



Memphis and Shelby County

Office of Planning and Development

CITY HALL, 125 N. MAIN STREET, SUITE 468; MEMPHIS, TN 38103-2084

July 18, 2012

To: Terral Lawson
Memphis City Council Records

From: Josh Whitehead, Planning Director

RE: Additional amendments to the Unified Development Code (ZTA 12-001)

Terral:

The purpose of this memorandum is to provide your office a copy of all of the changes made to this case (ZTA 12-001) by the Memphis City Council during its Third and Final Reading on July 17, 2012.

Executive Summary

The following is a short summary of each of the items found in the rest of this memorandum:

1. **Tattoo parlors**: These are not permitted at all in the CMU-1 district and require a Special Use Permit in the CMU-2 district; the approved language allows them by issuance of a Conditional Use Permit in the CMU-1 district and by right in the CMU-2 district.
2. **Significant Neighborhood Structures (SNS)**: The process of identifying a structure as an SNS allows certain limited commercial uses to be permitted in residential districts; the approved language changes the process by which these are approved from the Special Use Permit process to the Conditional Use Permit process.
3. **Construction Debris Landfills**: The old Zoning Code permitted these landfills in the EMP/Light Industrial zoning district; the UDC prohibits them in this district; the approved language allows them by Special Use Permit.
4. **TDOT plans**: The approved language removes all references to the TDOT Long Range Transportation Plan and instead refers only to the MPO Long Range Transportation Plan.
5. **Gas pumps**: The UDC requires that gas pumps and tanks be located no closer than 20 feet from a residential zoning district; the approved language adds to that provision a stipulation that gas pumps, tanks and vent pipes at new gas stations be 125 feet from single-family residential zoning districts.
6. **Day cares in churches**: The UDC allows day cares of 12+ children in places of worship; this approved language also allows day cares will less than 12 children in places of worship.
7. **Urban apartment buildings**: The amended UDC will require that apartment buildings in the downtown, Midtown and South Memphis areas be built in an urban fashion; this approved language adds the University District to that list.
8. **Applicability of urban requirements**: The amended UDC will allow non-conforming structures to be altered without triggering the urban requirements of the overlay district; this approved language provides a limitation from which urban provisions these structures are exempt.

9. **Administrative deviations for sidewalks**: This language limits the sites that are eligible for administrative deviations (those waivers approved by staff as opposed to the Board of Adjustment) from the required streetscape plates (essentially, the placement of sidewalks) found in the UDC to those that are less than 325 feet in width.
10. **Parking pods**: This language requires parking lots in the CBD (downtown) district to contain more parking islands.
11. **Design speed**: This approved language reduces the design speed for minor, neighborhood streets from 30 mph to 25 mph.
12. **Streetscape plates for the South Main area**: A reference to the streetscape plates, or the required placement of sidewalks, street trees, etc. was added to the South Main regulations of the Code.
13. **Streetscape plates for the Midtown Overlay**: Similar to the item above, streetscape plates were added to the regulations for the Midtown Overlay.
14. **Neighborhood meetings**: Approved language requires neighborhood meetings and explicitly includes who shall be invited to these meetings.
15. **Mailings for Special Use Permits and Planned Developments**: Language originally proposed in the notification table of the UDC was removed that implied that no notice would be required for Special Use Permits and Planned Developments.
16. **Concept plans**: Language was approved that requires the submittal of conceptual site plans with all new Planned Developments.
17. **Comprehensive rezonings**: Only the City Council or County Commission may initiate comprehensive rezonings (those neighborhood-wide rezonings that are initiated by government, as opposed to individual property owners).
18. **Changes in use in approved Planned Developments**: Language originally proposed that would have allowed administrative approval of changes in use in approved Planned Developments was removed.
19. **Expirations of Special Use Permits and Planned Developments**: Language is proposed that explicitly states that approved Special Use Permits and Planned Developments will expire unless a request for extension is filed prior to expiration.
20. **Expirations of Subdivisions**: Similar to the language proposed above for Special Use Permits and Planned Developments, the same language was approved for the section of the Code that deals with Subdivisions.
21. **Setbacks**: Language originally proposed that implied the Planning Director could approve changes to building setbacks was removed.
22. **Record of all Administrative Deviations**. This new section was added that states that all administrative deviations approved by the Planning Director shall be kept on file for public viewing.
23. **Use Variances and Special Use Permits**: Language was approved that will prohibit the issuance of a Use Variance if that zoning district requires a Special Use Permit for the requested use.
24. **Change to nonconformities**: Language originally proposed that would allow by right changes in use for nonconforming structures was removed.
25. **Reference to Midtown Overlay**: Chapter 10.8 incorrectly identifies the Midtown Overlay as Chapter 8.4.
26. **Existing buildings with 0-foot setbacks**. Language was approved that legalizes all buildings that were built with 0-foot setbacks (ie, they are located immediately behind the sidewalk) rather than make them nonconforming structures.

