MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT

STAFF REPORT

Agenda Item: ___

CASE NUMBER: **ZTA 15-002 CC** **L.U.C.B. MEETING:** **August 13, 2015**

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. Below is an executive summary of the amendments provided in this staff report.

- **Items 1, 4, 7, 8, 9, 10, 14, 15, 16, 19, 25, 26, 27, 29, 30, 31, 32, 34, 35, 37, 39, 41, 42, 43, 44 and 45** are housekeeping in nature and either correct cross-references, formatting or contradictions within the Code.
- **Item 2** cleans up the varying conflicting sections of the Code that deals with timber harvesting, which appears to have been created with the adoption of the UDC. The UDC introduced new language on the subject that was not in keeping with the Tree Ordinance, which was passed by the City Council and Board of County Commissioners in 2001. Under the proposed language, timber harvesting will require a Special Use Permit in all of the non-agricultural and non-industrial zoning districts, which was the original intent of the 2001 Tree Ordinance.
- **Item 3** adds "flexible loan plan establishments" to the distance and concentration restrictions that presently apply to payday loan and title loan establishments.
- **Item 5** states that container homes, or homes made out of shipping containers, require individualized review by the Board of Adjustment with notice to the neighbors. Commercial container buildings, shipping containers not used for residential purposes, will only be permitted in the industrial zoning districts, but also only with Board approval.
- **Item 6** will allow canopies for gas stations to be within 10 feet of the right-of-way.
- **Item 11** reduces the required height of awnings that encroach into the right-of-way.
- **Item 12** returns the allowable heights in the light industrial (EMP) zoning district to those permitted under the former zoning code.
- **Item 13** stipulates that private streets may be exempted from the sidewalk, curbs and gutter requirements (known in the Code as "streetscapes"). Private streets typically lack one or more of these features.
- **Item 17** will require buffer landscaping to contain evergreen trees rather than deciduous trees to provide year round screening.
- **Item 18** simplifies the front yard fence provisions of the Code; the proposed language will bar opaque fencing over four feet in height between the street and a house but allow wrought iron fencing.
- **Item 20** states that the screening requirement between a public street and loading docks do not apply to the industrial zoning districts, so long as there are no single-family homes across the street from the loading docks.
- **Item 21** will exempt interstate right-of-way, which is zoned single-family residential, from the general requirement that rooftop mechanical equipment be shielded from neighboring residential areas.

- **Item 22** stipulates that all protective distances provided in the sign code of the UDC between signs and residential districts do not include interstate right-of-way.
- **Item 23** addresses rope lighting, the tube lighting that many gas stations around town have placed around the perimeter of their windows. The proposed language will essentially require this rope lighting to be removed within six months of the passage of this zoning text amendment.
- **Item 24** contains both a housekeeping item (simplifying the setback language for billboards), but also limits billboards to 60 feet in height if they only meet the minimum setback and residential separation requirements of the Code. For every foot in distance that they exceed these minimum setbacks, they may be an additional foot in height, up to a maximum height of 100 feet.
- **Item 28** will allow new hotels to be processed through the submission of a Hotel-Motel Waiver application, whereby City Council or Board of County Commissioners review is expedited by bypassing the Land Use Control Board. It also provides the legislative bodies direction if they choose to reject such an application.
- **Item 33** will follow current practice in the event a zoning variance is discovered on a pending application with the Memphis Landmarks Commission; that variance will be acted upon first before the Landmarks Commission may act on the matter.
- **Item 36** will also follow current practice on how old Board of Adjustment cases are modified. Basically, if the site plan is amended in an insignificant way, staff may act upon the request. If either the site plan is being changed in a significant way or the articulated conditions are being changed, Board action will be required.
- **Item 38** both brings the Code into compliance with the Telecommunications Act of 1996 and the case and administrative law that has followed it, but it also stipulates what kind of minor changes to approved cell towers require Land Use Control Board action. It also states that only one, two-year extension to a Special Use Permit is permitted if the subject building or structure of that Special Use Permit was never constructed.
- **Item 40** matches item 33 in a sense that any application to the Land Use Control Board that requires a variance will be held in abeyance until the variance is acted upon. It also allows height variances and other variances that are the subject of special exceptions in limited circumstances.
- **Item 46** will add language that stipulates that private sex clubs will require the same distance requirements from schools, places of worship, parks and single-family residences as other adult oriented establishments.
- **Item 47** removes the discretion of the Planning Director to approve supportive living facilities that are not licensed by the State.

The UDC Review Committee, made up of Steve Auterman, Mary Baker, Brenda Solomito Basar, Homer Branan, Ray Brown, Mike Fahy, Beth Flanagan, Cecil Humphreys, Forrest Owens and Cindy Reaves, met on Monday, July 13; Friday, July 17 and Friday, July 24; to review these amendments. Many of the amendments, as originally proposed, were overhauled; others were dropped entirely.

These amendments can be read in greater context by downloading the entire UDC. It is available on this website: http://www.shelbycountytn.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. 1.13.3A(1) and (2): Pre-Existing Planned Developments

   These two sections of the UDC deal with Planned Developments that pre-existed the UDC, but appear to conflict with one another. The last sentence of Paragraph 1 states that the Planning Director may impose UDC restrictions on a Planned Developments that preceded the UDC if the Planned Development is silent on a particular issue (see below). On the other hand, Paragraph 2 requires a Planned Development that preceded the UDC to adhere to the UDC. In many respects, this is impracticable for an existing development, particularly for those developments that do not have the proper setbacks to install a UDC buffer or landscape screen. The proposal below moves the last sentenced of Paragraph 2 and places it at the end of Paragraph 1, which addresses the apparent conflict between these two sections.

   1.13.3A Planned Commercial (C-P) District and Planned Developments (PD)

   1. The provisions of this development code do not apply to any planned commercial (C-P) districts, or planned developments (PD) that were approved by the governing bodies prior to the effective date of this development code, except as provided in this Sub-Section. Any condition or set of conditions, imposed by the governing body on such plan or planned development governs. ~~If a previously approved planned commercial (C-P) or planned development (PD) is silent on a particular provision of this development code, the Planning Director may apply that provision to the previously approved C-P or PD.~~
   2. If a previously approved planned commercial (C-P) or planned development (PD) references a former zoning district or former development standard then the new applicable zoning district standard or development standard under this development code shall apply. **If a previously approved planned commercial (C-P) or planned development (PD) is silent on a particular provision of this development code, the Planning Director may apply that provision to the previously approved C-P or PD.**

2. 2.5.2, 2.6.5D, 2.6.5G, 2.9.6A, 3.5.3B(2), 3.5.3C(2), 6.1.2C, 6.2.2C(9), 6.6, 8.4.7 and 12.3.1: Tree Harvesting and Silviculture

   Insofar as the treatment of tree harvesting, there are no less than nine disparate sections of the UDC that both govern this subject and appear to conflict with one another. It was due to this conflict that the Board of Adjustment had to hear an appeal of a determination by the Planning Director in early 2015. In short, the following breakdown of each of these sections of the Code demonstrates the conflict:

   - 2.5.2 Section 2.5.2, the use table, requires a Special Use Permit from the legislative body(s) in all zoning districts for the following use: “Dredging, earth extraction, clearing or grading (silviculture).” The term “silviculture” is not defined in the UDC. To the untrained eye, it would appear that “silviculture” is synonymous with the term “earth extraction.” However, consultation to a dictionary reveals that silviculture has no relation to earth extraction; instead, it deals with the growing of forests, which calls into question its placement within a parenthetical. This particular use, as listed in the use table, contains a cross-reference to Sub-Section 2.6.5D.
   - 2.6.5D Sub-Section 2.6.5D is located in the “use standards” section of the Code, which is meant to guide a property owners who find themselves proposing a use that requires a Special Use Permit. However, Sub-Section 2.6.5D poses two problems: 1) it is entitled, “Dredging, Earth Extraction, Clearing or Grading (Timber Cutting);” which is not the exact title contained in

Section 2.5.2; and 2) it contains no use standards whatsoever and instead sends the reader to yet a different section of the Code, Chapter 6.6.

