



STAFF REPORT

AGENDA ITEM:

CASE NUMBER: ZTA 18-001

L.U.C.B. MEETING: April 12, 2018

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, 3, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16 and 19 are relatively minor in nature and further explained in this staff report.
2. Item 1 will require construction debris landfills in the Heavy Industrial zoning districts to obtain a Special Use Permit from the Memphis City Council or Shelby County Board of Commissioners rather than be permitted by right. It will also require a 500-foot separation between landfills and schools and parks.
3. Item 4 will require a public hearing for any change in the controlling interest in ownership of a used car lot that has received a Special Use Permit from the Memphis City Council or Shelby County Board of Commissioners.
4. Item 9 will amend the opening paragraph of the Medical, University and Midtown Overlay Districts to clearly stipulate that the use tables of these districts apply, regardless if there is any new construction.
5. Item 14 will require signs to be posted along the portions of a street subject to a Residential Corridor Deletion application.
6. Item 17 provides that the Planning Director, rather than the Building Official, shall issue written interpretations of the Zoning Code (the UDC). The latter's focus is primarily on the Building Code.
7. Item 18 will allow an up to 10% increase to a building setback to be processed administratively; currently, only *decreases* of up to 10% are permitted.

RECOMMENDATION

Approval

Staff Writer: *Josh Whitehead*

E-mail: josh.whitehead@memphistn.gov

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

1. 2.5.2 and 2.6.4D(2)(c) (new section): Landfills

During the deliberations for the expansion of a construction debris landfill at the corner of Thomas and Stage in Frayser earlier this year (OPD Case No. PD 17-14 for Memphis Wrecking Co.), the applicant’s agent stated he would investigate sites zoned Heavy Industrial in an effort to locate a property that would permit a construction debris landfill “by right” without the need to obtain a zoning entitlement through a public hearing process. This culminated with a public meeting held by the applicant in Hickory Hill where several “by right” sites within that neighborhood were allegedly discussed. This, in turn, resulted in a six-month moratorium passed by both the Memphis City Council and the Shelby County Board of Commissioners that affects any construction debris landfills that would be permitted by right in the Heavy Industrial zoning districts. When the Board of Commissioners passed its version of the moratorium, its members asked for several pieces of information to accompany any ordinance that would be promulgated pursuant to the moratorium. As this zoning text amendment is the ordinance resulting from that moratorium, responses to those inquiries are listed below.

a. History of the Zoning Code.

During its deliberations on the landfill moratorium on January 22, 2018, the Board of Commissioners asked for a history of how the zoning code has treated construction debris landfills over the years. See table below; the 1972 Zoning Code made no distinction between construction debris and sanitary landfills and required a Special Use Permit for both in both industrial zoning districts unless operated by a municipal government. In 1981, the Zoning Code was amended to reflect a new type of landfills, construction debris landfills, and permitted them by right in both industrial zoning districts. This was further changed with the current Zoning Code, which allows construction debris landfills by right in only the Heavy Industrial zoning district.

| Code | Type of Landfill | Light Industrial Zoning District | Heavy Industrial Zoning District |
|-----------|-------------------------------|---|----------------------------------|
| 1972 Code | All Landfills* | Not permitted unless operated by a municipality | Special Use Permit |
| 1981 Code | Construction Debris Landfills | By Right | By Right |
| 1981 Code | Sanitary landfills | Special Use Permit | Special Use Permit |
| 2018 Code | Construction Debris Landfills | Special Use Permit | By Right |
| 2018 Code | Sanitary Landfills | Special Use Permit | Special Use Permit |

*The 1972 Zoning Code made no distinction between construction debris landfills and sanitary landfills.

b. Location of Heavy Industrial Zoning Districts

The areas shown in red in the map below indicate the location of the Heavy Industrial zoning district in Memphis and unincorporated Shelby County. The significant vacant parcels within these red areas are as follows:

- i. Woodstock, just south of the Millington City Limits
- ii. Woodstock at Fite Road and US 51
- iii. Cordova, Macon and Berryhill Roads
- iv. Cordova, near and around Fisher Steel Road
- v. Frank Pidgeon Industrial Park

