

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT

STAFF REPORT

Agenda Item: 13

CASE NUMBER: ZTA 12-002 **L.U.C.B. MEETING:** November 8, 2012
APPLICANT: **Memphis and Shelby County Office of Planning and Development**
REPRESENTATIVE: **Josh Whitehead, Planning Director**
REQUEST: **Adopt amendment to the
Memphis and Shelby County Unified Development Code**

Executive Summary:

1. Based on the approval process of the last set of Unified Development Code (UDC) amendments, in which the entire ordinance was at risk of failing due to different language being approved by the two governing bodies (see above), a new process is proposed that will guide future amendments. This involves the assemblage of a committee akin to a Congressional conference committee. See Item 6.
2. Items 1 and 4 were requested by members of the legislative bodies shortly after the last set of UDC amendments was adopted. Item 1 limits the location of future gas stations; Item 4 allows signs for schools and places of worship along major roads to have electronic reader boards.
3. Item 3 was requested by the Mayor's Advisory Council for Citizens with Disabilities (Memphis) and the Memphis Center for Independent Living to eliminate the requirement that the ground floor of buildings be 18 inches above the sidewalk.
4. Six additional amendments are proposed by OPD staff. Item 2 will eliminate the need of homeowners to go to both the Land Use Control Board and the Board of Adjustment for certain encroachment requests. Items 7, 8, 9 and 10 are clean-up items from errors made during the last set of UDC amendments (Case No. ZTA 12-001). Item 5 reflects the fact that FEMA has issued new Flood Insurance Rate Maps.
5. 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." The itemized changes in this staff report are the substantive amendments to the UDC. Pagination, table of contents, indexing and cross-referencing corrections to the Code are found in the full UDC online.

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval

Staff: *Josh Whitehead*

e-mail: josh.whitehead@memphistn.gov

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

1. 2.6.3J(1)(f): Gas stations (new section)

In many parts of the community, gas stations are in close proximity to single-family neighborhoods. Concern has been expressed by many members of the Memphis City Council and Shelby County Board of Commissioners, particularly Councilman Harold Collins, about the potential negative impact these gas stations have on surrounding residential areas. In the set of UDC amendments approved this summer, language was added that prohibits gas pumps, tanks and vents from being 125 feet from single-family residential zoning districts for new gas stations and gas stations that are attempting to reopen after a one-year hiatus or longer. This amendment would go further and require that all new gas stations, or those being reactivated after a year's discontinuance, be located at major intersections:

2.6.3J(1)(f). Any convenience store with gas pumps or gas stations constructed after [insert date of final approval of this Zoning Text Amendment], or reactivated after one year of discontinuance, shall be located at the intersection of two arterials, an arterial and a collector or two collectors, according to the Long Range Transportation Plan.