Complete Description

Amendments, as they relate to the earlier proposed set of amendments, are indicated in **bold, underline typeface** for additions and ~~strikethrough typeface~~ for deletions.

1. **2.5.2 (Use Table):** The old Zoning Code considered *tattoo parlors, psychics, palmists and mediums* as general retail; thus, these uses were permitted in all commercial zoning districts. Under the UDC, however, these uses have a specific line in the Use Table and are only permitted by right in the CMU-3, CBD, EMP and IH districts and in the CMU-2 district by issuance of a Special Use Permit. The original proposal that was approved by the LUCB was to delete the line that read “tattoo, palmist, psychic or medium,” but that would have enabled these uses to go in all commercial zoning districts by right. The language approved by the City Council retains this line in the Use Table and make the following two changes: allow these uses in the CMU-2 district **by right** (solid square) and allow these uses in the CMU-1 district by issuance of a **Conditional Use Permit** by the Board of Adjustment. This will allow a case-by-case look at these uses in the lowest commercial district, the CMU-1 district. One example of a neighborhood commercial center with CMU-1 zoning is Broad Avenue. This necessitated the creation of a **new symbol** for Conditional Use Permits, a key at the top of the Use Table, a new Sub-Section **2.5.2D** that explains the Conditional Use Permit process and the addition of the Conditional Use Permit to the list in Section **9.1.3**.

2. **2.5.2C and 2.5.2 (Use Table):** As discussed above, a new symbol was created for Conditional Use Permits. In addition to this change, the *Significant Neighborhood Structure* process was converted from the Special Use Permitting process, which can take 4-6 months, to the Conditional Use Permitting process, which only takes 1-2 months. The Significant Neighborhood Structure process was created to make it easier to utilize non-residential properties in residential zoning districts that could be renovated for particular office and retail uses. This change, which is the result of comments made during a community meeting on the UDC on June 27, 2012, is in line with the ability of the Board of Adjustment to grant changes to non-conforming uses and use variances (see commentary on Sections 10.2.5 and 9.22.6 below). This change involved the following two amendments:
 - Rephrasing the language at the top of the Use Chart:
+ = **Conditional Use Permit** ~~Special Use Approval~~ – Significant Neighborhood Structure

 - 2.5.2C **Conditional Use Permit** ~~Special Use Review~~ – Significant Neighborhood Structures (+)
Indicates a use that may be permitted in the respective district only where approved by the **Board of Adjustment** ~~governing bodies~~ in accordance with Chapter **9.24** ~~9.6, Conditional Use Permit Special Use and Planned Development Review~~. The Significant Neighborhood Structure provisions are intended to protect and preserve existing non-residential neighborhood structures that are important to the historical, architectural, cultural or civic character of the neighborhood by allowing for nonresidential uses within residential zoning districts following certain criteria as a way to provide an economically viable means to preserve the landmarks. Significant neighborhood structures shall be designated by utilizing the provisions of Section **9.24.9** ~~9.6.18~~.

 - Moving the language of Section **9.6.18** to Section **9.24.9**, changing all references of “9.6.18” throughout the Code to “9.24.9” and replacing all references of the “Land Use Control Board and governing bodies” within this section to the “Board of Adjustment.”

