

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

**CASE NUMBER:** Z 11-106

**L.U.C.B. MEETING:** August 11, 2011

**LOCATION:** Northeast corner of Fair Oaks Avenue and Jackson Avenue

**COUNCIL DISTRICT:** 5

**SUPER DISTRICT:** 9

**OWNER OF RECORD / APPLICANT:** Ware Properties, LLC

**REPRESENTATIVE:** W.H. Porter Consultant, PLLC

**REQUEST:** Rezone property from RU-1 (Residential Urban -1) to CMU-3 (Commercial Mixed Use-3)

**AREA:** 0.215 Acres

**EXISTING LAND USE & ZONING:** Single Family Residence within the RU-1 (Residential Urban -1) District

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:**  
Rejection as a rezoning case: Approved as a Planned Development

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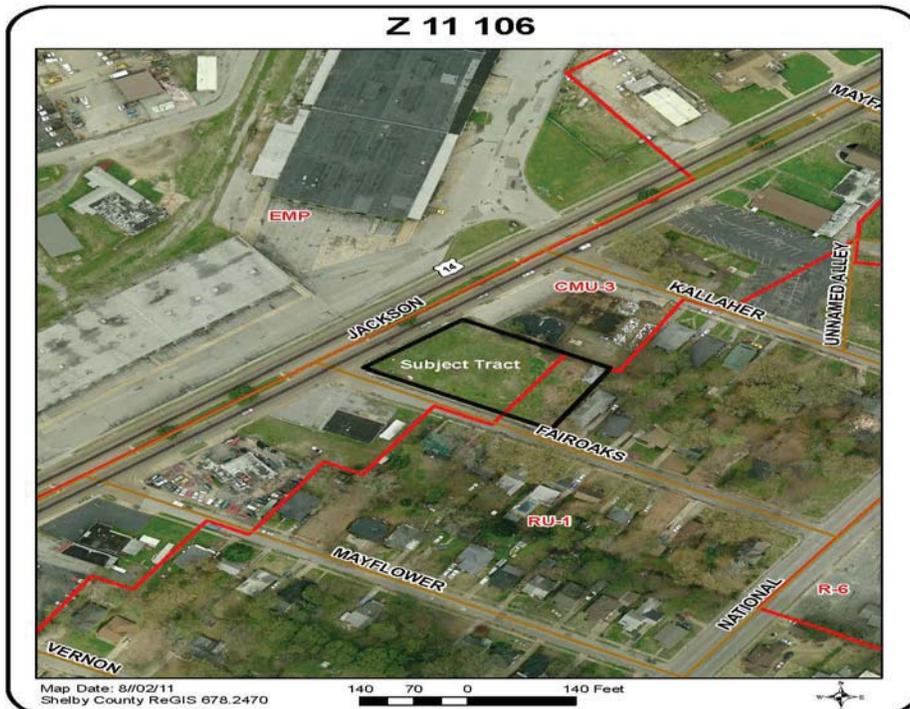
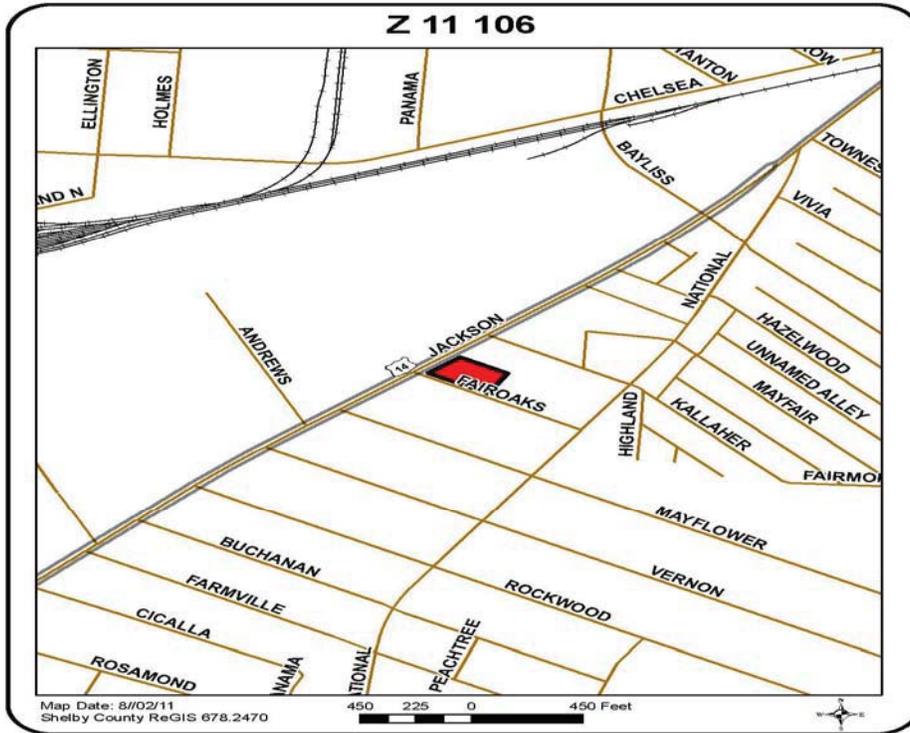
**CONCLUSIONS:**

