

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT**

**STAFF REPORT**

**Agenda Item: 7**

**CASE NUMBER:** ZTA 13-002                      **L.U.C.B. MEETING:** May 9, 2013  
**APPLICANT:**                      **Memphis and Shelby County Office of Planning and Development**  
**REPRESENTATIVE:**              **Josh Whitehead, Planning Director**  
**REQUEST:**                      **Adopt amendments to the Unified Development Code**

*Executive Summary:*

1. This set of amendments to the Unified Development Code (the “UDC”) continues the regular update to the Code that began with Case ZTA 12-001 in 2012. Upon requests by the Land Use Control Board, Memphis City Council and Shelby County Board of Commissioners, each set of amendments will contain fewer than a dozen individual amendments.
2. Amendments 1, 4 and 9 of this staff report are housekeeping items related to appropriate referencing, spelling and phrasing, respectively.
3. Amendment 2 allows certain infill development standards to be waived through the subdivision process.
4. Amendment 3 clarifies the kind of improvements that are required to a site with the addition of an accessory structure.
5. Amendment 5 addresses front yard fencing in the CA zoning district and fencing for the keeping of livestock.
6. Amendment 6 deals with outdoor storage, such as that found in front of Lowe’s and Home Depot.
7. Amendment 7 incentivizes lower signs by allowing them to be closer to the street than taller signs.
8. Amendment 8 will require neighborhood meetings for Special Use Permit and Planned Development amendments, which are relatively substantial revisions to approved projects and require action by City Council and/or Shelby County Board of Commissioners.
9. Amendment 10 exempts legal, nonconforming uses from obtaining new Certificates of Occupancy.
10. Amendment 11 addresses pre-existing uses that would otherwise require a Special Use Permit.
11. These amendments can be read in greater context by downloading the entire UDC. It is available on this website: <http://www.shelbycountyttn.gov/Blog.aspx?CID=7> or by googling the terms “UDC,” “amendments” and “Memphis.”

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:**

*Approval*

**Staff:** *Josh Whitehead*

**e-mail:** [josh.whitehead@memphistn.gov](mailto:josh.whitehead@memphistn.gov)

Proposed language is indicated in **bold, underline**; deleted language is indicated in ~~strike through~~.

1. 2.5.2 (Use Chart)

The cross reference for tractor-trailer (fueling of) to Sub-Section 2.6.3P is incorrect; the use standard described in that section applies only to vehicle sales, service and repair. The cross reference should be **deleted**.

2. 3.9.2: Contextual Infill Standards

The purpose of this section of the Code is to promote infill development that is sensitive to the existing surrounding neighborhood. It requires the lot width of the proposed lots of an infill development be no narrower than the average lot width of the surrounding area and that the new homes be built no closer to the street than the average distance of homes of the neighborhood. This language has had the effect of curtailing new infill developments, as it generally prevents any new subdivision of existing lots. The language below would permit the approval agencies, such as the Land Use Control Board or Memphis City Council, to waive these requirements through the subdivision process if a finding is made that the waiver will not substantially harm the surrounding neighborhood. This would eliminate the current process by which the Board of Adjustment must first approve a variance from this section prior to a subdivision being filed.

**3.9.2B(4) [new section] The provisions of this Section may be waived through the subdivision approval process, provided a determination is made that no substantial harm will be imposed upon the health, safety and welfare of the surrounding neighborhood.**

Also, Paragraph 9.7.7F(1) should be amended to include a reference to Section 3.9.2.

The Land Use Control Board is authorized to approve waivers to the requirements for a major preliminary plan where the Land Use Control Board finds that extraordinary hardships or practical difficulties may result from strict compliance and where the intent of this development code may be served to a greater extent by an alternative proposal. Only those provisions found in Article 5 ~~relating to street design and layout~~ **or Section 3.9.2** may be waived by the Land Use Control Board through the waiver process, unless a conflicting procedure is articulated.

