



Memphis and Shelby County Office of Planning and Development

CITY HALL, 125 N. MAIN STREET, SUITE 468; MEMPHIS, TN 38103-2084

July 3, 2012

To: Chairman Edmund Ford, Jr.
Members of the Planning and Zoning Committee of the Memphis City Council

From: Josh Whitehead, Planning Director

RE: Additional amendments to the Unified Development Code

Please be advised that the following amendments proposed to the Unified Development Code (the "UDC") postdate its approval by the Memphis and Shelby County Land Use Control Board. All of the following items are included in the staff report prepared for this Zoning Text Amendment.

The following items were added as a friendly amendment to the approval of the UDC by the Land Use Control Board. The specific language was developed after their approval and ***included*** in the ordinance that has been forwarded to you.

1. Home Occupations for Group Instruction: Section 2.7.4
2. Conditional Use Permit process: Chapter 9.24

The following items are suggested by the Office of Planning and Development and are ***not included*** in the ordinance that has been forwarded to you. Amendments, as they relate to the earlier proposed set of amendments are indicated in ***bold, underline typeface*** for additions and ~~strikethrough typeface~~ for deletions.

1. **2.5.2 (Use Table)**: The old Zoning Code considered tattoo *parlors*, *psychics*, *palmists* and *mediums* as general retail; thus, these uses were permitted in all commercial zoning districts. Under the UDC, however, these uses have a specific line in the Use Table and are only permitted by right in the CMU-3, CBD, EMP and IH districts by right and in the CMU-2 district by issuance of a Special Use Permit. The original proposal was to delete the line that read "tattoo, palmist, psychic or medium," but that would have enabled these uses to go in all commercial zoning districts by right. The proposal with this memo would be to retain this line in the Use Table and make the following two changes: allow these uses in the CMU-2 district ***by right*** (solid square) and allow these uses in the CMU-1 district by issuance of a **Conditional Use Permit** by the Board of Adjustment. This will allow a case-by-case look at these uses in the lowest commercial district, the CMU-1 district. One example of a neighborhood commercial center with CMU-1 zoning is Broad Avenue. This will necessitate the creation of a **new symbol** for Conditional Use Permits, a key at the top of the Use Table and a new Sub-Section **2.5.2D** that explains the Conditional Use Permit process.
2. **2.5.2C and 2.5.2 (Use Table)**: As discussed above, a new symbol will be created for Conditional Use Permits. In addition to this change, the *Significant Neighborhood Structure* process is proposed to be converted from the Special Use Permitting process,

which can take 4-6 months, to the Conditional Use Permitting process, which only takes 1-2 months. The Significant Neighborhood Structure process was created to make it easier to utilize non-residential properties in residential zoning districts that could be renovated for particular office and retail uses. This change, which is the result of comments made during the June 27, 2012, meeting, is in line with the ability of the Board of Adjustment to grant changes to non-conforming uses and use variances (see commentary on Sections 10.2.5 and 9.22.6 below). This change will involve the following two amendments:

- Rephrasing the language at the top of the Use Chart:
+ = **Conditional Use Permit** ~~Special Use Approval~~ – Significant Neighborhood Structure
 - 2.5.2C **Conditional Use Permit** ~~Special Use Review~~ – Significant Neighborhood Structures (+)
Indicates a use that may be permitted in the respective district only where approved by the **Board of Adjustment** ~~governing bodies~~ in accordance with Chapter **9.24** ~~9.6~~, **Conditional Use Permit** ~~Special Use and Planned Development Review~~. The Significant Neighborhood Structure provisions are intended to protect and preserve existing non-residential neighborhood structures that are important to the historical, architectural, cultural or civic character of the neighborhood by allowing for nonresidential uses within residential zoning districts following certain criteria as a way to provide an economically viable means to preserve the landmarks. Significant neighborhood structures shall be designated by utilizing the provisions of Section **9.24.9** ~~9.6.18~~.
 - Moving the language of Section **9.6.18** to Section **9.24.9**, changing all references of “9.6.18” throughout the Code to “9.24.9” and replacing all references of the “Land Use Control Board and governing bodies” within this section to the “Board of Adjustment.”
3. **2.5.2 (Use Table)**: The Use Chart is also proposed to be amended to change *construction debris landfills* from a use by right (solid square) to a use by **Special Use Permit** (hollow square) in the EMP (Employment/Light Industrial) zoning district. This will allow the City Council and/or County Board of Commissioners to review individual requests for these kinds of landfills in this zoning district.
 4. **2.6.2D(7), etc.**: TDOT references: Consistent with other sections of the UDC, the references to the *TDOT Long Range Transportation Plan* shall be removed from Sub-Section 2.6.2D(7), which may be in conflict with the MPO Long Range Transportation Plan. References to TDOT Long Range Transportation Plans should also be removed from Item **2.6.4D(2)(n)**, Paragraph **3.8.6A(7)**, Sub-Section **4.4.2C**, Paragraph **6.1.3A(9)**, Sub-Section **8.5.3A**, Item **9.7.3A(1)(c)**, Item **9.7.3B(1)(c)**, Item **9.7.4A(1)(c)** and Paragraph **9.7.6G(2)**.
 5. **2.6.3J(1)(c)**: During the public hearing on June 27, 2012, a citizen commented that this section of the UDC permitted gas pumps and tanks to be no closer than 20 feet of a residential district. Since 50 feet is the standard distance from single-family residential for many similar uses in the UDC, the following language is proposed for this section:

No sign of any type or any gasoline pump or tank shall be located within 20 feet of **any** a residential district. **Furthermore, no gasoline pump or tank shall be**

located within 50 feet of any single-family residential district.

6. **2.7.5E:** Add “**family day care home**” and “**group day care home**” to the first portion of this sentence, which would allow these smaller forms of day care as accessory uses to places of worship. This sentence already permits the largest form of day care, a “child care center” to be permissible accessory uses to places of worship. However, these smaller forms of day care should not be subject to the requirement that the lot size be at least 20,000 square feet; Section 2.6.2B, which covers day care facilities, only requires 20,000 square foot lots for child care centers, the grouping of day care facilities with the most children

7. **3.7.2, 3.8.5, 3.8.6:** The tables in these sections contain a proposed footnote (Footnote 1) that states that maximum building setbacks and required building frontages for apartments and stacked townhouses only apply to the CBID (downtown) and Zone 1 (areas of Midtown and South Memphis inside the Parkways). In addition to these two urbanized areas, the **University District Overlay** should also be added, which would require more urban-form apartment buildings in this area, as well. Proposed new language for Footnote 1 would thus read:
 1. Front (max) and required building frontage only apply to those parcels in the CBID, **University District Overlay** or Zone 1 depicted on Map 1 of Section 4.9.14 (i.e. inside the Parkways) and shall be measured from and along any abutting right-of-way and any internal drive onto which the buildings front.

8. **3.11.1:** This section deals with pre-existing buildings that lie on streets that have been designated for urban frontages. Essentially, this section states that such buildings may expand to up to 50% of their existing footprint without necessitating the triggering of the various provisions of the urban frontage designation. The proposed language would stipulate that only the building setback and building frontage provisions of the urban frontage designations would be exempt from these sites; other issues, such as transparency (the percentage of windows along the façade) would apply.
 - 3.11.1 Applicability
Any development where a maximum setback applies that involves an addition to a nonconforming structure or the construction of a new building(s) on a nonconforming site with an existing building and the addition or new construction represents an increase of more than 50% of the existing building footprint area. Additions and new construction that represents an increase of less than 50% of the existing building footprint area are not subject to the **building setback, building frontage, floor elevation or floor height** provisions of Sub- Section 3.10.2E, Section 3.10.3 or Articles 7 or 8 of this Code. In no instance shall maximum setbacks, nor this Chapter, apply to townhouses and multi-family buildings subject to Section 3.7.2 or permitted nonresidential uses subject to Section 3.7.3, provided that said buildings were constructed prior to January 1, 2011, and would otherwise be deemed conforming structures. See Chapter 10.8.

9. **5.2.11:** This section deals with the design speed of new minor streets during the subdivision process. The proposal is to change 30 mph back to **25 mph**.

10. **7.1:** A new Sub-Section “I” shall be inserted into the opening Chapter for the Special Purpose Districts that will state that developments in the SCBID and Uptown districts shall install the same streetscape plates that are applicable throughout the rest of Memphis and Shelby County:

I. Streetscape Plates. Site plans submitted pursuant to this Article shall reflect the streetscape plates of Section 4.3.3, unless an alternative is approved pursuant to the standards of this Article. The appropriate streetscape plate for a site shall be determined by the Office of Planning and Development based on the proposed land use of the subject site and its equivalent zoning district according to Section 4.3.3.

