

MEMPHIS AND SHELBY COUNTY ZONING BOARD OF ADJUSTMENT

STAFF REPORT

#6

DOCKET NUMBER: B.O.A. 14-35 City B.O.A. MEETING: August 27, 2014

LOCATION: 440 Vance
(Beginning at southwest corner of Danny Thomas Boulevard and Pontotoc Avenue, and extending south to Vance Avenue)

OWNER/APPLICANT: Harry Smith

REQUEST:

1. A variance to 7.2.3 D(4) to allow two structures in excess of 4,000 square feet.
2. A variance to 7.2.3 D(5) to allow parking between the principal structure and Vance Avenue.
3. A variance to 2.7.2A(2) to allow an accessory use or structure to extend into the required front yard (Vance Avenue)

EXISTING LAND USE & ZONING: Vacant land in the South Downtown Residential (R-SD) District

RECOMMENDATION

APPROVAL WITH CONDITIONS

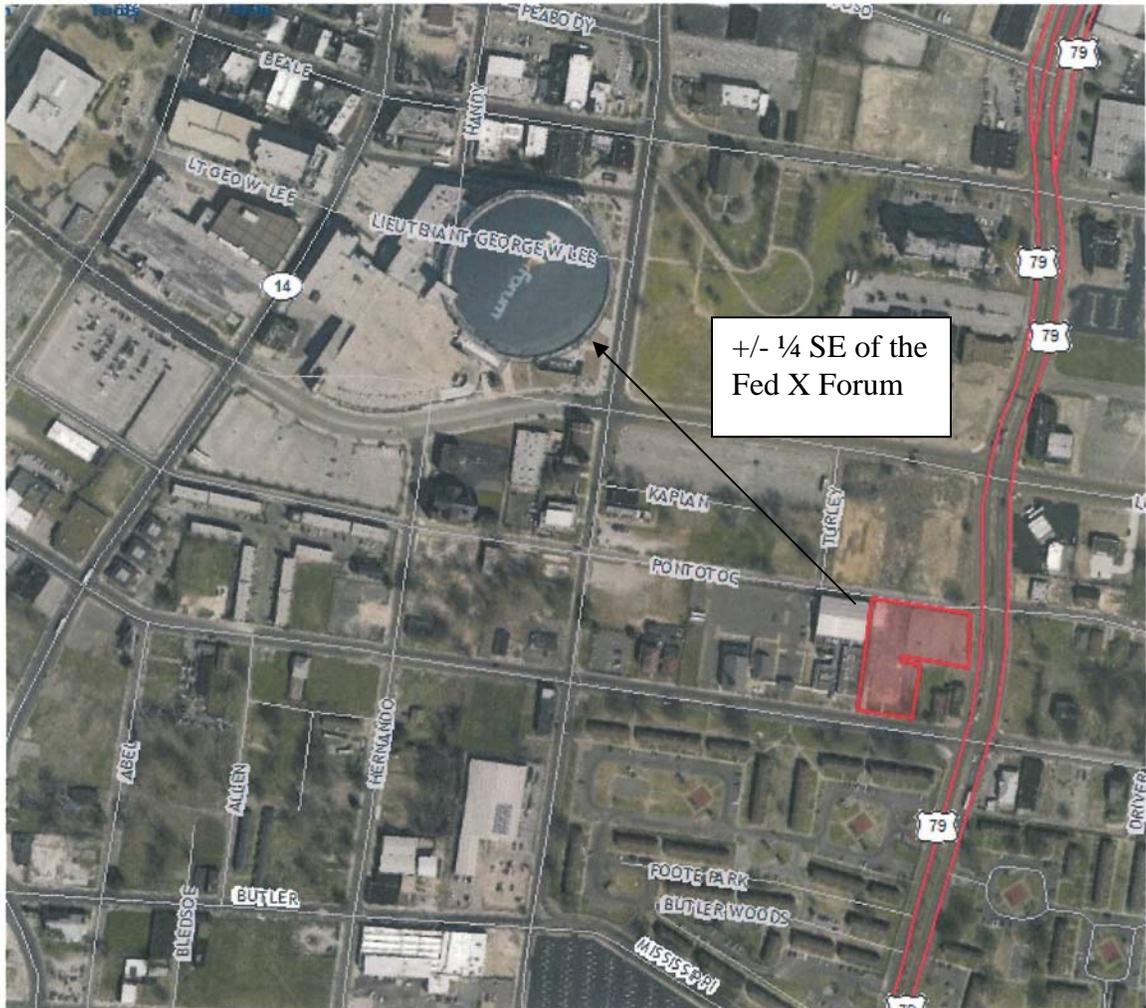
CONCLUSIONS:

