

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT

STAFF REPORT

#7

CASE NUMBER: P.D. 09-312 **L.U.C.B. MEETING:** June 11, 2009

DEVELOPMENT NAME: I-40/Germantown Parkway Planned Development, Amended

LOCATION: Southeast corner of Germantown Parkway and U.S. Highway 64

COUNCIL DISTRICT: 1 **SUPER DISTRICT:** 9

OWNER OF RECORD/APPLICANT: Simon Properties, Inc. (Keith Stewart)

REPRESENTATIVE: ETI Corporation (Ralph Smith/Rodney Joyner/Mark Lindstrom)

REQUEST: Amend existing conditions to allow "Retail Sales Outdoor"

AREA: 120.38 Acres

EXISTING LAND USE & ZONING: A Shopping Center regulated by the approved conditions of the I-40/Germantown Planned Development (P.D. 06-336)

SURROUNDING LAND USES AND ZONING:

North: A mix of retail commercial and automobile sales in the City of Bartlett

East: Retail Commercial and Hotel uses in the Highway Commercial (C-H) District

South: Residential dwellings and a private golf course in the Single Family Residential (R-S10) and Agricultural (AG) District

West: Retail commercial uses including restaurants and department stores governed by P.D. 94-371CC and P.D. 95-311 CC

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

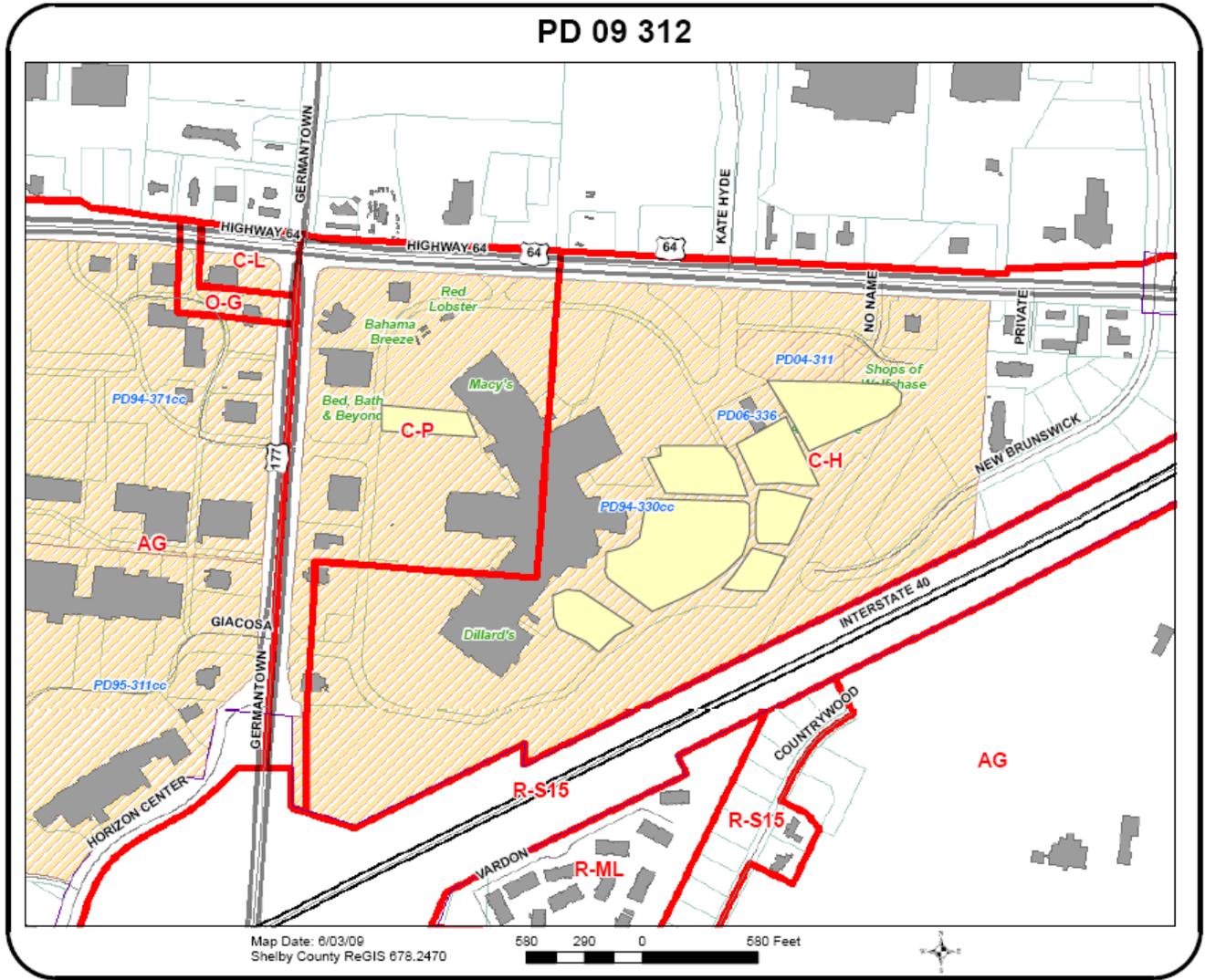
APPROVAL WITH CONDITIONS

Staff: Donald Jones

E-Mail: donald.jones@memphistn.gov

CONCLUSIONS

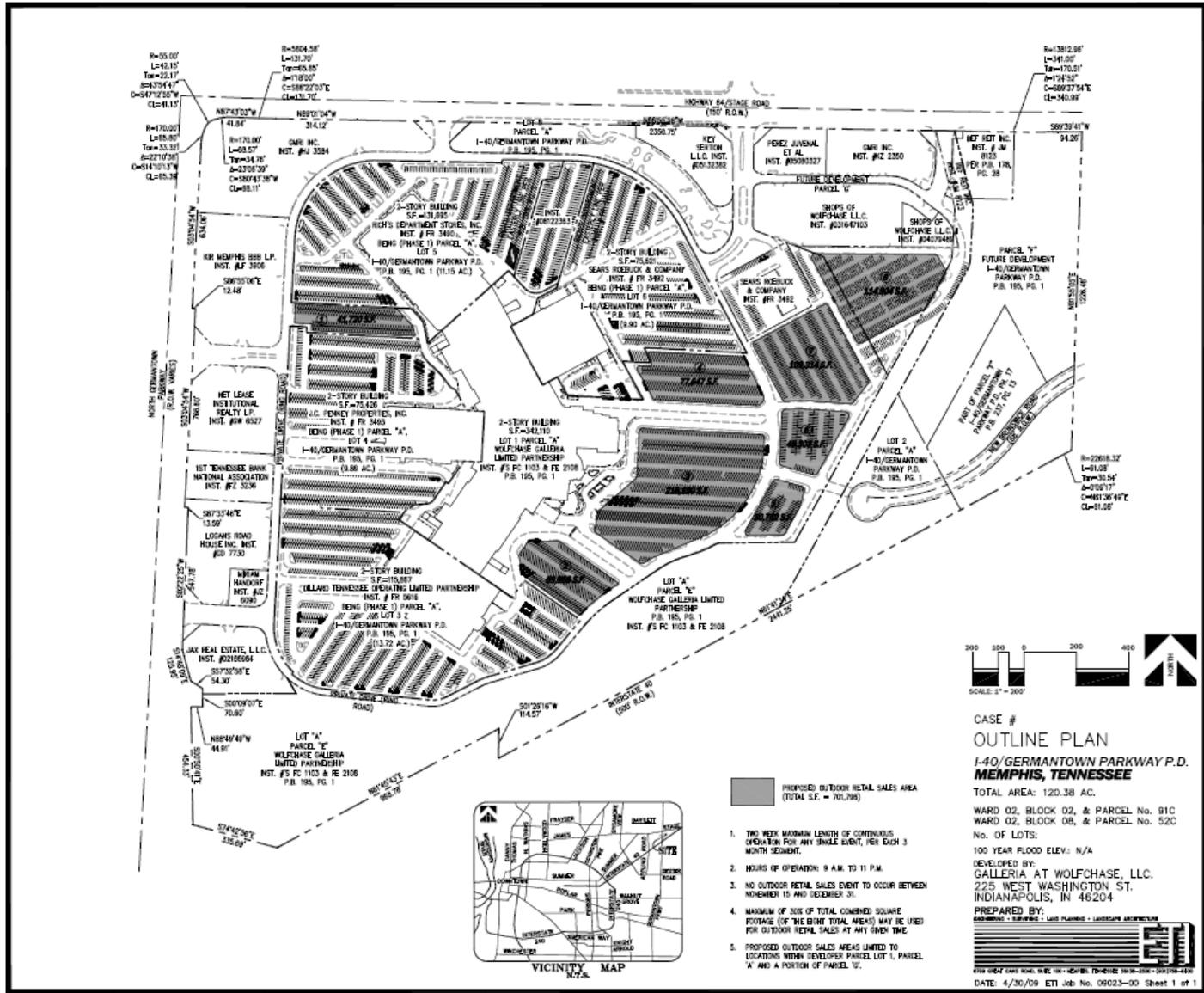
1. **Shopping Centers of various sizes have for years used some of their parking areas to stage relatively small carnivals often with games and rides or merchandise display areas as a marketing tool to attract customers to the center. And for the most part, one can look at these events as a marketing and operation issue.**
2. **However, if run too often or if the location is too visible these activities can have unintended consequences. If not located well or run well, these uses can become somewhat of a nuisance to shoppers who have to park further away from desired locations. These event can also serve as justification for abutting out-parcels to request more intensive useage which can lead to a change in the character of the entire area.**
3. **Staff has reviewed the proposed locations for the outdoor events, considered the impact on parking, and analyzed the requested uses and proposed conditions.**
4. **In addition to the limitations proposed by the applicant, the staff has offered some additional conditions regarding the frequency of the events and addresses some operational issues associated with some of the proposed uses, especially those that include the display of automobiles and large or bulk products.**
5. **In conclusion the staff finds that the proposed sites for the Outdoor Retail Sales uses are well located and that there is sufficient parking to accommodate these event sites. While the staff has a preference for using the outermost parking areas, areas 5-8, we believe that the mall management will be properly motivated to make sure that these events are well run and do not adversely impact the customers and tenants of the Mall.**



