:

- In the early 1960s, the board allowed a landowner to build a gas station at Poplar and June — a precedent that turned a residential corridor and a beautiful entrance into the city into a commercial obstacle course.

- In 1974, the board approved a shopping center on Millbranch near Winchester over the opposition of the planning commission, city council, and neighborhood residents. The board refused to reconsider its action despite the fact that one of its members owned property within the development site.

The more recent record also shows the board's lack of discretion. During the past 16 months, the board has approved a staggering 95 percent of "hardship" applications — appeals by landowners who want to use a piece of property for a different purpose than allowed by its zoning classification.

The approvals came despite indications in many cases that the applicant bought the property knowing it wasn't zoned for his needs. The only "hardship" in these cases was apparently that the applicant wouldn't make money on the deal.

In addition, the adjustment board — supposed to be the "court of last resort" in zoning matters — has gained such a favorable reputation among developers that many simply bypass the city's Office of Planning and Development and the City Council and apply directly to the board.

Such was the case with Dalcour Properties of Huntsville, Ala. Dalcour wanted to build a 398-unit apartment complex on land zoned for single family residences at McVay and Messick roads. Dalcour admitted its only "hardship" was that it could not get a "reasonable return" on its money if it built in accordance with zoning.

The company lost its bid only after residents of the area packed the meeting to complain.

Frank Colvett, chairman of the Board of Adjustment, said the board "realizes that it holds the private fortunes of people in front of it and wishes to use that power . . . evenhandedly for everybody."

He should remember that "evenhandedly" does not necessarily mean blanket approval of every appeal that comes before it. This city cannot grow confidently and wisely if one agency pulls the props from under the policies that are developed to provide for that growth.

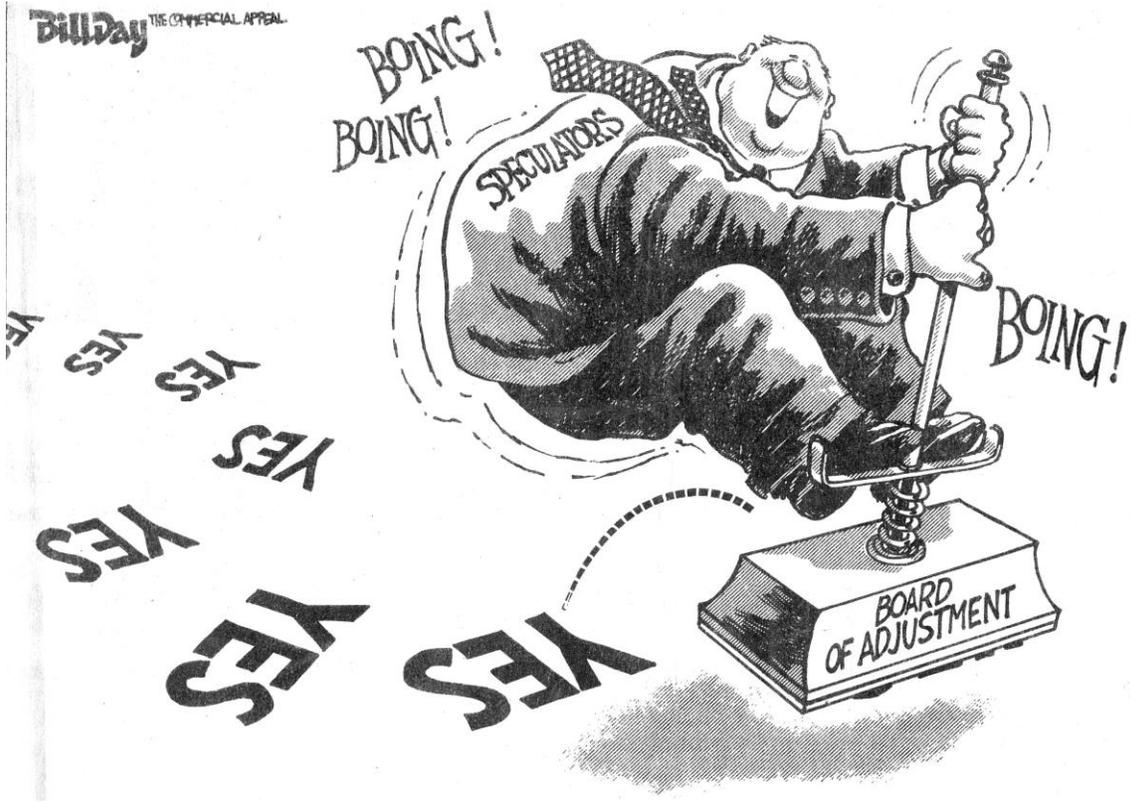
THE EIGHT MEMBERS of the board are appointed by the city and county mayors. The mayors may be able to exercise some influence in seeing that the board exercises more discretion.

For the long term, however, systematic reform is needed. According to the city attorney's office, the only way to redefine and restrict the powers of the board would be through a private act of the legislature. That effort, which has stalled before because of the reluctance of some local legislators to support the move, should be undertaken again.

Memphis deserves better than to see its neighborhoods disrupted and its major thoroughfares blighted. Decisions on land use should be made with the long term needs of the total community in mind, not the momentary financial interests of a few.

May 16, 1984, *Commercial Appeal* editorial

May 16, 1984, *Commercial Appeal*



Officials want zoning panel under control

By PEGGY McCOLLOUGH

County Mayor Bill Morris and members of the City Council and County Commission yesterday accused the Board of Adjustment of abusing its powers and called for legislation to limit its authority or abolish it.

"I don't think there is any question that there are times when it is a misused body," said Morris. "And I personally feel that there should be more definitive guidelines established so that they cannot circumvent the process of zoning and proper planning in the community."

The Board of Adjustment, a quasi-judicial board set up as a last-resort panel for zoning matters, can give variances to landowners who prove present zoning causes "hardship." Variances do not rezone property, but create use exceptions within present zoning.

The board's idea of "hardship," on which applicants base their case, "often comes down to where the hardship is (that) you can't get it passed before the proper planning body," Morris said.

In addition, many landowners use the board not as a last resort, but as a first step. A check of the board's records last week showed that during the past 16 months the board approved about 95 percent of its cases.

"There are too many instances," said Councilman J. O. Patterson, Jr., "in which the Board (of Adjustment) abuses its powers or misunderstands what its powers are. I don't know, but I have to think that it is that it just abuses its powers."

"I think the members of the legislature certainly ought to be concerned about this issue . . . and ought to tackle this head-on in a state law that would straighten this out."

Commissioner Jim Rout suggested that the board be abolished because, although it is a citizen board appointed by city and county mayors, it is not accountable to the public through elected officials like the City Council.

"I think there needs to be better communication, possibly have their decisions come to a legislative body, or have some mechanism to have it pass through the process, like the (Land Use Control Board's) decisions do," Rout said.

"Some may say, 'If you do that, do you need a Board of Adjustment?' Maybe not."

Councilman Pat Vander Schaaf blames Board of Adjustment variances for many business corri-

dors in residential areas.

Office of Planning and Development and city and county officials have complained that the board oversteps its intent by determining land use patterns and they question whether some applicants prove "hardship."

Morris and City Mayor Dick Hackett each appoint four members of the eight-member board to three-year terms.

Hackett would not comment on the board's record: "It is a citizen panel and they are doing it at no cost to the city, and for me to quarterback from this chair only from what I have read, I think would be an injustice to them."

May 17, 1984, *Commercial Appeal*

C.A. Friday May 18, 1984

Zoning variances are hard to detect

By PEGGY McCOLLOUGH

Potential home buyers who check zoning maps in the Office of Planning and Development to make certain the home they intend to buy is in an all-residential area may be in for a surprise.

The house next door that was zoned residential on the map and looked quiet the weekend the buyer looked at it may be a day care center during the week. And a new convenience store may sit on the lot that the map says is vacant and zoned residential.

"Zoning maps don't indicate Board of Adjustment use variation," said Ralph Smith, deputy director of land use control for the Office of Planning and Development. Use variations are not mapped because the zoning does not change — the applicant is simply given permission to use the property for something other than for what it is zoned, he said.

Driving around the neighborhood to see what's there won't help in all cases either, Smith

said. "The applicant has a year to build in accordance with the plan submitted" to the board.

To the chagrin of the Office of Planning and Development, the County Commission and the City Council, the Board of Adjustment often grants use variations to applicants who claim the present zoning is a "hardship" on them.

City and county officials have criticized the board for hearing use-variation cases and accepting some of the hardship explanations. According to board records, the board approved about 95 percent of the applications it received during the past 16 months.

While the Office of Planning and Development produces maps of planned unit developments and special-use permits granted by the City Council, it does not keep up with use-variation approvals, Smith said.

"We try as best we can when people call in for information on zoning to give them the zoning of the property and surrounding areas and, in some cases, to remember if there was a Board of Adjustment variation granted in the area. But sometimes, we just don't remember."

The Board of Adjustment office does keep files on variations it approves.

Board of Adjustment decisions also have caused headaches for Frank Bosak, deputy administrator of the Memphis and Shelby County Office of Construction Code Enforcement. His department cites zoning and building code violators, and tries to keep up with the variances granted.

"It's quite a file," he said.

"Quite often we have to explain why someone across the street is allowed to do something that this one is not allowed to do," he said. "Then we have to explain that their route has to be the same one that the (neighbor) took — the Board of Adjustment."

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"Give light and the people
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A6

Thursday, May 24, 1984

Editorials

BLOW TO BIAS: Supreme Court's ruling will help women and minorities get recognition they deserve.

ZONING: Home buyers who use zoning maps may be in for a nasty surprise, thanks to the Board of Adjustment.

KEEP OUT: President Reagan should not think of entering Iran-Iraq war.

Taking a chance

LET the buyer beware.

Recent articles in *The Commercial Appeal* by reporter Peggy McColough have described the havoc that the Board of Adjustment has wreaked on efforts to make effective zoning laws in Shelby County.

The most recent story showed an added dimension to the problems created by the board, and how the board's decisions can have very real meaning for many choosing a neighborhood in which to live.

The story disclosed that the numerous variances the board has approved — allowing property to be used in a different way than zoning allows elsewhere in a neighborhood — do not show up on zoning maps at the Office of Planning and Develop-

ment. Use variations aren't mapped because neighborhoods are zoned as units. A variance does not change the zoning of the unit, but in effect gives individuals within the block permission to violate the zoning.

What a prospective buyer sees while shopping on the weekend may be misleading. The house next door in a residential neighborhood may actually be a day care center or doctor's office during the week. Those who use zoning maps for guidance may find the vacant lot down the block that's zoned residential on the map may actually have a gas station on it.

Those who purchase homes in newer subdivisions are protected from the vagaries of the board by private agreements restricting how a buyer may use his home. A Board of Adjustment variance doesn't supersede private agreements, and residents of the neighborhood therefore are safe from someone opening a poodle parlor down the block.

Those relying on public zoning restrictions to protect their neighborhoods, however, have reason to doubt whether the board will keep their neighborhoods safe from commercial blight.

Based on the Board of Adjustment's record, a neighbor who decides to turn her home into a beauty shop isn't likely to run into trouble if she pleads "hardship" before the board, which has approved 95 percent of the requests for variances presented to it in the last 16 months.

Perhaps the Office of Planning and Development should attempt to record all the variances given by the Board of Adjustment. More appropriately, perhaps Shelby County legislators in Nashville should curb the power of the board by amending the private act that created it.

For as long as the board continues to make what are in effect "spot zoning" laws, there will be little security for many home buyers here.

You pay your money and you take your chances.

May 24, 1984, *Commercial Appeal* editorial

Zone fight by boards heats up

By PEGGY McCOLLOUGH

Real estate executive Waymon Welch said yesterday that as a member of the Board of Adjustment he considers it his obligation to bend over backward to help citizens coming before the board.

"That is the one reason I was willing to serve on it . . . I want to be helpful," Welch said.

Welch told a woman appearing before the board Wednesday that he wished he'd been able to help her prepare her variance application. She wanted to put a 20-by-40 foot hay barn on a 6½-acre residential lot in the county on Benjestown Road. Barns are not allowed in residential zones.

But Welch said the land should have never been zoned residential because it is sparsely developed and has a rural atmosphere. He even asked the applicant to amend her application to ask for an oversized accessory building.

"If some livestock get in there, well, we just can't help it," he said.

The application was approved.

"I don't see that that affects the planning patterns," Welch said. "It should have been left agricultural."

The Board of Adjustment's tendency to favor applicants' requests over the objections of the Office of Planning and Development has created tension between the two. The planning office says the Board of Adjustment's actions have been to the detriment of city and county land use planning.

The tension increased when Board of Adjustment chairman Frank H. Colvett, in a surprise move, changed the board's procedures Wednesday and instructed Ralph Smith, OPD deputy director for land use, to testify as an "opposition witness" in use variance cases. OPD staff customarily serve as information sources, not witnesses.

So yesterday, Smith said he planned to ask the city attorney to determine if it was even legal for members of the planning office staff to be case witnesses.

Smith also said he planned to ask to meet with board members to come to an "understanding of our respective positions regarding zoning."

"There should be some clear lines of who is handling zoning and what functions they have . . . The biggest problem is the duplication and people have the (option) to go before the Board of Adjustment or the regular zoning process" for use variance (using property for something for which it is not zoned).

Board member John S. Shepherd said he had no objections to meeting with the planning office staff. He also said Smith should not have to comment as an opposition witness: "I think that any employee attempting to work for the citizenry should be treated like any other governmental agency."

The quasi-judicial Board of Adjustment was set up as a last resort panel for zoning matters. The board has been criticized by Smith, City Councilmen and County Mayor Bill Morris for exercising too much authority in land use cases.

Critics also say use variance applications should be heard by the Land Use Control Board, then the City Council or County Commission.

May 27, 1984, *Commercial Appeal*, letters to the editor

Memphis, Tenn., Sunday, May 27, 1984

Board of Adjustment gives good service

To The Commercial Appeal:

I thank reporter Peggy McCollough for her recent articles and appreciate the interest she has shown in giving the taxpayers an overall view of what the Board of Adjustment is all about.

As a member of this august body, I'd like to say, "Don't judge a book by its cover." We're citizens, like you. I was asked to serve on this board nine years ago. I, like the other members, felt honored to serve our community . . . and was interested in good government.

I believe this board gives good *volunteer* service as best it can. We're not perfect and we don't have all the answers. We just happen to be interested, involved members of this community who want to support our elected citizens.

I personally refuse to be a "yes" person. As long as I serve on this board, I shall strive to be fair to all. I thank Mayor Hackett for his confidence in this board in your article of May 17. To my knowledge, no one on this board has received a penny for their many hours spent per month. I believe of interest here is that even though the mayors appoint our members, the City Council and county Board of Commissioners must approve each of us. I am not interested in their jobs. I'm just interested in helping Memphis grow.

MRS. T. KYLE CRESON JR.

257 Belvedere South

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"Give light and the people
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H4

Sunday, May 27, 1984

Editorials

VIETNAM: Memorial Day is a time to remember, not forget.

BOARD OF ADJUSTMENT: The board needs to solicit the counsel of professional planners — and respect their advice.

A little respect

A CONFRONTATION between Ralph Smith, deputy director of land use for the Office of Planning and Development, and members of the Board of Adjustment Wednesday night showed again how far outside normal planning channels the board is operating, and its unwillingness to cooperate with other agencies in establishing orderly zoning patterns.

The board, which has often made its decisions on zoning variance requests without input from agencies involved in planning, gave a loose invitation to City Council members, county commissioners, and OPD officials to attend Wednesday night's meeting.

The invitation seemed to show willingness to consider opinions from outside the board. In the past, the opposition of OPD and other planning officials has meant little to the board in deciding cases in which a property owner asks to use his property in a different way than zoning allows. The board has approved 95 percent of the requests for variances, often ignoring OPD's objections.

INSTEAD OF treating Smith's testimony as professional advice, however, the board accepted his evaluation of two zoning cases as hostile, "opposition" testimony, as if Smith had a vested interest in the cases rather than an opinion as a professional planner.

No satisfactory answer was given as to why Smith had to testify as an opposition witness, while other city or county department representatives' comments are treated as staff input.

Board members Frank Colvett and Waymon Welch indulged in some roundabout sniping at Smith's competence, pointedly questioning whether Smith understood the "hardship" criterion by which the board allegedly decides its cases.

Welch showed the depth of his consideration for good zoning by advising an applicant during the meeting how she could word her application to circumvent objections.

The case in question involved an application to build a barn on property zoned residential. The purpose of the barn was to store hay, but

there were indications that animals would also be kept there — a violation of building and health codes.

Welch told the woman she should change her application to refer to the barn as an "oversized accessory building" rather than a barn and not to worry about the animals. "If some livestock get in there, well, we just can't help it," he said.

The manner in which Smith was treated showed little respect for his professional stature, and Welch's comments were clearly inappropriate to proper procedure.

Other comments by Welch indicate he believes the board's role is to unilaterally revise zoning policy if he doesn't agree with it. He said the woman's land, which is zoned residential, "should have been left agricultural."

The meeting indicates again that the board considers itself the sole decision-maker on land use in the county, regardless if it short-circuits the work of the elected and professional bodies that formulate policy.

The board and members of planning agencies need to iron out their respective roles in establishing zoning patterns. The board needs to make sure it involves planners from other agencies in its decisions and treats their testimony with respect.

IN THE SHORT run, it would be appropriate if the Board of Adjustment voluntarily decided to consider only "bulk variances" — involving setbacks, parking, and building size and height. Cases involving "use variations" — use of property in different ways than zoning of an area allows — should be left to the Land Use Control Board, the City Council and county Board of Commissioners.

In the long run, Shelby County legislators in Nashville need to act to restrict the power of the board. Until then, however, the city and county mayors, who appoint members of the board, and more public officials involved in land use planning need to speak out more on the way the board is doing business.

Land use policy is too important to be established on a hodgepodge basis according to the whim of a board with too much power and too little information.

May 27, 1984, *Commercial Appeal* editorial

Board approves Seessel's expansion

By PEGGY McCOLLOUGH

The Board of Adjustment last night approved an application by Seessel's Supermarkets Inc. to expand its store at 1761 Union onto residential property after the company reached an agreement with the adjacent neighborhood group.

After a month of negotiations, the Central Gardens Area Association and Seessel's entered into a covenant that includes the neighborhood group agreeing to endorse the expansion plans. In exchange, the company agreed not to convert four residential properties that it owns in the neighborhood into nonresidential use for 20 years and to properly maintain the properties.

Seessel's owns properties at 1744 and 1756 Eastmoreland and 190 and 194 Lemaster. The covenant also calls for Seessel's to build an 8-foot brick and wood fence along the store's south property line and along the north property line of adjacent residences west of the store.

The store had asked the board to waive a 25-foot rear setback from the south property line in order to build an L-shaped addition along the length of the existing building.

Jon McCalla, an attorney and president of the Central Gardens group, said residents were particularly concerned about the homes that the company owns in the neighborhood and that it could lead to "encroachment."

The company realized that it would "have to make accommodations or we would be opposed," he said.

The board continued the case last month after neighborhood representatives and the company agreed to negotiate.

Yesterday's meeting lacked the fire of last month's meeting when Ralph Smith, deputy director of land use control for the Office of Planning and Development, was told that he could comment on cases only as an opposition

witness. Smith had criticized the board for hearing and approving land use cases.

Smith yesterday, however, commented on land use cases as a staff member. Asst. City Atty. Art Shea, who had been asked to give an opinion on the issue, said Smith could comment, without being sworn in, just as any other representative of a city or county department.

In other business, the board decided to rehear next month an application by James Skelos to turn a building at 2031 Jefferson, formerly the Memphis Jewish Community Center, into a boxing and karate arena. Skelos, who had planned to provide 235 parking spaces, only 150 of them paved, was asked to provide a parking plan showing when the others would be paved.

The plan, which calls for seating for 650, was opposed by Overton Square Inc. Bill Maxwell, attorney for Overton Square, said merchants were concerned about the type of crowd that the sports hall would attract and that those attending would park on others' lots.

Also, the board approved an application by Eddie F. Hayes & Son Funeral Home to turn a house at 950 Chelsea into a funeral home.

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General Manager



The Memphis Commercial ... Established 1889
The Appeal ... Established 1840
The Avalanche ... Established 1867
Consolidated July 1, 1984

"Give light and the people
will find their own way."

A4

Wednesday, September 19, 1984

Editorials

NO-MAN'S LAND: Memphis has never met a developer it didn't like.

Zoning nightmare

MEMPHIS is a city that can't say no. To developers, that is.

Despite a staff of planning experts under the direction of the Land Use Control Board, the city continues to use a roll of the dice to chart its growth.

The result is clear to anyone with a map: Memphis has become a city of sprawling commercial development, a planner's no man's land.

If Memphis' future is to be left in the hands of individual developers and speculators, who, after all, are primarily interested in short-term profits for specific projects and not long-range planning for the entire city, Memphis seems doomed to waddle into the future with an erratic growth plan.

It may surprise many Memphians to know that the city has professionals in its employ whose responsibility it is to plan for the city's development. Those people are found on the staff of the Land Use Control Board and the Office of Planning and Development.

Unfortunately, their best efforts have been stymied in recent years by the City Council, the Board of Adjustment and, yes, even their employers, the Land Use Control Board.

OF 100 ZONING and planned development requests brought before the council since July 1983, 95 were approved. Of 20 cases rejected by the staff of the Land Use Control Board as being not in the best interests of the city, 16 were overruled by the council. During that same period, 87 of 100 appeal cases were approved by the Land Use Control Board. And during a similar period, the Board of Adjustment approved 95 percent of the appeals brought before it. Clearly, the members of all three boards have a difficult time saying no.

"If the community would follow the recommendations (of the planners)," says Mayor Dick Hackett, "we'd be better off in the long run. I'm concerned that their recommendations are being overturned. It's not conducive to long-range planning." The various boards, says Hackett, simply don't have the expertise to shape the city's future. Even worse, "they find it easy to play to the crowd."

Briefly, this is how the system works:

Suppose you are a developer who wants to build a high-rise, commercial building that the city planning staff has determined would violate current zoning restrictions. You could appeal to the board and receive a public hearing. If the board ruled against you, you could then appeal to the City Council. If the City Council ruled against you, you could go to the Board of Adjustment, knowing that the odds would be stacked very high in your favor.

IT'S CLEAR THAT the developers' interests are being looked after. But who's looking after the interests of the city?

Don't get us wrong. We aren't opposed to developers. On the contrary, we recognize the importance of their contribution to the city's growth. At the same time, however, we recognize the importance of balancing the developers' needs with those of the city as a whole.

Incredibly, the city has no comprehensive, written plan for its future growth. It's true the Center City Commission has set goals for downtown development, but the rest of the city is proceeding headlong into the future without a clear understanding of where it is going. The only plan now in use is the Memphis 2000 plan adopted in 1981 by the City Council and the Shelby County Board of Commissioners. Though the plan prohibits the spread of commercial strip development and designates regional centers as sites for future commercial development, it legitimizes the continued spread of commercial construction in urban centers such as the White Station area and is little more than a "hold the line" plan designed to control existing nightmares. Beyond that, it says nothing about where Memphis as a city should go.

As citizens, there are several things you could do to bring an end to the city's zoning nightmare:

- You could urge Shelby County legislators to support legislation to abolish the Board of Adjustment and you could pressure council members

to use better judgment in intervening in zone variance appeals.

- You could try to convince the council and the mayor of the necessity of developing a post-Memphis 2000 plan comprehensive enough to establish written, easily understood guidelines for the city's growth. City planners are at work on a rezoning plan, but it remains to be seen whether the council will accept it.

- You could insist that the council stop speculative zoning at White Station along Poplar. Because it has been designated as an urban center with a mixture of residential, commercial and governmental uses, it is ripe for speculators who purchase property with the intention of asking for zoning variances at later dates to construct buildings prohibited under current standards.

AS IT STANDS Memphis has a plan to halt helter-skelter growth in existing areas, but that plan is being circumvented by an excessive number of appeal boards. Three appeal boards are too many.

AS IT STANDS Memphis has a plan to halt helter-skelter growth in existing areas, but that plan is being circumvented by an excessive number of appeal boards. Three appeal boards are too many.

The Board of Adjustment is an anachronism and should be abolished. The reason for having appeal boards is to allow affected citizens and developers an opportunity to challenge decisions made by city planners. That's how the system works in theory. In practice, it has often served the interests of developers rather than of the city as a whole. Over the years, the Board of Adjustment has become little more than a rubber stamp for developers and home owners pleading for exemptions. At a recent meeting, the board went so far as to declare the deputy director of the city's land use department a hostile witness. That's no way to manage this city's future.

The council's record is not much better. Repeatedly, it has ignored the advice of planners and sided with developers, often turning a deaf ear to the pleas of concerned residents. Most recently, it overrode the planners to approve Boyle Investment Company's request to build an office development on 22 acres on Shady Grove Road north of Poplar. Long before that, it overrode city planners and approved the construction of Clark Tower. It also approved the Mall of Memphis against the advice of city planners. The list goes on.

WHATEVER THE merits of individual requests, the pattern indicates a serious conflict among elected and appointed officials about what planning guidelines and goals the city should follow.

That conflict should be resolved.

The city needs a comprehensive development plan based on reasonable goals for business, neighborhoods, the environment and city services. The plan should have the approval and support of the administration, the council and the other bodies involved. It should address public concerns as well as requirements for economic growth.

In the meantime, government officials and planners should reach an agreement on what guidelines the city should use until such a plan is developed.

If the Board of Adjustment were abolished, if the council used more restraint and common sense in accepting zoning appeals and took action to halt speculative zoning, and if city planners were allowed to do what they do best — plan for the city's growth — Memphis could enter the 21st Century as a real city and not an oversized town grown too big for its britches.

November 29, 1984, *Commercial Appeal* (continues on following page)

Protests lead to rejection of home for Cuban refugees

By PEGGY McCOLLOUGH

In a 7½-hour emotion-packed meeting yesterday, the Board of Adjustment unanimously rejected plans for a transitional home for mentally ill Cuban refugees.

In another matter, board members agreed to meet with City Council and County Commission members to discuss tightening the mobile home ordinance because of complaints about the ease with which special permits for them are issued and extended.

The Southeast Mental Health Center sought a variation from the zoning ordinance to house 19 Cubans on seven acres of heavy industrial property at 5570 and 5586 Lamar, near the DeSoto County, Miss., line. The Cubans now are at St. Elizabeth's Hospital in Washington.

Mental health center attorney Michael C. Williams and development director Andy Fox told

board members the Cubans are not dangerous and wouldn't affect the community.

About 40 area residents, some from DeSoto County, however, said they believe the facility would devalue their property and cause fear among residents.

Also present was Olive Branch, Miss., Mayor Milton Nichols, who said he believed approval "would be detrimental to the (future) expansion of Olive Branch in this area."

Luther White of Olive Branch said he is "sorry for the Cubans and I am a God-fearing man . . . but there is no way this project could enhance our community."

Fox said Southeast received a \$1.06 million grant to operate the program for a year, with annual grant renewal necessary.

Three area residents supported the proposal, in

(See **BOARD** on Page A5)

Board rejects location of home for mentally ill Cubans

(Continued from Page A1)

cluding Claude and Judy Mangum, who visited a similar program in St. Louis.

Fox said the center still has the option of purchasing the old Capeville Baptist Church property on East Shelby Drive. That property is zoned commercial, which permits its use as a transitional home, but is not as desirable as the Lamar site, he said.

After the meeting, Dr. Leon Lebovitz, Southeast Mental Health Center director, said, "We will continue looking until we find an acceptable site for the project. We do not intend to impact a neighborhood where people do not want us there."

On the mobile home issue, City

Council chairman Barbara Sonnenburg and County Commission Chairman Jim Rout appeared before the board to seek a "90-day moratorium" on extensions of mobile home special permit ex-

ceptions. Rout also asked that board chairman Frank Colvert meet with him, Mrs. Sonnenburg and city and county attorneys to draft a new zoning ordinance for mobile homes.

Rout said he and Sonnenburg have received many calls and letters from people who are upset about the zoning ordinance, which allows mobile homes by special permit in the county on property of an acre or more. The permits, granted by the Board of Adjustment, can be issued for up to four years and can be extended,

which results in permanent mobile homes, Rout said.

And one mobile home in an area opens it up to others, said Rout, adding that longtime homeowners need to be protected.

Waymon Welch, a board member, said he understands how homeowners feel but added "there are people who need to live in a mobile home and I don't want to put these people on the street."

Board member Clinton R. Pearson and Welch said they didn't think it was appropriate for Sonnenburg and Rout to ask the board to participate in revamping the ordinance since the board is "quasi-judicial and applies the laws after the legislative bodies make them."

"I don't like the way they come and jump on us," Welch said. "I think if they don't like the job

we're doing, then don't reappoint us."

Although the moratorium was rejected because of concern regarding legal problems with applications already filed, the board agreed to have all of the members meet with council and commission members to discuss the mobile home ordinance.

The board also postponed an ap-

plication by Browning-Ferris Industries of Tennessee Inc. for an extension of a permit for a landfill at 4511 Holmes Road and to expand the landfill.

Approved yesterday were six mobile home permit extensions, including one at 5224 Benjestown Road opposed by about 20 residents, and five new applications for permits.

November 29, 1984,
Commercial Appeal (continued
from previous page)

Ruling sets back proposed home for mentally ill

By PEGGY McCOLLOUGH

The Board of Adjustment last night ruled that a proposed group home for the mentally ill at 1283 Holmes Road is a commercial venture and is required to get a special use permit from the City Council.

David Dickson, attorney for the mental health group planning the home said he will go to court to appeal the ruling.

"The ramifications (of the ruling) could lead to the dismantling of mental health homes in Shelby County," he said.

Officials of SMS Community Housing Inc. — an umbrella organization made up of the Midtown Mental Health Center, the Southeast Mental Health Center and the Southwest Mental Health Center — had argued that the Holmes Road project, funded by federal grants and subsidies, is nonprofit and tax-exempt and therefore not a commercial venture. The 2,200-square-foot Whitehaven home would house eight patients and two staff members.

However, Patricia Nozinich, an attorney and a resident of the Whitehaven neighborhood, argued that nonprofit and commercial can be synonymous and that the residents should be allowed to oppose the home in a public forum.

She also said that the three mental health centers have large reserve funds and operate like a commercial venture, and that the planned home would be a commercial venture.

The board's ruling overturned a previous ruling by the Building Official that the home is allowed in a residential neighborhood under a 1978 state law upheld by the state attorney general.

"I just don't believe that the legislature realized what they were doing" when they passed the law, said board member John S. Shepherd. Under that law, "they could put one of their houses in the middle of Germantown."

Board chairman W. Richard

Hall noted that the three mental health centers have large reserve funds. The Southeast Mental Health Center has a surplus of \$1.7 million, Hall said, and "it appears to me to be a commercial organization."

Mental Health officials, however, said that the reserve cushion is needed because the center anticipates losing \$600,000 a year in federal block grants and that the other two centers had substantially lower reserves that are needed for cost increases.

Dickson also charged that opposing residents were trying to prolong the process because SMS has to make arrangements for the home by September to receive the \$808,000 in Housing and Community Development grants and an annual \$92,600 federal rent subsidy. Two other such homes are planned for 1383 Faxon and Tchulahoma near Arnold Road.

The process has been a long one. In December, SMS filed an application with the Office of Planning and Development seeking to open a transitional home for the mentally ill at the Holmes Road site. A hearing, scheduled for February, was canceled when former Building Official Frank Bozak ruled that the home was permitted by law and did not require a special use permit and public hearing.

Ms. Nozinich filed a petition for an injunction in Circuit Court to stop the project, but Judge Robert L. Childers ruled that Circuit Court lacked jurisdiction over the matter and that the Board of Adjustment should consider Ms. Nozinich's objection.

Mr. and Mrs. Raymond E. Cotton, who live near the planned home, have filed petitions in Chancery Court, and SMS has asked the court for an injunction naming the City of Memphis and Ms. Nozinich as defendants.

Board members Frank Colvett and Frankye B. Jordan were the only board members to vote against Ms. Nozinich's appeal.

July 27, 1985, *Commercial Appeal*, Case BOA 85-54 (City)

High-rise plan near Orpheum wins approval

Project wins over protests

By PEGGY McCOLLOUGH

Plans for a huge, high-rise apartment development next to the Orpheum theater were approved yesterday by the Board of Adjustment over the objections of critics who said the project would "dwarf" the restored theater.

Yesterday's action means the project may proceed and does not need the approval of the City Council.

Developers said construction will begin in about 18 months and will take two years. The project will have three towers ranging from 22 to 39 stories.

Peggy Jemison, chairman of the Memphis Landmarks Commission, told the board the glass high-rise would "dwarf the Orpheum. . . . This is not in keeping with this building we have made a jewel."

She said she also was speaking for Memphis Heritage Inc.

The board, which issues variances from zoning laws, unanimously approved variances sought by Orpheum Plaza Partnership for the 576-unit development.

The property, zoned light industrial and central business district, stretches from Main to Front between the Orpheum and Beale Street Landing parking garage.

However, architect Bill Beaty, spokesman for the project at the meeting, said the property's zoning allows commercial buildings.

"What is too tall?" he asked. "I

really think this respects the Orpheum. It keeps something from touching it and crowding it."

The towers will be raised on columns 90 feet above the ground and will allow a river view from Main, he said.

Pat Halloran, president of the Memphis Development Foundation which manages the Orpheum, said, "We don't have an official position on the matter at all.

"We had a presentation made to the board of the Memphis Development Foundation three years ago about the project. We didn't see anything we were overly concerned with at the time."

Mrs. Jemison also said the project, which she said is on the edge of the South Main Historical District and "at the foot or the head" of the Beale Street Historical District, should be studied by planning consultants who have been hired by the city to study downtown. "It needs serious observation and should not be rushed at the last minute."

And Ralph Smith, deputy director of land use for the Office of Planning and Development, said in a written response to the application, that "a development with such an impact on major city projects" such as Beale Street and the Orpheum, "should be reviewed by the City Council."

However, board member Frank Colvett and chairman W. Richard Hall said the Center City Commission already had approved the \$40 million project, which indicates city approval.

October 24, 1985,
Commercial Appeal

Adjustment board considers appeals on how land used

By Marc Perrasquia
The Commercial Appeal

If local code enforcement officials say you can't build that carport or can't put that mobile home on your property, you can take your case to the Memphis and Shelby County Board of Adjustment.

"The case I'll never forget is when we allowed Elvis Presley to be buried at Graceland," said board chairman Frank H. Colvett. Presley had been interred in Forest Hills Cemetery on Bellevue in 1977, but when his family wanted Elvis's grave moved to Graceland, zoning regulations got in the way.

"You can't bury folks unless it is in a designated cemetery," Colvett said. But after inspecting Graceland, the board ap-

proved the move.

That is the board's job — to review cases and apply reasoning and compassion to often arbitrary and steadfast regulations. The Board of Adjustment was created by the Tennessee General Assembly in the 1930s and became firmly established in the 1950s, Colvett said.

The board considers whether a particular set of circumstances merits waiving the rules, Colvett said. Here are some examples of the types of cases the board may hear:

- Property use. For example, if code enforcement officials deny you a commercial use of your residential property, such as opening a beauty shop, you may take your case to the Board of Adjustment.

- New construction. If code enforcement blocks construc-

GOVERNMENT PANEL PROFILE

Name of Agency: Memphis and Shelby County Board of Adjustment.

Address: Room 1B09, City Hall, 125 N. Mid-America Mall.

Telephone: 576-6632.

Presiding Officer: Frank H. Colvett, chairman.

Members: Frank H. Colvett, Linda W. Ralford, Richard L. Rutherford, May Taylor, Marshall Colvin, W. Richard Hall, Frankye B. Jordan, John S. Shephard.

Salary of Members: None.

Current Annual Budget: \$90,000.

Number of Employees: Three.

Meetings: 1 p.m. every fourth Wednesday of the month in City Hall.

Mission Statement: Serves as an appeal board, granting and denying variances to local zoning regulations.

tion of your new garage because it is too close to the property line, the board could consider extenuating circumstances.

- Mobile homes. Two sets of permits are required to place a trailer on property with a non-agricultural zoning, but the board at times can help cut through red tape.

However, justice does not come without a price. Filing fees start as low as \$40 for residential

cases. Commercial cases can hit \$800.

If the Board of Adjustment denies your appeal, the next step is to file a petition in Circuit Court.

Colvett said board members, appointed by county Mayor Bill Morris and city Mayor Dick Hackett, always try to keep an open mind.

"We're citizens just like yourself," he said.

April 4, 1990,
Commercial Appeal

Board approves hazardous-waste plant renovation

By Tom Charlier
The Commercial Appeal

A local board Wednesday approved American Resource Recovery Corp.'s plans to modernize its South Memphis hazardous waste-processing plant.

In its 5-2 vote, however, the Memphis and Shelby County Board of Adjustment attached more than a dozen conditions to the project. American Resource will have to plant trees between the plant and residences, control dust, limit hours of operation and make other changes.

The proposal underscored the history of controversy surrounding the plant at 901 E. Bodley. Neighbors have long blamed American Resource for odors, health threats and various nuisances. Nearly a dozen neighbors showed up Wednesday,

many to argue the plant should never have been built adjacent to residential neighborhoods.

But board members agreed with the company's argument that it legally could continue operating with or without the board's approval of a requested zoning variance. With the board action, at least, safety and environmental improvements will be made and local regulators will have additional leverage on the company, they said.

"I feel like to approve this would be a help to what's out there," said board member Robert Knapp.

American Resource, technically considered a waste-recycler, is licensed to blend flammable solvents and other industrial liquids into fuel for cement kilns. The company has been in

Please see **PLANT**, Page **B2**

From Page **B1**

Plant

trouble with environmental regulators in past years and is busy cleaning up groundwater contamination it blames on a previous operator at the site.

To comply with federal regulations, American Resource plans to replace 22 aging storage tanks with 10 modern ones that will be located farther away from homes and protected by a canopy. Storage capacity will drop by more than one-third — from 187,000 to 120,000 gallons — and new sprinkler and vapor-recovery systems would enhance fire and environmental safety, according to the company.

The proposal normally would have required a special-use permit issued by the Land Use Control Board, but it was trans-

ferred to the Board of Adjustment because of technicalities in zoning regulations. A portion of the American Resource acreage is zoned for light-industrial uses, where special-use permits cannot be issued, officials said.

Scott Dowdy, vice president in charge of operations for American Resource, said the company was pleased with the decision and gladly would meet the board's stipulations.

Neighbors expressed mixed feelings on the action. Buddy Cannon, a member of the Prospect Park Neighborhood Association, said the project should improve the plant site. But group president Bernice Gailey said she doesn't trust American Resource.

"The promises are the things that concern me more than anything else," she said.

Landmark, adjustment panels face city probes

By **Wayne Risher**
The Commercial Appeal

City Council members believe the Landmarks Commission and the Board of Adjustment are too powerful and have decided to investigate each board.

After setting three short-term appointments to the boards Tuesday instead of the longer terms requested, councilmen said Wednesday that council committees will conduct inquiries in September to see if the boards should be modified or abolished.

The nine-member Landmarks Commission, which controls building activity in seven historic districts in Midtown and

downtown, has been criticized for strict enforcement of standards. Critics said the eight-member Board of Adjustment, which approves zoning variances and hears appeals of permit requests denied by the Office of Construction Code Enforcement, allows developers to sidestep city approval. Members of both serve without pay.

Supporters of the Landmarks Commission said the council could face a fight. Landmarks supporters and Board of Adjustment officials rejected the belief of some council members that the boards have overstepped their authority.

Councilman Shep Wilbun said

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Boards

his Housing and Community Development Committee would hold meetings on the Landmarks Commission in September: "Many on the council believe the Landmarks Commission is dominated by . . . people who appear to be so interested in history and protecting architecture of historic structures that

they are impeding and interfering with development."

Recently, council members have received complaints that Landmarks has been too strict on proposed home designs in the Midtown corridor, a right-of-way being redeveloped.

Landmarks supporters recalled that the action comes three years after the council's last attempt to weaken the commission. A council-appointed panel spent several months studying Landmarks after councilmen complained that Land-

marks was impeding development. None of those recommendations went into effect.

"It's a summertime rerun," said Sue Williams, a spokesman for the Historic Districts Alliance, a coalition of more than 20 districts.

Tuesday, the council received Mayor W. W. Herenton's nominations of one new Landmarks Commission member and two new Board of Adjustment members. The council was asked to approve multiyear terms but made appointments effective

through Sept. 30.

Reginald French, a Herenton aide who oversees appointees, said administration officials were reviewing the action Wednesday and had no immediate reaction.

The Landmarks appointee was Elizabeth G. Rudolph, proposed for a term expiring in July 1994. Board of Adjustment appointees were Steve Harrell and David S. Andrews, proposed for terms expiring in July 1995.

Councilman Tom Marshall said the council wants to investi-

July 23, 1992, *Commercial Appeal* (continued from the previous page)

gate the Board of Adjustment because "it is the council's perception that the Board of Adjustment has been overstepping its authority and is being used by developers and others in the development community to sidestep the process of going before the council."

Marshall, chairman of the Planning and Zoning Committee, said the committee will start its study in September.

W. Richard Hall, chairman of the Board of Adjustment, said, "I can't think of any cases where

we've overstepped our authority or boundaries." He said attorneys carefully review cases.

The council has the authority to abolish or change the Landmarks Commission, which was created by a city ordinance. Any changes must follow the state's legislation for historic zoning.

The Board of Adjustment, created by the General Assembly in the 1930s, is believed to be outside the city's legislative authority. But, said Marshall, the city wields influence by providing part of the board's funding.

June 23, 1993, *Commercial Appeal*

City Hall parking garage use being reconsidered

By Ron Maxey
and Wayne Risher
The Commercial Appeal

The city apparently is rethinking its decision not to allow members of volunteer boards to use the City Hall parking garage.

Mayor W. W. Herenton's office would only say Tuesday that alternatives are being sought to the controversial policy, which has brought complaints from members of several boards and prompted the Landmarks Commission to move its June 30 meeting to Victorian Village.

However, a spokesman for one of the affected boards, the Memphis-Shelby County Board of Adjustment, said she had received verbal approval from the mayor's office for board members to use the garage today.

Anita Forrester, executive secretary of the Board of Adjustment, said Herenton administrative assistant Reginald French told her he didn't think there would be a problem with members using the garage during the board's 1 p.m. meeting in City Council chambers.

Herenton spokesman Carey Hoffman said the matter was taken under advisement but didn't indicate there had been any official change in policy. "I can say that we are seeking alternatives," Hoffman said.

Forrester said she had received no written approval as of Tuesday afternoon to use the garage, and she said parking garage security personnel had not, to the best of her knowledge, received notification to allow board members to use the garage.

Requests denied for tall billboards on I-240 near mall

By Wayne Risher
The Commercial Appeal

The Board of Adjustment denied requests Wednesday for three overheight billboards on Interstate 240 South after neighbors and two City Council members opposed the plans. The landowner, Perkins Inter-

state Co., sought approval of billboards taller than 70 feet, claiming that a 50-foot limit would leave the signs hidden behind trees south of the interstate west of Perkins.

Lawyer Homer Branan III, representing Perkins Interstate, said the billboards would be dropped to 50 feet if a separate proposal for a beautification

project is approved by the state. The proposal calls for removing existing trees and replacing them with trees and shrubs no taller than 12 feet.

Perkins Interstate contends the trees have grown tall since the property was developed because the city and state didn't properly maintain right-of-way. The board deadlocked 4-4 —

one vote short of passage — on the billboard requests. Council members Barbara Sonnenburg and Mary Rose McCormick opposed the requests. Sonnenburg also told board members of council opposition to the beautification project.

Neighbors argued that taller billboards would be an eyesore for residents on the north side of

I-240. "Even though the neighborhood is across the interstate, these billboards will loom over our neighborhood as an eyesore," said James E. Nelson, representing the Colonial Acres Neighborhood Association. Beautification project proponents joined the fray. "Memphis

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Signs

has long been known as the city of trees. I would not want it to become known as the city of billboards," said Martine Madlinger, a Memphis Horticultural Society member.

Voting against the billboard requests were vice chairman Lynda Raiford and board members May Taylor, Robert Sparks and John Shepherd. Voting in favor were David Andrews, Steve Harrell, Marshall Colvin and Frankye Jordan.

Stanley Trezevant Jr., an owner in Perkins Interstate, declined comment on the billboard vote. Trezevant is also behind the tree-removal plan.

The Herenton administration has asked the state Department of Transportation to approve Trezevant's beautification project.

The plan calls for Trezevant to remove trees, some 45-50 feet tall, and replace them with clus-

ters of ornamental and shade trees, no more than 12 feet tall and spaced 1,000 feet apart.

A letter from Herenton to the state said the public-private partnership with Trezevant would advance the city's goal of beautifying traffic arteries.

Sonnenburg said the City Council has no authority to stop the beautification proposal, but a letter asking the state to reject the proposal has been sent to Transportation Commissioner Carl Johnson. It is signed by Sonnenburg, McCormick, Pat Vander Schaaf and Florence Leffler.

"We find the existing trees and shrubbery growing in the right-of-way and on Trezevant property a welcome relief to the concrete and grass which exists elsewhere," the letter said.

"We plead with you to save years of state maintenance money which would be required to mow four more miles of grass. Deny this selfish proposal! It has nothing to do with beautification or the public's interest."

August 26, 1993, *Commercial Appeal*

Refinery, Bellevue Baptist granted zoning variances

By LAURIE JOHNSON
THE DAILY NEWS

Williams Refining LLC and Bellevue Baptist Church were among applicants granted zoning variances Wednesday by the Memphis and Shelby County Board of Adjustment.

Williams Refining, which operates the former Mapco refinery, received permission to build five tower structures taller than 100 feet on refinery property at Interstate 55 and Mallory Avenue.

The structures will be part of a proposed continuous catalytic reformer, a facility the company plans to start construction on at a later date.

The purpose of the reformer will be to increase the company's productivity, particularly that which is related to the production of high-octane gas, according to the company's application to the board.

The proposed property site, which covers 2.2 acres near the center of the refinery's 120-acre tract, is subject to heavy industrial zoning requirements, which specify that property owners have to seek a variance if they plan to build any structure taller than 100 feet.

According to the company's application, the five structures will be of differing

heights, ranging from 109 feet to 280 feet.

The refinery already had numerous towers and structures taller than the 100-foot limit because prior to 1981, structures in industrial zones were exempt from height regulations, said Anita Forrester, director of the Memphis/Shelby County Board of Adjustment office.

The company is complying with all Environmental Protection Agency requirements applicable to the project, according to the company's application.

No local departmental comments have been filed regarding the application, and there has been no opposition from any nearby property owners, Forrester said.

"They're kind of boxed in, and they're trying to make reasonable, practical improvements that enhance the use that's already there," she said. "The only way they can meet their needs and the requirements of the EPA are to build these structures associated with the reformer the heights they've specified."

Board of Adjustment members also granted Bellevue Baptist Church a variance to erect three crosses higher than 100 feet on church property at Appling Road and Interstate 40.

Government

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► Zoning

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The crosses, two of which will be 120 feet and one of which will be 150 feet, will be part of a devotional area the church plans to develop on part of its land.

The four-acre property site is zoned light industrial, which also requires a variance for structures taller than 100 feet, Forrester said.

At Wednesday's meeting, board members rejected a request for a zoning variance that would allow a business to operate within a residential neighborhood.

The board rejected Jeffrey L. Kelley's application to open an insurance business in a home at 3632 Kirby Terrace Drive, at the

corner of Kirby Terrace and Winchester Road.

According to the application submitted by Kelley, who owns the home, the entire building would be used for business purposes. The property site is zoned single-family residential.

While the home is located near the Winchester commercial corridor, the home's placement on the property made it more a part of the residential portion of the neighborhood, Forrester said.

"Along Winchester, there is commercial and business use but the house itself faces onto Kirby Terrace Drive, and its driveway is on Kirby Terrace Drive," she said.

"So, as far as the physical characteristics of the property go, it tends to be more a part of

the subdivision than the Winchester Road commercial frontage."

The board also rejected Kelley's request for a larger sign than what the area's current zoning requirements allow. While single-family residential zoning allows one sign up to 12 square feet in size, Kelley wanted to place two signs on the property: a 50-square-foot detached sign and a 48-square-foot sign attached to the home.

Kelley had filed a prior application in 1997, but withdrew it following neighborhood opposition to the variance request.

The board also had received a lengthy protest letter regarding the current request, Forrester said.

The board's next meeting is scheduled for Sept. 22.

November 18, 1999, *Commercial Appeal*

COUNCIL OK'S NEW ORDINANCE LIMITING SIZE OF BILLBOARDS

Blake Fontenay

Call this "Unfinished Business Week" for the Memphis City Council.

In addition to voting on a lease deal that allows Williams Cos. to build an office complex in Martin Luther King Jr. Park, the council also gave final approval to two other long-discussed items of business.

The council adopted an ordinance Tuesday establishing various new regulations for billboards.

At a previous meeting, the council had agreed to ban all new billboards, except along interstate highways.

The regulations adopted this week will affect the boards that are already up around the city, as well as any new boards built along the interstate. The new provisions:

-- Limit the size of billboard signs to 672 square feet along interstates and major highways, and 500 square feet along other roads.

Previously, the city's rules allowed signs up to 1,000 square feet in total surface area. Existing billboards are exempt from the new size restriction unless they have to be rebuilt.

The ordinance:

-- Requires all billboards to have identifying decals so building officials can keep track of the signs' owners.

-- Requires building officials to maintain a log with information on all registered signs and their owners. That log must be available for public inspection during regular business hours.

The Shelby County Commission is considering an identical ordinance that would extend the billboard regulations to areas outside the Memphis city limits.

The council also gave final approval to an ordinance intended to limit the authority of the Memphis and Shelby County Board of Adjustment.

The board, made up of city and county mayoral appointees, grants variances to land use plans when property owners have some special hardship that is beyond their control.

Some council members contend the board has strayed from its intended mission by granting actual land-use changes over the years.

The ordinance passed this week is designed to strip the board of authority in land-use cases. The County Commission is also considering a similar ordinance.

Under the new ordinance, all cases involving land-use changes, such as rezoning property from residential to commercial classification, would be routed through the City Council or County Commission.

However, the Board of Adjustment would still hear cases that involve relatively minor changes to development site plans.

Councilman John Bobango said the ordinance should provide greater accountability by having elected council members or commissioners hear the sometimes controversial land-use cases, rather than a group of appointed officials.

In other business, council members learned that the city's administrative staff had resolved a problem that threatened to delay development in some outlying parts of the county.

Rick Masson, the city's chief administrative officer, said he reached an agreement that clears the way for Memphis to provide sewer service in unincorporated areas within Collierville's annexation reserve area.

Memphis officials were hesitant to provide sewer service within the area, without assurances Collierville would provide compensation if the smaller city ever annexed the area and took over the sewer service.

Collierville Mayor Linda Kerley wrote Masson a letter last week, stating the city's intent to work out a contractual arrangement with Memphis for sewer service in those areas.

Edition: FinalSection: MetroPage: B4

December 7, 1999, *Commercial Appeal*

COUNTY APPROVES WIDER REACH FOR
BAN ON NEW BILLBOARDS

Jimmie Covington

County Commission members on Monday gave final approval to extending a ban on new billboard construction to unincorporated areas of the county except along interstate highways.

Without debate, commissioners voted 9-0 to approve a joint city-county ordinance that includes the ban and other revised sign regulations. The City Council approved the ordinance Nov. 16.

Approval of a joint ordinance by both governmental bodies apparently removes a legal question that county attorneys had raised about whether the council could act alone to adopt new billboard restrictions.

"This is third and final reading on this ordinance; it has come before committee and has been recommended for approval," said Commissioner Mark Norris. Norris, chairman of the commission's zoning and land use committee, moved for its approval.

County Atty. Donnie Wilson had taken the position that neither the city nor county could act alone to change the joint zoning ordinance, which includes billboard regulations.

The council on Oct. 26 approved a city-only ordinance that its backers said would halt new billboard construction in the city except along interstate highways.

At the same time, the council started the process of approving the new joint ordinance that includes the new ban plus measures to fine-tune regulations on existing billboards.

Some of the new restrictions in the ordinance:

-- Signs along interstates and major highways are limited to 672 square feet and those along other roads to 500 square feet.

Previous regulations allowed up to 1,000 square feet of surface area. Current billboards are exempt from the new restriction unless they are rebuilt.

-- Building officials must keep a log with information on registered signs and their owners. The public will be allowed to inspect the log during regular business hours.

-- Current signs will be designated as either "legal conforming" signs or "legal nonconforming" signs.

Also, on Monday, commissioners approved a separate city-county ordinance that removes the authority of the Memphis and Shelby County Board of Adjustment to grant land use variances.

The adjustment board generally has authority to grant variances from zoning requirements for hardship reasons.

Several City Council members have voiced concerns that some board-approved land use changes have negated the intent and purpose of zoning requirements.

The new ordinance, which also has been passed by the council, will require that any land use changes be approved by the council or commission.

Edition: FinalSection: NewsPage: A1

December 22, 2006, *Daily News*, continues on the following page

The Saga Continues: More 'Main Street Sweeper' Info Comes to Light

By Andy Meek

A federal grand jury this week formally indicted two Memphis City Council members who previously had been implicated in criminal complaints alleging they sold their votes in exchange for supporting a real estate project, among other dealings.

At the same time, the indictments against Edmund Ford and Rickey Peete also shed new light on the inner workings of the "Operation Main Street Sweeper" investigation that targeted them and subsequently rocked the city council.

Prosecutors, via the indictments, revealed for the first time that well-connected lobbyist Joe Cooper was indeed the informant who wore a wire and paid the councilmen a total of \$23,400 in FBI funds to do several things over the course of four months: approve a particular land deal and get part of the council's billboard ordinance repealed, for starters.

And Cooper, who regularly represented clients before the council, appears to have had still another agenda.

On the same day the Memphis and Shelby County Board of Adjustment met in November to consider a contentious land deal involving the Tennessee Brewery, Cooper met with Peete to talk about John S. Shepherd, the chairman of the BOA.

Food for thought

The BOA is an eight-member body that meets periodically to hear appeals related to zoning laws that govern land development. On the same day the BOA was supposed to meet to talk about the brewery redevelopment, Cooper, according to the indictment, offered to pay Peete to encourage the council to boot Shepherd from his role as head of the BOA.

Shepherd was, in Cooper's words, becoming a problem for his clients.

"Cooper stated that the city mayor was required to appoint the chairman each year, and Cooper and Peete discussed having this issue addressed by the City Council," the indictment reads.

The timing of that rendezvous, coinciding with the BOA's meeting about the Tennessee Brewery, appears to be happenstance. Brenda Solomito, the land planner representing the developers who want to transform the vacant brewery into a towering condo project, said Cooper never approached her on that or any other project.

Nevertheless, Cooper told Peete that removing Shepherd would benefit Cooper's clients, who most notably included local billboard magnate William H. Thomas Jr. It's not yet clear if Cooper was promoting Shepherd's removal at the behest or to the benefit of Thomas, who has found himself in hot water lately for other issues before the council.

Passing notes in class

During the discussion on Nov. 13, Peete and Cooper exchanged notes on which were written the payment Peete wanted in exchange for pushing the council to replace the BOA chairman. That was the way the two men had operated over the past several months, using code words and making veiled comments about cash payments for favors, according to the indictment.

"Cooper showed Peete a note that read '5,000 TIP,' and then Peete wrote on a message slip a note indicating that he wanted to be paid \$2,500 in advance and \$4,000 after the issue was addressed by the city council," the indictment reads.

In addition to answering some questions, the indictments also raise new ones. For example, speculation has been raised in some circles that the feds were forced to act when they did - arresting both councilmen on Nov. 30 - because of either a misstep or blown cover by someone in the investigation.

Court papers show the arrest warrants, signed by federal judge Jon McCalla, were dated Nov. 29, yet Cooper still went ahead and wore a wire to meet separately with Ford and Peete the next day on Nov. 30 - the day of the high-profile arrest and press conference. He even left \$2,500 in cash in the bathroom of Peete's office on Nov. 30, presumably hours before the councilman was arrested.

December 22, 2006, *Daily News*, continued from the previous page

Body politick

The city council, meanwhile, is still dealing with the fallout from the land deal that Cooper allegedly bribed the councilmen to support in the first place and which is at the crux of the probe.

On Tuesday, the council's Planning and Zoning Committee put a stop to Thomas' work on that project, a mixed-use development off Interstate 240 that included a billboard.

The council also went a step further that day and slapped a moratorium on new billboards in the city.

"When we passed this item," councilman Jack Sammons said of the different features of Thomas' Steve Road project, "we included provisions that they would have to build the day care center first, then the billboard, then the storage facility.

"I drive by there on the way to the airport, and it just looks like a tornado has gone through there. A very thin slice of trees has been cut down, and I guess they could be trying to build the world's thinnest day care center. But I think this council has got to send a message to this fella that this isn't Dodge City; you can't just go out and do what you want."

'A smokescreen'

Gene Gibson, a member of the city-county Land Use Control Board, suggested that the development appeared to be little more than an excuse to build a new billboard.

"The deal was a smokescreen, but we get smokescreens all the time," he said. "People can tell us anything. What you've got to understand, for a lot of this stuff, there's nobody to enforce it. All we do is try to set rules and hope everybody's honest and that they do them."

Nevertheless, council members used the opportunity this week to enact another billboard moratorium, despite the fact that another one ended several months ago.

Taking aim at Thomas' project, which inspired the alleged misdeeds in the federal indictments, councilman Tom Marshall said: "We have what appears to be a largely unbridled industry in the billboard business. And I believe we all just need to take a breath and put a stop to this insane acquisition of property, these insane measures that people go to to build a billboard."

But the line between periodic business activity and an "unbridled" industry apparently is a thin one.

Later that day, council members also were told exactly how many permits are currently on file for new billboards in the city. There are fewer than five.

February 23, 2007, *Daily News*, Cases BOA 05-27 (City) and 06-05 (City) (see also p. 18 in Section II above), continues on the following page

Billboard Developer Thomas To Appear in Court Today

By Andy Meek

To say that local billboard magnate William H. Thomas Jr. has a bone to pick with the Memphis and Shelby County Board of Adjustment (BOA) probably is an understatement.

After that eight-member body - which meets periodically to hear appeals related to zoning decisions - declined recently to give Thomas the special permission he needed to build two billboards, the businessman filed suit in Shelby County Circuit Court. And though both Shelby County and the City of Memphis are listed as defendants in the lawsuit, Thomas directed most of his vitriol at the BOA.

Thomas is scheduled to appear before Chancery Court Judge Arnold Goldin this morning because of issues related to one of his billboard projects in South Memphis.

He's also due today before Environmental Court Judge Larry Potter to answer charges that he flouted a "stop work order" at another billboard site.

'Off the rails'

For example, Thomas claims in that litigation - filed in June 2006 - that the BOA had violated its own rules and exhibited "willful and reckless disregard" against him in denying him permission to build his signs. Further, Thomas claimed he was owed damages to deter future "bad conduct, such as occurred here."

The court filings go on to suggest Thomas believed the board was not following its own rules in appointing members, including a chairman. And in a later court filing in August, Thomas' representatives wrote that the allegations in his complaint show the board "was and remains completely off the rails, as far as billboards are concerned."

That court case, related to billboards Thomas wanted to build on Prescott Street and on Broad Avenue, has not been made widely known until now. But it puts events that happened a few months later in a new context.

Three months after Thomas' lawyer wrote that the BOA was "off the rails," federal prosecutors allege Thomas' business consultant, Joe Cooper, was meeting with Memphis City Council member Rickey Peete to talk about the possibility of replacing John Shepherd, the chairman of the BOA.

Cooper, a perennial candidate for office in Shelby County, had become Thomas' public face some time in late 2005. He worked as a paid consultant, smoothing the way for Thomas' deals to get the approval they needed.

But when Cooper faced unrelated money laundering charges last year, he was allowed to become a federal informant, apparently in exchange for leniency. Cooper then provided prosecutors with what purported to be an inside look at the dealings of local politicians he suggested were on the take.

Bird on a wire

Thomas, whose land holdings across Shelby County and beyond represent a vast fortune, may have been personally involved in directing Cooper's actions or he may have given Cooper carte blanche while the two men worked together, according to previous *Daily News* stories and other reports.

It's unclear, at least in court records of the sting operation, whether Thomas knew what Cooper was doing.

Nevertheless, sometime in November 2006 - three months after Thomas blasted the BOA in court papers - prosecutors claim Cooper met with Peete at Peete's office. Cooper, wearing a wire, was there to discuss the BOA.

"Cooper described to Peete what he claimed was a problem with the chairman of the Board of Adjustments and indicated that the replacement of the chairman would benefit his (Cooper's) clients," reads the indictment against Peete, which was handed down in December.

Peete, along with councilman Edmund Ford, was charged with accepting several thousand dollars to support various projects before the council.

February 23, 2007, *Daily News*, continued from the previous page

Meanwhile, the friction between Thomas and the BOA apparently wasn't enough to keep Thomas from accepting its denial of his project. At the site on Prescott where the BOA said he couldn't put up a sign, Thomas apparently went ahead and built it within the last few days, despite never having received a permit to do so, said Allen Medlock, the head of Memphis and Shelby County Construction Code Enforcement.

Also, Thomas' circuit court case on that issue since has been transferred to federal court.

"The billboard industry, it creates a lot of income real quick for people," Medlock said. "They can fight the thing in court, and if they're ordered to take it down, they just take it down - but they've made their money on it."

'Publicity-shy investor'

Whether Cooper was acting with Thomas' knowledge, the two men are widely known to have enjoyed a close relationship. Shortly after losing the Democratic primary for a seat on the Shelby County Commission this past summer, for example, Cooper left town to unwind and visit family members.

He traveled to the West Coast to spend time with his son, Trent, a Hollywood filmmaker and notably the director of the recent feature film "Larry the Cable Guy." While he was relaxing, though, Cooper said in an interview shortly after returning that he also had been scouting around for development prospects for Thomas while on vacation.

"He's a publicity-shy investor, a private person, but very nice, smart, philanthropic and I love working with him," Cooper said in a Daily News story at the time.

Meanwhile, Thomas may inadvertently encourage new public attention on his dogged approach to the billboard business - and on his dealings with Cooper - when he appears in court today.

March 15, 2010, *Daily News*

**UPDATE: County Commission Delays
Reappointments to Board of Adjustment**

By Bill Dries

Shelby County Commissioners have delayed the reappointment of two members of the local Board of Adjustment, the appointed body that hears appeals of conditions of zoning ordinances.

The names of Daniel Dow and [Lynda Raiford](#) had been submitted by interim Shelby County Mayor [Joe Ford](#).

Commissioner Steve Mulroy called for the deferral saying he wanted time to examine the voting records of those on the board.

"I think it's entirely appropriate to look at people's records," he said using the example of "smart growth" development policies.

"If we as a commission think that smart growth land use policy is the way to go and we see somebody who has consistently voted against that . it would be within our prerogative to vote against that appointment," Mulroy said.

Shelby County Attorney [Brian Kuhn](#), however, said the board is a "quasi judicial body" which hears testimony under oath on specific disputes and then makes judgments that can be appealed to a court of law.

"It's not a voting pattern that you could review for a policy," he said after pointing out he was not advocating for or against a delay.

Commissioner Mike Ritz challenge Mulroy's motives.

"I don't think there is a problem. I think somebody has a problem. . that's too bad," Ritz said. "They are probably friends of Commissioner Mulroy. I am not here to listen to Commissioner Mulroy repeat his statements why he wants this deferral. Frankly, he hasn't said anything."

Mulroy denied a personal motive. He also drew fire from Commissioner Henri Brooks.

"There's more to it than is what before us now," she said. "I would venture to say that this has something personal to do with Mr. Mulroy. . He needs to settle this outside. . If you want to put it out here, put the whole thing out here."

Commissioner John Pellicciotti said he and Mulroy had heard from a constituent he didn't identify who had complained about some decisions made by the Board of Adjustment.

V. Board Membership, 1925-present

<u>Name</u>	<u>Dates of Service</u>	<u>Years of Service</u>	<u>Board(s)</u>	<u>Chair</u>	<u>Notes</u>
Harry N. Howe	1925 1929	4	C		
Wassell Randolph	1925 1928	3	C	C	
E.B. LeMaster	1925 1928	3	C		
Charles J. Haase	1925 1927	2	C		
Walk C. Jones	1925 1927	2	C		
Dan Wolf	1925 1927	2	C		
S.E. Ragland	1925 1926	1	C		
John W. McClure	1926 1927	1	C		
H.R. Cheers	1927 1943	16	C		
R. Henry Lake	1927 1929	2	C		
W.E. Hyde	1927 1927	0	C		
Tate Pease	1928 1952	24	C/CO		
M.L. Martin	1928 1952	24	C/CO		
E.B. Klewer	1928 1936	8	C/CO	C/CO	
W.M. Stanton	1928 1935	7	C		
R.E. Palmer	1929 1940	11	C		
Bayard Cairns	1929 1934	5	C/CO		
E.W. Hale	1931 1955	24	CO		
Buford White	1931 1937	6	CO		
Bayard Cairns	1931 1934	3	CO		
W.S. McCormick	1931 1934	3	CO		
Max H. Furbringer	1935 1956	21	C		1
J.F. Dudley	1935 1954	19	CO		2
D.J. Canale	1935 1936	1	C		
David N. Harsh	1936 1962	26	C/CO	C/CO	
Phil Pidgeon	1936 1954	18	CO		
Wilson Fly	1936 1937	1	C		
Waddy West	1937 1949	12	C		
O.B. Ellis	1937 1947	10	CO		3
William D. Galbreath	1940 1943	3	C		
Clifford Reynolds	1941 1949	8	C		
Earl W. Smith	1943 1954	11	C		
Elbert A. Cheek	1943 1948	5	C		
R.R. Kimbrough	1946 1953	7	CO		
Rudolph Jones	1948 1962	14	CO		3
W.B. Smith	1948 1960	12	C		
John M. McGregor	1949 1968	19	C	C	
Robert E. Palmer, Jr.	1949 1959	10	C		
Kemmons Wilson	1952 1970	18	CO		

	<u>Name</u>	<u>Dates of Service</u>	<u>Years of Service</u>	<u>Board(s)</u>	<u>Chair</u>	<u>Notes</u>
	C.A. Camp	1952 1964	12	C		
	Charles L. Heckle	1953 1974	21	CO/J	CO/J	
	W.H. Dilatush	1953 1956	3	CO		
	Charles W. Baker	1954 1970	16	CO		2
	Edward Barry	1954 1954	0	CO		
	Perry Pipkin	1955 1970	15	C	C	
	Griffith C. Burr, Sr.	1956 1968	12	C		
	Walter M. Simmons	1956 1967	11	CO	CO	
	Jonathan C. Larkin	1956 1962	6	CO		
	A.L. Aydelott	1957 1959	2	C		
	John S. Palmer	1959 1983	24	C/J	C/J	
	Jack Bland	1959 1965	6	C	C	
	Roane Waring, Jr.	1960 1967	7	C	C	
	J.W. Ramsay	1962 1970	8	CO		3
	C.W. Bond	1962 1970	8	CO/J		
	E.M. Zinn, Jr.	1962 1965	3	CO		
	Donald Thomas	1964 1970	6	C		4
	James W. Campbell, Jr.	1965 1976	11	CO/J	J	
	Alfred M. Alperin	1965 1968	3	C		
	Rufus Jones	1967 1981	14	CO/J	J	5
	James B. Adams	1967 1970	3	C	C	
	Maxine Kahn	1968 1972	4	C/J		6
	Carl Langschmidt, Jr.	1968 1971	3	C/J	J	
	Charles A. Ison	1968 1970	2	C/J		
	Joe D. Spicer	1971 1973	2	J		
	Malcolm Baker	1971 1973	2	J		
	Robert Drzycimski	1971 1972	1	J		
	John S. Shepherd	1972 2008	36	J	J	
	Jayne Creson	1972 1988	16	J		
	Jerry F. Taylor	1973 1977	4	J		
	Robert W. Knapp	1973 1976	3	J		
	Barney Golding	1974 1988	9	J		7
	Clinton R. Pearson	1976 1985	9	J		
	Cary Whitehead	1976 1978	2	J		
	W. Richard Hall	1977 1994	17	J	J	
	Frank Colvett, Sr.	1977 1991	14	J	J	
	Estelle Willis	1978 1981	3	J		
	Frankye B. Jordan	1981 1996	15	J		1
	Waymon Welch, Sr.	1983 1985	2	J		
	Richard L. Rutherford	1985 1990	5	J		
	John Goodwin	1985 1988	3	J		

<u>Name</u>		<u>Dates of Service</u>		<u>Years of Service</u>	<u>Board(s)</u>	<u>Chair</u>	<u>Notes</u>
Lynda W.	Raiford	1988	present	19	J	J	8, 9
May	Taylor	1988	1996	8	J		
Marshall	Colvin	1988	1994	6	J		
Homer	Cody	1990	1992	2	J		
David S.	Andrews	1992	2011	19	J		
Steve	Harrell	1992	1994	2	J		
Roland P.	Taylor	1994	2009	15	J		
Guy V.	Hall	1994	2003	9	J		
Eddie F.	Carter, Jr.	1997	2009	12	J		
T. David	Goodwin, Sr.	1997	2006	9	J		
Patricia	Aldridge	1997	2004	7	J		
Jim	Strickland	2000	2007	7	J		
Kathy Moore	Cowan	2006	2007	1	J		
Daniel	Dow	2008	present	7	J		
Zakiyah M.	Langford	2008	2010	2	J		
Ray	Brown	2009	2012	3	J		
Andrew	Trippel	2009	2012	3	J		
Andre	Jones	2010	present	5	J		
Timothy	Rainey	2010	present	5	J		
Olliette	Murry-Drobot	2010	2012	2	J		
Frank	Colvett, Jr.	2012	present	3	J	J	
John	Jackson III	2012	present	3	J		
Jimmy	Burditt	2012	2014	2	J		
Madeleine	Savage-Townes	2013	present	2	J		
Aaron	Petree	2015	present	0	J		

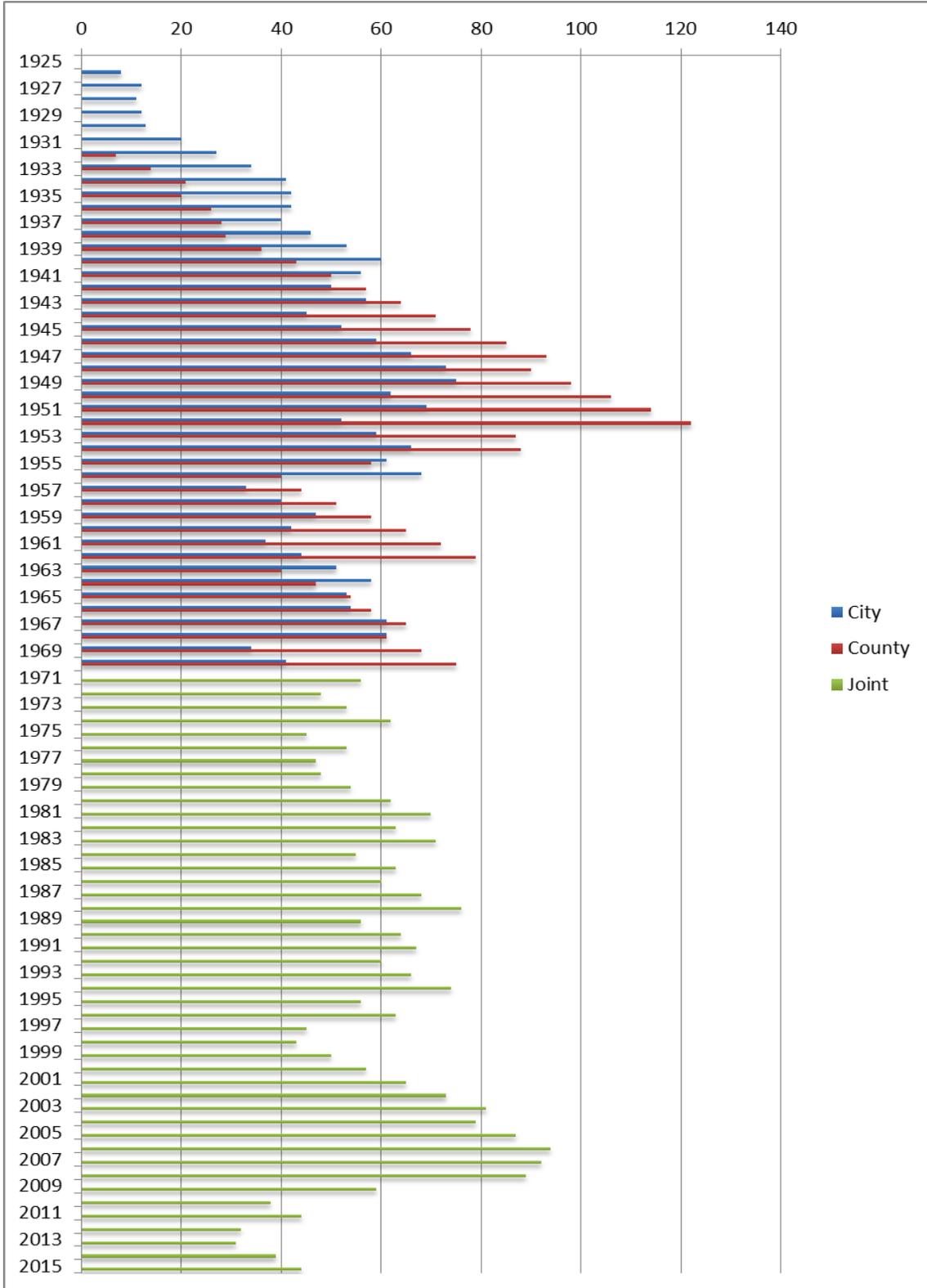
Board Key: C: City; CO: County; J: Joint

Only permanent members appointed by the City or County executives and confirmed by their respective legislative bodies are included in this list. In the last few years of the County Board, several individuals served as quasi-permanent alternates, attending nearly every month for two to three years: Squire Oscar H. Edmonds, Wayne W. Mink, John T. Dwyer and William Van Hersh. Establishing a quorum during the waning days of the County Board became so difficult that by its final meeting, on June 11, 1970, the Board Secretary, Robert Stacey, was appointed as an alternate.

Notes

1. Died in office
2. Ex-Officio Member (Squire, Shelby County Quarterly Court)
3. Ex-Officio Member (Commissioner, Shelby County Commission)
4. First African-American member
5. First African-American chair
6. First female member
7. Gap in service, 1977-1982
8. First female chair
9. Gap in service, 1997-2005

The table below displays the cumulative years of experience of all members serving on the Board at the time. The record for most years of experience occurred in 1952, when there was a combined 122 years of experience on the County Board (there were six members who had been on the Board since the 30s). As of January, 2015, the current Board has a combined experience of 44 years.



The following tables display the tenures of each Board Member.