3. **2.5.2 (Use Table):** The Use Chart was also amended to change *construction debris*

landfills from a use by right (solid square) to a use by **Special Use Permit** (hollow square) in the EMP (Employment/Light Industrial) zoning district. This will allow the City Council and/or County Board of Commissioners to review individual requests for these kinds of landfills in this zoning district.

4. **2.6.2D(7), etc.**: TDOT references: Consistent with other sections of the UDC, the references to the *TDOT Long Range Transportation Plan* were removed from Sub-Section 2.6.2D(7), which may be in conflict with the MPO Long Range Transportation Plan. References to TDOT Long Range Transportation Plans were removed from Item **2.6.4D(2)(n)**, Paragraph **3.8.6A(7)**, Sub-Section **4.4.2C**, Paragraph **6.1.3A(9)**, Sub-Section **8.5.3A**, Item **9.7.3A(1)(c)**, Item **9.7.3B(1)(c)**, Item **9.7.4A(1)(c)** and Paragraph **9.7.6G(2)**.
5. **2.6.3J(1)(c)**: During the public hearing on June 27, 2012, a citizen commented that this section of the UDC permitted gas pumps and tanks to be no closer than 20 feet of a residential district. The following language was added to this section:

No sign of any type or any gasoline pump or tank shall be located within 20 feet of **any** a residential district. **Furthermore, no gasoline pump, tank or tank vent pipe located at gasoline stations constructed on or after August 21, 2012, or at those gasoline stations that have been vacant for more than 365 days, shall be located within 125 feet of any single-family residential district.**

Note: Knoxville, Chattanooga, Germantown, Collierville and Franklin have no provisions separating gasoline pumps from residential areas. Of the Tennessee cities' zoning codes investigated for this inquiry, only the Nashville's zoning code contains distance requirements: 20 feet. The *International Fire Code*, 2003, section 2203.1, as adopted and NFPA (National Fire Protection Association), 30A section 6.2.1, 2000 edition, requires a 10-foot distance between fuel pumps and the property lines. TDEC (the Tennessee Department of Environment and Conservation) inspects the tanks and the Memphis Division of Fire Services inspects the valves on these tanks. Representatives from TDEC, the Division of Fire Services and the Memphis and Shelby County Office of Construction Code Enforcement all state that there is no safety risk associated with underground tanks due to the regulations administered by those entities.

Many existing gas stations in Memphis contain pumps that are in relative close proximity to single-family residential zoning districts, such as the BP at East Parkway and Young (59 feet), the Mapco at Jackson and Orchi (60 feet), the BP at Jackson and Watkins (95 feet), the Mapco at Jackson and Evergreen (104 feet) and the Exxon at Trezevant and Summer (115 feet). The tanks may be as close, if not closer, to the single-family zoning districts as the pumps. Therefore, the Office of Planning and Development ("OPD") recommended a distance of 125 feet and that it should only apply to new gas stations to avoid the creation of non-conforming situations. The creation of non-conforming gas tanks and pumps may result in disinvestment and abandonment of these gas stations. For stations that have been closed more than a year, they would be subject to this provision.

6. **2.7.5E**: "**Family day care home**" and "**group day care home**" were added to the first portion of this sentence, which allows these smaller forms of day care as accessory uses to places of worship. This sentence already permits the largest form of day care, a "child care center" to be permissible accessory uses to places of worship. However, these smaller forms of day care should not be subject to the requirement that the lot size be at least 20,000 square feet; Section 2.6.2B, which covers day care facilities, only

requires 20,000 square foot lots for child care centers, the grouping of day care facilities with the most children

7. **3.7.2, 3.7.3, 3.8.5, 3.8.6:** The tables in these sections contain a proposed footnote (Footnote 1) that states that maximum building setbacks and required building frontages for apartments and stacked townhouses only apply to the CBID (downtown) and Zone 1 (areas of Midtown and South Memphis inside the Parkways). In addition to these two urbanized areas, the **University District Overlay** was also added, which would require more urban-form apartment buildings in this area, as well. New language for Footnote 1 thus reads:

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 (i.e. inside the Parkways) or in the **University District Overlay** and shall be measured from and along any abutting right-of-way and any internal drive onto which the buildings front.

