

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT  
STAFF REPORT #14**

**CASE NUMBER:** S.U.P. 08-222

**L.U.C.B. MEETING:** September 11, 2008

(updated from August 14 report  
and redacted 9/8/2008)

**LOCATION:**

Southeast corner of Millbranch Street and  
Kilarney Avenue

**OWNER/APPLICANT:**

Alex & Irene Howard

**REQUEST:**

Site Plan Revision for Day Care Center

**AREA:**

±1.02 ac

**EXISTING LAND USE & ZONING:**

Existing day care center in the Single Family  
Residential (RS-8) District

**SURROUNDING USES AND ZONING:**

**North:** In the RS-8 District, across Kilarney Avenue, are single-family residences

**East:** Fronting the west side of Santa Monica Street are single-family residences and opposite the subject property's frontage on the east of Santa Monica, a vacant tract encumbered by an MLGW electric transmission line easement, all in the RS-8 District.

**South:** The southern part of the subject property is encumbered by MLGW electric transmission line easement; beyond this are single-family residences, all in the RS-8 District.

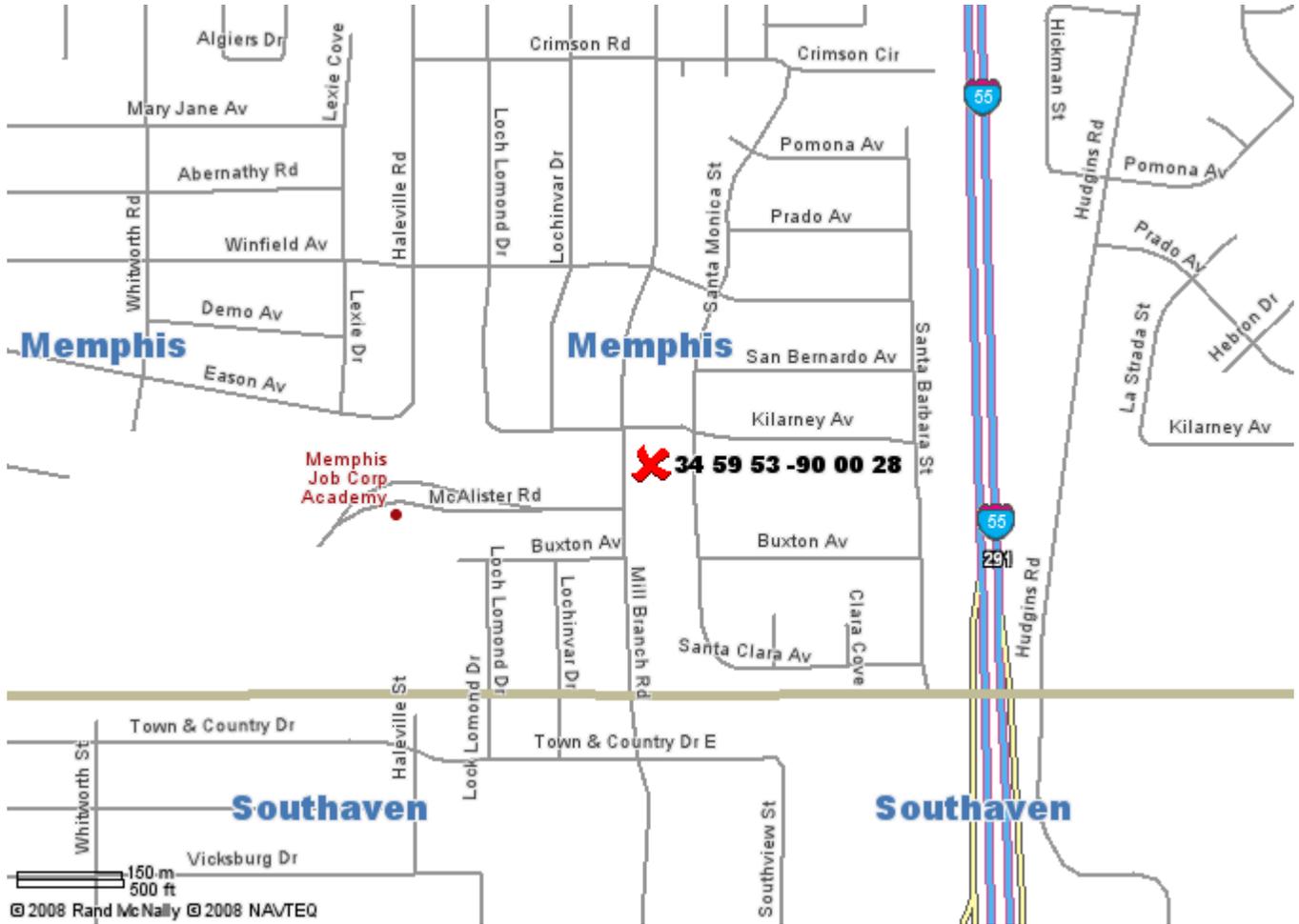
**West:** In the RS-8 District, across Millbranch Road is a single-family residence and MLGW property for the electric transmission line corridor and an entranceway to the Job Corps Center, which is located about 890 feet southwest of the subject property.

