

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT #21**

CASE NUMBER: UV 08-06 **L.U.C.B. MEETING:** June 12, 2008
LOCATION: West side of Millbranch Rd; 374 feet south of Hester Road
OWNERS / APPLICANTS: Robert & Renee Lutz
REPRESENTATIVE: Jim Kincaide
REQUEST: Barber and / or beauty shop
AREA: 0.32 acres
EXISTING LAND USE & ZONING: Vacant residential structure adapted for office use in the Limited Office (O-L) District

SURROUNDING USES AND ZONING:

North: A building in the O-L District owned by a religious organization that is not indicated as tax exempt, although religious services are advertised here
East: Across Millbranch Road, an office building regulated by the Anthony Tate Office Planned Development (PD 89-342)
South: Dentist's office in the O-L District
West: Single-family residence fronting on Lochinvar Drive in the RS-10 District

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION
Rejection

CONCLUSIONS

- 1. There is nothing unique about this property that would satisfy the criteria for a use variation.*
- 2. Since barber/beauty shops are considered by the zoning ordinance to be more intensive than the offices allowable in the Limited Office (O-L) District, the approval of this request is likely to encourage similar applications on nearby properties that would have the effect of substantially changing the character of this street frontage.*
- 3. The area appears to be well supplied with the other barber/beauty service establishments without necessitating an additional change in use through what is supposed to be an extraordinary procedure.*



