

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
ADDENDUM TO STAFF REPORT #13**

CASE NUMBER: U.V. 08-13

L.U.C.B. MEETING: May 14, 2009

LOCATION:

Property on the corner of South Third Street (US Highway 61) and Clinton Road on the northwest side of Third and the northeast side of Clinton.

CITY COUNCIL REPRESENTATIVES:

District 6 / Super District 8

OWNER/APPLICANT:

Travis Wilmath

REQUEST:

Motor vehicle service use (See Exhibit A for more details)

AREA:

1.123 acres

EXISTING LAND USE & ZONING:

Motor vehicle sales and service and single-family residential use in the Highway Commercial (C-H) and Single Family Residential (R-S6)

SURROUNDING USES AND ZONING:

- Northeast:** Vacant property in the C-H and R-S6 Districts
- Southeast:** Across 3rd Street (US Highway 61) are single-family residences and vacant lots in the C-H district
- Southwest:** Across Clinton Road are a religious institution and a single-family residence in the C-H and R-S6 Districts
- Northwest:** Single-family residences (subject to verification in one case) in the R-S6 District

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

Approval, with Conditions

CONCLUSIONS:

- 1. The applicant has already built a building for the proposed use, and claims this was due to a misunderstanding.**
- 2. The applicant has already made some improvement to the appearance of the property.**
- 3. The conditions would relocate the Clinton Street driveway access. in conformance with safety standards.**
- 4. Although the agreed upon landscaping does not conform to the standards for new construction, continuation of the proposed use with limited improvements --- for a period of three years --- should not adversely affect the neighborhood in any substantial way.**