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION**

*Approval, with Conditions*

**CONCLUSIONS**

- 1. An existing day care center is apparently seeking its first special use permit in order to make certain changes in its site plan.*
- 2. This is a well-established facility, which appears to have an appropriate location.*
- 3. The application did not include a complete site plan that would facilitate an adequate analysis of the screening and landscaping requirements.*



**Figure 1: LOCATION OF SUBJECT PROPERTY**  
(Licensed by Rand McNally & Company for limited distribution)

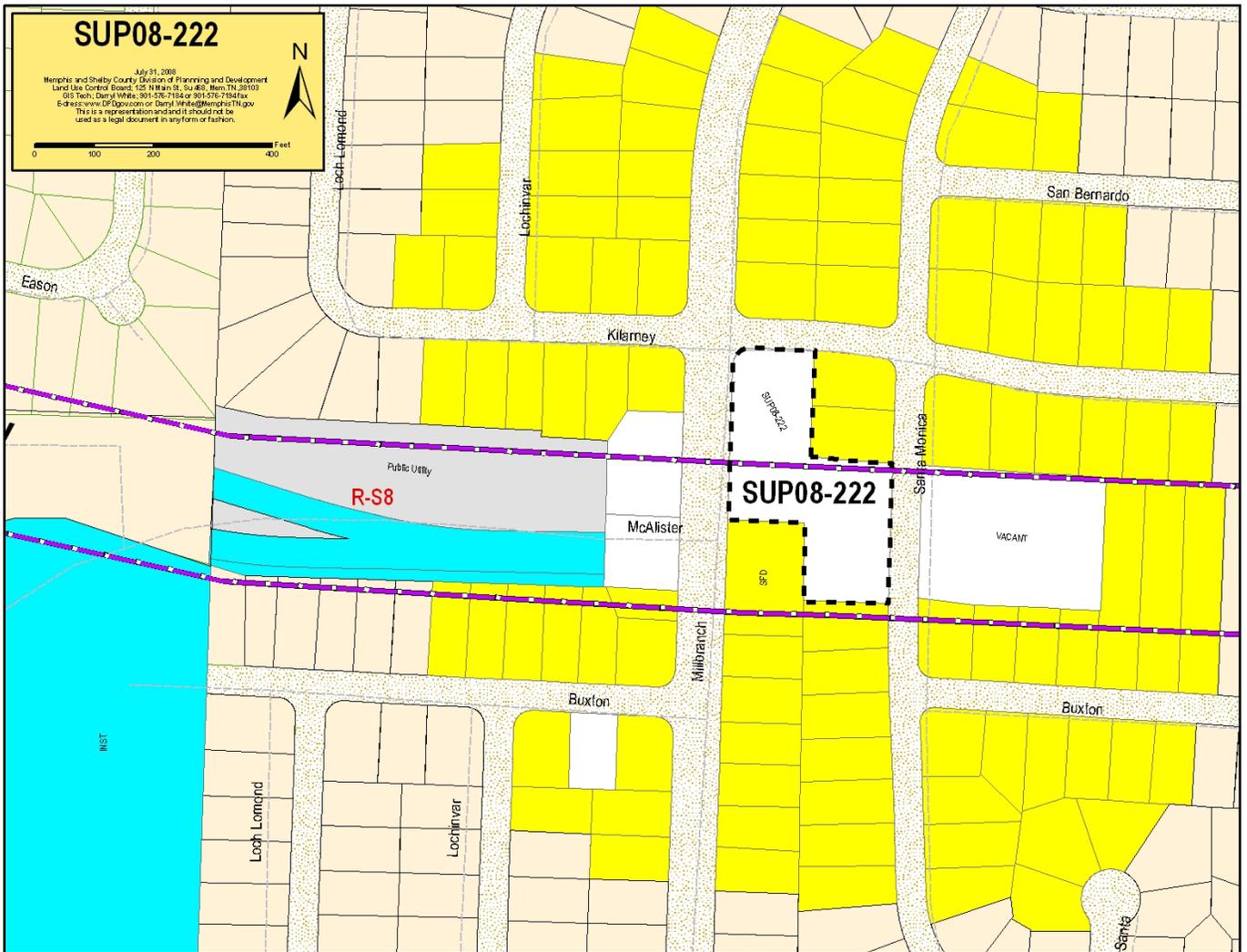


Figure 2: Land Use and Zoning in the Vicinity



Figure 3: Overhead View of Vicinity



Figure 4: Overhead view of subject property



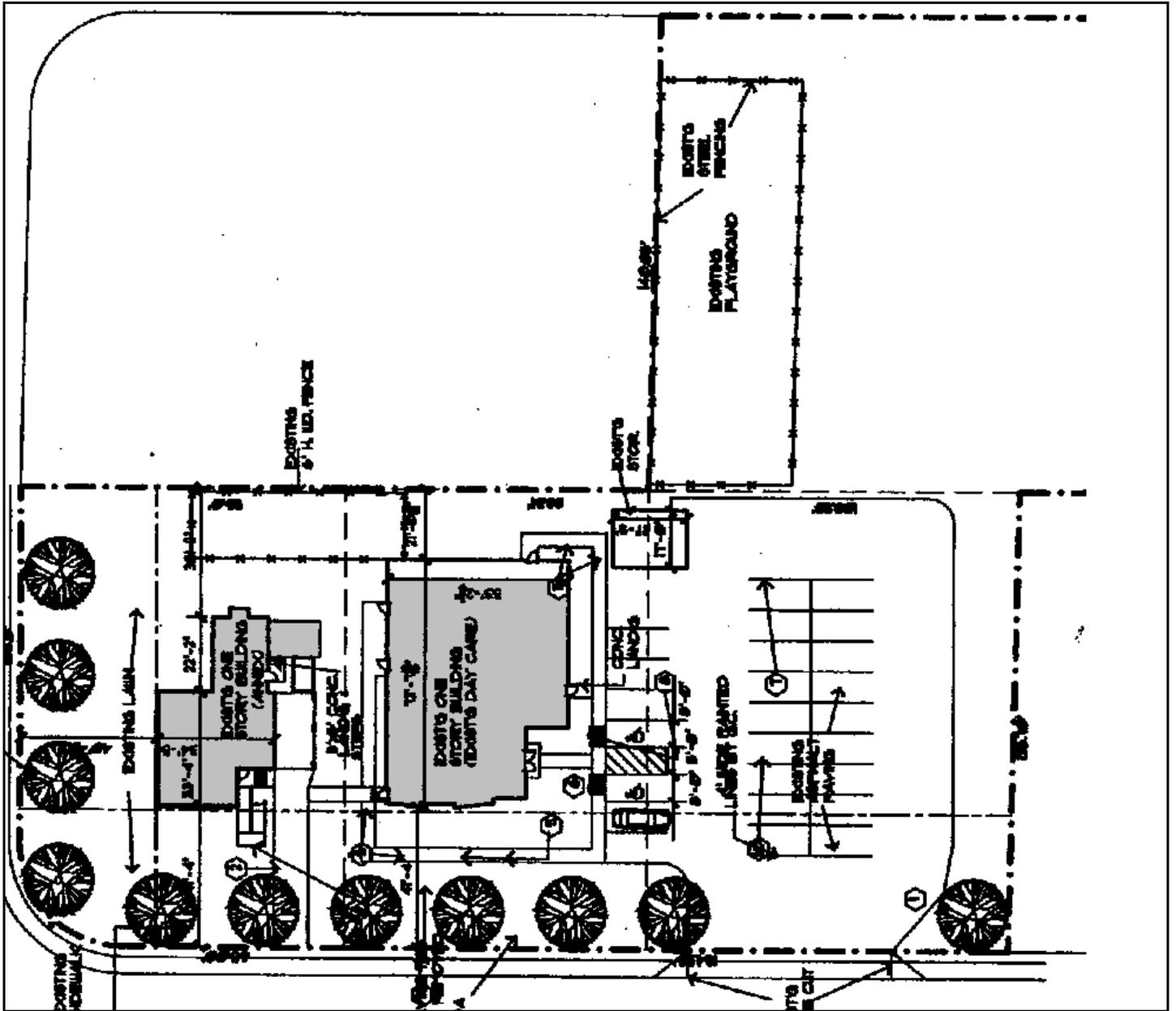


Figure 5: Proposed Site Plan



**Figure 6: The Lil' Olympian Learning Center day care facility occupies the subject property formerly by a church at 5500 Millbranch Road.**