3. 4.1: Triggers to the UDC

The table in Chapter 4.1 is one of the most important sections of the UDC. It outlines the kind of development that triggers the zoning code and which kinds of development can remain “grandfathered” under the old zoning code(s). There are two terms in this table that should be clarified for the Offices of Planning and Development and Construction Code Enforcement in their administration of the Code: “expansion of building area” and “new construction.” For example, in the industrial districts, a property owner may expand his principal building by 10,000 square feet before triggering the UDC, but a new building of any size would need to be processed under the UDC. The issue over whether accessory buildings are considered “new construction” or “building expansion” has arisen in several instances. For instance, the addition of a small shed of 500 square feet would trigger the UDC but not a 9,999 square foot expansion to the main building. The following language is proposed to address this issue:

4.1 Applicability. The development standards of this Article apply to **any development** each Chapter as set forth in the chart below: **For the purpose of this table, an addition of an accessory structure to a site shall be considered “building expansion” and not “new construction.”**

4. 4.5.5C(1): Impervious parking lots

The wrong word is used in this Paragraph; asphalt and concrete are impervious surfaces, not *pervious* surfaces. Therefore, the word “pervious” should be replaced with “impervious.”

4.5.5C(1) Except as provided in Paragraph 2 below, where off-street facilities are provided for parking or any other vehicular use area, they must be surfaced with bituminous asphalt, concrete or other **impervious** ~~pervious~~ pavement with a suitable stabilized subgrade approved by the City or County Engineer and maintained in a smooth, well-graded condition.

5. 4.6.7: Fencing in the CA district and for the keeping of livestock

Although the Conservation Agriculture (CA) zoning district permits single-family residences, and single-family residential uses constitute a major portion of the CA district, the district is not listed in Chapters 2.2 and 2.3 as a single-family residential district. The following suggested language would include the CA district in the prohibition of fences of over 4 feet in height from being constructed in front yards:

4.6.7C No fence or wall located within eight feet of a public right of way or located in a required front yard setback may exceed four feet in height in **the** a single-family residential **or CA** districts.

In addition, the UDC prohibits uncoated chain-link fences in most zoning districts, except the industrial zoning districts. The additional language below would also allow uncoated chain-link fences for the keeping of livestock in any zoning district.

4.6.7F Uncoated chain-link fences are not permitted except in the EMP, WD, and IH districts **or for the keeping of livestock and chickens. When used in conjunction for the keeping of livestock other than chickens, uncoated chain-link fences are only permitted on lots of at least 5 acres in size. When used in conjunction for the keeping of chickens, uncoated chain-link fences are only permitted outside of the required front yard. Otherwise, chain link fencing in all other districts must be galvanized, polyvinyl chloride (PVC) color coated in either black, dark green or dark brown color coatings and part of an evergreen landscape screening system. At the intersection of a driveway and a street and on all corner sites (the intersection of two streets), a clear sight triangle shall be established as set forth in Section 4.4.7.**

6. 4.8.4B: Outdoor storage

Outdoor storage is classified by the UDC into two categories: limited outdoor storage and general outdoor storage. The former includes items such as vehicles awaiting repair, garden supplies, etc. The latter includes items such as shipping containers, lumber, etc. The UDC generally discourages outdoor storage in what the UDC considers the required front yards of businesses, but there is also a restriction against outdoor storage in any area between the building and the street. This has proven to be very difficult for many commercial and industrial properties where the building is set back a good distance from the street. The following proposals would prohibit outdoor storage in the area within 15 feet of the street right-of-way (a restriction that is already in the Code; see Sections 4.8.4B(2)(b)(2) and 4.8.4B(3)(b)(2) below).

For example, the normal practice for establishments such as Home Depot and Lowe’s is to display

outdoor products like sheds in front of their building. The UDC considers this as *limited* outdoor storage, and under the current UDC, this practice is prohibited. In addition, these sheds must be screened from the street with landscaping. Under the following proposal, the only limitation to the placement of these sheds would be that they shall be placed 15 feet from the street right-of-way, which will allow the standard landscaping plate between the parking lot and sidewalk. An example of *general* outdoor storage is the stack of pallets at the Coca Cola bottling plant on Hollywood. Stacks of pallets lie in front of the building façade but nevertheless outside of the 15-foot required separation from the street right-of-way. Note: general outdoor storage is only permitted in the industrial zoning districts.