8. **3.11.1:** This section deals with pre-existing buildings that lie on streets that have been designated for urban frontages. Essentially, this section states that such buildings may expand to up to 50% of their existing footprint without necessitating the triggering of the various provisions of the urban frontage designation. The approved language stipulates that only the building setback and building frontage provisions of the urban frontage designations would be exempt from these sites; other issues, such as transparency (the percentage of windows along the façade) would apply.

3.11.1 Applicability

Any development where a maximum setback applies that involves an addition to a nonconforming structure or the construction of a new building(s) on a nonconforming site with an existing building and the addition or new construction represents an increase of more than 50% of the existing building footprint area. Additions and new construction that represents an increase of less than 50% of the existing building footprint area are not subject to the **building setback, building frontage, floor elevation or floor height** provisions of Sub- Section 3.10.2E, Section 3.10.3 or Articles 7 or 8 of this Code. In no instance shall maximum setbacks, nor this Chapter, apply to townhouses and multi-family buildings subject to Section 3.7.2 or permitted nonresidential uses subject to Section 3.7.3, provided that said buildings were constructed prior to January 1, 2011, and would otherwise be deemed conforming structures. See Chapter 10.8.

9. **4.3.4D:** City Council limited the sites that would be eligible for administrative deviations from the sidewalk requirements of the streetscape plates to those lots that are 325 feet in width or less. Language approved is below.

4.3.4 D. Sidewalk Placement. For sites in developed areas where the predominant streetscape includes sidewalks in closer proximity to the curb than permitted in any of the streetscape plates included in this Chapter, the Planning Director may approve an administrative deviation to permit sidewalks to be placed either immediately behind the back of curb or behind a grass lawn of less than four-and-a-half feet in width. **This provision shall only apply to those lots that are less than 325 feet in width.**

10. **4.5.5D(7):** The CBD district (the Central Business District zoning district) was added to the list of zoning districts that permit parking lot pods of no more than 60 spaces. Previously, parking pods, or those areas unbroken by landscaped medians, in the CBD

district could have as many as 190 spaces without landscaping medians.

11. **5.2.11**: This section deals with the design speed of new minor streets during the subdivision process. The approved language changes this from 30 mph back to **25 mph**.
12. **7.1**: A new Sub-Section "I" was inserted into the opening Chapter for the Special Purpose Districts that states developments in the SCBID and Uptown districts shall install the same streetscape plates that are applicable throughout the rest of Memphis and Shelby County:

I. Streetscape Plates. Site plans submitted pursuant to this Article shall reflect the streetscape plates of Section 4.3.3, unless an alternative is approved pursuant to the standards of this Article. The appropriate streetscape plate for a site shall be determined by the Office of Planning and Development based on the proposed land use of the subject site and its equivalent zoning district according to Section 4.3.3.

In addition, each sub-section of Chapter 7.2, the SCBID district, refers to "equivalent streetscapes approved by OPD." A reference to the new section above is provided in Paragraphs **7.2.2F(2)**, **7.2.3G(2)**, **7.2.4F(2)**, **7.2.5F(2)**, **7.2.6F(2)**, **7.2.9E(2)** (new language in **bold, underline**):

Parking lots and garages shall be landscaped with Plate A-6, Plate A-7 (see Section 7.2.8) or an equivalent streetscape approved by the Office of Planning and Development (**see Sub-Section 7.1I**).