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

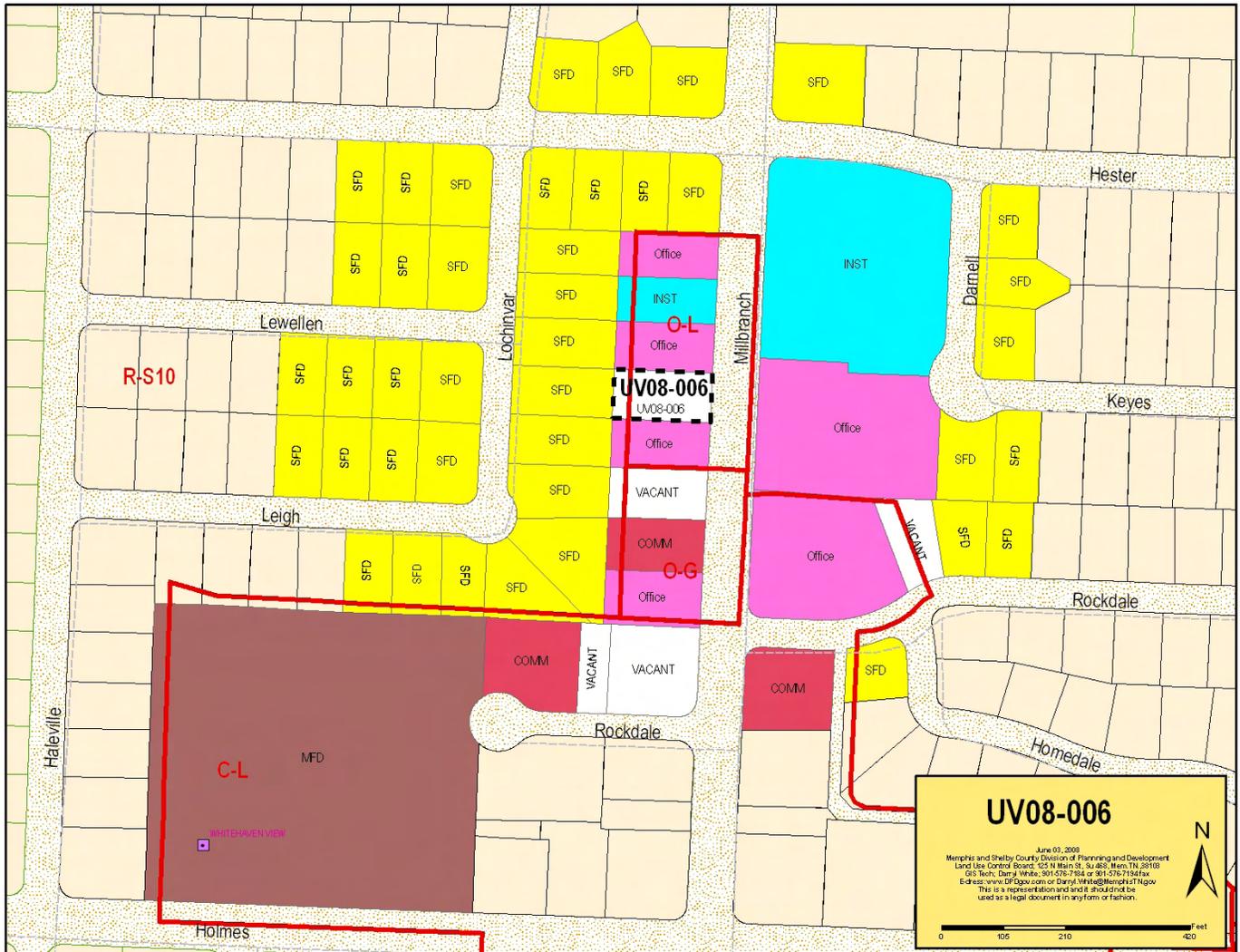


Figure 2: Land Use and Zoning in the Vicinity



Figure 3: Overhead View of Vicinity