**Figure 7: The day care center is seeking approval of a site plan that will allow the use of a second existing building to be converted from office to classroom use.**



**Figure 8: This shows the Kilarney Avenue frontage of the subject property and particularly the building to be converted from office use to classrooms.**



**Figure 9: This subject property includes a fenced playground fronting on Santa Monica Street adjacent to the house at 5507 Santa Monica Street which utilizes the driveway seen here.**



**Figure 10: The day care center has considerable paved parking available on the south side of its property where use is limited due to the MLGW transmission line easement.**

## **STAFF ANALYSIS**

### **Site and Location**

The subject property is a 1.64 acre site consisting of two frontages along north-south streets adjoining at the rear property lines, but with the east side offset 182 feet to the south. One corner of the property is at the southeast corner of Millbranch Road and Kilarney Avenue, and the property has 290 feet of frontage along Millbranch extending to a depth of 125 feet with approximately that amount of frontage along Kilarney. To the east the subject property has frontage along Santa Monica Street beginning south of two lots at the north end of the block. This frontage begins approximately 182 south of Kilarney and extends 233 southward. The depth of the Santa Monica frontage is 140 feet, extending back to the mid block. The maximum east-west extent of the subject property is 265 feet.

Millbranch Road is a minor north-south arterial street that provides a more accessible connection between the Memphis expressway loop at I-240 and Stateline Road, a distance of about 6 miles. In addition to providing an alternative to the parallel route of Interstate Highway 55, Millbranch provides access between Southaven and the western neighborhoods of Whitehaven and the “Aerotropolis” office/warehouse/distribution district northwest of Memphis International Airport.

In front of the subject property, Millbranch Road is improved with curb, gutters and sidewalks and approximately 60 feet of pavement (5 lanes) within an 80’ ft. right of way.

Kilarney Avenue is a major collector street which provides east-west access from and across Millbranch into residential subdivisions south of Holmes Road and north of the Mississippi State Line. Traffic on Millbranch does not stop at Kilarney. Santa Monica Street is strictly a minor local street providing access through residential subdivisions.

### Site Characteristics

The subject property was originally the site of an institutional use of one type (a church) which however changed to a different type of institutional use (a child day care center). Since there is seemingly no record of an approved special use permit for the day care center, it may have begun originally as a sponsored program ancillary to the church which continued after the church itself ceased operations.

The current operation is named "Lil Olympian Learning Center". The Tennessee Department of Human Services lists it as a three-star center (highest quality rating) with a capacity of 95 and services provided to children ranging 6 months to 12 years in age.

The center utilizes two separate buildings. The more northern of the two is a building with a residential appearance that is currently used as basically an office facility. The large brick building on the site, the former church, is currently the location of all child care activities.

South of the former church building is a large paved, but unscreened, parking lot mostly encumbered by the above referenced transmission line easement. The parking lot has no screening from the view of traffic along Millbranch as called for in the zoning regulations. The entire south end of the subject property is encumbered by the transmission line and much of it is vacant including both the Millbranch and Santa Monica frontage.

The center does make use of about 40 feet at the north end of the Santa Monica frontage. A play area here somewhat closely adjoins the single-family residence immediately to the north. As shown in the Figure 10, the play area is attractively fenced, but the fence is not sight-proof and there is no other screening.

### Proposed Development

The center now desires to begin using some of the space in the former residence for the child care function. As noted above, the child care activities are currently confined to the former church building and the use of the residential building is currently limited to office space and storage. After the proposed modifications, the expected enrollment capacity would be 126, a 33% increase, with 14 staff members.

