



STAFF REPORT

AGENDA ITEM: 9

CASE NUMBER: BOA 17-41 City **B.O.A. MEETING:** June 28, 2017

LOCATION: 2093 Covington Pike (Southwest corner of Covington Pike and Covington Way)

APPELLANT: CARite

REPRESENTATIVE: SR Consulting, LLC (Cindy Reaves)

REQUEST: Reverse an administrative decision by the City Engineering Office requiring removal of existing access to Covington Pike Highway

AREA: 1.027 acres

EXISTING LAND USE & ZONING: Vehicle Sales/ BOA 16-41 (City) for uses permitted within the CMU-3 Zoning District

CONCLUSIONS

1. The applicant has chosen their right to appeal the decision of the City of Memphis Engineering requiring the removal of access to Covington Pike Highway frontage abutting the subject property. The property is Lot 7 of Covington Pike Subdivision recorded in Plat Book 85, Page 26 which conveyed access to the City of Memphis.
2. The applicant has presented evidence contained in this report that when a use variance establishing the permitted land use on this site was approved with BOA 16-41, conditions were not placed on the site that would restrict access to Covington Pike Highway. Because this is a major point of access for the business, the applicant contends removal of the existing curb-cut is unreasonable and would necessitate the applicant vacating the property.
3. The Office of Planning and Development is not providing a recommendation for this application since it entails an appeal of an administrative action by another department within the City of Memphis Government.

RECOMMENDATION:

