

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT

Agenda Item: 17

CASE NUMBER: **ZTA 13-003** **L.U.C.B. MEETING:** **July 11, 2013**

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

- This is a set of amendments to the Unified Development Code (the “UDC”) that continues the regular updates to the Code that began with Case ZTA 12-001 in 2012. **Item 1** adds recreational fields with lights and off-site parking for places of worship as uses eligible for Conditional Use Permits, as well as providing for the expansion of any use that pre-exists the UDC to be expanded through the Conditional Use Permit process.
- **Item 2** will permit columbaria as accessory uses to funeral establishments and funeral establishments as accessory uses to cemeteries. Item 2 also addresses structures such as mausoleums in cemeteries.
- **Item 3** addresses outdoor runs at kennels; **Item 4** will change the review process for gas stations from the separate variance and special use permit processes to the conditional use process.
- **Item 5** will remove the requirement that car sales be located in a fully enclosed building in the CMU-1 district.
- **Item 6** is a housekeeping item related to home occupations; **Item 7** addresses encroachments of trellises, arbors, pergolas, bay windows and covered porches.
- **Item 8** is a housekeeping item related to building standards for group living.
- **Item 9** is a housekeeping item related to the adoption of FEMA floodplain maps.
- **Item 10** will match the public hearing process for street closures and dedications to that of planned developments and special use permits.
- **Item 11** addresses the administrative site plan review process in setting a two week review period for the Offices of Planning and Development and Construction Code Enforcement and City and County Engineering, and also clarifying which projects need administrative site plan review by City and County Engineering.
- **Item 12** will allow a greater time lapse between approval and initiation for Special Use Permits, if conditioned appropriately.
- **Item 13** addresses referencing and changing the term “practicable” to “practical” in the use variance process.
- These amendments can be read in greater context by downloading the entire UDC. It is available on this website: <http://www.shelbycountyttn.gov/Blog.aspx?CID=7> or by googling the terms “UDC,” “amendments” and “Memphis.”

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval

Staff: *Josh Whitehead*

e-mail: josh.whitehead@memphistn.gov

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

1. 2.5, et al: Conditional Use and Special Use Permits

a. Recreational fields with lights and off-site parking for places of worship

Currently, recreational fields with lights and off-site parking for places of worship require the issuance of a Special Use Permit, according to Section 2.5.2, the Use Table. It is suggested that these relatively minor uses be reclassified in the Use Table as uses eligible for Conditional Use Permits, which is a much less time-consuming and costly endeavor. The following recommendation is made to the Use Table, Section 2.5.2: change the symbol from a hollow box, "□," to a "**C**" for lighted recreation fields and off-site parking for places of worship. This change will also involve changing the term "special use permit" in Paragraphs **2.6.2C(1)**, **2.6.2G(2)** and **2.6.2G(3)** to "**conditional use permit**." Also, this proposal will also involve changing the hollow box symbol ("□") for Special Use Permits in Section **8.4.7** (the Use Table for the Midtown District Overlay) to a "**C**."

b. Expansion of pre-existing uses

In addition, the UDC made many changes to the Use Table, as it compares to the use table of the previous zoning code, which was originally approved in 1981. Many of these changes deal with a new nomenclature of uses, and many of these changes deal with the combination of old zoning districts into the new UDC zoning districts. Unfortunately, this has resulted in business owners who once had businesses that were permitted by right under the old zoning code but now need Special Use Permit, rezoning or Planned Development approval by the Land Use Control Board, Memphis City Council and/or Shelby County Board of Commissioners. The following language would provide for a more streamlined process.

2.5.1D [new section] **Uses Permitted under Previous Zoning Code**

1. Uses subject to Section 2.5.2. For any use that was permitted by right, permitted by site plan approval or exempt under the previous zoning code, as amended and in effect immediately prior to the effective date of this Code (January 1, 2011), and that use is not permitted by right under this Code, then such use may be expanded or modified through the approval of a Conditional Use Permit, provided the use was legally established under the previous zoning code and has not been discontinued or abandoned for a period of 365 consecutive days.