Figure 4: Overhead view of subject property

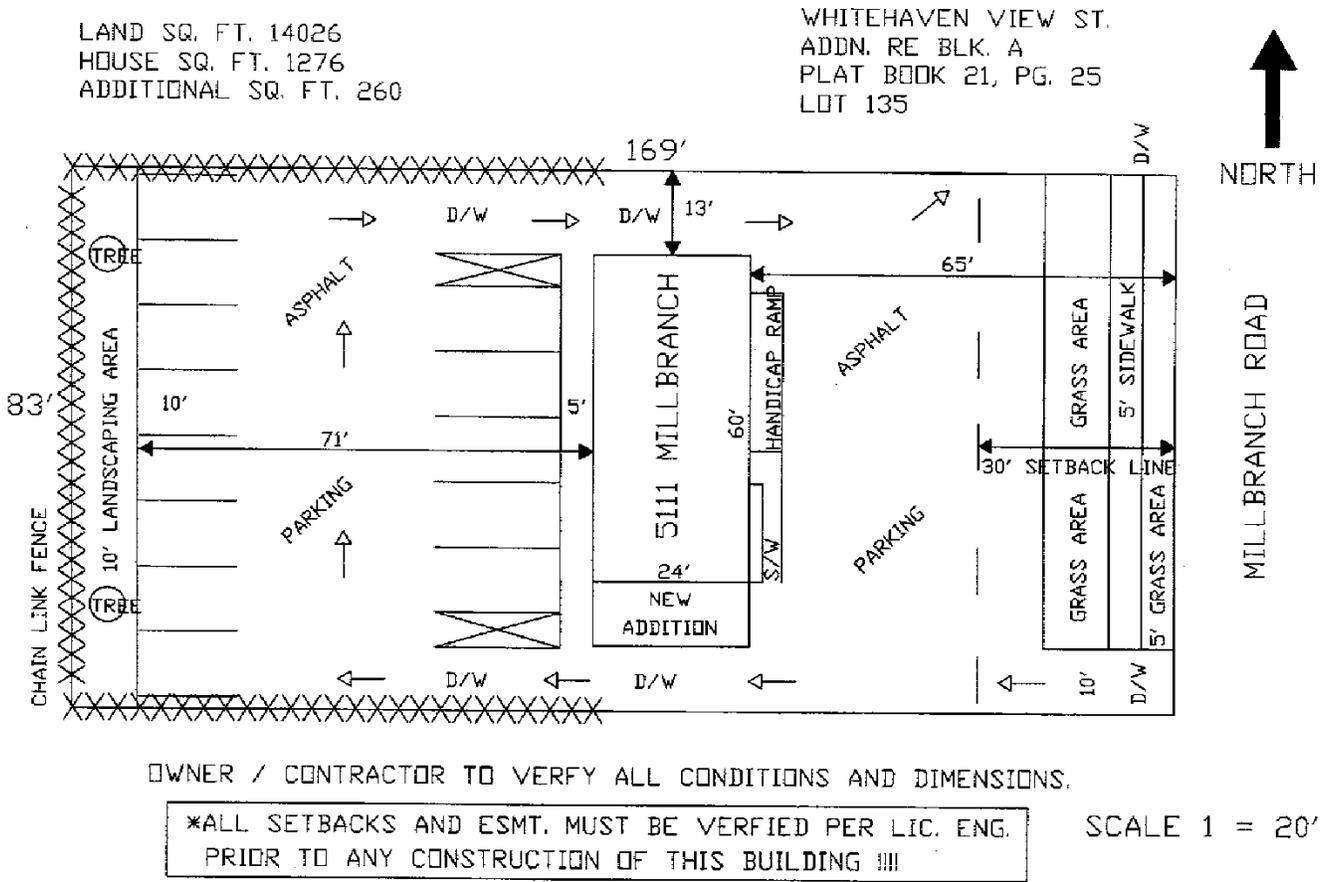


Figure 5: Proposed Site Plan
(same orientation as in Figure 5)

