

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

**CASE NUMBER:** S.U.P. 09-218

**L.U.C.B. MEETING:** February 11, 2010  
(updated 2/5/2010)

**LOCATION:**

East side of Cherry Rd., opposite and south of intersection with Dunn Rd.

**COUNCIL DISTRICT - REGULAR:**  
**COUNCIL SUPER DISTRICT**

**#4**  
**#9**

**OWNER/ APPLICANT:**  
**REPRESENTATIVE:**

Allen Parker, Jr.  
J. Whitten Gurkin

**REQUEST:**

Motor Vehicle Service

**AREA:**

0.482 acres

**EXISTING LAND USE & ZONING:**

Has been in use for motor vehicle service; zoning is Local Commercial (C-L)

**SURROUNDING USES AND ZONING:**

**North:** Motor vehicle service use in the C-L District

**East:** Across the Cherry Bayou channel structure, sing-family residences in the Single-Family Residential (R-S6) District

**South:** Vacant office building in the C-L District

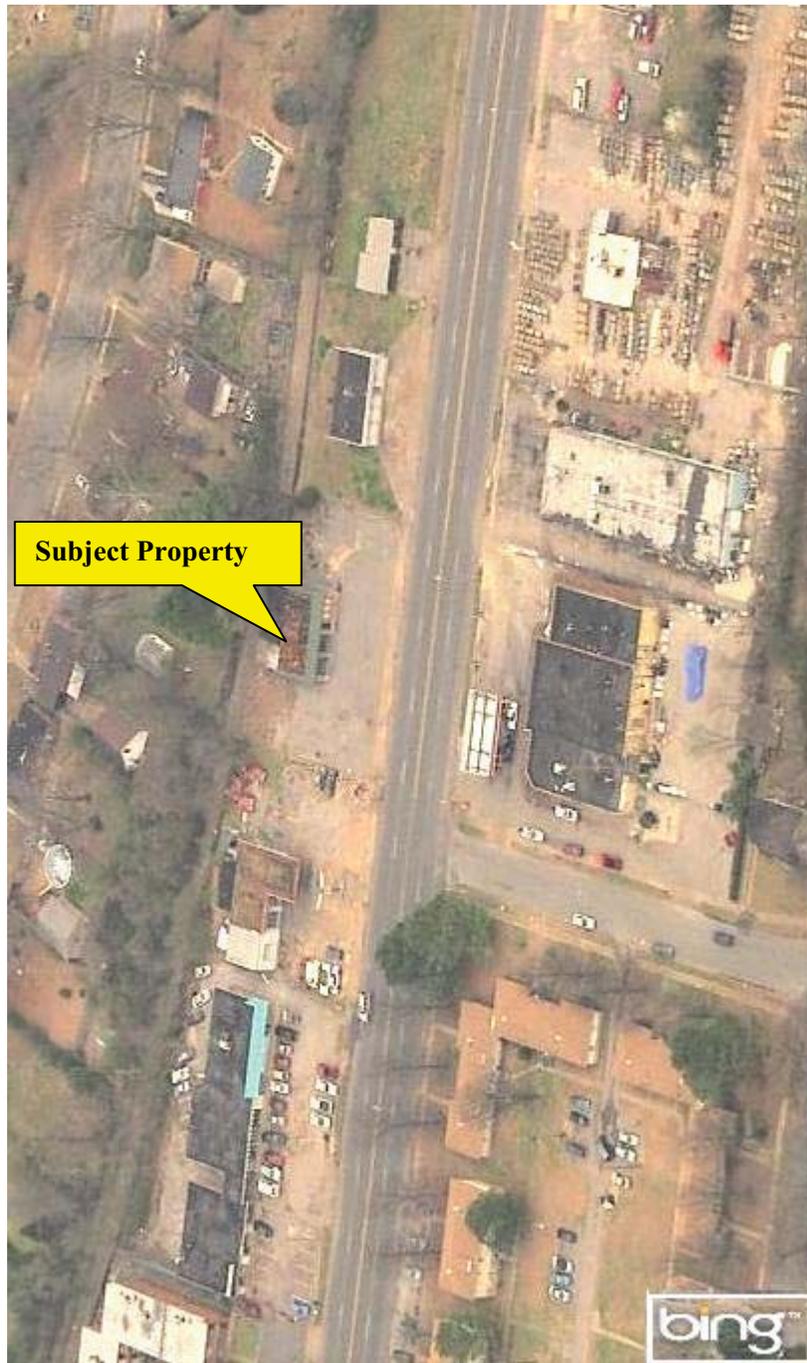
**West:** Across Cherry Road, a building materials supply yard and a multi-user commercial building in the C-L District

