

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT **#19**

CASE NUMBER: UV 08-12

L.U.C.B. MEETING: January 8, 2009
(updated and redacted 1/12/2009)

LOCATION: Northeast corner of Union Avenue and Rembert Street with frontage on west side of Morrison Street

CITY COUNCIL DISTRICTS: *Single Member: #5 Super District: #9*

OWNERS / APPLICANTS: Chick-Fil-A, Inc.

REPRESENTATIVE: Kevin Kilgore, *Chick-Fil-A, Inc.*

REQUEST: Use variation to allow driveway and off-street parking for a restaurant

AREA: 1.575 acres

EXISTING LAND USE & ZONING: Vacant landmark office building, vacant retail store and a vacant residential lot in the Highway Commercial (C-H) and Multiple Dwelling Residential (R-MM) Districts

SURROUNDING USES AND ZONING:

North: In the Local Office (O-L) District, the headquarters of not-for-profit service organization, and in the R-MM District, an apartment building.

East: At the northwest corner of Union and Morrison, a branch bank and across Morrison Street, apartments in R-MM District, and a laundry in the C-H District.

South: Across Union Avenue, commercial and office uses in the Single-Family Residential (R-S6) and the C-H Districts

West: Across Rembert Street, a television studio and a single-family residence in the C-H District.

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION
Approval, with Conditions

CONCLUSIONS

- 1. The applicant is requesting a use variation from the zoning regulations to permit driveway access and parking in a residential district as part of the site plan for a fast food restaurant that is otherwise permissible under the zoning.**
- 2. In view of the relatively high density residential character on Morrison Street and the adjoining commercial frontage on Union the proposed use of an R-MM lot for access and parking should not have a significant adverse effect on existing uses nearby.**
- 3. Use variations must be justified by unique circumstances, and in the case of this restaurant the proposed use of an adjoining lot seems justified by this opportunity to preserve a portion of this memorable structure that has been a landmark in the Midtown community for many years.**

