



Memphis and Shelby County Office of Planning and Development

CITY HALL - 125 N. MAIN STREET, SUITE 468 - MEMPHIS, TENNESSEE 38103

October 15, 2013

To: Steve Auterman, Sam Goff and Cecil Humphreys

CC: Mary Baker, Ray Brown, Beth Flanagan, Andy Kitsinger, Emily Trenholm and June West

From: Josh Whitehead

RE: Case Number ZTA 13-004

Sent via electronic mail

Steve: Again, thank you for offering to assist me with the refinement of the current zoning text amendment, Case Number ZTA 13-004. This memorandum is organized in the following manner: the first 13 items have been copied verbatim from the staff report for ZTA 13-004. The only additions in that section of this memo are in *italics*; these are responses to some of the questions and concerns you raised during the October 13, 2013, Land Use Control Board meeting. The items that follow (Items 14-23) are those that I had identified as potentially going before the Board, and eventually City Council and Board of County Commissioners, as part of the *next* zoning text amendment. As you will see, my analysis on these items are not as refined since I had not anticipated going before the Land Use Control Board with these items until January.

All: Case Number ZTA 13-004 was heard by the Land Use Control Board on October 10, 2013, but as applicant, I withdrew it due to some of the concerns expressed by Steve, who briefly discussed a few of the items. I told Steve and the Board that I'd like to possibly change or delete a few of these to reflect concerns of the "known stakeholders," but also add a few that I had already identified as part of the next series of amendments. I told the Board that I would like to return to them with a revised set of amendments in 30 or 60 days.

Cecil: You may find there are a few comments in *italics* directed to you; these are in response to your letter to me dated October 9, which I have attached at the end of this for everyone's reference.

Sam: I would also like to take this opportunity to respond to a few items that were raised in a memo that was circulated during a meeting of the Midtown Memphis Development Corporation on September 25. Please be advised that I am paraphrasing the comments found in that memo.

- a. The proposed amendments would allow the expansion of nonconforming uses through the conditional use permit process, which is processed by the Board of Adjustment.

Response: This item was originally proposed with Case No. ZTA 13-003 and heard by the Land Use Control Board on July 11, 2013, but the Board voted to hold this particular item for 90 days to allow Ms. Trenholm, a member of the Board, to vet it with known stakeholders. When the time approached to draft the staff report for the October 10, 2013, Land Use Control Board, I contacted Ms. Trenholm and realized that the vetting had not occurred. Therefore, I dropped that proposed amendment. I do not plan on returning it as an amendment for consideration.

- b. The changes have been initiated without a schedule or public process.

Response: Due to the great number of changes that I feel are necessary for my office to properly administer the Code, there has effectively been a schedule for these zoning text amendments: once one completes the roughly 3-4 month approval process, I initiate the next one. The UDC was a complete redraft of the zoning code; this has resulted in the discovery of a few deficiencies that I would like to address as they come up rather than attempt to make large, wholesale amendments with hundreds of individual changes. The process has been open to the public; a zoning text amendment requires no less than 11 public hearings: Land Use Control Board, City Council for three readings, a hearing by the City Council's Planning and Zoning Committee, and three readings each by the full Shelby County Board of Commissioners and its Land Use Committee.

In addition, all amendments, with descriptions of each, are included in two formats on the following blog: the first is the staff report which explains each amendment; the second is the way in which each of these amendments will appear in context of the entire UDC. Each set of amendments has its own posting; these are typically posted 1-2 weeks in advance of the Land Use Control Board hearing for each ZTA case.

<http://www.shelbycountyttn.gov/Blog.aspx?CID=7>

This blog has a somewhat cumbersome address; it can also be found by searching for the terms, "Memphis," "UDC" and "amendments."

- c. The most recent set of amendments removes regulations dealing with car lots and gas stations.

Response: Actually, ZTA 13-003 requires car lots in the CMU-3 District to be processed as Special Use Permits; this was a change from the original UDC, which allowed them by right in this zoning district. ZTA 13-003 also changed the requirement for gas stations not located on intersections to be processed as Special Use Permits (and approved by the City Council and/or Board of County Commissioners) rather than as Variances (and approved by the Board of Adjustment).

- d. The proposed amendments adversely affect the overlay and special purpose districts.

Response: Any amendments to the overlay and special purpose district sections of the UDC have been removed from both the last zoning text amendment (ZTA 13-003) and the subject zoning text amendment (ZTA 13-004), with the exception of Item 5 in this memorandum which deals with expansion of existing buildings on streets with designated frontages.

