

# MEMPHIS AND SHELBY COUNTY ZONING BOARD OF ADJUSTMENT

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## STAFF REPORT

**REQUEST:** Amendments to the Memphis and Shelby County Board of Adjustment Rules of Procedure to provide general updates and overall compliance with the Memphis and Shelby County Unified Development Code

**RECOMMENDATION:  
APPROVAL**

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**STAFF ANALYSIS:** The Board's Rules of Procedure have not been given a wholesale review since the adoption of the Memphis and Shelby County Unified Development Code (the "UDC") in 2010. The amendments provided in this proposal will update the Rules to both eliminate outdated terms, but also bring them into compliance with the UDC. Proposed amendments to the Rules of Procedure are found in the attached document. Proposed new language is indicated in **bold, underline**; deleted language is indicated in ~~strikethrough~~:

The amendments fall in the following categories:

1. The terms "appeal" and "appellant" is removed throughout the Rules since appeals are processed in the same manner as variances: through an application form. Therefore, the terms "application" and "applicant" shall suffice for both types of hearings.
2. The term "Building Department" is replaced with the term "Office of Construction Code Enforcement." Likewise, the term "Office of the Board of Adjustment" is replaced with the term "Office of Planning and Development."
3. The term "special exception" is removed since the Land Use Control Board, and not the Board of Adjustment, hears those cases under the UDC. On the other hand, the UDC grants the Board the authority to approve other types of items, such as conditional use permits, change in nonconforming use permits and Section 2.4.5 zoning district extensions. These terms are added throughout the Rules.
4. The term "Zoning Ordinance" is replaced with the term "Unified Development Code."
5. The term "his" is replaced with the phrase "his or her."
6. Rule III(2) is amended to establish the deadline for placing applications on the Board's docket.
7. Rule V(2), which requires the affirmative vote of five members for all substantive matters by the Board, is separated from Rule V(1) to provide it more visibility. The five-vote rule is found in the 1970 City-County Ordinance that merged the Memphis and Shelby County Boards of Adjustment.
8. Rule IX(1), which deals with appointments of the Chairman and Vice-Chairman by the City and County Mayors, is removed since that issue is covered by both the Board's enabling legislation and local ordinances.
9. Rule IX (3)(d) is removed since the UDC covers notification radii for Board cases.
10. Rule XI is updated to reflect the materials kept on file with each case and to allow electronic minutes.

Per Rule XII, amendments to the Rules and Procedure must be presented to the Board in writing during one of its regular meetings. Action by the Board on the amendment may only be taken at a subsequent meeting. This item was heard by the Board on April 23, 2014, at which time the Board voted to hold it for 30 days.

**RECOMMENDATION:** Approval.

**B.O.A. MEETING:** May 28, 2014

# RULES OF PROCEDURE

## MEMPHIS AND SHELBY COUNTY BOARD OF ADJUSTMENT

*Reflecting amendments approved by the Board as of May 28, 2014.*

### ARTICLE I

#### MEETINGS

1. Regular Meetings of the Board of Adjustment shall be held not less than once a month, at a time and place designated by the Board. The time and place of the regular monthly meeting may be changed by affirmative vote of five (5) members.
2. Special Meetings shall be called only by the joint action of the Chairman and Vice-Chairman, or in the absence or disability of either, at the instance of the active officer and a member appointed by the legislative agency other than that which appointed the active officer.

### ARTICLE II

#### CASES

1. Each appeal from a decision of an administrative official or application for variation, **conditional use permit, Section 2.4.5 zoning district extension, change in nonconforming use permit or correspondence case** ~~or special exception from the provisions of the Zoning Ordinance~~ shall be made on the official form prescribed by the Board.
2. All information called for by the official form shall be furnished by the ~~appellant~~ or applicant in the manner therein prescribed, unless waived by the Secretary because in his **or her** opinion such information is not necessary in a particular case.
3. All appeals or applications shall be accompanied by a typewritten statement, specifying the grounds upon which said appeal or application is based. Said statement shall contain a brief and concise statement of all facts on which the ~~appellant~~ or applicant relies or desires to present proof of at the hearing.
4. The Secretary shall reject and return to the ~~appellant~~ or applicant all appeals and applications if:
  - (a) The proper form is not used.
  - (b) The information required by the form is, in his **or her** opinion, incorrect, incomplete, illegible or in any way inadequate to insure complete understanding of the case.
  - (c) The nature of the unnecessary hardship or practical difficulty is not clearly set forth, in cases where the jurisdiction of the Board is contingent upon the existence of such a hardship or difficulty.

