STAFF REPORT

AGENDA ITEM:

CASE NUMBER: ZTA 16-001 **L.U.C.B. MEETING:** September 8, 2016

APPLICANT: Memphis and Shelby County Office of Planning and Development

REPRESENTATIVE: Josh Whitehead, Planning Director/Administrator

REQUEST: Adopt Amendments to the Memphis and Shelby County Unified Development Code

EXECUTIVE SUMMARY

1. Items 2, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 19, 20, 22, 24, 25, 26, 28, 29, 30, 31, 32, 34 and 36 deal with housekeeping matters.
2. Item 1 addresses pending applications at the time of a zoning text amendment. The UDC is currently silent on this issue and instead refers to pending applications at the time the UDC was adopted in 2010. The proposed language would square the UDC with current Tennessee law: rights to not vest in a pending application unless a building permit, site plan or plat has been approved by the Offices of Construction Code Enforcement (OCCE) or Planning and Development (OPD).
3. Item 3 addresses City- and County- owned facilities that have been made nonconforming by the adoption of the UDC.
4. Item 4 deals with future vapor shops and requires their approval by Special Use Permit in the commercial districts or to be located within the industrial districts.
5. Item 5 requires equestrian centers with lighting to be approved by Special Use Permit. It also defines several currently undefined terms related to equestrian-related activities.
6. Item 9 addresses the current process by which all hotel ownership changes are processed.
7. Item 13 will limit the height of accessory structures in close proximity of side and rear lines to 20 feet in height.
8. Item 18 will allow small infill developments in the RU-3 and RU-4 zoning districts to be all of one housing type.
9. Item 21 will allow driveways on lots of less than 50 feet in width to be closer than 3 ½ feet to the side property line, which is often required on narrow lots in the core city.
10. Item 23 addresses feather signs by stating they are not flags and requires them to be limited and number and at least 10 feet from the street.
11. Item 27 would explicitly require any street closure involving the closure of a public street at "both ends" to require it be converted to a private street.
12. Item 33 allows any party aggrieved by a decision of the Planning Director to appeal to the Board of Adjustment.
13. Item 35 addresses notice on the three different types of street closures.
14. Item 37 deals with the standard of review by the Memphis City Council and Shelby County Board of Commissioners when they hear appeals of the Land Use Control Board. Since notice is mailed out and public participation is encouraged, the hearing should be de novo rather than on the record.
15. Item 38 addresses definitions not covered in any of the above items. It will stipulate that any earth excavation of five acres or greater will require a Special Use Permit; that the keeping of any more than five dogs is a kennel; defines "banks," "multi-modal facilities" and "neighborhood resource centers" and clears up the definition of "frontage" for sign ordinance purposes.

RECOMMENDATION

Approval

Staff Writer: ***Josh Whitehead*** **E-mail:** ***josh.whitehead@memphistn.gov***

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

1. 1.13.3E [new section]: Applications Pending at Time of Amendments to the UDC

   Section 1.13.3D was written to allow applications that were pending during the initial adoption of the UDC in 2011 to be reviewed under the old zoning code and subdivision regulations. However, this section could also be interpreted to apply to applications pending at the time of any amendments to the UDC. That section reads:

   1.13.3D: Pending Applications

   The provisions of this development code do not apply to zoning and subdivision applications that are complete and pending at the effective date of this development code; such pending applications will be processed in accordance with and decided pursuant to the law existing on the date the application was filed.

   Since many amendments to the UDC are specifically targeting to apply to situations that arise from time to time, a new section of the UDC is required to address UDC *amendments*. Applications pending at the time of an amendment are subject to both statutory and case law. The relatively new statutory law deals with the concept of vested rights: a city cannot amend its zoning code to affect a piece of property if a building permit has been issued on the site or the city has granted subdivision plat or site plan approval on the property (see Tennessee Code Annotated 13-4-310 as amended in 2014). The case law deals with the concept of the pending legislation doctrine: the Tennessee Supreme Court has ruled that a city may amend its zoning code while an application may be filed, so long as the amendment was sufficiently along its approval process when the a decision was made on it (see *Harding Academy v Nashville*, 222 S.W. 3d 359 (2008)). The proposed new Sub-Section 1.13.3E below incorporates both the current statutory and case law.

   1.13.3E [new section]: **Applications Pending During Text Amendments**

   1. **Vested Rights. Text amendments to this development code shall apply to any application that is complete and pending at the time the text amendment(s) receive final approval from the governing bodies, provided the application has not resulted in the issuance of a building permit or the approval of a subdivision plan or any other site plan that was granted in accordance with the provisions of this Code. This Paragraph shall not be interpreted to conflict with TCA 13-4-310.**
   2. **Pending Legislation. Any individual, board or body with authority to act upon the regulations of this Code shall consider pending text amendments to this Code, provided the pending text amendment(s) have been acted upon by the Land Use Control Board and by one or both governing bodies at second reading (see Chapter 9.4, Text Amendment).**

2. 2.5.2 and 2.5.2C: Significant Neighborhood Structures

   The Use Table in Section 2.5.2 has been misread by members of OPD and OCCE to mean that the "+" symbol only requires the approval of a Conditional Use Permit, but in reality it requires that the structure be a "Significant Neighborhood Structure" in order to be approved as a Conditional Use Permit. Significant Neighborhood Structures are non-residential

buildings such as old churches and corner stores that are now zoned residential. This proposal would rephrase the term "Conditional Use Permit – Significant Neighborhood Structure" to "Significant Neighborhood Structure Conditional Use Permit" to lessen the possibility for future misinterpretation.

3. 2.5.2 and 2.6.2K (new section): City- or County-Owned Facilities

The Use Table in the UDC stipulates that City and County facilities, such as museums and libraries, require the issuance of a Special Use Permit by the Memphis City Council or Shelby County Board of Commissioners if located in the residential zoning districts. Prior to the adoption of the UDC in 2010, City and County governments were exempt from zoning; in fact, most City and County facilities were actually built in the residential zoning districts. This has resulted in the unfortunate situation in which any expansion of existing museums, libraries and other government facilities require either a new Special Use Permit or a use variance from the Board of Adjustment, both of which require fees paid to the Office of Planning and Development from sister City or County agencies. This occurred with the recent expansions of the Pink Palace and Children's Museum. The following proposal would add to Section 2.5.2, the Use Table, a cross reference to a new section, 2.6.2K for three categories: "Neighborhood Arts Center or Similar Community Facility (public)"; "Museum, Library" and "All other City- or County-owned facilities not included in this Use Table." Sub-Section 2.6.2K, in turn, would allow these facilities that pre-dated the UDC to expand by right:

2.6.2K [new section]: **City or County Facilities**

Facilities owned and operated by the City of Memphis or County of Shelby that were established in any zoning district that requires the issuance of a Special Use Permit (per Section 2.5.2, Article 7 or Article 8) prior to the effective date of this Code (January 1, 2011) may be expanded without a Special Use Permit, provided all other pertinent provisions of this Code are met.