All: On a final note, I would like to thank all of you for your continued interest in making the UDC as effective as possible. I realize we may not agree on the appropriate level of regulation that the local marketplace can withstand, but I want to assure you that my office fully supports the Code and its various sections, including the overlay districts. The fact that many of you disagree with me on the appropriate level of land use regulation that this market can withstand does not mean we do not agree that the UDC was a welcome change as it compares to the previous 1981 Zoning Code. I sincerely believe that the amendments included in this memorandum will promote good development and curtail the sprawl out of Memphis and Shelby County.

While my preference is to proceed to the Board with all amendments included in this memo in 30 days, I realize there will be some compromise on many of these items. Also, I will be in Chicago for a ULI Conference the week before the November Land Use Control Board meeting, so I would like to suggest that we look to the December 12, 2013, Land Use Control Board meeting as the date in which these items will be heard. I am open to a meeting with you in the next few weeks, or if you would prefer, a community, "town-hall style" meeting like we held on a previous zoning text amendment. If you see any other people that need to be notified that would be members of the "known stakeholders," please feel free to either forward them this memorandum.

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.~~

Steve: You mentioned at the October LUCB that you'd like to maintain an absolute maximum on lots of over an acre to prevent a 10,000 sq ft house with a 9,999 sq ft accessory dwelling. What do you suggest? It seems like we've had a few requests for accessory dwelling units on large lots go before the Board of Adjustment, but most of them were under 3,000 sq ft.

NEW INFORMATION (10-24-13): Central Gardens would like to entertain some provision in this section that would limit its applicability in historic districts.

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.

Steve: You mentioned at the Oct. LUCB that you thought this discrepancy should be changed the other way around; on other words, to 35% in 6.2.1D. Is this based on other cities' codes?

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.

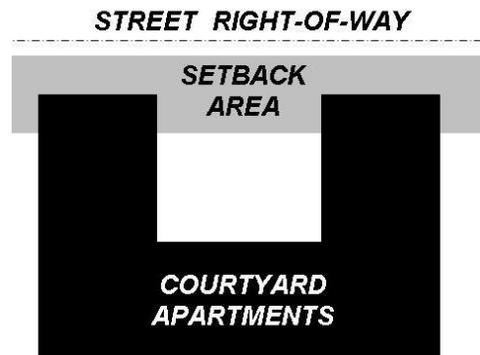
Sections 3.7.2, 3.7.3, 3.8.5 and 3.8.6:

[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.



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).

Cecil: Your letter to me, dated October 9, said you would be open to a less dramatic change to these sections. My main concern is that 3.9.1, which stipulates garage placement for single-family homes, currently applies to all residential lots in the City and unincorporated County. Neither OPD, nor the Office of Construction Code Enforcement, have the staff levels to ensure that this is properly achieved. 3.9.2, on the other hand, deals with setbacks, but only for properties that are surrounded by neighborhoods platted in 1950 or before. Again, determining whether a lot falls under this section's scrutiny is a labor-intensive task and cannot currently be achieved for all single-family residences in the City and unincorporated County. I would prefer a more easily defined geography.

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.

Cecil: Your letter to me expressed concern about this matter. My justification for this change is to assist smaller building expansions where the existing 50% threshold is relatively easy to meet. Another option would be to discuss removing certain sections of roadways from being designated (ie, Union Avenue east of, say, Cleveland and AW Willis on either side of Danny Thomas).

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 larger temporary signs in the single-family zoning districts to schools, places of worship, community services (such as police and fire stations) and parks.

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)(c): **Temporary signs for schools, places of worship, community services and parks in the R-E, R-15, R-10, R-8, R-6, R-3, RU-1 and RU-2 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.** Temporary signs **for all other uses** in the R-E, R-15, R-10, R-8, R-6, R-3, RU-1 and RU-2 Districts shall 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). Finally, Paragraph 9.1.8B(1) states that the Technical Review Committee shall only review those administrative site plans that are sent to it by the Planning Director. This conflicts with the table in Section 9.2.2 which indicates an “R” for “Administrative Site Plan” and “Special District Administrative Review.” Therefore, this proposal would also change the two “R’s” in these rows in Section 9.2.2 to deltas (“Δ”).

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 on the record; in other words, the Memphis City Council and/or Shelby County Board of Commissioners will be reviewing the case based on the record and the Land Use Control Board’s findings.