- 6.6 This chapter, which is being taken out of order in this list since it was referenced in Sub-Section 2.6.5D, is entitled "Dreading, Earth Extraction, Clearing or Grading (Silviculture)." Based on the language of the first sentence in this Chapter, it appears this Chapter does not address timber cutting/silviculture at all. It only contains regulations related to "excavation," which is a term not used in any of the earlier descriptors.
- 2.9.6A Sub-Section 2.9.6A is listed in the "use categories" section of the UDC; it is cross-referenced in Section 2.5.2. This sub-section lies within Chapter 2.9, which is meant to further list the specific uses that are listed in general in Section 2.5.2, the use table. In the table in this sub-section, all of the many specific uses that may be classified as "Agriculture." This table includes the use "Timber tract, forest nursery gathering of forest products." None of these items are defined in the definitions section of the UDC, Section 12.3.1. In addition, the term "silviculture" is listed in this table with "farm labor and management services Floriculture, horticulture, pasturage, row and field crops, viticulture and tree or sod farm."
- 2.9.6B This sub-section lists the specific uses under what the use table calls "Resource Extraction." Found in this list is the use "Dredging, earth extraction" but no mention is made of "timber harvesting" or "silviculture." Like the Sub-Section 2.9.6A, this sub-section is cross-referenced in Section 2.5.2.
- 3.5.3B(2) This paragraph states "No dredging or earth extraction is permitted within a FW District without approval of a special use permit (see 9.6); and no clearing of timber or grading within certain areas of the floodway as specified in Chapter 6.6 is permitted without approval of a special use permit." Again, while 6.6 contains "silviculture" in its title, it does not cover this activity.
- 3.5.3C(2) This paragraph is located almost immediately behind Paragraph 3.5.3B(2), described above. It states, "The harvest of timber for a sustained yield is considered an agricultural use, exempt from the provisions of Chapter 6.6..." This appears to directly contradict not only the section previously cited, but also the use table which lists "silviculture" as an "Resource Extraction" use and not as an "Agricultural" use. Also, this section requires trees of six inches or less to be retained, which would likely be very difficult in a timber harvesting operation.
- 6.1.2C Chapter 6.1 covers the tree permit process. Specifically, Sub-Section 6.1.2C contains a tree removal matrix that contains the tree retention requirements around the perimeter of the site that is subject of the tree removal. This matrix does not explicitly contain the terms "timber harvesting" or "silviculture," but it does contain the term "Agricultural" [use]. Under some of the sections listed above, timber harvesting is listed as an agricultural use; under others, it is an open use. If the reader were to place greater weight on those sections classifying timber harvesting as an resource extraction use, then this tree removal matrix does not require any trees to be retained on a site utilized for timber harvesting.
- 12.3.1 This is the definitions section of the UDC. Timber harvesting is defined, but not "timber tract," "forest nursery," "gathering of forest products," or, most notably, "silviculture."

It appears that the most salient section of the Code on point is Paragraph 3.5.3C(2), which classifies timber harvesting as an agricultural use. The following proposed amendments are made based on the current language of that section.

2.5.2 (Use Table):

Under "Agriculture," add new use:

Timber Harvesting and allow it by right in the same zoning districts where agriculture is permitted by right currently under the UDC (the FW, CA, EMP and IH districts) and in other zoning districts by Special Use Permit, based on where

Resource Extraction is currently permitted by Special Use Permit (the CIV, R-MP, R-E, R-15, R-10, R-8, R-6, R-3, RU-1, RU-2, RU-3, RU-4, RU-5, R-W, OG, CMU-1, CMU-2, CMU-3, CBD, CMP-1, CMP-2 and WD districts). This new use will also have a reference to a new use standard, 2.6.5G (see below)

Under "Resource Extraction:"
Dredging, earth extraction, clearing or grading ~~(silviculture)~~

2.6.5D
Dredging, Earth Extraction, Clearing or Grading ~~(Timber Cutting)~~

2.6.5G (new section) **Timber Harvesting**

1. **All timber harvesting is subject to Chapter 6.1.**
2. **In addition to Chapter 6.1, any timber harvesting in the FW floodway district shall adhere to Paragraph 3.5.3C(2).**

2.9.6A
Farm labor and management services**,** Floriculture, horticulture, pasturage, row and field crops, viticulture~~, tree or sod farm, silviculture~~
Timber **harvesting** ~~tracts~~, forest nursery**,** gathering of forest products, **tree or sod farm**

3.5.3B(2)
No dredging or earth extraction is permitted within a FW District without approval of a special use permit (see **Chapter** 9.6); and no ~~clearing of timber or~~ grading within certain areas of the floodway as specified in **Chapter** 6.6 is permitted without approval of a special use permit.

3.5.3C(2)
The harvest of timber for a sustained yield is considered an agricultural use, exempt from the provisions of Chapter 6.6. For the purposes of this development code, the harvest of timber constitutes the cutting and removal of trees greater than six inches in diameter at a height of 18 inches above the ground and retention of the remaining stump in place. ~~Smaller trees may not be cut and~~ **T**he disposal of associated debris into a water course is prohibited. **No timber harvesting may occur within 60 feet of the top of bank of an adjacent waterway.**

6.1.2C

	Maximum Disturbed Area	
Proposed Use	Perimeter of Site	Remainder of Site
Single-family (10,000 sq. ft. or less)	18%	100%
Single-family (over 10,000 sq. ft.)	18%	80%
Multifamily	18%	80%
Office/institutional	18%	90%
Retail	23%	90%
Agricultural **(including timber harvesting)**	18%	100%

6.2.2C(9)
Agriculture, horticulture, **timber harvesting** ~~silviculture~~ or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

6.6

Dredging, Earth Extraction, Clearing or Grading ~~(Silviculture)~~

8.4.7

Dredging, earth extraction, clearing or grading ~~(silviculture)~~

12.3.1

FOREST NURSERY: An area or place where planting stock (seedlings and saplings) of trees and shrubs are grown.
FOREST PRODUCTS, GATHERING OF: An area or place where trees, shrubs and parts thereof are collected.
TREE FARM: A forest managed for timber production.

3. 2.5.2, 2.6.3M and 12.3.1: Flexible Loan Plan Establishments

The Tennessee General Assembly has recently passed legislation permitting a new type of financial business, a flexible loan plan establishment. The table below compares flexible lenders, payday and title lenders and conventional banks. In staff's opinion, this data, derived from the Tennessee Code Annotated, demonstrates that these types of businesses are more like payday and title loan establishments.

	Banks [1]	**Flexible Loans [2]**	**Payday/Title Loans [3]**
Chartered	Yes	No	No
Compile and Report Credit Ratings	Yes	No	No
Unsecured Loans	Yes	Yes	No
20+% Personal Loan Interest Rates	No	Yes	Yes
Credit Worthiness	Yes	Yes	No
Depository	Yes	No	No

The following information was gathered from the Tennessee Department of Financial Institutions (Departments Compliance Division).

[1]Banks

- Governed by TN Code Annotated 45-2-1102
- State or Federally Chartered
- Maximum personal loan amount of $15,000 (Depends on Bank)
- Maximum personal loan interest rate per annum of 10%
- Depository
- Reports to Credit Bureau

[2]Flexible Lender

- Governed by TN Code Annotated 45-12-101
- Max loan amount is $4,000
- Max per annum interest rate of 20%
- Non-depository
- Does not report to Credit Bureau
- .7% interest rate may be charged as a fee
- Compounding schedule should be considered

[3]Payday/Title Loan Lender

- Governed by TN Code Annotated 45-17-101
- Payday max loan amount is $500
- Title Loan max amount is $2,500
- Max time length of a loan is 31 days
- Max APR is 459%
- Non-depository
- Does not Report to Credit Bureau
- Compounding schedule should be considered

2.5.2, 8.4.7 Use Tables

Payday loans**,** ~~and~~ title loan**, and flexible loan plan** establishments

2.6.3M Payday Loans, Title Loan **and Flexible Loan Plan** Establishments

1. It shall be a violation of this development code for a person, corporation, or other legal entity to operate or cause to be operated any payday loan**,** ~~or~~ title loan **or flexible loan plan** establishment within 1,000 feet of any other establishment offering payday loans**,** ~~or~~ title loans **or flexible loan plans**.
2. It shall be a violation of this development code for a person, corporation or other legal entity to operate or cause to be operated any payday loan**,** ~~or~~ title loan **or flexible loan plan** establishment within 1,320 feet from the boundary of a residential district or historic overlay district.
3. Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premise where the payday loan**,** ~~or~~ title loan or **flexible loan plan** establishment is located, to the nearest property line of the premises of any other payday loan**,** ~~or~~ title loan **or flexible loan plan** establishment or any residential district or historic overlay district.

12.3.1, Definitions

FLEXIBLE LOAN PLAN: A written agreement subject to Chapter 45-12-101 of the Tennessee Code Annotated between a licensee and a customer establishing an open-end credit plan under which the licensee contemplates repeated noncommercial loans for personal, family or household purposes that 1) may be secured or unsecured by personal property, 2) may be without fixed maturities or limitations as to the length of term and 3) are subject to prepayment in whole or part at any time without penalty.

FLEXIBLE LOAN PLAN ESTABLISHMENT: An establishment that is primarily engaged in the business of issuing flexible loan plans.

4. 2.5.2 and 12.3.1: Truck Stops

There have been several complaints filed lately with individual Council Members regarding overnight parking of tractor-trailers and RVs in commercial parking lots. The UDC does not contain language specifically addressing this issue. Currently, the use chart does not contain a use named "truck stops." Instead, it contains a use called "Tractor-Trailer (fueling of)," which is essentially defined as any gas station that caters to tractor-trailers. This proposal would expand the use entitled "Tractor-Trailer (fueling of) to read "**Truck Stop,** Tractor-Trailer (fueling of)." This proposal will also insert the following definition in Section 12.3.1:

TRUCK STOP: An establishment, or any portion thereof, that provides fueling, bathing options and other conveniences to tractor-trailers and their operators. This definition includes any overnight parking of recreational vehicles and tractor-trailers in non-industrial zoning districts, with the exception of hotels, motels and other similar places of overnight lodging.