4. 2.5.2, 2.6.3S (new section) and 12.3.1: Vapor Shops

Since their development several years ago, shops that cater to electronic cigarettes have proliferated throughout Memphis and Shelby County. The proposal below would limit place a review process for these establishments to ensure the negative impact on adjoining residential properties will be minimized. This proposal would limit new vapor shops to the industrial districts by right and the commercial districts by Special Use Permit, but allow those that exist at the time of this zoning text amendment to remain and not be considered nonconformities.

2.5.2: Add a new use, "vapor shop," which will only be permitted by right in the industrial districts, permitted by Special Use Permit in the commercial districts and add a reference to Sub-Section 2.6.3S.

2.6.3S [new section] **Vapor Shops**:

Vapor shops that exist in non-industrial zoning districts at the time this zoning text amendment becomes effective ([*insert date here*]) shall not be considered nonconforming uses and may be expanded, modified or relocated within the same site.

12.3.1: **VAPOR SHOP: Any retail establishment where more than 50% of its monthly sales are comprised of the selling of electronic cigarettes, a cigarette-shaped device containing nicotine-based liquid that is vaporized and inhaled.**

5. 2.5.2 and 12.3.1: Riding Academies and Equestrian Centers with Outdoor Lighting

Currently, Section 2.5.2 allows lighted horse arenas, riding academies and equestrian centers by right in the CA district, but lighted soccer and baseball fields need an SUP. This proposal would square these two conflicting sections of the Code and require an SUP for horse-related facilities in the SUP district. This will involve the addition of a use in Section 2.5.2 that reads: "Riding academy and equestrian center with outdoor lighting." Also, a couple of these terms require definitions in Section 12.3.1:

EQUESTRIAN CENTER: Any facility that contains infrastructure for the boarding, training and/or competition of horses.

EQUESTRIAN CENTER WITH OUTDOOR LIGHTING: Any equestrian center that contains outdoor lighting designed to light a large area for nighttime competition and/or training. For the purpose of this definition, a large area shall be defined as any area that is similar in size, or greater in size, to a soccer field, football field or baseball diamond.

RIDING ACADEMY: A type of Equestrian Center.

RIDING ACADEMY WITH OUTDOOR LIGHTING: A type of Equestrian Center with Outdoor Lighting.

6. 2.6.2D, et al: Extraterritorial Jurisdiction

On Monday, November 23, 2015, the Shelby County Board of Commissioners ratified changes made by General Assembly earlier that year to the various Private Acts of Tennessee governing zoning in Memphis and Shelby County that removes both the 3- and 5-mile extraterritorial jurisdiction of the City of Memphis in unincorporated Shelby County and the 5-mile extraterritorial jurisdiction of Shelby County and all municipalities over cemeteries. This has resulted in a simplification of the review process: the Memphis City Council hears requests for Special Use Permits for cemeteries within its borders and the Shelby County Board of Commissioners hears zoning requests in unincorporated Shelby County. As this change has already been made to the enabling legislation, the following proposed amendments are merely perfunctory:

2.6.2D(1): ~~Special Use Permits for new cemeteries and the expansion of existing cemeteries within the City of Memphis must be approved by the Board of County Commissioners and the City of Memphis. Special Use Permits for new cemeteries and the expansion of existing cemeteries in unincorporated Shelby County must be approved by the Board of County Commissioners and the legislative bodies of all municipalities within five miles of the cemetery.~~

2.6.2D(8): ~~Chapter 405 of the Private Acts of 1925 and Title 46, Chapter 1 of the Tennessee Code Annotated further regulates the location, establishment and operation of cemeteries.~~

2.6.3J(1)(f): … governing body~~(s)~~…

2.6.4D(2)(t): … legislative **body** ~~bodies~~…

5.2.18B(1): … legislative body~~(s)~~...*(this is currently 5.2.18A(1), but is moved down to Paragraph 5.2.18B(1) due to the proposed addition of a new Paragraph 5.2.18B(2); see Item 27 below in this staff report).*

5.2.18B(2): … legislative body~~(s)~~. *(this is currently 5.2.18A(2), but is moved down to Paragraph 5.2.18B(1) due to the proposed addition of a new Paragraph 5.2.18B(2) see Item 27 below in this staff report).*

9.2.1: ~~Unless set forth below,~~ **T**he City Council retains review and approval or appeal authority within the City limits of Memphis and the Board of Commissioners retains review and approval or appeal authority within unincorporated Shelby County.

Also, remove the tables below the opening sentence of Section 9.2.1.

9.5.12A: …legislative body ~~or bodies~~…

9.22.6B(3): …legislative **body** ~~bodies~~...

7. 2.6.2F, et al: Special *Use Permits*

Currently, the Code uses the terms "special use permit," "special use" and "special permit" interchangeably. The definitions of "Special Use" and "Special Use Review" in Section 12.3.1 explain that special uses are those uses that require a Special Use Permit from the Memphis City Council or Shelby County Board of Commissioners, so the following sections that currently read "special use" may remain unchanged:

2.5.2, 2.6.2I(1)(b), 2.6.2I(2), 2.6.2I(2)(e), 2.6.2I(3)(b)(4), 2.6.2I(3)(e), 2.6.2J(1)(a), 2.6.2J(1)(c)(1), 2.6.3R(2), 4.7.3C, 7.3.13D, 8.5.2A, 8.5.2B, 8.10.4A, 9.1.1B(4), 9.1.2C, 9.1.2D(2), 9.1.6B(4), 9.1.6C(1), 9.1.8B(1)(b), 9.2.1, 9.2.2, 9.3.1B(2), 9.3.3A, 9.3.3B, 9.3.4A, 9.3.4C(2)(a), 9.5.7A(1), 9.6, 9.6.1A, 9.6.1E, 9.6.5C, 9.6.7A, 9.6.8C(2), 9.6.13, 9.6.13D, 9.12.1C, and 9.22.6B(5).

However, the following sections that currently read "special permit" should be amended to read "Special *Use* Permit:"

2.6.2F, 4.7.3A(1)(c), 4.7.3C, 6.5.1, 6.5.1A, 6.5.1C, 6.5.1D, 6.5.1F, 8.5.2C and 12.3.1 (definition of "Farmers Market").

