

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT**

Agenda Item: 8

CASE NUMBER: ZTA 13-001 **L.U.C.B. MEETING:** February 14, 2013

APPLICANT: Memphis and Shelby County Office of Planning and Development

REPRESENTATIVE: Josh Whitehead, Planning Director

REQUEST: **Adopt Amendment to Sections of the Memphis and Shelby County Unified Development Code that Concern Conditional Use and Special Use Permits, Consumer Vehicles Parked on Residential Lots, Preexisting Apartments, the Tree Ordinance, Standard Improvement Contracts, Dedication of Right-of-Way, Zoning Code Definitions and Other Provisions of the Code**

Executive Summary:

1. This set of amendments to the Unified Development Code (the “UDC”) continues the semi-annual update to the Code that was begun with Case ZTA 12-001, approved in August 2012 and continued with Case ZTA 12-002, approved in January 2013.
2. Items 1 and 2 deal with modifications of Special Use Permits approved by the governing bodies and transferring one use eligible for a Special Use Permit (mobile homes) to a use eligible for a Conditional Use Permit.
3. Item 3 deals with large consumer vehicles, including those known as “duallies,” that are parked on residential lots. A definition of a “daully” is required as part of this proposal. Item 9 proposes the addition of two other new terms: “platted residential lot” and “used good,” as well as restoring many definitions that were in the old Zoning Code but inadvertently omitted from the UDC.
4. Item 4 corrects issues that have arisen with apartments that pre-exist the UDC.
5. Item 5 deals with exempting site plans that have already been reviewed by OPD, LUCB, the governing bodies or the Board of Adjustment from the Tree Ordinance.
6. Item 6 deals with incorporating lawsuits to the 18-mo. prohibition of filing the same zoning request.
7. Items 7 and 8 clarify which plans require Standard Improvement Contracts and when the abandonment of right-of-way requires action by the governing bodies.
8. These amendments can be read in greater context by downloading the entire UDC. It is available on this website: <http://www.shelbycountyttn.gov/Blog.aspx?CID=7> or by googling the terms “UDC,” “amendments” and “Memphis.” The itemized changes in this staff report are the substantive amendments to the UDC. Pagination, table of contents, indexing and cross-referencing corrections to the Code are found in the full UDC online.

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval

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

1. 2.5.1B(2): Modifications to approved special use permits

This section currently contradicts language found in Sub-Section 9.6.1D and Paragraph 9.22.6B(5), which requires that any modification of a use variance approved by either governing body as a special use permit must be approved by said governing body or bodies.

For properties that have been granted a use variation by the ~~Memphis and Shelby County Board of Adjustment or the Memphis City Council~~ **governing bodies** prior to the adoption of this development code, any expansion, modification or amendment to said use variation, its permitted uses or conditions placed on its permitted uses shall be processed as a Special Use Permit as outlined in Chapter 9.6.

2. 2.5.2 (Use Table): Conditional use permits for mobile homes

Currently, mobile homes require the approval of a Special Use Permit (SUP) from the Land Use Control Board and either the Memphis City Council or the Shelby County Board of Commissioners. Since most mobile homes are located in the 5-mile zone outside of the City of Memphis, all three boards must approve an SUP for a mobile home. The proposal below would transfer mobile homes to a use eligible for a Conditional Use Permit (CUP). The CUP process is a much nimbler process, taking only one month as opposed to 4-5 months for an SUP. This change will involve replacing the symbol for SUPs (a hollow box, "□") in the Use Table with the symbol for mobile homes in the CA (Conservation Agriculture) and R-MP (Manufactured Home Park) zoning districts to the symbol for CUPs (a "C"). This change will also involve changing language in Sub-Section 2.6.1D from "special use" to "**conditional use**" and language in Paragraph 2.6.1D(3) from "special use permit" to "**conditional use permit**."