Staff Planner: Dave Adams

E-mail Address: david.adams@memphistn.gov

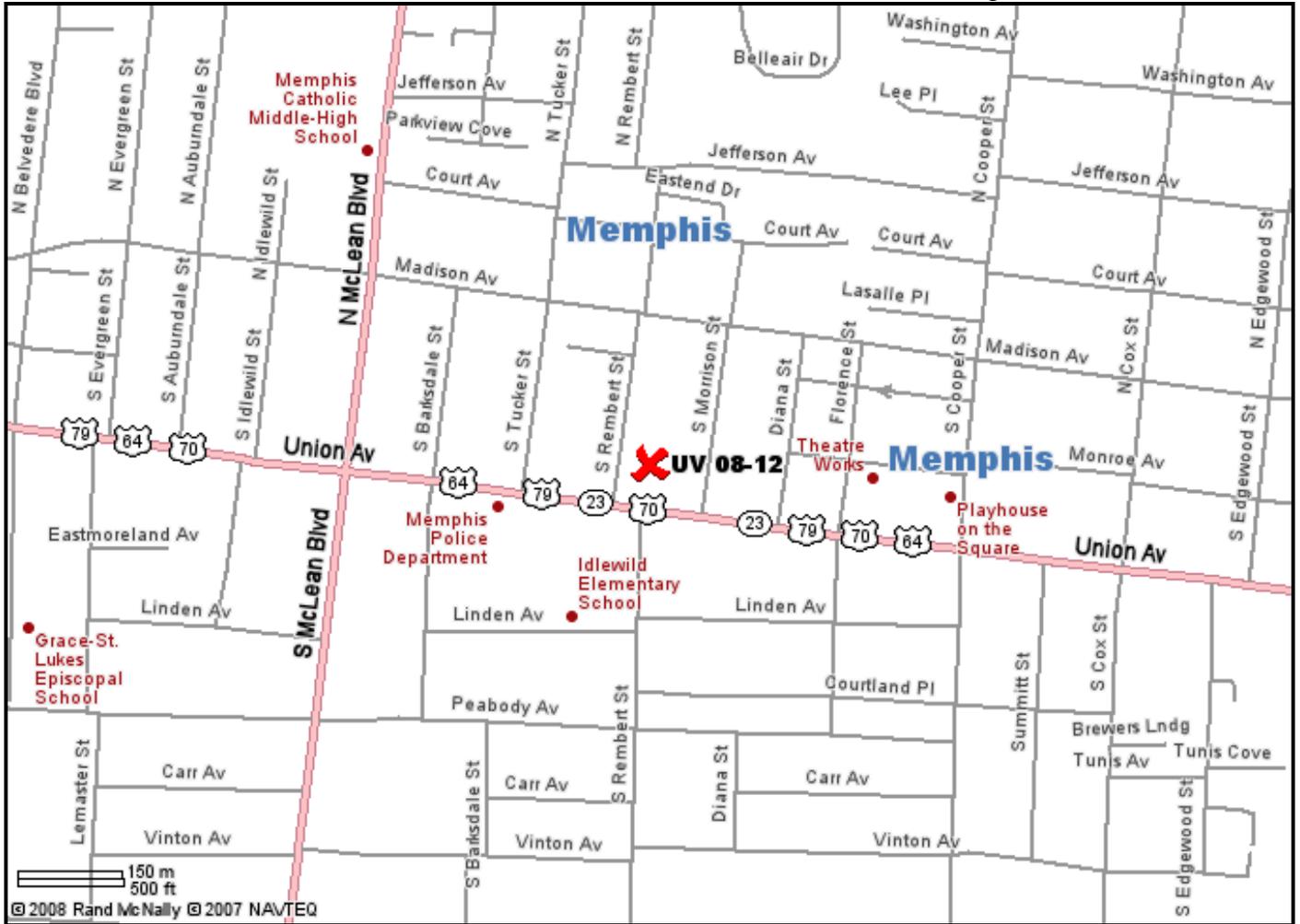


Figure 1: Location Map
(Copyrighted material – licensed for limited distribution)