In addition, each sub-section of Chapter 7.2, the SCBID district, refers to “equivalent streetscapes approved by OPD.” A reference to the new section proposed above is suggested in Paragraphs **7.2.2F(2)**, **7.2.3G(2)**, **7.2.4F(2)**, **7.2.5F(2)**, **7.2.6F(2)**, **7.2.9E(2)** (new language in **bold, underline**):

Parking lots and garages shall be landscaped with Plate A-6, Plate A-7 (see Section 7.2.8) or an equivalent streetscape approved by the Office of Planning and Development (**see Sub-Section 7.1I**).

11. **8.4.11**: The Midtown Overlay District was approved immediately after the UDC, but before the UDC took effect. As such, it contains many redundancies that were proposed to be deleted with this set of amendments. One of these sections, however, deals with streetscape plates that should be reinserted into the Midtown Overlay to make the document as self-contained as possible. This not only aligns with the Medical and University District Overlays, which contain their own streetscape plates, but it also makes the Midtown District Overlay easier to read and understand. So, a new Section 8.4.11 is now proposed that would essentially duplicate the streetscape plates and language found in Section 4.3.3, as amended, into the Midtown Overlay (as Sub-Section 8.4.11**A**). A reference to 4.3.4, which deals with exceptions to those streetscape plates, will also be provided in a new Sub-Section 8.4.11**B**.
12. **9.3.2**: Neighborhood notification: (1) reduce the number of lots in a subdivision that triggers a neighborhood meeting from 50 to four (ie, “minor subdivisions”) (Para. 9.3.2A(4)) and (2) add a method to notify residents in multi-family dwellings (Sub-Section 9.3.2B):

9.3.2 Neighborhood Notification and Meeting

- A. At least ten days, but not more than 120 days, prior to a hearing before the Land Use Control Board or governing bodies, the applicant shall provide an opportunity to meet with representatives from neighborhoods adjacent to the development site which the hearing involves:
 1. Zoning changes not in compliance with any plans to be considered (see Chapter 1.9);
 2. Special use permit and major modification to a special use permit; ~~and~~
 3. Planned development outline plan or major modification to a planned development outline plan; and
 4. **All** subdivisions **except minor subdivisions** containing at least fifty lots.
- B. Where applicable, the applicant shall contact the following to determine the need and method for discussing the proposed project: 1) the officers of any neighborhood or business associations registered with the City of Memphis Office of Community Affairs whose boundaries include properties within 1,500 feet of the subject property; 2) all current residents of single-family

and two-family dwellings within the notification area; 3) all property owners within the notification area, if different from the current residents, to determine the need and method for discussing the proposed project; **and 4) the rental or management offices of all multi-family dwellings within the notification area with a request that said rental or management office post the notice in a conspicuous location within a common area(s), including, but not limited to: entry doors, hallways, mailbox areas and laundry rooms.** The neighborhood notification requirements shall be the same as the mailed public notice requirements in 9.3.4A. The notification shall also include the public hearing date of when the application will be heard by the Land Use Control Board or governing bodies. Documentation of the neighborhood notification shall be provided to the Office of Planning and Development and shall consist of a copy of the letter mailed to all parties, the address labels to whom letters were mailed and a map of the notice area. Neighborhood meetings are the sole responsibility of the applicant. If a neighborhood meeting is held, documentation of its proceedings shall also be provided to the Office of Planning and Development. The applicant may request neighborhood organizations' contact information, if available, from the Office of Planning and Development.

- C. The purpose of the neighborhood notification and meeting is to inform the neighborhood of the nature of the proposed land use and development features and solicit comments.
- D. ~~The posted notice requirements of Sub-Section 9.3.4C shall not apply to hearings described in Sub-Section 9.3.2A above.~~

13. **9.3.4A:** Changes were proposed four sections of this table that could be interpreted to remove the requirement to mail notice for certain applications. This was unintended. Under new Special Use Permits, Special Use Major Modifications, new Planned Developments and Planned Developments Major Modifications; the "M-AO" designations will be changed back to "M." This will continue to provide for mailed notice to the Land Use Control Board, and if appealed to the City Council and/or Board of County Commissioners, those bodies as well.

14. **9.6.11:** Concept Plans

Currently, OPD requires concept plans, or conceptual site plans that indicate the general layout of buildings and roadways, to be submitted with all requests for planned developments. However, this requirement is found in the application materials and not in the UDC. The proposal below would codify the requirement found in the Planned Development application into the UDC.

9.6.11 Planned Development Special Requirements

The following additional requirements shall apply to all planned developments.

