STAFF REPORT

AGENDA ITEM:

CASE NUMBER: ZTA 17-001 **L.U.C.B. MEETING:** September 14, 2017

APPLICANT: Memphis and Shelby County Office of Planning and Development

REPRESENTATIVE: Josh Whitehead, Planning Director/Administrator

REQUEST: Adopt Amendments to the Memphis and Shelby County Unified Development Code

EXECUTIVE SUMMARY

1. Items 1, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32 and 33 are relatively minor in nature and further explained in this staff report.
2. Item 2 deals with the pending legislation section of the Code; that is, that if amendments to the Code are sufficiently pending, they apply to applications filed with the Offices of Planning and Development and Construction Code Enforcement. This proposal would add pending changes to the zoning map to the pending matters that apply to applications filed during the pendency.
3. Item 3 would require new blood plasma donation centers to receive a Conditional Use Permit from the Memphis and Shelby County Board of Adjustment prior to opening in the commercial zoning districts.
4. Item 4 allows up to four weddings or similar events to occur at a home before a Conditional Use Permit is required; two if the home is unoccupied.
5. Item 8 stipulates that the prohibition against the parking of large trucks on residential lots also applies to residential streets.
6. Item 11 will require windows to be placed on apartment buildings located in close proximity to streets.
7. Item 17 proposes several updates to the Tree Ordinance. The most significant of these is the new requirement that those trees that are to be retained from a site be clearly marked by flags, tree paint or fencing. For those non-disturbed areas along the perimeter of the site, the amount of trees is being reduced from 18% and 23% to 0%; in other words, no trees will be removed from the perimeters of a site under this proposal.
8. Item 25 clarifies land uses and streets, as identified in the concept plan of a Planned Development outline plan, may only be shifted by the same dimensions that currently apply to buildings. Otherwise, a major modification or amendment to the outline plan will be required.
9. Item 31 would allow the Planning Director to reject an application for a minor subdivision that does not meet the character of the surrounding neighborhood. This proposal would direct the Planning Director to look at the same attributes of the lots surrounding the subject site (setbacks, size, etc.) as the Land Use Control Board looks at when reviewing applications for *major* subdivisions.

RECOMMENDATION

Approval

Staff Writer: ***Josh Whitehead*** **E-mail:** ***josh.whitehead@memphistn.gov***

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

1. Table of Contents, 2.3.8J and 8.6: Overlay Suffixes

   In both the Table of Contents and in the heading of Chapter 8.6, an "(-H)" needs to be added at the end of the phrase "Historic Overlay District" to comply with the manner in which such districts are reflected on the zoning atlas and to conform with the suffixes provided for the other overlay districts. In Sub-Section 2.3.8J, the suffix for the Midtown District Overlay needs to be indicated as "(-MD)" and not "(-MDO)" to match the suffix used for that overlay elsewhere throughout the Code.

2. 1.13.3E: Pending legislation

   This section of the Code deals with applications pending at the time a text amendment is being processed. It requires the text amendment to be taken into consideration by any board or individual acting pursuant to the UDC. This section should be amended to incorporate pending amendments to the zoning map, as well.

   Applications Pending During Text **and Map** Amendments
   1. Vested Rights. Text amendments to this development code **and amendments to the Zoning Map** shall apply to any application that is complete and pending at the time the ~~text~~ amendment(s) receive final approval from the governing bodies, provided the application has not resulted in the issuance of a building permit or the approval of a subdivision plan or any other site plan that was granted in accordance with the provisions of this Code. This Paragraph shall not be interpreted to conflict with TCA 13-4-310.
   2. Pending Legislation. Any individual, board or body with authority to act upon the regulations of this Code shall consider pending text amendments to this Code **and pending amendments to the Zoning Map**, provided the pending ~~text~~ amendment(s) have been acted upon by the Land Use Control Board and by one or both governing bodies at second reading (see Chapter 9.4, Text Amendment **and Chapter 9.5, Zoning Change**).

3. 2.5.2 and 2.6.2K (new section): Blood plasma donation centers

   There have been at least two examples of blood plasma donation centers being proposed in close proximity of potentially incongruous land uses. The first of these exists at 3923 Park Avenue in the University District, directly next door to the Bottle Shoppe, a liquor store. The second of these is proposed as of the writing of this staff report. It is proposed on Summer Avenue in close proximity of single-family residential uses. Due to the potential secondary effects of these uses, it is proposed that the use chart in Sec. 2.5.2 of the Code be amended to require the issuance of a Conditional Use Permit in the two commercial zoning districts in which they are currently permitted by right (the CMU-2 and CMU-3 districts). This proposal would make such a change to the use chart of Section 2.5.2, as well as add a new use standard cross-referenced in the use chart. This new section, Sub-Section 2.6.2K, would permit those blood plasma donation centers that were established prior to the date of the adoption of this zoning text amendment to be expanded or modified.