2. Uses subject to Chapters 7.2, 7.3, 8.2, 8.3 and 8.4. For any use that was permitted by right, permitted by site plan approval or exempt under the previous zoning code, as amended and in effect immediately prior to the effective date of Chapters 7.2 (Case ZTA 02-003, approved November 12, 2002), 7.3 (Case ZTA 01-004, approved October 10, 2001), 8.2 (Case ZTA 06-002, approved November 7, 2006), 8.3 (Case ZTA 08-002, approved July 7, 2009), and 8.4 (Case ZTA 10-001, approved October 25, 2010), and that use is not permitted by right under this Code, then such use may be expanded or modified through the approval of a Conditional Use Permit, provided the use was legally established prior to the adoption of those chapters of the Code and has not been discontinued or abandoned for a period of 365 consecutive days.

The proposed language above should be referenced in the Article of the UDC that covers nonconforming uses:

10.2.3: A nonconforming use shall not be extended, expanded, enlarged or increased in intensity, **except as provided in Sub-Section 2.5.1D.**

Incidentally, in most instances, nonconforming uses may expand as a matter of right in most of Tennessee. In other words, no action would even be required of those cities' and counties' Boards of Zoning Appeals. The private acts that enable zoning in Memphis and Shelby County discourage the continuation of nonconforming uses to a much greater degree than the public affects that enable zoning in other cities and counties.

c. Car lots

Finally, the UDC does not currently require Special Use Permit review for car lots (vehicle sales and leasing) in the CMU-3 zoning district. Special Use Permits are required for new car lots in the CMU-1 and CMU-2 zoning districts. Based on a request by the Memphis City Council, it is recommended that the symbol for the use entitled "All vehicle sales, rental, leasing, except as listed below:" be changed from that for a use by right, a solid box ("■") to a symbol for a Special Use Permit, a hollow box ("□"). A reference currently in the Use Table to Sub-Section 2.6.3P will stipulate that this shall only apply to new facilities (see description of this Sub-Section in Item 5 of this staff report below).

2. 2.6.2D, 2.9.3E and 2.9.4L: structures in and accessory uses to cemeteries and funeral establishments

The UDC requires that all structures in cemeteries that are over six feet in height be 100 feet away from all property lines and the right-of-way. The proposal below would allow such structures to be treated like any other structure in the city or county.

2.6.2D(4) All structures located in a cemetery of six feet in height or over including, but not limited to mausoleums, monuments and buildings, and all mausoleums not located in a cemetery and regardless of height shall **meet the setbacks of the zoning district** ~~be set back at least 100 feet from each lot line and public right-of-way.~~

Also, the list of accessory uses for cemeteries, as articulated in Sub-Section **2.9.3E**, should be expanded to include "**funeral establishments (as an accessory use only to cemeteries)**" as a permitted accessory use. Finally, columbaria and morgues should be added as accessory uses to funeral establishments and crematoria. Columbaria are already listed in Sub-Section 2.7.5A as permitted accessory uses to places of worship. This will involve adding the terms "**columbarium**" and "**morgue**" to the list of acceptable accessory uses with funeral establishments in Sub-Section **2.9.4L**.

3. 2.6.3H(1): Outdoor runs

Currently, outdoor runs are not permitted for animal shelters in the commercial (CMU-) zoning districts, despite the fact that these are the zoning districts in which most kennels exist. The proposal below will allow outdoor runs in the commercial zoning districts (the CMU- districts).

H. Animal Hospital, Veterinary Clinic, Pet Clinic, Animal Boarding, Animal Shelter, Kennel

1. In the CA, **CMU**, EMP, WD, IH districts, outdoor runs are permitted.
2. In all other districts, outdoor runs are not permitted. All overnight care of animals must occur indoors. All pens, kennels and runs must be located within an enclosed building.