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION**

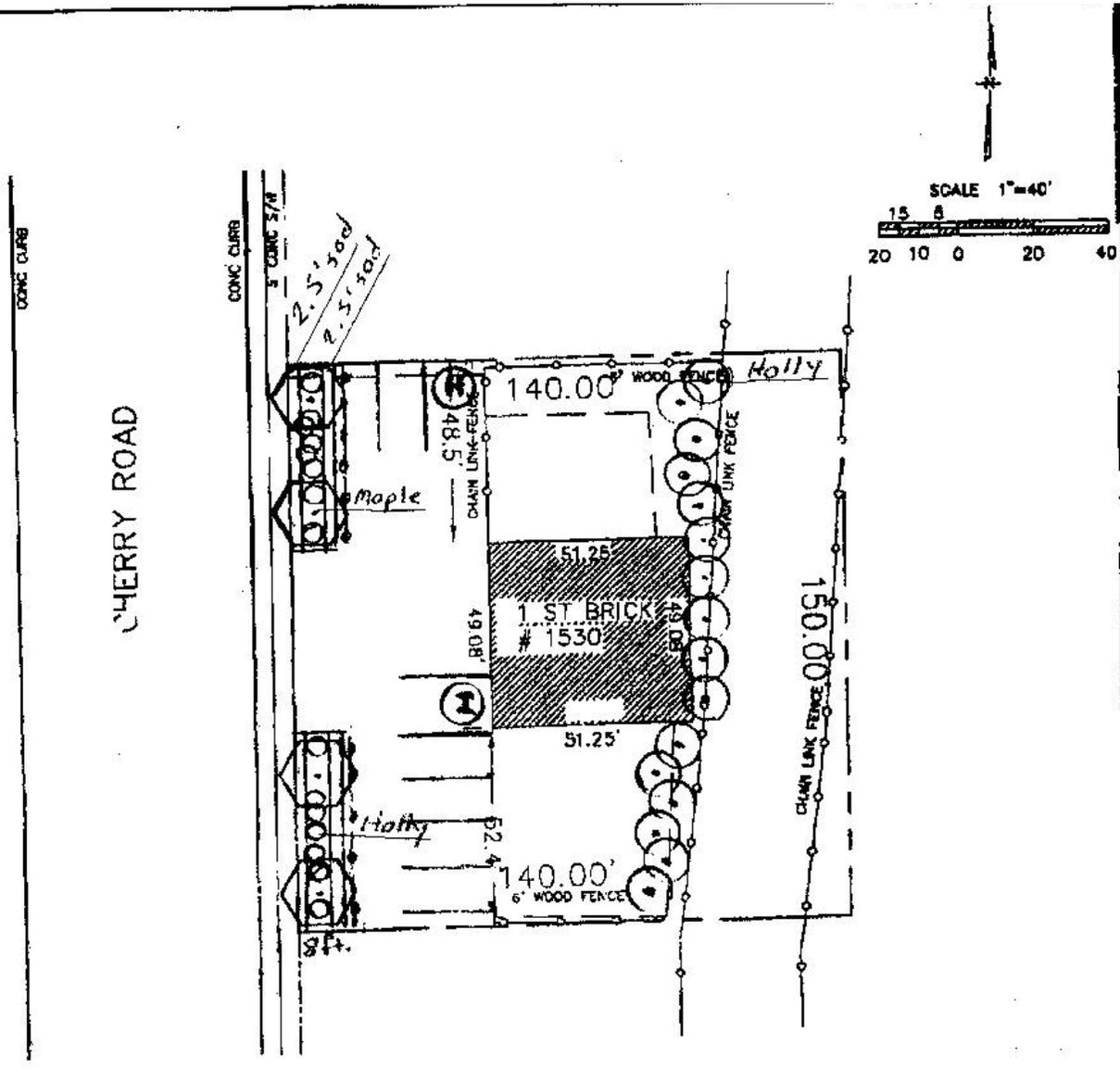
**Hold, for further refinement of the site plan and the results of expected neighborhood input**

**CONCLUSIONS**

- 1. Motor vehicle service on this property would make it one of two adjacent former service stations in this C-L zone being used in this way, which is somewhat consistent with their original design.**
- 2. The owner acquired this tax sale property through the Shelby County Trustee, and is trying to establish a use that will justify the expense of the tax bill.**
- 3. The applicant team seems willing to work to address the concerns of neighbors and the need for appropriate landscaping**



**Figure 1: Bird's Eye View of Cherry Road at Dunn Avenue Intersection**



**Figure 2: Draft Site Plan with Proposed Landscaping  
As revised for January 14 Land Use Control Board**

**FURTHER REVISIONS ARE ANTICIPATED PRIOR TO THE FEBRUARY 11 BOARD MEETING**

## **STAFF ANALYSIS UPDATE**

- The applicant team as of 01/8/09 was giving further consideration to the need and feasibility of various measures such those listed in the bullets from the original staff report. (Those – with one addition - are listed again just below as a continuation of the current staff recommendation.). One written comment from a neighbor had just come to the attention of the applicant team. For the convenience of the Board members, applicant team, etc. The two most recent comments follow in two Addendum Exhibits. Both of neighborhood comments that came in on this case are listed below on pages A-7 and A-8.
- In addition to work on the above mandate, as of 2/5/2010. the applicant team is in the process of arranging a meeting with the Colonial Acres Neighborhood Association as requested at the January 14 Land Use Control Board meeting.