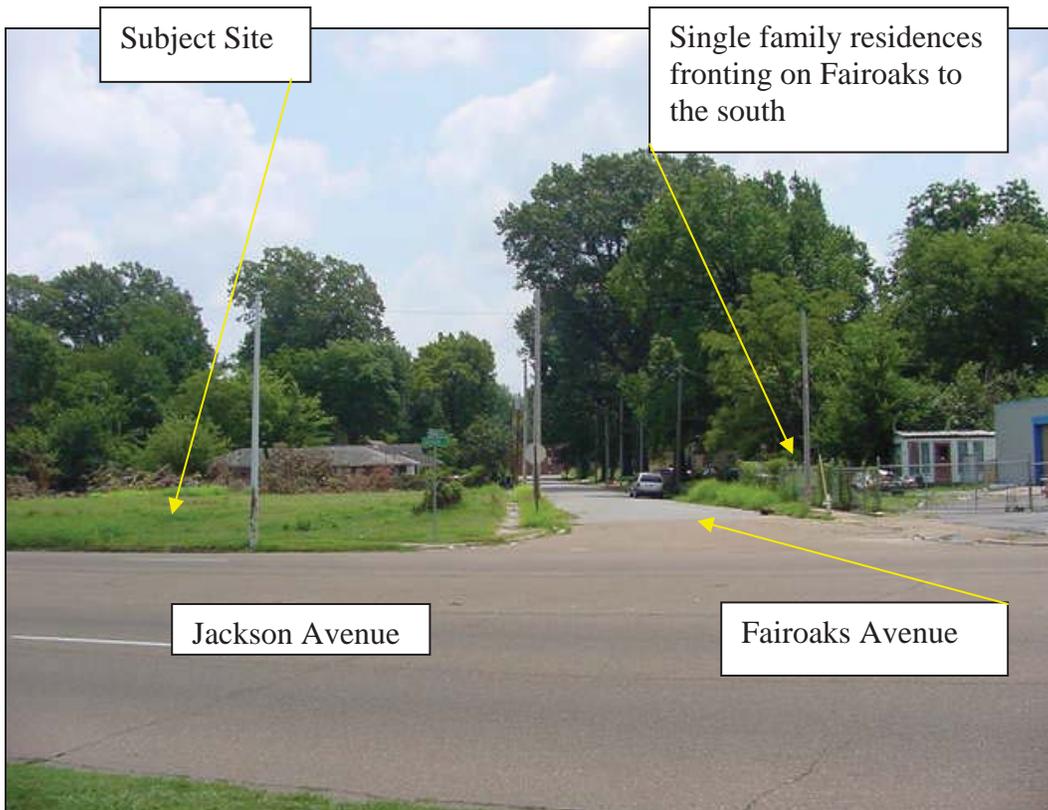
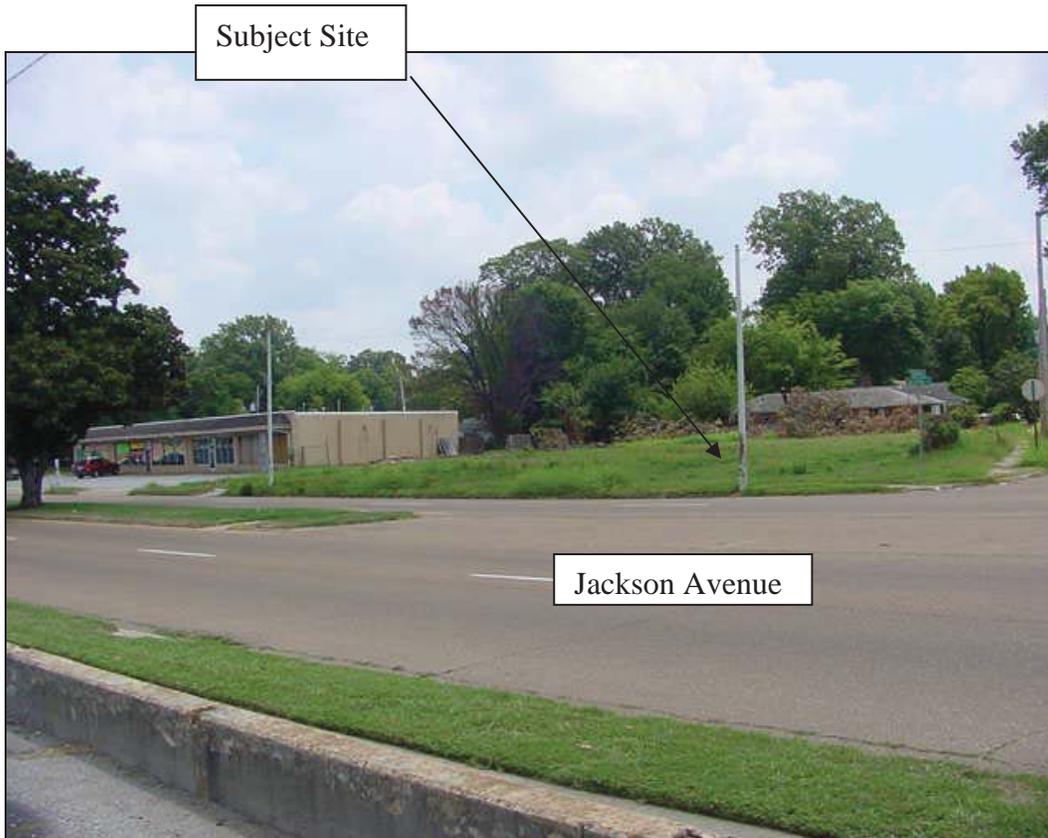
The subject site is a .17 acre parcel situated on the north side of Fair Oaks Avenue approximately 275 feet east of Jackson Avenue. This lot was originally created by the E.O. Bailey Subdivision in 1911. The subject parcel is currently zoned RU-1 (Residential Urban -1) and is intended to be consolidated with a larger commercial property and used for the development of a small retail store. This property is currently zoned CMU-3 (Commercial Mixed Use -3) and fronts on the southeast corner of Jackson Avenue and Fair Oaks Avenue and consists of approximately .81 acres.