9.23.2

E. Governing Body Action

2. Appeals heard by the governing bodies shall be based on the record.

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.

14. (NEW): 2.5: Veterinary clinics

Veterinary clinics and animal hospitals are not permitted in the OG district, but under the old Zoning Code, they were. This has created issues with many existing vet clinics who wish to improve their properties. The legislative bodies were assured that no uses would be “downzoned” with the adoption of the UDC since we did not send individual notices to property owners like we would with a comprehensive rezoning. I would like to add these uses as permitted uses in the OG district.

15. (NEW): 2.9.2A: Animals per household

A recent Board of Adjustment case raised the issue of the number of pets per household. The City of Memphis Code of Ordinances (Section 8-16-10B) says no more than five “companion animals” may be in a household, but only if they are not properly cared for. Presumably, that allows an unlimited number of animals in a household, provided they are cared for. I would like to suggest that only five companion animals be permitted per household, define “companion animals” in the UDC (see definition in Item 19 below), and define “kennel” as a location where any more than five companion animals are kept.

16. (NEW): 2.9.5D: Wreckers

Towing operators and wreckers with impound lots are considered as Heavy Industrial uses under the UDC, and are therefore only permitted in the IH District. Under the old Zoning Code, they were permitted in the Light Industrial District and, if indoors, in the C-H (now CMU-3) District. This has created a great inconvenience for several towing operators who wish to improve their properties in the IL and CMU-3 districts. It appears this group of business owners were downzoned with the adoption of the UDC without notice. I would like to move wreckers with impound lots from the list of Heavy Industrial uses in 2.9.5D to the list of Light Industrial uses in 2.9.5B.

17. (NEW): 3.1.1: Building envelope standards

Section 3.1.1 discusses building envelope standards. The proposal below would add two new sub-sections at the end of this section that would assist in understanding the various rules and regulations found in the UDC pertaining to setbacks. No substantive changes are proposed with this amendment.

3.1.1

F. Setbacks

1. Generally, all residential and non-residential structures are subject to a setback provision, requiring the primary structure and its associated structures to be a certain distance from the public right of way and property boundaries. For setback requirements for Special Purpose or Overlay Districts, see Articles 7 and 8, respectively.

2. Some residential structures are subject to Contextual Infill Standards. See Section 3.9.2.

3. Structures may also be subject to setbacks contained in the subdivision final plat or planned development final plan on record with the Shelby County Register of Deeds.

4. For specific setback requirements see the following

a. Single-Family Districts: Section 3.6.1

b. Permitted Non-Residential use in Single-Family Districts (i.e. schools, places of worship, etc.): Section 3.6.2

c. Multi-Family Districts: Section 3.7.2

d. Permitted Non-Residential Use in Multi-Family District Districts (i.e. schools, places of worship, etc.): Section 3.7.

e. Open Space Subdivisions: Section 3.8.5

f. Sustainable Subdivisions: Section 3.8.6

g. Commercial and Industrial Districts, Section 3.10.2

G. Special Purpose and Overlay Districts

Generally, developments in Special Purpose and Overlay Districts are not subject to Article 3. However such developments may be subject to Article 3 standards if a standard addressed in Article 3 is part of such a development and is not addressed in either Chapter 7 or Chapter 8.

18. (NEW): 4.6.7: Fences and Walls

The fence and wall regulations of the UDC have created some level of confusion among property owners. The proposal below would make no changes to this section; rather, it would reformat the section by adding headings and editorial commentary with the idea of making it more legible.

4.6.7 Fences and Walls

- A. Retaining Walls. Retaining walls are exempt from the following provisions.
- B. Temporary Construction Fencing. Temporary construction fencing around an active construction site that is removed within eighteen months of installation is exempt from the following provisions.
- C. Front Yard Fencing. No fence or wall located within eight feet of a public right of way or located in a required front yard setback may exceed four feet in height in the single-family or CA residential districts.