4. 2.6.3J(1)(f): Gas stations

As of January 28, 2013, with the adoption of Case ZTA 12-002, all new gas stations are required to be at the intersection of two major roads (major roads being classified as an arterial or a collector). The intent of this ordinance was to reduce gas stations in close proximity to residential areas. However, many ideal sites for gas stations are along major thoroughfares but not at an intersection. For those that are not adjacent to residential areas, a lower legal standard than that provided with the current variance process is appropriate. The revised language below would allow such gas stations with the issuance of a Conditional Use Permit. The Conditional Use Permit process would allow a review of a site's neighboring land uses, as opposed to whether a hardship is exhibited (the standard for variances, which is required under the current Code), which will, in turn, provide the Board of Adjustment greater direction when considering such requests.

Any convenience store with gas pumps or gas stations constructed after January 28, 2013, or reactivated after one year of discontinuance, ~~not shall be~~ located at the intersection of two arterials, an arterial and a collector or two collectors, according to the Long Range Transportation Plan, **shall require the issuance of a Conditional Use Permit. In addition to the approval criteria articulated in Section 9.24.6, the Board of Adjustment shall also consider the proximity of the convenience store with gas pumps or gas station to a single-family residential zoning district when reviewing an application for a Conditional Use Permit pursuant to this Item.**

This language will also necessitate a change to Section 2.5.2, the Use Table, which currently requires the issuance of a Special Use Permit in the CMP zoning districts for gas stations. The hollow box symbol, "□," should be changed to the symbol for a Conditional Use Permit "C." In addition, this will involve changing the process for gas stations in the special purpose and overlay districts from a use eligible for a Special Use Permit to one eligible for a Conditional Use Permit (a new Conditional Use Permit section, Paragraph **7.2.2C(4)**, and changes to the Use Tables of Sections **7.3.11**, **8.3.11** and **8.4.7**). This will provide consistency throughout the Code, and prevent an applicant from submitting simultaneous applications for a Conditional Use Permit and a Special User Permit.

5. 2.6.3P: Vehicle sales

Paragraph 2.6.3P(2) stipulates that all vehicle sales in the CMU-1 and CBD zoning districts, as well as those along streets with designated frontages (such as those in the overlay districts) shall be within fully enclosed buildings. While this requirement is reasonable in the CBD zoning district and along designated streets, which are naturally pedestrian-oriented, it is not in the CMU-1 districts. Since vehicle sales also require the issuance of a Special Use Permit in the CMU-1 district, this requirement results in vehicle sales establishments having to both file for a Special Use Permit with the Land Use Control Board and Memphis City Council and/or Shelby County Board of Commissioners and a variance request with the Board of Adjustment. This cumbersome process can be eliminated by deleting CMU-1 from the areas of town covered by the provisions of Paragraph 2.6.3P(2). The requirement that vehicle sales establishments in the CMU-1 district obtain a Special Use Permit will remain, so the requirement that it be located within a fully enclosed building can be placed upon a particular establishment through that process, if the Office of Planning and Development, Land Use Control Board, Memphis City Council or Shelby County Board of Commissioners find the neighborhood warrants such a situation.

Also, with the planned requirement that all new vehicle sales and leasing establishments receive a Special Use Permit in the CMU-3 zoning district (see Item 1 of this staff report above), a new section

should be added that stipulates that this only applies to those facilities constructed after the effective date of this amendment:

2.6.3P(1)(I) [new section]: **Any vehicle sales, rental or leasing facility located in the CMU-3 zoning district constructed after [insert effective date of this ordinance], or reactivated after one year of discontinuance, shall require the issuance of a Special Use Permit.**

6. 2.7.4B: Home occupations

The definition of “home occupations” indicates that these home based businesses can be located in either the main residence or in an accessory structure, such as a detached garage, to the main residence. However, Sub-Section 2.7.4B, which sets out the standards for home based businesses, indicates that they are not permitted in the accessory structures. The following proposal will eliminate this discrepancy:

2.7.4B Standards. The intent of a home occupation is to permit very limited nonresidential activity in a residential dwelling **or accessory structure to a residential dwelling**, provided such activity does not impact or detract from the residential character of the neighborhood. A home occupation shall be deemed an accessory use and no further approval shall be required, provided the nonresidential use meets the following.