8. 2.6.3A(1)(d): Separation of Adult Businesses from the CA Zoning District

Under the UDC, adult businesses must be 1500 feet from any residential zoning district. This is a carryover from the previous zoning code. Under the previous zoning code, the

"AG," Agricultural, zoning district was a residential zoning district. However, its replacement, the "CA," Conservation Agriculture, zoning district, is listed by the UDC as an "open" zoning district. The language below would clarify that adult businesses need to be 1500 feet from any residential or open zoning district.

> …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 adult oriented establishment within one thousand five hundred (1,500) feet of:
>
> …
>
> d. A boundary of a residential zoning district**, open zoning district** or historic overlay district;

9. 2.6.3D, 9.6.1 and 9.6.6: Hourly Rate Hotels

In 1994, the Memphis City Council passed a zoning text amendment that only applied inside the City limits that required all hotels to obtain a Special Use Permit when they changed ownership. This was done in an effort to eradicate hourly rate hotels. With the adoption of the UDC in 2010, this ordinance also affected hotels in unincorporated Shelby County. However, in the 22 years since passage, few, if any, hourly rate hotels have been closed due to the ordinance, which was later amended to allow an expedited, "Hotel/Motel Waiver (HMW)" process whereby a hearing before the Land Use Control Board was removed. The SUP or HMW requirement for all hotel ownership changes has resulted in hundreds of non-hourly rate hotel closings to be unnecessarily delayed.

ZTA 15-002, which was passed by the Memphis City Council on October 6, 2015, and the Shelby County Board of Commissioners on October 26, 2015, largely addresses the issue on new hotels: all new hotels must now be approved by the City Council or County Commission through the Special Use Permit (SUP) process. The proposal below would complement the SUP requirement for new hotels by addressing existing hotels and motels. Ownership changes of non-hourly rate hotels would be relieved of the HMW process; instead, only those ownership changes at hourly rate hotels would require a Special Use Permit.

Finally, a new Paragraph 2.6.3D(1) is added that would allow non-hourly rate hotels and motels that pre-exist the UDC to expand or be modified without the need for the issuance of a Special Use Permit.

> 2.6.3D:
> All hotels and motels are required to meet the following standards:
>
> **1. Hotels and motels that do not operate on an hourly rate basis established prior to the effective date of this Code (January 1, 2011) may be expanded, modified and rebuilt without a Special Use Permit, provided no other zoning entitlements effect the site.**
>
> 2. Any change in the controlling interest of **an hourly rate** hotel or motel, or the real property associated with such use**,** shall require the approval of a new special use permit (see Chapter 9.6).
>
> 3. The owner or manager of any **hourly rate** hotel or motel shall notify the Planning Director in writing of any change in name of the hotel or motel, not

resulting in a change of ownership and shall apply for a new certificate of occupancy permit that reflects this change.

4. No fencing or screening is permitted which visually blocks the front building entrance from view from the public right-of-way.
5. The governing bodies find that hourly rate motels/hotels have a deleterious effect on both the commercial and residential segments of a neighborhood, are repeatedly associated with prostitution, causing blight and the downgrading of property values. Hourly rate hotels and motels are not permitted in any zoning district. No hotel or motel may provide rooms for rent or lease more than twice in any ten hour period. Three or more violations of this provision in a 24 month period shall be grounds for revocation of the certificate of occupancy permit.

9.6.1B: A special use permit is required for all special uses as set forth in Article 2~~, unless a waiver is obtained under the terms of Section 9.6.6~~.

9.6.6: *Delete entirely and change its title from "Waiver Provisions for Hotels and Motels" to "Reserved."*

10. 2.6.4H: Uses Permitted in Container Buildings

With the passage of ZTA 15-002, container buildings are now permitted in the commercial and industrial zoning districts through the issuance of a Conditional Use Permit. However, this section of the Code needs language similar to what was added to Paragraph 2.6.1G(2) for container *homes* that requires conformity with the Use Table:

Definition. A container building is any principal structure used for a purpose other 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. **Uses within a container building are regulated by Section 2.5.2. Only those uses permitted by right in a particular zoning district may be located within a container building with the approval of a Conditional Use Permit. Uses requiring the issuance of a Special Use Permit proposed within a Container Building may be approved through the Special Use Permit process without necessitating an accompanying Conditional Use Permit application.**

11. 2.6.5A: Sale of Agricultural Products, Outdoor

This section references itself; it should reference Sec. 2.8.2A.

2.6.5A: See Sub-Section ~~2.6.5A~~ **2.8.2A**.

12. 2.7.2A(2): Accessory Structures in Side (Street) Yards

Paragraph 2.7.2A(2) prohibits accessory buildings in the required front yard, but according to Paragraphs 3.2.9B(1) and (2), corner lots have only one required front yard; the other yard along a street is called a "side (street) yard." So, Paragraph 2.7.2A(2) would not prohibit an accessory structure in close proximity to a side street on a corner lot unless the corner lot had a platted setback along that street. While Paragraph 2.7.2A(4) prohibits accessory

structures in side yards, it does not explicitly state that a side street yard is included. The proposal below addresses this:

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

13. 2.7.2A(4) and 2.7.2A(5) and 2.7.2B: Height and Setback of Accessory Buildings

The Code's regulations on the permissible maximum height and minimum setback of accessory buildings are located in several locations. This proposal would not only consolidate these sections, but also address the situation pictured below in which an accessory building of a very large size at 1751 Carr was built. This proposal would more clearly articulate that accessory buildings over 20 feet in height must be set back at least 20 feet from both the side and rear property lines.

Accessory structure at 1751 Carr Ave.

2.7.2A(5): *(moved to a new Paragraph 2.7.2B(2); see below).*

2.7.2B Height

> **1.** (*new number*) **In Relation to the Principal Structure.** Except as provided in Sub-Sections 2.6.2H, 2.6.2I, 3.2.6A and Section 2.7.9, the height of an accessory structure shall not exceed the height of the principal structure.
> **2. Height and Setback**. *(moved from current Paragraph 2.7.2A(5))*: Accessory structures shall be at least five feet from the **side and** rear property line**s**. Any portion of **an** accessory structure over 20 feet in height

shall be located at least 20 feet from **all** ~~a~~ **side and** rear **property** ~~lot~~ line**s** that do~~es~~ not abut an alley. **For the purpose of this Paragraph, height shall be measured from the highest point of the accessory structure, not including any exceptions articulated in Paragraph 2.7.2B(1).**

14. 2.7.10: Truck Parking in All Residential Districts

This section of the Code regulates the parking of boats, trailers, trucks, tractor trailers and heavy equipment in the residential districts, but does not cover the CA district, which covers most of the residential areas of unincorporated Shelby County. This proposal would add "open" to the list of districts covered by this regulation, as the CA district is a type of "open" district. According to Section 2.2.1 of the UDC, there are five types of open districts: P (Parks), OS (Open Space), FW (Floodway), CA (Conservation Agriculture) and CIV (Civic). Two of these, P and OS, are "floating" zoning districts that have yet to be applied to the official zoning atlas. The CIV district covers but one property, a nursing home. The FW district is stipulated by FEMA; all five should be subject to truck parking restrictions.