Zoning Map



Aerial of Site





Looking north into parking areas 6 & 7



Looking south into parking area 5



Looking north into parking area 3



Looking east into parking area 1 g

STAFF ANALYSIS

Location and Site Characteristics:

The subject site is the Wolfchase Shopping Mall in the Countrywood area of East Memphis. The subject site is part of the triangle that is formed by Germantown Parkway, Interstate 40, and Highway 64.

More particularly the subject property(s) are 8 parking areas that provide service to the Mall. These parking areas are for the most part located on the far east side of the mall and well removed from Highway 64. The lone exception is located in front of the J.C. Penny store which is 350 feet east of Germantown Parkway and located behind the out parcel that serves the Bed, Bath, and Beyond retail store.

Request:

The applicant, Simon Properties, is requesting an amendment to Condition I Uses Permitted, number 21 to permit Outdoor Retail Sales at specific locations on the Mall site and under certain specific conditions. The applicant in his letter of explanation has included a list of typical activities to be considered and that list has been added in the conditions section of this report. These activities include weekend RV/Camper Shows; displays for outdoor furniture, residential storage buildings, community festivals, arts and crafts shows, pottery sales, seasonal and holiday products, rug sales, sidewalk sales, pools and spas, new cars, trucks and motorcycles, antique car shows, and landscape materials and plants.

The applicant also proposes some limits with respect to time of day (9 a.m. to 11 p.m), and frequency, no more than 2 consecutive weeks for any one event in any three month period. Also no activities of this type will be permitted between November 15 and December 31. And finally, the amount of area devoted to Outdoor Retail Sales would be no more than 30 percent of the total area of all 8 parking areas that are identified on the site plan..