   2.6.2K (new section): Blood Plasma Donation Center
   Blood plasma donation centers established before [insert date of this ZTA

here] in the CMU-2 and CMU-3 districts may be modified, expanded or rebuilt on the same site without the issuance of a Conditional Use Permit.

4. 2.5.2, 2.9.4D and 12.3.1: Home-based wedding and event venues

Under both the UDC and its predecessor code, the 1981 Zoning Code, home-based wedding and other occasional event venues were not specifically listed as a use but nevertheless were processed through various land use applications, including use variances and special use permits. This proposal will add a specific use entitled "Home-Based Wedding and Event Center" in the Use Table and require specific zoning review before a public hearing. This proposal would also define how often weddings or special events must occur at a residence before zoning action. For instance, a once-in-a-lifetime event such as the wedding depicted in the 1950 and 1991 films, *Father of the Bride*, should not require a public hearing.

Under this proposal, a new principal use under the category entitled "Outdoor Recreation" would be added to Section 2.5.2 (the Use Table): "Home-Based Wedding and Event Center." This use would require a Conditional Use Permit, marked by a "C," in the CA (Agricultural), RE (Residential Estate), R-15 (Residential) and R-10 (Residential) zoning districts. This will also involve the term "Home-Based Wedding and Event Center" being added to the list of Outdoor Recreation principal uses in Sub-Section 2.9.4D. Finally, and perhaps most importantly, this proposal would involve the addition of the following definition to Section 12.3.1:

12.3.1 **Home-Based Wedding and Event Center: An establishment that caters to weddings or other occasional special events for large groups of individuals, including but not limited to the following: weddings, birthdays, reunions, church events, company events and anniversaries. This use shall be limited to those special events that occur at a frequency of four or more times per calendar year. Furthermore, this use shall be limited to those special events that occur largely outdoors or in structures that are open-air. For the purpose of this definition, "large groups of individuals" shall mean at least 50 individuals present on the site at any one time. Home-based wedding and event centers may or may not occur on the same site that is occupied by a single-family residence; however, for those that occur on sites that are not occupied by a single-family residence, the use shall be limited to those special events that occur at a frequency of more than once per calendar year.**

5. 2.6.2I(3)(e)(1): Co-location of antennae on cell towers

This section of the UDC, which deals with cell towers administratively reviewed by staff, only permits two antennae on these towers. However, Sub-Item 2.6.2I(2)(d)(1), which deals with cell towers subject to Special Use Permits, allows four antennae. The proposal below clears up this discrepancy.

2.6.2I(3)(e)(1) Any proposed tower shall be structurally designed to accommodate at least **four** ~~two~~ CMCS sectorized antenna arrays if 130 feet in height or greater…

6. 2.6.4H: Containers Buildings

In 2015, the Memphis City Council and Shelby County Board of Commissioners approved ZTA 15-002, which, among other matters, added to the UDC the requirement that commercial uses that utilize shipping containers receive individualized review to ensure compatibility with the site's immediate surroundings. The definition of "Container Building" stipulates that the shipping container be used as the principal building on the site, but often, the shipping container is used as an accessory building, such as storage rooms. This proposal would add the word "accessory" to ensure that accessory shipping container buildings also receive individualized review at a public hearing.

> 2.6.4 Container Building. Definition. A container building is any principal **or accessory** structure used for a purpose other a dwelling unit that is wholly or partially located within a shipping container…

7. 2.7.2: Accessory structures

This section of the Code deals with accessory structures. A few of its sub-sections need clarification, given issues that have arisen over the course of the last several years of administering the UDC.

2.7.2A(1). The current Paragraph 2.7.2A(1) (which will shift to Paragraph 2.7.2A(2) if this proposal is adopted) prohibits accessory structures from being five feet to any other building on its lot. This language should be repeated by clearly also prohibiting accessory structures from being five feet of the property's side and rear property lines.

> **2.7.2A(1)** (new section) **No accessory structure shall be located closer than five feet to any side or rear property lines.**

2.7.2A(4). The purpose of this section is to prevent sheds, carports, garages and other similar structures from being placed in front of a home. However, it has also been applied to barns on very large lots within certain residential and CA districts. The proposal below would both add open districts (primarily the CA district) to its applicability, but then allow barns and other related structures to be located in front of homes, under certain conditions.

> 2.7.2A(4) In single-family**, open** and residential zoning districts, no accessory structure shall extend forward of the front building. Flagpoles, bird baths, statues and similar ornamental features are exempt. See also Sub-Section 3.2.9E, Encroachments. **Barns and other related accessory structures may be located in front of the primary residence, provided that such structures are at least 100 feet from the right-of-way and the subject site is at least four acres in size.**

2.7.2B. Since Paragraph 2.7.2B(2) contains language dealing with setbacks of accessory structures, as they relate to the height of said structures, the heading of this Sub-Section should be changed from "Height" to "Height and Setbacks."