Figure 1A: Overhead view of subject property

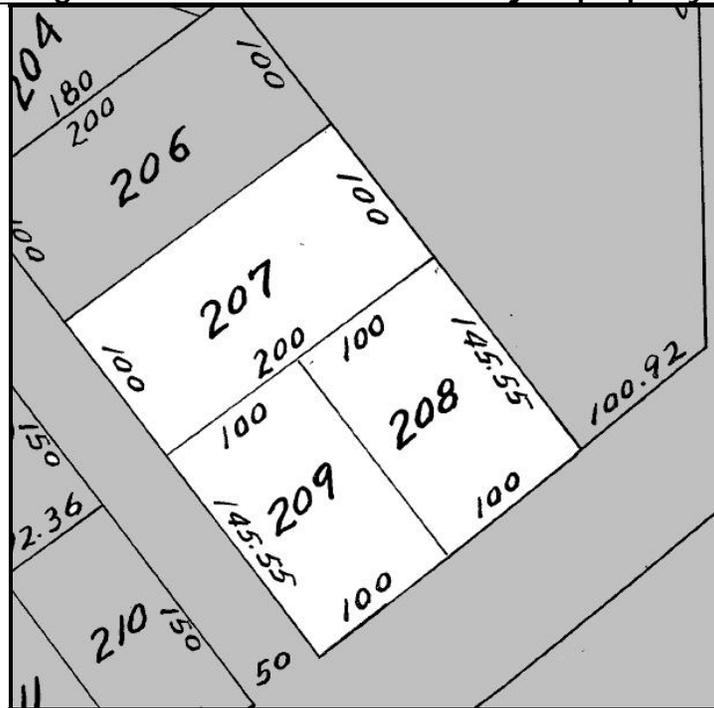


Figure 2A: Lots comprising Subject Property in Old Home Town Subdivision

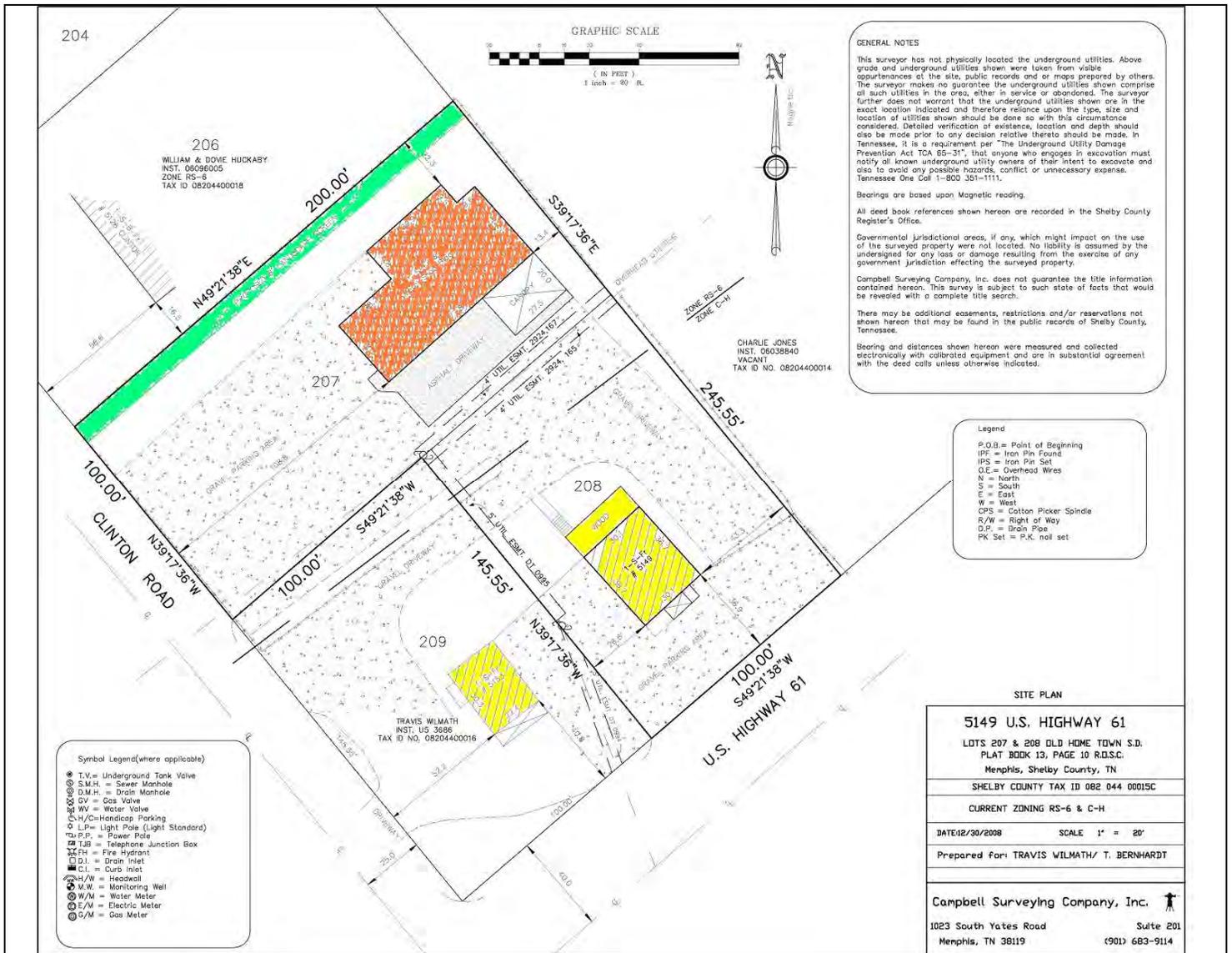


Figure 3A: The proposed site plan shows the two pre-existing buildings, original built as "single-family" houses, the "metal shop building" and a proposed 8-foot landscape strip inside the area as currently fenced.

SITE PLAN CONDITIONS

Motor Vehicle Sales and Service Uses at 5149 & 5153 S Third Street

UV 08-13

May 14, 2009

For a period of three years, a Use Variation is hereby granted for motor vehicle sales and service use on Lots 207-209 of the Old Home Town Subdivision as recorded in Plat Book 13 Page 10 subject to a site plan adopted herewith and subject to all current development regulations and City of Memphis engineering standards except as may be specifically waived herein.

