



Memphis and Shelby County Land Use Control Board

CITY HALL 125 NORTH MID AMERICA MALL MEMPHIS, TENNESSEE 38103-2084
(901) 576-6619

(Please visit our web site at: <http://www.dpdgov.com>)

MINUTES

Date: April 14, 2011

Meeting Attendance

LUCB Board Members

OFFICERS/MEMBERS	NAME	PRESENT	ABSENT
Chairman	James Toles	X	
Member	Loyal Featherstone	X	
Member	Lisa Wilbanks	X	
Member	Roslyn Willis		X
Member	Jon McCreery	X	
Member	Margaret Pritchard	X	
Member	Mary Sharp	X	
Member	Emily Trenholm	X	
Member	Mark Yates		X
Member	Robert Norcross	X	
Alternate Member	Frank Colvett, Jr.	X	

Call to Order and Roll Call

Chairman James Toles called the meeting to order at 9:00 a.m. Don Jones called the roll. There was a quorum.

LUCB Staff: Josh Whitehead, Director of Office of Planning and Development, Chip Saliba, Brian Bacchus, Don Jones, Gregory Love and Shelia Pounder.

Others Present: Kelly Albalease, Mack Edwards, Kevin Farmer, Ricky Mason, Tim McCaskill, Tim Mulrone, Phil Muran, Robert Noel, James Simpson, , J. Wise Smith, Delee Upchurch, Alex Wellford, and Charles White.

Chairman's Opening Remarks

Chairman Toles read the General Order of the Public Hearing proceedings and the Conflict of Interest Statement.

Secretary's Report

Chip Saliba reported that effective, starting with the current meeting that all LUCB meetings will be streamed live on the City of Memphis website for public viewing.

Consent Agenda (Items 1-12)

Chairman Toles explained the procedure for hearing the applications; staff presentation for the application; applicant comments; comments from the public; time limits; rebuttal; and the Commission's discussion and action. The Consent Agenda Items 1-12 were read. Chairman Toles also explained the procedure for hearing the Consent Agenda Items.

Item Summary – Consent Agenda (Items 1-12)

Discussion Summary – Agenda Items 4, 5, and 10 were pulled for comment. Chairman Toles made board members and general public aware that Item 18 would be placed on hold for 30 days. Board Member Featherstone made a motion to approve Consent Agenda Items 1-3, 6-9 and 11-12. The motion was seconded by Board Member Mary Sharp. The motion passed unanimously.

Pulled Consent Agenda (Items 4, 5, 10) for discussion

Chairman Toles called for the first case.

Item 4: Case # S 11-004 CO

Pascola Two Lot Subdivision

Request for two Lot Residential Preliminary Plat

Chip Saliba gave a summary of staff report, location of property and showed photos of the case property. He also added that the case is present mainly because a series of illegal property transfers of the property as well as others in the surrounding area. Staff recommended approval with conditions and with the approval of a variance of a septic tank.

Chairman Toles asked the applicant or applicant's representative for comments.

Tim Mulrone, a representative for the applicant stated he didn't have any comments to add to the staff's report and would answer any questions.

Chairman Toles asked the opposition of the case for comments.

Phil Muran, approached to speak in opposition of the case. He felt like since ownership has been transferred so many times that the applicants should be granted approval.

DeLee Upchurch and Kelly Abalease, property owners spoke and they want to delay the process of the application. They stated that their names are incorrect on most of the County official paperwork as owners and that they were not dealt with honestly because they thought their lot were going to be included for the subdivision to be built which would make their deed legal as well. They requested more time to speak with Clayton Bank & Trust to be included before the application was approved.

Chairman Toles note to the applicant or applicant's representative of their two minutes rebuttal.

Tim Mulrone noted the land was purchased by the bank due to a foreclosure and it had been divided. He stated that the lots the bank owes has buyers ready to build homes and he was not aware of any other lots wanting to be a part of the subdivision. He mentioned the other lots can be looked at as part of a Phase II project.

Chairman Toles then asked for a motion.

Board member Featherstone made a motion to approve case # S 11-004 CO in accordance with staff's recommendation. The motion was seconded by Board member Pritchard.