- A. Outline Plan Required
A complete application for approval of a planned development shall include an outline plan consistent with the requirements of this development code and **shall also include at least one conceptual site plan illustrating a possible development scenario incorporating the proposed land use entitlements and conditions of the Outline Plan and indicating the following:**

1. property boundary lines and dimensions, existing utilities and easements, roadways, rail lines and public rights-of-way, crossing adjacent to the subject property;
2. the proposed height, dimensions and arrangements of buildings on the property;
3. the type and location of proposed landscaping;
4. the location of points of ingress/egress (driveways), parking lots and loading areas on the site; and
5. any proposed substantial re-grading of the site and any significant topographical or physical features of the site including water courses or ponds.

15. 9.6.11E(2)(e)

This section, which was proposed with this set of amendments, permits the Planning Director to approve changes in use to approved Planned Developments, so long as the use is to one of a “higher classification.” This would allow too much discretion to be bestowed to staff without public notification; therefore, this section is now proposed to be **deleted**.

16. 9.6.14: Language that was proposed earlier that would allow Planned Developments and Special Use Permits to be extended after expiration is now proposed to be removed. Also, it has been the policy of OPD to set a five-year expiration for all Planned Developments if a final plan has not been submitted. The language below would codify that five-year expiration into the UDC.

9.6.14 Period of Validity

- A. Planned developments shall **expire five years after the approval of the outline plan unless a final plan is filed with the Office of Planning and Development within that five-year period** ~~in accordance with the outline plan.~~ Where applicable, an application for a time extension may be filed as a Major Modification and subject to Paragraph 9.6.11E(2). An application for a time extension **shall** may be filed **prior to** after the date of expiration and shall be subject to the provisions of Chapter 9.16. ~~A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~
- B. Excluding planned developments, special use permits shall be implemented within 24 months of final approval or such permits shall be void. **Where applicable, an application for a time extension may be filed as a Major Modification and subject to Paragraph 9.6.12B. An application for a time extension shall be filed prior to the date of expiration and shall be subject to the provisions of Chapter 9.16.** ~~The Land Use Control Board, however, upon application, may grant extensions in increments not exceeding two years upon a finding that the character of the neighborhood has not substantially changed since approval of the original special use that would require a public hearing as in the case of the original granting of the special use. Where applicable, an application for a time extension may be filed as a Major Modification. An application for a time extension or reactivation may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date~~

~~of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

- C. Excluding planned developments, if a special use permit has not been in use for any consecutive 24-month period, the permit shall be void. The applicant, at the time of a request for a certificate of occupancy, shall be responsible for providing proof to the Building Official of such continued use. ~~Where applicable, an application for a Major Modification may be filed to reactivate a special use permit. An application for such a reactivation may be filed prior to the after the 24-month period of discontinuance and shall be subject to the provisions of Chapter 9.16. Such a request for reactivation shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

The changes above will also necessitate the deletion of Footnote 5 in the table in Sub-Section 9.3.4A.

17. 9.7.6F and 9.7.7I(4)

Similar to restoring the requirement that a request for a time extension to PDs and SUPs be filed prior to the expiration date, the same is proposed for subdivisions. The two sections below address minor preliminary subdivision plans (9.7.6F) and major preliminary subdivision plans (9.7.7I(4)).

9.7.6F

An approved minor preliminary plan shall retain its validity for two years. An applicant may request an extension of time. Requests for extensions shall be submitted in writing to the Planning Director **prior to the expiration date**. The applicant shall indicate the reasons for the extension and the estimated time for finalizing the development. When granted, an extension shall be for a 24-month period. An application for a time extension ~~may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

9.7.7I(4) Time Extension

An applicant may request an extension of time. Requests for extensions shall be submitted in writing to the Planning Director **prior to the expiration date**. The applicant shall indicate the reasons for the extension and the estimated sequence for finalizing the development. When granted, an extension shall be for a 24-month period. An application for a time extension ~~may be filed after the date of expiration and shall be subject to the provisions of Chapter 9.16. A request for a time extension after the date of expiration shall require notification to all property owners within 500 feet of the subject property, or pursuant to Footnote 1 in Sub-Section 9.3.4A.~~

The changes above will also necessitate the deletion of Footnote 5 in the table in Sub-Section 9.3.4A.

18. **9.7.9A(3)(c)**: This section should be **deleted** in its entirety. This action requires the Land Use Control Board's approval; its inclusion in this section implies that the Planning Director may approve such setbacks administratively.

19. **9.22.6B(3)**: This section prohibits the issuance of a use variance for any use that is highlighted in the Use Table (Section 2.5.2) that requires a Special Use Permit (SUP) from the City Council and/or Shelby County Board of Commissioners. This language needs to be clarified, as it leaves room for interpretation as to whether use variances may be requested for a use in a zoning district in which it is prohibited but allowed in other zoning districts through the SUP process. Also, this section should also include language dealing with SUPs for Significant Neighborhood Structures since some structures do not qualify as Significant Neighborhood Structures but the use itself may nevertheless warrant a use variance.