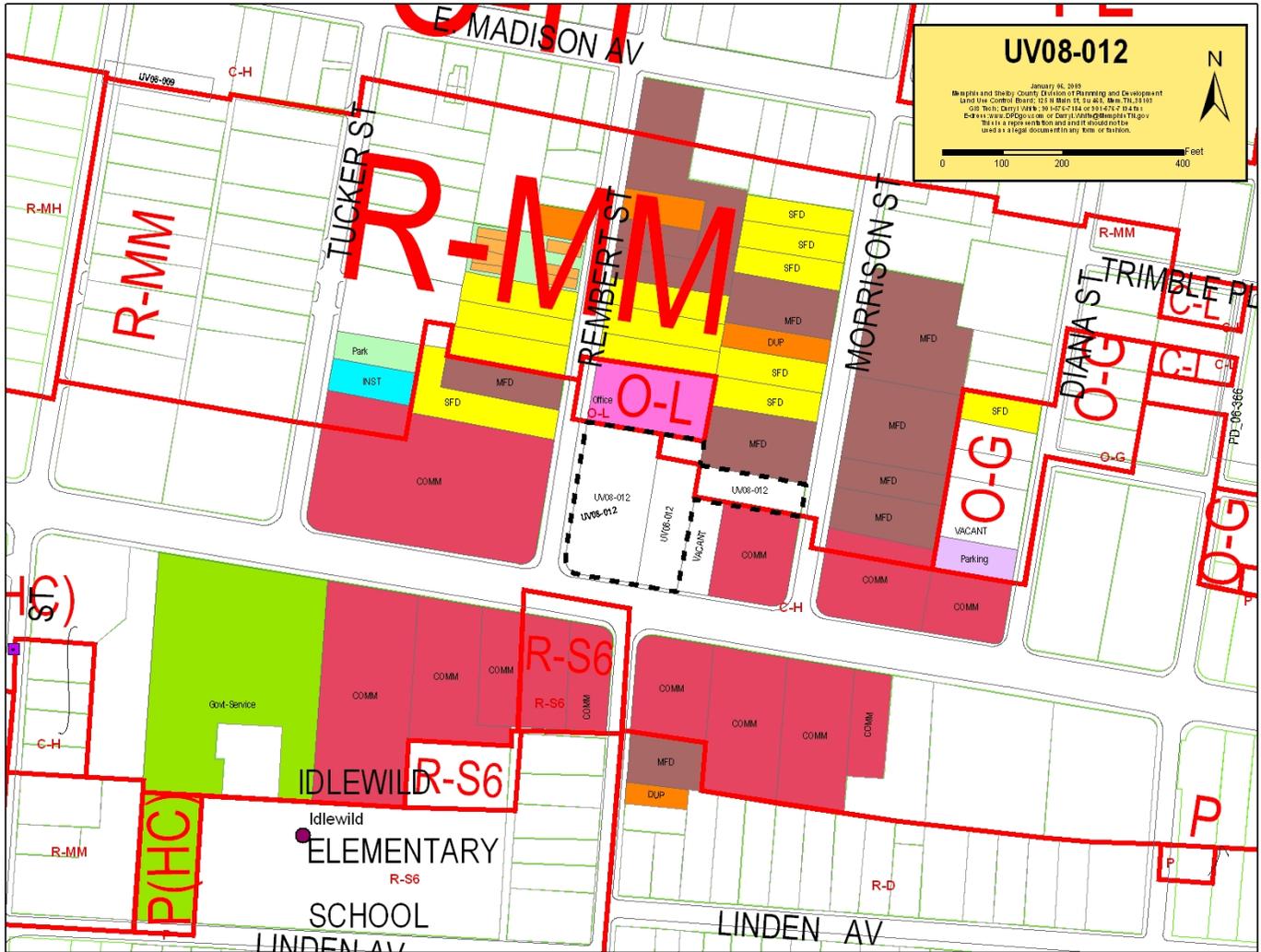


Figure 2: Land Use and Zoning in the Vicinity



Figure 3: Overhead View of Vicinity