> 2.7.2B Height **and Setbacks**

8. 2.7.10B: Parking of trucks in the residential zoning districts

This section prohibits the parking of heavy trucks in the residential zoning districts. This is typically interpreted to mean the parking of heavy trucks on a residential property since zoning codes traditionally deal with properties rather than right-of-way and streets. Given that there is a growing problem of parking of delivery trucks and tractor trailers on residential streets, particularly at the dead ends of these streets, the following language is proposed:

> 2.7.10B: The parking of trucks, heavy equipment or tractor trailers shall not be allowed **on any lot or on any street segment wholly or partially located within a residential or open zoning district.** This requirement shall not prohibit commercial vehicles from making deliveries in a residential or open district. For the purpose~~s~~ of this Sub-Section, the terms "trucks" and "heavy equipment" includes vehicles or equipment in excess of 8,000 lbs., with the exception of consumer vehicles such as duallies. **Furthermore for the purpose of this Sub-Section, "street segment" shall mean the section of a street as measured horizonally from curb-to-curb or edge of pavement-to-edge of pavement.**

9. 2.9.4H: Electronic vehicle service stations

The purpose of this section is to outline all retail uses in a more comprehensive manner than can be provided in the Use Table, Section 2.5.2. While gas stations and convenience stores with gas pumps are provided in this list, electronic vehicle service stations are not. This proposal would add "**electronic vehicle service station**" to this section since they are classified as retail uses in Section 2.5.2.

10. 3.2.9F: Encroachments

This section stipulates that building encroachments need either action by the Board of Adjustment or the Land Use Control Board, but it is only meant to apply to those encroachments not otherwise permitted by the Code. The proposed added sentence below will clarify this.

> 3.2.9F: An encroachment into a building setback or easement found in either this Code or any recorded plat or plan shall be heard by the Board of Adjustment as a variance request, unless authorized otherwise. However, the removal or relocation of a building setback or easement shall be heard by the Land Use Control Board as a major modification request (see Item 9.6.11E(2)(d) and Sub-Section 9.7.9B). **This Sub-Section does not apply to those encroachments permitted by this Code.**

11. 3.7.2B, 3.8.5B and 3.8.6C: Windows for apartments close to the street

One of the major policy changes to the City's zoning that was effectuated with the adoption of the UDC in 2010 was the requirement that new apartments be built in close proximity to the street, a practice that was typical with many of the apartment buildings built in the city before the 1950s. The requirement for apartments to be constructed close to the sidewalk applies to the core areas of the City, including those areas identified on a map in Sub-Section 4.9.14E (essentially, the area inside the parkways), the CBID (downtown, Uptown and S. Main) and the University District Overlay. However, this setback provision is not accompanied by a requirement for transparency along the front façade of the built, which can result in situations such as the building pictured to the left at 3566 Spottswood (located on the north side of Spottswood betwixt Minor and Brister) in the University District Overlay. Such requirements for transparency do apply to similar commercial structures.

This proposal would require the same transparency requirements that primarily apply to apartment buildings on what are known as "designated frontages" of the overlay districts to these apartment buildings (Sub-Sections 3.10.3H and Sub-Section 8.4.8D requires a 20% transparency on most designated streets, both on the ground and upper floors). This would involve amending "Footnote 1" in Sub-Sections 3.7.2B, 3.8.5B, 3.8.6C,

> Footnote 1: Front (max) and required building frontage only apply to those parcels in the CBID or Zone 1 depicted on Map 1 of Section 4.9.14 [this language will change to "**Map 3 in Sub-Section 4.9.7D**" if Case No. ZTA 17-002 is approved] (i.e. inside the Parkways) or in the University District Overlay and shall be measured from and along any abutting primary street. Required frontage along any abutting side street shall be 35%. **Transparency on all floors along both the primary and side streets shall be 20% on all structures built within the 2-20 foot setback range.**

12. 4.4.4A

This section needs to be clarified to stipulate that the 16-foot maximum width of a residential driveway where it meets the property line only applies to the *front* property line (i.e., the apron); citizens have asked about whether this provision affects the width of their driveways in the rear yard or along the side yards.

> 4.4.4A Excluding those sections where turning movements require larger dimensions, the width of a residential driveway within the required front yard of lots smaller than 15,000 square feet, must be no less than eight feet and no more than 22 feet, provided that the driveway is no wider than 16 feet at the **front** property line. For subdivisions built prior to 1950 driveways must be a maximum of 12 feet wide and must extend 20 feet beyond the front of the house.