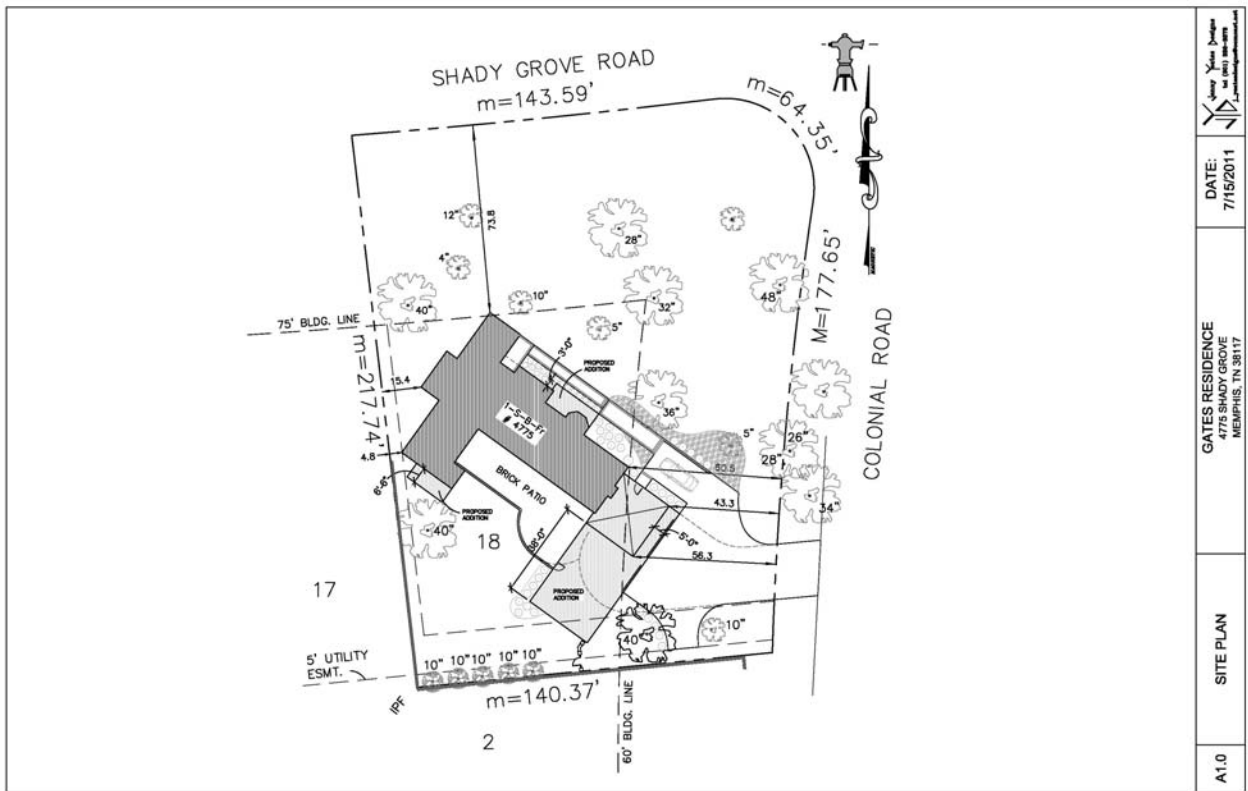
2. 3.2.9A(3): Setback encroachments (new section)

Most building setback encroachments are processed by the Board of Adjustment through the variance process. This is due to the fact that the UDC contains requirements that buildings be set back certain minimum distances from the front, side and rear property lines. However, for many properties throughout the City and County, setbacks in excess of those found in the UDC and its predecessor zoning codes are indicated on subdivision or planned development plats (for example, many large lot subdivision plats show very large front yards of 75 feet or more; see graphic on the next page). These setback encroachments are processed by the Land Use Control Board since that entity, or its predecessor, the Planning Commission, approved the subdivision plat with the excessive setbacks. This can sometimes become an issue for a property owner who wishes to expand their building in directions that would involve both a UDC setback and a subdivision plat setback. The property owner must file two separate applications and appear before two separate boards.

This problem would be resolved if simple language was added to the UDC that states that buildings must meet all setback requirements, both those found in the Code, as well as those found on subdivision and planned development plats. This will enable the Board of Adjustment to hear subdivision plat encroachments and prevent situations in which a property owner must appear before two boards. The following new Sub-Section is proposed:

3.2.9F. Authority

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).



The owner of the property above had to file a Board of Adjustment application for the zoning setback encroachment along his southern property line (which, as the required rear yard, contained a 20-foot building setback line) and a Land Use Control Board application for the platted setback encroachment along the eastern property line (the dashed, 60-foot building setback line) to expand his home. The amendment described above would enable future property owners to receive the necessary entitlements from one entity, the Board of Adjustment.

3. 3.9.2J, etc.: Ground Floor Elevation

Various sections of the UDC require that the first floor of the building be 18 inches above the surrounding grade. This requirement primarily deals with buildings that are in close proximity to the street and the purpose is to raise the first floor of the building above the traffic and noise of the sidewalk and street. However, the Mayor's Advisory Council for Citizens with Disabilities (Memphis) and the Memphis Center for Independent Living have both identified this requirement as an impediment to those with special mobility issues. Since this requirement was inserted into the UDC for purely aesthetic reasons, OPD staff recommends that the various provisions of the UDC that contains language regarding ground floor elevations be deleted.