Use Variances and Special Use Permits. No use variance may be requested for any use that requires issuance of a Special Use Permit by the legislative bodies in the zoning district of the subject property. See Article 2 for uses requiring Special Use Permits.

20. **10.2.5**: A Change in Nonconforming Use Permit should be required for all changes in use, even those that do not require structural changes. See proposed language to Section 10.2.5 below:

10.2.5 Change in Use

~~A. No Structural Alterations~~

~~Where no structural alterations are made in a building of a nonconforming use, such use may be changed to a use of a similar or higher classification (see Priv. Acts 1921, ch. 165, sec 7 and Priv. Acts 1931, ch. 613, sec. 8). The Planning Director shall determine whether a use is of a similar or higher classification on a case-by-case basis. The Planning Director shall not approve a change in use for a use that requires the issuance of a Special Use Permit, according to Article 2, or for an off-premise sign. In addition, the Planning Director shall not waive any use standard as set out in Chapter 2.6 with the approval of a change in use.~~

~~B. Structural Alterations~~ **A.** Change in Nonconforming Use Permit

1. Board of Adjustment. ~~Where structural alterations are made in a building of a~~ **A** nonconforming use, such use may be changed to a use of a similar or higher classification with the issuance of a Change in Nonconforming Use Permit. The Board of Adjustment shall have the authority to issue Change in Nonconforming Use Permits.

2. Application. A Change in Nonconforming Use Permit shall be processed in the same manner as a variance request (see Chapter 9.22). However, the Findings of Fact of Section 9.22.6 shall be substituted for the following: The Board shall find that the proposed use will create no greater adverse impacts on the surrounding area than the existing use.

3. Conflict with other Provisions. A Change in Nonconforming Use Permit shall not be issued for any use that requires the issuance of a Special Use Permit, according to Article 2, or for an off-premise sign. In addition, the Board of Adjustment shall not waive any use standard as set out in Chapter 2.6 with the approval of a Change in Nonconforming Use Permit. However, a companion application for a variance(s) may be filed with an application for a Change in Nonconforming Use Permit.

B. Higher Classification

For the purpose of this Section, a use of a “higher classification,” per **Priv. Acts 1921, ch. 165, sec 7 and Priv. Acts 1931, ch. 613, sec. 8** ~~the 1921 and 1931 Private Acts,~~ shall be determined accordingly. Those uses at the top of the following list are of a higher classification than those at the bottom. See Chapter 2.5, Use Table, for specific uses within each classification. For proposed uses within the same following categories as the existing use, or for proposed uses not included within the following categories, the Planning Director or the Board of Adjustment shall determine whether a proposed use is of a higher classification as compared to the existing use on a case-by-case basis.

1. Open
2. Single-Family Residential
3. Multi-Family Residential
4. Civic
5. Commercial
6. Industrial

21. **10.8:** This section states that buildings that predated the establishment of the UDC and the overlay districts are not to be considered nonconforming structures unless they expand pursuant to Chapter 3.11. In this section, the reference to 8.11 (its current numbering), the Midtown Overlay, should be changed to **8.4** (its proposed numbering).
22. **10.14:** A new exemption for buildings that predated the UDC that have setbacks of less than two feet. Throughout the UDC, the minimum setback is set at two feet to allow for a wider sidewalk in urbanized areas. However, existing buildings with setbacks of less than two feet, which are found throughout the City, particularly downtown, do not meet this two-foot minimum setback. This places them as non-conforming structures, which can complicate these properties’ mortgages, financing and insurance. One recent example is the new building at Main and Gayoso, Barboro Flats. Its refinancing deal was complicated when it received a zoning compliance letter from my office stating that it was a non-conforming structure and, if destroyed by fire or act of God by more than 75%, it could not be rebuilt. This is indeed in line with our ordinance. The proposed language below would address these situations:

10.14 EXCEPTION FOR BUILDINGS WITH LESS THAN TWO-FOOT SETBACKS

Any minimum setback of two feet found in this Code shall not apply to any building that was built prior to January 1, 2011, with a setback of less than two feet, provided that said building would otherwise be deemed a conforming structure.

23. *Note: There may be additional items added to this list regarding items eligible for administrative deviations. A final memorandum with all proposed amendments will be disseminated to the City Council prior to their Third Reading on July 17.*