### Planning Issues

Day care centers are one of the uses for which special use permits may be required. A special use permit requires legislative approval --- in this case by the Memphis City Council. Special use

permits are supposed to meet certain general standards of applicability<sup>a</sup> as specified in the zoning regulations, and they are subject to a review based on the details of the proposal. Specific plan details and conditions may be imposed to insure that there will be no “substantial or undue adverse effects” as a result of the proposed development. In addition there are certain specific standards for Day Care Centers<sup>b</sup>

### Neighborhood Impacts

A key to the analysis of this project is that the day care center should not have “a substantial or

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<sup>a</sup> **General standards of applicability**

1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.
2. That the proposed building or use will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.
3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.
4. That the proposed building or use will not result in the destruction, loss or damage of any feature determined by the legislative body to be of significant natural, scenic or historic importance.
5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

<sup>b</sup> **Specific standards for day care centers**

- i. The minimum lot size shall be twenty thousand (20,000) square feet in R-S, R-D and R-TH zoning districts.
- ii. The distance from the closest existing day care center to a proposed day care center shall not be less than one-quarter mile when measured along the most direct roadway route between the two sites, if both sites are in either R-S, R-D or R-TH zoning districts.
- iii. A day care center which is located in the R-S, R-D or R-TH zoning districts shall maintain the residential character and scale of the area in which it is located.
- iv. The property should be located: (a) on a major road; or (b) on a collector street within two hundred (200) feet of an intersecting major road; or (c) if property is on a collector street more than two hundred (200) feet from an intersecting major road or is on a minor street, adequate queuing spaces for vehicular drop offs and pick ups shall be provided on site.
- v. Screening of the play and parking areas from adjacent properties may be required.
- vi. The maximum number of children to be accommodated on site shall be specified. Children who are related to the child care provider(s) by blood or marriage and are kept at the facility shall be counted for purposes of determining enrollment and facility compliance with these standards. There shall be provided a minimum of thirty (30) square feet of usable indoor play area per child, exclusive of restrooms, hallways, kitchen or office space, a minimum of thirty (30) square feet of floor area per child within the nap room and a minimum of fifty (50) square feet of usable outdoor play area per child, to be computed based upon the total number of children enrolled. State and local health, education, and/or fire regulations may reduce but shall not increase the number of students permitted to be enrolled (Joint Ordinance - Resolution No. 3742)
- vii. “Enrollment” means the total number of children enrolled at any one time.
- viii. Required off-street parking shall be located on site. (Joint Ordinance - Resolution No. 3742),

undue adverse effect upon adjacent property and the character of the neighborhood ...” etc.

There are several features of the subject property and the proposed plan that need further attention to eliminate “undue adverse impacts”.

- More substantial screening is needed between the play area on the Santa Monica frontage and the house at 5507 Santa Monica Street.
- The front yard parking compound for the buses is unsightly. The feature should be moved to the rear property line.
- The parking lot should be screened from the street by a planting of evergreen shrubs that can be maintained, eventually as hedge, at a height of 3 to 4 feet., as specified in landscape plate A-2 or A-3, in addition to the shade trees from the A-1 Plate, which was proposed in the site plan
- Maintain an appropriate site distance at the corner of Millbranch and Kilarney. This might require the deletion of the tree shown on that corner in the applicant’s site plan.
- Evidently the handling of garbage is currently an issue with the neighborhood. If this function can not currently be handled in a way that is not offensive to the neighbors, it may be necessary to provide for garbage dumpster, fully screened with a site-proof fence to block any views of it from off the property.
- The signage (a pole sign and a wall sign) needs further review as to its compliance with the limitation of the RS-10 zoning district. Compliance needs to be documented when the final site plan is submitted for approval.

### Analysis

The subject property is located in an established residential neighborhood. It appears to be in the type of site that is contemplated for a day care center --- a site larger than one acre, located on a major arterial, at a street corner. The transmission line easement provides a certain amount of buffering for the residences located to the south. However it came to be here, an important highly-rated institutional facility has grown up on the subject property.

Staff believes that the issues listed above can be resolved through appropriate site plan conditions and final site plan review so as to achieve the standard of no “substantial or undue adverse effect upon adjacent property and the character of the neighborhood”. These comments will be incorporated in a detailed set of site plan conditions to be available for discussion and review prior to the Land Use Control Board meeting.

**RECOMMENDATION:**

**Approval, with Conditions**

## **SITE PLAN CONDITIONS**

### **Lil' Olympian Day Care Center**

Will be prepared for discussion at the public hearing on September 11.

## **GENERAL INFORMATION**

<b>Parcel Number:</b>	079151 00001C
<b>Coordinates:</b>	34° 59' 53" N, 90° 00' 28" W
<b>Street Address:</b>	5500 Millbranch Road, 38116
<b>Street Frontage:</b>	Millbranch Rd. - 270 ft. on this major arterial street Kilarney Avenue - 120 ft. on this major local street Santa Monica - ±40 ft. on this local street
<b>Planning District:</b>	Whitehaven-Levi
<b>Census Tract:</b>	221.30
<b>Annexation Status:</b>	Annexed by Memphis on December 31, 1969
<b>City Council Districts:</b>	3 & 8
<b>Zoning Atlas Page:</b>	2530
<b>Zoning History:</b>	<i>1961-</i> County zoning adopted <i>Single Family Dwelling "R-1-A" District</i> <i>1970-</i> Same designation after annexation by City of Memphis <i>1981-</i> Converted to <i>Single-Family Residential (R-S8) District</i> under the current ordinance

## **DEPARTMENTAL COMMENTS:**

### **City Engineer:**

1. Standard Subdivision Contract as required in Section 500 of Subdivision Regulations.

### **Sewers:**

2. City sanitary sewers are available at developer's expense.

### **Curb Cuts/Access:**

3. The City Engineer shall approve the design, number and location of curb cuts.
4. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.

Drainage:

5. Drainage improvements, including on-site detention, shall be provided under a Standard Subdivision contract in accordance with Subdivision Regulations and the City of Memphis Drainage Design Manual.

Site plan notes:

6. Provide a continuous, one-way, on-site traffic pattern or a paved, circular turn-around that will provide for exit by forward motion without any on-site backing of vehicles.
7. Locate the pick-up/discharge area as far as possible from the entrance as practical to maximize on-site queue space for vehicles between the right-of-way and the pick-up/discharge point.
8. Provide a paved and curbed pick-up/discharge area that does not cause children to walk between parked cars or across traffic aisles.

General Notes:

9. The width of all existing off-street sewer easements shall be widened to meet current city standards.
10. Required landscaping shall not be placed on sewer or drainage easements.

**City Fire Department:**

[No comment].

**City/County Health Department:**

**Memphis City Schools:**

**Construction Code Enforcement:**

No comments received.

**Memphis Light, Gas and Water:**

MLGW has reviewed the referenced application, and has no objection, subject to the following comments:

- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- **It is the responsibility of the owner/applicant** to comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances between existing overhead electric facilities and any proposed structures.

- **Landscaping is prohibited** within any MLGW utility easement. No trees, shrubs or permanent structures will be allowed within any MLGW utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc
- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s).
- **It is the responsibility of the owner/applicant** to contact the appropriate MLGW engineering area to determine if system improvements may be required and any related cost:
  - MLGW Engineering - **Residential Development:** 528-4858
  - MLGW Engineering - **Commercial Development:** 367-3343
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

**AT&T**

AT&T has no comments.

**Memphis Area Transit Authority (MATA):**

No comments received.

**OPD-Regional Services:**

No comments received.

**OPD-Plans Development:**

No comment.

**Neighborhood Associations:**

**Memphis Airport Development Corp.**

No comments received.

**South Memphis Neighborhood Foundation**

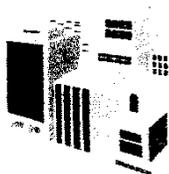
No comments received.

**Whitehaven Community Development Corp.**

No comments received.

**Whitehaven View NA**

No comments received.



# Tony Rodgers

**GENERAL CONTRACTOR**

**TN. LIC.#00046649**

SEPTEMBER 2, 2008  
JOB SITE; 5500 MILLBRANCH

OFFICE OF PLANNING AND DEVELOPMENT  
LIL OLYMPIAN LEARNING CENTER  
CASE NUMBER: S.U.P. 08-222

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES LISTS THIS DAY CARE AS A THREE STAR CENTER WITH A CAPACITY OF 95. WITH THE PROPOSED ANNEX OF 949 S.F. OF PLAY AREA, THIS WILL INCREASE CAPACITY TO 126. PRESENT NUMBER OF EMPLOYEES IS 14.

TONY RODGERS

Contractor also reserves the right at any time to stop work until such time as past due payments, according to the payment schedule of this contract are brought up to date, such work stoppage shall not constitute grounds for any breach of contract action being brought against the contractor. Before resuming work because of lack of payments, the full amounts of the contract shall be due and payable. If collection is required, owner shall be responsible for legal interest and reasonable attorneys fees.