- (d) Any of the maps or drawings are, in his or her opinion, improperly drawn, or in any way inadequate to insure complete understanding of the case.
  - (e) Any additional information requested is not supplied which, in his or her opinion, is necessary to insure complete understanding of the case.
5. Any ~~appellant or~~ applicant, aggrieved by a ruling of the Secretary under Paragraph 4 above may submit his or her ~~appeal or~~ application and attached data to the Board at any regular meeting. If the Board finds that the ruling of the Secretary is in error, the ~~appeal or~~ application shall be placed on the docket of the next regular meeting or a special meeting called for this purpose.
  6. Every ~~appeal or~~ application for ~~variation or special exception~~ shall be made within five (5) days from the date of refusal of a permit by, or date of order, ruling, decision or determination of the Building Official.

### ARTICLE III

#### THE DOCKET AND CALENDAR

1. Each ~~appeal or~~ application for ~~variation or special exception~~ filed in proper form with the required data shall be numbered serially, docketed and shall be placed upon the calendar of the Board by the Secretary thereof. The docket numbers shall begin anew on January 1 of each year, and shall be hyphenated with the number of the year in which the said appeal or application is filed, but in no case shall it be placed on the docket until it has been inspected and found to be correct and in proper form as set forth in Article II, Paragraph 4 above.
2.
  - (a) All cases docketed ~~twenty one (21) days or more~~ prior to the **deadline date for the** next regular meeting day shall be automatically set for hearing on the succeeding regular meeting day. Cases docketed within twenty (20) days, or less of **after the deadline date for** the next regular meeting day shall be set for hearing on the second meeting day after docket of the appeal or application for ~~variation or special exception~~.
  - (b) Cases which have been set for a special public hearing or meeting of the Board shall have been docketed at least ten (10) days prior to such special meeting.
3. ~~Appeals or~~ **Applications for variation or special exception** shall be heard in the order in which they appear on the calendar, except that an appeal or application may be advanced for hearing by order of the Chairman upon good cause shown. Where all ~~appeals or~~ applications cannot be disposed of on the day set, the Board may adjourn from day to day, or until the next regular meeting, as may be ordered by the Chairman.
4. The calendar of cases to be heard shall be posted in the Office **of Planning and Development** ~~the Board of Adjustment~~ three (3) days before each regular meeting. Other appropriate adequate public notice shall be provided in conformance with the State of Tennessee requirements for public meetings and other requirements of the **Memphis and Shelby County Unified Development Code** ~~Zoning Ordinance/Regulations~~.

## ARTICLE IV

### HEARINGS

1. Hearings shall be held by the Board at its regular or special meetings.
2. A quorum for hearing by the Board shall consist of five (5) members.
3. Hearings shall be open to the public.
4. The ~~appellant or~~ applicant may appear in his or her own behalf, or be represented by agent at said hearing. In the absence of any personal appearance on behalf of the ~~appellant or~~ applicant the Board will proceed to dispose of the matter on the record before it.
5. At a hearing, the order shall be as follows:
  - (a) Report or comments from Board of Adjustment staff, and, if applicable, the Office of Construction Code Enforcement ~~Building Department~~.
  - (b) Public hearing begins. During the public hearing, any member of the Board may question a speaker during his or her presentation.
  - (c) Presentation of appeal or application by ~~appellant or~~ applicant.
  - (d) Presentation of statements by interested property owners in favor of the case.
  - (e) Presentation of statements by interested property owners in opposition of the case.
  - (f) Rebuttal by ~~appellant or~~ applicant.
  - (g) Public hearing ends.
  - (h) Discussion by the Board. Discussion by the Board shall not involve requesting further testimony from the applicant/~~appellant~~ or any interested property owner. Such a request will involve a public re-hearing and require a 2/3 affirmative vote by the Board. Once a public re-hearing begins, both sides (applicant/~~appellant~~ and opposition) shall be given the opportunity to respond to each question by the Board. Once the public re-hearing ends, Discussion by the Board resumes.