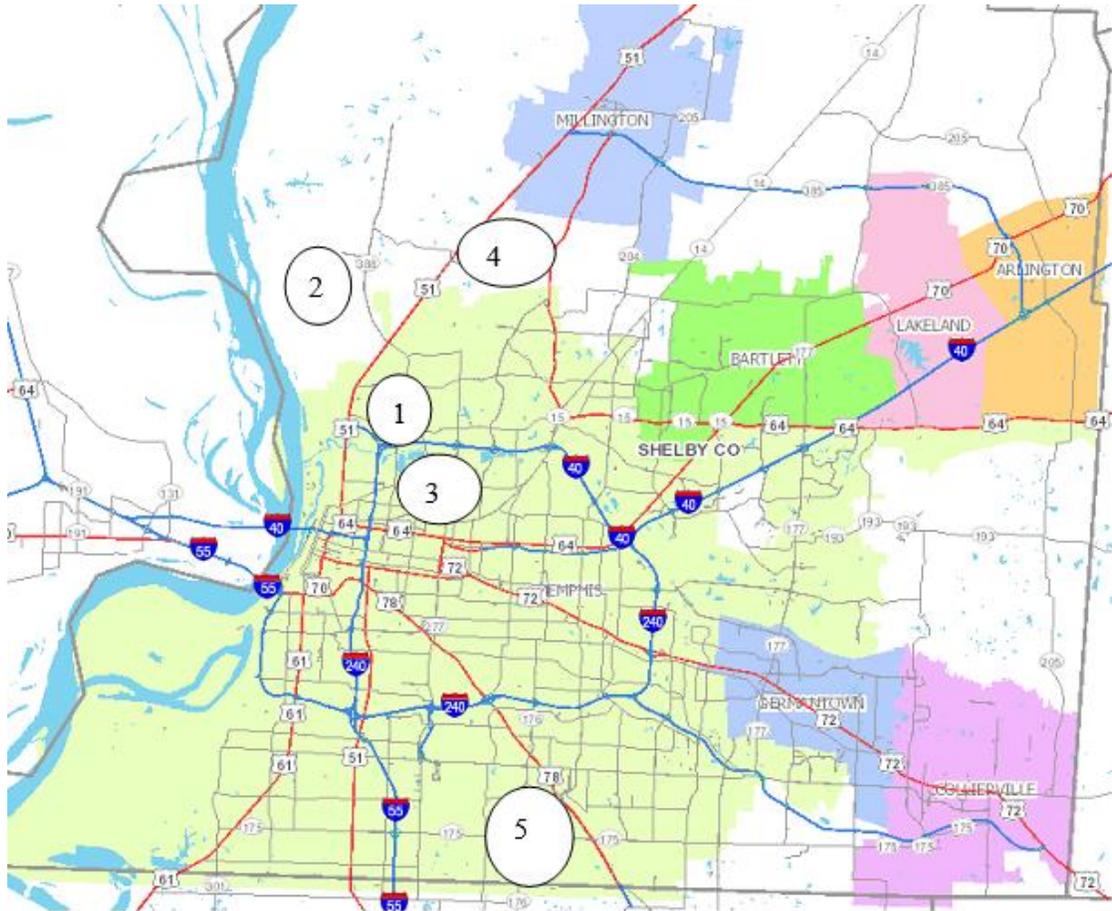


c. Hazardous Waste

The Unified Development Code highlights several hazardous uses that require review under the Special Use Permit process, such as radioactive waste storage, waste incineration and others, but the Tennessee Department of Environment and Conservation (TDEC) is the primary government agency that regulates hazardous waste. TDEC has a tiered system for landfills based on the toxicity of the materials being stored at the landfill.

d. Capacity of Existing Landfills

The map below shows the landfills that fall under the jurisdiction of the Office of Planning and Development, the Unified Development Code, the Memphis City Council and the Shelby County Board of Commissioners. Below is a list of the names of the landfill, as well as the date they are expected to reach capacity.



1. **Memphis Wrecking Co., Class III:** capacity date: ca. 2025
2. **North Memphis Landfill – Fullen Dock, Class III:** capacity date: ca. 2030
3. **Chandler Demolition, Class III:** currently only open to Chandler
4. **Republic (formerly BFI) North Shelby Landfill, Class I** capacity date: ca. 2140
5. **Republic (formerly BFI) South Shelby Landfill, Class I:** capacity date: ca. 2055

The recommendation below would be to require a Special Use Permit for construction debris landfills in both the Light and Heavy Industrial zoning districts, which is the current requirement for sanitary landfills under the UDC. This will involve changing the symbol for Construction Debris Landfills in the EMP, Light Industrial, zoning district in the Use Table from a solid box (“■”) to a hollow box (“□”). This recommendation also proposes to change the use known as “Construction Debris Landfill” to “Construction **and Organic** Debris Landfill” since both are regulated similarly by the State.