As an explanation for the request, the applicant's letter states " With the approval of this amended condition, Simon Properties will be able to more efficiently and effectively maximize the commercial potential of the Wolfchase Galleria property. The proposed outdoor sales areas will be used by the mall manager to provide an alternate temporary venue for outdoor retail sales".

Review of Request:

In its original form, this planned development included a laundry list of uses that are to be specifically prohibited. While the Staff Report does not provide any detail about how this list was compiled, the list includes uses that by their nature would not be complementary to an

upscale retail commercial center. Some of the uses to be excluded are land consumptive in nature and/or include a storage function that would take place on a 24 hour a day and seven day a week basis. Other uses have hours of operation or commuting patterns that would be inconsistent with the operation of a retail mall.

The most recent amendment to this Planned Development allows a small rental car operation to be added to the existing auto repair shop. This Avis Rental Car was added to the Sears Auto Repair Shop which is located in the eastern portion of the site, outside of the loop service road.

Site Planning Considerations:

Shopping Centers of various sizes have for years used some of their parking areas to stage relatively small carnivals often with games and rides or merchandise display areas as a marketing tool to attract customers to the center. And for the most part, one can look at these events as a marketing and operation issue. However, if run too often or if the location is too visible these activities can have unintended consequences. If not located well or run well, these uses can become somewhat of a nuisance to shoppers who have to park further away from desired locations. These event can also serve as justification for abutting out-parcels to request more intensive useage which can lead to a change in the character of the entire area.

Location and Parking Count- With that in mind, the staff has reviewed the proposed locations and its impact on parking. Seven of the eight locations are on the eastern side of the site. Four of these seven are in more remote locations east of the primary service road loop and for the most part screened from view of the public streets. The other three are reasonably close to the main building and present some concern to the staff with respect to circulation and pedestrain safety. The other location, area 1, is a smaller linear strip on the west side of the site. It's view from the public road is blocked by a large retail box and there appears to be ample parking available on either side.

The applicant has provided information regarding the number of spaces required based on the gross leaseable space of the Mall and the number of spaces provided. The Mall which has some 1,150 square feet of leasable space is required to provide 3,845 spaces. The actual number provided is in excess of 5,900 spaces. Even though a large number of these spaces are located beyond the loop service drive, there appears to be ample space to be used without significantly impacting the main use. This coupled with the applicant's stated intention to limit the amount of space devoted to outdoor sales is a large consideration here. The staff is proposing two additional conditions. That outdoor sales events do not run simultaneously and that they be limited to a maximum of six events in the period between January 1 and November 14.

Uses - Some of the uses listed as "typical uses" seem like natural attractions that should be encouraged. Uses such as community festivals, arts and crafts shows, pottery sales, seasonal and holiday products, rug sales, and sidewalk sales seem to fit well into a retail theme and would allow a reasonable use of space that is otherwise underutilized for the majority of the calendar

year. Other uses such as automobile related shows, storage buildings, and landscape materials raise some concern. A show where people walk up and look at products for future purchase at the proper location is one thing. But the purchase of any of these type of products on site raises concerns about test drives or in the case of storage buildings and landscaping materials brings to mind an image of large trucks with cranes being driven to the site and loading these products for delivery to the purchasers home or business. So short of prohibiting these altogether, the conditions designate which uses are for display only and other imitations that apply.

In summary the staff is in support of the request, and although our preference is to focus on the outer most parking lots, areas 5-8, we believe that the mall manger will be properly motivated to make sure that these events are well run and do not adversely impact the customers and tenants of the Mall.