2.7.10: Boats, Trucks, Heavy Equipment, Recreation Vehicles and Trailers in Residential **and Open** Districts

2.7.10B: The parking of trucks, heavy equipment or tractor trailers shall not be allowed. This requirement shall not prohibit commercial vehicles from making deliveries in a residential **or open** district…

15. 2.9.2A: Leasing/Management Offices for Residential Uses

This section of the Code lists the acceptable accessory uses for residential uses. A management or leasing office needs to be added as an acceptable accessory use, as many apartments, mobile home parks, manufactured home parks and other similar residential uses customarily contain these operations on site. This may be achieved by adding "**Leasing/Management Office**" in the column entitled "Accessory Uses" in this section.

16. 2.9.3H and 12.3.1: Work Release Centers and Day Reporting Services

The UDC permits work release centers in the commercial and industrial zoning districts with the approval of a Special Use Permit by the Memphis City Council or Shelby County Board of Commissioners. However, the term "work release center" is an undefined term. This proposal would add this term to the definitions section of the Code, as well as the term sometimes used by agencies for work release centers, "day reporting service establishment." This proposal will also add day reporting services to the table that outlines those uses considered as social services in Sub-Section 2.9.3H.

2.9.3H: Work release center **and day reporting service establishment**

12.3.1: **DAY REPORTING SERVICE ESTABLISHMENT: See work release center.**

12.3.1: **WORK RELEASE CENTER: Any establishment that specializes in providing employment or housing services to individuals in prison or transitioning from prison that further involves the individuals who are being served to physically report to the establishment.**

17. 3.6.1B(3): Unsewered Lots

A minor change is required for this section; an "in" should be replaced with a "to:"

> 3.6.1B(3): Where the provisions of this Sub-Section cannot be met, the Board of Adjustment may grant a variance **to** ~~in~~ these requirements after receiving a written opinion from the Health Department that the proposed variance would not create a health hazard and the proposed lots are acceptable for septic tank and/or wells.

18. 3.7.2: Percentage of Housing Types in the RU Districts

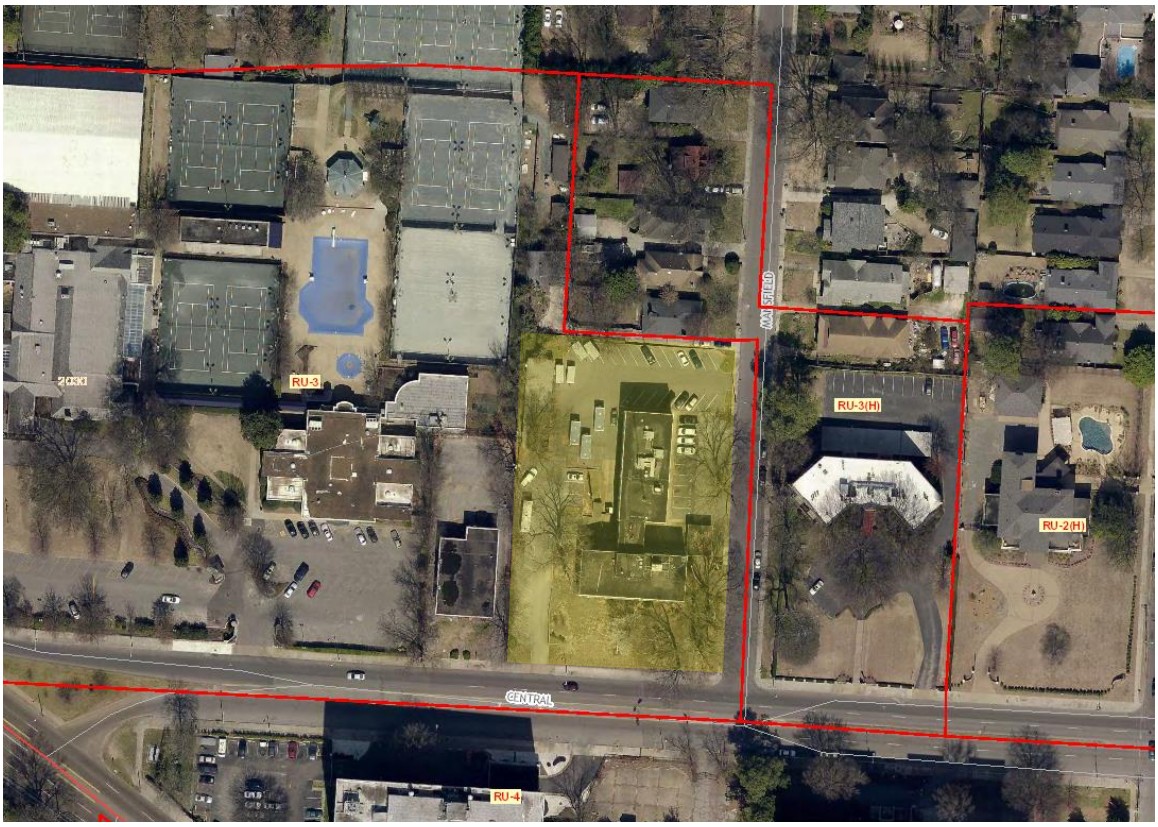
This section mandates that lots of varying sizes require a certain percentage of housing types in the RU, or multi-family, zoning districts. The intent of this section is to encourage diversity in housing and discourage large, monolithic, apartment communities. However, it appears some of the metrics encourage apartments over single-family homes. While the RU districts allow multi-family housing, they also allow single-family housing. At the bottom of the tables in this section, there is a requirement that developments of between one and ten acres contain no more than 50% of the housing to be single-family while at the same time allows 100% of the housing to be multi-family. This requirement does the opposite of its intent: to prevent large apartment-only residential communities. The proposal below would strike the housing percentage requirements for the RU-3 and RU-4 districts to match the RU-1 and RU-2 districts, which have no maximum housing requirement for developments of less than ten acres.