## ARTICLE V

### FINAL DISPOSITION OF CASES

1. The final disposition of any ~~appeal or~~ application for ~~variation or special exception~~ shall be in the form of a resolution which shall affirm, modify, or reverse the refusal of a permit by or any order or decision of the Building Official. In any case involving an application for variation, conditional use permit, or change in nonconforming use permit ~~or special exception~~, the resolution shall set forth:

- (a) The Board's findings of fact, **as articulated in the pertinent section of the Memphis and Shelby County Unified Development Code.**
- ~~(b) Whether or not an unnecessary hardship exists and the nature of the hardship, if a use variation is involved.~~
- ~~(c) Whether or not a practical difficulty exists and the nature of the practical difficulty, if a bulk or other variation is involved.~~
- (d) The decision, rejecting or granting the petition, wholly or in part, with or without conditions.

Said resolution shall specifically set forth what variations ~~or special exceptions~~ are granted and what conditions, if any, shall be complied with, **or in the case of conditional use permits and change in nonconforming use permits, what uses are permitted and what conditions, if any, shall be complied with.**

- 2. Every ~~appeal or application for variation or special exception~~ shall be disallowed unless the concurring vote of five (5) members of the Board shall favor the appeal or application. The vote of each member present on each resolution shall be recorded with the resolution.
- 3. Any ~~appellant or applicant~~ may withdraw his **or her** ~~appeal or application~~ at any time prior to the decision by the Board of Adjustment.
- 4. When a permit authorized through an appeal to the Board of Adjustment is granted overruling, in whole or in part, the decision of any officer, department, board or bureau of the County of Shelby, or the City of Memphis, the successful party shall, in all cases, obtain such permit within the time limit set by the Board. Unless otherwise expressly authorized by the Board in its resolution granting the permit, said limit shall expire two (2) years after the time of the decision of the Board granting same unless certiorari is applied for and the case removed to a court, in which instance the two (2) years period would not commence until after such time as a final judicial determination had been reached. Extensions may be granted by the Board pursuant to Article VIII. Construction shall begin within six (6) months of an applicant obtaining a building permit or such permit expires.
- 4. Any construction initiated by the ~~appellant or applicant~~ that does not adhere to the decision of the Board shall be removed within sixty (60) days from the date of the decision of the Board, unless otherwise conditioned by the Board.
- 5. The Secretary shall send a notice of final disposition of ~~appeals or applications~~ to the ~~appellant or applicant~~ within thirty (30) days of the date of decision of the Board, said notice to be made on the official form provided for that purpose and to state thereupon any conditions which may be imposed in connection with the grant or refusal of any appeal or application.

## **ARTICLE VI**

### **REHEARINGS**

1. Rehearings may be applied for by any person, board or by any bureau or department of the County of Shelby, or the City of Memphis aggrieved by any decision of the Board of Adjustment. A petition for rehearing shall be in writing and shall be filed no later than seven (7) days prior to the next regular meeting of the Board of Adjustment held after the decision complained of. It shall specify the grounds upon which the rehearing is sought, pointing out specifically the error in or illegality of the action of the Board with apt reference to the law and facts relied upon. All such applications for rehearing shall be filed with the Secretary and addressed to the Board.

No oral arguments on petitions for rehearings will be heard unless invited by the Board.

2. If the Board, after considering the petition, shall determine that it should be granted, it may order the case to be redocketed for rehearing and shall designate the time at which such rehearing will be held.

All persons who appeared, or were notified, at the hearing at which the original ruling, action or determination of the Board was made, shall be notified by the Secretary that a rehearing has been granted, and the time at which the rehearing will be held.

3. In the event a petition for rehearing is filed on the grounds of newly discovered evidence, it shall be accompanied by an affidavit setting forth facts showing that due diligence was exercised to fully present the case at the former hearing, and the reasons why such evidence was not presented. Said affidavit shall further set forth the nature of the evidence sought to be introduced together with the names of the witnesses, or identification of the documents through whom or by which it is sought to establish the facts.
4. Not more than one (1) petition for rehearing may be filed in any case.
5. Requests for rehearings shall be considered to include requests that the Board reconsider a decision, review evidence, or concern itself in any way whatever with a case upon which the Board has already made a decision.
6. Requests for Rehearing shall be accompanied by an affidavit certifying that a copy of the petition requesting such rehearing has been delivered to the attorney, spokesman or representative of those appearing at the hearing and taking a position opposite that of said petitioner. ~~If~~In the event no single spokesman represented a group, a copy shall be delivered to each property owner, or interested person who testified for the opposing side. Service by certified mail will be accepted as evidence of compliance with this requirement. If no one appeared in opposition at the original hearing, the Board Secretary may certify said petition to that effect.