5. 2.5.2 and 2.6.1G: Container Homes

Across the country, there is a growing trend of utilizing shipping containers as dwelling units. This may be more appropriate in neighborhoods where there is no predominant architectural theme. The proposed language below would require a public review for these types of homes by requiring them to obtain a Conditional Use Permit, which in turn would help ensure they were not placed in inappropriate neighborhoods. Specifically, Sub-Section 9.24.6B requires that structures being granted a Conditional Use Permit be compatible with their immediate vicinity.

2.5.2 (new use categories): **Container Home** shall be added as a use under the Household Living category. Container homes shall be permitted by Conditional Use Permit and indicated with a "C" symbol in all zoning districts where conventional single-family homes, as well as the R-MP (mobile home park) zoning district. A cross-reference to Sub-Section **2.6.1G** will also be provided. **Container Building** shall be added as a use under the Light Industrial *category*. Container buildings shall be permitted by Conditional Use Permit and indicated with a "C" symbol in the Light and Heavy Industrial districts. A cross-reference to Sub-Section **2.6.4H** will also be provided.

2.6.1G (new section) **Container Home**

1. **Definition. A container home is any dwelling unit that is wholly or partially located within a shipping container.**
2. **Housing Types. Container homes may qualify as a variety of housing types (see Chapter 3.4), which are in turn regulated by zoning district according to Section 2.5.2. A Conditional Use Permit may not allow a container home in a zoning district that does not allow the housing type; a companion zoning case must be filed in conjunction with the Conditional Use Permit to address any housing type conflicts with Section 2.5.2.**

3. **Accessory container home. A container home may be utilized as an accessory dwelling unit with the issuance of a Conditional Use Permit, provided all use standards of Section 2.7.3 are met.**

2.6.4H (new section) **Container Building**

Definition. A container building is any principal structure used for a purpose other than a dwelling unit that is wholly or partially located within a shipping container. Container buildings are prohibited in all zoning districts except as indicated in Section 2.5.2.

12.3.1 Definitions

SHIPPING CONTAINER: Any standardized container designed to accommodate the transportation of goods by truck, train, plane or ship.

6. 2.6.3J(1)(a) and 2.6.3J(2)(a): Fuel Canopies at Gas Stations

These two sections of the Code both deal with fuel canopies at gas stations. However, they conflict with one another. The first states that the canopies must be located outside of the required front yard of a lot (which is 20 feet for commercially-zoned properties and 30 feet for industrially-zoned properties). The second states that the canopy may be set back 15 feet. The proposal below would delete the former and reduce the latter 10 feet, which would both create a more urban-looking gas station (see photos below), but also provide more flexibility for narrow lots.

The canopy at the Summer Fuel and Grocery on Summer between East Parkway and Hollywood is ten feet from the right-of-way.

The canopy at the Shell Station at the corner of Poplar and White Station is ten feet from the right-of-way.

This canopy at Dodge's Chicken on Elvis Presley is about seven feet from the right-of-way.

2.6.3J(1)(a)
The primary building~~, including the fuel canopy,~~ shall conform to all building envelope standards.

2.6.3J(2)(a)

The canopy shall be located no closer than **10** ~~15~~ feet to any side or rear property line or right-of-way. **This Item shall not be construed to supersede the landscaping and streetscape provisions of Article 4.**

7. 2.6.3N(1): Outdoor Sales

Outdoor sales generally require a Special Use Permit by the City Council or Board of County Commissioners in an effort to place some controls over such venues. However, certain products are sold outdoor by their very nature. The language below would explicitly exempt these products from being covered by the outdoor sales ordinance:

An outdoor retail sales, service or vending facility shall be deemed stationary if it remains or operates on any single tract or lot for more than a total of one-half hour in any 24 hour period. A special use permit may be granted for individual or multiple vending facilities. This Sub-Section shall not apply to mobile food preparation vehicles that adhere to the provisions of Memphis Code of Ordinances Section 16-261, et. seq., or the Shelby County Code of Ordinances Chapter 8, Article XVI. **This Sub-Section shall also not apply to the outdoor sales or leasing of vehicles, manufactured housing, portable storage units, sheds, agricultural machinery and other products that are customarily sold outdoors.**

8. 2.6.3P(1)(d): Storage of Impounded Vehicles

This section of the Code deals with the storage of impounded vehicles, which are generally not allowed on car lots. However, since impound lots are permitted in the industrial zoning districts, they should be permitted associated with car lots in these zoning districts:

The storage of impounded vehicles shall not be permitted**, except in the EMP or IH districts**. **Impounded vehicles in the EMP district shall be at least 500 feet away from any single-family residential uses. The storage of inoperable vehicles is not permitted in the EMP district.**

9. 2.8.2A Outdoor Sales of Agricultural Products

This section of the Code dealing with the outdoor sale of seasonal products, such as Christmas trees and pumpkins, contains an incorrect cross-reference. Language below will also allow for various other types of seasonal products.

2.8.2A Outdoor Sales of Agricultural Products

1. The outdoor sales of agricultural products shall conform to the location for outdoor retail sales as set forth in Sub-Section 2.6.3~~M~~**N** except the Building Official may waive the requirement for an on-premise host and approve a use meeting the definition of agricultural products, seasonal outdoor sales of pumpkins and Christmas trees without an on premise host if the needed support facilities are provided on the site including restrooms, trash receptacles, parking and access.

2. The Building Official shall not approve agricultural products~~,~~ **(including, but not limited to,** seasonal outdoor sales of pumpkins**, gourds, hay bales, corn stalks** and Christmas trees**)** unless the site conforms to the location, parking, and sign requirements for granting a special use permit for an outdoor retail vending facility

including (a) Distance from public right-of-way, (b) Distance from interstate ramps, (c) Distance from intersections, (d) Distance from residences, (e) Parking and (f) Advertising devices.

10. 2.8.3C: Special Event Permit

This section of the Code deals with temporary special event permits issued by the Building Official. However, it uses the term "special *use* permit." The language below would correct this.

> Special events occurring for a time period not exceeding 90 consecutive days as approved by the Building Official on a case-by-case basis. The Building Official may grant an additional special **event** ~~use~~ permit upon the termination of this period.

11. 3.2.9E(2)(d): Awnings

This section of the Code deals with awnings and requires said awnings to be high enough over sidewalks to not interfere with pedestrians below. Based on existing awnings, particularly those along Main Street, it appears a more appropriate minimum height above sidewalks for awnings would be eight feet rather than the existing ten feet. Also, many awnings are much less in depth than six feet, which the current Code also requires.

> Awnings or overhangs may encroach into a required front setback provided they do not encroach into the public right-of-way without a right-of-way encroachment permit. Awnings or overhangs over a public sidewalk must be a minimum of **eight** ~~ten~~ feet clear height above the sidewalk and be a minimum of **five** ~~six~~ feet deep.

12. 3.10.2B: Maximum Height in the EMP District

The maximum height in the old Light Industrial zoning district was 100 feet or 45 feet if adjacent to residential uses or zoning districts. The EMP district replaced the old Light Industrial zoning district when the UDC was adopted. Sub-Section 3.10.2B of the UDC stipulates the maximum height of EMP is 60 feet, regardless of proximity to residential districts. The language below would address by essentially using the language of the old zoning code since many structures were built under its regulations.

	CMP-1	CMP-2	EMP	WD	IH
Building					
Height (max ft.) see also 3.2.6	125	75	~~60~~ **45**	60	60
Height (max ft.) more than 100 ft from a residential district[5]	125	75	~~60~~ **100**	60	100

[5] This shall not include portions of a residential zoning district encompassing interstate highway right-of-way.

13. 4.3.1C (new section): Private Streets and Streetscape Plates

Private streets and drives can range from a residential street with lots that looks just like a City street to internal parking lot aisles inside an apartment complex. There have been questions as to whether the streetscape section of the Code, which requires curbs, gutters, sidewalks, etc., apply to private streets. The language below is meant to clarify this:

4.3.1C (new section) **Private Streets**
Private streets and drives are exempt from the streetscape standards provided in this Chapter unless conditioned otherwise by the Land Use Control Board, Board of Adjustment or legislative bodies.

14. 4.3.2: Street Tree Spacing

The last sentence of the introductory paragraph to the streetscape plates states that street trees must be planted off center at a minimum of 40 feet. This should probably say "maximum," but the proposed language below would simply cross-reference the section of the Code that specifies how far each type of tree must be from one another. This item will also address the discrepancy between the UDC, which generally measures street width from the face of curb, and general engineering practices, which measures street width from the back of curb.