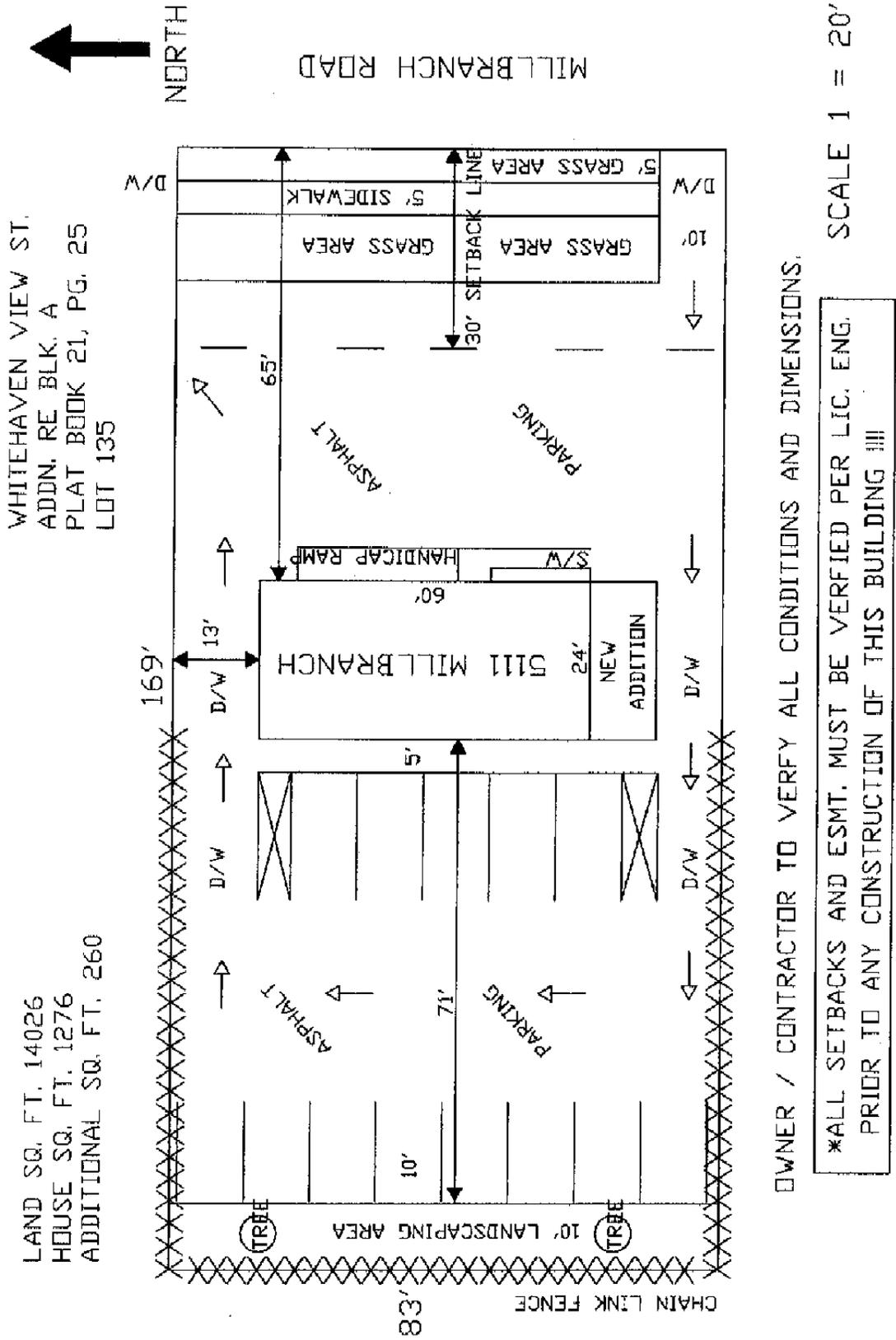


Figure 6: Proposed Site Plan
(rotated for greater legibility)



Figure 8: The subject property includes the house at 5111 Millbranch on the right side in this view. The house to the left (5119 Millbranch) is a dentist's office



Figure 9: The building at 5103 Millbranch, is occupied by an entity known as *Christian Congregation In The United States*. The sign indicates that church services are held here.



Figure 10: This office building is opposite the subject property on the east side of Millbranch Road (5090 Millbranch). It was approved as a planned development



Figure 11: This barber/beauty shop is located 4 lots south of the subject property at 5135 Millbranch in the General Office (O-G) District, where this use is permissible subject to an administrative site plan review by the Office of Construction Code Enforcement.



Figure 12: More than one beauty salon is located in this office building on the east side of Millbranch (5134 Millbranch) in the Local Commercial (C-L) District, where this use is permitted by right.

EXTRACT FROM CHART 1 - ZONING DISTRICTS IN WHICH BARBER OR BEAUTY SHOPS ARE PERMITTED

Uses Permitted ^a	AG	R-E	R-S15	R-S10	R-S8	R-S6	R-S6	R-D	R-TH	R-ML	R-MM	R-MH	R-MO	O-L ¹	O-G ²	C-P ³	C-L ³	C-N	C-H ³	CBD ²	I-L ³	IH ³	H ³	CU ³	CTSD	SMSD	FW ⁴	P ⁵	
COMMERCIAL:																													
Barber or beauty shop															P	P	X	A	X	X	X	X	X	P ⁴	P ⁴				P ⁵

Figure 13: Extract from Chart 1 for Barber / beauty shops

STAFF ANALYSIS

Site Characteristics

The subject property consists of Lot 135 of Section A of the Resubdivision of Block B of the First Addition to the Whitehaven View Subdivision (*Plat Book 21, Page 25*). This rectangular lot has 83.34 feet of frontage on Millbranch Road and a depth of 169 feet, amounting to 14,084 feet (0.323 acres).

Millbranch Road is a minor north-south arterial street that provides a more accessible connection between the Memphis expressway loop at I-240 and Stateline Road, about 6 miles. In addition to providing an alternative to the parallel route of Interstate Highway 55, Millbranch provides access between Southaven and the western neighborhoods of Whitehaven and the “Aerotropolis” office/warehouse/distribution district northwest of Memphis International Airport. In particular, Millbranch provides a north-south connection for the east-west major roads of Holmes and Raines, which have no direct access to the north-south route Interstate Highway 55. However the importance of Millbranch is secondary to Elvis Presley Boulevard and Airways Boulevard, which run parallel one mile to the west and one mile to the east, respectively.

In front of the subject property, Millbranch Road is improved with curb, gutters and sidewalks and approximately 60 feet of pavement (5 lanes) within an 80’ ft. right of way.

Occupying the subject property is a 1,700 sq. ft. building constructed as a residence in 1959. With its two parking spaces on paved bay in the front yard, this vacant building, assessed as commercial property, appears to have been used for non-residential purposes, which may well have been consistent with its current zoning in the Limited Office (O-L) District.