**STAFF RECOMMENDATION: Hold, for further refinement of the site plan and the results of expected neighborhood input**

## **SITE PLAN CONDITIONS**

### **Motor Vehicle Service at 1530 Cherry Road**

#### **S.U.P. 09-218**

#### **As Proposed by OPD Staff for the February 11, 2010 Meeting**

A Special Use Permit is hereby granted to Allen Parker, owner, for the operation of a motor vehicle service establishment at 1530 Cherry Road on the lot recorded at the Shelby County Register's Office as Instrument Number 08082133, subject to the approved site plan and the following site plan conditions:

1. No new building construction shall occur in connection with the issuance of this special use permit.
2. Vehicle service and on-site parking shall be limited to automobiles, sport utility vehicles and light trucks. No service may be performed on medium and heavy-duty (cargo) trucks.
3. No auto body work shall be performed at this location. No vehicle requiring such work shall be parked overnight on this site.
4. Hours of operation shall be limited to the periods from sunrise to sunset.
5. Occupancy of the property as a residence is prohibited; provided that no more than one caretaker may spend the night if the necessary in connection with the approved motor vehicle service use.

6. No loudspeakers or sound equipment shall be used that would be audible in residentially zoned property.
7. No display or advertising of vehicles for sale at this location is permitted. This location is ineligible as the location of a motor vehicle dealer as regulated by the Tennessee Code Annotated.
8. Vehicles parked on site must utilize parking spaces that are clearly designated in conformance with the approved site plan. The number of vehicles shall be limited as follows:
  - a. Vehicles remaining on site overnight: maximum of (4) four
  - b. Total number of vehicles parked on site at any time: maximum of (8) eight
  - c. Medium and heavy duty (cargo) trucks: maximum of one (1) on site at a time, only for loading and unloading parts and equipment; not to be parked on site when not in use.
9. Improvement of the Cherry Road right-of-way is required subject to the review and approval of the City Engineer. Such improvement shall include replacing curb, gutter and sidewalk, all to the satisfaction of the City Engineer, in accordance with the Subdivision Regulations and the ADA requirements subject to the review and approval of the City Engineer, one standard curb cut may be installed to permit direct access to this use from Lauderdale Street. In connection with this installation, the sidewalk shall be rebuilt as necessary...
10. Streetscape and edge screening shall be installed and maintained in accordance with the landscaping requirements of the zoning regulations, provided that the Office of Planning and Development may approve equivalent as agreed upon and specified in detail in the approved site plan. Any wood fences shall be capped with a continuous row of wood beams along the top of the fence posts. No barbed wire, etc. shall be on fences in the front yard or along property lines.
11. No outdoor storage or display of tires or any other materials is permitted.

**Colonial Acres Neighborhood Association.  
Response to Review Materials**

I am responding to the special use variance request for the above property on behalf of Colonial Acres Neighborhood Association.

This property is currently in use as a motor vehicle service center.

We (CANA) are not in favor of granting the special use based on problems with the current business.

Reasons:

- Selling autos from this location
- On-site piles of tires & old appliances
- Numerous vehicles parked at the location, junky, not just temporary parking for those being serviced
- Residential use in rear of garage - 2 families? Living there
- Sanchez Auto Svc. Currently owes personalty taxes for 2008 & 2010 showing total of \$142.65

Sincerely,  
Wanda Tabor, President CANA

**10/29/2010**

**EXHIBIT: A-1  
Neighborhood Association Comments in Opposition**

I am writing in response to the request of the owner of 1530 for a variance. We live on the same side of the street at this property at 4362 Boyce Road. We first noticed this business back in the late winter/early spring and wondered what was going on. Several families reside at this establishment. They have been seen cooking outside and on weekends, there are several persons milling around the backside of the building. This business is just that. A Business. Not a residence. No one should be living there, much less, two or three families.

Also, the selling of vehicles from that establishment has turned the parking area of it into a used car lot. It is unsightly and an attractive nuisance. We are totally against any changes being made for the use of this business. This area is quickly going downhill and is beginning to look like a run-down commercial area instead of a neighborhood community. This needs to be stopped. It has already escalated into another business of "used tires" being opened two doors down and right next to my property.

Please do not allow our community to be taken over by persons and businesses such as these. I have been here all of my life and do not wish to be forced out of my childhood home due to the nature of events which are being allowed here. Further, there was a shooting on that establishment just a couple of weeks ago. This is the type of "business" that is going on there.

They are illegally selling automobiles, living at the establishment, (there are no showers), storing unsightly vehicles and tires on the premises, and generally bringing this neighborhood and the property values down.

Thank you for your assistance in this matter.

Russell Banks  
Phyllis Keller

**11/29/2010**

**EXHIBIT: A – 2  
E-Mail in Opposition**

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**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT  
(ORIGINAL) STAFF REPORT #17**

**CASE NUMBER: S.U.P. 09-218**

**L.U.C.B. MEETING: November 12, 2010**

**LOCATION:**

East side of Cherry Rd., opposite and south of intersection with Dunn Rd.

**COUNCIL DISTRICT - REGULAR:  
COUNCIL SUPER DISTRICT**

**#4  
#9**

**OWNER/ APPLICANT:**

Allen Parker, Jr.