RECOMMENDATION: APPROAL WITH CONDITIONS

OUTLINE PLAN CONDITIONS

I-40/Germantown Parkway P.D. (Amended)

P.D. 06-336

(Bold Print indicates conditions specifically related to this amendment)

I. Uses Permitted

- A. Parcels A, B, C, D, F, G, and H any use permitted by right, by administrative site plan review or by special use permit in the C-P District except the following uses:
1. Group Shelter
 2. Transitional Home
 3. Airport, Heliport
 4. Church
 5. Lodge, Club, Country Club
 6. Recreation field
 7. School, public or private
 8. Farm, labor and management
 9. Garage, commercial
 10. Motor vehicle – sales (except in Parcel A where an automobile rental business is permitted with site plans approved by OPD)
 11. Pawn shop
 12. Tavern, cocktail lounge, nightclub
 13. Undertaking establishment
 14. Telephone switching center, electric transmission, gas piping, water pumping station
 15. Bingo games
 16. Convenience stores
 17. Business school
 18. Agriculture use
 19. Family day care home
 20. Beverage container collection center
 21. Retail sales outdoor (see F. below)
 22. Used goods second hand sales
 23. Group day care home
 24. Nursery school
 25. Greenhouse or nursery commercial
 26. Lawn, tree, or garden service
 27. Veterinary clinic
- B. Parcel E shall be used only for the relocated stream on the property, wetlands and storm detention, as shown on the Outline Plan.

- C. Other uses – Photo finishing shall be a permitted use on Parcels A, B, C, D, F, G and H. A commercial nursery is permitted in Parcels F and G.
- D. Hotel as a principal use is permitted with associated accessory uses such as a restaurant, gift shop, lounge, etc.
- E. An automobile lease/rental use may be permitted as a companion use with the automobile service use in Parcel A. If this use is located within an existing use, it shall not be subject to Site Plan Review by the Land Use Control Board unless it increases the square footage of the building.
 - 1. This amendment pertains to the applicant (Avis-Budget Group Inc) re-use for another agency shall require the filing of a correspondence OPD.
- F. Outdoor retail sales as further conditioned below and in II. D. shall be permitted. The locations for Outdoor Retail Sales are limited to the areas highlighted on the Site Plan and owned by Simon Properties or its successors, as submitted with amendment P.D. 09-312. Such outdoor retail uses shall include:**
 - 1. RV/Camper shows (display only – no test drives)**
 - 2. Displays of Outdoor Furniture**
 - 3. Residential Storage Buildings (not to be loaded for a purchaser on this site)**
 - 4. Community Festivals**
 - 5. Arts and Crafts Shows**
 - 6. Pottery Sales**
 - 7. Seasonal and Holiday Products**
 - 8. Rug Sales**
 - 9. “Sidewalk Sales”**
 - 10. Pools and Spas (not to be loaded for a purchaser on this site)**
 - 11. New Cars, Trucks, and Motorcycles (for display purposes only, sales and test drives are prohibited)**
 - 12. Antique Car Shows (display only)**
 - 13. Landscape Materials in bags or containers only, piles of free standing mulch, sand, gravel and similar materials are not permitted**

II. Bulk Regulations

A. All Parcels –

The requirements of the Planned Commercial (C-P) District will apply with the following exceptions:

1. A total of 2,153,606 square feet of floor area may be constructed on the property, provided that the Floor Area Ratio (FAR) for Parcels B, C, D, and H shall not exceed .25
2. Minimum setback from Germantown Parkway and Highway 64 – 40 feet
3. Minimum setback from internal private drives – 15 feet.
4. Maximum Heights
 - a. Parcel A - Three stories plus architectural embellishments and atriums. Hotels can be 10 stories.
 - b. Parcels B, C, and H – two stories plus architectural embellishments and atriums
 - c. Parcels F and G – 10 stories plus architectural embellishments and atriums not to exceed 150 feet.

B. Air conditioning, heating, and other mechanical equipment shall be screened using architectural features, planting, fences, or other means.

C. Site plans for Parcels A, F, and G may provide for development of an integrated center on one or more of these parcels, in such case the developer may create individual building lots within Parcel A, F, and G which shall not be required to have frontage on dedicated public streets nor to have front side or rear yards.