1. The applicant suggests that a “Practical Difficulty” exists on this property in that if he were to develop this site with 4 individual buildings on 4 parcels, there would be issues with providing adequate circulation, parking and landscaping.
2. Staff agrees and adds that a larger structure with a similar purposes is located immediately to the west. That project, Street Ministries, is part of a much larger church property.
3. Staff also found that variances to the location of parking and the accessory play area are needed. Based on the parking requirement, the variance for parking in the front yard is explained by the practical difficulty that is created by the projects frontage on three streets.
4. The same practical difficulty explains the location of the play area in the Vance Avenue front yard.

Staff: John D. (Don) Jones

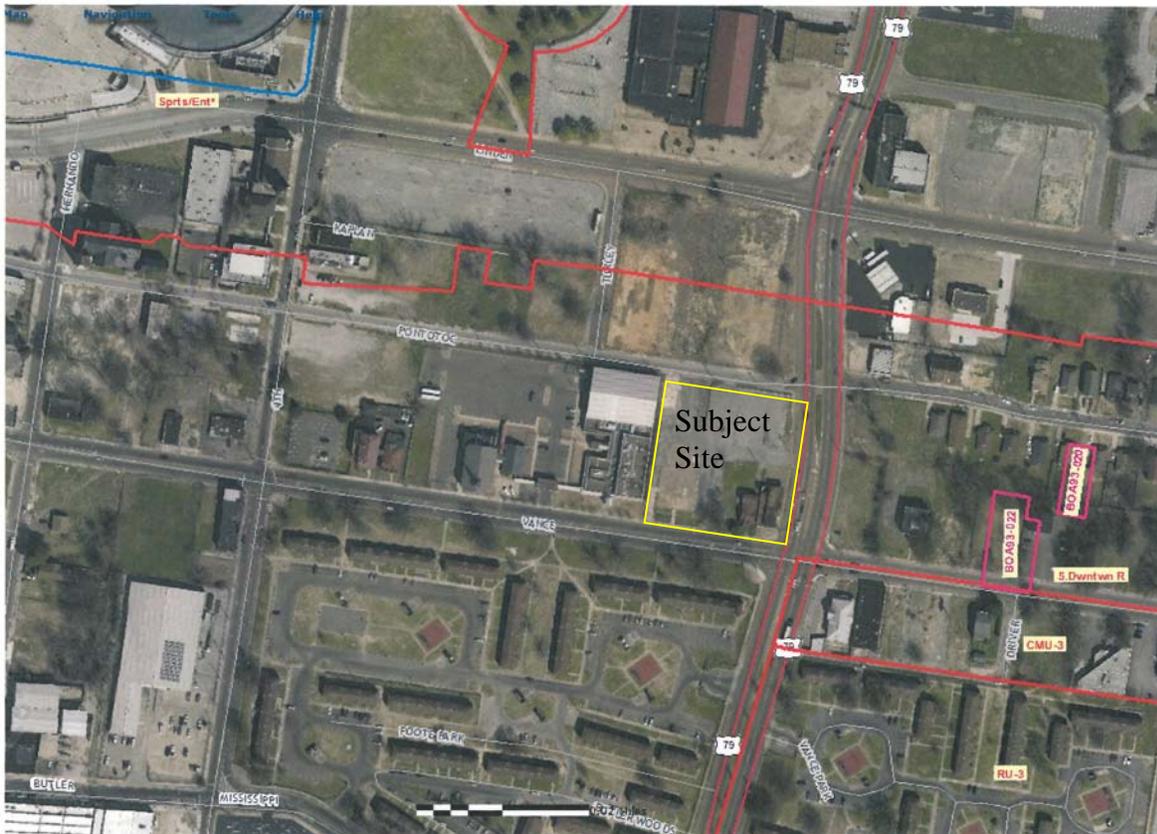
E-Mail: John.Jones@memphistn.gov

Exhibit 1 - General Location Map



Subject site is trimmed in red, site has frontage on Danny Thomas Boulevard, Vance Avenue, and Pontotoc Avenue. Subject site does not include the two parcels, vacant commercial building and residential dwelling located at the northwest corner of Danny Thomas Boulevard and Vance Avenue.

Exhibit 2 –Land Use and Zoning



Surrounding Uses and Zoning:

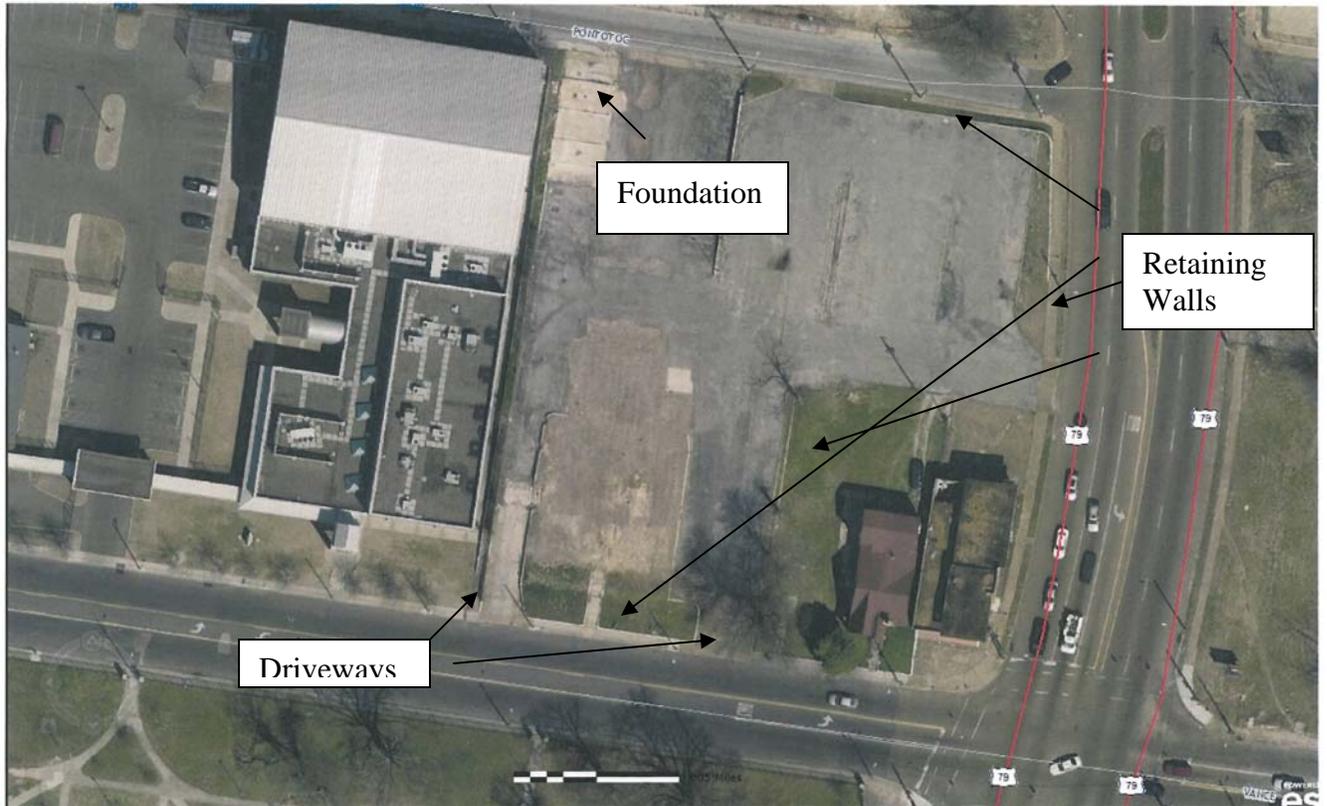
North: Vacant Land in the South Downtown Residential (R-SD) and Sports and “Entertainment (SE) District