**REQUEST:**

Motor Vehicle Service

**AREA:**

0.482 acres

**EXISTING LAND USE & ZONING:**

Has been in use for motor vehicle service; zoning is Local Commercial (C-L)

**SURROUNDING USES AND ZONING:**

**North:**

Motor vehicle service use in the C-L District

**East:**

Across the Cherry Bayou channel structure, sing-family residences in the Single-Family Residential (R-S6) District

**South:**

Vacant office building in the C-L District

**West:**

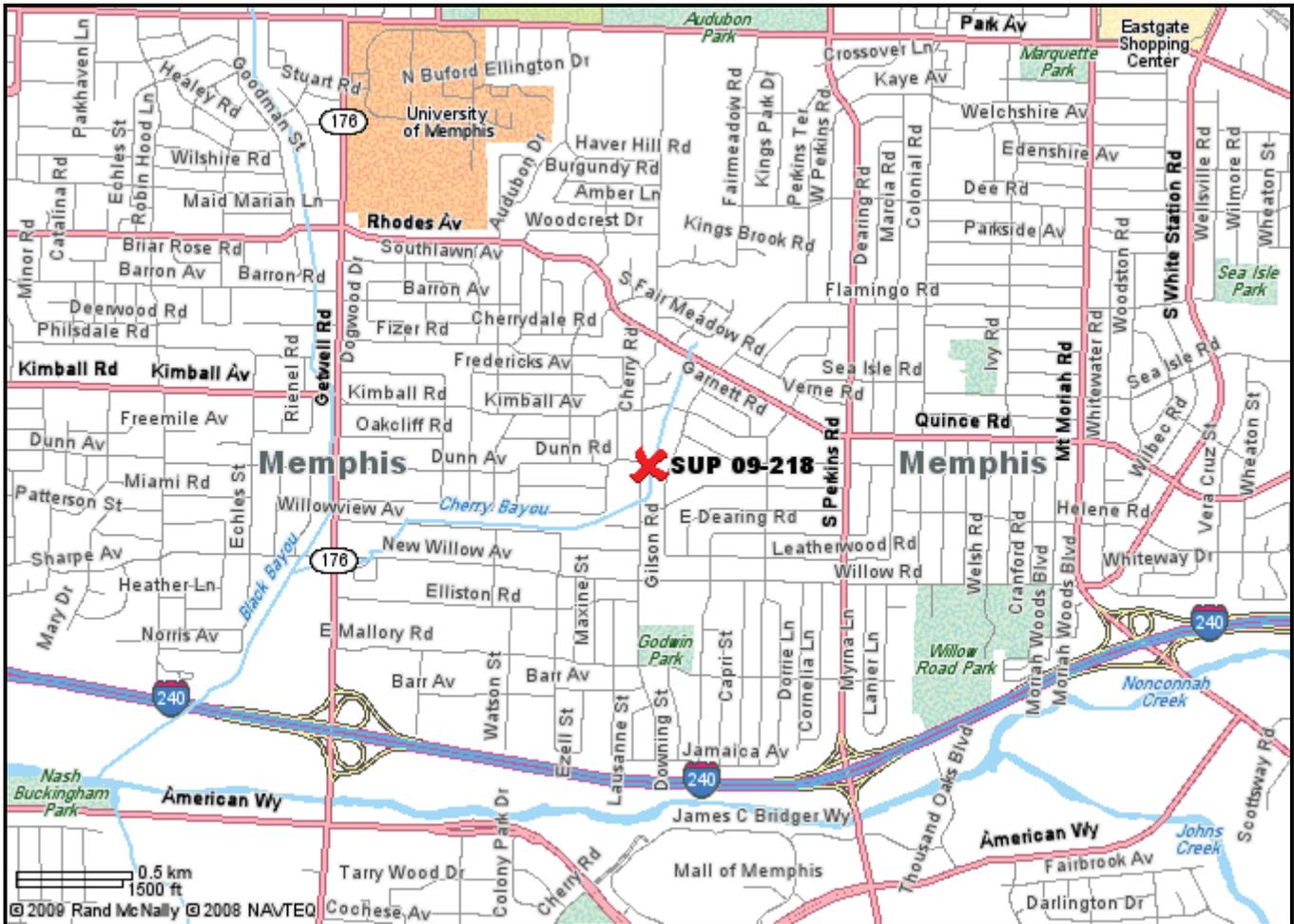
Across Cherry Road, a building materials supply yard and a multi-user commercial building in the C-L District