This will involve the complete deletion of the following sections: Sub-Section **3.9.2J**, Para. **7.3.5D(3)**, Para. **7.3.6D(3)**, Para. **7.3.7D(3)** and Sub-Section **8.10.5H** and the removal of the references to "Ground Floor Elevations" in the following tables: Sub-Sections **3.10.2E**, **3.10.3H** (six separate tables are included in this sub-section), **8.2.5C** (four separate tables are included in this sub-section), **8.3.6D** (three separate tables are included in this sub-section), **8.4.8D**, **8.4.8E**, **8.4.8F**, **8.4.8G**, **8.4.8H**, **8.4.8I** and **8.4.8J**.

4. 4.9.6E(2)(h) (new section) and 4.9.7B(3): Signs for schools and places of worship

No significant changes were made to the Sign Code with either the adoption of the UDC or the subsequent amendments to the UDC. The current Sign Code was written in 2007. Since that time, many schools and places of worship have been required to go before the Board of Adjustment for variances based on two factors: electronic reader boards and setbacks from the street. Currently, electronic reader boards are regulated under the same restrictions as video signs. They must be a minimum distance from residential zoning districts. As many schools and places of worship are located *within* residential zoning districts, this minimum distance requirement automatically prohibits these kinds of signs at most schools and places of worship. The recommendation below is to create a new section for electronic reader boards. These kinds of signs would be permitted in residential districts, provided they are certain minimum distances from single-family properties and along major roadways.

4.9.6E(2)(h) The following limitations shall apply to the location of signs using an electric or electronic message board:

- 1. Signs with an electric or electronic message board are limited to sites that front arterial or collector roads, as identified by the Long Range Transportation Plan, and shall be limited to the frontage along said arterial or collector road.**
- 2. A sign on which the electric or electronic message board includes 100 or more square feet of sign area shall not be erected within 500 feet of any property with a single-family dwelling.**
- 3. A sign on which the electric or electronic message board includes 20 or more square feet of sign area but less than 100 square feet of sign area shall not be erected within 200 feet of any property with a single-family dwelling.**
- 4. A sign on which the electric or electronic message board includes less than 20 square feet of sign area shall not be erected within 100 feet of any property with a single-family dwelling.**

In addition to the issue related to electronic reader boards, many schools and places of worship find that their existing signs are nonconforming due to their close proximity to the street. This is usually due to either the absence of a permit for their initial construction or changes in the Sign Code over the years. Due to the smaller size of signs for schools and places of worship, it is recommended that the setback for these signs be reduced from 10 feet to 5 feet.

4.9.7B(3)

Minimum Setback

No portion of a sign may be located within **five (5)** ~~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 any approved planned development unless the sign is an attached sign.

5. 8.8.3B: Flood Insurance Rate Maps

A corresponding case to this Zoning Text Amendment, Z12-107, is being presented to the Land Use Control Board, Memphis City Council and Shelby County Board of Commissioners that will update the Memphis and Shelby County Zoning Atlas to reflect the new 100-year floodplains, as promulgated by the Federal Emergency Management Agency (FEMA). The existing UDC cites the exact panel number and date of the last update of the floodplain boundaries. The recommendation below is to remove

specific references to panel numbers and dates so future zoning map amendments may be made without necessitating a zoning code amendment.

8.8.3B. Basis for Establishing the Areas of Special Flood Hazard

The Areas of Special Flood Hazard identified on the City of Memphis and Shelby County Federal Emergency Management Agency, Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), ~~Community Panel Number 47157C, dated September 28, 2007,~~ along with all supporting technical data, are adopted by reference and declared to be a part of this Chapter.