No Recommendation

Staff Writer: *Staci Tillman*

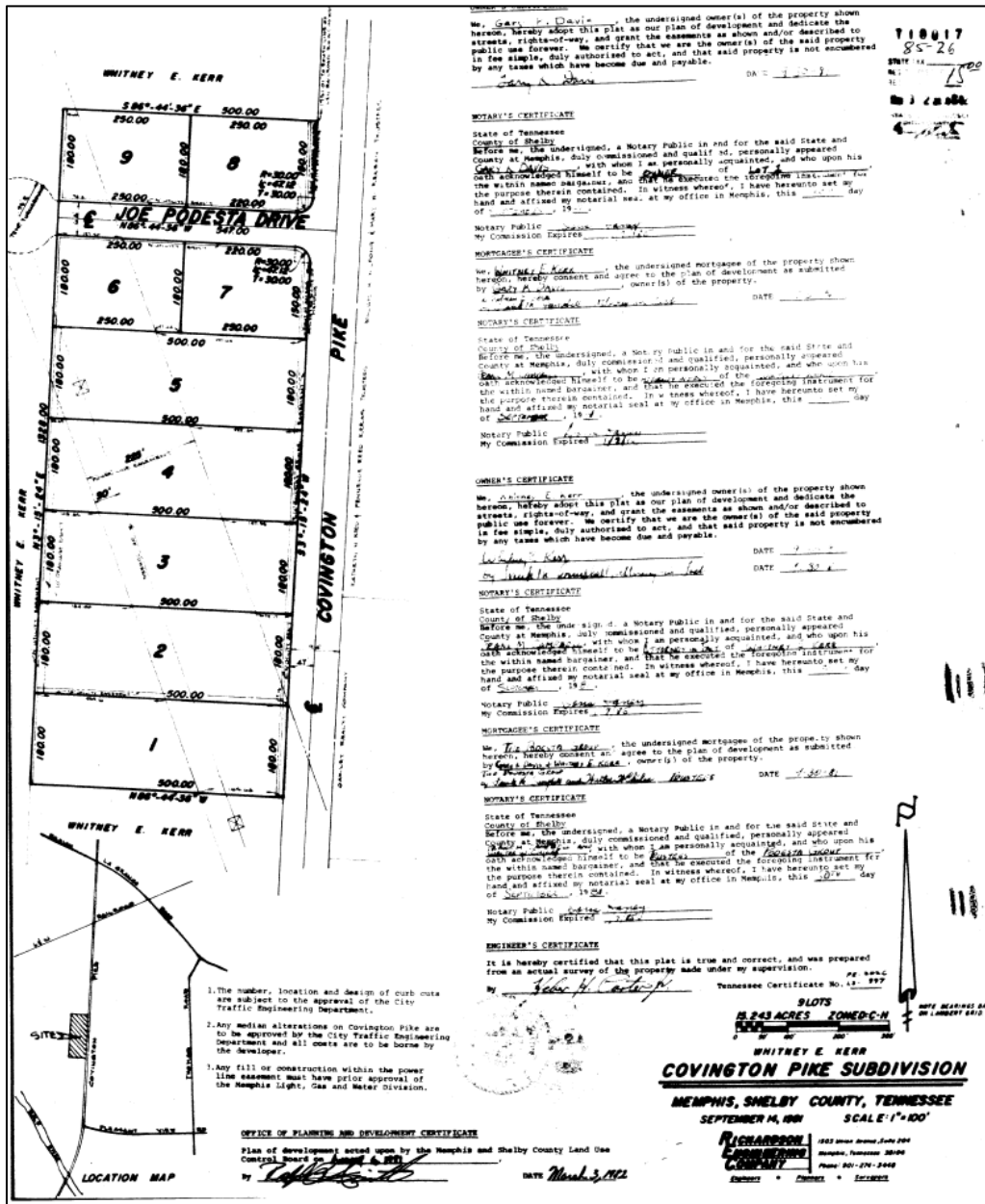
E-mail: staci.tillman@memphistn.gov



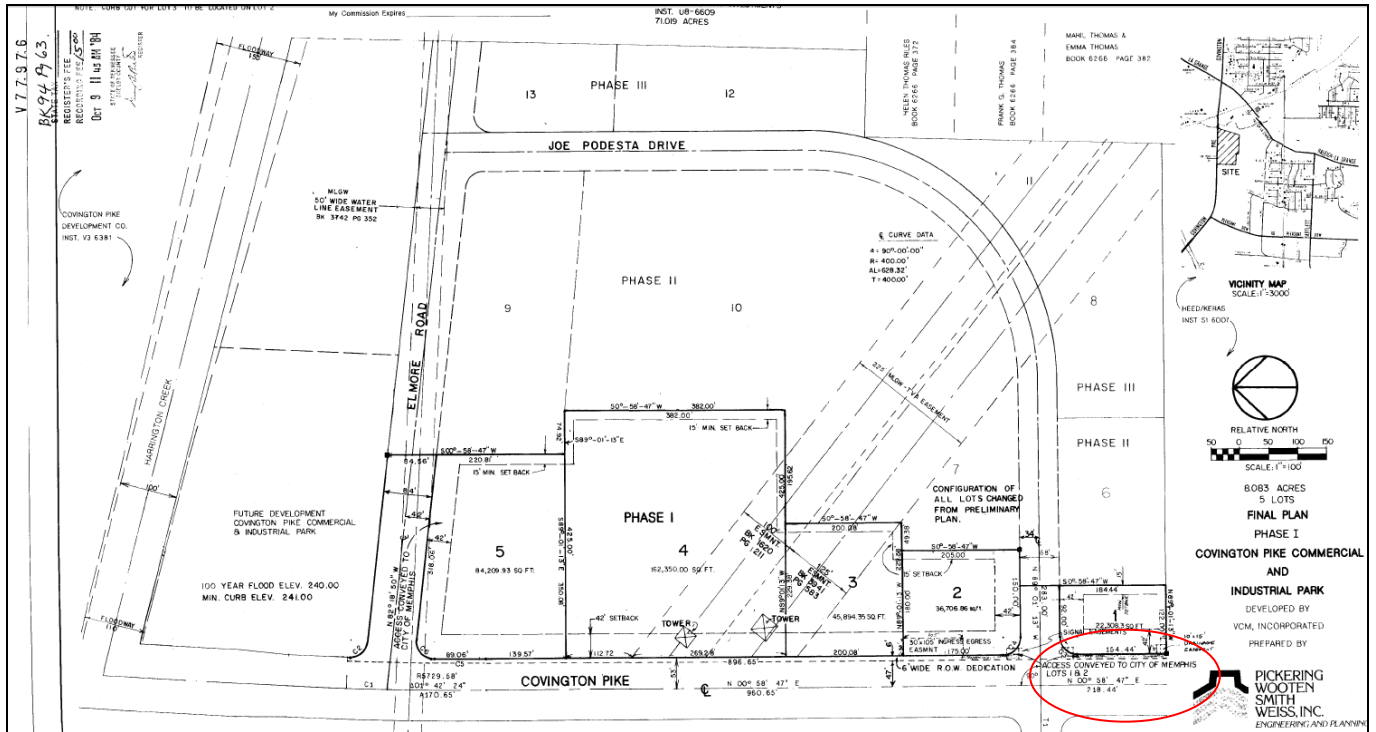
The subject property is located at 2093 Covington Pike.