13. 4.5.2C(2)(e), 4.5.4B(3), 12.3.1, 2.5.2 and 2.6.2G(3): Off-site parking and commercial parking

Item 4.5.2C(2)(e) and Paragraph 4.5.4B(3) both allow for off-site parking, but the former requires such off-site parking to be 300 feet from the principal use that it serves and the latter requires it to be within 660 feet. This apparently is not a conflict since the latter triggers an administrative site plan review while the former could be construed as a "by right" situation where the underlying zoning district permits commercial zoning. Even so, there are a few items within these sections that need to be clarified:

Sub-Item 4.5.2C(2)(e)(2) states that off-site parking is permitted but only if the use that it serves would be permitted in the zoning district in which the off-site parking is located by right or by Special Exception by the Land Use Control Board. In the same way, Item 4.5.4B(3)(c) states that the zoning district in which the off-site parking lies must "allow" commercial parking as a principal use but does not state whether the commercial parking is allowed "by right" or by issuance of a Special Use Permit. The amendments below clarify these questions:

> 4.5.2C(2)(e)(2): Such off-site parking spaces are located within a district which would permit the use to which such parking is accessory or as permitted by the Land Use Control Board through the special exception process (see Chapter 9.14). **A special exception shall be required for the off-site parking if the latter applies. See also Paragraph 4.5.4B(3)(c).**
>
> 4.5.4B(3)(c): The off-site parking must be located wholly within a zoning district that **permits by right** ~~allows~~ commercial parking as principal use. **See also Sub-Item 4.5.2C(2)(e)(2).**

Also, the term "commercial parking," while found in both the Use Table of Section 2.5.2 and in Item 4.5.4B(3)(c), is not currently defined in the Code. The definition is being offered for this term:

> 12.3.1: Commercial Parking: Any surface or structured parking that serves an off-site non-residential use(s).

Finally, Section 2.5.2 (the use table) and Paragraph 2.6.2G(3) require a Special Use Permit for off-site parking to accompany places of worship. Two changes are proposed for these sections: first, the latter should be changed to include a cross-reference provided in Sub-Item 4.5.2C(2)(e)(2) above and second, both should be changed to require places of worship to go through the Conditional Use Permit process, which involves less time and expense for the place of worship. This will involve the language cited below, as well as changing the hollow box symbol ("□") for off-site parking for places of worship in Section 2.5.2 to a "C."

> 2.6.2G(3): All parking shall be located on the same site as, or a contiguous site to, the site on which the place of worship is located, or in a district that allows commercial parking as a principal use. A **conditional** ~~special~~ use permit shall be required for all off-site parking for places of worship for parking not located on the same site as, or a contiguous site to, the site on which the place of worship is located, or in a district that allows commercial parking as a principal use (see Use Table, Section 2.5.2). **This**

Paragraph shall not apply to off-site parking that meets the provisions of Sub-Item 4.5.2C(2)(e)(2).

14. 4.5.5D(1)(a): "right-of-of way"

This section needs to change the wording from "right-of-of way" to "**right-of-way**."

15. 4.6.5D(3): Errors in the landscaping buffer provisions

With the adoption of ZTA 16-001 in 2016, an amendment to the UDC was approved that squared the landscaping buffer provisions of table in Paragraph 4.6.5C(1) with the graphics as shown in Sub-Section 4.6.5D below it. Specifically, the graphic for the Class III, Type C buffer was amended to show a sight-proof fence (rather than chain link) with seven trees (rather than six). Two additional errors were inexplicably made to the UDC document when this change was made: 1) the Class III, Type B buffer went from 10 feet in width to 15 feet in width and 2) Paragraph 4.6.5J(3)(e) moved up to become Paragraph 4.6.5D(3)(a). This proposal would fix these two errors.

16. 5.5.5B(4): Standard improvement contracts

Before the adoption of the Unified Development Code, there was a separate Zoning Code and a Subdivision Regulation Ordinance (hence, the "unified" in "Unified Development Code"). This section of the Code contains holdover language from when the subdivision improvement contracts were based on the Subdivision Regulations. The proposed below would address this:

> 5.5.5B(4) Failure to follow this extension procedure constitutes a breach of the contract and places the applicant in violation of **this Code** ~~the subdivision regulations~~.

17. 6.1: Tree ordinance cleanup

The Tree Ordinance was originally approved by the Memphis City Council and Shelby County Board of Commissioners in 2001 and has not been significantly updated since then. Given its applicability on a few sites in the recent past, the following changes are suggested. The basis of many of the updates to the tree ordinance, including many of the definitions, are from Tennessee Department of Agriculture, Division of Forestry (esp. *Guide to Forestry Best Management Practices*, 2003). This guide is used by the personnel at Tennessee Department of Environment and Conservation (TDEC) when they inspect timber harvesting sites.

6.1.2B(2): First, the title of this section should be reworded since it addresses surveys and permits rather than the notice of intent process:

> 6.1.2B(2) Survey and Permit ~~Notice of Intent~~ Required ~~Survey/Permit~~

In addition, the following two sections require updated referencing and rephrasing.

6.1.2B(2)(b): Before the removal of any existing tree, a tree survey shall be submitted to the Planning Director for review, except as provided under Sub-Section **6.1.2**A above **or Paragraph 6.1.2B(3) below**.

6.1.2B(2)(c): A permit shall be required **under any of the following three situations: 1)** ~~if~~ the removal of existing trees exceeds the matrix limits established under **Sub-Section 6.1.2C** ~~paragraph~~ **below; 2)** an equivalent alternative method as described ~~under~~ **in** Item **6.1.2B(**3**)(**a**)** below is not selected~~, and~~ **or 3)** no waiver of such requirement is provided by the Planning Director.