Commentary:

1. *Fences erected before January 1, 2011, are exempt from this section.*
2. *The length of a front yard setback varies by zoning regulation. Setback requirements are measured after the public right of way, which is measured 10 feet from the curb of the street. See Section 3.6.1 to determine setback requirements in residential zones.*
3. *This rule is also subject to a lot's recorded subdivision plat.*
 - a. *Example: Ann wishes to build a fence along the western side of her property. She is zoned in a R8 residential zone that has a twenty-foot setback. Her neighborhood however has a thirty-foot required setback. Her fence must therefore not exceed four feet in height for the first forty-feet (thirty feet plus ten foot right of way) from the curb of the street. If Ann has a corner lot with two front yard setbacks indicated on her plan, the fence restrictions of Section 4.6.7 only apply to the setback along the "primary" street, or the street that the house faces. The Unified Development Code considers the other front yard setback as a "side street" setback.*
 - b. *See Shelby County Register of Deeds to find a recorded subdivision plat.*

- D. Fence Height. A fence or wall may not exceed nine feet in height in any required side or rear setback area.
- E. Fence and Wall Materials
 1. Permissible Materials. Fences and walls must be constructed of high quality materials, such as
 - a. Decorative blocks,
 - b. Brick,
 - c. Stone,
 - d. Treated wood, or
 - e. Wrought iron.
 2. Masonry Walls. Masonry walls shall be constructed to allow the flow of water from one side of the wall to the other.

3. Electrified Fences, Barbed Wire and Concertina Wire Fences
 - a. Residential Districts. Electrified fences, barbed wire or concertina wire fences are not permitted in a residential district.
 - b. Non-Residential Districts. Barbed wire or concertina wire is permitted in an industrial district provided the barbed wire or concertina wire is located at least eight feet above the ground. Electrified fences are permitted in industrial districts. Electrified fences, barbed wire or concertina wire may be permitted in other non-residential zoning districts through the administrative deviation process (see Chapter 9.21).
 - c. Keeping of Livestock. Electrified fences or barbed wire is permitted in any zoning for the keeping of livestock.

4. Chain-Linked Fencing. Uncoated chain-link fences are not permitted except in the EMP, WD and IH districts. Chain link fencing in all other districts must be galvanized, polyvinyl chloride (PVC) color coated in either black, dark green or dark brown color coatings and part of an evergreen landscape screening system, as defined in Section 12.1. At the intersection of a driveway and a street and on all corner sites (the intersection of two streets), a clear sight triangle shall be established as set forth in Section 4.4.7.

5. Fencing Along Public Streets. The maximum length of a continuous, unbroken and uninterrupted fence or wall plane abutting a public right-of-way shall be 100 feet. Breaks shall be provided through the use of columns, permanent landscaped areas part of an evergreen landscape screening system, transparent sections or a change in material. This Paragraph shall not apply to properties in industrial zoning districts.

Commentary: Example: The eastern boundary of Adam's property runs for 300 feet along side a public road. A public right of way runs with any public street. He wishes to build a fence running the entire length. His fence must conform to the materials listed in Paragraph E(1) and every 100 feet must incorporate a column, evergreen shrubbery consistent with surrounding vegetation, or foot long sections of brick if the fence is primarily constructed out of treated wood.

- F. Administrative Deviation. The Planning Director may permit additional fence material, additional fence height, or reduced setback through the administrative deviation process if it is determined that such allowance is not contrary to the public interest and will not be injurious to the surrounding neighborhood. Factors to be considered by the Planning Director when making such an administrative deviation shall include the material, height or setback of fencing in the immediate vicinity of the subject site, the classification of the roadway abutting the subject site and the proposed use of subject site. See Chapter 9.21

19. (NEW): 12.3.1: Definitions

The term "catering establishment, small scale" is used under Retail in the use table and permitted in the commercial and industrial zoning districts. However, this term is not defined. What is "small scale?" A kitchen of restaurant proportions? 2.9.5J lists Light

Industrial uses and lists “catering establishment, large scale,” but again, this is not a defined term.

In addition, the following terms found in the UDC should be defined:

Animal Kennel: An establishment where more than five animals are trained, bred or boarded.

Animal Hospital: A hospital dedicated to the treatment of animals.

Barber Shop: see Beauty Salon

Beauty Salon: A duly licensed establishment in which hairdressing, makeup, and similar cosmetic treatments are carried out professionally.

Body Piercing: A business that engages in the piercing of the human body.

Companion Animal: Any domesticated animals kept in or near the household for the primary purpose of companionship for members of the household and/or companionship for other such animals. This includes dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, invertebrates and species that a reasonable person would consider to be a pet.

Dental Lab: see Medical Lab

Flag Lot: A parcel having the configuration of an extended flag and pole. The pole represents access to the site which is usually located to the rear of another lot fronting the roadway.

Flush Mount: A CMCS tower where the antennae are applied directly to the tower.

Massage Parlor: An establishment providing massages.