Likewise a copy of any answer to the petition for rehearing, filed by those in opposition to the granting of such rehearing, shall be delivered to the filer of said petition and certified as hereinabove provided.

## **ARTICLE VII**

### **RE-APPLICATIONS**

1. A re-application is any application which relates to all or a part of the same property involved in a former application, **including appeals**.
2. No re-application ~~for variation or special exception from the provisions of the Zoning Ordinance~~ shall be accepted, docketed by the Secretary or considered by the Board within six (6) months of the decision of the Board on the former application, unless the Board at a regular or special meeting by the affirmative vote of at least five (5) members waives this rule subsequent to a written petition filed by the applicant. No oral arguments on such petitions shall be hearing unless invited by the Board. If the Board, after considering the petition, shall determine that it should be granted, it may order that the rule be waived and permit the filing of an application in accordance with these rules governing all applications.

## **ARTICLE VIII**

### **EXTENSIONS**

1. Extensions of previously approved requests may be granted by the Board. Extensions may be requested for matters where a permit was not obtained within the allotted time or for matters where the sunset provision of the original approval is approaching.
2. Requests for extensions must be filed with the Board in writing prior to the expiration of the two- (2) year time limit described in Article V, Section 3, or any previous Board extension thereof, and must state the reason, or reasons, for such requested extension.
3. If the two- (2) year time limit described in Article V, Section 3, or a sunset provision of the original approval has lapsed, an extension may not be granted by the Board.
4. The Board shall make the following findings in its approval, approval with conditions or rejection of an extension:
  - a. Changed conditions of the neighborhood and area in which the time extension is being made, as compared to conditions present during the original approval;
  - b. Changed conditions of the site in which the request is being made, as compared to conditions present during the original approval;
  - c. Any administrative or legislative policy, ordinance, regulation or comprehensive or neighborhood plan that has been adopted since the time of the original approval; and
  - d. The scope of construction, such as the size of the site or building, involved with the original approval.
5. Notice shall be mailed to adjacent property owners for time extension requests in the same

manner in which notice was provided for the original request.

## ARTICLE IX

### OFFICERS

1. ~~(a) — Chairman and Vice Chairman, Election of:~~

~~“The Mayor of the City of Memphis, with the concurrence of a majority of the City Council, shall designate the first Chairman from among its appointees, who shall serve for one year, expiring with the calendar year, and until his successor is appointed and qualified.~~

~~The Quarterly County Court, solely upon the nomination of the Chairman, shall elect the first Vice Chairman from among its appointees, who shall serve for one year, expiring with the calendar year, and until his successor is elected and qualified.~~

~~The second year the Chairman shall be selected by the Quarterly Court, as above, and the Vice Chairman by the Mayor with the approval of a majority of the City Council, as above. Thereafter, in even years, the Chairman shall be selected by the Mayor and City Council, as above, and the Vice Chairman by the Quarterly County Court, as above, and on odd years, the Chairman shall be selected by the Quarterly County Court, as above, and the Vice Chairman by the Mayor and City Council, as above. Permanent or temporary vacancies in the offices of the Chairman or Vice Chairman created by any cause shall be filled in the same manner and by the same authority as hereinabove provided with respect for other members.~~

~~The Chairman shall be the Chief Executive Officer of said Board, preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization, except as may be restricted herein. The Vice Chairman shall perform the duties of the Chairman in the latter's absence or disability.”~~

~~(b) — Secretary, Selection of:~~

~~“Within the limitations of its approved budget, the Board at its first meeting hereunder and thereafter at its first meeting in January of each year, shall elect a suitable person to be Secretary of said Board of Adjustment and fix his salary, which shall be subject to approval of the legislative bodies and within the approved budget.”~~

2. CHAIRMAN

- (a) The Chairman shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chairman, the Vice- Chairman shall preside.