1. Single-family residence shall be permitted in the principal structure on Lot 208, provided that this use is continuously maintained and subject to the Section 28 of the Zoning Regulations (Nonconformities). Continuance of single-family residential use beyond the date of June 30, 2013 shall require a renewal of this condition by the Memphis City Council.
2. Motor vehicle sales may be conducted on Lot 209.
3. Motor vehicle service may be performed on Lot 207 and within 30 feet of Lot 207 on the adjacent, portions of Lot 208 and Lot 209
4. The operations of the motor vehicle service facility shall be limited to Mondays through Saturdays, from 7 AM to 6 PM.
5. Any outdoor lighting on Lot 207 shall be no more intense than standard pole lighting typically provided in residential areas
6. All parking lots, and driveways, and aprons for vehicular access shall be paved, and paving shall required in all other areas where cars are to be parked, provided that the area specified above in Condition 3 and screened by a fence shall maintained with an all-weather surface, not necessarily paved.
7. Driveway access to Lot 207 shall be moved farther from Third Street to a location satisfactory to the Division of Engineering, provided that it shall not be located beyond the rear driveway of the church on the opposite side of Clinton Street.
8. No public improvements shall be required during the three-year duration of this use variation.
9. The standard landscape plates shall be installed as specified in Section 32 of the zoning regulations provided that certain modification will be permitted, as described in Conditions 6 with respect to Lot 207 and Condition 7, with respect the street frontages of Lots 208 and 209.

10. The exterior of the accessory garage building, including siding, fascia and soffits, shall be finished and maintained with a uniform paint color --- white or earth-toned. Any roofed storage area open to view from offsite shall be enclosed with an exterior wall or shall be screened from off-site view by extending the existing 6-foot fence.
11. Existing fencing and landscape plantings shall be shown on the site plan and shall be maintained.
12. The front yard of Lot 208 shall be landscaped and maintained with grass and one shade tree. Any direct vehicular access to Clinton Street from Lot 208 shall be provided with an appropriate driveway to the rear of the existing building on Lot 208 & 209. The portion of this driveway in the rear yards of Lot 209 & 209 shall be maintained in an all weather surface, not but not necessarily paved.
13. Outdoor storage of vehicles and equipment shall not be permitted. All vehicles kept on site must be covered by current dealer registration and they must be operable, provided that a maximum of two vehicles may be kept overnight if under repair.

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT #8**

CASE NUMBER: U.V. 08-13

L.U.C.B. MEETING: March 12, 2009

(unchanged from February report)

LOCATION:

Property on the corner of South Third Street (US Highway 61) and Clinton Road on the northwest side of Third and the northeast side of Clinton.

CITY COUNCIL REPRESENTATIVES:

District 6 / Super District 8

OWNER/APPLICANT:

Travis Wilmath

REQUEST:

Motor vehicle service use (See Exhibit A for more details)

AREA:

1.123 acres

EXISTING LAND USE & ZONING:

Motor vehicle sales and service and single-family residential use in the Highway Commercial (C-H) and Single Family Residential (R-S6)

SURROUNDING USES AND ZONING:

Northeast: Vacant property in the C-H and R-S6 Districts

Southeast: Across 3rd Street (US Highway 61) are single-family residences and vacant lots in the C-H district

Southwest: Across Clinton Road are a religious institution and a single-family residence in the C-H and R-S6 Districts

Northwest: Single-family residences (subject to verification in one case) in the R-S6 District

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

Hold pending consideration of applicant's site plan proposal

CONCLUSIONS:

- 1. The applicant has already built a building for the proposed use, and claims this was due to a misunderstanding that should have been corrected by Construction Code Enforcement staff and that they should have denied the building permit.**
- 2. As currently planned, the site of the proposed use does not provide adequate separation and buffering for the transition from intense commercial use to residential.**
- 3. OPD staff has not yet received a site plan proposal from the applicant's representative.**



Figure 1: Location Map
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Figure 3: Overhead View of Vicinity