7. 3.2.9E: Encroachments

The UDC specifically permits covered porches to encroach into the required front yard of lots in an effort to promote the construction of front porches. However, covered porches may not encroach into required rear yards. The following language is proposed that would allow the same kind of encroachment currently permitted in required front yards as in the required rear yards:

3.2.9E(4)(b)

Covered, unenclosed porches attached to the principal structure may encroach a maximum of eight feet into a required front, **rear and side yard** setbacks, **provided a five-foot separation is maintained between the porch and property line.**

Both the UDC and its predecessor, the 1981 Zoning Code, have been somewhat unclear as to the degree of encroachment that can be made by structures, such as arbors and pergolas, into the required rear, side and front yards. The proposal below would treat arbors like fences, gates and walls, provided they are relatively small. Any arbors that exceed that size would be considered pergolas, which are permitted in required rear and side yards, but not in the required front yards.

3.2.9E

1. Accessory Structures

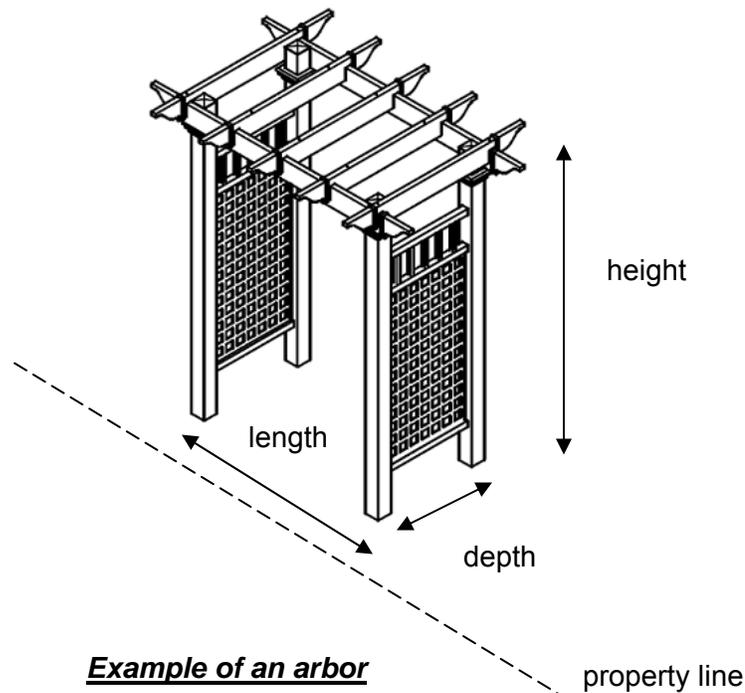
a. Accessory structures (as permitted in Chapter 2.7 Accessory Structures and Uses).

b. Trellises

Trellises and other related items constructed in a linear form may encroach into all required yards, subject to the provisions of this Code governing fences and walls.

c. Arbors

Arbors may encroach into all required yards, provided no portion of an arbor exceeds nine feet in height, six feet in length and three feet in depth (see graphic of arbor below). Any arbor that exceeds these dimensions shall be considered a pergola and regulated by the provisions of Item d below.



d. Pergolas

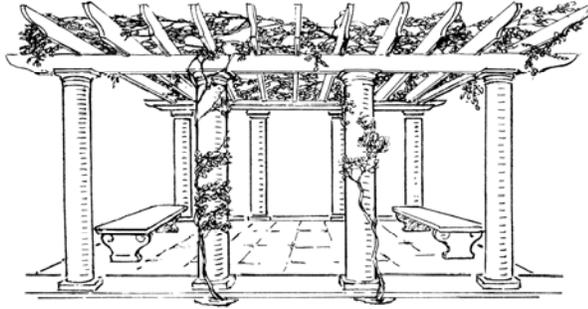
1. In the single-family and CA zoning districts

Pergolas and other related items constructed without an enclosed roof in the single-family and CA zoning districts may be located forward of the front building line, but outside of the required front yard, provided said pergolas do not exceed nine feet in height or 600 square feet. Encroachments of pergolas into the required rear and side yards shall be governed by Section 2.7.2, Accessory Structures.