Figure 4: Overhead view of subject property

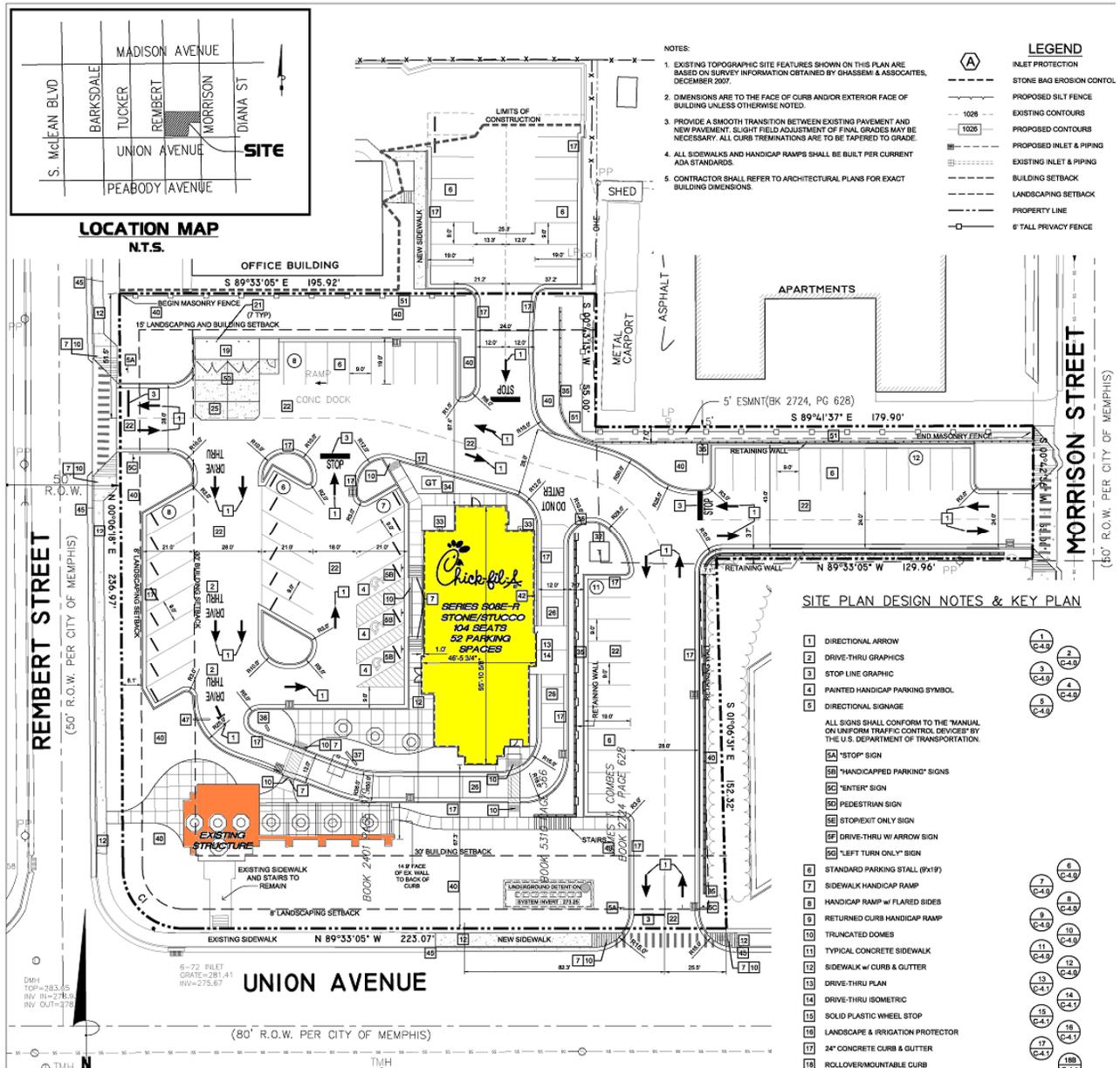


Figure 5a: Proposed Site Plan
(Color-Enhanced by OPD Staff)