D. **Outdoor Retail Sales (Operational considerations)**

1. **Hours of operation shall be limited to 9 a.m. to 11 p.m.**
2. **There will be a 2 week maximum stay for any one event in each three month quarterly period. Events shall not be held simultaneously.**
3. **At any one time, the site square footage dedicated to Outdoor Retail Sales cannot exceed 30 percent of the total (of all eight parcels) proposed Outdoor Retail Sales area.**

4. **No outdoor sales will be allowed between November 15 and December 31.**
5. **The Building Official shall determine if appropriate areas for staging/display, customer loading of purchased products, and sales area have been provided before issuing a Temporary Use/Event Permit.**
6. **Total number of events shall be limited to 6.**
7. **Outdoor Retail Sales – The mall manager will review the layout of the proposed sales areas to insure they will not interfere with overall site traffic circulation and emergency access. The signature of the mall manager shall be required on any request for a temporary use permit.**

III. Access, Circulation, and Parking

- A. All private drives to be constructed to meet the Subdivision Regulations, applicable City Standards, and provide a minimum width of twenty two (22') feet exclusive of curb and gutter.
- B. All commons, open areas, lakes drainage, detention facilities, private streets private sewers and private drainage shall be owned and maintained by the property owner or a property owner's association. A statement to this effect shall appear on the final plan.
- C. Stage Road (U.S. 64) shall be improved with a minimum of one additional eastbound lane (three lanes total) plus urban improvements in accordance with the Subdivision Regulations.
- D. North Germantown Parkway shall be improved with a minimum of one additional northbound lane (four lanes total) plus urban improvements in accordance with the Subdivision Regulations .
 1. Additional auxiliary or deceleration lanes may be required at a future date on North Germantown Parkway and Stage Road (U.s. 64) as traffic conditions warrant. At such time as it is determined by the City/County Engineer that such auxiliary or deceleration lanes are required, the mall owner shall be required to construct the required improvement at its own expense.
 2. Additional right-of-way shall be dedicated as necessary for the roadway widening.

- D. The developer shall have his engineer prepare and submit a Traffic Impact Analysis for this project providing data for opening day and five years after opening. The report shall provide traffic volume projections for the project in addition to background traffic and shall indicate levels of service for each movement of traffic at each entrance/exit to the site. Proposed traffic signals shall be demonstrated to meet State warrants for signalization and indicate the year such warrants are met. The study shall provide traffic progression analysis of the proposed signal systems on Stage Road and North Germantown Parkway and demonstrate what, if any, degradation in Level of Service on each roadway segment. The Traffic Study shall be submitted prior to approval of the Outline Plan by the legislative bodies and shall be revised if necessary to the satisfaction of the City/county Engineer proper to submittal of the first Final Plat.
- F. All required improvements to North Germantown Parkway and Stage Road (U.S. 64) shall be included in the first phase of the development.
- G. The developer shall install all approved traffic signals and modify existing signals covered in the Traffic Study at his sole expense.
- H. The developer shall modify the medians in Stage Road and Germantown Parkway at his sole expense to provide access to the site in accordance with the approved engineering plans and close any abandoned median opening(s).
- I. A reservation of future right-of-way for a clover leaf ramp at the I-40/Germantown interchange (northeast quadrant) shall be placed upon the southwest property of Parcel E, which is already encumbered with proposed detention and wetlands.
- J. The design and location of curb cuts to be approved by the City/County Engineer.
- K. Permit two curb cuts along the South Germantown Parkway frontage (with minimum uniform spacing of 1,000 feet between both median openings and street intersections).
- L. Permit three curb cuts along the Stage Road (U.S. 64) frontage (with a minimum spacing of 1,000 feet between both median openings and intersections)
- M. Provide internal circulation between adjacent phases, lots, and sections. The private drive shall be a joint use ingress/egress easement.
- N. Other points of direct access to Stage and Germantown shall be prohibited.