- (b) The Chairman, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the members of the Board in session at the time.
- (c) The Chairman may designate members of the Board to make personal inspections when necessary from time to time, and unless directed by a majority of the Board, shall appoint such committees as may be found necessary.
- (d) The Chairman shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.
- (e) The Chairman, subject to the Joint Ordinance Resolution #722, these rules and further instructions from the Board, shall transact the official business of the Board, and supervise the work of the Secretary.

### 3. SECRETARY

- (a) The Secretary, subject to the provisions of the Joint Ordinance/Resolution #722, these rules, the direction of the Board and its Chairman, shall conduct all correspondence of the Board, send out all notices required by these rules and the order of the Board; shall attend all meetings and all hearings of the Board; shall scrutinize all ~~appeals and applications for variation or special exception~~ to see that these rules are complied with; shall keep the dockets and minutes of the Board's proceedings; shall compile all required records; shall maintain the necessary files and indexes, and generally direct the work of all subordinates and exercise general disciplinary powers.
- (b) Before the docket of any appeal or application ~~for variation or special exception~~, the Secretary shall see that all maps, plats, and other papers accompanying the appeal or application are properly prepared. He shall demand from the ~~appellant or~~ applicant such additional information and data as may be required to fully advise the Board with reference to the ~~appeal or~~ application, whether such information and data is called for by the official form or not. Any failure or refusal on the part of the ~~appellant or~~ applicant to furnish such additional information or data shall be grounds for dismissal of the ~~appeal or~~ application by the Board.
- (c) The Secretary shall send a letter of notice to all owners of property, from a list supplied by the applicant, in accordance with Section 9.3.4 of the Memphis and Shelby County Unified Development Code. Said notices to be addressed to such persons at their last known addresses, or places of residence, and to state the time and place of hearing, and the nature of the appeal or application before the Board.
- ~~(d) The Secretary may, at his discretion, reduce the area or radius fifteen hundred (1500) feet required on matters located in the unincorporated areas of Shelby County if, in his opinion, a lesser radius would serve to properly notify affected property owners, and where conditions are such that a lesser area is warranted, but in no case is he authorized to reduce this area of notification to~~

~~less than a radius of five hundred (500) feet. In determining the area of notification the required radius shall be measured from and determined by the extreme points or corners of the property on which the appeal is to be held.~~

- (e) The Secretary shall, prior to the hearing on any ~~appeal or~~ application for ~~variation or special exception~~, make a personal inspection of the premises affected and be prepared to report to the Board on the existing physical condition of the subject property and the adjacent and surrounding properties.

## ARTICLE X

### FORMS

1. The forms referred to in these Rules of Procedure shall be any forms which the Board deems necessary for the proper performance of its functions. These forms may be changed, added to, or deleted by the vote of five (5) members at any regular or special meeting of the Board.

## ARTICLE XI

### DOCKET AND MINUTE BOOK

1. The Secretary shall be provided with a docket and minute book which shall be kept posted to date. The docket shall be a well-bound book, in which shall be entered the number of the ~~appeal or application~~ **and address. Complete materials on each case, including the staff report, application,** ~~the name of the applicant, short description, by street number or otherwise, of the premises, the nature of the appeal or application and the~~ **its** final disposition, ~~after the case has been disposed of~~ **shall be kept on file at the Office of Planning and Development.** All continuances, postponements, dates of sending notices and other steps taken and acts done shall be noted on the docket.
2. The minute book shall be a well-bound book, in which shall be recorded the resolution relating to each case acted on, together with a vote of each member of the Board, those absent being so marked, together with all other actions of the Board. **Electronic files may substitute for a well-bound minute book.**

## ARTICLE XII

### AMENDMENTS

1. These rules may be amended or modified by affirmative vote of not less than five (5) members of the Board; provided that such amendment be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

## ARTICLE XIII

### RESOLUTIONS

1. Every resolution not otherwise provided for shall require a majority vote of the members

present at a legally constituted meeting.

#### **ARTICLE XIV**

##### **ADVICE**

1. No informal requests for advice or moot questions will be considered by the Board.

#### **ARTICLE XV**

##### **ORDER OF BUSINESS AT REGULAR MEETINGS**

1. The order of business at all regular meetings of the Board shall be as follows:
  - (a) Roll Call
  - (b) Reading of minutes of previous meeting
  - (c) Hearings
  - (d) Unfinished business
  - (e) Communications
  - (f) New Business