South: At the northwest corner of Danny Thomas Boulevard and Vance Avenue a vacant commercial building and a residential structure, further south apartments (Foote Homes) in the South Downtown Residential (R-SD) District

East: Vacant land in the South Downtown Residential (R-SD) District

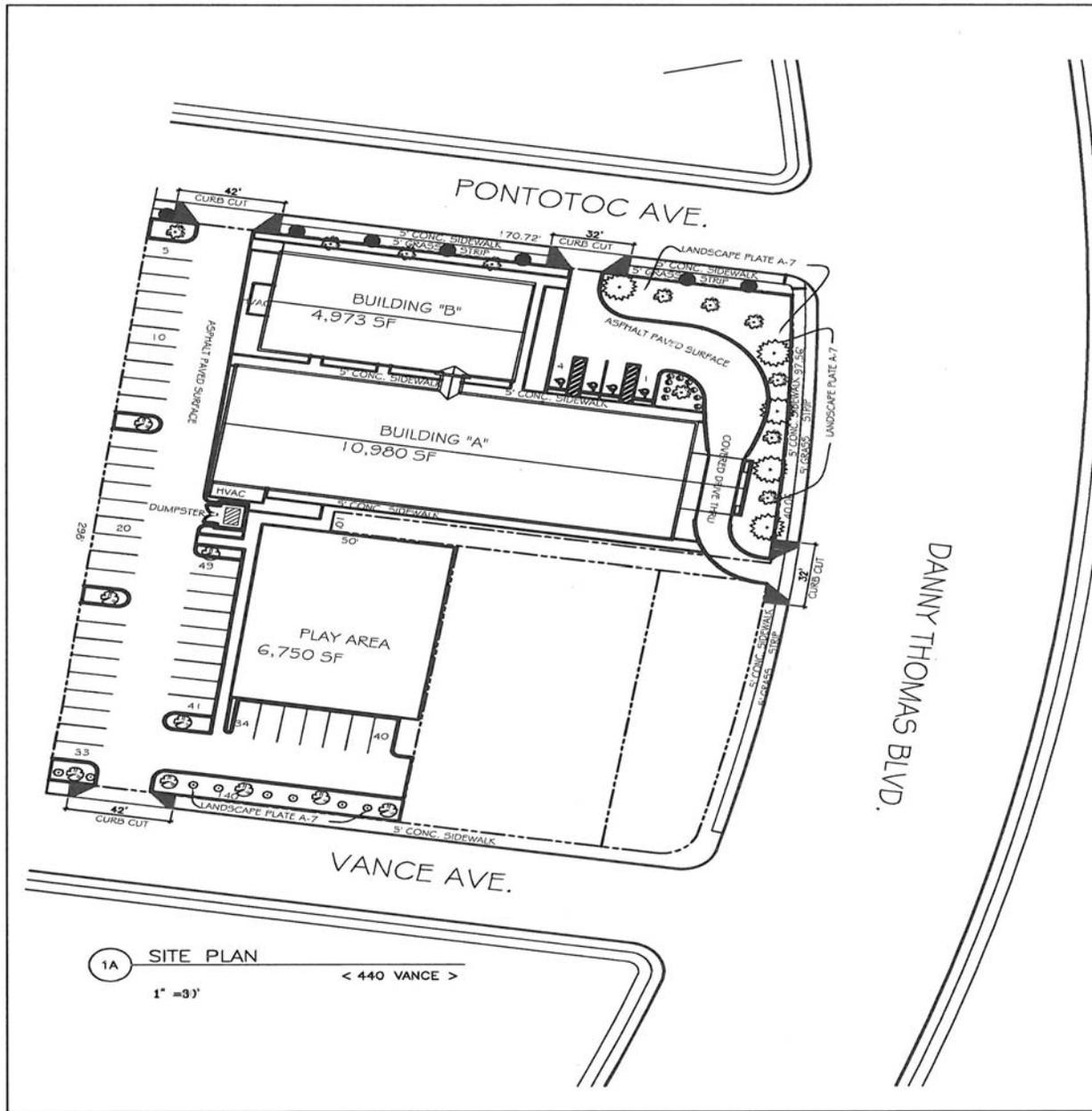
West: Institutional uses, a church and a youth counseling with gymnasium facility, (Streets Ministries), in the South Downtown Residential (R-SD) District