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION**

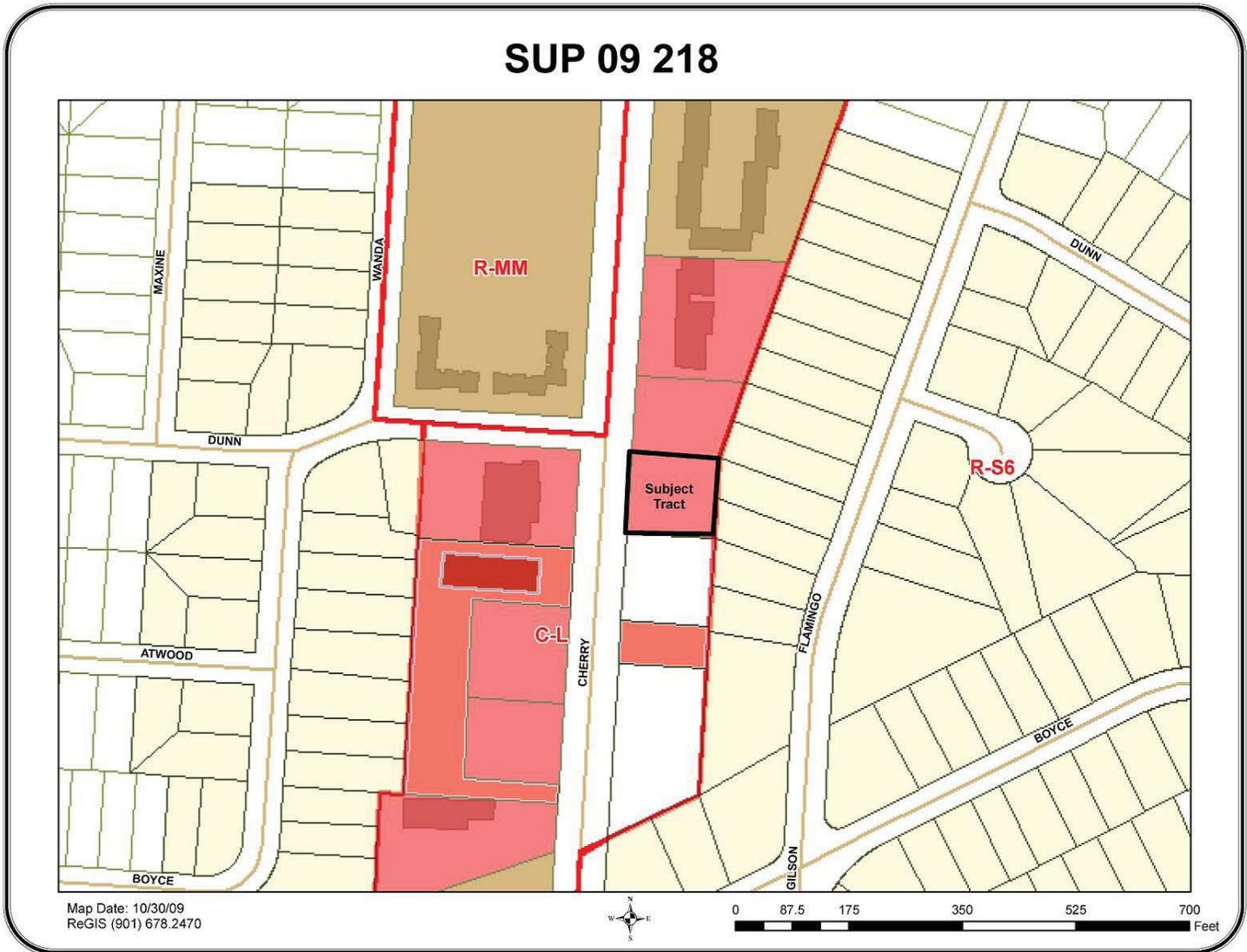
**Approval, with Conditions**

**CONCLUSIONS**

- 2. The building on the subject property was designed to serve the function, motor vehicle service, for which approval is being requested.**
- 3. Motor vehicle service on this property would make it one of two former service stations being used in this way that would be more appropriate in the Highway Commercial (C-H) District. Motor vehicle service on this property would make it one of two former service stations being used in this way.**
- 4. There are a number of unresolved issues that stand in the way of the development of satisfactory site plan for this property.**



