

For:  
Introduction and referral to Planning Commission: 10/3/22  
Planning Commission Review and Recommendation: 1/30/23  
Re-introduced: 2/6/23  
Public Hearing 3/6/23  
Adoption: 3/6/23  
Effective: 3/27/23 (expiration of 20 days after Mayor approves or override of veto, if applicable)

**THE TOWN OF MOUNT AIRY, MARYLAND**

**ORDINANCE NO. 2022-32**

**AN ORDINANCE TO AMEND PART II  
OF THE CODE OF THE TOWN OF MOUNT AIRY  
ENTITLED “GENERAL LEGISLATION,”  
CHAPTER 112 ENTITLED “ZONING”, ARTICLE V ENTITLED  
“PROVISIONS GOVERNING COMMERCIAL DISTRICTS”, SECTION 112-39.1  
ENTITLED “MIXED-USE DEVELOPMENT IN THE CC DISTRICT  
(MXU-CC) SPECIAL EXCEPTION”**

**WHEREAS**, the Town wants to preserve the transition from commercially zoned areas to other zoning classifications and land uses; and

**WHEREAS**, the Town wants to prevent incompatible land use with surrounding areas; and

**WHEREAS**, the Town wants to preserve areas that have been labeled as entrance points to town in our Comprehensive Master Plan or other town documents as an entry point; and

**WHEREAS**, the Town wants to bring uniformity in non -permitted uses to closely related zoning classifications;

**WHEREAS**, the Town Council believes it in the best interest of the citizens of the Town, and in order to meet the goals stated above, that certain uses be specifically prohibited uses with a Mixed Use Development in the Community Commercial (CC) District (MXU-CC), even though those uses might otherwise be permitted on property that is completely used commercially, due to the residential uses in close proximity to the commercial uses where development occurs pursuant to a MXU-CC special exception, such uses having been determined by the Town Council to be incompatible with residential uses in close proximity; and

**WHEREAS**, pursuant to the Town Code, Section 112-67, this ordinance was referred to the Town Planning Commission for a recommendation, and on January 30, 2023, the Town Planning Commission considered this ordinance and voted that the Town Council adopt this ordinance with modification; and

**WHEREAS**, after due and timely notice, a public hearing was held on this ordinance before the Town Council on March 6, 2023 pursuant to the Town Code, Section 112-66A and the Maryland Land Use Article, Section 4-203(b)(1).

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:**

Section 1: That Chapter 112, Article IV of the Code of the Town of Mount Airy be and is hereby amended to repeal and reenact with amendments Section 112-39.1 as follows:

**§112-39.1. Mixed-use development in CC District (MXU-CC) special exception.**

\* \* \*

D. Prohibited uses. The following uses shall not be permitted under an MXU-CC special exception:

(1) Pawn shops.

(2) Vape shops.

(3) Tobacco shops.

\_\_\_\_\_ (4) Dispensaries.

(5) Any business that sells cannabis for medicinal or recreational use.

(6) Any business that sells packaged goods.

DE. Minimum use percentage guidelines. Mixed-use developments shall incorporate the following residential-to-nonresidential ratios with respect to the site design and proposed land use:

(1) Required land use mix. Subject to the exception contained in Subsection DE(2) below, residential-to-nonresidential land use mix shall represent a ratio of no greater than 75% residential and no less than 25% nonresidential, and no less than 25% residential and no greater than 75% nonresidential, of the net developable acreage, and in the case of mixed use within a single building project shall be no greater than 75% residential and no less than 25% nonresidential of the square footage of the building.

(2) Notwithstanding Subsection DE(1) above, the Planning Commission may authorize greater land use mix ratios of up to but no greater than 85% residential and down to but no less than 15% nonresidential, or up to but no greater than 85% nonresidential and down to but no less than 15% residential, provided the applicant proves that:

(a) It is more likely than not that the development project would not be economically viable in the long term at any lower ratio of residential to nonresidential use, but would be economically viable in the long term at the proposed ratio, given current and forecasted market demands, the compatibility of surrounding land uses, the adequacy of public facilities and other similar factors;

(b) It is more likely than not that the development project meets or accomplishes the purposes, objectives and minimum standards of the zone, and other requirements of the Town Code;

- (c) It is more likely than not that the development project will be internally and externally compatible and harmonious with existing and planned land uses in the ~~MXD~~ and adjacent areas;
- (d) Existing and planned public facilities are adequate to service the proposed development proposed in the plan; and
- (e) The plan, if approved, would be in the public interest.

~~EF~~. Conditions to use. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of odor, dust, smoke cinders, gas, fumes, noise, vibrations, refuse matter or water-carried waste or otherwise create a nuisance.

~~FG~~. Building height. No structure shall exceed 40 feet in height.

~~GH~~. Location, dimension and buffer requirements. MXU-CC design shall promote a pedestrian-oriented environment through the placement of buildings in relation to public walkways, massing of buildings and related architectural elements, and give consideration as to the appropriate location of necessary amenities such as parking areas, trash containers, alleys, loading areas, etc. so as to limit them as much as possible from public view. During the concept plan phase of the development approval process, the applicant shall provide the Commission with a list of building setback requirements from public streets, or other structures within the development, and the property boundaries. Once approved by the Commission, these bulk requirements shall be included in the Pattern Book described in § 98-61~~BC~~ and govern development of the MXU-CC. Property boundaries that abut less intensive zoning districts shall contain suitable buffers to be delineated in the development plans and Pattern Book and approved by the Planning Commission. Buffer requirements may not be eliminated through consolidation of parcels outside the CC District.

~~HI~~. Development plans. Any new use or a change of use involving structural additions or changes and any site improvements, to include grading and parking, to be undertaken within the MXU-CC shall require submission and approval of site and/or subdivision plans, as may be applicable, pursuant Chapter 98, including § 98-61.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the 27th day of March, 2023 (expiration of 20 days after approval by Mayor or override of veto, if applicable).

Introduced the 3<sup>rd</sup> day of October, 2022.

Re-introduced the 6<sup>th</sup> day of February, 2023.

Enacted this 6<sup>th</sup> day of March, 2023 by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

ATTEST:

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Pamela Reed, Secretary

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Jason Poirier  
President of the Town Council

Approved this 6<sup>th</sup> day of March, 2023.

ATTEST:

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Pamela Reed, Secretary

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Larry Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.  
This 6<sup>th</sup> day of March, 2023.

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Thomas V. McCarron, Town Attorney