Proposed Development

Barber shop and beauty salon are not allowable in the Limited Office (O-L) District, being regarded a somewhat more intensive than the doctors’ and insurance agents’ offices that are typical of what is allowed. Therefore, the applicant, wishing to establish a barber shop and / or beauty salon, is requesting a use variation that would set aside this restriction. According to Section 10 of the zoning regulations, use variations are intended as a means of remedy for an unintended hardship created when the zoning ordinance is applied to a certain unique property or due to other unique circumstances.¹

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

- a. *Unnecessary hardship.* The property for which a variation is requested cannot yield a reasonable return if used for any of the purposes permitted or allowed in the zoning classification for the property. Such inability to realize a reasonable return must be supported by specific facts. The applicant must present facts, not its unsubstantiated opinion, that the property cannot yield a reasonable return under the existing regulations. Proof that the property cannot be used for its highest and best use and that it could be used more profitably for another use will not alone be sufficient to establish that the property cannot yield a reasonable return as classified.

The Vicinity and the Neighborhood

Imbedded in the Whitehaven View residential neighborhood, the subject property is located along a major road frontage about 850 ft. north of Holmes Road, which is the focus of a neighborhood commercial shopping area, including the types of uses permitted in the Local Commercial (C-L) District.

The non-residential character of the Millbranch Road frontage continues northward past the subject property --- more or less to Hester Road, about 400 feet to the north. However the intensity of the use permitted generally diminishes as one travels northward from Holmes to Hester. On the west side, the commercial zoning (C-L) transitions to General Office (O-G), which permits barber/beauty shops, to Limited Office (O-L), which does not. The transition from O-G to O-L occurs between the first and second lot south of the subject property

On the east side of Millbranch , the C-L zoning continues opposite the O-G to include the northeast corner of Millbranch and Rockdale Avenue. North of that C-L corner is the Anthony Tate Office Planned Development (PD 89-342) which features a long, low office building with a residential style roof. The office uses in this PD are comparable to what is permitted on the west side where the zoning is Limited Office (O-L). On the east side an institutional use --- a church --- continues the nonresidential pattern north to the southeast corner of Millbranch and Hester Drive. On the west side, the southwest corner has a single-family as a buffer to residential use farther north on Millbranch.

Planning Issues

The current zoning pattern provides a good transition between the more intensive commercial uses at Holmes Road and more residential / institutional character north of Hester. The proposed use variation would extend the higher intensity use farther north and encourage intensification of other properties closer to Hester.

The applicant has not presented a compelling case that granting this request would alleviate some unique hardship, which is the intended function of use variations. It appears that beauty salon services are in ample supply as indicated by a quick internet search for nearby facilities. See Exhibit A. Male customers can also have their needs met at the "Unisex" facility located just 200 feet to the south in the O-G District.

RECOMMENDATION: *Rejection*

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

SITE PLAN CONDITIONS

UV 08-06

As Proposed for Discussion by OPD Staff

A Use Variation is hereby granted to the applicants Robert and Renee Lutz to allow use of subject property for a Barber/Beauty Shop. This use variation is applicable to the 0.32-acre property at 5111 Millbranch Road (recorded as Instrument #X58985 at the Shelby County Register's Office), in accordance with a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

- A. The site plan shall reflect conformance with all design standard of the subdivision and zoning regulations subject to the approval of the Office of Planning and Development, particularly with respect to parking, signage, and also with respect to landscaping for which equivalent alternative may be substituted with the approval of the Office of Planning and Development. *[These issues will be specified in more detail in a later draft of the site plan conditions to be presented for discussion at the land use control board hearing.]*
- B. The site plan will reflect all requirements specified by the City Engineer *[See agency comments below. These issues will be specified in more detail in a later draft of the site plan conditions to be presented for discussion at the land use control board hearing.]*
- C. The building on this property shall retain a residential appearance, with the color to remain white or be limited to earth tones if the color is changed. The existing front elevation of the building shall be made part of the site plan, and subject to approval by correspondence item before any change is made.