4.8.4B(2)(b) Limited Outdoor Storage

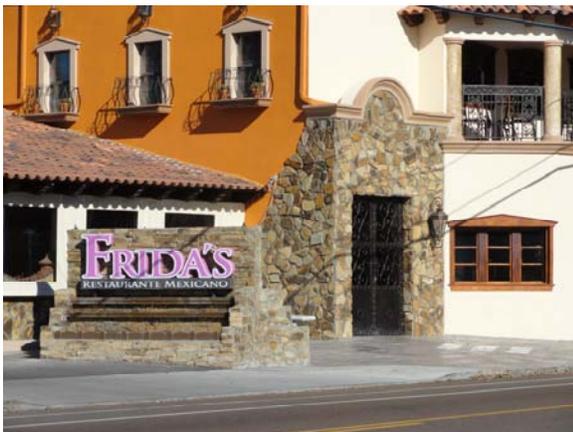
1. Limited outdoor storage shall not be more than 12 feet in height and shall be fully screened from view from ~~the public right-of-way, or~~ adjacent residential development by a Class III buffer as set forth in Section 4.6.5.
2. All limited outdoor storage shall be located at least 15 feet from the public right-of-way and any abutting residential district.
- ...
- ~~5. Limited outdoor storage may not be located between the building and the street.~~

4.8.4B(3)(b) General Outdoor Storage

- ...
2. All general outdoor storage shall be located at least 15 feet from the public right-of-way and any abutting residential use or residential district.
3. No general outdoor storage shall be permitted in a front setback area, ~~any setback area abutting a street, or otherwise forward of the front building line.~~

7. 4.9.6C, etc.: Signs

The current sign provisions of the UDC were written in 2007. The sign code does not permit any sign of more than 6 square feet in size to be within 10 feet of the back of sidewalk. However, the City and County contain a proliferation of signs either built before this 10-foot setback went into effect in 2007 or without a permit. See photos below.



This sign for Frida's on Madison east of Bellevue is about 1 foot behind the sidewalk and out of compliance with the current Code.



This sign for the Gilmore Apartments on McLean, south of Madison, is about 2 feet behind the sidewalk and out of compliance with the current Code.



This sign for Folk's Folly on Mendendall, just south of Sanderlin, is about ½ of a foot behind the sidewalk and out of compliance with the current Code.



This sign for Houston's on Poplar east of Mendenhall, is about 3 feet behind the sidewalk and out of compliance with the current Code.



This First Tennessee sign in the Town of Collierville on Wolf River Blvd., west of Houston Levee, is about 1 ½ feet from the sidewalk and would not be permitted in Memphis and Shelby County.



This bank sign in the Green Hills section of Nashville is directly behind the sidewalk and would not be permitted in Memphis and Shelby County.

The proposed language below would allow signs that are 10 feet in height or less to be close to the sidewalk. Those that are over 10 feet in height will remain legal, nonconforming structures. The proposed language will help promote lower, ground-mounted signs since they would be permitted to be closer to the street than taller signs.

#### 4.9.6C. Sign Setback and Location on the Lot

No sign greater than six square feet in area shall be erected in a Nonresidential District or in the non-residential portion of an approved planned development closer than ten (10) feet to any lot line, **except as provided in this Article**. No sign shall extend into any right-of-way except projecting signs where a building is located within six feet of the right-of-way.