Exhibit 4- Overhead View



Subject Property dominates the right half of the screen. Site is almost completely paved and includes a former building's foundation, steps and driveway from Vance and retaining walls in proximity to each road frontage and to the residential use.

Exhibit 5 – Site Plan



Pictures of Street Frontages



Facing west along Danny Thomas Blvd



Facing South along Pontotoc Ave



Facing north along Vance Avenue

STAFF ANALYSIS

General Location and Site Characteristics:

The subject property is located in the south downtown area generally known as the South Central Business Improvement District, (SCBID), approximately 1/4 mile southeast of the Fed Ex Forum facility. Specifically, the site is a 1.19 acre tract that is located on the west side of Danny Thomas Boulevard between Pontotoc Avenue on the north and Vance Avenue on the south exclusive of the two parcels on the north side of Vance Avenue abutting Danny Thomas Boulevard.

The property consists of 4 individual parcels at least two of which included a former Funeral Home. The property is almost completely covered in concrete and asphalt except for a small strip of land near Vance Avenue which was the front yard of the former Funeral Home.

In addition to the asphalt, the site contains the steps of the former use, two driveways along Vance Avenue, a driveway and alley along the Danny Thomas Boulevard frontage, and two driveways along Pontotoc Avenue. The site also contains retaining walls along Vance Avenue, Danny Thomas Boulevard and Pontotoc Avenue, as well as a retaining wall in the centre of the site and another along the common property line between the east property line of the site and the property line for the residential structure that faces Vance Avenue.

The Project

The applicant's intention is to construct a 16,000 square foot Day Care Facility in two attached buildings to serve up to 300 children. The interior space will provide both classroom and recreational instruction. The site also includes a 6,750 square foot, fenced, outdoor play area. Parking is provided as required by the UDC; 4.5.3B, 10 spaces plus 1 space for every 10 individuals.

Variance Needed:

An application was filed by this property owner in May of 2014 for a Special Exception to permit a day care center on property located within the South Downtown Residential District as per UDC 7.2.3D(1). During the preliminary review of that application, it was determined that a variance was needed to allow a building(s) in excess of 4,000 square feet, UDC 7.2.3D(4). The Special Exception application is on hold pending the outcome of hearing before the Board of Adjustment on the variance(s).

The applicant has filed an application for the indicated variance. In review of the site plan, staff has determined that two other variances are also needed; a variance to allow parking between the building and the front yards of Pontotoc Avenue, Danny Thomas Boulevard, and Vance Avenue, UDC 7.2.3D(5).

The third variance is to allow the playground which is an accessory to the day care facility to be located between the building and Vance Avenue, UDC 2.7.2A(2).

Justification for Variance

The applicant was prepared in response to the first variance that was noted by staff, the size of the building footprints. However, some of the responses in the letter of intent and the response to the Findings of Fact have relevance to the other two variances as well.

The applicant suggests that the variances needed are a result of a practical difficulty. The code limits the maximum building size to 4,000 square feet. To achieve the 16,000 square feet needed for this operation, 4 individual buildings would have constructed on this site.

“Placing four different individual structures on each [existing] parcel would not be practical and would create on-site traffic circulation problems”.

The applicant further states with respect to any impact on the surrounding area”

“A child care center will provide a needed service within a residential setting/neighborhood.” And, “the 1.19 acre lot will easily accommodate the proposed structure, required parking, landscape, and outdoor play area. The variance is required to allow the construction of one structure instead of four individual buildings.”