Figure 4: Overhead view of subject property

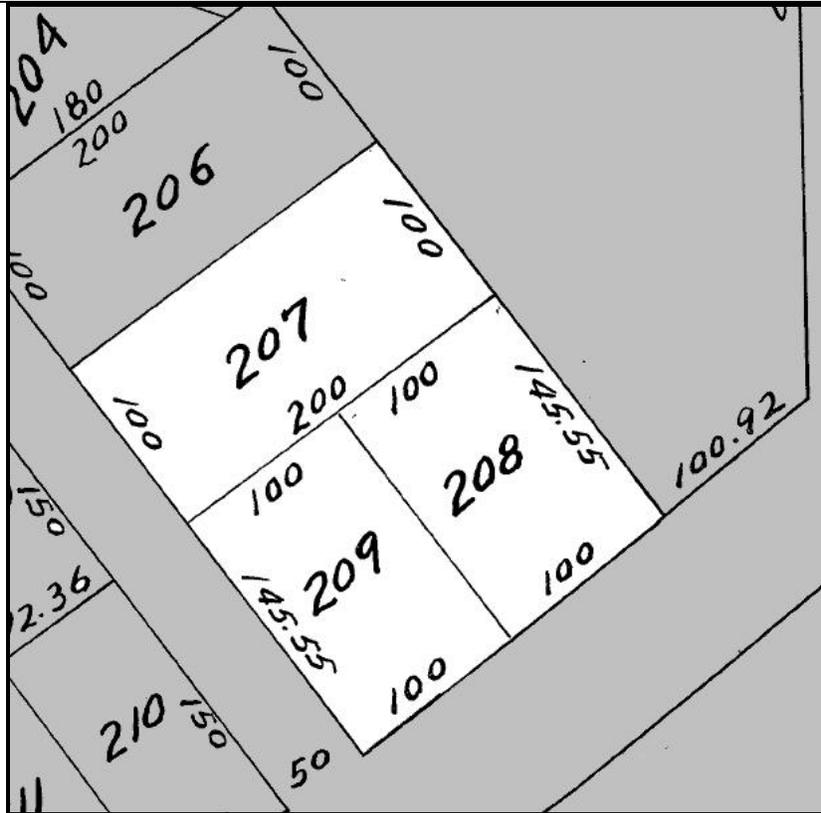


Figure 5: Lots comprising Subject Property in Old Home Town Subdivision



Figure 6: On Lot 208, this house at 5149 S Third Street in the C-H District is the residence of the applicant. The front yard is paved and directly accessible from Lot 209



Figure 7: On Lot 209, this building at 5153 S Third Street, in the C-H District, is the office for the S & B Auto Sales establishment



Figure 8: Driveway access for Lot 209 is off of Clinton Road



Figure 9: Much of Lot 207, in the R-S6 District, is bordered with a high wood fence, including the Clinton Road frontage, seen here. Currently it is only accessible through Lot 208.