Board member Prichard wanted to know Chip Saliba's take on the illegal purchases and building of the homes in the subdivisions.

Chip Saliba stated that on Lots 411 and 412, there were actual homes illegally existing and he did not know how the homes got any building permits. He added that the two lots cannot be added onto the application since it only was a request for Lot 410 which was stated in the legal notices sent. Mr. Saliba gave two options the board could which were to hold this application until next month adding Lots 411 and 412 or move forward with the approval this the application as submitted.

Both Chairman Toles and Board member Prichard agreed to move forward with approval with application is it was submitted. The applicant also agreed to proceed today and add the other lots as a Phase II Project later.

Chairman Toles asked for a vote. The motion passed unanimously.

Item 5: Case # SAC 11-603

Stonebrook Circle

Request to close and vacate a portion of Stonebrook Circle.

Chip Saliba gave a summary of staff report, location of property and stated that the application was approved by LUCB and Council 3yrs. ago with a year to comply with the conditions. He added that the time had lapsed before the applicant was able to comply with the conditions but now want to proceed and has resubmitted their application. Staff recommended approval with conditions.

Chairman Toles asked the applicant or applicant's representative for comments.

James Simpson, a representative for the applicant stated his name and address as 1661 International Dr., Ste. 100 and that he didn't have any comments to add to the staff's report and would answer any questions.

Chairman Toles asked the opposition of the case for comments.

Charles White approached and states his property address as 3121 Sandbrook. Mr. White stated that closing the circle would increase the level of crime, dumping of trash and debris and bring the property value down.

Chairman Toles note to the applicant or applicant's representative of their two minutes rebuttal.

James Simpson stated that closing the circle would provide a secure perimeter and less opportunity of criminal activity.

Chairman Toles then asked for a motion.

Board member Featherstone made a motion to approve case # SAC 11-603 in accordance with staff's recommendation. The motion was seconded by Board member Pritchard.

Board member Pritchard asked the applicant why wasn't the conditions met.

Mr. Simpson stated that due to the economy decline, a decision was made to delay the project.

Board Member Pritchard stated that she would think there would be less likelihood of criminals to escape by closing the circle. She also asked Chip Saliba if he knew the crime stats for the area. And he did not.

Chairman Toles asked for a vote. The motion passed unanimously.

Item 10: Case # PD 05-320

Whitten I-40 Planned Development, Phase 20, Part of Areas C and D

Request for site plan approval for the construction of a Family Dollar Store.

Don Jones gave a summary of staff report, location of property with aerial views of other properties surrounding. He added that the applicant also had a landscaping plan he would like for the board to view prior to voting. Staff recommended approval of site plan and approval of landscaping plan with conditions.

Chairman Toles asked the applicant or applicant's representative for comments.

J. Wise Smith, the applicant stated his name and address as 771 Brookhaven Cir. He stated that property was a difficult lot and that he has had to purchase several lots because of the shape. He made mention of a letter of support from Mr. Boyle. And he added that he should be relieved of the two conditions to plant a buffer around an open and undeveloped land.

Chairman Toles then asked for a motion.

Board member Featherstone made a motion to approve case # PD 05-320 in accordance with staff's recommendation. The motion was seconded by Board member Pritchard.

Board member Colvett suggested two alternatives for the applicant with and without a fence for landscaping as quoted from the UDC Class 1, PT. 3. He added that he did not feel like the landscaping is an erroneous request.

Chairman Toles then asked Don Jones to finish report after hearing the applicant's landscaping plan.

Don Jones stated that staff will be willing to include language stating "for an equivalent alternative to the UDC Class 2 and Class 2 Landscaping Buffer which would be located on or near the West of the property line.

Board member Jon McCreery noted and made mention that the decision is being made under the governance of Whitten I-40 PUD and not UDC.

Chairman Toles asked for a vote. The motion passed unanimously.

REGULAR AGENDA ITEMS

Item 13: Case # PD 11-302

Dewey Planned Development, 2nd Amendment

Request to add restaurant with alcohol sales with extended hours.