Housing Type	Conventional	Side Yard	Cottage	Semi-Attached	Two-Family	Town-house[1]	Large Home	Stacked Townhouse[1]	Apartment[1]
RU-3 District									
% of Housing Types									
More than 10 acres (max)	50%	50%	50%	60%	70%	80%	80%	80%	70%
~~1 to 10 acres (max)~~	~~50%~~	~~60%~~	~~80%~~	~~100%~~	~~100%~~	~~100%~~	~~100%~~	~~100%~~	~~100%~~

Housing Type	Conventional	Side Yard	Cottage	Semi-Attached	Two-Family	Town-house[1]	Large Home	Stacked Townhouse[1]	Apartment[1]
RU-4 District									
% of Housing Types									
More than 10 acres (max)	50%	50%	50%	60%	70%	80%	80%	80%	80%
~~1 to 10 acres (max)~~	~~50%~~	~~50%~~	~~60%~~	~~80%~~	~~100%~~	~~100%~~	~~100%~~	~~100%~~	~~100%~~

As an example, the Red Cross building at the corner of Central and Mansfield within the RU-3 zoning district could not be developed as an infill subdivision since the site is over an acre. According to the table above, only 50% of the housing in the subdivision could be single-family; the rest of the housing units would need to come in the form of duplexes or apartments. This would require an exclusively single-family development requiring the approval of a planned development, a much more onerous process than a subdivision. The table, therefore, which has the intent of preventing large monolithic apartment complexes, instead has the perverse effect of discouraging infill development. Please note that, if

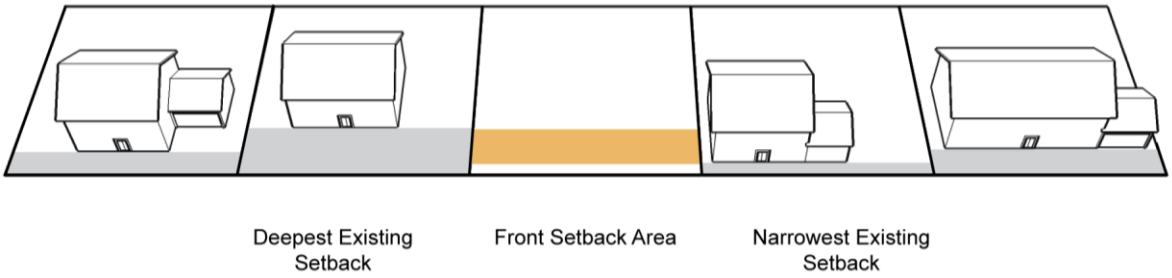
developed as apartments, the *current* table would allow that all units be developed as apartments.



Red Cross building site shown in yellow highlight

19. 3.9.2E: Front Setbacks with Contextual Infill Standards

This section of the Code mandates that new and vacant lots in the core city must be compatible with their surrounding neighborhood. One of the provisions of this requirement is that the front yards of the proposed lots must be in keeping with the front yards of the existing homes around the new lots. This section not only explains the calculation in narrative format, but also with a graphic:



However, this section is difficult to interpret for corner lots since they do not have two lots on either side. The final sentence of this section addresses corner lots, but not explicitly. The proposed addition to the final sentence makes it clear:

> …Where the calculation of a range of setbacks is not practicable**, such as instances where the subject lot(s) is on or within two lots of a corner**, the structure shall be located a minimum of 20 feet from the front property line.

20. 3.10.2F(1)(b) and 3.10.2F(4) [new section]: CMP Regulations

The two "CMP," or "Campus Master Plan," zoning districts were created with the adoption of the UDC. All former "H" (Hospital) and "CU" (College/University) districts automatically converted to CMP-1 and CMP-2 with the adoption of the UDC in 2011. The CMP districts were created to allow universities and hospitals greater flexibility, but the regulations found in Sub-Section 3.10.2F were not found in the old H and CU district regulations. These regulations include architectural standards, height limits and the requirement that a master plan be on file with the Office of Planning and Development. This has resulted in making each hospital and university in town within a CMP district a nonconformity, which further necessitates Board of Adjustment action for relatively minor additions. The proposed language would exempt all properties that were automatically zoned CMP with the adoption pf the UDC:

> **3.10.2F(4)** [new section]: **Applicability**
> **This Sub-Section shall not apply to properties zoned CMP-1 and CMP-2, or their predecessor zoning district classifications, at the time this Code became effective on January 1, 2011.**

Also, a minor change is needed for Item 3.10.2F(1)(b):

> 3.10.2F(1)(b):… A campus master plan shall be submitted to the **Office** ~~Division~~ of Planning and Development prior to any zoning map change submittal…

21. 4.4.4B: Driveways

This section of the Code, in part, requires driveways to be placed no closer than 3.5 feet from the property line, which is impossible in many older neighborhoods; such as Uptown, Midtown and South Memphis; where narrow lots are common. This proposal would exempt lots of 50 feet in width or less from this provision:

> At the street right-of-way, residential driveways must be spaced at least 20 feet from any other driveway on the same lot, but not nearer than 3½ feet to any side lot line. **The 3½-foot separation shall not apply to driveways on lots of 50 feet in width or less…**

22. 4.6.5C: Landscaped Buffers

The narrative descriptions of the required landscaped buffers found in the table in Sub-Section 4.6.5C conflicts with the graphic portrayals of these landscaped buffers in Paragraph Sub-Section 4.6.5D(3) in two ways: Sub-Section 4.6.5C requires seven trees in a Class III, Type C buffer, while the graphic in Paragraph 4.6.5D3) requires only six. In addition, the

table in Sub-Section 4.6.5C requires at least a 6-9 foot sight proof fence in a Class III, Type C buffer (the buffer with the maximum width of 15 feet), while Paragraph 4.6.5D(3) requires at least a 6-9 foot chain link fence. This discrepancy only recently has come to the attention of the Office of Planning and Development, which has been using the graphic portrayals in Paragraph 4.6.5D(3) exclusively. This proposal will amend Sub-Section 4.6.5C so it narratively describes what is currently graphically shown in Paragraph 4.6.5D(3).

23. 4.9.2D(8) and 12.3.4: Feather Signs

Paragraph 4.9.2D(8) says that flags are generally exempt from the Code's sign regulations. The purpose of this section is to allow the flying of municipal, county, state, national and other non-commercial flags and not to allow feather signs. Feather signs are those signs, which sometimes contain words but often do not, that flutter in close proximity to the street that are meant to attract customers to a retail establishment. This proposal would state that feather signs are not flags and instead fall under the provisions of the temporary sign regulations.