- O. Parking will be in conformance to the requirements of the zoning ordinance. The developer shall provide a total of twenty (20) truck loading spaces of Parcel A, two (2) for each department store and twelve (12) for the mall building.
- P. Access to the east proposed Brunswick road shall be provided via public street or public street.
- Q. A private drive connecting the ring road on Parcel A to any future extension of New Brunswick Road is required. The private drive will be constructed at such time as New Brunswick Road is extended to the eastern boundary of the JMB property that JMB will not be required to complete the private drive prior to the time the mall on Parcel A opens for business.
- R. The revised plat for the Sears Auto Center facility shall identify the spaces (a maximum of 12) on the plat.

IV. Landscaping and Screening:

- A. Developer will plant a twenty-five (25) foot landscaped area along the Germantown Parkway and Highway 64 frontage as previously approved for the property and as shown on the outline plan.
- B. Internal landscaping shall be planted at a minimum ration of 350 square feet of landscaped area and one shade tree for every 20 parking spaces.
- C. All required landscaping shall be provided exclusive of any area encumbered by easements and shall not conflict with any easements including overhead wires.
- D. Equivalent landscaping may be substituted for the required above, subject to the approval of the Land Use Control Board's part of the site pan review of any final development plan.
- E. Refuse containers shall be completely screened from view from the public roads.
- F. Minimum height of light standards shall standards shall be forty five (45) feet measured at grade of pole base.

V. Signs

- A. Three integrated center signs for Parcel A shall be permitted at the locations shown on the outline plan. Each sign may be two-faced with a maximum size of 400 s.f. per face. Maximum height of signs along I-40 frontage shall be eight (80) feet and the maximum height along Germantown Parkway and Highway 64 frontage shall be fifty (50) feet. Signs may be internally illuminated with an integrated message board.
- B. Signage for Parcels F and or G will be determined at site plan review.
- C. Signs for individual lots in Parcels B, C, D and H shall be monument in style a maximum height of 10 feet, maximum area 70 square feet.
- D. Developer may install ground mounted signs on each of entrances C1, C2, C3, and C4 (eight signs in all). Each sign shall have only one face the area of which shall not exceed sixty (60) square feet, and shall display on the name of the development or a graphic rendering of the development's logo, maximum height of 5 feet.
- E. No temporary, portable, or outdoor advertising (billboards) signs shall be permitted. Temporary FOR SALE OR LEASE signs are permitted with a maximum area of 35 square feet.
- F. Signs for the rental car use in Parcel A, Lot 7 shall be limited to attached as regulated by the Planned Commercial District and the individual stall markers.

VI. Drainage:

- A. Drainage improvements including possible on-site detention to be proved under contract in accordance with Subdivision Regulations and the City of Memphis Drainage Design Manual.
- B. The project must be evaluated by the Tennessee Department of Health and Environment regarding their jurisdiction over the watercourses on this site in accordance with the Water Quality Control Act of 1977 as amended (TCA 69-3-101 et. seq)

- C. The developer should be aware of his obligation under 40 CFR 12.26 (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 construction and clearing/grading activity covered under the State's National Pollution Discharge System (NPDES) general permit. The NOI shall be submitted 15 days before construction/clearing/grading is proposed to disturb any area which exceeds 5 acres or is a part of a larger phased plan of development.
- D. A drainage easement/unbuildable area/ common open space along the major drainage way passing through the site must be provided consistent with drainage plans approved by the City/County Engineer and on A.R.A.P. permit. The width may be equal to 2 ½ times the top of bank width, measured from the stream centerline in order to protect buildings and accessory structures from bank caving and stream meandering.

VII. Other

- A. The Land Use Control Board may modify the bulk, access, parking, circulation, signage, lighting, landscaping, and other site design requirements if equivalent alternatives are presented, provided however, any adjacent property owner who is dissatisfied with the modifications of the Land Use Control Board hereunder may within ten days of such action, file a written appeal to the Director of the Office of Planning and Development to have such action reviewed by the Legislative Bodies.