Don Jones gave a summary of staff report, history of the building, it's process of expansion, location of property with view of other properties surrounding. He noted that in 2002, the applicant submitted application which a lot of discussion took place regarding hours and the possible ability to serve alcohol. Then the application was approved with the agreement it would be an English Tea Room with no alcohol served and only day hours of operation. Don Jones added that since 2002, the building is under new management and they are requesting approval to sale alcohol and open for extended hours. Staff recommended approval of application with conditions that 1) to stripe 4 parking spaces and post as no parking for safety needs and 2) reword sign and for it to remain a current location and size.

Chairman Toles asked the applicant or applicant's representative for comments.

Alex Wellford, the husband of the applicant stated his name and address as 199 Ridgefield. He stated that he and his wife has had good support and no complaints about the operation of Crumpets. He added that the cash flow as Crumpets were negative. He stated that he agreed with staff's recommendation. He also felt that adding the restaurant and extending the hours would produce more revenue and yet remain with in the integrity of the area. He went on to request a friendly amendment to stripe 4 parking spaces and post as no parking for safety to just allow them to monitor and lot without having to stripe the spaces.

Chairman Toles asked the opposition of the case for comments.

Mr. Robert Noel approached and stated that he and others present were in friendly opposition. He added that his concern was the future use of the current status of the restaurant. He stated that he agreed with staff's recommendation and would like to add the following: 1) there is a 10-20% min. offsite consumption of food items, 2) no bar service without a meal, and 3) a seating of 60 seats instead of an increase to 75 to maintain a gourmet décor.

Chairman Toles asked the applicant or applicant's representative for a rebuttal.

Mr. Wellford explained the process he went through to obtain information about the percentage of food and alcohol that would be allowable. He also allotted time for Mack Edwards to speak who will be the manager of the restaurant. Mr. Edwards stated that the intent is only to have a small restaurant with limited hours and the capability to serve mixed drinks. He added that operating a night club has never been the plan.

Chairman Toles then asked for a motion.

Board member Pritchard made a motion to approve case # P.D. 11-302 in accordance with staff's recommendation and the two friendly amendments made by Don Jones. The motion was seconded by Board member Wilbanks.

Board member Colvett asked if there were current a bar in the restaurant. He also added a friendly amendment for the possibility of additional seating to 75 but later it was determined it already in the original conditions.

Mr. Wellford stated that there currently was not a bar in the restaurant and not even sure where one would be located but would not like to exclude the possibility later.

Chairman Toles ended the discussion stating that customers should be allowed to come and just have a drink if that's what they choose, the striping for spaces for safety concern near Highland and the required handicap parking should be implemented. Also, Don Jones made a correction in the staff report to increase the lighting height from 15ft. to 25 ft.

Chairman Toles asked for a vote. The motion passed unanimously.

**Item 14: Case # Z 11-102
& #PD 11-306**

Clifton Ave. and Overton Crossing

Request for Commercial Mixed Use-3 (CMU-3) District.
Staff's recommendations were to deny CUM-3 and approve PD11-306, the plan development.

Chairman Toles asked the applicant was present and if he agreed with staff's recommendations.

Ricky Mason approached and stated his name and address as 2042 Clifton Ave and that he agreed with staff's recommendation.

Shelia Pounder made two friendly amendments which were 1) to delete condition #3B and 2) add to 4A and 4B the language, "alternative equivalent landscaping".

Chairman Toles then asked for a motion. Board member Pritchard made a motion to approved Case #PD 11-306 for the plan development according to staff's recommendation, along with staff's two friendly amendments. The motion was seconded by Board Member Wilbanks. The motion passed unanimously.

Item 15: Case # SUP 11-202

Hwy. 51 and N. Watkins Street

Request for mini storage.

Chairman Toles asked the applicant was present and if he agreed with staff's recommendations.

Tim McCaskill approached and stated his name and address as 7620 Appling Center Dr. and that he had discussed with staff an item of opposition but staff agreed to make a friendly amendment.

Don Jones made a friendly amendment which was to clarify that the "Future Commercial Area" would be regulated by CMU-3 and the other conditions would remain the same which would regulate the mini storage.