4.9.2D(8)
…Feather signs shall not be considered flags and shall be regulated by Section 4.9.9.

FEATHER SIGN: Any banner, with or without words, that is designed to flutter in an effort to attract customers to a commercial establishment.

BANNER: A sign made from cloth, vinyl or other similar pliable material that is hung from a frame or affixed to a wall.

Example of a "feather sign"

24. 4.9.6C, 4.9.6F(3) and 4.9.14: Sign Setbacks

A 0-foot setback is permitted in the office, commercial and industrial zoning districts if a sign is 10 feet in height or less. This was established with passage of ZTA 13-002 in the summer of 2013, although it was legitimizing a practice that had been in place for some time before that. However, Sub-Section 4.9.6C of the Code, which generally prohibits signs from being within 10 feet of the right-of-way, does not provide direction to the reader to the sections of the Code that allow for reduced setback. The proposal below adds a parenthetical to the phrase "except as provided in this Article" to take the reader to the two sections of the Code that covers reduced setbacks:

> 4.9.6C: No sign greater than six square feet in area shall be erected in a Nonresidential District or in the non-residential portion of an approved planned development closer than ten (10) feet to any lot line, except as provided in this Article **(see Paragraph 4.9.7C(3) and Sub-Item 4.9.7D(3)(b)(2) for provisions that allow for a 0-foot setback)**. No sign shall extend into any right-of-way except projecting signs where a building is located within six feet of the right-of-way.

Also, Paragraph 4.9.6F(3) needs to be deleted, as it conflicts with the allowance for signs of 10 feet in height or less to be located close to the sidewalk:

> 4.9.6F(3) ~~No sign or sign structure obstructing an area between two feet and six feet above grade shall be located within ten (10) feet of the public right-of-way.~~

Signs will still need to be free of the sight triangles, or those areas near intersections, to allow drivers a clear peripheral view of oncoming traffic. Signs in sight triangles are covered in Paragraphs 4.9.6F(*1*) and 4.9.6F(*2*).

Example of a sign with a reduced setback

On the other hand, some have viewed the sign area table included in Section 4.9.14 to be inclusive of all regulations related to detached signs. Since this table makes no mention of sign setback, it has led some readers to believe that no setback was required for a sign that

might be, for instance, 25 feet in height. The following proposed section should address this in the future. This proposal also creates new Sub-Sections and headings for each of the tables, charts and maps found in this Section.

4.9.14A: Setbacks
The tables, charts and maps in this Section contain regulations related to the area and height of permitted signs. Please refer to Sections 4.9.7 and 4.9.8 for setbacks of permitted signs.

25. 4.9.7D(1): Roof Signs in the Commercial and Industrial Districts

Roof signs are permitted in the commercial and industrial districts, as they are not listed as prohibited signs as they are in the residential and office districts (see Paragraphs 4.9.7B(1) and 4.9.7C(1)). The language below would make these permitted sign types more explicit:

…Roof signs are permitted, provided the height restrictions of the zoning district are met.

Example of recent roof sign. *Photograph by Brad Vest, © Memphis Commercial Appeal.*

26. 4.9.7D(4)(a): Wall Signs in Commercial and Industrial Districts

This section of the Code is found in the sign regulations for Commercial and Industrial zoning districts (the OG, General Office, zoning district has a separate section). When interpreted on a strict basis, this section allows five signs per business (the definition of "establishment" in Sec. 12.3.4 says establishments are businesses), even in a shopping center. If put into practice, this would lead to a proliferation of signs in shopping centers and

along the facades of office buildings. The proposal below is to amend this section of the Code to stipulate that only those establishments in standalone buildings are permitted five signs.

4.9.7D(4)(a) Attached~~:~~

1. **Standalone Buildings: For establishments that occupy an entire building,** five **signs** per establishment and no more than two of the five may be located on any building façade, awning, canopy or marquee. Only one changeable copy sign shall be allowed. If a single owner or tenant occupies a building of more than 200,000 square feet in an Industrial District four additional signs, not on a canopy, awning, or marquee, are allowed.
2. **Shopping Centers: For establishments within a structure that houses multiple businesses, such as a shopping center, one sign per establishment may be located on any building façade, awning, canopy or marque, per building façade. An additional three signs may be located on fuel pump canopies for establishments within shopping centers that sell gasoline.**
3. **Office Buildings: For establishments within a multi-storied structure, such as an office building, one sign per ground floor establishment may be located on any building facade, awning, canopy or marque, per building façade, provided the sign(s) is located along the outside of the area of the building that houses the establishment. In addition, one rooftop sign, per building façade, may be permitted to advertise an establishment located anywhere within the building.**

27. 5.2.18A [new section]: Public-to-Private Street Conversions

Nowhere in the Code does it stipulate that a public street cannot be completely dislocated from the public street system. This recently became a topic of discussion when a neighborhood requested to gate both sides of its public street and further requested that it remain public. A new section, entitled "Generally" should be added to the Private Street Conversion section of the Code (5.2.18) that explains that placing a physical barrier that would disconnect a street from the public street system would necessitate a conversion of that street to a private street with private maintenance.

5.2.18A [new section]: **Generally**
Public streets must be connected to the public street system with at least one unobstructed access point. Any proposal that would involve completely dislocating a street or street segment from the public street system through the erection of a gate(s) or other obstruction(s) shall necessitate a private street conversion. Private streets are maintained by a homeowners association or one or more abutting property owner(s).

28. 7.2.9N and 7.3.11: Planned Developments in Uptown

Sub-Section 7.2.9N, which was added to the Code with the adoption of ZTA 15-003, prohibits planned developments in the Uptown Special Purpose District. However, it was placed in the SCBID Special Purpose Regulations section of the Code. It should be moved

to 7.3.11, which is the Uptown Land Use Zoning Matrix. In addition, the Uptown Zoning Matrix has been misinterpreted to allow uses that are similar, but not the same as, uses listed. The proposed language addresses this, as well as moving existing Sub-Section 7.2.9N:

> 7.3.11: **Any use not explicitly listed in the Zoning Matrix below is prohibited within the Uptown Special Purpose District. Furthermore, no Planned Developments (Section 4.10) shall be allowed within the Uptown Special Purpose District.**

29. 7.3.11, 8.3.11 and 8.4.7: Neighborhood Gardens and Container Homes and Buildings in the Overlays

Neighborhood gardens were added to the UDC with the passage of ZTA 12-001. Under that amendment, they were added as permitted uses in every zoning district, per Section 2.5.2, the general Use Chart. Container homes and buildings were added to the UDC with the passage of ZTA 15-002. However, Uptown, the University Overlay and the Midtown Overlay all have their own use charts and were not affected by these addition. This proposal adds neighborhood gardens as a permitted use and container homes and buildings as a use permitted by Condition Use Permit in the Uptown, University and Midtown use charts.

