

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT

Agenda Item: __

CASE NUMBER: **ZTA 13-004** **L.U.C.B. MEETING:** **October 10, 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 set of amendments to the Unified Development Code (the “UDC”) continues the regular update to the Code that began with Case ZTA 12-001 in 2012.
- **Item 1** deals with accessory uses; namely, that the size of guesthouses should be governed by the size of the lot and not the zoning district, that unlisted accessory uses are addressed and to correct a table heading.
- **Item 2** is a housekeeping item that corrects a conflict in the UDC concerning open space for mobile home parks.
- **Item 3** addresses courtyard apartments on designated streets.
- **Item 4** addresses infill development and its compatibility with surrounding, established neighborhoods.
- **Item 5** addresses additions to existing building on designated streets.
- **Item 6** is a housekeeping item that replaces and simplifies the current parking dimensions table of the UDC.
- **Item 7** addresses the queuing for various drive-in windows, gas pumps, etc.
- **Item 8** is a housekeeping item that allows limited outdoor storage in side yards.
- **Item 9** addresses signage for schools and places of worship, as well as temporary signs for these uses and retail uses.
- **Item 10** is a housekeeping item that corrects a sentence dealing with design and layout of new streets.
- **Item 11** is a housekeeping item that deletes narrative descriptions of zoning districts.
- **Item 12** deals with the types of cases that require Technical Review Committee review. **Item 13** also deals with process; it addresses the review authority of the legislative bodies when hearing appeals of the LUCB.
- 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. 2.7 & 2.9: Accessory Structures and Uses

Sub-Section 2.7.3B sets out the regulations for accessory dwelling units, which are sometimes known as guesthouses, granny flats or secondary suites. One of those regulations, found in Paragraph 2.7.3B(1), contains maximum sizes for these dwelling units. Currently, this paragraph sets an arbitrary limitation for sites that may have larger accessory dwelling units: home sites within the CA and RE zoning districts. The proposal below would replace the reference to these zoning districts and instead use the more universal requirement that accessory dwelling units of any size must be on properties of at least one acre.

2.7.3B(1) The living area of the accessory dwelling unit may not exceed the living area of the principal structure. In no case shall the total floor area of the accessory dwelling unit exceed 700 square feet except **on residential sites of at least one acre in size** ~~in the RE and CA districts where the total floor area of the accessory dwelling unit may not exceed 1,000 square feet.~~

Traditionally, any use that was considered “customary with and incidental to” a permitted principal use could be considered an acceptable accessory use to its principal use (see Sec. 4-26 of Yokley’s *Zoning Law and Practice*, Third Ed.). However, the UDC contains a set of relatively rigid tables that explicitly articulate acceptable accessory uses for each principal use. Unfortunately, this system does not allow for much flexibility. The language proposed below would give the Office of Planning and Development (“OPD”) the same ability to determine the appropriateness of accessory uses on a case-by-case basis as it currently has with principal uses. The proposed language below is copied from Paragraph 2.5.1B(1) of the Code, which deals with OPD’s discretion on unlisted principal uses and Sub-Section 2.7.1A, which spells out the requirement that an accessory use be clearly incidental and insubordinate to a principal use.

2.9.1B(2) Accessory uses are allowed by right in conjunction with a principal use as set forth in Sections 2.9.2 through 2.9.6 subject to the provisions of Chapter 2.7, Accessory Structures and Uses, unless otherwise expressly limited to special use permit elsewhere in this code. No accessory use may be established on a site prior to the establishment of a permitted principal use. **Any accessory use not specifically listed is expressly prohibited unless the Planning Director determines that a proposed accessory use is customary with and clearly incidental and subordinate to a permitted principal use.**

Finally, Sub-Section 2.9.4J of the Use Categories contains three specific uses: vehicle service, vehicle repair and vehicle sales and leasing. However, the words, “leasing” and “repair” are not included in the heading. This proposal would add those words to the heading.

Vehicle Sales, **Leasing, Repair** and Service
Direct sales of and service to passenger vehicles...

2. 3.6.3D: Open Space in Manufactured Home Parks

Sub-Section 3.6.3D states that 35% of the acreage of residential manufactured home parks be open space. Sub-Section 6.2.1D, which is part of the Open Space section of the UDC, states that 20% of the acreage of residential manufactured home parks be open space. This proposal would change the former section to 20% since this aligns with open space requirements of other, similar types of developments.

3.6.3D: Open Space equal to 20% 35% of the total site area must be provided as either public or private common open space. Requirements for the configuration, use and management of common space are set forth in Chapter 6.2, Open Space.

3. 3.7.2, et al: Apartment Buildings

Under the UDC, courtyard apartment buildings are discouraged. This is due to the fact that; along designated streets, inside the Parkways and in the University District Overlay; new apartment buildings must be pulled up to the street. The calculus used to encourage such buildings to be constructed in a pedestrian context does not allow for courtyard apartments, where a significant portion of the front façade is set back from the street. For instance, one of the most notable pre-war apartment buildings in the city is Park Lane, which sits at the southwest corner of Poplar and Cleveland. Only 42% of its front façade is close to the street (see photograph below). The proposed language would address this issue and would allow courtyard apartments without Board of Adjustment variance action.



Park Lane Apartments at Poplar and Cooper (photo courtesy of Makowsky Ringel Greenberg, LLC)

In addition, there is a requirement that apartment buildings along designated streets, inside the Parkways and in the University District Overlay not only be pulled up to the street it faces, but also any side street. Therefore, the 50% of a lot's length and width must be made up of building façade. This is virtually impossible, even for very urban, higher-density environments. For example, this author's home, located within the Carolina Condominiums, was built at the southwest corner of Madison and Idlewild in 1928 (see photograph below). It sits close to Madison, about 11 feet from the sidewalk, with parking in the rear. It is essentially the "ideal" UDC apartment building. However, while it has a building frontage of 84% along Madison (in other words, 84% of the lot along Madison is covered by building façade), its frontage along Idlewild is only 47%. Therefore, this very urban building would have required a variance under the UDC. Part of this proposal would be to eliminate the requirement that buildings contain a building frontage of at least 50% on its side street.



Carolina Condominiums at Madison and Idlewild. The frontage along Madison is 84%, but only 47% along Idlewild.

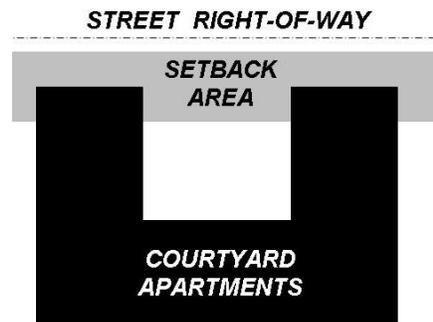
Sections 3.7.2, 3.7.3, 3.8.5 and 3.8.6:

[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 (i.e. inside the Parkways) or in the University District Overlay and shall be measured from and along any abutting **primary street** right-of-way and any internal drive onto which the buildings front. **See also Paragraph 3.2.9C(2).**

Paragraph 3.2.9C(2) [new section; this will also involve converting the current Sub-Section 3.2.9C into Paragraph 3.2.9C(1)]:

Courtyard apartments

Any multi-family development subject to maximum front yards pursuant to this Code is eligible for a reduction in the required building frontage if a courtyard building is constructed. Courtyard buildings shall be permitted on sites with maximum front yards provided that at least 40% of the total front building façade is within the required building frontage. See graphic below.



Finally, the definition of “primary street” below conflicts with various graphics found throughout the UDC regarding lots that abut more than one designated street. The following change to the definition of “primary street” addresses this conflict:

STREET, PRIMARY: ~~Unless otherwise designated on the Zoning Map or Frontage Maps, The~~ primary street for a site or lot is the abutting street with the highest classification on the MPO Long Range Transportation Plan; or if not designated on the MPO Long Range Transportation Plan, the street with the highest traffic counts. [This sentence is being moved from the end of this definition to here]: For lots that abut a street ~~or streets~~ with designated frontage, the primary street ~~or streets~~ shall be defined as the street ~~or streets~~ with designated frontage. For corner and double frontage lots, **including those that abut multiple streets with designated frontage.** the primary street shall be determined by the pattern of the orientation of buildings located on corner or double frontage lots on the same intersection or street; or in the absence of such a pattern, the primary street shall be determined as the abutting street with the highest classification on the MPO Long Range Transportation Plan; or, if not designated on the MPO Long Range Transportation Plan, the street with the highest traffic counts. Other abutting streets shall be defined as side streets.

4. 3.9: Residential Compatibility

Sections 3.9.1 and 3.9.2 regulate the design and layout of single-family homes, which creates a logistical challenge for existing neighborhoods that were not designed in accordance with these

guidelines, as they predated them. The language below would limit the applicability of this section to infill subdivisions, which should be required to be sensitive to their surrounding, established neighborhoods. The proposal would link Section 3.9.1 to Section 3.9.2, the section of the Code that covers infill subdivisions and requires heightened scrutiny by OPD, enabling the proper enforcement that Section 3.9.1 requires.

3.9.1A(1): The following garage and carport placement requirements apply to all housing types within any ~~district~~ **subdivision subject to Section 3.9.2.**

In addition, Section 3.9.2 stipulates that all new residential developments in older sections of town (those built before 1950) shall respect the setbacks and widths of the lots around them. However, it uses the term “project,” but it should instead use the more appropriate term “subdivision.”

3.9.2B

1. The contextual infill development standards shall be used on any residential **subdivision** ~~project~~ that is less than two acres in size and is abutted on two or more sides by existing single-family detached or single-family attached development lots platted or established before 1950 in a residential district...

2. Residential **subdivisions** ~~projects~~ two acres or more in size shall follow the applicable district standards (see Chapter 3.6, 3.7, or 3.8).

5. 3.11 Additions to Buildings on Streets with Designated Frontage

The overlay and special purpose districts have applied maximum setbacks along a few streets in the city, such as Danny Thomas, Madison, Union, Cooper and Highland. Maximum setbacks effectively require buildings to be built in close proximity to the street. However, there are many buildings along these roadways that pre-exist the overlay and special purpose districts and do not adhere to the maximum setbacks as mandated. Section 3.11.1 of the UDC allows for certain improvements to existing buildings, but, since the threshold provided in this section is tied to the percentage increase in footprint area, smaller properties have been unintentionally brought under the designated frontage requirements. See attached letter from Lauren McHugh, president of Huey’s, concerning the expansion of their corporate headquarters at 1915 Madison (immediately to the west of their Madison Ave. restaurant). In addition to this situation occurring with Huey’s headquarters, it was also an issue with Popeye’s purchase of 1370 Union (the old Mrs. Winner’s restaurant). Rather than adding on to the old Mrs. Winner’s building and expanding the footprint of the building, Popeye’s chose instead to utilize the existing building to avoid justifying a variance request to the Board of Adjustment. Both Madison and Union are streets with designated maximum setbacks.

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 **or an increase of 2000 square feet, whichever is greater.** Additions and new construction that **fall below this threshold** ~~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.

6. 4.5: Parking Regulations

The table in 4.5.3B provides minimum parking requirements for most uses that are provided for in the UDC. However, the various types of funeral services are not included in this table. The following proposal would set certain minimum parking requirements for the various types of funeral service establishments:

Funeral services: for funeral homes: 1 space per 10 seats; for any other funeral services: 1.0 space per 600 SF FA (square feet of floor area)

The current parking space regulations in Sub-Section 4.5.5A are both complicated and fail to include key dimensions. This proposal would replace all of the existing graphics in Sub-Section 4.5.5A with the following table:

Angle	Minimum Stall Width*	Minimum Stall Depth (perpendicular to curb)*	Minimum Width of Adjacent Drive Aisle**	Maximum Curb or Wheel Stop Overhand
0°	7 feet	19 feet, 6 inches	11 (one way)	2 feet, 6 inches
45°	8 feet, 6 inches	17 feet	11 feet (one way)	2 feet
50°	8 feet, 6 inches	17 feet	12 feet (one way)	2 feet
55°	8 feet, 6 inches	17 feet, 6 inches	13 feet (one way)	2 feet
60°	8 feet, 6 inches	17 feet, 6 inches	14 feet (one way)	2 feet, 6 inches
65°	8 feet, 6 inches	18 feet	15 feet (one way)	2 feet, 6 inches
70°	8 feet, 6 inches	18 feet	16 feet (one way)	2 feet, 6 inches
75°	8 feet, 6 inches	18 feet	18 feet (one way)	2 feet, 6 inches
90°	8 feet, 6 inches	18 feet	22 feet (two way)	2 feet, 6 inches
90°	9 feet	18 feet	20 feet (two way)	2 feet, 6 inches

***stall width and stall depth may be reduced for compact vehicles**

****minimum width of two-way drive aisles for stall angles of less than 90° shall be 20 feet; minimum width of for one-way drive aisles for stall angles of 90° may be reduced with approval by the City or County Engineer**

7. 4.5.6A: Queuing

The table in Sub-Section 4.5.6A details the required queuing for a variety of uses, including drive-in windows for banks, valet parking stands, etc. Some of these queuing requirements would require excessive pavement on a site. The following proposals are being requested for the table below:

- a. Reduce the queuing for bank tellers to match that of ATMs since these drive-through lanes are often parallel with one another.
- b. Reduce the queuing lanes for car lubrication and car washes to one space.
- c. Reduce queuing for gas stations. Requiring two queuing spaces for pumps at gas stations is impractical since the rear gas pumps are typically immediately behind them. Requiring only one queuing space, on either side of the pumps, is more in keeping with current practice.

	Minimum Spaces	Measured From
Automated teller machine	3	Machine
Bank teller lane	4 3	Teller or window
Pharmacy with Drive-thru	3	Window
Car lubrication stall	2 1	Entrance to stall
Car wash stall, automated	4 1	Entrance to wash bay
Car wash stall, hand-operated	3 1	Entrance to wash bay
Gasoline pump island	2-1	Pump island
Restaurant with Drive-thru	6	Pick-up window
Valet parking	3	Valet stand
Guards and gatehouses	See Section 4.4.8	
School drop-off (public and private)	Determined by City or County Engineer	
Day care and all other	Determined by City or County Engineer	

8. 4.8.4B(2)(b)(3) & (4): Limited Outdoor Storage

The UDC identifies two types of outdoor storage: *limited* and *general*. While the more intense outdoor storage, general outdoor storage, is permitted to lie within a site's required side yard setbacks, the less intense outdoor storage, limited outdoor storage, is not. The proposal below would allow both types to be located in a side setback by copying the language from Sub-Item 4.8.4B(3)(b)(4) into Sub-Item 4.8.4B(2)(b)(3) and delete Sub-Item 4.8.4B(2)(b)(4) entirely:

4.8.4B(2)(b)(3): Limited outdoor storage may be located in the **side or** rear setback area.

~~4.8.4B(2)(b)(4): Limited outdoor storage may be located to the side of a building, provided it is not located within the required side setback area or required buffer.~~

9. 4.9: Temporary Signs and Signs for Schools and Places of Worship

Places of worship and schools are often located in residential zoning districts. This sometimes poses a problem with signage, since the sign code in the residential zoning districts is very restrictive. The sections of the Code cited below limits one ground sign per street frontage, and further limits the total amount of square footage of all signs to 32 square feet. The proposal below would allow one sign per 300 feet of frontage and remove the absolute maximum on square footage for a site. This will prevent places or worship on large lots that seek more than one sign per frontage from the need of submitting \$1500 sign variance requests to the Board of Adjustment.

4.9.7B(4)(b): No more than one attached and one detached sign are permitted per **300 feet of** frontage per lot. Attached signs shall be limited to the name of the establishment only.

4.9.7B(2): The maximum gross surface area of signs in the Open Districts, Residential Districts, and Residential Work (RW) District may not exceed twelve (12) square feet, or twelve (12) square feet per acre of area of the lot, whichever is greater, up to a maximum of thirty-two (32) square feet **per sign**.

The former Zoning Code permitted detached, or ground-mounted, temporary signs, provided they were staked into the ground to withstand heavy winds. The proposal below will restore language from the old Zoning Code in this regard. The proposal below would also limit temporary signs in the single-family zoning districts to permitted, nonresidential uses, such as schools and places of worship.

4.9.9A(1)(a), 4.9.9B(1)(a) and 4.9.9C(1)(a): Temporary signs shall be either detached or attached signs. **Temporary detached signs shall be constructed to withstand a 70 mph wind load velocity.**

4.9.9A(1)(b): Temporary signs in the ~~CA, RU-3, RU-4, RU-5 and RW~~ Districts shall not exceed eight feet in height and 16 square feet in area for any parcel that is less than two acres and an additional 16 square feet for any parcel that is two acres or more.

4.9.9A(1)(c): Temporary signs in the R-E, R-15, R-10, R-8, R-6, R-3, RU-1 and RU-2 Districts shall **be limited to permitted nonresidential uses.** ~~not exceed five feet in height and seven square feet in area.~~

10. 5.2.11: Design Speed

This is a housekeeping item. The purpose of the section of the UDC cited below is to encourage traffic calming devices along neighborhood streets to slow traffic, but the traffic calming devices must be consistent and **not** introduce unexpected changes. Unexpected changes would not qualify as traffic calming devices as they may promote accidents.

5.2.11 Design Speed

Default speed is 25 mph with a stopping sight distance of 200 feet unless specific traffic calming geometrics are used. Use of low speed elements must be consistent throughout the length of the minor local street in order to maintain a constant design speed and **not** introduce unexpected vertical and horizontal direction changes. Speed limit and other necessary warning signs shall be installed per the approved signing plan.

11. 7.:2: Zoning District Boundaries in the South Central Business Improvement District

Chapter 7.2 contains the regulations for the South Central Business Improvement District Special Purpose District, which itself contains seven separate zoning districts. Each section of the UDC that contains the regulations for these seven zoning district includes descriptions of their boundaries. It is unnecessary to list the boundaries for these zoning districts since they are graphically shown on the Zoning Map. In addition, a description in the text of the UDC prevents any expansion or change in these zoning districts to reflect changes in the neighborhood. This proposal will involve replacing the current geographically specific language in Sub-Sections **7.2.1A, 7.2.2A, 7.2.3A, 7.2.4A, 7.2.5A, 7.2.6A and 7.2.7A** with the following language: **“As indicated on the Zoning Map.”**

12. 9.1.8B and 9.2.2: Procedural Review

The UDC contains conflicting language on which projects are routed to the Technical Review Committee (the “TRC”) before being heard by the Land Use Control Board. Section 9.2.2 requires TRC review of Special Use Permit major modifications, but Item 9.1.8B(1)(b) stipulates that TRC review is left to the discretion of the Planning Director on a case-by-case basis. In addition, both sections of the UDC require TRC review of Planned Development major modifications. Since many Special Use Permit and Planned Development major modifications do not involve technical issues, it is recommended with this zoning text amendment that Section 9.2.2 be amended to change an “R” on the rows for Special Use Permit and Planned Development major modifications to a delta, “Δ,” so that TRC review is not required for all cases. Also, Planned Development major modifications should be moved from Item 9.1.8B(2)(b) to the list in Paragraph 9.1.8B(1).

In addition, the table in Section 9.2.2 conflicts with the table in Sub-Section 9.3.4A, which only requires that the legislative bodies publish notice in the newspaper for Text Amendments, Zoning Changes, Comprehensive Rezoning (including those related to incorporating FEMA Floodway and Floodplain Maps) and Historic District Designations. Those applications should be the only ones designated in 9.2.2 with a "D;" the rows for Right of Way Dedication and Vacation should be converted to a "D*." "D*" denotes that published newspaper notice is only required if opposition is present at Land Use Control Board.

13. 9.23.2: Appeals of the Land Use Control Board

The Land Use Control Board (LUCB) has final authority on a few items, such as subdivisions, special exceptions and correspondence cases, unless appealed to the Memphis City Council or Shelby County Board of Commissioners. The current UDC does not stipulate whether these appeals heard by the governing bodies are on the record or de novo. The proposal below would explicitly state that all appeals by the governing bodies are reviewed de novo; in other words, the Memphis City Council and/or Shelby County Board of Commissioners will be reviewing the case and its adherence to the UDC independent of the LUCB's review.

9.23.2

E. Governing Body Action

2. The governing bodies shall hear the case de novo.

3. The governing bodies shall approve the appeal, approve with conditions, or deny the appeal. The governing bodies shall base their approval, approval with conditions or denial on the same approval criteria provided in this Code for the Land Use Control Board.