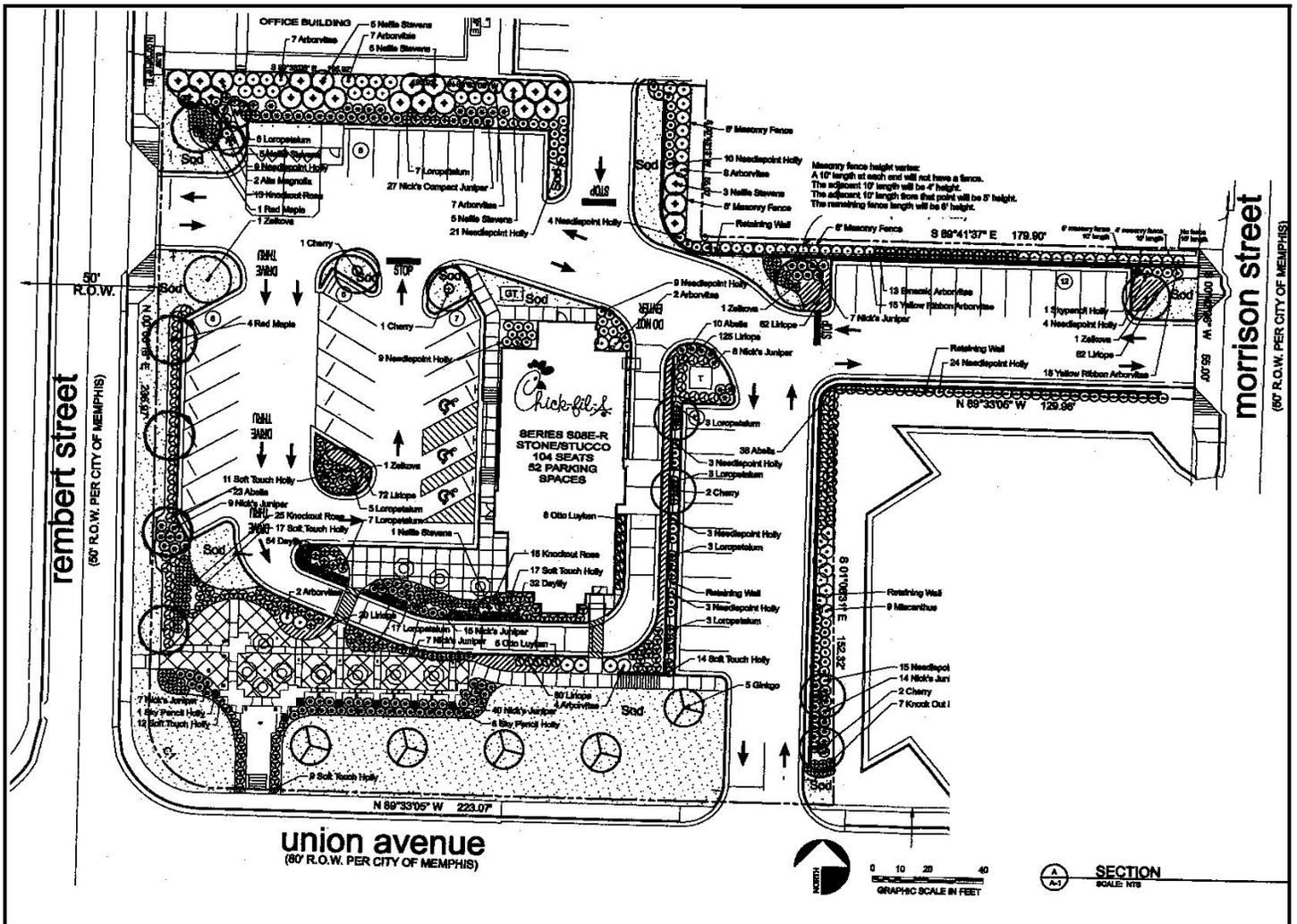


Figure 5b: Proposed Landscaping Plan for Site
 (Details from original drawing omitted)