Review of Request:

Building size - The applicant’s responses to the request for a connected building of up to 16,000 square feet are well founded and the staff finds them acceptable. One additional point to be added is that immediately abutting this site to the west is a very large facility of similar or larger size devoted to ministering to troubled youth or young adults. So this proposed use is not out of character.

Parking and Play Area Location - With respect to the parking and play area which are located between the building and existing public streets, this is almost completely unavoidable due to the practical difficulty that the property is bounded by public streets on three of its four sides. Short of providing a variance to the required parking for Day Cares, there really is not another location for so much parking. Similarly, given the size and configuration of the buildings, any location of the play area would be in one of the front yards.

Staff would be willing to eliminate the 7 parking spaces between Vance Avenue and the play area and the five parking spaces to the west of and forward of the play area in return for some additional green space.

RECOMMENDATION: Approval with Conditions

CONDITIONS:

1. The specific variances discussed in the report are the only ones granted by this approval. The final site plan is subject to the review and approval of the Memphis and Shelby County Land Use Control Board in relation to Case Number SE 14-04 which is companion to this Board of Adjustment Variations Request.
2. The Final Site Plan for the companion case, SE 14-01, shall reflect the approved variances and conditions approved by the Memphis and Shelby County Board of Adjustment. These variances are subject to requirements for variances found in the UDC at 9.22.

GENERAL INFORMATION

Street Frontages: Danny Thomas Boulevard135 Feet
Pontotoc Avenue240 Feet
Vance Avenue135 Feet

Census Tract 114

Parcel ID (4): 05001500008, 05001500009, 05001500010, 05001500013

DEPARTMENTAL COMMENTS:

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

City Engineer:

The City Engineer objects to the variance.

The City Engineer will require a full set of engineered plans, signed and sealed by a registered engineer in the State of Tennessee on this project.

No building permit shall be granted until a full set of engineered plans are approved by the City Engineer.

1. Standard Subdivision Contract as required in Section 5.5.5 of the Unified Development Code.

Sewers:

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

Roads:

3. The existing alley in the middle of the site shall be vacated by alley closure application,

4. Dedicate a 5 foot property line radius at the intersection of Pontotoc and Danny Thomas.

5. The sidewalk on Vance Ave does not meet the requirements of the UDC for width and may not comply with ADA requirements for passable area due to electrical poles in the sidewalk.

6. The Developer shall be responsible for the repair and/or replacement of all existing curb and gutter along the frontage of this site as necessary. Any granite curb removed as a result of this project shall be retained and delivered to the Public Works yard for reuse.

7. 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,

Curb Cuts/Access:

8. The City Engineer shall approve the design, number and location of curb cuts.
10. The existing curb cut nearest the corner of Vance and Danny Thomas shall be closed with curb, gutter and sidewalk.
11. All existing curb cuts are non-standard and shall be reconstructed to meet current City standards.
12. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.

Drainage:

13. Drainage improvements, including possible on-site detention, shall be provided under a Standard Subdivision contract in accordance with Unified Development Code and the City of Memphis Drainage Design Manual.
14. Drainage data for assessment of on-site detention requirements shall be submitted to the City Engineer.

Site Plan Notes:

15. There are two trees on this site, but this site plan preserves neither of them. Can adjustments be made to the site design to ensure their retention. They both act to shade the play area shown on the site plan.
16. As shown on the site plan, the continuous, one-way, on-site traffic pattern or a paved, circular turn-around that will provide for exit by forward motion without any on-site backing of vehicles. Vehicles shall enter on Pontotoc and exit onto Danny Thomas.
17. Locate the pick-up/discharge area as far as possible from the entrance as practical to maximize on-site queue space for vehicles between the right-of-way and the pick-up/discharge point.
18. Provide a paved and curbed pick-up/discharge area that does not cause children to walk between parked cars or across traffic aisles.