6.1.2B(3)(b)(3): This section needs a reference to the use standards section of the UDC that contains regulations for timber harvesting.

6.1.2B(3)(b)(3): (new section): **See Sub-Section 2.6.5G for further regulations regarding timber harvesting.**

6.1.2B(4) (sew section): In practice, OPD staff has required some sort of delineation on the ground to mark the areas where trees were to be preserved, but the tree ordinance does not mandate this practice. This new section will require all areas of a site where trees are to be preserved to be marked.

6.1.2B(4) (sew section): **Tree Identification**
Prior to any tree removal under any process identified in this Chapter, the non-disturb areas of the site shall be clearly marked by flags, fencing and/or tree paint identifying the perimeters and Streamside Management Zones pursuant to Sub-Section 6.1.2C, as well as any other non-disturb areas. The flags and/or tree paint shall be located at a frequency of at least every 50 feet.

6.1.2C: This section contains the tree removal/preservation matrix, which requires trees along the perimeter of a site to be maintained. This matrix has proven to be very difficult to enforce, since it is difficult to measure whether, for instance, 18% of the trees along the perimeter have been preserved. The primary changes proposed with this amendment are that no trees are permitted to be removed from the perimeters, except in areas where these perimeters need to be crossed for access. The Tree Ordinance definitions section of the UDC, Section 12.3.2, defines "perimeter" to mean the required front, rear and side setbacks that apply to the zoning district of the subject site, but in no case shall be less than 15 feet (which is proposed to be changed to 30 feet). A note is also added that, in addition to the perimeter of a site, trees are not to be removed from a streamside management zone, which includes a 30-foot buffer around any perennial or intermittent stream. Definitions of "streamside management zone," as well as terms used in that definition, are provided below.

6.1.2C:Removal of existing trees exceeding any of the percentages below, where an equivalent alternative or waiver is not used or given, shall require a permit:

	Maximum Disturbed Area	
Proposed Use	Perimeter of Site/SMZ*	Remainder of Site
Single-family (10,000 sq. ft. or less)	**0%**~~18%~~	100%
Single-family (over 10,000 sq. ft.)	**0%**~~18%~~	80%

Multifamily	**0%**~~18%~~	80%
Office/institutional	**0%**~~18%~~	90%
Retail	**0%**~~23%~~	90%
Agricultural (including tree harvesting)	**0%**~~18%~~	100%

***There is one exception for tree removal within a perimeter: a maximum of two points of ingress and egress no wider than 30 feet each may be permitted to access the site. There is one exception for tree removal within an SMZ: one stream crossing of no wider than 20 feet every 200 feet. For the acceptable widths of the perimeter and SMZ (Streamside Management Zone), see definitions in Section 12.3.2.**

12.3.2: **EPHEMERAL STREAMS: A stream running in a diffuse manner during and for short periods following precipitation. There is no well-defined stream channel, commonly referred to as drains, draws, dry washes or wet weather conveyances. Aquatic plants and animal life are not present, but leaf, twig and other forest litter is typically present or sporadically displaced.**

12.3.2: **INTERMITTENT STREAMS contain water within a well-defined channel and flow in response to seasonal variations in precipitation (40 to 90 percent of the time) following a major rainstorm or as long as ground water is abundant.**

12.3.2: **PERENNIAL STREAMS contain surface water within a well-defined channel. These streams flow practically year round under normal weather conditions and usually provide permanent habitat for aquatic plants and animal life.**

12.3.2: PERIMETER OF SITE: The outside boundary of the total site as defined by the proposed (for a zoning change application) or existing (for a proposed planned development) zoning classifications for front, rear, and side setbacks, except that in no case shall any applicable yard be less than **30** ~~15~~ feet in width. The front setback shall not include required reservation of right-of-way for arterials or connector streets.

12.3.2: **STREAMSIDE MANAGEMENT ZONES (SMZs): Areas encompassing perennial and intermittent streams and the 60-foot wide buffer on either side of the top of the stream banks where management practices that might affect water quality are modified. SMZs are also those areas encompassing ephemeral streams and the 30-foot wide buffer on either side of the top of those stream banks. SMZs filter sediment and nutrients from overland runoff, allow water to soak into the ground, protect stream banks and lakeshores, provide shade for streams and improve the aesthetics of forestry operations. No tree removal is permitted in any SMZ under the notice of intent waiver process.**

6.1.3B(1): This section sets an amount to be contributed to the tree bank that is set in ordinance; this proposal would remove this amount for the ordinance and place it within the Office of Planning and Development Fee Schedule, which is presented to the Memphis City Council and Shelby County Board of Commissioners on a periodic basis.