13. **8.4.11**: The Midtown Overlay District was approved immediately after the UDC, but before the UDC took effect. As such, it contains many redundancies that were deleted by the LUCB with this set of amendments. One of these sections, however, deals with streetscape plates that was reinserted into the Midtown Overlay to make the document as self-contained as possible. This not only aligns with the Medical and University District Overlays, which contain their own streetscape plates, but it also makes the Midtown District Overlay easier to read and understand. So, a new Section **8.4.11** was approved that essentially duplicates the streetscape plates and language found in Section 4.3.3, as amended, into the Midtown Overlay. A reference to 4.3.4, which deals with exceptions to those streetscape plates, is also provided in this new section.
14. **9.3.2**: Several changes were approved to this section of the UDC, which deals with neighborhood notification, including the following: (1) reduction in the number of lots in a subdivision that triggers a neighborhood meeting from 50 to four (ie, "minor subdivisions") (Para. 9.3.2A(4)); (2) add a method to notify residents in multi-family dwellings (Sub-Section 9.3.2B) and (3) requiring that these meetings be held, and that they be held prior to the Land Use Control Board meeting. The following language was approved by City Council:

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 ~~or governing bodies~~, the applicant shall **host and/or attend a neighborhood** ~~provide an opportunity to 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 and major modification to a special use permit; and
3. Planned development outline plan or major modification to a planned development outline plan; and
4. **All** subdivisions **except minor subdivisions** containing at least fifty lots.

B. **Procedure**

1. Where applicable, the **Office of Planning and Development** shall **mail notification of the neighborhood meeting prepared and provided by the applicant** ~~contact to~~ the following **individuals** ~~to determine the need and method for discussing the proposed project:~~ 1) the officers of any neighborhood or business associations registered with the City of Memphis Office of Community Affairs whose boundaries include properties within 1,500 feet of the subject property; 2) all current residents of single-family **and two-family** dwellings within the notification area; 3) all property owners within the notification area, if different from the current residents; ~~to determine the need and method for discussing the proposed project;~~ **4) the members of the Memphis City Council who represent the district and super-district in which the development is planned, or for areas in unincorporated Shelby County, the member of the Shelby County Board of Commissioners who represent the district in which the development is planned; and 5) all residents of multi-family dwellings within the notification area; to inform the community of the proposed development and solicit comments. If the applicant is unable to make notification to the multi-family dwellings, he or she shall provide notice to the Office of Planning and Development the reason and shall mail notification of the neighborhood meeting to the rental or management offices of all multi-family dwellings within the notification area with a request that said rental or management office post the notification in a conspicuous location within a common area(s), including, but not limited to: entry doors, hallways, mailbox areas and laundry rooms.**
2. The neighborhood notification requirements shall be the same as the mailed public notice requirements in 9.3.4A. **The notification shall identify the time and place of the neighborhood meeting, as well as a description and map of the project.** The notification shall also include the public hearing date of when the application will be heard by the Land Use Control Board. **The applicant shall contact the officer(s) of any neighborhood or business association registered with the City of Memphis Office of Community Affairs prior to determining a date for the neighborhood meeting.**
3. **The notification shall be prepared by the applicant and presented to the Office of Planning and Development no later than two working days prior to the date set out in the mailing requirement provided in Paragraph 4 below. The notification shall be folded, sealed and placed in stamped envelopes when presented to the Office of Planning and Development. The following items shall accompany**

the notification when presented to the Office of Planning and Development: Documentation of the neighborhood notification shall be provided to the Office of Planning and Development and shall consist of a copy of the letter **to be** mailed to all parties, **a copy of** the address labels to whom **notification will be** letters were mailed and a map of the notice area.

4. **If practicable, the neighborhood meeting shall be held at a public building or place of worship within a one-mile radius of the subject property, or at the subject property itself.**
5. **If the notification package is determined to be complete by the Planning Director, the Office of Planning and Development shall mail the notification no later than 20 days prior to the hearing before the Land Use Control Board. If the neighborhood notification package is determined to be incomplete by the Planning Director, the application is subject to being considered incomplete and removed from the Land Use Control Board agenda.**
6. Neighborhood meetings are the sole responsibility of the applicant. ~~If a neighborhood meeting is held,~~ Documentation of its proceedings shall also be provided to the Office of Planning and Development. The applicant may request neighborhood organizations' contact information, if available, from the Office of Planning and Development.
- C. The purpose of the neighborhood notification and meeting is to inform the neighborhood of the nature of the proposed land use and development features and solicit comments. **Applicants shall reserve at least 15 minutes of the neighborhood meeting for community members, businesses and/or neighborhood associations wishing to make a presentation regarding the development.**
- D. **Any neighborhood or business association registered with the City of Memphis Office of Community Affairs whose boundaries include properties within 1,500 feet of the development area will have the opportunity to submit a Community Impact Statement (CIS). The purpose of the CIS is to provide community members a chance to give an opinion and any recommendation regarding the development project. The CIS shall not exceed 500 words. Neighborhood or business associations who intend to file a CIS must submit said statement to the Land Use Control Board or governing bodies no later than 5 days prior to the scheduled hearing date. The CIS shall be included within the staff report in a prominent position alongside the Land Use Control Board and Office of Planning and Development recommendations.** ~~The posted notice requirements of Sub-Section 9.3.4C shall not apply to hearings described in Sub-Section 9.3.2A above.~~