General Notes:

19. The width of all existing off-street sewer easements shall be widened to meet current city standards.
- 20.. 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.

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

Shelby County Fire Department: No comment

Shelby County Schools: No comments received.

Memphis, Light, Gas & Water:

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

- **Street Names: It is the responsibility of the owner/applicant** to contact MLGW–Address Assignment @ 729-8628 and submit proposed street names for review and approval. Please use the following link to the MLGW Land & Mapping website for **Street Naming Guidelines** and the **Online Street Name Search**: <http://www.mlgw.com/builders/landandmapping>
- **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, without prior MLGW 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 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 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.
- **Street Trees are prohibited**, subject to the review and approval of the landscape plan by MLGW Engineering. It is the responsibility of the owner/applicant to submit a detailed landscape plan to MLGW Engineering.
- **Landscaping is prohibited** within any MLGW utility easement without prior MLGW approval.
- **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 Builder Services: (901) 729-8675 to initiate the utility application process.
 - All commercial developers must contact MLGW's Builder Services line at 729-8630 (select option 2) to initiate the utility application 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.

**Memphis & Shelby County Health Department:
*Water Quality Branch & Septic Tank Program:***

No comment.

Neighborhood Association:

None Identified

Appendix

Letter of Intent
Application

Letter of Intent

LETTER OF INTENT

Mr. Harry Smith, the owner/ developer is filing a Variance application on the property located at 440 Vance Ave. to construct a new 16,000 sq. ft. structure to be used as a Child Care Center, with 300 Children capacity. The hours of operations are 6am. To 6 p.m. The site is located in a R-SD zone on a 1.19 acre lot The A-7 landscape plate will be installed to screen the parking. Section 7.2.3D4 limits the maximum floor area to 4000 sq. f. per parcel for nonresidential use. This project consist of four parcels, which are all adjacent to each other. We are requesting approval to construct the 16,000 sq. ft. under one roof.

Application



MEMPHIS & SHELBY COUNTY BOARD OF ADJUSTMENT

125 North Main Street, City Hall, Room 468
MEMPHIS, TENNESSEE 38103

**APPLICATION FOR VARIATION OR APPEAL FROM THE REQUIREMENTS OF THE
UNIFIED DEVELOPMENT CODE**

Property Owner of Record: HARRY SMITH Phone #: 901.649.2255
Mailing Address: 1153 E. RAINES ROAD City/State: MEMPHIS Zip 38116
Property Owner E-Mail Address: hsmith1412@yahoo.com
Applicant (if not property owner): same Phone # _____
Mailing Address: _____ City/State: _____ Zip _____
Applicant E- Mail Address: _____
Authorized Agent: DELINOR D. SMITH Phone #: 901.690.3944
Mailing Address: 3831 LAKEHURST DRIVE City/State: MEMPHIS, TN Zip 38128
Engineer/Surveyor/Architect: JAMES WHALEN Phone # 901.327.4139
(Add additional sheets if including more than one entity)
Mailing Address: 3525 SUMMER AVE. City/State: MEMPHIS, TN Zip _____
Engineer/Surveyor/Architect E-Mail Address: jwhale@gmail.com

To the Chairman, Board of Adjustment:

Application is hereby made for {Variation(s), Appeal} from the requirements of Section(s) 7.2.3D4 of the Unified Development Code under the discretionary power vested in your Board by Section 9.22 to permit {erection, alteration of, maintenance} in accordance with the plans filed under application for Building or Use and Occupancy Permit dated 07.24. 20 14.

PREMISES LOCATION (Describe by street address & directional location description, ex. 200 Johnson Street, North side of Johnson Street, 100 feet east of Brown Street) 440 VANCE AVE., MEMPHIS, TN 38126

ON THE NORTH PROPERTY LINE OF VANCE AND 123.39' EAST OF THE WEST PROPERTY
and LINE OF DANNY THOMAS BLVD.
_____ known as Number 440 VANCE AVE (Street, Avenue, Road).

DESCRIBE PROPOSED {VARIATION (S), APPEAL} AND JUSTIFICATION FOR REQUEST.