3. 2.7.10B: Duallies

This section of the Code prohibits any vehicle of more than 8000 lbs. to be parked or stored on residential properties. The purpose of this section is to prevent heavy trucks and machinery from being parked on residential lots. However, the arbitrary threshold of 8000 lbs. prevents some consumer vehicles, such as duallies, from being parked at homes. The following language will carve out an exception to this provision for consumer vehicles.

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 district. For the purposes of this Sub-Section, the terms "trucks" and "heavy equipment" includes ~~any vehicles~~ or equipment in excess of 8,000 lbs., **with the exception of consumer vehicles such as duallies.**

This amendment will also involve adding a definition to Section 12.3.1:

12.3.1. (Definitions) **DUALLY: A pickup truck, specifically one with four wheels on the rear axle.**

4. 3.7.2A, 10.8 and 10.9: Preexisting apartments.

During the first set of UDC amendments (case ZTA 12-001), language was added to the Code that stipulated that certain requirements of the UDC did not apply to preexisting apartment complexes so

these complexes would not be considered nonconforming structures. As nonconforming structures, banks were expressing their unwillingness to refinance these structures and buyers expressed their unwillingness to purchase these structures. The language added during case no. ZTA 12-001 in August 2012 that exempts these preexisting structures, however, contains a phrase that stipulates that the structures must nevertheless be conforming. This presents the following problem: for an apartment complex that was built under the 1981 Zoning Code with a 30-foot front yard setback (which adheres to the UDC), but a 10-foot rear yard (which adhered to the 1981 Code, but not the UDC), then the maximum front building setback, the required building frontages and the required percentage of housing types (the three onerous provisions of the UDC which were to explicitly not apply to existing apartments) *would* apply since the building is not otherwise “deemed to be conforming.” The proposal below is to delete this phrase, which would relieve properties of this problem.

3.7.2 Building Regulations for Permitted Housing Types

A. ... The maximum front building setbacks, required building frontages and required percentage of housing types established in this Section shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures.~~ See Chapters 10.8 and 10.9.

10.8. The maximum setback and building frontage requirements that apply to townhouses and multi-family buildings, as established in Section 3.7.2 and to permitted nonresidential uses, as established in Section 3.7.3, shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures...~~

10.9. The required percentage of housing types, as established in Section 3.7.2, shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures.~~

5. 6.1: Tree ordinance

The tree ordinance was designed to prevent clear-cutting of trees in both approved and contemplated subdivisions and PD outline plans. In fact, Section 6.1.1 and Paragraph 6.1.2A(5) of the tree ordinance state that it does not apply to subdivisions and PD outline plans approved prior to the date of the passage of the ordinance (February 26, 2001). The tree ordinance was never intended to apply to site plans approved pursuant to the Zoning Code, such as those approved by the Board of Adjustment, the Land Use Control Board, the Memphis City Council or the Shelby County Board of Commissioners. Those site plans had already been through a review process, and the additional time and expense of a tree permit and/or notice of intent is unnecessary. The proposed language below will address this problem.

6.1.2A(9) (new section) The provisions of this Chapter shall apply to all tree removal in the unincorporated areas of Shelby County and the City of Memphis except in the following cases, which do not require a notice of intent, a tree survey or a tree permit:

Where the tree removal is affiliated with any site plan approved pursuant to this Code.

6. 9.5.11A, 9.6.13A and 9.14.8A: Elapsed time between applications

Three sections of the Code stipulate that a certain time must elapse between the time an application is filed at the same location for the same request. The 18-month period is intended to give all parties a period of resolution following a denial, and prevents undue and repetitive consumption of city and county resources spent dealing with a particular application. Further, a second application assumes

that there has been some change in the locale or in the proposal itself that makes the second application more appealing and beneficial than the first application. The 18 months provides the applicant with a period in which to improve upon the original application. Indeed, the opposition to a previously-denied application may even have a legal right to bar a hearing on the exact same application again (“res judicata”). Three forms of applications contain this clause: rezonings, Special Use Permits and Planned Developments and special exceptions. Each are contained in difference sections of the Code:

9.5.11B Time Lapse between Applications (for rezonings)

When the governing bodies have voted on a rezoning application and the proposed rezoning has either been denied or has failed to be approved by the vote required in the event of a valid protest petition, then the application shall be deemed to have expired, **effective upon the date of the decision of the governing body, or any appeal thereof, becomes final, whichever is later.**

9.6.13A Effect of Special Use and Planned Development Decisions

If the governing bodies votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 18 months have elapsed from the date of denial, **or from the date any appeal thereof becomes final, whichever is later.** The governing bodies may waive the time-lapse requirements of this section where it is in the public interest to do so.

9.14.8A Effect of Decision (for special exceptions)

If special exception is denied, there may be no subsequent application for the same or similar exception submitted by any party for that portion of the subject property until 18 months have elapsed from the date of denial, **or from the date any appeal thereof becomes final, whichever is later.**

7. 9.7.8C(3), 9.7.8D(1), 9.7.8F(1) and 9.9.4C: Approval of Standard Improvement Contracts

These sections contradict each other; for instance Paragraphs 9.7.8C(3) and 9.7.8F(2) conflict with Paragraph 9.7.8D(1), which states that only those plats that involve the construction of public improvements require approval by the governing bodies. In addition, Sub-Section 9.7.4C explicitly states that dedication of ROW that requires no physical improvements can be done administratively. This is based on enabling legislation and case law.

9.7.8C(3)

If the final plat contains ~~dedication of streets, public easements, public or private drainage easements, or construction of~~ public improvements requiring a Standard Improvement Contract (see Section 5.5.5), the Planning Director shall forward copies of the final plat to the appropriate City or County Engineer requesting preparation of any required contracts and approval resolutions for the governing bodies. The Planning Director shall complete the review of the final plat and notify the applicant of nonconformities, omissions, or corrections required before the final plan is forwarded for governing bodies’ action.

9.7.8D(1)

If the final plat contains ~~requires the construction of~~ public improvements requiring a Standard Improvement Contract, then the governing bodies shall approve the final plat before such plat is recorded.

9.7.8F(1)

After a final plat is approved by the governing bodies, the Planning Director shall record such plat in the Shelby County Register's Office after receipt of the resolution approving the final plat and any necessary contracts to provide improvements required by Article 5, Infrastructure and Public Improvements, and the required signatures for recordation have been secured. If the final plan contains no ~~dedication of streets or easements or~~ construction of public improvements, then the Planning Director shall record such plan without action of the governing bodies.

In addition to the three sections cited above, the following language currently found in Sub-Sections 9.7.4C, 9.12.4A and 9.13.7A is proposed to be added to a fourth section of the Code, as it is the section of the Code (Chapter 9.9) that describes the right-of-way dedication process:

9.9.4C (new section)

The Planning Director, as Secretary of the Land Use Control Board, is authorized to accept, upon review by the City or County Engineer, public dedication of streets and alleys (Priv. Acts 1921, ch. 162, Section 8) if a Standard Improvement Contract is not required (see Section 5.5.5).

8. 9.8: Right-of-Way Vacation

The City of Memphis Code of Ordinances contains a provision for the vacation (or closure) of right-of-way in special circumstances that is less time-consuming than the procedure outlined in the UDC. This section of the City Code deals with right-of-way that is no longer needed due to the realignment or relocation of a city street. The following note is proposed to be added that will cross-reference this section of the City Code:

9.8 Right of way vacations shall be classified in the following four ~~three~~ categories:

D. Excess right-of-way: City of Memphis right-of-way that meets the provisions of Section 2-16-1D of the City of Memphis Code of Ordinances. Such excess right-of-way shall be vacated utilizing the procedure outlined in Section 2-16-1D of the City of Memphis Code of Ordinances and not this Code.

Also, the end of Section 9.8.2 includes a redundant phrase "The application shall include." This is to be removed.

9. 12.3.1: Definitions

The term "platted residential lot" is found in Paragraph 2.6.2C(4), which requires this issuance of a Special Use Permit for schools expanding into residential areas, but this term is not defined. The proposal below would define this term.

PLATTED RESIDENTIAL LOT: A parcel that is part of a recorded subdivision that is located in a residential zoning district or a parcel that is part of a residential portion of a planned development.

RESIDENTIAL LOT, PLATTED: See platted residential lot.

There are several approved Planned Developments throughout the City that exclude used goods, but this term is not defined. Since “vehicle sales” is a separate use category under Section 2.5, the Use Chart, used vehicles are not customarily considered used goods. However, many citizens were under the expectation that used vehicle sales would be excluded from these planned development. To cure this situation, the following definition of “used good” is offered which will include used vehicles.

USED GOOD: Any article of trade that is being offered for resale, including vehicles.

The following definitions were in the old Zoning Code but inadvertently omitted from the UDC. They are to be inserted with the approval of this Zoning Text Amendment.

BEVERAGE CONTAINER COLLECTION CENTER: A building or portion of a building used for the incidental storage of beverage containers.

BEVERAGE CONTAINER RECYCLING CENTER: A building or portion of a building used for the crushing of beverage containers commonly used by the general public and the incidental storage of such containers.

BUILDING LINE: The line established by this Code beyond which a building shall not extend.

BULK: The minimum or maximum lot area, yard area, height or land use intensity ratios permitted or required in any zoning district.

BUS BARN: See Bus Terminal.

BUS TERMINAL: Any building where intercity or intracity bus trips begin or terminate or the building or land where buses used in such trips are parked, serviced or repaired.

CONTRACTOR: A person who contracts to erect structures or buildings, construct streets, lay pipe, move earth or otherwise do land development. A contractor includes a person who contracts to perform all or part of another’s contract as defined above.

CONTRACTORS STORAGE: The use of land or buildings for the storage or parking of materials, equipment, vehicles or supplies used by a contractor off the premises on which such storage is located.

HOMEOWNERS ASSOCIATION: A group of owners of property in a development, which group is responsible for the enforcement of rules and regulations governing the common elements of such development.

LEGISLATIVE BODY: The City Council of the City of Memphis, Tennessee, and/or the Board of Commissioners of Shelby County, Tennessee.

LODGING HOUSE: See Rooming House.

RESIDENTIAL BUILDING: A building the principal use of which is a residential use.

RETAIL SHOP: An establishment engaged primarily in the sale of goods for personal use or consumption rather than for resale to the ultimate consumer.

ROOMING HOUSE: A building where lodging is provided for compensation for five or more persons, who are not transients, by prearrangement for definite periods, provided that no convalescent or chronic care is provided. This definition does not include supportive living facilities or personal case homes for the elderly licensed by any duly authorized governmental agency or in other instances, approved by the director of the Memphis and Shelby County Office of Planning and Development (who shall provide any such applicant with written notice of his or her determination), and thereby allowed by right within all residential zones in accordance with the definition of "family" hereunder.

SCRAP METAL PROCESSOR: Any persons or parties having facilities for processing and storing iron, steel or nonferrous scrap and whose principal product is scrap iron and steel or nonferrous scrap for sale or remelting purposes.

SCRAP PROCESSING YARD: Any place having the necessary machinery, equipment and other facilities to process, refine, manufacture or prepare and store scrap iron, scrap steel or nonferrous materials for resale or for remelting purposes.

SCREENING: The use of vegetation, fencing or berms to limit the view of one premises from another.

SECONDARY MATERIAL DEALERS: Any person who shall engage in the business of buying, storing and selling secondary materials consisting of old or scrap copper, brass, rope, rags, batteries, paper, rubber, iron, steel and other old scrap, ferrous or nonferrous.

WHOLESALE DISPLAY: A display of commodities of a wholesale establishment.

WHOLESALE ESTABLISHMENT: A business engaged in the sale of commodities in quantity, usually for resale or business use, chiefly to retailers, other businesses, industries and institutions.