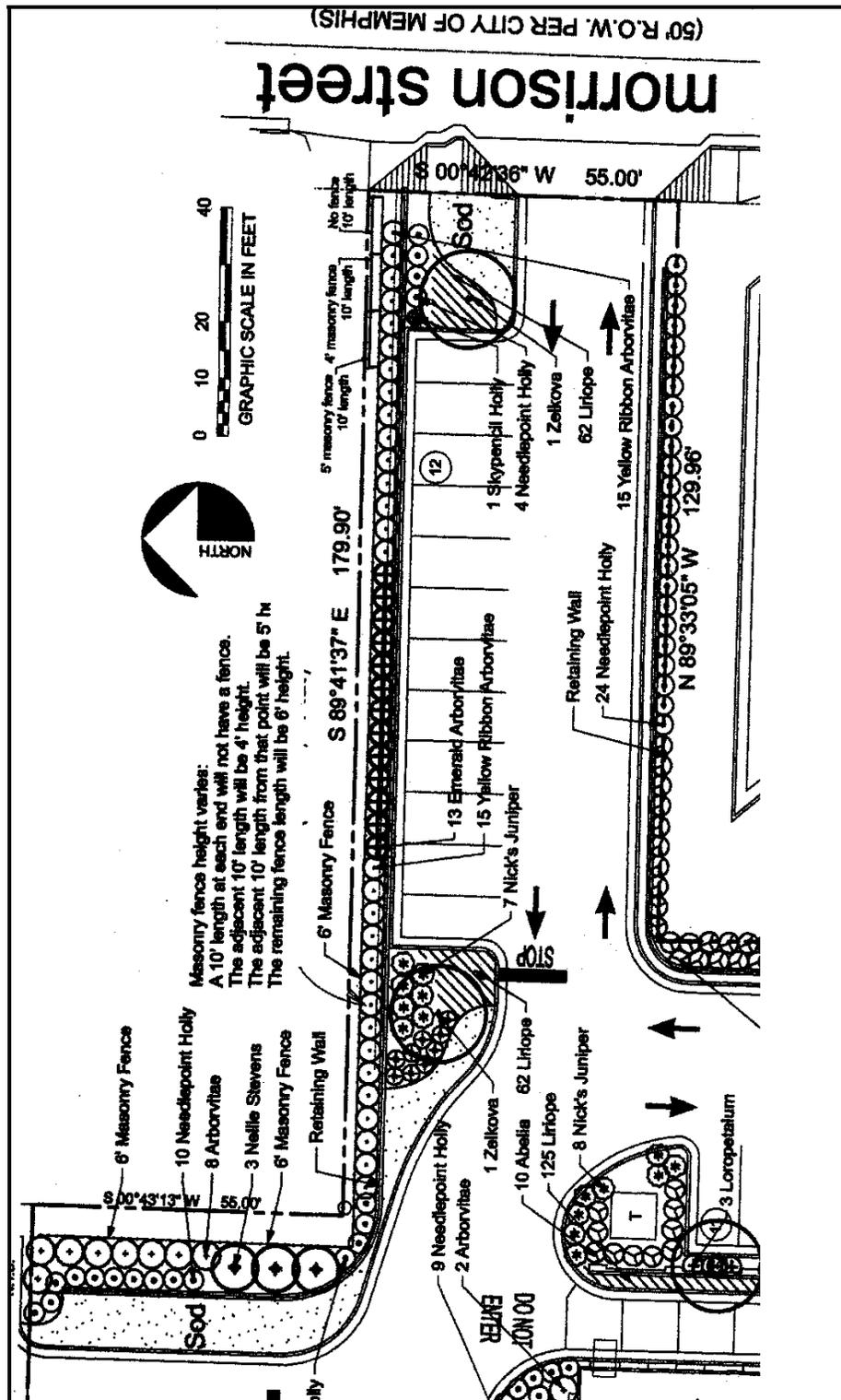


Figure 5c: Proposed Landscaping Plan for Site with detail for the area in the R-MM district (Reoriented to fit page – north to the left; east at the top)



Figure 5d: South elevation --- View from Union Avenue



Figure 5e Oblique view of structures from the northwest corner of the property



Figure 5f: Interior perspective of preserved building facade

Artwork provided by Chick-Fil-A





Figure 6: Poplar Avenue frontage of the subject property



Figure 7: The proposed site plan would utilize this lot in the R-MM District for parking and driveway access to Morrison Street.



Figure 8: This branch bank on a corner lot at 2000 Union Avenue would be adjoined on the west side and the north side by the proposed fast-food restaurant site



Figure 9: Site plan shows construction of driveway to maintain connection from this parking behind the Boys & Girls Clubs of Memphis office (44 S Rembert – in the O-L District) to the parking and driveways on the subject property.

STAFF ANALYSIS

Site Characteristics

The subject property consists of four lots in various unrecorded subdivisions. Together they comprise a proposed building site that has frontage on Rembert Street, Union Avenue and Morrison Streets. The core of the site is a rectangular area in the northeast corner of Union Avenue and Rembert. This core area extends 195 feet eastward from Rembert and approximately 262 feet northward from Union. To the east side of this core area, two lots have been added. One is a 50' x 150' lot fronting on Union Avenue. The second extends eastward through the balance of this City block 180 feet to Morrison Street, where it has 55 feet of frontage.

This property is occupied by two buildings. At the corner is a vacant, handsome $\pm 5,000$ sq. ft. two-story brick office building (58 S Rembert), as shown in Figure 6. It was built nearly 60 years ago and served as a central office for the Cumberland Presbyterian Church organization. The second is a vacant 1,600 sq. ft. building (1992 Union), formerly used a retail store.

The office building is situated on the highest part of the property, which slopes downward toward Morrison Street on the east side for a total elevation change of approximately 12 feet in a distance of about 250 feet.

Proposed Development

The applicant is proposing to redevelop this site for use by a franchise restaurant featuring a drive-through lane. Memphis Heritage, Inc. is an organization that advocates the preservation of significant buildings that represent historic components of the built environment. Memphis Heritage worked with the development team with the goal of saving the office building through adaptive reuse by the restaurant. When this proved impractical, they considered a plan for preserving part of the façade of the office building along Union Avenue. That is now a feature of this proposed development, which is supported by Memphis Heritage.

The proposed restaurant development would be in compliance with the Highway Commercial (C-H) Zoning District, which includes most of this site. However, the 180' x 55' lot which connects to Morrison Street is in the Multiple Dwelling (R-MM) Residential District. Use of that property for restaurant access and parking is not allowed under the R-MM Zoning. Therefore, the applicant is requesting a use variation that would set aside this restriction. According to Section 10 of the zoning regulations, use variations are intended as a means of remedy for an unintended hardship created when the zoning ordinance is applied to a certain unique property or due to other unique circumstances.¹

¹ Before the Memphis city council and/or board of county commissioners of Shelby County can grant a use variation, the applicant must show that the use variation requested will not be unduly detrimental to and will be in reasonable harmony with the character of the area where the property is located. Additionally, to satisfy the requirements for the granting of a use variation, an applicant shall establish the existence of the following:

- a. *Unnecessary hardship.* The property for which a variation is requested cannot yield a reasonable return if used for any of the purposes permitted or allowed in the zoning classification for the property. Such inability to realize a reasonable return

The Vicinity and the Neighborhood

The immediate neighborhood features commercial uses along Union Avenue, which has, over many years, seen a primarily residential street between the Medical Center to the east and the vicinity of Overton Square at Cooper Street become the prime commercial corridor for the Midtown community. To the north is a belt of higher density residential uses, including apartments, in the R-MM District sandwiched between the relatively new commercial corridor along Union Avenue and the old commercial corridor that grew up along the Madison Avenue streetcar line. An exception to this pattern is a two story office building just north of the subject property along Rembert Street.

The site's R-MM lot that is the focus of this use variance application, is bordered on the north side by a 10-unit apartment building that fronts on Morrison Street and by a bank branch that fronts on Union Avenue. Directly opposite this lot, on the east side of Morrison is an apartment building. Within the 500-foot notification radius along Morrison Street, there are five single-family residences one duplex and about 635 feet of frontage occupied by apartment buildings.

Planning Issues

In view of the relatively high density residential character on Morrison Street, and the adjoining commercial frontage on Union, the proposed use of an R-MM lot for access and parking should not have a significant adverse effect on existing uses nearby.

Use variations must be justified by unique circumstances, and in the case of this restaurant the proposed use of an adjoining lot seems to be justified by this opportunity to preserve a portion of this memorable structure that has been a landmark in the Midtown community for many years.

RECOMMENDATION: *Approval, with Conditions*

must be supported by specific facts. The applicant must present facts, not its unsubstantiated opinion, that the property cannot yield a reasonable return under the existing regulations. Proof that the property cannot be used for its highest and best use and that it could be used more profitably for another use will not alone be sufficient to establish that the property cannot yield a reasonable return as classified.

- b. *Unusual characteristics of the property.* The inability to yield a reasonable return must result from unusual circumstances peculiar to the property itself, including its narrowness, shallowness, and shape or topographic conditions, not the personal situation of the applicant, the location of the property or a self-imposed hardship.

SITE PLAN CONDITIONS

Chick-Fil-A Restaurant at 1980 Union Avenue

UV 08-12

As Approved by the Land Use Control Board

January 8, 2009

A Use Variation is hereby granted for a driveway and parking on the property formerly known as 57 S Morrison Street (recorded as Instrument #E99642 at the Shelby County Register's Office) to be used as part of the site of a restaurant located at the northeast corner of Union Avenue and Rembert Street, as specified in a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

- A. The site plan shall reflect conformance with all design standards of the zoning regulations with respect to parking and with respect to signage according to the standards for the applicable zoning districts.
- B. The site plan shall include details with respect to onsite solid waste handling. Garbage dumpsters shall be screened from view off site.
- C. Outdoor lighting shall be designed and oriented so as to avoid direct illumination of residential property. Subject to the review and approval of the Office of Planning and Development outdoor lighting shall be specified in the site plan document in sufficient detail so to insure that the above standard will be achieved.
- D. Any outdoor speakers shall be designed and oriented so to be inaudible from nearby residential property and minimally audible from the office building that adjoins the site.
- E. Landscaping shall be installed and maintained as specified in the landscaping plan that will be part of the adopted site plan document. If it becomes necessary, equivalent alternatives may be approved by the Office of Planning and Development staff.
- F. The design and construction of onsite buildings and the preservation of the former Cumberland Presbyterian office building shall conform to the building elevations approved as part of the adopted site plan document.
- G. **City Engineering Division may substitute equivalent alternatives for design standards specified in the comments provided to the applicant in the staff report.**

GENERAL INFORMATION

| | |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Parcel Number: | 017063 00016, -19, -20, 21 |
| Coordinates: | 35° 08' 07"N, 89° 59' 42"W |
| Street Address: | ± 1980 Union Avenue, 38104 |
| Street Frontage: | <u>Union Avenue</u> – 223 ft. on major arterial (80 ft. ROW), (US Hwys 64, 70 & 72) <u>Rembert Street</u> – 237 ft. on local street (50 ft. ROW) <u>Morrison Street</u> – 55 ft. on local street (50 ft. ROW) |
| Planning District: | Midtown |
| Census Tract: | 32 |
| Annexation Status: | Annexed by the City of Memphis, 1899 |
| Zoning Atlas Page: | 2035 |
| Zoning History: | 1931: ‘B-1’ Apartment Shop District & ‘B’ Residential (Multi-Family) 1955: Converted to “C-2” Commercial & “R-4” Multiple Dwelling in 2 nd ordinance < 1977: Adjoining Boys Club / Girls Club office site rezoned from “R-4” to “O-2” Office 1981: Converted to (C-H) Highway Commercial & (R-MM) Multiple Dwelling Residential & (O-G) General Office in current ordinance |

DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

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.