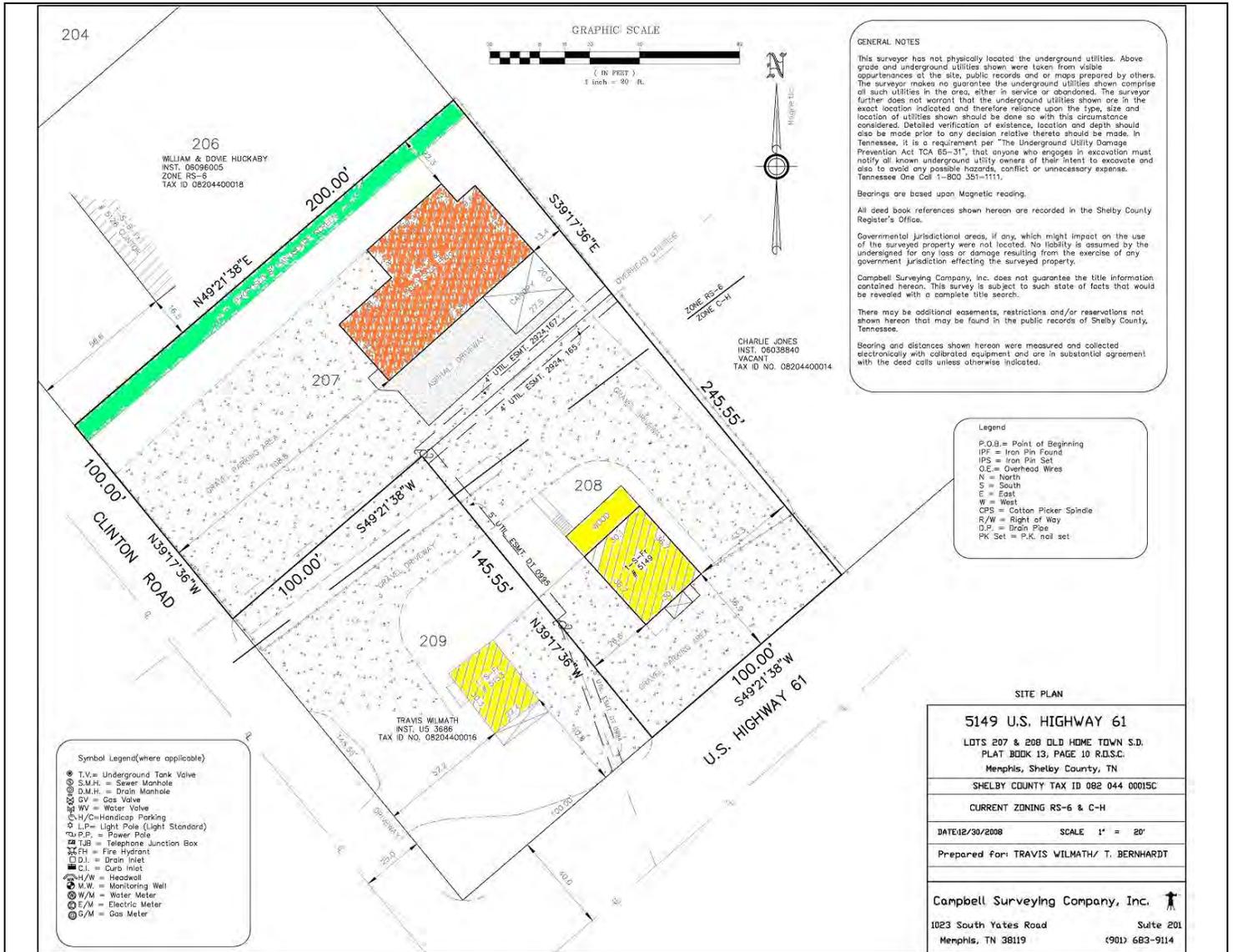


Figure 10: The proposed site plan shows the two pre-existing buildings, original built as "single-family" houses, the "metal shop building" and a proposed 8-foot landscape strip inside the area as currently fenced.



Figure 11: This, apparently vacant, motel complex at 5123 South Third Street Road is separated from the subject property by the 90-ft. frontage of an vacant, somewhat park-like parcel immediately northeast of the subject property



Figure 12: This religious institution occupies the corner just across Clinton Road, at 5135 S Third Street (Highway 61)



Figure 13: Adjoining the subject property to the northwest is this residence at 5126 Clinton Road. Listed by the Assessor as a single family residence there have been indications of multiple occupancy, at least in the past.



Figure 14: The fence along the northwest side of Lot 207 is right on the property line, which is 16½ feet from the house and much closer to the attached garage.



Figure 15: In front of the subject property, Highway 61 (S Third Street) runs downhill to the south. In the absence of curb and gutter along the edge of the roadway, the drainage swale has been covered with asphalt, apparently for erosion control.

STAFF ANALYSIS

Site Characteristics

The subject property consists of three lots in the Old Home Town Subdivision, platted in 1948, with frontage on US Highway 61 and Clinton Road. Highway 61 (also known as South Third Street), extending southward from Interstate Highway 55 has historically been the primary access road to the delta country of northwestern Mississippi, and more recently the casinos of Tunica County. Traffic along this route has been correspondingly heavy. However, increasingly the westward extension of Interstate 69 from I-55 will provide an alternative all-expressway route that should divert some travel away from Highway 61.

Clinton Road is a local street that extends less than ½ mile and provides access to the internal street system of this subdivision, include Longcrest Road that leads to the Coro Lake Dam.

As shown in Figure 10, the subject property is occupied by three structures ---- Lots 208 and 209 each contain a small single-family residential structure built in the mid-1940s. These have been more or less adapted for commercial use. The house on Lot 209 (5153 S Third) is now the office of an auto sales operation. The house on Lot 208 (5149 S Third) remains in use as a single-family residence; but has at the same time been used in connection with various other auto-related businesses.

Access to these to property is limited to “curb cuts” as follows:

- Lot 209 – 5153 S Third – one point of access to Clinton Road
- Lot 208 – 5149 S Third – one point of access from South Third Street
- Lot 207 - to the rear of 5149 S Third - driveway access through Lot 208.
(Lots 207 & 208 together comprise a single Assessor’s Parcel.

Proposed Development

The applicant is requesting approval to use the third building as a shop for an auto repair business. This use would be permitted in Lots 208 and 209, which are zoned C-H; but is not allowed on Lot 207, which remains in the R-S6 District. Apparently the applicant had in mind the erroneous thought that combining Lots 207 & 208 as a single Assessor’s parcel would have the effect of making the C-H zoning applicable to Lot 207.

For a more detailed presentation, please see the applicant’s letter of intent in Exhibit A, at the end of this report. (A convenient drawing of Lots 207-209 may be found in Figure 5.)

The Vicinity and the Neighborhood

A commercial character is predominant along this segment of South Third Street which has had commercial zoning for fifty years. However commercial use has not absorbed the entire frontage. Vacant and single-family residential properties still remain, particularly on the southeast side of Third Street opposite the subject property. In general the commercial use becomes somewhat more intensive as one approaches the Holmes Road intersection to the southwest.

In keeping with development pattern around Coro Lake, about ½ mile to the west, the Old Home Town Subdivision is a quasi-rural development, with no curbs, gutter or sidewalks. Larger lots (ave ±20,000 sq. ft.) and larger homes are found along the northeastward extension of Clinton Street and another that parallel it. To the southwest, lots are somewhat smaller (ave ±15,000 sq. ft.). Except for just a few problem properties, the house exteriors seem to be in reasonably good shape, and the area to be potentially stable. However, the number of rental houses in this area seems to be considerable.

Planning Issues

Introduction of a commercial use into a residential neighborhood can easily be a source of instability because the number of people who wouldn't mind living nearby may be reduced, and thereby the value of housing in the neighborhood.

Auto repair is perhaps the most intensive commercial use and one that is often unsightly. Of all commercial uses, it is one of the most likely to have an adverse effect on the adjoining and nearby property. The 6 foot wood fence around the R-S6 portion of the property does at least limit the potential adverse effect, although staff takes note that such a wood fence over a period of several years is likely to create maintenance issues. If it falls down, the neighborhood is exposed to unsightly operations.

Particularly concerned might be the owner and/or residents of the adjoining house, with its 16 foot sideyard in front, and ±5-foot sideyard in back. Typically transitions from commercial to residential use affect the residential property more drastically when they occur along a side yard lot line instead of the rear yard.

Less impacted by the proposed auto use are the properties on the opposite side of Clinton Road ---- a religious ministry in a former church building facing South Third Street and a single family residence that faces Longcrest Road.

Key design issues are addressed in the draft conditions that have been prepared, at this point, only as a basis for discussion of design issues:

- #1) residence in the C-H District;
- #2) noise;
- #3) excessive lighting;
- #4) dust;
- #5 & 6) landscaping on the R-S6 lot ;
- #7 landscaping on the C-H lots;
- #8 coordination with City Engineer

RECOMMENDATION: *Hold for additional input*

SITE PLAN CONDITIONS – FOR DISCUSSION PURPOSES ONLY
Motor Vehicle Sales and Service Uses at 5149 & 5153 S Third Street
UV 08-12

A Use Variation is hereby granted for motor vehicles sales and service use on Lots 207-209 of the Old Home Town Subdivision as recorded in Plat Book 13 Page 10 subject to a site plan adopted herewith and subject to all current development regulations and City of Memphis engineering standards except as may be specifically waived herein.

1. Single-family residence shall be permitted in the principal structure on Lot 208, provided that this use is continuously maintained and subject to the Section 28 of the Zoning Regulations (Nonconformities). Continuance of single-family residential use beyond the date of June 30, 2013 shall require a renewal of this condition by the Memphis City Council.
2. The operation for the auto repair facility shall be limited to Mondays through Saturdays, from 7 AM to 6 PM.
3. Any outdoor lighting on Lot 207 shall be no more intense than standard pole lighting typically provided in residential areas
4. All parking lots, driveways, and aprons should be paved, and paving shall required in all other area were cars are to be parked, provided that certain landscape area shall be maintained without paved as specified below.
5. The standard landscape plates shall be installed as specified in Section 32 of the zoning regulations provided that certain modification will be permitted, as described in Conditions 6 with respect to Lot 207 and Condition 7, with respect the street frontages of Lots 208 and 209.
6. To provide a better transition to residential use, the 6-foot wood fencing shall be moved back from the north property line and the street right of way and the prescribed landscape areas shall be installed and maintained outside the fencing. Equivalent alternatives for the prescribed landscaping may be substituted, subject to the review and approved of OPD.
7. On Lots 208 and 209, applicants shall install and maintain a modified A-3 plate, consisting of one major shade tree (Tree A) on each lot in a landscape area 2 feet in diameter , and a 9 sq. ft. landscape area on each side of the respective driveways, with plant materials to be recommended by OPD staff. The asphalt shall be removed from the specified landscape area and an appropriate bedding soil will provided