6. 9.4.5D: ZTA process (new section)

Unlike Acts of Congress, the Zoning Text Amendment process does not provide for a method of squaring whatever differences may arise between the language adopted by the Memphis City Council and the language adopted by the Shelby County Board of Commissioners. As indicated above, this recently became an issue with the last set of amendments to the UDC when the Memphis City Council did not incorporate the language on tattoo parlors which had been approved by the County Board of Commissioners, thereby placing the entire ordinance at risk of failing (see Item 1 above). The following language is proposed to the section of the Code that discusses the ZTA approval process by the governing bodies:

9.4.5D. If the governing bodies approve different versions of a text amendment, a conference committee may be assembled to resolve any conflicts between the two versions. The conference committee shall be comprised of the members of the committees of the Memphis City Council and Shelby County Board of Commissioners that govern land use and zoning matters. The conference committee shall be chaired by the chairman of the appropriate City Council committee in even-numbered years and by the chairman of the appropriate Board of Commissioners committee in odd-numbered years. Five members of the conference committee shall constitute a quorum. Only members of the appropriate committees of the City Council and Board of Commissioners shall be entitled to vote at the conference committee. Upon approval of revised language, the text amendment shall be forwarded to the City Council and Board of Commissioners for approval or rejection, without amendment.

7. 9.6.1: Special Use Permits

This section requires two clarifications. Sub-Section **9.6.1B** should cite "**Article 2**" and not "Chapter 2.5, Permitted Use Table," because there are items contained throughout Article 2 and outside of Chapter 2.5 that require Special Use Permits. Also, Sub-Section 9.6.1D should be amended since it should only refer to those use variances approved by the governing bodies.

9.6.1D A special use permit 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 ~~Memphis and Shelby County Board of Adjustment or the Memphis City Council~~ **governing bodies** prior to the adoption of this development code.

8. 9.23.4: Appeals

The last sentence of this section, "When passing upon appeals, the Board of Adjustment shall make the findings of fact as provided in Section 9.22.6," should be deleted, as this section deals with appeals of decisions of the Board of Adjustment, not appeals to the Board of Adjustment.

9. 9.24: Conditional Use Permits

Due to the relatively late addition of the conditional use permit process during the approval of the last set of UDC amendments (Case No. ZTA 12-001), inappropriate wording can be found in Chapter 9.24. The language pertaining to special use permits was supposed to be inserted into this section; unfortunately, the three sections cited below refer to “variances.” Section 9.24.1 needs to be completely rewritten, reflecting the language of 9.6.1 (the requirements of Special Use Permits), while Sub-Section **9.24.2B** and Section **9.24.3** need the word “variance” substituted for “**conditional use permit.**”

9.24.1 Applicability

~~The Board of Adjustment may grant of this development code that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the certain provisions of this development code, will, in an individual case, result in practical difficulty or unnecessary hardship. In granting a variance, the Board of Adjustment shall ensure that the spirit of this development code shall be observed, public safety and welfare secured, and substantial justice done.~~

- A. **Conditional uses within each zoning district are uses that may be appropriate in a particular zoning district, but because of the increased potential for incompatibility with adjacent uses, require individual review by the Board of Adjustment.**
- B. **A conditional use permit is required for all conditional uses as set forth in Article 2.**
- C. **Where a use requiring conditional use approval lies on a separate tract or lot, only the building containing the use and its separate tract or lot shall be subject to conditional use review, not the entire project. However, where the separate tract or lot is an outparcel, the application for conditional use shall describe the relationship of the outparcel to the remaining site.**

10. 12.3.1 Definitions

During the approval of ZTA 12-001, the City Council, and subsequently, the County Board of Commissioners, approved an amendment to Sub-Sections 9.3.3A, 9.3.4A and 9.5.12A that would require governing body initiation of comprehensive rezonings. However, the definitions section of the UDC was not amended due to the late nature of this item as it was proposed by City Council during their Third Reading of the ordinance. Thus, the following language should change in the definition of “comprehensive rezoning:”

COMPREHENSIVE REZONING: A rezoning initiated by the **governing body** ~~Planning Director~~ **and approved** only after **it has** ~~the governing bodies have either adopted or approved a plan for the subject area.~~