



Memphis and Shelby County
Office of Planning and Development
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October 18, 2016

TO: Members of the Memphis City Council

FROM: Josh Whitehead, Planning Director and Administrator, Office of Planning and Development

RE: ZTA 16-001, Amendments to the Unified Development Code (the “zoning code”)

Council Members:

During its first hearing of this case on September 26, 2016, the Shelby County Board of Commissioners approved two amendments. The first of these dealt with those parties who may appeal decisions of the Planning Director, Building Official, City Engineer, County Engineering or any of their designees when administering the code. As the staff report on this item indicates (this is Item 33 in the staff report), the Code as currently written conflicts with State law in that it only permits the subject property owner to appeal administrative decisions pursuant to the Code. On the other hand, state law states any “aggrieved party” may appeal decisions made pursuant to zoning codes to the Board of Adjustment. During the Land Use, Transportation and Codes Committee meeting on September 21, Commissioners stated their desire to provide legislative intent on which parties can in fact be classified as “aggrieved” from a site plan approved by staff. The following language is an attempt to address this request (amended language is in **bold, underline** and ~~strikethrough~~ below):

Section 9.2.2, Summary of Review Table

		Review, Recommendation, Decision and Approval							
		City or County Engineer	Building Official	Technical Review Committee	Planning Director	Board of Adjustment			
	x-ref								
Administrative Site Plan	9.12			Δ	D	A** A*			
Special District Administrative Review	9.13			Δ	D	A** A*			
Administrative Decision		D	D		D	A** A*			

A = Appeal

A* = Only the subject property owner or his or her representative may appeal decisions of the Planning Director, Building Official or City or County Engineer.

A = Only those property owners within 1000 feet of the subject property, as measured from property line to property line, may appeal decisions of the Planning Director, Building Official or City or County Engineer.**

As presented in the Joint Ordinance, this change will be reflected as such:

Amend Section 9.2.2:

(replace the symbol “A*” under the column “Board of Adjustment” in the rows entitled “Administrative Site Plan,” “Special District Administrative Review,” and “Administrative Decision” with the symbol “A**” with the following new footnote: **A** = Only those property owners within 1000 feet of the subject property, as measured from property line to property line, may appeal decisions of the Planning Director, Building Official or City or County Engineer.**)

The second item discussed during the Land Use, Transportation and Codes Committee on September 21, and amended by the full Board of Commissioners on September 26, was the proposed definition of “earth extraction” that would trigger the need to obtain a Special Use Permit from the Shelby County Board of Commissioners or Memphis City Council. This is covered in Item 38 of the staff report. During the Committee meeting, Commissioners expressed concern that the proposed definition, setting an exemption of dirt removal of less than three acres, did not account for deep digs of relative small size. Commissioners also asked that certain situations be exempt from this definition, such as sites being returned to agricultural use and dirt removal made pursuant to the creation of ponds and lakes. The language below addresses these concerns (again, amended language is in **bold, underline** and ~~strikethrough~~ below):

Section 12.3.1, Definitions:

EARTH EXTRACTION: Earth extraction requiring the issuance of a Special Use Permit shall be limited to dirt removal from a site where the area of dirt removed ~~within a 365-day period~~ exceeds three acres in **area or 4840 cubic yards in volume, whichever is less. The following examples of earth extraction are exempt from the requirement to obtain a Special Use Permit:**

1. Earth extraction incidental to a plan approved in accordance with this Code ~~is exempt from the requirement to obtain a Special Use Permit.~~
2. **Earth extraction incidental to the construction of a single-family dwelling.**
3. ~~In addition,~~ **Earth extraction incidental to a project funded by the city, county, state or federal government is exempt from the requirement to obtain a Special Use Permit.**
4. **Earth extraction incidental to a duly permitted lake or pond.**
5. **Earth extraction incidental to the grading, tilling or leveling of land for a permitted agricultural use.**

Finally, during its Second Hearing of this case on October 17, the Board of Commissioners made a third amendment. The Board deleted the proposed definition of “feather signs” and a reference to such signs in the sign chapter of the code. This will remove the proposed reference to “feather signs” in Paragraph 4.9.2D(8) of the Code and the proposed definition in Section 12.3.4.