8. Street access and infrastructure shall to the standards and be provided or improved as specified by the City of Memphis Division of Engineering. (See comments, page 16 & 17)

GENERAL INFORMATION

Coordinates:	35° 00' 30"N, 90° 06' 06"W
Parcel Number:	082044 00015C, -16
Street Address:	5149 South Third Street, 38019
Street Frontage:	<u>South Third Street</u> : --- 200 feet of frontage on this 4-lane major arterial road with an 80 ft. right of way.
Planning District:	Whitehaven-Levi
Census Tract:	210.20
Annexation Status:	In Memphis Annexation Reserve Area
Zoning Atlas Page:	2065
Zoning History:	1961 – Zoned “C-2” Commercial in the 1 st County zoning ordinance. 1981 – Zoning converted to Highway Commercial (C-H) when current ordinance took effect.

DEPARTMENTAL COMMENTS

City Board of Education:

MCS has noted that this case does not have an application provided nor does it provide an explanation of the use variation. However, 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 or MCS' property interests.

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 engineering 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/Bell South:

AT&T Tennessee has no comment regarding this new development.

City/County Health Department:

No objections.

OPD-Plans Development:

No 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.

Roads:

3. The developer shall improve Clinton Road within the existing right-of-way to urban standards with additional pavement as necessary and curb, gutter and sidewalk in accordance with Subdivision Regulations.

Curb Cuts/Access:

4. The City/Engineer shall approve the design, number and location of curb cuts.
5. Any existing nonconforming curb cuts shall be modified to meet current City/Standards or closed with curb, gutter and sidewalk.
6. The existing asphalt driveway connection near the corner of Clinton at Hwy 61 shall be closed and relocated to the center of the Clinton Road frontage so that it serves all three of these lots.

Drainage:

7. 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.
8. Drainage data for assessment of on-site detention requirements shall be submitted to and approved by the City Engineer.
9. The developer should be aware of his obligation under 40 CFR 122.26(b)(14) and TCA 69-3-101 et. seq. to submit a Notice of Intent (NOI) to the Tennessee Division of Water Pollution Control to address the discharge of storm water associated with the clearing and grading activity on this site.

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. Adequate queuing spaces in accordance with the current ordinance shall be provided between the street right-of-way line and any proposed gate/guardhouse/card reader.
12. Adequate maneuvering room shall be provided between the right-of-way and the gate/guardhouse/card reader for vehicles to exit by forward motion.

General Notes:

13. The width of all existing off-street sewer easements shall be widened to meet current city standards.
14. 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.
15. Required landscaping shall not be placed on sewer or drainage easements.

City Fire Division:	No comments received.
Memphis Area Transit Authority (MATA):	No comments received.
OPD-Regional Services:	No comments received
Construction Code Enforcement:	No comments received

Neighborhood Associations

**Westwood Shores Property Owners:
S. Memphis Neighborhood, Inc.:**

Also notified: *Cumming Street Community Development Corp*

BERNHARDT LAW FIRM

December 31, 2008

Memphis and Shelby County
Office of Planning and Development
City Hall
125 North Mid America Mall
Memphis, TN 38103-2084

RE: Travis Wilmath Application for Special Use Variance
Lot 207 Old Home Town Subdivision

To Whom It May Concern:

Travis Wilmath, the sole owner of Lots 207, 208 and 209 Old Home Town Subdivision is making application for the purposes of obtaining a Special Use Variance for Lot 207. A brief history of the property will explain why he has requested this variance, and a simple map is attached hereto for a visual aid.

Mr. Wilmath purchased Lots 208 and 209 in 1979 and 1991 respectively. In 1981, he purchased Lot 207, the lot which he hopes to obtain the Special Use Variance. Lots 208 and 209 were zoned Commercial Highway in the past, and have been zoned as commercial lots since Mr. Wilmath can remember. Sometime around 1982, Mr. Wilmath combined Lots 207 and 208 into one tax parcel identification number. The address of record for Lot 207 has been the same as that for Lot 208, and the only access to Lot 207 was over and upon Lot 208. A privacy fence has separated Lot 207 from any access upon Clinton Road since Mr. Wilmath's ownership. It was Mr. Wilmath's belief that he had legally combined the two parcels, and that Lot 207 was part of Lot 208 and therefore a commercial lot.