Medical Lab: A laboratory where tests are done on clinical specimens in order to get information about the health of a patient as pertaining to the diagnosis, treatment, and prevention of disease.

Mortuary: A funeral home.

Pole Barn: A farm building with no foundation and with sides consisting of corrugated steel or aluminum panels supported by poles set in the ground.

Reverse Frontage: The frontage of a lot with two or more frontages that is adjacent to the rear façade of the structure that lies on the lot.

Shed: An accessory structure no larger than 200 square feet used for the storage of materials.

Storage Pod: A self-storage container no larger than 200 square feet.

Tattoo Parlor: A business that applies permanent tattoos to the human body.

Truck Farming: A farm that produces fruits or vegetables for the market.

Wind Farm: Any group of two or more wind towers.

Wind Tower: A standalone structure not mounted to a building that converts wind into energy.

20. (NEW): Editorial Commentary

The following commentaries are offered to assist in the reading of the UDC:

3.8.5

Commentary

- i. *As of [insert effective date of this ZTA], no development has been designated as an Open Space subdivision and, as such, this section is not applicable to any current developments as of the above date.*
- ii. *For more information about the benefits of an Open Space Subdivision and process of designating a development as such, contact the Office of Planning & Development.*

3.8.6

Commentary

- i. *As of [insert effective date of this ZTA], no development has been designated as a Sustainable subdivision and, as such, this section is not applicable to any current developments as of the above date.*
- ii. *For more information about the benefits of a Sustainable Subdivision and process of designating a development, as such contact the Office of Planning & Development.*

3.7.2B

Commentary

There are no maximum density requirements for multi-family developments that are subject to this Article.

3.10.2B(after table)

Commentary

There are no maximum density requirements for multi-family developments that are subject to this Article.

4.1

Commentary

- i. *Developments that meet the thresholds of Chapter 4.1, with the exception of single-family dwellings, are subject to the administrative site plan review requirements of Chapter 9.12.*
- ii. *Developments that meet the threshold requirements under 4.1 but which are located within a required frontage standard, as governed by Section 3.10.3, or located within a Special Purpose District or Overlay District, as governed by Articles 7 and 8 respectively, are subject to the administrative site plan review requirements of Chapter 9.13.*

21. (NEW): 2.7.2A(4): Accessory structures in the side yard

This section of the Code prohibits any accessory structures from being located within the required side yard except for a few items. Preferred language would limit the applicability of this section to only the portion of the side yard along the side of the building. The rest of the yard would be considered the required rear or front yards. Without this amendment, very few accessory structures would be permitted in the rear yards of corner residential lots, since their rear yard is actually considered a side yard (see Sub-Section 3.2.9B).

No accessory structure shall extend into the portion of the required side yard setback that lies between the side façade of a structure and the property line, except for air conditioning and heating units, pool equipment and similar mechanical equipment. See also Sub-Section 3.2.9E, Encroachments.

Also, a reference to Sub-Section 2.7.2A needs to be added to 3.2.9E so the exceptions in 2.7.2A can be tracked by readers looking for permitted encroachments.

3.2.9E(1)(a): Accessory structures (as permitted in Chapter 2.7, Accessory Structures and Uses). Air conditioning and heating units, pool equipment, flagpoles, bird baths, statues and other ornamental features, detached garages and other accessory structures may encroach into certain the required yards, per Sub-Section 2.7.2A.

22. (NEW): 2.7.5D: Overnight accommodations at places of worship

The five-acre rule for overnight accommodations at places of worship has become an issue for many churches, particularly those associated with the Room at the Inn program. There seems to be no rational basis between the size of a lot a place of worship sits on and whether overnight accommodations be permitted, so this provision of the UDC should either be deleted or change to 20,000 square foot lots, which is the new threshold for all new places of worship under the UDC.

23. (NEW): 9.3.2: Neighborhood Meeting Notification

This section of the UDC stipulates that neighborhood meetings shall be held no later than 10 days prior to the LUCB hearing and that notice for these meetings shall be mailed no later than 20 days prior to the LUCB hearing, but there is no minimum number of days set between neighborhood meeting and notification. I suggest 10 days to match our mailed notice for other public hearings.

24. (NEW): 3.10.2B: Non-single-family lots with no water and/or sewer

Insert the same 2 acre and 4 acre minimum lots sizes that exist for residential.

25. (NEW): 2.7.5B: places of worship and gyms

Either remove requirement that places of worship with gyms have 10 acres, or replace with language that such sites be along collectors or arterials.