GENERAL INFORMATION

Parcel Number:	079097 00007
Coordinates:	35° 00' 32"N, 90° 00' 29"W
Street Address:	5111 Millbranch Road
Street Frontage:	<u>Millbranch Road</u> – <u>83 feet</u> on this major arterial with 60' roadway in an 80' right of way)
Planning District:	Whitehaven-Levi
Census Tract:	221.20
Annexation Status:	Annexed by the City of Memphis, December 31, 1969
City Council District:	3

Super District:

8

Zoning Atlas Page: 2530

Zoning History:

1961: Single-Family Dwelling "R-1" - original County zoning regulations
1981: "R-1" District converted to (R-S10) in current zoning ordinance.
1986: Among several properties rezoned to Limited Office (O-L)

DEPARTMENTAL COMMENTS

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

City Engineer:

1. Standard Subdivision Contract as required in Section 500 of Subdivision Regulations.

Sewers:

2. City sanitary sewers are available at developer's expense.

Curb Cuts/Access:

3. The circulation pattern proposed on this site is backwards and utilizes the neighboring curb cut as part of the access. This is not acceptable and the site plan will have to be redesigned to comply with the guidelines of the City Engineer's office for access and circulation.
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.

Drainage:

6. 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.
7. Drainage data for assessment of on-site detention requirements shall be submitted to and approved by the City Engineer.

Site Plan Notes:

8. The width of all existing off-street sewer easements shall be widened to meet current city standards.
9. 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.

10. Required landscaping shall not be placed on sewer or drainage easements.

City Fire Division: No comments received.

City/County Health Department-

Water Quality Branch: No comments
Environmental Sanitation: 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. Thank you for the opportunity to comment.

Construction Code Enforcement: No comments received.

Memphis Light, Gas and Water:

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

- **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.
- **Landscaping is prohibited** within any MLGW utility easement. No trees, shrubs or permanent structures will be allowed within any MLGW utility easements.
- **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 the appropriate MLGW engineering area 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: AT&T has no comment regarding this development.

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

OPD-Regional Services: No comments received.

OPD-Plans Development: No comments.

Memphis Park Commission: No comments received.

Neighborhood Associations:

Whitehaven CDC

No comments received.

South Memphis Foundation

The South Memphis Neighborhood Foundation Executive Board has reviewed the following applications for comments.

Memphis Airport DC
Whitehaven View NA

No comments received.

No comments received.

LISTING OF HAIR SALONS NEAR 5111 MILLBRANCH

Source: Google Maps 6/6/2008

- | | |
|---|--|
| A. De'jar Hair & Nails
5134 Millbranch Rd # 101, Memphis,
TN - (901) 346-0501 - 0.1 mi S | B. House of Beauty & Boutique
5134 Millbranch Rd # 251, Memphis, TN
- (901) 345-0590 - 0.1 mi S |
| C. D's Talk of the Town
5134 Millbranch Rd # 103, Memphis,
TN - (901) 346-1009 - 0.1 mi S | D. Heads Up Beauty & Barber Salon
5134 Millbranch Rd, Memphis, TN -
(901) 396-8950 - 0.1 mi S |
| E. Lovely Nails Salon
1707 E Holmes Rd, Memphis, TN -
(901) 398-4583 - 0.2 mi S | F. Studio H Hair Salon
1652 Rockdale Ave, Memphis, TN -
(901) 344-0204 - 0.1 mi S |
| G. Barbara's Hair Salon
5216 Millbranch Rd, Memphis, TN -
(901) 396-3588 - 0.2 mi S | H. Ivory Nail & Hair Shop
5226 Martin Edwards Pl # 1, Memphis,
TN - (901) 398-3577 - 0.2 mi S |
| I. Jeanaes Hair Studio
5226 Martin Edwards Pl, Memphis, TN
- (901) 345-8833 - 0.2 mi S | J. Gloria's with Artistic Art Beauty
Salon
5226 Martin Edwards Pl, Memphis, TN -
(901) 346-1025 - 0.2 mi S |
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EXHIBIT A

LISTING OF HAIR SALONS NEAR 5111 MILLBRANCH

Source: Google Maps 6/6/2008

[Accuracy subject to review and verification]