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



**Figure 2: Zoning and Land Use in the Vicinity of the Subject Property**

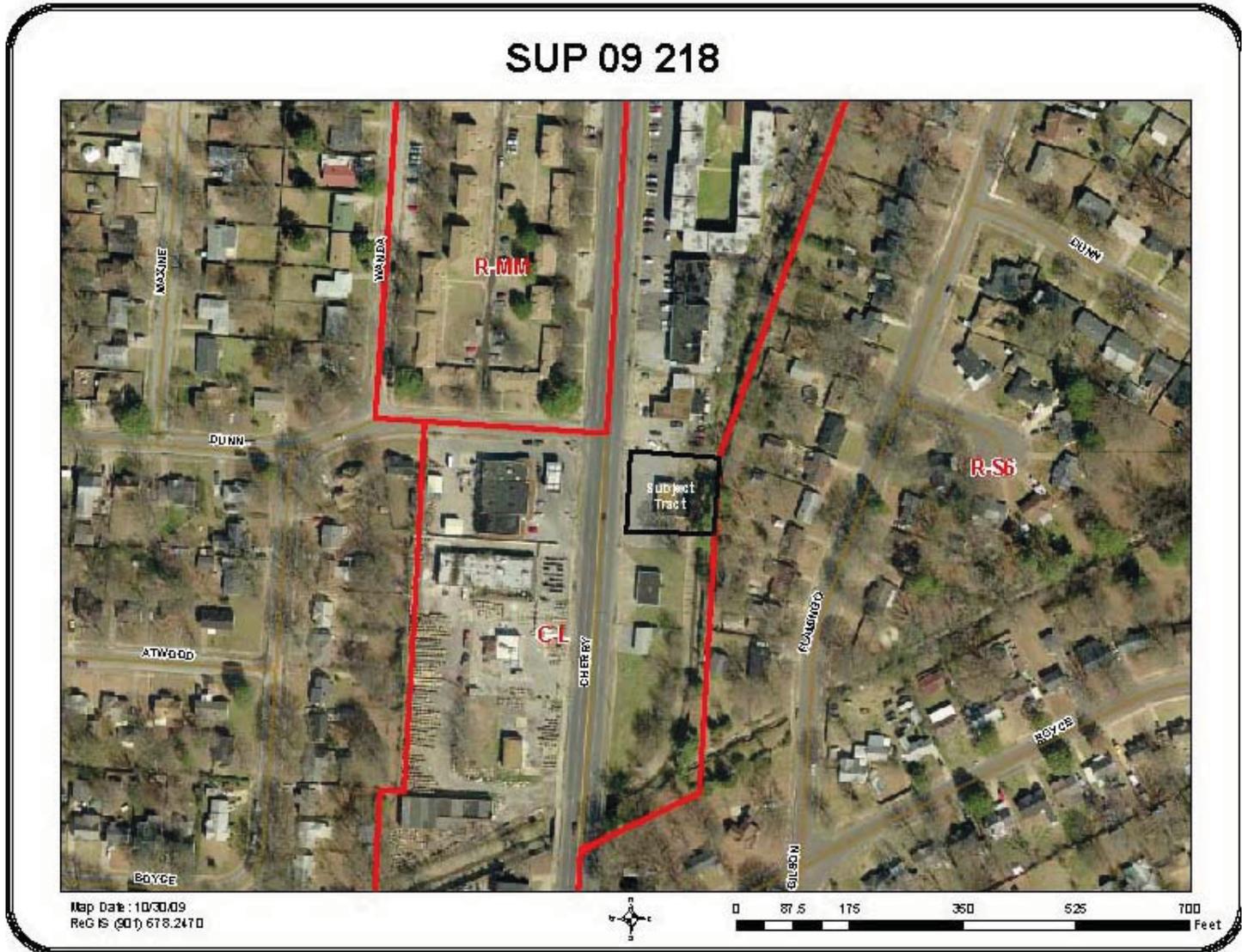


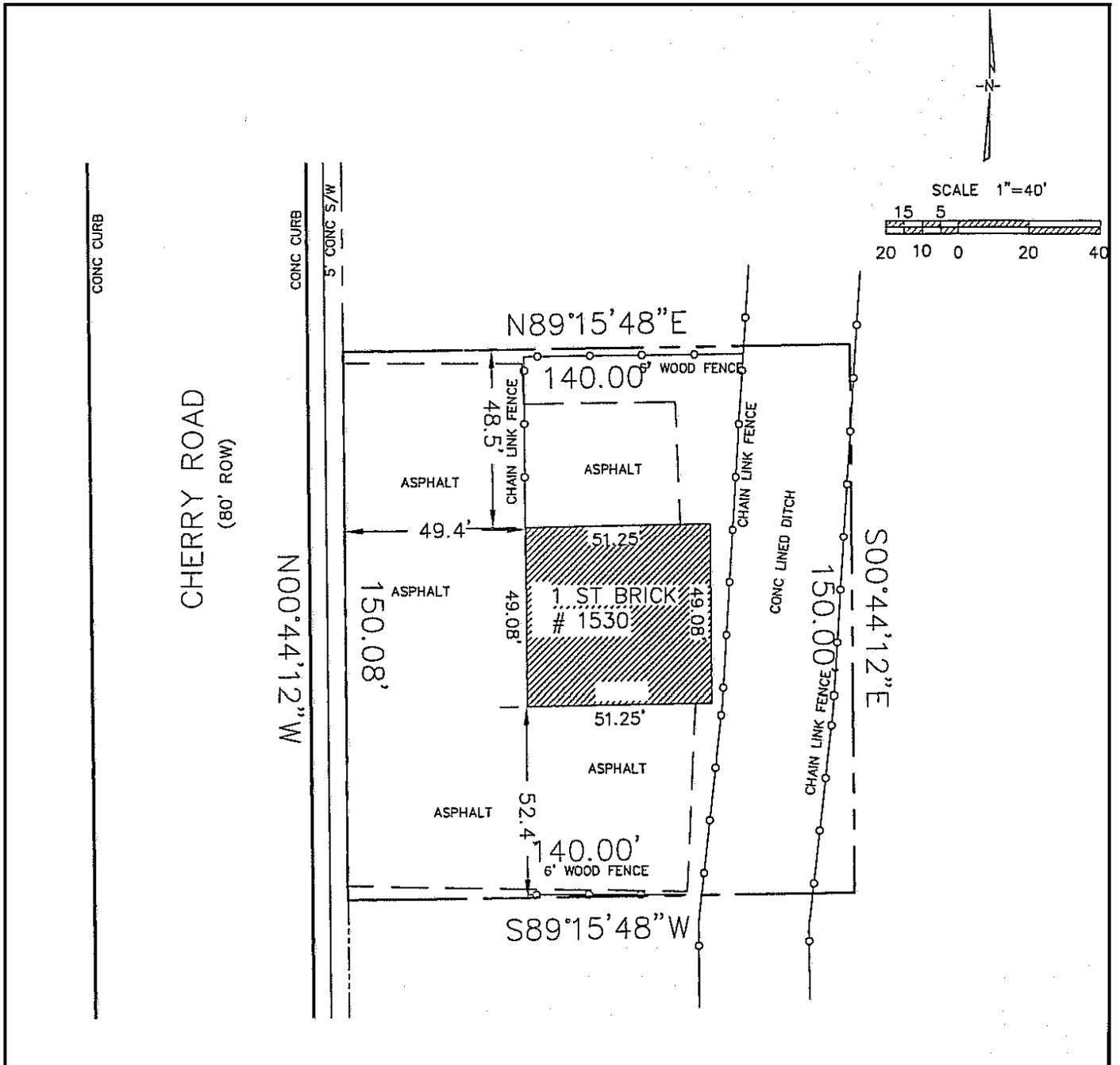
Figure 3: Overhead View of vicinity



**Figure 4: Overhead View of Subject Property**  
**(Note: Assessor's parcel mapping shows a 130' width, instead of the actual 150 feet.**  
**The subject property includes the entire parking lot.)**



**Figure 5: Oblique overhead view of commercial area along Cherry Road at Dunn Rd.  
Back property line of subject property is marked by arrows.  
*To see this from the intended perspective, rotate the page so that the arrows are pointing downward.***



**Figure 6: Plot Plan in Lieu of Site Plan**  
(Original drawing prepared by Whalen Surveying)



**Figure 7: On the subject property at 1530 Cherry Road, this building was originally built in 1954, apparently as a two-bay auto service garage.**



**Figure 8: The northern property line follows the curbing shown here behind the SUV. Out of sight behind that vehicle is a 6' high wood fence. The pole-mounted lighting fixture is on the adjoining property, which may be seen below in Figure 12. North of the main building, the rear of the property has been fenced off --- apparently on a temporary basis to confine two dogs that are kept there.**



**Figure 9: This is a view of the side yard on the south side of the subject property. A sight-proof wood fence has been erected along the southern property line at the rear of the site.**



**Figure 10: This apparently vacant office building at 1542 Cherry Road borders the subject property on the south.**



**Figure 11: The commercial uses along the east side of Cherry Road extend south to include this property at 1550 Cherry.**



**Figure 12. On the north side of the subject property is this motor vehicle service use at 1510 Cherry. The wood fence visible at the right side of this view was installed at the rear of the property line that separates these two lots.**



**Figure 13: Across the street at 1553 Cherry, southwest of the subject property, is a dealer in building supplies --- specifically decorative stone slabs and tiles. Apparently the product is stored outdoors on what appear to be pallets, as may be seen through the fence in this photo.