#### 4.9.7C(3). [setbacks in the OG office district]

No portion of a sign **greater than ten (10) feet in height** shall be located within ten (10) feet of a right-of-way, and no sign greater than twelve (12) square feet in area shall be located within fifty (50) feet of an adjacent residential district or a residential portion of a planned development

unless the sign is attached. **There shall be no minimum required setback for detached signs of ten (10) feet in height or less.**

4.9.7D(3)(b)(2). [setbacks in the in the commercial and industrial districts]

All signs **greater than ten (10) feet in height** shall have a minimum setback of ten (10) feet from the **right-of-way** roadway which fronts the property. **There shall be no minimum required setback for detached signs of ten (10) feet in height or less.**

In addition to the sign setback language above, the language regulating the number of permissible signs in the commercial and industrial zoning districts has proven somewhat difficult for both the industry and members of the Offices of Planning and Development and Construction Code Enforcement to interpret. Suggested language, which makes no changes to the number of signs permitted, is provided below.

4.9.7D(4)(b) Maximum number [of signs] permitted

Detached: one sign per road frontage **in accordance with the table below.** ~~to two hundred (200) feet of the lot, plus one additional sign for each additional two hundred (200) feet of road frontage, to a maximum of three signs. After three signs, an additional sign may be added for each additional three hundred (300) feet of frontage.~~ If installed, an integrated center sign shall be considered as one of the detached signs.

<b><u>Road frontage</u></b>	<b><u>Maximum number of signs per road frontage</u></b>
<b><u>up to 399 feet</u></b>	<b><u>1</u></b>
<b><u>400-599 feet</u></b>	<b><u>2</u></b>
<b><u>600-899 feet</u></b>	<b><u>3</u></b>
<b><u>900-1199 feet</u></b>	<b><u>4</u></b>
<b><u>Over 1200 feet</u></b>	<b><u>5*</u></b>

**\*An additional sign is permitted for every 300 feet of frontage over 1200 feet.**

8. 9.3.2: Neighborhood Notification and Meeting

Neighborhood meetings are required for the most significant of land use cases, such as planned developments, special use permits and subdivisions. However, the current language of the UDC does not require neighborhood meetings for amendments to approved Special Use Permits and Planned Developments. Amendments are typically substantial revisions that often change the uses permitted in a project. As such, they require action by the Memphis City Council and/or Shelby County Board of Commissioners. The suggested change below would require mandatory neighborhood meetings for amendments to approved Special Use Permits and Planned Developments and remove the requirement for mandatory neighborhood meetings for major modifications of approved Special Use Permits and Planned Developments. Major modifications are relatively minor requests, such as the addition of an ATM kiosk or changing building setback lines, and they do not require legislative body action unless appealed.

9.3.2 Neighborhood Notification and Meeting

A. At least ten days, but not more than 120 days, prior to a hearing before the Land Use Control Board, the applicant shall host and/or attend a neighborhood meeting with representatives from neighborhoods adjacent to the development site which the hearing involves:

1. Zoning changes not in compliance with any plans to be considered (see Chapter 1.9);

2. Special use permit **or amendment** and ~~major modification~~ to a special use permit;
3. Planned development outline plan or **amendment** ~~major modification~~ to a planned development outline plan; and
4. All subdivisions except minor subdivisions.

9. 9.6.12: Revisions to special use permits

This section addresses revisions to special use permits that have already been approved by the Memphis City Council, Shelby County Board of Commissioners, or both. The sentence below is suggested to ensure that major changes to special use permit site plans go before the Land Use Control Board and not approved administratively by staff.

9.6.12B Time extensions (see Sub-Section 9.6.14B) to and requests to exceed the 24-month limitation on discontinuance (see Sub-Section 9.6.14C) of approved special use permits shall be processed as major modifications, subject to the provisions of Chapter 9.16. **In addition, revisions to site plans approved in accordance with approved special use permits that do not meet the standards below set out for minor modifications (see Sub-Section 9.6.12C) shall be processed as major modifications.**

Sub-Section 9.6.12A should also be amended to replace as disjointed sentence:

9.6.12A Any revision to an approved Special Use Permit that does not meet the provisions for Major or Minor Modifications set out below shall be **processed** ~~if a proposed~~ as an amendment.