P.O. BOX 34206  
BARLETT, TN 38134  
(901) 384-4613  
CELL (901) 832-3198

**EXHIBIT A: LETTER OF INTENT**

## Chart 4 REQUIRED PARKING AND QUEUING SPACES BY USE

<u>Use</u>	<u>Number of Parking and Queuing Spaces Required</u> <sup>1</sup>
Day care centers	1 for each 300 square feet of f.a. or 5 spaces whichever is greater plus 1.5 for each 2 employees employed on the largest shift

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### Sec. 16-112-7 Permanent on-premise sign regulations [Other sections may also apply]

- A. Districts permitted: AG, R-E, R-S, R-D, R-TH, R-ML, R-MM, O-L, and FW.
1. Structural types permitted: attached and detached signs, except for pole and roof signs, and except as regulated by the central business improvement district I and II as contained in Chapters 12-32 through 12-44.
  2. Maximum gross surface area: twelve (12) square feet, or twelve (12) square feet per acre whichever is greater, up to a maximum of thirty-two (32) square feet. **[Existing sign - 12.88 sq. ft.]**
  3. Minimum setback: no portion of a sign shall be located within ten (10) feet of a right-of-way, and no sign greater than twelve (12) square feet in area shall be located within fifty (50) feet of an adjacent residential district or a residential portion of a planned development unless the sign is attached.
  4. Maximum Number Permitted
    - a. Residential uses: [N/A]
    - b. Nonresidential uses: one attached and one detached sign per frontage per zoning lot. Attached signs shall be limited to the name of the establishment only.
  5. Maximum height: five feet for signs twelve (12) square feet in area or less, and twelve (12) feet for signs greater than twelve (12) square feet in area.
  6. Illumination: external or internal.
  7. Lettering size of nonresidential attached signs:
    - a. Maximum of eighteen (18) inches in height if sign is located less than or equal to one hundred (100) feet from the street. **[Existing sign – 12” letters]**
    - b. Maximum of thirty (30) inches in height if sign is located more than one hundred (100) feet from the street.
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### Sec. 16-120-4 Landscape/screening requirements. (excerpt)

#### 5. Single-family (R-S, R-D, R-TH Zones and Uses):

##### **Streetscapes:**

With frontage on major road

A-1 (Major deciduous trees – 30' o.c.)

Nonresidential uses with parking in front yard

A-2, A-3 or A-4 (add evergreen shrubs to screen parking)

##### **Screening (adjacent to):**

For nonresidential uses in R-S, R-D, R-TH Zones

B-1, B-3, B-4 or B-5 (sightproof barrier composed of approved combinations of a wall, and/or fencing and / or evergreen trees)

## EXHIBIT B: APPLICABLE DESIGN STANDARDS – PARKING, SIGNS, LANDSCAPING

**Joyce Fields Correspondence (received by email 8/5/080**

Thank you for the written notice of a proposed zoning change in my neighborhood. I, **Joyce Fields**, received the notice on 8-2-08, and I had just filed a mayor action case on the property on 8-1-08 for not cutting a tree branch that obstructs traffic at the corner of Kilarney and Millbranch. I am the longest residence on Santa Monica Street, and I am very much opposed to the zoning change.

For 26 years I have been making sure our neighborhood stay quite, clean and safe. The proposed property (Day Care) is next to my property and for the 26 years I have lived next to this property, me and my family have been the ones that kept the property (Mr. Howard's property) clean and also kept the grass cut as well as having a sink hole repaired, in which after phone calls and certified letters Mr. Howard ignored the sink hole.

Mr. Alex Howard does not live in Memphis, TN and has no stake in our neighborhood except for financial gain. I and my family as well as other neighbors have peace of mind, property values and keeping our neighborhood from being destroyed at stake by changing the zoning.

When I come to the hearing I will show the Land Use Control Board why you should vote no to changing the zoning.

**Below are just some of the problems of Mr. Howard not taking care of his property next to me and me having to call or take care of the problem myself:**

- Trash cans in the street on Millbranch
- Not taking trash cans in, left blocking sidewalks
- Noise from Day care children (morning and afternoon)
- Noise from car doors slamming early in the morning (5am/6am)
- Grass not being cut
- Trash not picked up around property: Paper, beer cans, throughout field
- Toys from daycare in street (balls)
- Sink Hole (ignored phone calls, certified letters)
- Trees not being trimmed (blocking intersection)
- Mr. Howard own several other properties and those as well are not taking care of, (I have pictures that I will bring to the hearing).