…All trees found in the Streetscape Plates are to be planted **in accordance with Sub-Section 4.3.5B** ~~at a minimum of forty feet on center from one another~~. **All dimensions found in this Chapter shall be measured from the back of curb and not the face of curb.**

15. 4.5.3F (new section): Accessible (Handicap) Parking

The required number of handicap, or accessible, parking spaces is not found in the UDC but rather the building code. However, a reference should be provided in the UDC to make it more user friendly, in an effort to avoid a design professional from the need to consult two Codes in designing a parking lot.

4.5.5C (new section) **Accessible (Handicap) Parking**

Accessible parking is regulated by Section 1106 of the Building Code. The parking ratio of Section 1106.1 is provided below for illustrative purposes only. Any variances to the accessible parking table below, if applicable, shall be governed by the Building Code. In the event amendments are made to the Building Code affecting the accessory parking below and are not memorialized in this development code, the Building Code shall govern.

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20, plus one for each 100, or fraction thereof, over 1000

16. 4.5.5G: Parking Setbacks

The parking lot setback language of this section essentially only applies to the residential districts since non-residential parking lot setbacks are specifically covered by Sub-Section 3.10.2B. The current

language could be interpreted to prohibit residential driveways within the required side and rear setbacks of residential lots. The prohibition against required front yard parking is covered in Item 4.5.2C(1)(b). The proposed language below would reset parking setbacks to the widths of any required landscape screen or buffer.

> G. Parking Setbacks
> All parking and vehicular use areas shall observe the parking setback requirements of Article 3, Building Envelope Standards **for parking in the front setback and the screening and buffer requirements of this Article for parking in the side and rear setbacks**.

17. 4.6.5: Buffer Requirements

The buffers required by the Code are contacted in this section. The intent of buffers are to screen certain proposed uses from adjacent uses that are sensitive, such as a proposed commercial or multi-family use abutting a single-family use. The proposed changes below would require all landscaping in a required buffer to be evergreen in an effort to ensure a year-round buffer.

> 4.6.5A(4) It is the intent of a buffer to interrupt sight lines from adjacent **property through the use of Tree D or E and Shrubs, A, B or C**. If the grade of the site, or other condition, prevents the buffer from accomplishing this purpose then the minimum requirements may be modified at the request of the Planning Director.
>
> 4.6.5C(1)(a) The following chart establishes the specific width and plant material for a Class I, II, and III buffers. An applicant is free to choose from each alternative (A, B, or C) within the respective buffer classification (I, II, or III). Buffers planted below overhead utility lines shall apply any of the allowed buffer alternatives, except that Type **E** ~~C~~ tree shall replace any Type **D** ~~A or B~~ trees at a rate of two Type **E** ~~C~~ trees per required Type **D** ~~A or B~~ tree.
>
> 4.6.5C (throughout table) **Evergreen** Tree
>
> 4.6.5H(2) Type **D** ~~A and B~~ trees may be located no closer than five feet from any structure. Type **E** ~~C~~ trees may be planted no closer than three feet from any structure.

18. 4.6.7C: Front Yard Fence Height

This section of the Code regulates fence height in front yards. It has been found to be very difficult to regulate, particularly for the Zoning Enforcement Officers. Since a required front yard may be governed by either the UDC or the recorded plat, a great deal of research is required to determine where a particular fence may taper above four feet in height. The proposal below would greatly simplify this regulation by essentially prohibiting fences over four feet in height between the house and the street.

> 4.6.7C
> 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 **between the front façade of any single-family residence and a public right-of-way or private street, with the following exceptions:** ~~the single-family or CA residential districts~~.
>
> 1. **Wrought iron fencing. Wrought iron or other decorative metal fencing may be up to eight feet in height in the front yard. Chain link and metal panel fencing shall not be considered decorative metal fencing for the purpose of this Paragraph.**

2. **Large front yards. For single-family residences that are at least 40 feet from the public right-of-way or private street, fences and walls may be up to eight feet in height, provided they are at least 40 feet from the public right-of-way or private street.**

~~*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 often 10 feet from the curb of the street, as measured from the face of curb. 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.*~~

19. 4.6.8B: Dumpster Enclosures

Sub-Section 4.6.8B, which largely deals with dumpster enclosures, should be retitled "Service Areas **and Dumpster Enclosures**" since the latter term is often used by practitioners but not used in the UDC, making this section sometimes difficult to locate.

20. 4.6.8C(1): Screening of Loading Areas

This section of the Code requires that loading areas, such as the one pictured below, be screened from adjacent streets by evergreen landscaping. As the photo indicates, this provision is impracticable in some industrial areas.

The language below would make it clear that properties in the industrial zoning districts are exempted from this requirement.

4.6.8C(1)

Provide a minimum 100% year-round screen of all loading areas visible from residential properties (does not include upper-story residential units associated with a mixed use building)

or public rights-of-way (not including an alley). **This provision shall not apply to sites within the industrial zoning districts, except in instances where the loading areas are directly across the public right-of-way from single-family residential uses.**

21. 4.6.8D(1) and (2): Screening of Mechanical Equipment

These two sections of the Code, which address screening of mechanical equipment, conflict with one another. Paragraph 1 requires screening for rooftop equipment that is viewed from adjacent residential properties or the street; Paragraph 2 requires screening for all rooftop equipment, regardless of the height of the building or whether it can be seen from the street or adjacent properties. The proposal below would eliminate Paragraph 2 in favor of Paragraph 1. Also, this proposal would eliminate the requirement that rooftop equipment be screening from interstate right-of-way, as such a roadway is often raised above the entire building, particularly in areas of on and off ramps.

1. All roof, ground and wall mounted mechanical equipment (e.g. air handling equipment, compressors, duct work, transformers and elevator equipment) must be screened when within 150 feet of residential properties or public rights-of-way, as measured from the residential property line or public right-of-way to the nearest point of the footprint of the mechanical equipment. The mechanical equipment shall be screened as viewed at a point five feet above grade measured horizontally 150 feet from the mechanical equipment. **For the purpose of this Paragraph, rights-of-way shall not include interstate highway right-of-way.**

~~2. Except for antennas mounted on roofs pursuant to the provisions of this development code, all mechanical equipment located on the roof of any building constructed after the effective date of this development code must be fully screened by a parapet wall or other screening structure constructed of materials compatible with the principal building façade to the height of such equipment.~~

22. 4.9.2G (new section): Distances for Signs from Residential Districts

This proposal would insert a new section at the beginning of the sign code (Chapter 4.9 of the UDC) that would stipulate that the required distances found throughout the sign code from residential districts and uses shall not apply to portions of a residential zoning district encompassing interstate highway right-of-way.

4.9.2G Distances from Residential Districts

Any distance requirement between a sign and residential zoning district articulated by this Chapter shall not include portions of a residential zoning district encompassing interstate highway right-of-way.

23. 4.9.4, 4.9.4A(10), 2.6.3J(1)(g), 4.7.3F and 12.3: Rope Lighting

In the past few years, some businesses, particularly gas stations, have installed rope lights around their windows in an effort to draw customers. The proposal below would eliminate the use of rope lighting since it is both aesthetically garish and its brightness causes unnecessary glare at night.

This item was taken to the Memphis City Council in December, 2014, during the deliberations on case ZTA 14-001. During those deliberations, members of the Memphis City Council expressed their

concerns that the Division of Planning and Development did not have adequate resources to enforce an all-out prohibition on rope lights and removed that item from ZTA 14-001. However, in consultation with the Manager of the Zoning Enforcement Department at the Office of Construction Code Enforcement, Rose Hill, it appears the Division does have the staff to enforce this proposed language. Ms. Hill stated her office would likely issue citations neighborhood-by-neighborhood via certified mail over a period of time.

Below are images of rope lights.

<u>4.9.4A(10)</u> [new section] **<u>Rope lighting</u>**

<u>Prohibited rope lighting shall include any rope lighting along the exterior of a structure or along the perimeter of any window or within three feet of the interior of any window of said structure. Such rope lighting shall not be considered a "structure" for the purpose of this Code and shall furthermore not be afforded any nonconforming status under Article 10. All rope lighting, regardless of its time of installation, shall be deemed a violation of this Code and shall be removed. In an effort to allow the owner of the rope lighting a period to amortize the capital costs</u>

associated with the lighting, this Paragraph shall not take effect until 180 days after the effective date of this zoning text amendment ([insert effective date of this zoning text amendment here]).

Also, the title of Section 4.9.4 needs to be rephrased as "Prohibited Signs**, Lighting and Graphics**," as does the introductory sentence of Sub-Section 4.9.4A.

Given that many of this rope lighting is found on gas stations, a cross reference should be added to Paragraph 2.6.3J(1), which lists the use standards for gas stations.

2.6.3J(1)(g) [new section] **Rope lighting subject to Paragraph 4.9.4A(10) is prohibited.**

A reference to this new section should also be added to the Outdoor Lighting section of the Code:

4.7.3F [new section]: **Rope Lighting**
Rope lighting subject to Paragraph 4.9.4A(10) is prohibited.

A definition of "rope lighting" shall be added to the list of sign definitions in Section 12.3.4 with a cross reference in the regular definition section of 12.3.1:

12.3.4 ROPE LIGHTING: Rope lighting, also known as fiber-optic cable lighting, is made up of tiny lights, available in either incandescent or LED bulbs, spaced about an inch apart and surrounded by clear, flexible PVC tubing.

12.3.1 ROPE LIGHTING: See Signage Definitions, Section 12.3.4.

24. 4.9.8: Heights and Setbacks for Billboards

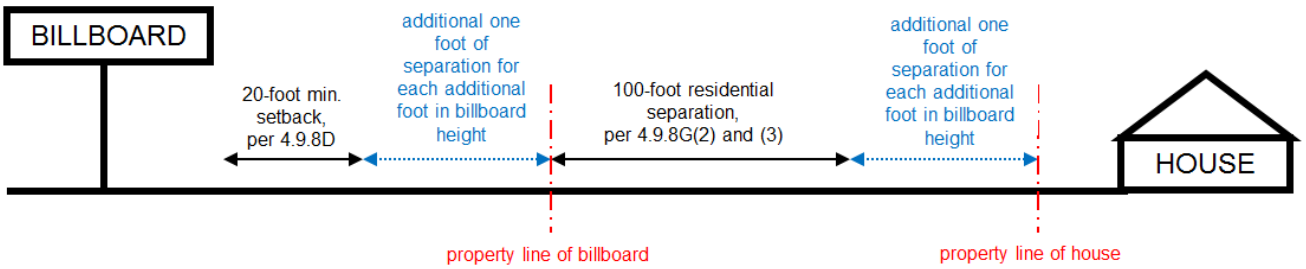
Currently, the billboard section of the UDC (Section 4.9.8) refers to the height and side and rear setback requirements of the zoning districts found in Article 3. The proposal below cleans up the setback requirements by setting a clear 20-foot setback from all property lines. It also replaces the height regulations of the zoning district (75 feet for CMU-3, unlimited for CBD, 60 feet for EMP and up to 100 feet for IH) with fixed heights depending on the distance between the billboard and the nearest residential zoning district.

4.9.8D, Minimum Setback

~~For supporting columns the minimum required front setback for the district in which the sign is located, or no closer than the setback of the closest nonresidential principal building on the same side of the road that is within two hundred (200) feet of the proposed sign, whichever is less.~~ In no instance shall any portion of **an off-premise** ~~the~~ sign~~,~~ or column be setback less than twenty (20) feet **from the front, rear or side property lines**.

4.9.8G(6) **Maximum Height: Off-premise signs that meet the minimum 20-foot side, rear and front setbacks of Sub-Section 4.9.8D and the 100-foot separation from residential zoning of Paragraphs 4.9.8G(2) and (3) shall have a maximum height of 60 feet. For every additional foot of horizontal separation, as measured from this 120-foot buffer and the property line of a parcel that is either residentially zoned, within a residential portion of a planned development or occupied by a single-family residential dwelling, an off-premise**

sign may have an additional foot in height, up to a maximum permitted height of 100 feet. See graphic below.



~~Signs shall not exceed the maximum height permitted for detached signs in the district where the sign is located (see Section 4.9.7).~~

In addition, the section below contains a semi-colon instead of a colon; this proposal addresses this.

4.9.8D(4) The maximum gross surface area of a sign is as follows:
Along all U.S. Interstate Highways in Memphis and Shelby County~~;~~: six hundred seventy-two (672) square feet.

25. 4.9.8M and 4.9.15F: Removal of Nonconforming Signs

These two sections appear to cover the same subject matter: the removal of nonconforming signs, both on-premise and off-premise (billboards). However, they do not exactly match with each other. It appears Sub-Section 4.9.8M has been updated over the years, while Sub-Section 4.9.15F, has not. The proposed language below seeks to correct this:

4.9.8M Removal of Nonconforming Signs

1. Any Nonconforming Sign
   a. If a nonconforming sign is damaged or destroyed by a force of nature or other action beyond the control of the sign owner, then it may be replaced with a sign of identical size in the same location or by a conforming sign provided that a complete application for a permit for the replacement is filed within sixty (60) days of the date of the damage or destruction, and the replacement or repair is completed before the expiration of the permit or any valid extension thereof. The repaired or replacement sign shall be considered a legal nonconforming sign.
   b. If a nonconforming sign is voluntarily removed or damaged or destroyed through the actions of the sign owner, then such sign shall not be replaced except with a sign that fully conforms with the requirements of this ordinance. If such sign is an off-premise sign that is located more than 300 feet from a U.S. Interstate Highway, it shall not be replaced with an off-premise sign.

   (the following two sections are being moved, as they are presently written, from 4.9.15F(1)(c) and 4.9.15F(1)(d)).

c. **Any nonconforming on-premise sign, the use or copy of which is discontinued or removed for a period of three hundred sixty-five (365) days regardless of any intent to resume or not to abandon such sign shall be deemed to be abandoned and shall not thereafter be reestablished. Abandonment or obsolescence of a nonconforming sign shall terminate immediately the right to maintain such sign.**
d. **Any period of such discontinuance caused by government actions, strikes or acts of God, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this Paragraph.**

2. Off-Premise Signs
In addition to the provisions of Paragraph 1 of this Sub-Section M, which apply to all nonconforming signs, each of the following provisions shall apply to nonconforming off-premise signs:
   a. No nonconforming off-premise sign which has been removed voluntarily shall be replaced. This restriction is not intended to prevent the future erection of other signs on the site that conform fully with the provisions of this ordinance.
   b. Any nonconforming off-premise sign, the use or copy of which is discontinued or removed for a period of six months regardless of any intent to resume or not to abandon such sign shall be deemed to be abandoned and shall not thereafter be re-established. Abandonment or obsolescence of a nonconforming sign shall terminate immediately the right to maintain such sign.
   c. Any period of such discontinuance caused by government actions, strikes or acts of God, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this subdivision.
3. Alteration, Expansion or Moving of Off-Premise Sign
Any nonconforming off-premise sign shall not be changed or altered in any manner which would increase the degree of its nonconformity; be expanded; structurally altered to prolong its useful life; or removed in whole or in part to any other location where it would be nonconforming. Replacing the support structure of the sign shall be structurally altering the sign to prolong its useful life. Converting a sign to a different technology, such as tri-vision or changeable copy technology is prohibited unless the modified sign fully conforms to the applicable restrictions of this Chapter, including but not limited to those that specify the locations at which such technology is permitted.
4. Severability of Prohibition on Off-Premise Signs
If any part section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter and/or other provisions of this Chapter or other provisions of this Code or other sections of the Memphis and Shelby County Codes of Ordinances are declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the limitations on off-premise signs as contained herein.

(the following sections are being moved, as presently written, from 4.9.15F(3) and (4)). Paragraph 4.9.15F(3) is being slightly amended to change its reference to "Chart 1," which was found in the 1981 Zoning Code and not in the UDC. Paragraph 4.9.15F(4) is being slightly amended to explicitly require that the entirety of a nonconforming sign be removed.)

5. Removal of Nonconforming Sign Upon Change of Principal Use
Any nonconforming sign shall be removed or brought into compliance with this chapter immediately upon a change in the principal use of the site, in accordance

with Section 2.5.2, Permitted Use Table, or any other Permitted Use Table found in this Code.

6. Removal

For the purpose of this Chapter, "removal" shall mean removal of the entire structure of the sign, including any portion of the structure above the surrounding grade.

4.9.15F Removal of Nonconforming Signs

See Sub-Section 4.9.8M.

~~1. Any Nonconforming Sign~~

~~a. If a nonconforming sign is damaged or destroyed by a force of nature or other action beyond the control of the sign owner, then it may be replaced with a sign of identical size in the same location or by a conforming sign provided that a complete application for a permit for the replacement is filed within sixty (60) days of the date of the damage or destruction, and the replacement or repair is completed before the expiration of the permit or any valid extension thereof. The repaired or replacement sign shall be considered a nonconforming sign.~~

~~b. If a nonconforming sign is voluntarily removed or damaged or destroyed through the actions of the sign owner, then such sign shall not be replaced except with a sign that fully conforms to the requirements of this ordinance. If such sign is an off-premise sign that is located more than 300 feet from a U.S. Interstate Highway, it shall not be replaced with an off-premise sign.~~

~~c. Any nonconforming on-premise sign, the use or copy of which is discontinued or removed for a period of three hundred sixty-five (365) days regardless of any intent to resume or not to abandon such sign shall be deemed to be abandoned and shall not thereafter be reestablished. Abandonment or obsolescence of a nonconforming sign shall terminate immediately the right to maintain such sign.~~

~~d. Any period of such discontinuance caused by government actions, strikes or acts of God, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this subdivision.~~

~~2. Off-premise Signs~~

~~In addition to the provisions of Paragraph 1 of this Sub-Section F, which apply to all nonconforming signs, the following provisions shall apply to nonconforming off-premise signs:~~

~~a. No nonconforming off-premise sign which has been removed voluntarily shall be replaced. This restriction is not intended to prevent the future erection of other signs on the site that conform fully with the provisions of this ordinance.~~

~~b. Any nonconforming off-premise sign, the use or copy of which is discontinued or removed for a period of six months regardless of any intent to resume or not to abandon such sign shall be deemed to be abandoned and shall not thereafter be reestablished. Abandonment or obsolescence of a nonconforming sign shall immediately terminate the right to maintain such sign.~~

~~c. Any period of such discontinuance caused by government actions, strikes or acts of God, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this subdivision.~~

~~3. Removal of Nonconforming Sign Upon Change of Principal Use~~

~~Any nonconforming sign shall be removed or brought into compliance with this chapter immediately upon a change in the principal use of the site, in accordance with Chart 1, Uses Permitted, set out at the end of this title.~~

~~4. Removal~~
~~For the purpose of this Chapter, "removal" shall mean removal of the entire structure of the sign.~~

26. 5.2.7A(3): Street cross-sections

Some of the street cross sections in the UDC conflict with the new City of Memphis *Complete Streets Project Delivery Manual*. The following note will resolve any conflict that may exist. In addition, the street cross sections utilized by City and County Engineering use the back of curb as the basis of measuring road widths, so the change below will resolve the conflict between this practice and the Code (a similar change is found above in Section 4.3.2).

> **The street sections contained in this Code are for illustrative purposes only. All dimensions found in this Chapter shall be measured from the back of curb and not the face of curb.** The City or County Engineer may adjust the configurations as necessary for specific conditions provided that the **back** ~~face~~ of curb to **back** ~~face~~ of curb maximum width does not exceed the width shown for the specific street type. **Please consult the *City of Memphis Complete Streets Project Delivery Manual* for standard street sections located within the City of Memphis.**

27. 7.1F(1): Applicability to Single-Family Housing

This section of the Code specifically states that the SCBID and Uptown Special Purpose Districts do not apply to single- and two-family structures. However, since there are no underlying zoning districts in the special purpose districts, unlike the overlay districts, this leaves single- and two-family housing in these areas of the City without any zoning regulations whatsoever. The following proposal addresses this issue:

> The provisions of this Article shall apply to the following development, **including** ~~with the exception of~~ single-family and two-family housing types:

28. 7.2.1C, 7.2.2C, 7.2.5C, 7.2.6C, 7.2.7C and 9.6.6: Hotels in the SCBID and Hotel/Motel Waivers

The SCBID ordinance is somewhat out of compliance with the rest of the City and County, where a Special Use Permit is required for all new hotels and beds and breakfast. Various zoning districts within the SCBID area allow hotels, but only with the approval of a site plan by City Council. These sections should be amended to specifically allow the City Council to review these hotels, which includes site plan approval, but also gives the legislative body discretion when hearing such cases. This proposal will require the Special Use Permit for all hotels and beds and breakfast.

> 7.2.1C(2), Additional Uses Permitted [in the SE, Sports and Entertainment, zoning district]
> ~~Hotel (subject to site plan review by the legislative body)~~
> ~~Bed and Breakfast~~
>
> 7.2.1C(3), Special Use Permit [in the SE, Sports and Entertainment, zoning district]
> **Hotel, Bed and Breakfast**
>
> 7.2.2C(2), Additional Uses Permitted [in the SM, South Main, zoning district]
> ~~Bed and Breakfast~~
> ~~Hotel (subject to site plan review by the legislative body)~~

7.2.2C(3) Special Use Permit [in the SM, South Main, zoning district]
Hotel, Bed and Breakfast

7.2.5C(2), Additional Uses Permitted [in the R-B, Bluffview Residential zoning district]
~~Bed and Breakfast~~
~~Hotel (subject to site plan review by the legislative body)~~

7.2.5C(3) (new section), **Special Use Permit** [in the R-B, Bluffview Residential zoning district]

The following uses are subject to the approval of a Special Use Permit:

Hotel, Bed and Breakfast

7.2.6C(2), Additional Uses Permitted [in the SDBP, South Downtown Business Park zoning district]
~~Hotel (subject to site plan review by the legislative body)~~

7.2.6C(4) (new section), **Special Use Permit** [in the SDBP, South Downtown Business Park zoning district]

The following uses are subject to the approval of a Special Use Permit:

Hotel, Bed and Breakfast

7.2.7C(2), Additional Uses Permitted [in the C-G, Gateway Commercial zoning district]
~~Hotel (subject to site plan review by the legislative body)~~

7.2.7C(3), (new section), **Special Use Permit** [in the C-G, Gateway Commercial zoning district]

The following uses are subject to the approval of a Special Use Permit:

Hotel, Bed and Breakfast

In addition, this item will clarify the regulations surrounding Hotel Motel Waivers, the procedure in which hotel and motels are expedited straight to the Memphis City Council and/or Shelby County Board of Commissioners. The proposal below would not only make new hotels eligible for the waiver process, but allow the legislative bodies to remand those cases back to the Land Use Control Board, thereby sending them through the full Special Use Permit process.

9.6.6: Waiver Provision for Hotels and Motels
F. Waiver applications may be filed for sites not yet developed as hotels and motels, provided a site plan is submitted pursuant to Section 9.6.4.
G. The legislative body(s) shall have the authority to deny any application for a waiver and require the submittal of a full Special Use Permit application if it finds that the submitted site plan is incompatible with the surrounding land uses.

29. 7.2.3F(2): Densities in the South Main and South Downtown Residential zoning districts of SCBID

Current Paragraphs 7.2.3F(3) and (4) need to be sections “a” and “b” under Paragraph 7.2.3F(2):

7.2.3F(2) Maximum Density

a. New residential construction–40 dwelling units per acre
b. Existing building – None

30. 8.2.5C, 8.3.6D, 8.4.8D and 3.10.2B: 0-Foot Setbacks

The last amendment, case ZTA 14-001, added some language to the main setback section of the Code, Sub-Section 3.10.2B, that allows for attached buildings, but also a 5-foot side yard for detached signs. This was added as Footnote 4 to that table. The tables in 8.2.5C, 8.3.6D and 8.4.8D need to be revised in the same way. This proposal also adds the word "minimum" to the earlier-amended Sub-Section 3.10.2B to allow building separations of greater than five feet.

8.2.5C (footnote "2")
A 0-foot side setback is permitted. For structures built after [insert effective date of this ZTA], and for any expansions to existing buildings after this date, a 5-foot minimum separation is required between detached buildings on separate lots. ~~A 0-foot setback is permitted for attached buildings; however, a minimum setback of 10 feet is required between detached buildings.~~

8.3.6D (new footnote "*")
A 0-foot side setback is permitted. For structures built after [insert effective date of this ZTA], and for any expansions to existing buildings after this date, a 5-foot minimum separation is required between detached buildings on separate lots.

8.4.8D (new footnote "*")
A 0-foot side setback is permitted. For structures built after [insert effective date of this ZTA], and for any expansions to existing buildings after this date, a 5-foot minimum separation is required between detached buildings on separate lots.

3.10.2B (existing footnote "4")
A 0-foot side setback is permitted. For structures built after February 10, 2015, and for any expansions to existing buildings after this date, a 5-foot **minimum** separation is required between detached buildings on separate lots.

31. 8.4.7: Use Table for Midtown

The use table for Midtown does not contain the use "vehicle repair;" instead only "vehicle service.' The proposal below would match the main use table of the UDC (Sec. 2.5.2); "all vehicle repair" would be permitted in the CMU-1 and CMU-2 districts by issuance of a Special Use Permit by the Memphis City Council and in the CMU-3 and EMP districts by right.

32. 8.4.8B: Midtown Frontage Map

The Memphis City Council is currently in the midst of three readings considering an amendment to the Zoning Atlas to add Urban and Transitional designated frontages along Cleveland and Watkins Streets from Larkin Avenue to North Parkway. By the time this ZTA is forwarded to the legislative bodies, the City Council will have acted on that proposal, which is OPD Case No. Z15-101. If approved, this proposal would incorporate the designated frontage map that was part of Z15-101 (see below) into the Midtown Frontage Map that is located in Sub-Section 8.4.8B.

33. 8.6.1D (new section): Conflicts in the Historic Districts

There have been several cases in the historic overlay districts that have required action by both the Board of Adjustment and the Landmarks Commission, creating situations in which an applicant receives the approval of two different site plans by two different boards. The following language seeks to resolve this conflict. It is in line with the enabling legislation for the Landmarks Commission, TCA 13-7-407, which grants Tennessee historic zoning commissions "broad powers" when reviewing new construction and rehabilitations in historic districts.

8.6.1D Conflicts between Design Regulations and this Code

In the event a conflict is found between the design regulations of any particular historic overlay district as adopted by the Memphis landmarks commission and this Code, the design regulations shall govern. Otherwise, the Landmarks Commission shall not act on a particular request that involves variances to this Code until those variances have been addressed by the appropriate body. See also Sec. 9.22.10. Nothing in this sub-section shall be construed to allow the Memphis landmarks commission to vary the use of a piece of property.

34. 8.9.2B(4): Incorrect Reference in Fletcher Creek Overlay

This section in the Fletcher Creek Overlay District contains a reference to "Sub-Sections C and F," but Section 8.9.2 does not contain Sub-Sections C and F. This is supposed to read "Sub-Sections **8.9.3**C and F."

35. 9.1.8B(2)(d): Technical Review Committee Review of Right-of-Way Vacations

This section states that the Planning Director shall send all applications for street and alley closures to the Technical Review Committee (TRC) for review. However, Sub-Section 9.8.3A of the Code states that the Planning Director ***may*** send this application to the Technical Review Committee. This proposal would remove the former section to allow discretion over which street and alley closures require TRC

review since many street and alley closures involve paper streets and do not necessitate technical review.

This proposal would remove 9.1.8B(2)(d): ~~Right-of-way vacation;~~

36. 9.3.4, 9.22.9, 9.23.1E, 9.24.10 and 9.2.2: Board of Adjustment Correspondence Cases

Section 9.3.4 is the notice table for all applications filed pursuant to the UDC. Board of Adjustment correspondence cases, or modifications to sites already approved by the Board, however, are not included in the list. This proposal would set the notice requirements for these cases as they currently exist for a similar application, major modifications to existing planned developments. The other sections that are the subject of this proposal would explain what triggers a correspondence case; specifically the difference between minor modifications that may be approved by staff and major modifications which need to be reviewed by the Board. The final section below updates the sister table to the notice table, Section 9.2.2, which needs to be updated to reflect the inclusion of Board of Adjustment correspondence cases. Also, Note 1 below the table in Section 9.2.2 is being deleted since it repeats the same note that follows the table in Sub-Section 9.3.4A.

9.3.4A

		Public Hearing				Public Hearing Notice			Public Notice Mailed To			
	x-ref	Board of Adjustment	Landmarks Commission	Land Use Control Board	Governing Bodies	Sign Posted	Mailed	Newspaper Publication	Subject Property Owners	Adjacent Owners[4]	Owners within 500 Ft. Radius[1]	Neighborhood Associations
Board of Adjustment Correspondence	**2.4.5, 9.22.9, 9.23.1E(2) & 9.24.10**	**PH**	-	-	-	-	**M**		■	■		

9.22.9 (new section): **Modifications to Approved Variances**

Modifications to the site plan of an approved variance that are in substantial compliance with the approved site plan may be processed administratively as a minor modification. Modifications to the articulated conditions of an approved variance shall be processed to the Board as a major modification through the filing of a correspondence application, unless conditioned otherwise.

9.23.1E (new section): **Conditions on and Modifications to Appeals**

(1) Conditions on Appeals

The Board of Adjustment or Land Use Control Board may set forth conditions in granting an appeal. Such conditions may relate to screening, landscaping, location and other conditions necessary to preserve the character of the area and protect property in the near vicinity. A violation of such conditions shall be a violation of this development code.

(2) Modifications to Approved Appeals

Modifications to the site plan of an approved appeal that are in substantial compliance with the approved site plan may be processed administratively as a minor modification. Modifications to the articulated conditions of an approved appeal shall be processed to the Board of Adjustment or Land Use Control Board as a major modification through the filing of a correspondence application, unless conditioned otherwise.

9.24.10 (new section): **Modifications to Approved Conditional Use Permits**

Modifications to the site plan of an approved conditional use permit that are in substantial compliance with the approved site plan may be processed administratively as a minor modification. Modifications to the articulated conditions of an approved conditional use permit shall be processed to the Board as a major modification through the filing of a correspondence application, unless conditioned otherwise.

9.2.2

		Review, Recommendation, Decision and Approval							
	x-ref	City or County Engineer	Building Official	Technical Review Committee	Planning Director	Board of Adjustment	Landmarks Commission	Land Use Control Board	Governing Bodies
~~**Variance**[1]**and Conditional Use Permit**~~ **Board of Adjustment**	~~9.22 & 9.24~~				RR	D			

~~1. In the case of setback variation requests less than 5 feet only adjacent property owners shall be notified~~

37. 9.3.4A and 9.3.4D: Emailed Notice to Neighborhood Associations

These sections of the Code address notice to neighborhood associations that are registered with the City of Memphis Office of Community Affairs. While many of these associations and their officers have shared with OCA their physical mailing addresses, many have not and instead exclusively use electronic mail. The proposed language permits email notification to neighborhood associations. It also changes the time frame in which to send this notification from 30 days before the public hearing to 45 days. This will allow OPD to notify neighborhood associations of applications to the Land Use Control Board once they are filed with the Office, which is 45 days before the Board's public hearing.

9.3.4A (new footnote "5") **Public Notice to Neighborhood Associations may be mailed or sent via electronic mail.**

9.3.4D(1) Where mailed notice is required, notification shall be mailed not more than **45** ~~30~~ or less than 10 days prior to the date of the public hearing. Mailed notice shall be provided to all property owners within Shelby County in accordance with the provisions of this Code.

9.3.4D(2) All of the neighborhood associations registered with the City of Memphis Office of Community Affairs whose boundaries include properties within 1,500 feet of the subject property shall be provided mailed notice in accordance with Sub-Section 9.3.4A. **Notice via electronic mail may substitute for mailed notice.**

38. 9.6.12C(1)(d), 9.6.14B and 12.3.1: Extensions and Minor Modifications to Approved Special Use Permits

Section 9.6.12C(1) of the Code addresses those modifications to Special Use Permits that have been approved by the Memphis City Council and/or the Shelby County Board of Commissioners. The language below would allow increases of no more than 10% of the approved height of structures approved with Special Use Permits, which are most often cell towers. The 10% level was gleaned from the current allowance of a 10% increase in floor-to-floor height of buildings and 10% decrease to setbacks approvable administratively, as found in Paragraphs 9.21.2A(1) and 9.21.2C(1), respectively. For CMCS towers (cell towers), a recent order from the Federal Communications Commission requires the approval of certain co-locations, provided that they do not exceed a 10% or 20-foot addition in height (whichever is greater) or a 20-foot protrusion onto the face of the tower (whichever is greater), unless there is a condition meant to conceal such antennae. See FCC Order Number 14-153, Section 188, for further details.

9.6.12C(1)

(d) (new section) **An increase of no more than 10% to the approved height of any structure, not including CMCS towers. For the purpose of this Item, the approved height is the height as approved by the appropriate board or body.**

(e) (new section) **An increase of no more than 10% or 20 feet, whichever is greater to the approved height of a CMCS tower (see FCC Order 14-153, Sec. 188). For the purpose of this Item, the approved height is the height as approved by the appropriate board or body.**

(f) (new section) **The co-location of antennae and other infrastructure to approved CMCS towers shall be approved upon the submittal of an application for a minor modification, provided that the antennae or other infrastructure does not protrude more than 20 feet from the CMCS tower or 10% of the width of the tower at the location of the additional infrastructure, whichever is greater. This Item shall not apply to CMCS towers that were approved with conditions intended to conceal the antennae through the use of a flush mount, slickstick or stealth design (see FCC Order 14-153, Sec. 188).**

In addition, a definition of "concealed tower" is proposed that will include flush mount, slickstick and stealth design towers; the definitions for these three types of towers are also amended to state that they are intended to conceal the antennae.

12.3.1, Definitions

CONCEALED TOWER: A type of CMCS tower that is designed in an effort to conceal the visual impact of the antennae that includes flush mount, slickstick and stealth design towers.

FLUSH MOUNT: A CMCS tower where the antennae are applied directly to the tower **in an effort to conceal the visual impact of the antennae**. Antennae on a flush mount CMCS tower shall project no more than 30 inches from the exterior of the tower.

SLICKSTICK, CMCS TOWER: A type of stealth monopole design where all antenna and related equipment are housed inside the pole structure rather than attached to the exterior of the pole **in an effort to conceal the visual impact of the antennae**.

STEALTH DESIGN (CMCS TOWERS): Stealth design in CMCS towers is the common industry practice of disguising the CMCS tower inside another structure such as, but not limited to, a steeple, clocktower, or other architectural element, or limiting the visibility of the tower by

disguising it as a flagpole, tree, painted slickstick, or similar camouflaging technique **in an effort to conceal the visual impact of the antennae**.

Also, Special Use Permits expire if not implemented within two years of their approval by the Memphis City Council or Shelby County Board of Commissioners. The proposal below would allow for time extensions of expired Special Use Permits after the date of expiration, but requires such extensions to be processed as major modifications subject to a public hearing.

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 **before the date of expiration or within 12 months after** ~~prior to~~ the date of expiration and shall **further** be subject to the provisions of Chapter 9.16. **Only one 24-month time extension is permitted.**

39. 9.7.7H(2): General Suitability for Subdivisions

On May 14, 2015, the Land Use Control Board recommended approval of adding a section to the Code that allows the Land Use Control Board and, if appealed, the Memphis City Council, to reject a subdivision if it is not in keeping with the general character of the neighborhood. That zoning text amendment was limited to the City of Memphis only; the proposal below would extend this to all subdivisions under the UDC's jurisdiction.