In addition to the changes above, the following sections shall be renamed "Neighborhood Notification **and Meeting**": Sections **9.5.4**, **9.6.3** and **9.7.5**. Also, Sub-Section **9.7.9D** shall be changed accordingly:

An applicant requesting a subdivision **that is not a minor subdivision** containing at least ten lots shall notify the neighborhood(s) (see Section 9.3.2).

15. **9.3.3A, et seq.**: Currently, there is a process outlined in the UDC known as “comprehensive rezoning,” which is essentially the ability of the government to initiate a rezoning of an entire neighborhood or community from one set of zoning districts to another. Sub-Section **9.3.3A** was amended to add a reference to 9.5.12A stating that only the legislative bodies may initiate a comprehensive rezoning. Sub-Section **9.3.4A** was amended to add a solid black box in the table to require notice to subject property owners. Finally, the following language was added to the end of Sub-Section **9.5.12A**:

Only the legislative bodies may initiate a comprehensive rezoning. If 100% of the subject property owners do not approve of the rezoning, a majority of the full legislative body or bodies (see Section 9.2.1) shall be required for final approval.

16. **9.3.4A**: Changes to four sections of this table were approved by the LUCB that could be interpreted to remove the requirement to mail notice for certain applications. This was unintended. Under new Special Use Permits, Special Use Major Modifications, new Planned Developments and Planned Developments Major Modifications; the “M-AO” designations were approved to be changed back to “M.” This will continue to provide for mailed notice to the Land Use Control Board, and if appealed to the City Council and/or Board of County Commissioners, those bodies as well.

17. **9.6.11**: Concept Plans

Currently, OPD requires concept plans, or conceptual site plans that indicate the general layout of buildings and roadways, to be submitted with all requests for planned developments. However, this requirement is found in the application materials and not in the UDC. The approved language below codifies the requirement found in the Planned Development application into the UDC.

9.6.11 Planned Development Special Requirements

The following additional requirements shall apply to all planned developments.

A. Outline Plan Required

A complete application for approval of a planned development shall include an outline plan consistent with the requirements of this development code and **shall also include at least one conceptual site plan illustrating a possible development scenario incorporating the proposed land use entitlements and conditions of the Outline Plan and indicating the following:**

- 1. property boundary lines and dimensions, existing utilities and easements, roadways, rail lines and public rights-of-way, crossing adjacent to the subject property;**
- 2. the proposed height, dimensions and arrangements of buildings on the property;**
- 3. the type and location of proposed landscaping;**
- 4. the location of points of ingress/egress (driveways), parking lots and loading areas on the site; and**

5. any proposed substantial re-grading of the site and any significant topographical or physical features of the site including water courses or ponds.

18. 9.6.11E(2)(e)

This section, which permitted the Planning Director to approve changes in use in approved Planned Developments (provided it was from a more intense use to a less intense use), was **deleted** due to it bestowing on the Planning Director discretion that should be reserved with the legislative bodies, which ordinarily have the authority to change the uses in planned developments through the Planned Development amendment process.

19. **9.6.14:** Language that was proposed earlier that would allow Planned Developments and Special Use Permits to be extended after expiration was deleted. Also, it has been the policy of OPD to set a five-year expiration for all Planned Developments if a final plan has not been submitted. The language below has codified that five-year expiration into the UDC.

9.6.14 Period of Validity

- A. Planned developments shall **expire five years after the approval of the outline plan unless a final plan is filed with the Office of Planning and Development within that five-year period** ~~in accordance with the outline plan.~~ Where applicable, an application for a time extension may be filed as a Major Modification ~~and~~ subject to Paragraph 9.6.11E(2). An application for a time extension **shall** ~~may~~ be filed **prior to** ~~after~~ the date of expiration and shall be subject to the provisions of Chapter 9.16. ~~A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~
- B. Excluding planned developments, special use permits shall be implemented within 24 months of final approval or such permits shall be void. **Where applicable, an application for a time extension may be filed as a Major Modification subject to Sub-Section 9.6.12B. An application for a time extension shall be filed prior to the date of expiration and shall be subject to the provisions of Chapter 9.16.** ~~The Land Use Control Board, however, upon application, may grant extensions in increments not exceeding two years upon a finding that the character of the neighborhood has not substantially changed since approval of the original special use that would require a public hearing as in the case of the original granting of the special use. Where applicable, an application for a time extension may be filed as a Major Modification. An application for a time extension or reactivation may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~
- C. Excluding planned developments, if a special use permit has not been in use for any consecutive 24-month period, the permit shall be void. The applicant, at the time of a request for a certificate of occupancy, shall be responsible for providing proof to the Building Official of such continued use. ~~Where applicable, an application for a Major Modification may be filed to reactivate a special use permit. An application for such a reactivation may be filed prior~~

~~to the after the 24-month period of discontinuance and shall be subject to the provisions of Chapter 9.16. Such a request for reactivation shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

The changes above will also necessitate the deletion of Footnote 5 in the table in Sub-Section 9.3.4A.

20. 9.7.6F and 9.7.7I(4)

Similar to restoring the requirement that a request for a time extension to PDs and SUPs be filed prior to the expiration date, the same was approved for subdivisions. The two sections below address minor preliminary subdivision plans (9.7.6F) and major preliminary subdivision plans (9.7.7I(4)).

9.7.6F

An approved minor preliminary plan shall retain its validity for two years. An applicant may request an extension of time. Requests for extensions shall be submitted in writing to the Planning Director **prior to the expiration date**. The applicant shall indicate the reasons for the extension and the estimated time for finalizing the development. When granted, an extension shall be for a 24-month period. An application for a time extension ~~may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

9.7.7I(4) Time Extension

An applicant may request an extension of time. Requests for extensions shall be submitted in writing to the Planning Director **prior to the expiration date**. The applicant shall indicate the reasons for the extension and the estimated sequence for finalizing the development. When granted, an extension shall be for a 24-month period. An application for a time extension ~~may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

The changes above also necessitated the deletion of Footnote 5 in the table in Sub-Section 9.3.4A.

21. **9.7.9A(3)(c)**: This section was **deleted** from the list of amendments. This action requires the Land Use Control Board's approval; its inclusion in this section implied that the Planning Director may approve such setbacks administratively. The rest of this section, as it is currently written, shall remain.
22. **9.21.6**: Language was added to the Administrative Deviation section of the Code that stipulates that all such deviations shall be kept on file for the public record. Administrative Deviations are waivers to the Code that can be granted by the Planning Director. The language below mirrors that of Written Interpretations that is found in Chapter 9.20.

9.21.6 Official Record

The Planning Director shall maintain an official record of all administrative deviations. The record of administrative deviations shall be available for public inspection during normal business hours.

23. **9.22.6B(3)**: This section prohibits the issuance of a use variance for any use that is highlighted in the Use Table (Section 2.5.2) that requires a Special Use Permit (SUP) from the City Council and/or Shelby County Board of Commissioners. This language needed to be clarified, as it left room for interpretation as to whether use variances could be requested for a use in a zoning district in which it is prohibited but allowed in other zoning districts through the SUP process. Also, this section includes language dealing with SUPs for Significant Neighborhood Structures since some structures do not qualify as Significant Neighborhood Structures but the use itself may nevertheless warrant a use variance.