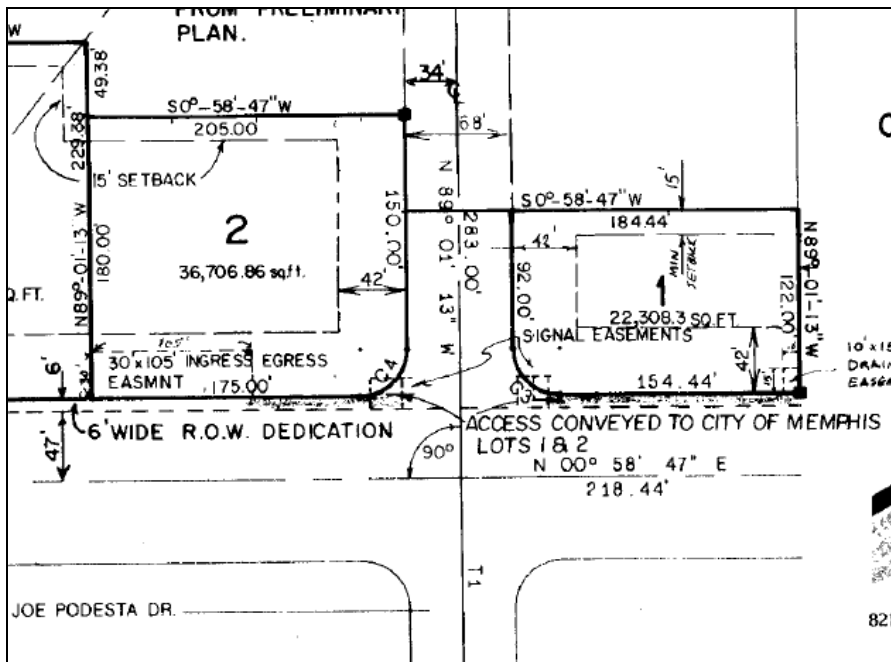
The subject property is zoned Commercial Mixed Use (CMU-3).



According to the Shelby County Assessor of Property, the site was developed in 1984. The Covington Pike Subdivision, recorded in Plat Book 85, Page 26, conveyed the Covington Pike Highway access fronting the subject property (Lot 7) to the City of Memphis. The adjacent properties fronting Covington Pike Highway directly to the east of the subject property were also required to dedicate access to of Covington Pike to the City of Memphis per Plat Book 94, Page 63. The Shelby County Assessor records indicate permits have been filed for this site dating from December 1983 to October 2016.



Plat Book 94, Page 26



Plat Book 94, Page 26 (shown in the previous image circled in red)

STAFF ANALYSIS

Chapter 9.23 of the Memphis and Shelby County Unified Development Code provides an appeal process to the Board of Adjustment for persons who feel they have been aggrieved by a final order, interpretation or decision of the Planning Director, Building Official or other administrator in regards to the provisions of the Unified Development Code. Such is the purpose for this appeal as the applicant wishes to reverse the decision of the City of Memphis Engineering Office requiring the removal of the existing access to Covington Pike fronting the subject property. Though Plat Book 85, Page 26 conveyed access to Covington Pike to the City of Memphis, several permits have been granted at this property whereby the removal has never been required. The City Engineering has indicated to the applicant compliance is now required.

The Board of Adjustment granted a use variance to the property with BOA 16-41. Conditions of approval including City Engineering comments and conditions are outlined in the final staff report and are included in this report. Provided in this staff report is also information provided by the applicant indicating how the closure constraints will impact the operation of their business.

**BOA 16-41 FINAL STAFF REPORT
CONDITIONS OF APPROVAL**

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RECOMMENDATION: Approval with four (4) conditions

Site Plan Conditions:

1. The City Engineer shall require a full set of engineered plans, signed and sealed by a registered engineer in the State of Tennessee on this project for the repair/replacement of the sidewalk and pedestrian ramps at the southwest corner of the intersection.
2. No building permit for work within the right-of-way shall be granted until a full set of engineered plans are approved by the City Engineer. The existing fencing shall be removed from City of Memphis right-of-way and easements.
3. The City Engineer shall approve the design, number and location of curb cuts. Any existing nonconforming curb cuts and/or sidewalks shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
4. The Use Variance is conditioned upon a submitted site and landscaping plan. Any modification shall be submitted to the Office of Planning & Development for review and approval.