[...Most people have an adverse opinion of Whitehaven .....]. But when my friends/co-workers, repair people or whomever come on our street or neighborhood they are amazed at the care and quite of our neighborhood. So please do not approve the zoning change for the sake of preserving at least one clean, quite, and safe neighborhood that working families call home. One thing my grandmother and mother always taught me and that is no matter all the bad that happens in the world, you home/neighborhood should always be a place of Peace. So please don't take our Peace.

Thank You  
Joyce Fields  
(No address provided)

*[Ed. Note: Some adverse characterizations of Whitehaven omitted. Complete document available by request.]*

**EXHIBIT C: LETTER IN OPPOSITION**

**PETITION TO STOP** Lil Olympian from expanding their Day Care and Changing the Zoning

**CASE # SUP 08-222**

1. Dorothy W. June 5589 Santa Monica 38116
2. Kesha Turner 5589 Santa Monica 38116
3. Ronald RANKIN 5581 SANTA MONICA 38116
4. Carol Webb 5581 SANTA MONICA
5. Vincent JONES 5599 Santa Monica
6. Vickey Payne
7. Lucille Ison 1715 Santa CLARA
8. Arnetria Ferguson 1720 Santa Clara Ave 38116
9. Debbie Henker 1727 Santa Clara 38116
10. Eldridge Davis 1735 SANTA CLARA 38116
11. Deven Norman 1748 Santa Clara 38116
12. Iva Norman 1748 Santa Clara 38116
13. Ivory Blank 3579 SANTA CLARA 38116
14. James & Linda Franks 1744 SANTA CLARA 38116
15. Randolph & Lucille 5581 CLARA CO. 38116
16. Robert & Evelyn HALL 1799 SANTA CLARA 38116
17. Chester B Harris 1754 Buxton 38116
18. Fabian [unclear] 5567 Santa Monica 38116
19. John Cooper 5593 Santa Barbara ST
20. T. Byrd 5570 SANTA BARBARA
21. R. L. Annen 5562 Santa Barbara 38116

**Petition to STOP Lil Olympian from expanding their Day Care**

Address is 5500 Millbranch (Southeast Corner Millbranch - Kilarney Ave.)

1. Jannette Glover 1693 Kilarney 38116
2. Enoch Glover<sup>III</sup> - 1693 Kilarney 38116
3. Michael Elliot Alton 1693 Kilarney 38116
4. Natalie Torres 5566 Santa Monica St 38116
5. Luis Torres 5566 Santa Monica St 38116
6. Courtney Gray 5566 Santa Monica St 38116
7. Roy C. Odom, Jr 5566 Santa Monica St 38116
8. Falecia Johnson 5561 Santa Monica 38116
9. Hutural Parker 5561 Santa Monica 38116
10. Karlin Johnson 5561 Santa Monica 38116
11. Eugenia Williams 5561 Santa Monica 38116
12. Vicky Payne 5599 Santa Monica St. 38116
13. Danny & Cathy Allen 1763 Santa Clara 38116
14. Patricia J. Demorey Kirksey 1755 Santa Clara 38116
15. Melvin Moore 1747 Santa Clara 38116
16. Elzina Wellborn 1747 Santa Clara 38116
17. David Norman 1745 Santa Clara 38116
18. Sharon Jackson 5547 Santa Monica CA
19. James H. Davis 1743 San Bernardino 38116
20. Joyce Fields 5539 Santa Monica
21. Alicia H. Fulk 5539 Santa Monica 38116
22. W. Fulk 5539 Santa Monica

22. Selisha McCallum 1799 Buxton
23. Johnny Jeffries 1799 Buxton
24. Doris Jeffries 1799 Buxton
25. ~~John & Willie~~ 5554 Santa Barbara  
Barbara Chama 5548 Santa Barbara
26. Barbara & Willie Dowell 1718 Buxton
27. ~~Kenneth & Norma~~ 1957 Buxton
28. Evelyn & Donzel Crenshaw 1795 Buxton
29. Doris Jeffries 1799 Buxton
30. Michael Taylor 1734 Buxton
31. Doris Taylor 1734 Buxton
32. Larry Haley 1760 Buxton
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