In 1989, Mr. Wilmath applied for and obtained from a building permit to construct a 1200 square foot detached garage building upon the property. In 2001-2002, he applied for and obtained a building permit allowing him to build an additional 840 square foot commercial addition to the existing garage building upon the property. Additionally, he obtained an electrical permit from OPD in 2002. At this time Mr. Wilmath was running an auto repair and sales business and using the garage on Lot 207 as an auto cleanup shop.

Copies of the most recent application and permits are attached hereto. You will note that throughout the documentation, the building inspector states the change from "SFR to

**Licensed in Tennessee & Illinois*

Bus-Auto Sales & Repair.” In the process of applying for the necessary documents, and in the issuance of said permits, Mr. Wilmath was given to believe that the two lots were one lot, and that the entire area was zoned commercial. He relied upon the knowledge and expertise of the Code Enforcement inspectors and truly believed, based on their conversations and the issued permits that he was authorized to legally construct an Auto Shop, and subsequently construct an addition to his Auto Shop upon Lot 207. We imagine that to the naked eye, and in good faith, it appeared to the Code Enforcement inspectors to be one single lot. In fact, it is hard to find any data on Lot 207 that is not connected to the property address of Lot 208, so the misunderstanding is easy to understand. In any event, had Mr. Wilmath been told that the lot was zoned as a residential lot, and that the commercial building could not lawfully be constructed upon the premises, he would not have done so at significant expense to himself. It was not until the summer of 2008, when a Zoning Complaint Officer charged him with ‘Failure to obtain a use and occupancy permit’ that the issues at hand were brought to Mr. Wilmath’s attention. Mr. Wilmath came to my office confused because he had obtained U&O’s in the past, and the property wasn’t currently in use. With some research, and some assistance from officers of the OPD we were able to unravel the mystery of the situation. As a result, we are submitting this application.

As stated previously, the improvements located upon Lot 207 are still not in use. Mr. Wilmath himself lives upon the residence located on Lot 208, and he has rented out Lot 209 to an automotive business. Mr. Wilmath is a senior citizen who has little means. He can not afford to demolish the buildings located upon Lot 207, and to do so would cause him unfair and unnecessary hardship. From his point of view he did everything he knew to comply with the OPD, and in good faith the OPD believed he was in compliance. He now has the opportunity to rent the building located on Lot 207 to the commercial tenants renting Lot 209. He desires to obtain a special use variance from OPD so that the building will not remain vacant, and the property unusable. To do so would cause him to suffer an unfair and unnecessary financial loss, as he does not have the money to demolish and clear the building, and he can not and should not have to suffer the financial loss of his investment. Additionally, if he were able to obtain the variance, it would allow him to rent the premises, and allow him to keep watch over the careful and professional use of the property.

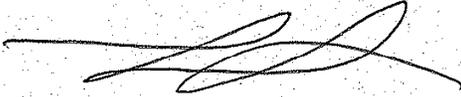
It is important to know that commercial property and rental property surrounds the Lot and that the property has had a commercial building and use since 1989. Additionally, the nature of the lot makes it unlikely to be used as a residential lot. The only access to the property is from Lot 208, and possible Lot 209. Also, according to the surveyor, the property sits in a “bowl”; in other words the elevation of Lot 207 lies beneath those of the surrounding lots. Mr. Wilmath has had the property protected from view with a privacy fence, but is agreeable to providing landscaping screens as may be required by the OPD.

Mr. Wilmath respectfully asks the board to consider his application for a Special Use Variance for the purposes of using the property as it had been used previously, as an auto clean up shop. As stated previously, the tenants occupying Lot 209 are willing to rent the premises in conjunction with their automotive repair and sales business.

We hope that you will consider the facts contained in this letter as evidence of Mr. Wilmath's good faith attempts in both the past and present to comply with the requirements of Code Enforcement and the OPD, and as a basis for granting him the request in his application.

Please feel free to call me with any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Teresa M. Bernhardt', written over a horizontal line.

Teresa M. Bernhardt
Attorney

Copy: Travis Wilmath
Enclosures