**



**Figure 14: North of the stone yard, at the southwest corner of Cherry and Dunn Avenue is a building with a convenience store and gas pumps near the corner, and couple of small commercial bays in the south end, including this restaurant site.**

## **STAFF ANALYSIS**

### **Site and Location**

The subject property consists of one 0.48 acre parcel, which corresponds to Lot 1 of Colonial Terrace Commercial Subdivision recorded in 1956 (*PB 20 Pg 52.*) This property has 150 feet of frontage on the east side of Cherry Road and a platted depth of 140 feet. However, the back yard is traversed, from north to south by a stream known as Cherry Bayou, which has been confined to a 31' wide concrete drainage ditch. The ditch has severed access to a small area at the southeast corner of the platted lot.

The subject property is occupied by a 2,400 sq. ft. commercial building constructed in 1954 in a design typical of a traditional "gas station" with two service bays. Except for small parts of the rear yard and the northern side yard, the entire property is paved with asphalt. Its depth ranges from 114 feet along the north property line to 100 feet along the south property line.

The subject property is located on the east side of Cherry Road in the segment between Park Avenue and Willow Avenue. It is designated as a major thoroughfare and constructed as a 60' wide roadway in an 80' wide right of way. Lacking direct access from any major traffic generator, except Harding University at Park Avenue, Cherry Road is overbuilt with respect to the volume of traffic that it currently handles.

The subject property is part of an area designed for "Neighborhood Shopping" use in the zoning ordinance adopted in 1955. This small commercial area along Cherry Road is more or less centered at Dunn Avenue, which is just a major local street segment that is cut off from any other major roads. North of Dunn, a large apartment complex lines each sides of Cherry Road as it approaches the intersection with Kimball, which is functionally a minor collector at that point

### **Proposed Development**

The applicant became the owner upon acquiring this property from Shelby County through a tax sale. The objective is to permit the continuation of the motor vehicle service use on this property.