Use Variances and Special Use Permits. No use variance may be requested for any use that requires issuance of a Special Use Permit by the legislative bodies **in the zoning district of the subject property.** See Article 2 for uses requiring Special Use Permits.

24. **10.2.5**: A Change in Nonconforming Use Permit was approved for all changes in use, even those that do not require structural changes. See approved language to Section 10.2.5 below:

10.2.5 Change in Use

~~A. No Structural Alterations~~

~~Where no structural alterations are made in a building of a nonconforming use, such use may be changed to a use of a similar or higher classification (see Priv. Acts 1921, ch. 165, sec 7 and Priv. Acts 1931, ch. 613, sec. 8). The Planning Director shall determine whether a use is of a similar or higher classification on a case-by-case basis. The Planning Director shall not approve a change in use for a use that requires the issuance of a Special Use Permit, according to Article 2, or for an off-premise sign. In addition, the Planning Director shall not waive any use standard as set out in Chapter 2.6 with the approval of a change in use.~~

~~B. Structural Alterations~~ **A.** Change in Nonconforming Use Permit

1. Board of Adjustment. ~~Where structural alterations are made in a building of a~~ **A** nonconforming use, such use may be changed to a use of a similar or higher classification with the issuance of a Change in Nonconforming Use Permit. The Board of Adjustment shall have the authority to issue Change in Nonconforming Use Permits.

2. Application. A Change in Nonconforming Use Permit shall be processed in the same manner as a variance request (see Chapter 9.22). However, the Findings of Fact of Section 9.22.6 shall be substituted for the following: The Board shall find that the proposed use will create no greater adverse impacts on the surrounding area than the existing use.

3. Conflict with other Provisions. A Change in Nonconforming Use Permit shall not be issued for any use that requires the issuance of a Special Use Permit, according to Article 2, or for an off-premise sign. In addition, the Board of

Adjustment shall not waive any use standard as set out in Chapter 2.6 with the approval of a Change in Nonconforming Use Permit. However, a companion application for a variance(s) may be filed with an application for a Change in Nonconforming Use Permit.

B. Higher Classification

For the purpose of this Section, a use of a “higher classification,” per **Priv. Acts 1921, ch. 165, sec 7 and Priv. Acts 1931, ch. 613, sec. 8** ~~the 1921 and 1931 Private Acts,~~ shall be determined accordingly. Those uses at the top of the following list are of a higher classification than those at the bottom. See Chapter 2.5, Use Table, for specific uses within each classification. For proposed uses within the same following categories as the existing use, or for proposed uses not included within the following categories, the Planning Director or the Board of Adjustment shall determine whether a proposed use is of a higher classification as compared to the existing use on a case-by-case basis.

1. Open
2. Single-Family Residential
3. Multi-Family Residential
4. Civic
5. Commercial
6. Industrial

25. **10.8:** This section states that buildings that predated the establishment of the UDC and the overlay districts are not to be considered nonconforming structures unless they expand pursuant to Chapter 3.11. In this section, the reference to 8.11 (its current numbering), the Midtown Overlay, was changed to **8.4** (its proposed numbering).
26. **10.13:** This is new exemption for buildings that predated the UDC that have setbacks of less than two feet. Throughout the UDC, the minimum setback is set at two feet to allow for a wider sidewalk in urbanized areas. However, existing buildings with setbacks of less than two feet, which are found throughout the City, particularly downtown, do not meet this two-foot minimum setback. This places them as non-conforming structures, which can complicate these properties’ mortgages, financing and insurance. One recent example is the new building at Main and Gayoso, Barboro Flats. Its refinancing deal was complicated when it received a zoning compliance letter from my office stating that it was a non-conforming structure and, if destroyed by fire or act of God by more than 75%, it could not be rebuilt. This is indeed in line with our ordinance. The language below was approved by City Council that addresses these situations:

10.13 EXCEPTION FOR BUILDINGS WITH LESS THAN TWO-FOOT SETBACKS

Any minimum setback of two feet found in this Code shall not apply to any building that was built prior to January 1, 2011, with a setback of less than two feet.