**BOA 16-41 FINAL STAFF REPORT
DEPARTMENTAL COMMENTS**

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GENERAL INFORMATION

Street Frontage: Covington Pike-----+/-150.00 linear feet.
Covington Way-----+/-220.00 linear feet.

Planning District: Raleigh-Bartlett

Zoning Atlas Page: 1845

Parcel ID: 088039 00013

DEPARTMENTAL COMMENTS

The following comments were provided by Inter-governmental Agencies/Organizations to which this application was referred:

City Engineer:

A previous owner of this site placed an iron fence along the road frontage of the parcel. The fence is within the right-of-way of Covington Way, blocking both the public sidewalk and access to the pedestrian crossing controls on the existing traffic signal pole at Covington Pike and Covington Way. The fence appears to be within a public sanitary sewer easement along Covington Pike. A "right of access conveyed to City of Memphis" and a "sanitary sewer easement" are shown on the provided plat along Covington Pike. The right for drive access to Covington Pike is not found on the plat. The existing traffic signal pole and pedestrian crossing are not shown on the Site Plan provided and neither is the existing fencing.

The City Engineer has no objection to the Use Variance subject to the following conditions:

1. 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 for the repair/replacement of the sidewalk and pedestrian ramps at the southwest corner of the intersection of Covington Pike and Covington Way.
2. No building permit for work within the right-of-way shall be granted until a full set of engineered plans are approved by the City Engineer.
3. The City Engineer shall approve the design, number and location of curb cuts.
4. The existing fencing shall be removed from City of Memphis right-of-way and easements.
5. Any existing nonconforming curb cuts shall be modified to meet current City of Memphis Standards or closed with curb, gutter and sidewalk.
6. All public easements should be shown on the plat.
7. All drives should be shown on the plat.
8. Required landscaping shall not be placed on sewer easements.

GENERAL INFORMATION

PUBLIC NOTICE: Three public notices were mailed on 06/16/17 to the subject property owner and owner representatives. No public sign posting is required.

Zoning Atlas Page: 1845

Parcel ID: 088039 00013

DEPARTMENTAL COMMENTS

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

City Engineer: The City Engineer objects to the continued use of this illegal access. The applicant should be required to come into compliance with the recorded conditions of approval.

County Engineer: No comments received.

County Fire Division: No comments received.

City/County Health Department: No comments by the Water Quality Branch & Septic Tank Program.

Shelby County Schools: No comments received.

Construction Code Enforcement: No comments received.

Memphis Light, Gas and Water: No comments received.

Neighborhood Associations: No comments received.

LETTER OF INTENT



Date: May 26, 2017
To: Office of Planning & Development
From: Cindy Reaves
Re: 2093 Covington Pike
Job #: 17-0042

LETTER OF INTENT

This application is for an appeal from an Administrative Decision for property at 2093 Covington Pike at the southwest corner of Covington Pike and Covington Way. The property is Lot 7 of Covington Pike Subdivision recorded in Plat Book 85, Page 26 which conveyed access to Covington Pike to the City of Memphis. City Engineering has stated to remove the existing access to Covington Pike per Plat Book 85, Page 26. We are requesting approval to allow the current access to remain. The building was built in 1983 and it has always had access to Covington Pike that existed before the current owner bought the property in 2003. Since the time it was built several different tenants have occupied the property and used the Covington Pike access for their businesses. There have been several remodels, building additions and use and occupancy permits, which did not require the removal of this curb cut. This is a major point of access to the site and the tenant has claimed they cannot operate without this access. The adjacent properties on the east side of Covington Pike at Covington Way were also required per Plat Book 94, Page 63 to convey access of Covington Pike to the City of Memphis and both parcels currently use access points within this conveyed area.

We appreciate your support with this request. Please contact me if you have any questions.

AERIAL PHOTOS

(Aerial photos on the next pages are provided by the applicant showing access to Covington Pike between 1997 and 2016)