2. Outside of the single-family and CA zoning districts

Pergolas and other related items constructed without an enclosed roof outside of the single-family and CA zoning districts may encroach into the required front yard provided said pergolas do not exceed nine feet in height. Encroachments of pergolas into the

required rear and side yards shall be governed by Section 2.7.2, Accessory Structures.



Example of a pergola

12.3.1. (Definitions) **ARBOR: An open-air structure of latticework that may be covered with climbing shrubs or vines.**

12.3.1. (Definitions) **OPEN-AIR STRUCTURE: A structure which is not enclosed by a roof or walls.**

12.3.1. (Definitions) **PERGOLA: An open-air structure consisting of vertical posts that support an open roof of girders and cross rafters.**

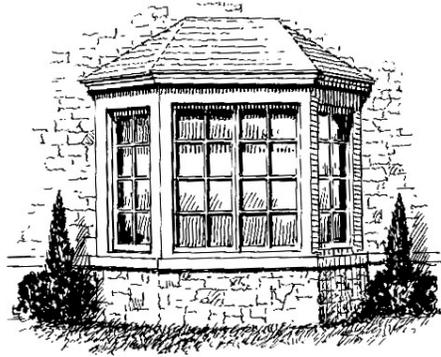
12.3.1. (Definitions) **TRELLIS: A frame of latticework used as a screen or as a support for climbing plants.**

2.7.2A(2): No accessory structure shall extend into the required front yard, **except as provided in Sub-Section 3.2.9E, Encroachments.**

Currently, only those bay windows that are less than 10 feet in width are permitted to encroach into the required front, side and rear yards of a lot. According to a local prominent architect, this requirement prevents a bay window that can accommodate sofas. Therefore, a 16-foot limit is proposed for bay window encroachments.

3.2.9E(2)(c)

Bay windows, entrances and similar features that are less than **sixteen** ~~ten~~ feet wide may encroach up to 42 inches but shall remain at least 42 inches from the property line.



Example of a bay window

8. 3.7.4 (new section): Building standards for group living

Section 2.5.2, the Use Table, allows certain kinds of group living in certain zoning districts. For instance, nursing homes are permitted in the multi-family zoning districts while smaller “supportive living facilities” are permitted in the single-family zoning districts. However, there are only two tables shown in Article 3 for each zoning district that demonstrate the building standards in these zoning districts: those for dwelling units and those for “permitted nonresidential uses.” Group living falls under neither category, leaving the question as to which building standards are to apply for group living uses. A new Section 3.7.4, presented below, would

3.7.4 [new section] Building Regulations for Group Living

Building regulations for group living shall be governed by the appropriate zoning district regulations based on the type of structure used for the group living, based on the housing types of Chapter 3.4.

9. 9.3.3 and 9.5.12: FEMA amendments

Based on language added to the Code with the adoption of ZTA 12-001 in August of 2012, comprehensive rezoning may only be initiated by the Memphis City Council and Shelby County Board of Commissioners, and not the City or County Administrations. However, the adoption of FEMA floodplain and floodway maps, which has historically been initiated by the City and County Engineers’ Offices, should be exempt from this process since those departments are responsible for the administration of the flood plain provisions of the Code. The following language is proposed:

9.3.3A

*Only the body(s) may initiate a request for a comprehensive rezoning (see Sub-Section 9.5.12A), **with the exception of comprehensive rezonings related to Federal Emergency Management Agency floodway and floodplain maps.**

9.5.12A

... Only the legislative bodies may initiate a comprehensive rezoning, **with the exception of comprehensive rezonings related to Federal Emergency Management Agency floodway and floodplain maps.** 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.