VIII. Site Plan Review by the Land Use Control Board

- A. A site plan shall be submitted for the review comment and recommendation of the Office of Planning and Development (OPD) and appropriate City and County agencies and the approval of the Land Use Control Board prior to approval of any final site plan.
 - 1. **The Amendment for Outdoor Retail Sales shall not require site plan review before the Land Use Control Board. The Outline Plan shall be re-recorded to reflect the changes to the conditions and to denote the areas where this use applies.**
- B. The site plan shall be submitted at least twenty days prior to a Land Use Control board meeting and shall include the following:

1. The location, dimensions, and floor area of all buildings, structures, and parking areas
 2. An illustration of the dimensions, design materials, and method of lighting for all attached signs
 3. An access plan for the site entrance and exit lanes and any proposed traffic signing or signal
 4. Specific plans for internal and perimeter landscaping and screening including the identification by name and location of plant materials
 5. Roadway improvements necessary to accommodate traffic generated by this development shall be in place or under contract before any final plan shall be approved
 6. Illustration of the public and private pedestrian system
 8. A composite plan showing all built and/or approved final plans within a Parcel shall be submitted for review with each request for site plan review.
- C. The site plan shall be reviewed based upon the following criteria:
1. Conformance with the outline plan conditions
 2. Conformance to the standards and criteria for commercial planned developments contained in Section 14-C and 14-E. of the Zoning Regulations
 3. Compatibility with adjacent land uses
 4. Provision of an adequate access plan including availability of needed major road facilities and pedestrian facilities as detailed above
- D. Developer shall not be required to submit site plans for grading, drainage, utilities, and other pre-building construction activities for the approval of the Land Use Control Board. Developer may submit final plans for such pre-building construction directly for review and approval of OPD and appropriate City and County agencies.
- IX. A final plan shall be filed within ten years of approval of the outline plan. The Land Use Control Board may grant extensions of the request of the application.

- X. Any final plan shall include the following:
- A. The outline plan conditions
 - B. A standard subdivision contract as defined by the Subdivision Regulations for any needed public improvements
 - C. The exact location and dimensions including height of all buildings or buildable areas, parking areas, drives, and identification of plant materials required landscaping as well as a rendering of the appearance of all proposed buildings including labeling of predominant construction materials.
 - D. The number of parking spaces
 - E. The location and ownership, whether public or private, of any easement.
 - F. The location, diameter, and species name of existing trees over 10 inches in diameter, and differentiation between those trees to be preserved and to be removed.
 - G. Any wetlands
 - H. The location of any conservation easement and the agency in whose favor the easement is granted

GENERAL INFORMATION

Street Frontage: Highway 64+/- 3,100 Feet
Germantown Parkway.....+/- 2,700 Feet
(actual access to the parking areas is provided via a loop or ring road on site)

Planning District: Shelby Farms - Germantown

Census Tract: 211.34

Zoning Atlas Page: 1855

Parcel ID: D02-02091C & D02-08-52C

Zoning History:

Most recent amendment – P.D. 06-336 approved by the Memphis City Council on December, 19, 2006, permits an auto rental use in combination with the existing Sears Auto Center use.

The I-40/Germantown Parkway P.D. was approved by the Shelby County Board of Commissioners on 9/12/94 and the Memphis City Council on 9/13/94. It has been amended relative to condition III. L . and modified by the LUCB to reconfigure Parcel G and to permit the easternmost median opening less than the required 1,000 feet of spacing.

DEPARTMENTAL COMMENTS

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

City Engineer: No comments.

City Fire Division: Special use, use variance??

City Real Estate: None.

City/County Health Department:
No comments from the Water Quality Branch.

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.

Construction Code Enforcement: No comments received.

Memphis Light, Gas and Water: No comments received

AT&T: AT&T Tennessee has no comment regarding this request.

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

OPD-Regional Services: No comments received.

OPD-Comprehensive Planning: No comments received

Neighborhood Associations: No comments received

Cordova Leadership Council:

Cordova Community Watch, Inc.

Countrywood Neighborhood Association: