



Memphis and Shelby County *Office of Planning and Development*

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

November 3, 2015

TO: Nextdoor Participants

FROM: Josh Whitehead
Planning Director/Administrator
Memphis and Shelby County Office of Planning and Development

Ladies and Gentlemen:

Since many of you may be unfamiliar with the Land Use Control Board (“LUCB”) and Board of Adjustment (“BOA”), their authority and the process by which the Office of Planning and Development (“OPD”) routes cases to these boards, please allow me this opportunity to briefly explain so these monthly posts may be placed into greater context.

1. **OPD.** OPD is a joint City/County agency that administers the zoning code for the City of Memphis and unincorporated Shelby County, the Unified Development Code (“UDC”). Both the UDC and various provisions of state law govern the authority of the LUCB and BOA. The OPD website contains a link to the UDC, as well as the official Zoning Atlas:

<http://shelbycountyttn.gov/index.aspx?NID=924>

2. **LUCB.** The LUCB serves as the planning commission for Memphis and unincorporated Shelby County. It primarily hears the following applications: rezonings, planned developments, special use permits, subdivisions, street name changes and street closures. On some of these cases, their decisions are final unless appealed (see section entitled “Appeals” below). On others, they make a recommendation to the Memphis City Council and/or the Shelby County Board of Commissioners. Section 9.2.2 of the UDC contains a table that summarizes which cases heard by the LUCB are final and which are recommendations. Here is a direct link to that table, which may also be accessed from OPD’s homepage above:

<http://shelbycountyttn.gov/DocumentCenter/View/17425>

Note the column on the right side of the table. It explains which cases are heard by the Memphis City Council and/or Shelby County Board of Commissioners as a matter of course (indicated by a “D” for “Decision”) and which are heard by those bodies on appeal from the LUCB (indicated by an “A” for “Appeal”).

The following page contains the names and email addresses of the ten current members of the LUCB, five of whom are appointed by the Mayor of the City of Memphis and

confirmed by the Memphis City Council and five of whom are appointed by the Mayor of Shelby County and confirmed by the Shelby County Board of Commissioners:

<http://shelbycountyttn.gov/index.aspx?nid=140>

3. **BOA.** The BOA serves as the board of zoning appeals for Memphis and unincorporated Shelby County. It primarily hears variance requests. Appeals of decisions of the BOA are discussed below. The following page contains the names and email addresses of the eight current members of the BOA, four of whom are appointed by the Mayor of the City of Memphis and confirmed by the Memphis City Council and four of whom are appointed by the Mayor of Shelby County and confirmed by the Shelby County Board of Commissioners:

<http://shelbycountyttn.gov/index.aspx?nid=115>

4. **Explanation of Cases.** This section explains the fundamental differences between the majority of cases heard by the LUCB and BOA.
 - a. **Rezoning (LUCB).** This application seeks to change the zoning district in which a property lies, according to the official Zoning Atlas. If you go to the Zoning Atlas, as hyperlinked in Section “1” above, zoning district boundaries are shown in red lines. Typically, a request for a rezoning involves a property being “annexed” into a neighboring zoning district; in other words, the request seeks to shift a zoning district boundary to encompass the subject property into the desired zoning district. The primary purpose of seeking a rezoning is to allow a use on the property that is permitted in the requested zoning district but not the existing zoning district. Due to the fact that a rezoning cannot be conditioned, or linked, to a particular set of uses or specific site plan, this type of request has grown somewhat out of favor and has largely been replaced with planned developments. See Sec. 9.5 of the UDC for more information about rezonings.
 - b. **Planning Developments (LUCB).** In many respects, planned developments achieve the same desired result as a rezoning: to allow a use that would not otherwise be permitted on a piece of property under the current zoning regulations. As indicated above, the advantage of a planned development over a rezoning is that it may be tied to one or a small handful of specific uses, as opposed to all of the uses that are allowed in a particular zoning district. In addition, since planned developments may be tied to a specific site plan, certain landscape buffers and architectural details of a building may be mandated through the planned development process where they could not through a rezoning. All approved planned developments may be downloaded from the Shelby County Register’s website: <http://register.shelby.tn.us/>. See Sec. 9.6 of the UDC for more information about planned developments.
 - c. **Special Use Permits (LUCB).** Certain uses are neither permitted by right nor prohibited in a particular zoning district. See Section 2.5.2 of the UDC. Some uses are permitted in a zoning district with individual review and scrutiny by the

City Council or County Commission that determine whether it would be appropriate on the subject property. These are known as special use permits. Some uses require a special use permit in some zoning districts but are permitted as a matter of right in others, as is the case with vehicle sales. Vehicle sales is a permitted use in the industrial zoning districts but requires a special use permit in the commercial zoning districts. See Sec. 9.6 of the UDC for more information about special use permits.

- d. **Subdivisions (LUCB).** A subdivision is simply a division of an existing parcel. No additional uses are granted on the parcel by the approval of a subdivision; the zoning district remains unchanged. Subdivisions may create as few as two lots or many hundreds of lots. In fact, under the UDC, a one-lot subdivision is even permitted if a parcel requires legitimization through the recording of a plat. Like planned developments, all approved subdivision plats may be downloaded from the Shelby County Register's website: <http://register.shelby.tn.us/>. See Sec. 9.7 of the UDC for more information about subdivisions.
 - e. **Street Closures (LUCB).** Street closures can be categorized in three main groups: public-to-private street conversions, physical closures and abandonment of paper streets. The first two typically deal with residential streets; the primary difference between the two is that a private street conversion is necessitated when a street seeks to be completely disconnected from the street network, usually by the erection of gates. Physical closures, on the other hand, deal when owners along a street seek only to close connectivity from the street grid at one location. The street in question would still be open to the public street network, at least from one point of access. Abandonment of paper streets occurs when a street that was never constructed is sought to be removed from City ownership and deeded to the abutting property owner(s). See Sec. 9.8 of the UDC for more information about street closures.
 - f. **Variances (BOA).** Variances are exemptions from one or more sections of the UDC, be it from the maximum building height, minimum building setback, permitted use, or other articulated regulation found in the UDC. Variances must be based on some peculiar circumstance on a piece of property that imparts upon its owner a practical difficulty or undue hardship. One examples of a variance is a request to build a garage in the rear of a residential property that encroaches into its rear yard setback. Another example is a request to reuse an old warehouse for industrial or commercial uses that was downzoned to a residential zoning district. See Sec. 9.22 of the UDC for more information about variances.
5. **Correspondence Cases.** The term "correspondence case" is used for a case that has already received approval from the LUCB, BOA, Memphis City Council or Shelby County Board of Commissioners, but the owner seeks some sort of modification to that approval. These are listed in the Review Table above as various types of "Major Modifications." Correspondence case numbers carry with them the year in which they were originally heard, as opposed to new cases which will have the current year in their case number. Correspondence cases heard by the LUCB are final unless appealed to the

Memphis City Council and/or Shelby County Board of Commissioners. Please note that modifications that intensify the uses in an approved planned development are given new case numbers and are treated as brand new cases and *not* correspondence cases.

6. **City Council or County Commission?** Staff will add a suffix to case numbers to indicate whether a case will proceed to the Memphis City Council, the Shelby County Board of Commissioners or both, whether as a matter of course or by appeal. Cases with no suffix are located on properties entirely within the Memphis city limits. Cases with a “CO” suffix are located on properties in unincorporated Shelby County at least five miles away from the Memphis city limits and require action by the Shelby County Board of Commissioners *only*. Cases with a “CC” suffix are located on properties in unincorporated Shelby County within five miles of the Memphis city limits and require action first by the Shelby County Board of Commissioners and then the Memphis City Council.
7. **Findings of Fact.** A very important aspect for all land use cases is the findings of fact required for their approval. These findings are listed throughout Article 9 of the UDC under the descriptions for each type of application. For instance, when the Memphis City Council approves a special use permit, one of its findings is that the use will not have an adverse effect to surrounding properties (see UDC Sec. 9.6.9A). When the Board of Adjustment approves a variance, one of its findings is that the property is unique in some way and that the strict adherence to the UDC would impart upon the owner a practical difficulty or undue hardship (see UDC Secs. 9.22.6A(1) and (2)).
8. **Appeals.** Appeals of decisions made by the LUCB are discussed above in the section entitled “LUCB” and also covered in the UDC Sec. 9.2.2 review table linked above. Appeals of decisions made by the BOA, Memphis City Council, Shelby County Board of Commissioners and the Memphis Landmarks Commission are made to either the Shelby County Circuit or Chancery Courts, as governed by Chapter 9 of Title 27 of the Tennessee Code Annotated.
9. **Your Comments.** An active and engaged citizenry is crucial to the land use process. Written comments provided to the staff planner assigned to the case that are submitted in time to be placed with the staff report are sent to the LUCB and BOA via mail prior to the meeting. Written comments provided to the staff planner *after* the staff reports have been delivered will be shared with the LUCB and BOA members during the meeting. In addition, both boards receive and consider all oral testimony provided during the meetings. All LUCB and BOA meetings are open to the public. They are also streamed live on the City’s website and may be viewed at any time after the meeting on this website:

<http://www.memphistn.gov/Government/CityCouncil/ArchivesofMeetings.aspx>
10. **Staff Reports.** Staff reports by OPD to the LUCB and BOA are completed by the Friday preceding their monthly meetings and posted on their respective websites linked above. With most cases, OPD staff will provide the boards our recommendation to approve, approve with conditions or reject the application. Even in instances where OPD staff

recommends rejection, we will still compose conditions if the board decides to approve the case so the application will at least have conditions attached to it if approved. These conditions are placed in the staff report, typically towards the end after the staff analysis. The most common condition found in staff reports is that the approval be tied to a particular site plan.

Please be advised that negotiations between applicants, surrounding property owners and other interested stakeholders often continue up to and during the LUCB and BOA meetings. Therefore, the Boards have the authority to modify, add or delete conditions during their deliberations over an application. If there is a particular condition, including the specifics of a site plan, of an application in which you have an interest, your advocacy for that condition during the hearing on that case may prove decisive.

- 11. Timing of these Posts.** We make every attempt to place on our website applications filed with us within 72 hours, or three business days, of the monthly application deadlines. The 2015 and 2016 application deadlines are found on the OPD website. Here are the direct links:

2015 deadlines and meeting dates:

<http://shelbycountyttn.gov/DocumentCenter/View/21037>

2016 deadlines and meeting dates:

<http://shelbycountyttn.gov/DocumentCenter/View/21038>

With the exception of these monthly posts, I infrequently log onto OPD's NextDoor account, so if you have any questions about any of these matters, or items that I have not covered, please feel free to contact me via email and I, or a member of my staff, will respond. My email address is josh.whitehead@memphistn.gov.