10. 9.3.4: Notice for Right-of-Way Vacation and Dedication

Under the current UDC, special use permit and planned development cases that received no opposition at the Land Use Control Board do not require additional published notice when those cases proceed to the City Council and/or Board of County Commissioners. This involves a "PH-AO" in the table in Section 9.3.4. This proposal would involve changing "**PH**" to "**PH-AO**" for right-of-way vacation and dedication to match this procedure.

11. 9.12 and 9.13: Administrative Site Plan Review

Under both the 1981 Zoning Code and the UDC, there is a process by which site plans are reviewed by staff that did not require action by the City Council, County Board of Commissioners, Land Use Control Board or Board of Adjustment. This process is known as administrative site plan review, or "ASPR." There is one key difference between the ASPR process of the old Zoning Code and the UDC: under the old Zoning Code, staff had 14 days (or 10 working day) to return plans. That turnaround time is absent from the UDC. The following proposal would return the same language of Section 7, Sub-Section G from the old Zoning Code:

9.12.3A(3) [new section] The Building Official shall approve, approve subject to conditions, or disapprove administrative site plans within ten working days of their receipt, except for those site plans that require City or County Engineering or Technical Review Committee review. The Building Official shall provide written notice of his decision to the applicant within two working days of the date of his decision.

In addition, the same language shall be placed in the section dealing with the Special Purpose and Overlay Districts, which is headed by the Planning Director:

9.13.3C [new section] The Planning Director shall approve, approve subject to conditions, or disapprove administrative site plans within ten working days of their receipt, except for those site plans that require City of County Engineering or Technical Review Committee review. The Planning Director shall provide written notice of his decision to the applicant within two working days of the date of his decision.

Finally, one of the most significant changes made with the adoption of the UDC was the automatic review by City or County Engineering for all site plan reviews. However, for many projects, this review by Engineering has resulted in unnecessary delays to relatively minor projects. Since Engineering has a separate review process for street cut permits, the following language is recommended for Paragraph 9.12.3B(3) and Sub-Section 9.13.4D:

9.12.3B(3) and 9.13.4D City or County Engineer Action. Only the following administrative site plans shall be reviewed by the City or County Engineer:

- a. For sites that require the dedication of public right-of-way **for unimproved roads**.
- b. For sites within sensitive drainage basins, as defined by the City or County Engineering, and any new development or redevelopment of sites two acres in size or greater.
- c. For sites outside of the sensitive drainage basins, projects requiring construction involving sewer, drainage or right-of-way improvements, **but not** including sidewalk construction, **sewer and water taps and other improvements that shall be reviewed through the street cut or sidewalk permitting process.**

- d. **The City or County Engineer shall approve, approve subject to conditions, or disapprove administrative site plans within ten working days of their receipt. The City or County Engineer shall provide written notice of his decision to the applicant within two working days of the date of his decision.**

12. 9.6.14B: Expiration of Approved Special Use Permits

The UDC contains a limitation on the amount of time that may elapse between the date a Special Use Permit is approved by the Memphis City Council and/or the Shelby County Board of Commissioners and the date in which the Special Use Permit is initiated. The time period is 24 months. However, for some Special Use Permits such as gravel mine operations, the permitting process through the State of Tennessee may exceed 24 months. The language below would allow the conditions attached to a Special Use Permit to exceed the 24-month period and would be considered by the legislative bodies on a case-by-case basis.

9.6.14B

Excluding planned developments, special use permits shall be implemented within 24 months of final approval or such permits shall be void, **unless conditioned otherwise**. 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.

13. 9.22.6B(1): Use Variances

The section explaining the use variance process cites Section 2.5.2 as the use table, but there are a number of use tables throughout the UDC. For instance, each overlay district has its own use table. Therefore, the citation to Section 2.5.2 in the use variance section should be deleted. Also, the term “practicable” should be replaced with “practical.”

In addition to the findings established for other variances in Sub-Section A, the Board of Adjustment shall also find that none of the uses permitted on the property ~~by Section 2.5.2 (the Use Table)~~ are ~~practicable~~ due to either the unusual characteristic found to apply in Sub-Section A, Paragraph 1, or to any physical improvements made upon the property.