Include applicable section reference from the Memphis/ Shelby County Unified Development Code for which relief is being sought from.

7.2.3D4 Limits the maximum floor area to 4000 sq. ft per parcel for nonresidential use. This project consist of four parcels all adjacent to each other. To maximize the property and to provide adequate circulation if we are allowed to placing the 16000 sq. ft. under one roof. The remaining open space will be used for parking, outdoor play area, and perimeter landscaping.

DESCRIPTION OF EXISTING OR PROPOSED BUILDING OR STRUCTURE

Size of Building or Structure:

At street level: 120' feet across front: 208 feet deep. Height: 1 Stories 12 feet high.

Occupancy: (a) Number of Families: (If any are used as dwellings): N/A
(b) Number of Automobile Parking Spaces: 48 SPACES

Use District: R-SD (SOUTH DOWNTOWN RESIDENTIAL) Date of Erection: 10.15.2014

Character of Construction: Frame Masonry
Reinforced Concrete or Protected Steel Frame Other (Specify) _____

Has any previous application or appeal been filed with this Board on these premises? Yes _____ No X
(If yes give date & docket #. of prior application) Date _____ Docket # _____

I (we) hereby make application for approval of the Zoning Ordinance/Regulations variation(s) being sought from described above and on the accompanying materials.

I (we) accept responsibility for any errors or omissions which may result in the postponement of the application being reviewed by the Memphis & Shelby County Board of Adjustment at the next available hearing date.

I (We), owner(s) of the above described property hereby authorize the filing of this application and the above named persons to act on my behalf.

 1-24-2014
*Property Owner of Record Date Applicant (if not property owner) Date

* Property Owner of Record shall sign if not the applicant of the request for variation.

MEMPHIS AND SHELBY COUNTY UNIFIED DEVELOPMENT CODE
(Section 9.22.6)

VARIATIONS (Complete this form only if a variation is needed)

PROVIDE AN EXPLANATION TO THE FOLLOWING CRITERIA:

(Please response to all points listed below. Additional sheets may be added as needed)

9.22.6 Findings of Fact - The Board of Adjustment must make specific written findings of fact on each variance request. In granting any variance, the Board of Adjustment shall make the following findings:

A. Bulk and Other Non-Use Variances

1. Unusual characteristics of the property. The property is unusual in that it exhibits at least on of the following exceptional physical features as compared to other properties located in the same zoning district: exceptional topographic conditions, exceptional narrowness, exceptional shallowness, exceptional shape or any other extraordinary and exceptional situation or condition;

This project consist of four different parcels which will allow 4,000 sq. ft. per parcel . We are requesting that the board allows a total of 16,000 under one roof.

2. Practical difficulties or undue hardship. By reason of the unusual characteristics found to apply in Paragraph 1, the strict application of any regulation found in this Code would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property;

Placing four different individual staructurals on each parcel would not be partical and would create on site traffic circulation problems.

3. The unusual characteristic found to apply in Paragraph 1 is not the result from and deliberate action by the owner;

The properties lines and parcels were established prior to the owner purchasing the site.

4. That a variance from the strict application of this Code may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of an adopted plan and this Code;

The approval of the variance will present substantial detriment to the public good nor substantly impairing the intent and purpose of an adopted plan and this code.

5. The requested variance will be in harmony with the purpose and intent of this development code and will not be injurious to the neighborhood or to the general welfare;

A child care center will provide a needed service within a residential setting /neighborhood. This business will also provide 30 plus needed jobs for this community.

6. The variance is not granted simply because by granting the variance, the property could be utilized more profitably or that the applicant would save money.

The 1.19 acre lot will easily accommodate the proposed structure, required parking, landscape, and out door play area. The variance is required to allow the construction of one structure instead of four individual buildings.

Please only fill out the following space if a use variance is requested:

B. Use Variances

1. In addition to the findings established for other variances in Subsection A, the Board of Adjustment shall also find that none of the uses permitted on the property are practical due to either the unusual characteristic found to apply in Subsection A, Paragraph 1, or to any physical improvements made upon the property.