In addition, a new section of the Code is recommended that would mandate a 500-foot separation between all types of landfills and schools and parks, a requirement that the Code currently contains for buffers between landfills and residential areas (which is found in Item 2.6.4D(2)(b)). This would involve the addition of a new Item, 2.6.4D(2)(c), which would read:

2.6.4D(2)(c): Landfill excavation or filling shall not be located within a minimum of 500 feet of any school or park, as measured from the property line of the landfill excavation or filling site to the property line of the school or park.

2. 2.5.2: Other Items related to the Use Table

Sub-Section 2.9.3I and Section 12.3.1 (the definitions section) includes solar farms in the list of items that fall under the definition of “major utilities.” However, under the Use Table in Section 2.5.2, solar farms are listed as separate uses and permitted by right in many more districts than major utilities. The following corrective action will address this:

Minor utilities, **except as listed below**
Major utilities, **except as listed below**

Also, “message therapy” under “retail sales and service” needs to read “message therapy:”

Hair, nail, tanning, ~~message~~ **massage** therapy and personal care service, barber shop or beauty salon

3. 2.6.1 and 12.3.1: Manufactured, Modular and Mobile Homes

Sub-Sections 2.6.1C and 2.6.1D contain use standards related to manufactured, modular and mobile homes. Section 12.3.1 contains definitions of these terms. There is some inconsistency between these three sections, particularly with regards to mobile homes, which are described as structures built after 1976 in Sub-Section 2.6.1D and as structures built before 1976 in Section 12.3.1. The following language addresses this inconsistency:

2.6.1C(8) (new section): **See Section 12.3.1 for distinctions between manufactured and modular homes.**

12.3.1: **MOBILE HOME, CONFORMING: see Sub-Section 2.6.1D.**

12.3.1: MOBILE HOME, **NONCONFORMING**: A structure manufactured before June 15, 1976, that is not constructed in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, (42 U.S.C. § 5401 et seq.). It is a structure that is transportable in one or more sections that in the traveling mode is eight body feet or more in width and 40 body-feet or more in length, or, when erected on site, is 320 or more square feet and that is built on a chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes any plumbing, heating, air conditioning and electrical systems contained in the structure.

4. 2.6.3P(3)(h) (new section): Ownership of used car lots

Under the current ordinance, any new car lot requires the issuance of a Special Use Permit outside of the industrial zoning districts. However, one concern that the City Council has expressed during its last few reviews of used car lots is the efficacy of the conditions placed on the Special Use Permit when a change in ownership occurs. The language proposed below would require the approval of a Major Modification for any change in ownership of a used car lot:

Any vehicle sales facility that both requires the issuance of a Special Use Permit under this Code and is primarily or solely engaged in the sales of used vehicles shall require a major modification if the controlling interest of its ownership changes. During its review of the major modification request, the Land Use Control Board shall review whether the original conditions of approval, as well as the use standards contained in this Code, are being met. Furthermore, the Land Use Control Board may amend the conditions to ensure the approval criteria for special use permits contained in Section 9.6.9 of this Code are met. For the purpose of this section, the term “primarily or solely engaged in the sales of used vehicles” shall be defined as any car sales facility where the sales of used vehicles constitute 50% or more of its annual sales, measured by the most recent calendar year available.

5. 2.9.3C: Emergency shelters for schools

This section lists the acceptable accessory uses for schools. This proposal would add **“emergency shelters”** to the list of acceptable accessory uses for schools.

6. 4.5.4B(1)(a) and 4.5.4B(2)(c): Alternative parking plan

This section contains two minor issues related to punctuation and grammar:

4.5.4B(1)(a) has a semicolon and a period at the end:

...structure or use served by such parking lot);.

4.5.4B(2)(c) has a “the” and “this” right next to each other:

...the number of required parking spaces per ~~the~~ this development code for each such use, and the number of parking spaces proposed to be jointly used.

7. 4.5.5D(1)(b): Parking abutting residential districts

This section stipulates that all parking lots must have a perimeter landscaped island around them if they abut residential districts. However, this should read *single-family* residential districts since many multi-family residential districts also have parking lots. In other words, a commercial parking lot should not need screening against multi-family parking, nor should multi-family parking lots be buffered from one another. This is the approach currently taken by the UDC in its required landscape buffers (see the table in Section 4.6.5, which requires no buffers between RU-, multi-family, and CMU-, commercial, districts). The following language is proposed:

4.5.5D(1)(b): The perimeter of all parking and vehicular use areas adjacent to a **single-family** residential district must provide a Class III buffer (see Section 4.6.5).