6.1.3B(1)(c) In the event that the Planning Director determines that the proposed site is located in any district that may not adequately provide the required space to accommodate the provisions of this Chapter, or the soil types, topography and/or unusual nature of the site would not assure the growth of trees, or in the event the applicant prefers to contribute to the tree bank instead of on-site replacement, the applicant may contribute to the tree bank~~,~~ an amount of money equal to the cost of providing the required replacement on the site up to a maximum contribution ~~of $1,000.00 per acre~~ **established in the Office of Planning and Development fee schedule by the governing bodies from time to time,** of the area of the site for which a permit is required. ~~The schedule of reasonable costs will be determined by the Planning Director and may be updated from time to time.~~

18. 6.4.1A: Stream buffers

The Tennessee Department of Environment and Conservation requires a 30-foot setback from the top of the bank of a "water of the State," but the UDC requires 60 feet. This section is redefined to square with the State requirement.

6.4.1A: A stream buffer shall be established on both sides of any stream determined to be "waters of the State" or a jurisdictional water course by the Tennessee Department of Environment and Conservation (TDEC). The width of the required stream buffer shall be determined by TDEC, or as set forth in Sub-Section 8.8.5E or 8.8.5H**, but** ~~abut~~ in no case shall it be less than **30** ~~60~~ feet.

19. 7.2.9F: Parking lots on corners

The SCBID generally prohibits parking lots being built at corners. This regulation is found in Sub-Section 7.2.9F, which contains three requirements for the placement of surface parking lots in the SCBID, each with the caveat, "except as otherwise deemed appropriate by the Memphis City Council." This language, which does not explicitly state how the Memphis City Council would grant such exceptions, was part of the original SCBID ordinance passed by the Memphis City Council on November 12, 2002, with the passage of ZTA 02-003. According to OPD personnel who were in attendance during the Memphis City Council's approval of ZTA 02-003, these exceptions were added by the Council at the behest of Councilman Tom Marshall, who intended it to apply to principal parking lots. Since the passage of ZTA 02-003, OPD has processed accessory parking lots that do not meet these exceptions as Special Exceptions (see, as an example, SCBID 10-07, the parking lot for Memphis College of Art at the northeast corner of Front and Butler). This approach is reflected in the proposed language below, which is consistent with Paragraph 7.2.2F(3), which reads, "[t]he Land Use Control Board may approve modifications to any parking requirements in accordance with the Special Exception Requirements (see Section 7.2.10)." Special exceptions, while approvable by the Land Use Control Board, are appealable to the Memphis City Council. Parking lots as principal uses are not permitted in the SCBID, as stipulated in the permitted use sections of each individual zoning district in the special purpose district.

7.2.9F: Surface Parking Lots Discouraged on Corners – Surface parking lots shall not occur in front of the primary façade or on corner locations~~, except as otherwise deemed appropriate by the Memphis City Council~~. Surface parking lots shall be

located a minimum of 65 feet from the intersection of any street measured from the edge of the right-of-way or 20% of the distance of the street frontage of the block, whichever is greater~~, or otherwise as deemed appropriate by the Memphis City Council~~. No surface parking lot shall have more than 200 feet of street frontage, inclusive of the required side yard landscape plate and no more than two such lots shall be contiguous in any one block~~, unless otherwise deemed appropriate by the Memphis City Council~~. **Any provision of this Paragraph may be waived through the approval of a Special Exception (see Section 7.2.10).**

20. 8.2.4A: Permitted uses in the Medical Overlay District

The opening sentence of the permitted use section of the Medical Overlay District needs to be clarified so it is not interpreted to mean that a use permitted by Special Use Permit in the underlying zoning district (under Section 2.5.2, the Use Table) would be permitted by right in the Medical Overlay District.

8.2.4A All uses permitted by right or by special use permit in the underlying zoning districts are permitted **by right or by special use permit** in the Medical Overlay District, with the exception of the following prohibited uses…

21. 8.4.8C(2)(b) and (c): Building height in the Midtown Overlay District

These two sections indicate that building height in the Midtown Overlay is regulated by the height requirements found in Article 3, but in reality building height in Midtown is regulated by the height map in Section 8.4.9. The proposed language below corrects this.

8.4.8C(2)(b): For apartment and nonresidential district regulations pertaining to tract or lot area, tract or lot width~~, building height,~~ and ground floor area still apply and are listed in Sub-Section 3.10.2B.

8.4.8C(2)(c): For all other housing types, district regulations pertaining to tract or lot area, tract or lot width~~,~~ **and** unit width ~~and building height~~ still apply and are listed in Sub-Section 3.10.2C.

22. 9.1.8B(1)(h), et al: TRC review of street and alley closures

ZTA 15-002, which was approved by the Memphis City Council and Shelby County Board of Commissioners, respectively, on October 6, 2015, and October 26, 2015, removed street and alley closures from the list of items that required a hearing before the Technical Review Committee since so many dealt with vacation of paper rights-of-way. At that time, "right-of-way vacation" should have been added to the list of those cases that may be heard by the Technical Review Committee. This proposal does exactly that, as well as adds an "and" to Item 9.1.8B(2)(f) and removes the now superfluous "and" from Item 9.1.8B(2)(g).