The comprehensive area of the proposed site will comprise a total of about an acre. Rezoning the subject parcel from RU-1 which is predominantly intended for the development of single and two-family residential dwellings to CMU-3 intended for more intense commercial uses has the potential to produce conflicting land uses and ultimately disrupt the character of the neighborhood and the intent of the layout and design of the subdivision. This rezoning imposes the most detrimental affect upon the residential dwellings along the south side of Fair Oaks which will face this potential development site.

This case, as submitted, should be rejected and instead approved with conditions as a Planned Development. Converting this case to a PD will provide the applicant an opportunity to go forward with the development of this property while providing a site plan that will address potential incompatibility and conflicting land use concerns...





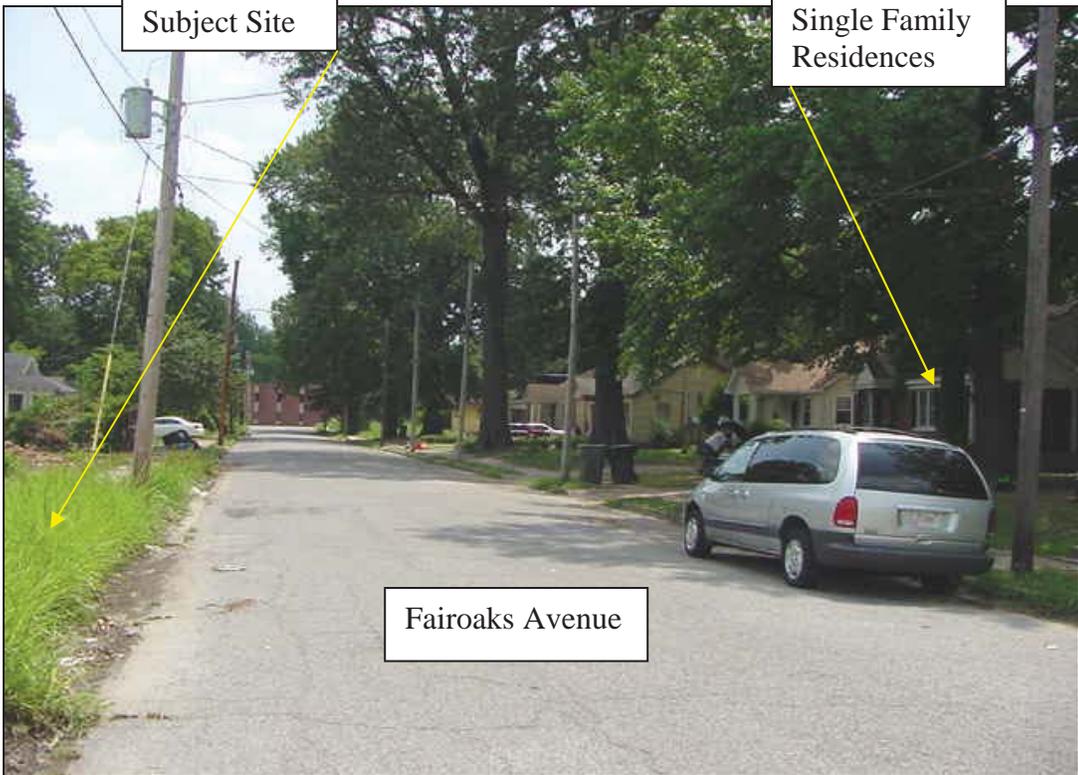


Single family residence  
directly abutting the  
subject site to the east

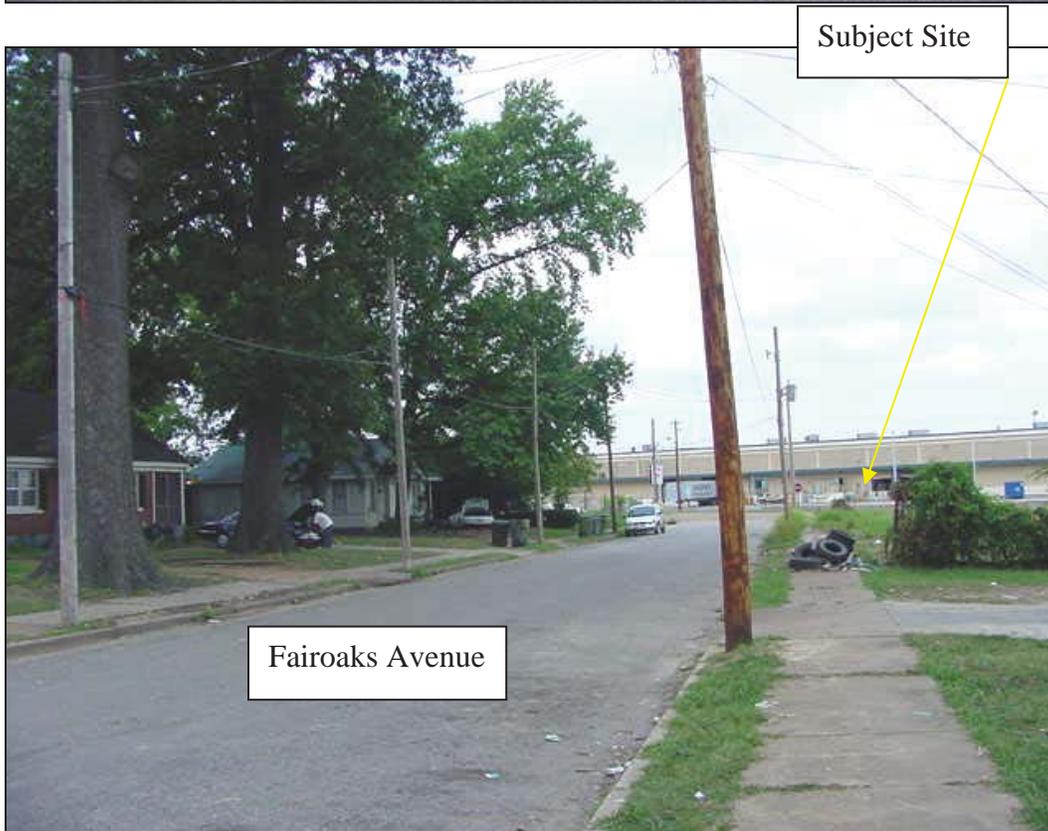


Subject Site

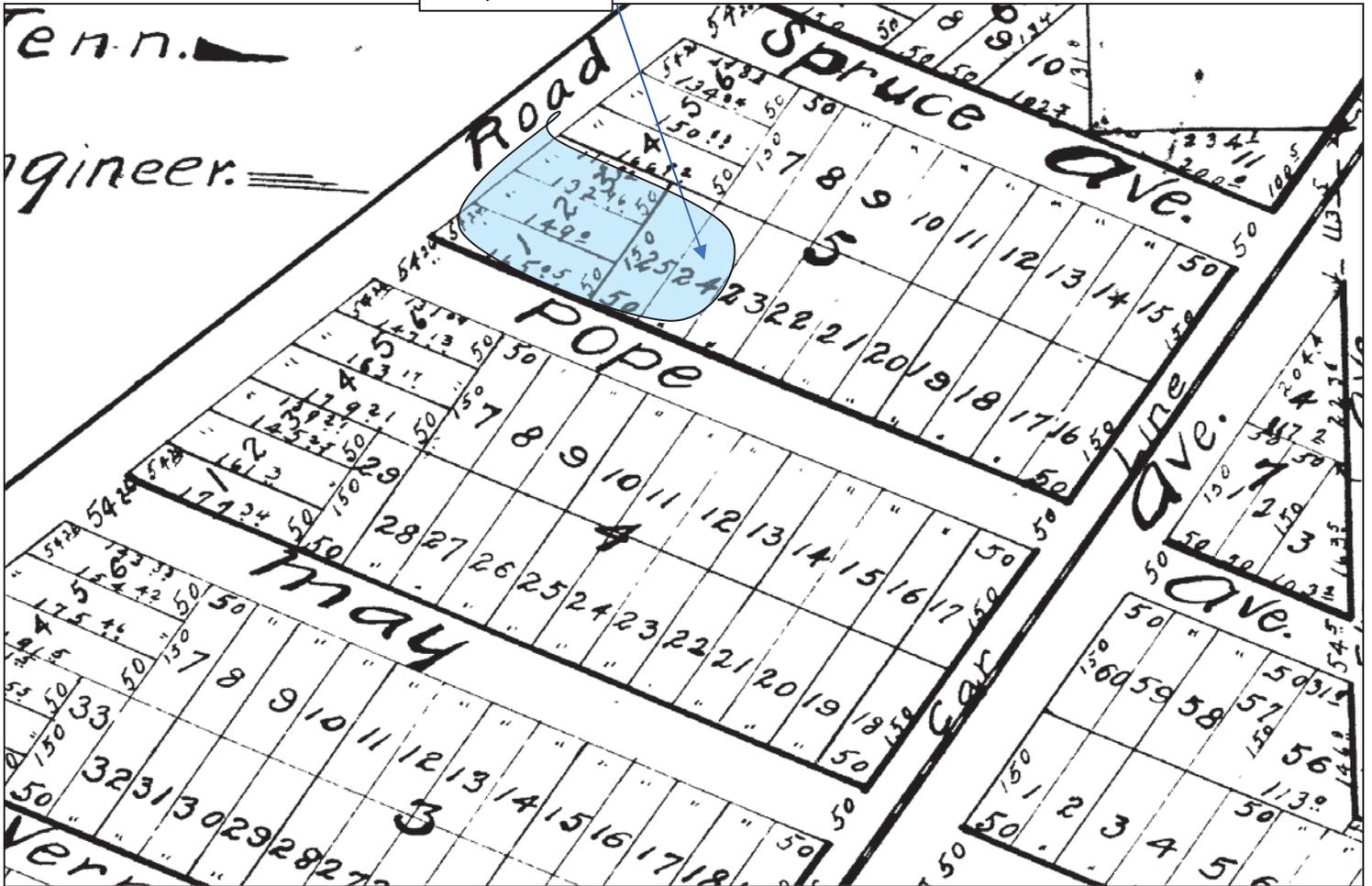
Single Family  
Residences



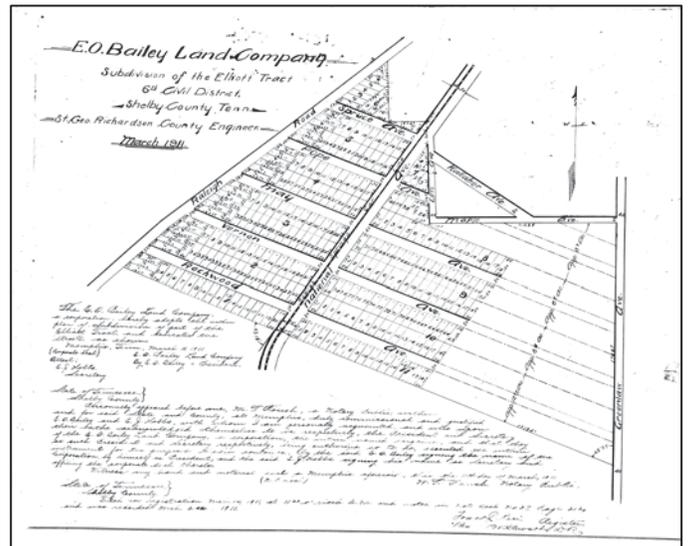
Fairoaks Avenue



Subject Site



As illustrated in the original E.O Bailey Subdivision Plat established in March, 1911 lots 25 and 24 (lot 24 is the subject parcel) were platted to address Pope (later changed to Fair Oaks) and lots 1 through 6 were platted to address Jackson. The orientation of these two lots suggests that they were intended to coincide with lots on the south side of Fair Oaks. According to Historic Zoning Atlas data some or all of Lot 25 is currently zoned RU-1 and only lot 24 is being requested to be rezoned but the end result is that two parcels originally planned to address Fair Oaks and perceivably intended to match in use and character to the south side of the street as made evident by this plat will be developed in contrast to the intent and existing layout of the subdivision. This request as submitted may increase the potential for incompatibility as well as disrupt the consistency of the already established neighborhood now as well as potentially into the future as this zoning change would run with the land and would be applicable to any future projects.





## **STAFF ANALYSIS:**

### Site Characteristics

The subject site is a .17 acre parcel situated on the north side of Fairoaks Avenue approximately 275 feet east of Jackson Avenue. This parcel is zoned RU-1 (Residential Urban -1) and is intended to be consolidated with a larger commercial property to the west consisting of approximately .81 acres fronting on the east side of Jackson. The 2 subject lots are intended to be used for the development of a Dollar General retail store. The comprehensive area of the proposed site will comprise a total of .98 acres.