1. ~~This Paragraph shall only apply to proposed subdivisions within the City of Memphis.~~ The LUCB or **governing body(s)** ~~Memphis City Council~~ may reject a preliminary plan if it is determined that the proposed subdivision is not in keeping with the character of development in the neighborhood. The LUCB or **governing body(s)** ~~Memphis City Council~~ shall consider the following in the determination of the character of the development in the neighborhood.
    a. Building setback lines of all principal structures that lie within 500 feet of the proposed subdivision.
    b. Size and width of all lots within 500 feet of the proposed subdivision.
    c. Proximity of arterial and connector streets within 500 feet of the proposed subdivision.
    d. Diversity of land uses within 500 feet of the proposed subdivision.

40. 9.22.5A, 9.23.1C(2) and 9.24.5A: Periods of time for Board of Adjustment and Land Use Control Board hearings

The Board of Adjustment currently has a four-week window between application deadline and hearing date. This replaces a three-week window, which was found to provide insufficient time for staff to review the cases and send adequate notice to adjacent property owners. The Code currently contains a reference to a 21-54 day requirement for Board of Adjustment cases to be heard, which reflects the former three-week application window. Under the new four-week window, this should read **28-63 days**, which will require that a case be heard at the soonest meeting after the deadline date, or, if the application is found to be deficient in any way, the meeting following that initial meeting. The range of 28-63 days also takes into account a month with five Wednesdays (the day of the week on which the Board meets). In addition, the Appeals section of the Code, Chapter, 9.23, contains a window for the Land Use Control Board which needs to be amended to reflect that board's application deadline calendar.

9.22.5A: Board of Adjustment Action

Not less than ~~21~~ **28** or more than ~~54~~ **63** days after an application has been determined complete, the Board of Adjustment shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification.

9.23.1C(2) (Appeals of Administrative Actions to both the BOA & LUCB)
Not less than ~~21~~ **28 or more than 63** days after a notice of appeal is filed, the Board of Adjustment ~~or Land Use Control Board~~ shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. **In the case of appeals to the Land Use Control Board, not less than 35 or more than 75 days after a notice of appeal is filed, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification.**

9.24.5A: Board of Adjustment Action
Not less than ~~21~~ **28** or more than ~~54~~ **63** days after an application has been determined complete, the Board of Adjustment shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification.

41. 9.22.10: Variances and Special Exceptions Discovered on Pending Applications

If any application for a subdivision, special use permit or special exception requires action by the Board of Adjustment on a variance, the application for subdivision, special use permit or special exception shall not be acted upon by the Land Use Control Board or Landmarks Commission until the Board of Adjustment approves the variance. On the other hand, if the need for a special exception is discovered on a pending variance application, the Board of Adjustment may review that as part of the variance request. If such a variance involves height, the language below will require that the subject site have exceptional topographic conditions to warrant the height variance request.

9.22.10 [new section] **Pending Applications**

A. **Any application that is pending with the Landmarks Commission or Land Use Control Board that also requires approval of a variance by the Board of Adjustment shall be deferred until the Board of Adjustment has approved the variance request. If the Board of Adjustment denies the variance request, the application to the Landmarks Commission or Land Use Control Board shall either be withdrawn or amended so no variance is required. See also Sub-Section 8.6.1D.**

B. **If a pending variance application also requires the approval of a special exception (see Chapter 9.14), the Board of Adjustment may consider the special exception as a variance request. Under such a circumstance where the request involves additional height, the Board of Adjustment may only grant the request for additional height if it makes a finding that the subject site exhibits extraordinary topographic conditions.**

42. 9.24.9B: Criteria for Significant Neighborhood Structures

This section of the Code governs those buildings eligible to be classified as "Significant Neighborhood Structures." According to the section of the Code that immediately precedes this section (Sec. 9.24.9A), Significant Neighborhood Structures are typically buildings that were constructed as non-residential structures, such as churches and old corner stores. This appears to conflict with the section that is the subject of this amendment, which lists a building's construction as a non-residential structure

as one of many factors that can be considered when declaring it as a Significant Neighborhood Structure. The proposal below would make this a requirement, not just one of many factors:

> A Significant Neighborhood Structure is defined as a structure **that was originally constructed as a non-residential structure**, it**s** appurtenances and the associated property that has historical, cultural, architectural, or civic value and/or importance; ~~and~~ whose demolition or destruction would constitute an irreplaceable loss to the quality and character of its neighborhood; and that meets one or more of the following criteria:
>
> ~~1. It was originally constructed as a non-residential structure;~~
> 2. It is recognized as a significant element of the neighborhood and/or community;
> 3. It embodies characteristics that distinguish it from other structure of the neighborhood and/or community;
> 4. It is considered historically or architecturally significant;
> 5. Rezoning the property on which the structure exists to a general zoning district inconsistent with surrounding or adjacent properties would have a significant negative impact to the neighborhood and/or community;
> 6. Retaining the features of the structure is important in maintaining the traditional neighborhood fabric;
> 7. Retaining the structure will help to preserve the variety of buildings and structures historically present within the neighborhood, recognizing that such structure may be differentiated by age, function and architectural style in the neighborhood and/or community;
> 8. Retaining the structure will help to reinforce the neighborhood and/or community's traditional and unique character.

43. 10.10: Reference to Landmarks Districts

This section contains the incorrect cross-reference to the Historic Overlay District chapter of the UDC. This section should read:

> …~~Section~~ **Paragraph** 8.~~5~~**6**.2F(3)…

44. 12.3.1: Definition of "Lot of Record"

The definition of "Lot of Record" conflicts with the definition of "Lot," as well as the balance of the UDC, in that it uses the old grandfathering date for lots created by deed. The former Subdivision Regulations included the date of March 6, 1956; all lots created before this date could be built upon if not included in a subdivision approved by the Planning Commission. All lots created after this date would need to go through the subdivision process. The UDC replaced that date with the date of March 1, 1989, to allow the subdivision process to be avoided. However, the definition of "lot of record" below inexplicably still includes the old date.

> LOT OF RECORD: An area of land that is a lot in a subdivision recorded on the records of the Shelby County Register's Office, or that is described by a metes and bounds description which has been so recorded prior to **March 1, 1989** ~~March 6, 1956~~, or lots or tracts exempt from the Chapter 9.7, Subdivision Review**.**

45. 12.3.1: Private Sex Clubs

Adult oriented establishments are generally required to be a certain distance from residential areas, schools, places of worship, parks, etc. However, there has been a spate of gatherings at private residences for the specific purpose of engaging in sex. The definitions below would require any private club that is organized for the purpose of catering to the engagement of sexual intercourse to be classified as an adult oriented establishment and be separated from residential areas, schools, etc. The proposal below will also specifically state that a private sex club is not a place of worship in an effort to avoid a situation that recently occurred in Nashville.

> ADULT ORIENTED ESTABLISHMENT: Includes, but is not limited to, an adult bookstore, adult motion picture theater, adult mini-motion picture establishment, adult cabaret, escort agency, sexual encounter center, adult massage parlor, rap parlor; further, "adult-oriented establishment" means any premises to which the public patrons or members are invited or admitted and that are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. "Adult-oriented establishment" further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import. **"Adult-oriented establishment" further includes any private sex club.**
>
> PLACE OF WORSHIP: Any building where congregations gather for prayer as well as accessory buildings and uses, operated, maintained, and controlled under the direction of a religious group on a regular basis. Examples include churches, temples, synagogues, and mosques. **A private sex club shall not be considered a place of worship.**
>
> **PRIVATE SEX CLUB: A club that is organized on any temporal basis for the purpose of catering to the engagement of sexual intercourse.**

46. 12.3.1: Definition of "Rooming House"

During the last text amendment, the definition of "rooming house" was amended to both differentiate it from "boarding house." Part of this amendment was to replace the word "persons" with "transients," but the former was not deleted. This proposal will delete it.

> ROOMING HOUSE: A dwelling where lodging is provided for compensation for at least one, but not more than four, ~~persons~~ transients at one time, by prearrangement for a period of less than 30 days.

47. 12.3.1: Definition of "supportive living facility"

The current definition of "supportive living facility" was created in reaction to both federal statutes and United States Supreme Court decisions. However, it contains a clause giving the Planning Director some degree of discretion. The proposal below would remove this discretion and require proper licensing, where required.

> SUPPORTIVE LIVING FACILITY: Any residence licensed, where required by law, by a duly authorized governmental agency, ~~or in other instances approved by the Planning Director,~~ in

which eight or fewer unrelated mentally retarded, mentally handicapped or physically handicapped persons, (as certified by any duly authorized entity including governmental agencies or licensed medical practitioners) reside, and may include three additional persons acting as houseparents or guardians who need not be related to each other or to any of the mentally retarded, mentally handicapped or physically handicapped persons residing in the home. This definition does not apply to residence wherein mentally retarded, mentally handicapped or physically handicapped persons reside when such residences are operated on a commercial basis. Also, this definition does not include a nursing home which requires skilled medical staff to provide full time convalescent or chronic care, or both.