9.1.8B(1)(h) [new section]: **Right-of-way vacation**;

23. 9.3.4A: Public Hearings

Under the Review Table in Section 9.2.2, a public hearing is required for minor subdivisions at the Technical Review Committee. However, under the Public Hearing Table in Sub-Section 9.3.4A, this public hearing is not readily apparent. This proposal would add an extra column in the Public Hearing Table entitled "Technical Review Committee" with a "PH" requiring a public hearing for Minor Preliminary [Subdivision] Plans.

Also, the footnote to "PH-AO" has lead some to believe that they must appear in objection to a case and then file an appeal in order to trigger the public hearing requirement before the Memphis City Council or Shelby County Board of Commissioners. However, Secion 9.2.2 does not require such an appeal to be filed; the public hearing is automatic if objections are provided in writing before a Land Use Control Board meeting or given during the meeting. The following amendment to this footnote should resolve this in the future:

PH-AO = Public Hearing Upon Appeal **or Objection** Only **(see Section 9.2.2)**.

24. 9.3.6B Withdrawal of Applications

This section of the Code deals with withdrawals of applications. Since many of these withdrawals now occur by email, the following language is suggested:

9.3.6B The statement of withdrawal shall be **in writing and may be delivered by hand, through mail or electronically**. ~~signed by all persons who signed the application or their representative.~~

25. 9.6.11D(3)(c): Modifications to planned developments

This section stipulates that planned development final plans must be consistent with the original planned development outline plan that were approved by the City Council or Board of County Commissioners. Additional language is needed to make it clear that, in addition to the building locations within a final plan adhering to where they were shown on the outline plan, the "zoning boundaries" must also be adhered to. For instance, larger planned developments will often contain different areas that allow for different uses; these essentially amount to zoning district boundaries. The proposed language would address this.

9.6.11D(3)(c) *The Planning Director may find that a final plan conforms with an approved outline plan if*…

It modifies the **location of permitted land uses, the** orientation of buildings or ~~their~~ **the** location **of buildings or streets** as long as such changes do not significantly alter or adversely affect the relationship of such **land uses,** buildings **or streets** to the total development or any of its elements. Such modification shall not exceed a distance of:

1. 25 feet for final plans of two or less acres;
2. 50 feet for final plan of more than two but less than eight acres;
3. 100 feet for final plans of eight acres but than 20 acres; and
4. 150 feet for final plans of 20 acres or more.

26. 9.6.11E(2)(b) Notice for Major Modifications to Planned Developments

This section, which requires notice to all property owners within a planned development for a major modification, conflicts with the notice chart in Sub-Section 9.3.4A, which only requires mailed notice to adjacent property owners. Given that notice is provided through electronic mail to neighborhood associations and neighbors directly through NextDoor.com and signs are posted on the property, it is suggested that this section be modified to adhere to the notice chart. Mailed notice to all property owners for a setback change or another relatively minor condition that would not rise to the level of an amendment would be onerous given the number of property owners within larger planned developments such as Mud Island, Southwind, Buckingham Farms, etc.

> A modification to an outline or final plan shall require notification to all property owners **in accordance with Sub-Section 9.3.4A,** ~~within the planned development~~ but shall not require **all of these** property owners to sign the modification application.

27. 9.6.11E(2)(g) [new section]: Expiration of Planned Development major modifications

This new section is required to address those major modifications approved by the Land Use Control Board but never effectuated, either through the construction of improvements on the property pursuant to the major modification or a re-recordation memorializing the major modification. This proposed language addresses situations of expired major modifcations.

> **9.6.11E(2)(g)** [new section] **Approved major modifications expire five years after the date of approval unless an outline plan or final plan has been recorded memorializing the major modification.**

28. 9.6.12B: Major modifications to Special Use Permits

This section addresses those revisions to Special Use Permits that require action by the Land Use Control Board. These are differentiated from those that require action by the legislative bodies (known as "amendments") and those that can be processed administratively (known as "minor modifications"). The sentence that is the subject of this amendment states that revisions to approved site plans that do not meet the parameters set out in Sub-Section 9.6.12C for minor modifications must go to the Land Use Control Board. The proposal below would amend this sentence to add elevations and conditions to site plans so that any major changes to them would also require action by the Land Use Control Board.

> 9.6.12B…In addition, revisions to site plans**, elevations or conditions** 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.

29. 9.6.12C(1)(e), 9.6.12C(1)(f), 9.6.12C(1)(g) [new section] and 12.3.1: Cell towers

Items 9.6.12C(1)(d), (e) and (f) contain language from the Federal Communications Commission setting parameters on which modifications to cell towers and cell tower antennae must be approved administratively. A new section, 9.6.12C(1)(g) is needed to state that these apply to cell towers, regardless of whether they were approved as Special Use Permits, Planned Developments or Variances:

9.6.12C(1)(g) [new section] **Items (d), (e) and (f) above shall also apply to modifications to CMCS towers approved as variances and planned developments. Modifications to CMCS towers approved as variances and planned developments that fit within the parameters of Items (d), (e) and (f) shall be processed as variance and planned development minor modifications.**

Also, a comma is needed in 9.6.12C(1)(e):

9.6.12C(1)(e) An increase of no more than 10% or 20 feet, whichever is greater**,** to…

The Federal Communications Commission, through FCC Order 14-153, Section 200, has ruled that antennae may be added to those towers approved as "flush mount" without interference from local jurisdictions, but not slickstick or stealth design. The following changes reflect this Order:

9.6.12C(1)(f)…This Item shall not apply to CMCS towers that were approved with conditions intended to conceal the antennae through the use of a ~~flush mount,~~ slickstick or stealth design (see FCC Order 14-153, Sec**s**. 188 **and 200**).