### Conclusions

Although, the intended use for this site, Dollar General, will offer additional retail choices to the community and may help to inspire other projects within the area. We feel that this application and proposed rezoning, as submitted, has the potential to substantially encroach into the existing residential neighborhood; our recommendation is that it be rejected as submitted. When a parcel is rezoned its automatically inherits the rights to be developed for any use within the proposed district the intended use could be designed to fit within the context of the community with some minor site plan requirements/conditions.

We recommend rejection of this zoning application because we find it difficult to justify. The Unified Development Code Art. 9.5.7 (Zoning Review Criteria) suggests that recommendations be based upon:

#### **1. Compatibility with present zoning**

The subject parcel is currently zoned residential (RU-1) which primarily allows, single family and two-family residential structures. In fact the Unified Development Code (Art. 2.2.2, D - Residential Urban Districts) comments that this district is intended to “encourage residential infill on single lots and small tracts as well as new development on larger tracts in traditional urban patterns that mimic established portions of surrounding neighborhoods” This section also suggests that a limited amount of corner commercial uses be allowed subject to performance measures. The request is to rezone the subject parcel to the most intense commercial district (CMU-3) which allows for more intense commercial use. The planned use being a small retail store may fit within the current context but performance measures/conditions would help to promote a balance between the land uses.

#### **2. Suitability of allowed new district uses**

Although the planned future use of the subject site is a small retail store, zoning runs with the land and rezoning this property to CMU-3 would allow, by right, more onerous uses such as: light manufacturing and warehouse as well as vehicle sales.

Where as, the main purpose and intent of a Planned Development as written in UDC Art. 4.11, is “to create a more desirable use of the land, promote more coherent and coordinated development, and a support a better physical environment than would be possible under a single base zoning district”.

Planned developments are intended to be used as a tool to apply creativity and design that will offer symmetry and cohesion between new developments and existing communities.

This application was initially submitted as a proposed rezoning but we felt that this project could benefit if it were considered as a Planned Development. The logic of converting this case from a “straight rezoning” to a Planned Development is that a Planned Development will produce a site plan that will provide an opportunity to implement a design/site plan that will help to minimize the impact of the proposed commercial use upon the existing residential community. It will also provide some protection against potentially onerous and incompatible land uses in the future and support a more predictable land use pattern for the neighborhood.

#### Recommendation

Rejection of the initial Zoning Application and approval as Planned Development

### **Planned Development Conditions**

1. Continue brick wall proposed for the rear of the site to traverse Fair Oaks from the rear of the property to the Fair Oaks Avenue curb-cut. The wall shall be constructed at 3-4 feet in height. Landscaping shall be installed along the south face of the building in grass strip along the brick wall, between the wall and the sidewalk.
2. The south facing wall of the building shall be constructed of split faced brick, architectural features along the wall shall be implemented at least every 40 feet to “break-up” the blank wall surface (paint color is not considered substantial).

**GENERAL INFORMATION:**

**Planning District:** Jackson

**Census Tract:** 11

**Street Frontage:** ± 163 feet

**Zoning Atlas Page:** 1940

**Parcel ID:** 043053 00015

**Zoning History:** RU-1

**DEPARTMENTAL COMMENTS:**

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

**City Engineer:**

City sanitary sewers are available at developer's expense. Traffic signal improvements may be required as part of the corner improvements. The curb cut on Alcy is too close to the signalized intersection. It would need to be relocated near the west property line.

**City Fire Division:** No comments received.

**City Real Estate:** No comments received.

**City/County Health Department:** No comments received.

**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.

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

- **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 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 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). Application for utility service is necessary before plats can be recorded.
  - All residential developers must contact MLGW's Residential Engineer at 901-528-4855 for application of utility services.
  - All commercial developers must contact MLGW's Builder Services at 901-367-3343 to initiate the utility installation process.
- **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.

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

**OPD-Regional Services:** No comments received.

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

**Neighborhood Associations:** No comments received.