It is the understanding of staff that the former owner would be given the opportunity to continue his operation as a tenant.

### **Neighborhood Context**

The subject property is in a predominantly single-family area between the Colonial Acres neighborhood to the east and the Dunn Road Neighborhood to the west. It is part of a commercial area intended to serve this community at the neighborhood level. This C-L district zone does in fact contain a few neighborhood friendly uses, including a (grocery) market and a laundromat, and a café. It also contains three auto-related uses, including motor vehicle service on the subject property and on the property to the north, and a gas station / convenience store immediately across the street.

As illustrated in Figure 13, there is also a 3-acre building supplies yard with outdoor storage of decorative stone materials, apparently serving a market area that is metropolitan-wide or greater.

### Special Use Permit Standards

In the current zoning ordinance, motor vehicle service uses are permitted by right in industrial districts and the Highway Commercial (C-H) District. However, in the Local Commercial (C-L) District, a specific use permit must be obtained; and this involves the approval of a site plan and site plan conditions by the Memphis City Council. The zoning ordinance sets forth five general standards of compatibility established for all special use permits<sup>1</sup>. The zoning ordinance does not specify any specific standards for motor vehicle service uses, but it is understood that the issues typically raised by this type of use need to be addressed in a way that will protect and maintain compatibility with the neighborhood. .

### Other Planning Issues

With this particular application, staff currently has the handicap that no specific site plan was proposed in the material submitted. It is therefore impossible, working within the current deadlines, to craft a detailed plan and appropriate conditions in the time frame of this report. If the Land Use Control Board believes that the proposed use is worthy of consideration, it may be necessary to withhold a decision on this application until the December meeting in order to have a specific plan for review.

## **CURRENT STAFF RECOMMENDATION:**

### ***Hold for Development of a Site Plan***

The following key issues need to be addressed in the site plan:

- Restoration of curbing and sidewalk, including the installation of one standard curb cut and the elimination of all other curb cuts.

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#### **1 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.

- Parking layout which avoids a massing of vehicles in the front yard of the property, and which designates areas for employee and customer parking.
- No onsite parking of vehicles needing body work.
- Vehicles larger than light trucks to be prohibited as incompatible with this neighborhood-serving location.
- No outdoor storage.
- Any security fencing to be subject to careful review and approval by OPD staff for consistency with a neighborhood friendly environment.
- Design, installation and maintenance of landscaping as required by the zoning regulations, including treatment of the streetscape and screening of property edges along the south and east sides, subject to the review and approval of OPD staff.
- No work to be done on site between sunset and sunrise.
- No overnight occupancy except as may be permitted by zoning regulations on terms to be specified herein.

## **SITE PLAN CONDITIONS**

### **Motor Vehicle Service Use at 1530 Cherry Road**

#### **S.U.P. 09-218**

**To Be Recommended by OPD Staff for the  
November 12, 2010 Meeting.**

*[Note: Generic site plan conditions will be provided as a basis for action the Land Use Control Board may wish to take at the time of the scheduled public hearing.]*

## **GENERAL INFORMATION**

<b>Coordinates:</b>	35° 19' 41"N, 89° 42' 15"W
<b>Parcel Number:</b>	066002 00025
<b>Street Address:</b>	1530 Cherry Road, 38117
<b>Street Frontage:</b>	Cherry Road -- 150 feet on this designated major thoroughfare, with a 60' pavement in an 80' ROW.
<b>Planning District:</b>	Quince
<b>Census Tract:</b>	93
<b>Annexation Status:</b>	March 24, 1953

**Zoning Atlas Page:** 2240

**Zoning History:** 1955 – Designated “C-1” Neighborhood Shopping District under the 2<sup>nd</sup> zoning ordinance.  
1981 – Converted to Local Commercial (C-L) with the adoption of the current zoning 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.
2. City sanitary sewers are available at developer's expense.

#### Roads:

3. Improve the Cherry Road right-of-way by replacing curb, gutter and sidewalk, all to the satisfaction of the City Engineer, in accordance with the Subdivision Regulations and the ADA requirements.

#### 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. All existing sidewalks and curb openings along the frontage of this site shall be inspected for ADA compliance. The developer shall be responsible for any reconstruction or repair necessary to meet City standards,
7. One curb cut will be permitted.

### **City Fire Division:**

### **City/County Health Department:**

<b>Pollution Control:</b>	No objections.
<b>Environmental Sanitation:</b>	No objections.

### **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 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 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.

**OPD-Regional Services:** No comments

**City Board of Education:** No comments received.

**Construction Code Enforcement:** No comments received.

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

**OPD-Plans Development:** No comments received.

**Memphis Park Commission:** No comments received.

**Colonial Acres Neighborhood Association**

See Comments in Opposition in Exhibit A1 of the Addendum, which precedes this original staff report

**Other Neighborhood Associations / Organizations:** No comments received.

*Dunn Road Area N.A.:*

*Audubon Park Community Association:*

*University District Incorporated:*