12.3.1 (definitions) FLUSH MOUNT: A CMCS tower where the antennae are applied directly to the tower in an effort to conceal the visual impact of the antennae. ~~Antennae on a flush mount CMCS tower shall project no more than 30 inches from the exterior of the tower.~~

12.3.1 (definitions) STEALTH DESIGN (CMCS TOWERS): Stealth design in CMCS towers is the common industry practice of disguising the CMCS tower inside another structure such as, but not limited to, a steeple, clocktower, or other architectural element, or limiting the visibility of the tower by disguising it as a flagpole, tree, ~~painted~~ slickstick, or similar camouflaging technique in an effort to conceal the visual impact of the antennae.

30. 9.7.6F and 9.7.7J: Expiration of subdivisions

These sections of the Code deal with expiration of minor and major preliminary subdivisions. Essentially, subdivisions expire in two years if not recorded. However, the present language of the UDC does not explicitly state this. The proposed language below will make this much clearer:

9.7.6F (minor subdivisions) An approved minor preliminary plan shall **expire two years after its approval unless a final plat filed pursuant to that plan is recorded with the Register of Deeds** ~~retain its validity for two years~~...

9.7.7J (major subdivisions)

1. (new section) **Expiration**
An approved major preliminary plan shall expire two years after its approval unless a final plat filed pursuant to that plan is recorded with the Register of Deeds. For this purpose of this Sub-Section, the "retaining" of

an approved preliminary plan shall be interpreted to mean the recording of a final plat pursuant to that plan.

2. Bond

Applicants submitting a security deposit in accordance **with** Article 5, Infrastructure and Public Improvements, instead of installing required improvements shall retain a valid approved plan for a period not exceeding 24 months from the date of preliminary approval.

31. 9.7.6G(12): [new section]: Approval criteria for minor subdivisions

Sub-Section 9.6.7G of the Code contains the regulations that pertain to minor subdivisions, which are those subdivisions that have no more than four lots and may be approved administratively by the Planning Director. This process requires notice to adjacent neighbors to attend the Technical Review Committee, but it does not provide the Planning Director any discretion to reject a proposed minor subdivision that meets the technical requirements outlined in this Sub-Section. The proposal below would add the same language to this, the minor subdivision approval criteria section of the Code, that was added in 2015 to the major subdivision approval criteria section, Sub-Section 9.7.7H. This will allow the Planning Director to reject a proposed minor subdivision if it is not in keeping with the character of the neighborhood.

9.7.6G(12): The Planning Director may reject a minor preliminary plan if it is determined that the proposed subdivision is not in keeping with the character of development in the neighborhood. The Planning Director shall consider the following in the determination of the character of the development in the neighborhood.

- **a. Building setback lines of all principal structures that lie within 500 feet of the proposed subdivision.**
- **b. Size and width of all lots within 500 feet of the proposed subdivision.**
- **c. Proximity of arterial and connector streets within 500 feet of the proposed subdivision.**
- **d. Diversity of land uses within 500 feet of the proposed subdivision.**

32. 9.19.5C: Rescission of Certificate of Occupancy

Section 9.19.5 addresses the issuance of Certificates of Occupancy to properties by the Building Official. It does not explicitly cover the rescission of Certificates of Occupancy, which is sometimes necessary when new information about a property is gleaned that was not disclosed or known when the Certificate was issued. The language below addresses such a situation.

9.19.5C [new section] **A certificate of occupancy may be rescinded by the Building Official if he or she finds that it was issued in error to a use or structure that does not comply with this Code.**

33. 12.3.1: Definitions not otherwise addressed above

The Code's definition of "bar" includes the 60-40 rule for bars and restaurants; that is, a restaurant is an establishment where alcohol sales constitute no more than 60% of the total

sales. An establishment that exceeds that limit is considered a bar. This proposal copies that language in the definition of "restaurant:"

> RESTAURANT: An establishment where food is available to the general public primarily for consumption within a structure on the premises and/or which is by design of physical facilities or by service or packaging procedures permits or encourages the purchase of prepared, ready-to-eat foods intended to be consumed off the premises, and where the consumption of food in motor vehicles on the premises is neither permitted nor encouraged~~. and the sale of~~ **A**lcoholic beverages **shall not constitute more than 60% of the annual sales at a restaurant** ~~are not provided~~.