Paragraph 9.22.6B(5) below should also be rephrased to be more inclusive. It uses the terms “amendments” and “major modifications;” while it should use the more inclusive term “revisions” (which includes both amendments and major modifications, as well as minor modifications).

9.22.6B(5) Time extensions and **other revisions** ~~amendments~~ to use variances approved by the Memphis City Council and Shelby County Board of Commissioners shall be processed as Special Use **revisions** ~~Major Modifications~~, pursuant to ~~Sub-Section 9.6.12B~~ of this Code.

A similar change is also needed in Sub-Section 9.6.1D:

A special use permit **revision** is required for any expansion, modification or amendment to a use variation, its permitted uses or conditions placed on its permitted uses that was granted by the governing bodies prior to the adoption of this development code.

10. 9.19.3A(2)(a): Certificates of Occupancy

The following language is recommended to ensure that nonconforming uses will not be required to obtain a new certificate of occupancy. In other words, a legal, nonconforming use should be treated in the same manner as any other legal use.

9.19.3 Certificate of Occupancy Required

- A. It shall be unlawful for an owner or any other person to use or permit the use of any building or premises or part thereof, hereafter created, changed, converted, or enlarged, wholly or partly, until a certificate of occupancy has been issued by the Building Official; provided however, such certificate of occupancy shall not be required for a person to use an existing building or premises, or part thereof, if:

1. The proposed use does not require a change in the physical layout of the interior or exterior of the building or structure or its support systems which would require the issuance of a permit from the Building Official under the technical codes; and
2. The proposed use is:
  - a. A permitted use under Article 2.5 of this development code for the zoning district in which the building is located **or a nonconforming use pursuant to Article 10**, and
  - b. The same use and occupancy classification under Chapter 3 of the building code as the most recent such building code use and occupancy classification of the premises.

#### 11. 9.22.6B(3): Use Variances and Special Use Permits

Many older sites throughout the City of Memphis are legal, non-conforming uses due to the changes made to the zoning code throughout the 90-year history of zoning in the city (the UDC is actually the *fourth* zoning code adopted since 1922). These properties are not permitted to expand or rebuild without certain zoning entitlements being granted by the Board of Adjustment, the Land Use Control Board, the Memphis City Council and/or the Shelby County Board of Commissioners. This has the unintended effect of discouraging redevelopment in areas of the city that need it the most. For example, under the UDC, apartment buildings are only permitted in the commercial zoning districts (the CMU-1, -2 and -3 districts) by Special Use Permit, a process which takes about four months. Under the old zoning code(s), apartments were permitted in these districts by right. If the owner of an older, non-conforming apartment building in a commercial district would like to renovate his building, he often must go to both the Board of Adjustment for a variance and the Land Use Control Board and then the Memphis City Council for a Special Use Permit.



This is exactly what occurred when the owner of this 1923 building, the Biltmore Apartments located at 1812 Madison Avenue, wished to renovate the structure. Since Paragraph 9.22.6B(3) prohibits the issuance of a use variance for any use that requires a Special Use Permit, the owner cannot request a use variance from the Board of Adjustment when he goes to that body for another variance request associated with his parking lot. The irony is that a photograph of this building is included in Chapter 3.4 of the UDC, highlighting it as a model example of an apartment building that adheres to the ideals of the UDC.

The language below would allow the use issue associated with this property to be cleared up by the Board of Adjustment as that body considers any other variance. The language below would also prevent property owners from circumventing the Land Use Control Board, Memphis City Council and/or Shelby County Board of Commissioners for a Special Use Permit for *new* developments that require such Special Use Permits under the UDC.

9.22.6B(3) Use Variances and Special Use Permits. No use variance may be requested for any use that requires the issuance of a Special Use Permit by the appropriate legislative bodies in the zoning district of the subject property, **except for the expansion, modification or legitimization of uses established, structures built or sites developed prior to the effective date of this Code (January 1, 2011)**. See Article 2 for uses requiring Special Use Permits.