30. 8.1.E: Use Standards in the Overlay Districts

Chapter 2.6 contains use standards for a variety of uses permitted by right and by special or conditional use permit. Its various sections are referenced in the standard Use Chart, Section 2.5.2, but not the various individual use charts in the Special Purpose and Overlay Districts found in Articles 7 and 8. This was addressed for the Special Purpose Districts with the adoption of Sub-Section 7.1H, which articulates that the use standards of Chapter 2.6 apply to the uses contained in Article 7. The proposed language below uses this same language to ensure that the use standards of Chapter 2.6 also apply to Article 8 (the overlays):

> **The Use Standards of Chapter 2.6 shall apply to all uses contained in this Article, unless otherwise stated. See Use Table, Chapter 2.5, for required use standards.**

31. 8.3.11: Planned Developments in the RU-1, RU-3 and CMP-2 Districts in the University Overlay

The University District Overlay Use Chart prohibits planned developments in the RU-1, RU-3 and CMP-2 zoning districts while allowing them in the R6, CMU-1 and CMU-2 districts. However, there are at least two existing planned developments in these districts, the Laurels Condominiums at Central and Highland and the southwestern portion of Highland Row and Ellsworth and Midland. The following footnote should be provided at the bottom of the University District's Use Chart to state that these planned developments are not affected:

> **1. Planned Developments approved prior to the adoption of the University District Overlay (July 22, 2009) are not affected.**

32. 8.4.7: CMP in the Midtown Overlay

The CMP-1 district for university and hospital campuses currently exists within the Midtown District Overlay. However, it is not listed as a permissible zoning district in Section 8.4.7, the Use Chart for Midtown. This proposal adds CMP-1 as a zoning district within Midtown and uses the permitted uses according to Section 2.5.2, the Use Chart for the rest of the City.

33. 9.2.2, 9.23.1C(2), 9.23.1C(4) and 9.23.1C(6): Appeals of the Planning Director

Chapter 9.23 states:

> An appeal by *any person* aggrieved by a final order, interpretation or decision with regards to the provisions of this development code may be taken as set forth below (emphasis added).

This language stems from the private act that created the Memphis Board of Adjustment (Priv. Acts 1925 Chap. 428) that reads:

> Appeals to the Boarad [sic] of Adjustment may be taken by *any person* aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within five days…(emphasis added).

However, the Review Table in Section 9.2.2 only allows appeals by the affected property owner. This proposal would amend Section 9.2.2 to square with Chapter 9.23 and allow any aggrieved property owner to appeal a decision of the Planning Director or Building Official, such as the approval of an administrative site plan, administrative deviation or administrative interpretation. Specifically, the three "A*'s" in Section 9.2.2 under the column entitled "Board of Adjustment" would be struck of their asterisk and become "A's."

The language found in both the UDC and the private act is fairly boilerplate and found in many states' legislation concerning Zoning Boards of Appeal. Although the Tennessee courts have never specifically addressed whether this language implies that the Planning Director or Zoning Administrator must place an appeal on the next available Board of Adjustment/Board of Zoning Appeals docket regardless of whether the appellant has standing, the North Carolina Supreme Court recently opined that it is the job of the Board of Adjustment – and not the staff – to determine standing (*Morningstar Marinas/Eaton Ferry, LLC v. Warren Cty.*, 777 S.E.2d 733, 737 (N.C. 2015)). The Tennessee courts are likely to make the same finding, given the specific enabling legislation cited above.

Also, language needs to be added that would require notice to the given to the property owner and prevent the Board from holding the case for more than one month to ensure an expedited appeal. The language below accomplishes these goals:

> 9.23.1C(2): …**For appeals taken by non-property owners, the Office of Planning and Development shall provide notice of the appeal to the property owner by mail and any other reasonable means available no less than 10 days prior to the date of the public hearing by the Board of Adjustment.**

> 9.23.1C(4): The Board of Adjustment or Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant. **For appeals taken by non-property owners, the Board of Adjustment may only defer a decision for one month.**

Finally, Chapter 9.23 deals with appeals taken to both the Land Use Control Board and the Board of Adjustment; however, the rule to obtain five votes only applies to the latter board. The following amendment is required to ensure it is not interpreted to apply to the Land Use Control Board:

> 9.23.1C(6): If a motion to reverse or modify is not made, or fails to receive the affirmative vote of five members necessary for adoption, then the appeal shall be denied. **This Paragraph shall only apply to those appeals taken to the Board of Adjustment.**

34. 9.3.3H: Concurrent Applications

This section, which allows concurrent applications to proceed, should not be construed to conflict with Paragraph 9.23.1D(1), which prohibits concurrent applications during appeals. The language below would help square these two sections better:

> Applications may be filed and reviewed concurrently, at the option of the applicant**, provided there is not a pending appeal filed by applicant on the subject site (see Paragraph 9.23.1D(1))**.

35. 9.3.4A and 9.8.4A: Notice of ROW Vacation

Sub-Section 9.3.4A is the general notice chart for all applications filed pursuant to the Code. Its section on notice for right-of-way vacation conflicts with Sub-Section 9.8.4A. Sub-Section 9.3.4A groups all three kinds of right-of-way vacation into one row and requires only abutting property owner notice. This is appropriate for a paper street vacation, where the abutters would be quit claimed the vacated property, but not for a physical closure of a public street that might affect surrounding property owners that do not abut the subject street. This is why 9.8.4A stipulates that physical closures and conversions require notice to all property owners within 300 feet of the street to be closed.

This proposal would create three categories in Sub-Section 9.3.4A: conversions of public streets to private, physical closures and abandonments. The first two should require a sign posted; the last one should not since it involves paper streets and alleys. Also, since almost every private street conversion involves a street that is already generally closed to through traffic given the neighborhood has a homeowners association, mailed notice to those not abutting the street is unnecessary, so only physical closures will require non-abutters to be notified and at 500 feet rather than the existing 300 feet radius. In addition, the following footnote will be added at the bottom of Sub-Section 9.3.4A:

9.3.4A (new footnote 6): **The 500-foot radius shall be measured from the entire segment of the road affected by the closure rather than the area of right-of-way to be vacated. The segment of road affected shall be defined to mean that portion of public right-of-way that contains the proposed closure between the two nearest intersecting streets on either side of the closure.**

With more details added to Sub-Section 9.3.4A, the following language may be deleted from Sub-Section 9.8.4A:

9.8.4A: Not less than 35 or more than 75 days after an application has been determined complete, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. ~~For conversions and physical closures, mailed notice shall also be measured from the delivered to all property owners within a three hundred (300) foot radius of the street or alley closing.~~

36. 9.7.7F: Streetscape Plate Exceptions

Sub-Section 4.3.4E says certain streetscape elements; such as sidewalks, curbs and gutters; may be exempted by the Land Use Control Board through the subdivision process, but Sub-Section 9.7.7F says only Article 5 and Section 3.9.2 may be waived by the Land Use Control Board through the subdivision process. This proposal will add the streetscape section of the Code, Chapter 4.3, to the list of sections that are subject to a waiver to address this incongruity:

…Only those provisions found in Article 5**, Chapter 4.3** or Section 3.9.2 may be waived by the Land Use Control Board through the waiver process, unless a conflicting procedure is articulated.

37. 9.23.2E(2) and (3): Appeals of the Land Use Control Board

This section of the Code states that, when appeals of decisions by the Land Use Control Board are heard by the Memphis City Council and Shelby County Board of Commissioners, the governing bodies are basing their decisions on the record of the Land Use Control Board hearing. However, public notice is made and a public hearing is required for appeals, which is counter to an on-the-record appeal since new testimony will undoubtedly be provided by both those in support and in opposition to the case. This section should be amended to read that the appeals hearings by the governing bodies are de novo, which will allow the Council and Commission to consider new evidence, as well as the evidence on the record before the Land Use Control Board. This is similar to the manner in which the Knoxville City Council hears appeals from its Planning Commission (see Appendix B, Article VII, Section 6, of the Knoxville Code of Ordinances).

2. ~~Appeals heard by the governing bodies shall be based on the record.~~
3. The governing bodies shall **consider the appeal de novo in public hearing and** approve the appeal, approve with conditions, or deny the appeal. The governing bodies shall base their approval, approval with conditions or denial on the same approval criteria provided in this Code for the Land Use Control Board.

38. 12.3.1 and 12.3.4: Definitions not Covered in any Subjects Above

a. Clearing and Grading; Earth Extraction. Section 2.5.2 of the Code requires clearing and grading and earth extraction to be classified in the same manner as other resource extractions, such as gravel or oil, which requires the issuance of a Special Use Permit by the Memphis City Council or Shelby County Board of Commissioners. The intent of this provision was clearly not intended to cover all clearing and grading. For instance, a homeowner clearing and grading a section of his or her yard to plant a tree should not require a Special Use Permit. The definition below would explicitly state that clearing and grading and earth extraction requiring a Special Use Permit is limited to large sites not incidental to an approved site plan in accordance with this Code or incidental to a government-funded project such as road building.

12.3.1: **CLEARING, GRADING: Clearing and grading requiring the issuance of a Special Use Permit shall meet the definition of Earth Extraction in this Section.**

12.3.1: **EARTH EXTRACTION: Earth extraction requiring the issuance of a Special Use Permit shall be limited to dirt removal from a site where the area of dirt removed within a 365-day period exceeds five acres. Earth extraction incidental to a plan approved in accordance with this Code is exempt from the requirement to obtain a Special Use Permit. In addition, earth extraction incidental to a project funded by the city, county, state or federal government is exempt from the requirement to obtain a Special Use Permit.**

12.3.1: **MINING: Any extraction of a mineral from the ground.**

12.3.1: **RESOURCE EXTRACTION: Any extraction from the earth, including dirt, minerals and other materials.**

b. Kennels. The UDC does not define "kennel," yet it is listed in the Use Chart of Section 2.5.2 as a use that requires a Special Use Permit. Since the UDC was adopted, the Offices of Planning and Development and Construction Code Enforcement have been identifying any kennel operating commercially to be considered a kennel. However, this was not the case under the previous zoning code: it defined any boarding of three or more dogs as a kennel, which was a much easier standard to administer. This proposal would restore the previous Code's definition in Section 12.3.1 of the UDC, but increase the number of dogs boarded to qualify as a kennel from three to five. This will relieve the currently required showing by the Offices of Planning and Development and Construction Code Enforcement that a kennel be operated "commercially."

12.3.1: **KENNEL: Any lot or premises on which five (5) or more dogs are either permanently or temporarily boarded.**

c. Multi-modal facility. According to Section 2.5.2, the Use Table, this use is permitted by right in the commercial and industrial zoning districts, but it is not defined. Presumably, a multi-modal facility is one that deals with multiple modes of passenger traffic, as opposed to bus and train terminals that deal with one. The definition below clarifies the difference between bus and train passenger terminals and multi-modal facilities.

12.3.1: **MULTI-MODAL FACILITY: Any bus, train or similar passenger terminal that offers multiple modes of transportation, including access to two or more of the following: bus, train, bike, automobile or other.**

d. Banks. Since the zoning code began regulating payday and title lending establishments, agents for these establishments have attempted to make the argument that they were in reality banks and should be permitted in whatever zoning districts allow banks. While this argument was not accepted by OPD, the term "bank" does need a definition to explicitly state that the listed use of "bank" in the UDC does not cover these sorts of establishments.

12.3.1: **BANK: An establishment authorized by the state and/or federal government to accept deposits, pay interest, clear checks, make loans, act as an intermediary in financial transactions and provide other financial services to its customers. For the purpose of this Code, a bank shall not include a standalone ATM or a payday loan, title loan or flexible loan plan establishment.**

e. Neighborhood Resource Center. The term "neighborhood resource center" is found in Sec. 2.9.3H as a type of Social Service Institution, but is not defined. This proposal defines this term.

12.3.1 **NEIGHBORHOOD RESOURCE CENTER: Any establishment that provides certain services to the community, a particular neighborhood or a specific segment of the community. Such services include, but are not limited to: special counseling, education or workforce training or instruction, parent education classes, child development activities, parent-to-parent support groups, afterschool and academic enrichment and health information and referrals.**

f. Frontage for Signs. The current definition of "Frontage" in Section 12.3.1 does not adequately address the use of the term in the Sign Ordinance (which is Chapter 4.9 of the UDC). The language below addresses this discrepancy, but also deals with situations in which a site abuts the stub of a private street.

12.3.4 **FRONTAGE: For purposes of the Sign Ordinance (Chapter 4.9 of this Code), the distance a site abuts a public road, or if the property only abuts a private drive, the distance a site abuts a private drive. Private drive stubs shall not be used in the calculation of frontage for the purposes of the Sign Ordinance.**