8. 4.6.9: Approved planting list

This section of the Code includes a list of acceptable trees to be planted as part of the required streetscape and landscape plans for development. According to the Memphis Tree Board, the seedless emerald ash is susceptible to an insect, the emerald ash borer, that not only destroys those trees but other species, as well. Many cities are prohibiting the further planting of this ash tree; the recommendation is to eliminate it from the acceptable tree list:

| | | | |
|-----------------------------------|--|------|--|
| Seedless Green Ash (N) | Fraxinus pennsylvanica lanceolata | Fast | "Marshall's Seedless," "Newport," "Summit" |
|-----------------------------------|--|------|--|

9. 8.2.2A, 8.3.3A and 8.4.3A: Applicability of the Medical, University and Midtown Overlays

These three sections, each at the beginning of the three overlay districts, stipulate when the regulations of the overlay districts are triggered. For the most part, these sections state that the overlays do not apply until and unless there is new building construction or major renovation. The legislative intent was that the massing provisions of the overlays would not be triggered until there was new construction but that the use regulations of the overlays would take immediate effect. The following amendments will address this discrepancy:

8.2.2A: All new building construction; **however, the list of permitted uses in Section 8.2.5 shall apply to all sites within the District.**

8.3.3A: All new building construction; **however, the list of permitted uses in Section 8.3.11 shall apply to all sites within the Overlay.**

8.4.3A: All new building construction; **however, the list of permitted uses in Section 8.4.7 shall apply to all sites within the Overlay.**

10. 8.4.8D: Reference to the Midtown Overlay height standards map

The footnote indicated with "****" at the bottom of this section contains a reference to the Midtown Overlay height standards map, which should read 8.4.9, not 8.4.7:

*** Maximum Height governed by the Height Map at Section 8.4.7 **8.4.9.**

11. 8.5.5A: Residential Corridors

This section needs two minor edits as follows:

8.5.5A: Through the rezoning process (see Chapter 9.5), any resident in the City of Memphis or unincorporated portion of Shelby County may file an application, accompanied by a fee approved by the Memphis City Council and Shelby County Board of Commissioners, with **the** Planning Director requesting that a street or section of a street be designated as a Residential Corridor or a previously designated segment **be** he deleted.

12. 8.8.3B: Flood Insurance Rate Map reference

This section of the UDC references the Federal Emergency Management Agency's ("FEMA") flood maps that establish, among other things, the 100-year flood plain. According to the City Engineer's Office, the specific reference to a date found in this section of the Code is inappropriate since some of FEMA's maps were approved before that date and some, including Letters of Map Revision ("LOMRs") were approved after that date. The City Engineer's Office suggests replacing a specific date with "most current" as provided below:

8.8.3B: The Areas of Special Flood Hazard identified on the **most current** City of Memphis and Shelby County Federal Emergency Management Agency, Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Number 47157C, ~~dated February 6, 2013~~, along with all supporting technical data, are adopted by reference and declared to be a part of this Chapter.

13. 8.9: Fletcher Creek Overlay

This section of the Code highlights regulations specific to the Fletcher Creek Overlay. When adopted by the Memphis City Council and Shelby County Board of Commissioners in 2003 (as Ordinances Nos. 5007, 5008 and 5009), the Fletcher Creek Overlay included both the Fletcher Creek and Young Creek Basins; however, the map included in the narrative portion of the Code (the UDC), as well as the map portion of the Code (the Zoning Atlas) include only the Fletcher Creek Basin. The revised map below should replace the existing map at the top of Chapter 8.9:

Figure 1: Proposed Map of the Fletcher Creek Overlay:

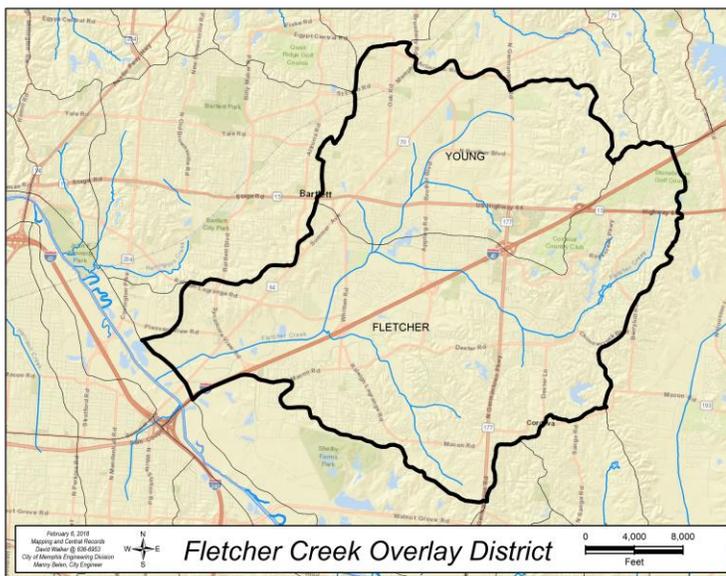


Figure 2: Map of Fletcher Creek Overlay currently found in the UDC:

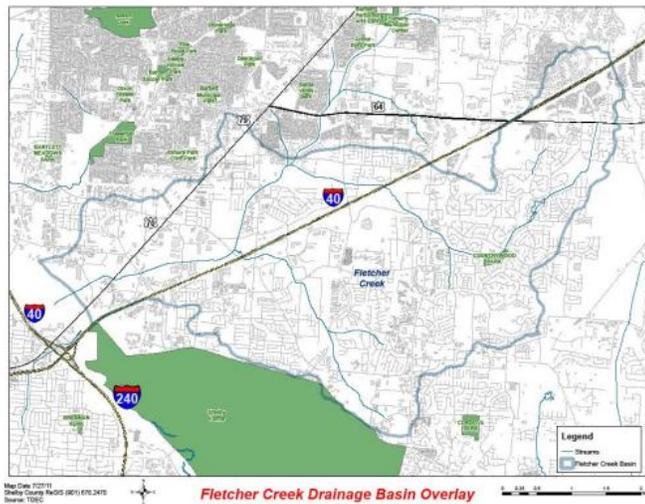
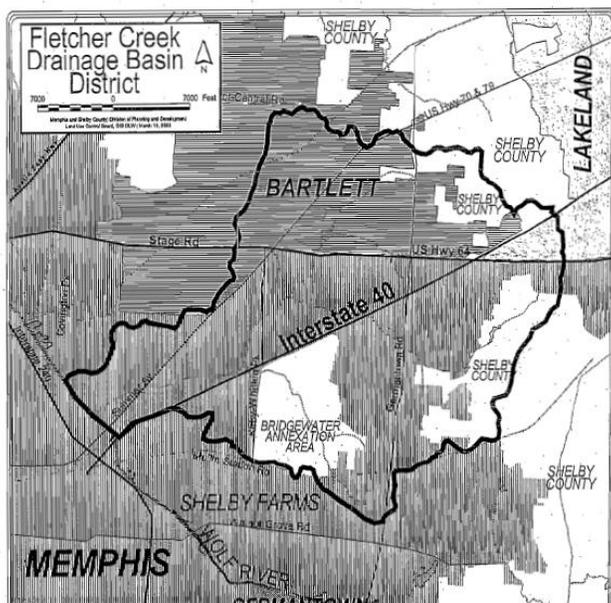


Figure 3: Map of Fletcher Creek Overlay found in the 2003 Fletcher Creek Ordinances:



14. 9.3.4A: Sign posting for Residential Corridor deletions

This section of the Code includes various levels of notice for different applications. Currently, it does not require a sign to be posted in the vicinity of the area subject of a residential corridor deletion. Residential corridors lie along those streets identified by the Memphis City Council that require a 2/3 vote of the body before any non-residential rezoning may take place along the street. This proposal would not only require a sign to be posted along a residential corridor that is proposed to be added or deleted, but also add "Residential Corridors" to the notice table. Since it is essentially a rezoning, this proposal simply involves adding "**Residential Corridor**" to the notice required for "Zoning Change." This proposal also adds a cross-reference to Chapter **8.5** in the notice table.

15. 9.3.6E and F: Holds by the Applicant

These two sections may be deleted since they've been made moot by the 30-90 day holds provided for each type of application and found throughout Article 9 (see, as an example, Sec. 9.5.7).

~~E. The application shall move forward to the agenda of the appropriate review body or, if not moved to the appropriate agenda within six months, may be withdrawn by the Planning Director.~~

~~F. At the request of the applicant, the Land Use Control Board, the Board of Adjustment or the Landmarks Commission may defer a case for one month, in addition to any permitted deferrals as provided in this Article. Additional deferrals are prohibited and will constitute a withdrawal.~~

16. 9.8.2C: Revocation of SAC application

This section of the Code currently prohibits any abutting property owner from withdrawing his or her support for a street or alley closure after an application has been filed. This early vesting period is rather burdensome in that it does not account for parties who sign an application well before an application deadline and have had a change in heart. A more sensible approach would be to allow those abutting property owners who will be deeded a section of right-of-way to withdraw their consent at any point up to the Land Use Control Board hearing. The proposed language below addresses this:

9.8.2C: After **the Land Use Control Board holds its final public hearing** on an application has been filed with the Planning Director, the withdrawal of consent to the closure by an abutting property owner **who will be deeded portion of the vacated right-of-way** is prohibited.

17. 9.20, 9.1.6C and 9.1.7C: Written Interpretations

The Code provides the Building Official authority with regards to building permits, administrative site plans, temporary permits and sign permits, yet Chapter 9.20 also provides the Building Official to interpret the balance of the Code. This section should be amended to allow the Planning Director the authority to interpret the Code in consultation with the Building Official, City Attorney and County Attorney. The following sections will require amendments to effectuate this change:

9.20.1: When uncertainty exists, the **Planning Director** ~~Building Official~~, after consultation with the ~~Planning Director and the City or County Attorney~~ **and, where applicable under this Code, the Building Official**, shall be authorized to make all interpretations concerning the provisions of this development code.

9.20.2B: The **Planning Director** ~~Building Official~~ established specific submittal requirements for a written interpretation request (see Application for requirements).

9.20.3: Planning Director ~~Building Official~~ **Action**

- A. The **Planning Director** ~~Building Official~~ shall review and evaluate the request in light of the text of this development code, the Zoning Map, any plans to be considered (see Chapter 1.9) any other relevant information;
- B. Following completion of the technical reviews by staff, the **Planning Director** ~~Building Official~~ shall render an opinion.
- C. The interpretation shall be provided to the applicant in writing.

9.20.4: The **Planning Director** ~~Building Official~~ shall maintain an official record of all interpretations and shall provide a copy of all interpretations to the **Building Official** ~~Planning Director~~. The record of interpretations shall be available for public inspection during normal business hours.

This proposal will also involve deleting “written interpretations” from the list of duties performed by the Building Official in Sub-Section 9.1.7C and adding it to the list of duties performed by the Planning Director in Sub-Section 9.1.6C:

9.1.6C

8. Final plat; Demolition by neglect; and
9. Administrative deviations; **and**
- 10. Written interpretations.**

9.1.7C

2. Sign permit; **and**
3. Certificate of occupancy; ~~and~~
- ~~4. Written interpretations~~

18. 9.21.2A(1): Setback Deviations

This section of the Code deals with the administrative approval of encroachments into building setbacks. It currently states that the Planning Director may grant an up to 10% encroachment into either a maximum or minimum setback. For instance, a 4-foot building addition may be approved administratively on a house that has a 40-foot setback and a new apartment building may be 22 feet from the curb rather than the maximum 20 feet. However, this section does not deal with decreases for maximum setbacks; in other words, if a house sits on a lot with a 40-foot *maximum* setback, the Planning Director could not approve a 4-foot addition. The following language corrects this unintended discrepancy:

9.21.2A(1): Setback encroachment – increase **or decrease** of up to 10% of the maximum permitted setback and **increase of** up to 10% of the minimum permitted setback...

19. 12.3.1 and 12.3.4: Definitions

12.3.1 is the regular definition section of the Code. The following are recommendations for this section that were not covered above.

MASONRY: Masonry includes brick, concrete block, natural and cut stone and traditional cementitious stucco that is applied over a concrete masonry base.

PLANNING DIRECTOR: The Administrator ~~Director~~ of the Memphis and Shelby County Office of Planning and Development, or his or her designee. In the absence or vacancy of the office of the Administrator ~~Director~~ of the Office of Planning and Development, the Director of the Memphis and Shelby County Division of Planning and Development or his or her designee shall be deemed as the Planning Director insofar as the administration of this Code is concerned (see also Section 9.1.6).

12.3.4 is the sign definition section of the Code. The following are recommendations for this section:

COMPLEX: A group of a specific number of lots or number of dwelling units, neighborhood, park, school, or governmental use.- (this definition has two periods at its end).