5. The developer shall relocate the existing concrete light pole on Union Avenue (located at the eastern property line) to a minimum of five feet from the end of radius for the proposed drive opening.
6. Eliminate all transverse markings shown on the site plan for each of the proposed curb openings.
7. All curb openings shall have a maximum cross slope of 2% in the pedestrian path, across the curb cut.
8. Eliminate the proposed truncated domes on the approaches to each curb cut.

Drainage:

9. 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:

10. Provide internal circulation between adjacent phases, lots, and sections. Common ingress/egress easements shall be shown on the final plats.
11. The width of all existing off-street sewer easements shall be widened to meet current city standards.
12. All commons, open areas, lakes, drainage detention facilities, private streets, private sewers and private drainage systems shall be owned and maintained by a Property Owner's Association. A statement to this effect shall appear on the final plat.
13. Required landscaping shall not be placed on sewer or drainage easements.

City Fire Division: No comments.

City/County Health Department: No objections.

City Board of Education:

The subject property does not appear to be adjacent to any property which has been identified as belonging to Memphis City Schools (MCS). No identifiable impact on MCS' school-aged population nor MCS' property interests. Thank you for the opportunity to comment on this case.

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 conditions:

- **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.
- **It is the responsibility of the owner/applicant** to comply with **Memphis/Shelby County Zoning Ordinance - Landscape and Screening Regulations. Landscaping is prohibited** within any MLGW utility easement without prior approval.
- **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 MLGW to determine if system improvements may be required and any related cost:
 - 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/Bell South: AT&T Tennessee has no comment regarding this new development.

Memphis Area Transit Authority (MATA): No comments received.

OPD-Regional Services:

This application was reviewed by the MPO staff/Department of Regional Services on November 26, 2008. The MPO staff has determined that Union Avenue is an existing major road consisting of 78 feet of right of way, 64 feet of pavement and no proposed improvements.

OPD-Plans Development: No comments.

Memphis Park Commission: No comments received.

Neighborhood Associations:

31st Ward Civic Club: No comments received.
Central Gardens Association See Exhibit A
Other Associations Contacted

| |
|--------------------------------------|
| East Parkway Association |
| Idlewild Neighborhood Assoc |
| Idlewild Community/Neighborhood Assn |
| Idlewild - East End Historical Assn. |
| Idlewild Neighborhood Assoc |
| Belleair Woods |
| Tucker-Jefferson NA |



January 07, 2009

Memphis and Shelby County
Office of Planning and Development
City Hall
125 North Main Street
Memphis, Tennessee 38103
Attn: Dave Adams

Re: Chick-Fil-A Restaurant Site Case # UV 08-12, Northeast corner of Union and Rembert

Dear Mr. Adams,

Thank you for allowing the Central Gardens Neighborhood Association the chance to review and comment on the attached application for the Chick-Fil-A Restaurant proposed for the Corner of Union and Rembert.

Our understanding of the project is the representatives of Chick-Fil-A and Memphis Heritage worked very hard to come up with the best possible solution for all concerned.

After review of the request for the use variation to allow a driveway and parking on the section of property noted as an R-MM (Multiple Dwelling Residential) we see no reason for that not to be allowed.

As a community, we would like to see as much landscaping as possible around the parking areas to allow for a visual softness to the large amount of parking required. (a landscape plan was not included in the package) We ask that Chick-Fil-A help with our neighborhood's continued efforts to provide as much green space as possible to better our environment.

Respectfully,

A handwritten signature in black ink, appearing to read "Christina Hall".

Christina Hall,
Vice President and Landmarks Chairman
Central Gardens Association

Exhibit A - Comments from Central Gardens Association