Chairman Toles then asked for a motion. Board member Pritchard made a motion to approved Case # SUP 11-202 according to staff's recommendation, along with staff's friendly amendment. The motion was seconded by Board Member Trenholm. The motion passed unanimously.

Item 16: Case # SUP 11-203

North of Summer, East of Waring Rd.

Request for special use permit to allow a pawn shop, including jewelry store.

Staff recommended approval with conditions.

Chairman Toles asked the applicant was present and if he agreed with staff's recommendations.

Tim McCaskill approached and stated that after he spoke with City Engineer's Office, he would like to make a friendly amendment to condition #3A, which was to have to curb cut to be on the East of the property line instead of the West.

Chairman Toles if staff agreed. Brian Bacchus stated that he did and he also made some amendments, deleting conditions II-A, B, and C. He also noted to add that the bulk regulations be as illustrated on site plan and no outdoor display of sales.

Board Member Pritchard also noted to change the wording of the request to, "special use permit to allow a pawn shop including a jewelry store".

Chairman Toles then asked for a motion. Board member Pritchard made a motion to approved Case # SUP 11-203 according to staff's recommendation, along with the friendly amendment for the curb cut to be on the East of the property line. The motion was seconded by Board Member Sharp. The motion passed unanimously.

Item 17: Case # UV 10-12

North side corner of Tant Rd. and I-240

Request for use variation for outdoor contractor storage and recycling of building materials.

Staff recommended rejection.

Chairman Toles asked the applicant was present and if he agreed with staff's recommendations. There was opposition to the staff's recommendation.

Greg Love gave a summary of staff report, history of the site, location of site property with view of other properties surrounding, the use of the storage and the use of a gravel rode to import and export construction material. He also mentioned a letter of opposition received from a property owner to the right side of the case property which the gravel separates the two properties. He went on to state the concerns of the trucks going in and out using the gravel drive which would create noise, debris, and dust in the residential area.

Chairman Toles asked the applicant or applicant's representative for comments.

Kevin Farmer, a representative of the applicant stated his name and address as 2190 Tant Rd. He stated that he cannot afford to relocate and he just wanted space to store his dump trucks and other construction equipment safely on his current property. He added that the site would not be visible to his immediate neighbors or other surrounding properties beyond the gravel driveway.

Chairman Toles asked the opposition of the case for comments. There were none and he then asked for a motion.

Board member Pritchard made a motion to approved Case # UV 10-12 according to staff's recommendation. The motion was seconded by Trenholm.

Chairman Toles asked Mr. Farmer if he used the property for his business. Mr. Farmer replied he did not only for storage and does not conduct any form of business with clients.

Chairman Toles asked Greg Love what Mr. Farmer was asking for that he is not already doing. Greg stated that the property had been zoned for Single Family and for an enterprise to incorporate heavy trucks, equipment and outdoor storage is illegal use for the property.

Board member McCreery wanted clarity on another case for a gravel road in a residential area mentioned that City Council approved. Shelia Pounder clarified that it was for a large property South to the case property and only for access to maintain a billboard.

Board member McCreery asked Mr. Farmer how long had he been operating from the property site. Mr. Farmer stated for 20 years. Both Board members McCreery and Pritchard felt that Mr. Farmer had been operating and not causing any disturbance with the neighbors since there was no one in attendance opposing the case but one letter from a resident.

Discussion continued with the an outcome to place the case on hold for 30 days until the applicant and staff could agree upon conditions that would maintain the character of the neighborhood and for Mr. Farmer to continue to store his trucks, sand, dirt and other equipment/materials.

Board member Pritchard made a motion to hold case # UV 10-12 for 30 days (next month's LUCB meeting) and the motion was seconded by Board member McCreery. The motion passed unanimously.

Item 18: Case # PD 05-320

Cotton Mill Apartments

Request for site plan approval for the construction of a Family Dollar Store.

***CASE WAS PLACED ON HOLD**

ADJOURNMENT:

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

MINUTES APPROVED: June 9, 2011



CHAIRMAN



SECRETARY