

For:  
Introduction and referral to Planning Commission: 2/6/23  
Planning Commission Review and Recommendation: 2/27/23  
Public Hearing: \_\_\_\_\_  
Adoption: \_\_\_\_\_  
Effective: \_\_\_\_\_ (upon expiration of 20 calendar days following approval by the Mayor or passage by the council over his veto by 4/5ths of the whole Council)

**THE TOWN OF MOUNT AIRY, MARYLAND**

**ORDINANCE NO. 2023-1**

**AN ORDINANCE TO AMEND PART I  
OF THE CODE OF THE TOWN OF MOUNT AIRY  
ENTITLED “ADMINISTRATIVE LEGISLATION,”  
CHAPTER 25 ENTITLED “PLANNING COMMISSION”,  
ARTICLE II ENTITLED “ADEQUACY OF FACILITIES”,  
SECTION 25-5 ENTITLED “ADEQUATE FACILITIES”;  
PART II OF THE CODE ENTITLED “GENERAL LEGISLATION”,  
CHAPTER 98 ENTITLED “SUBDIVISION OF LAND AND SITE PLAN REVIEW”,  
ARTICLE VI ENTITLED “CONSTRUCTION, ARCHITECTURE AND DESIGN STANDARDS”,  
SECTION 98-23 ENTITLED “REQUIRED OPEN SPACE/RECREATION AREAS TO BE  
DEDICATED,” ARTICLE XVII ENTITLED “SPECIAL DEVELOPMENT REGULATIONS”,  
SECTION 98-60 ENTITLED “TOWNHOUSE DEVELOPMENTS”; AND  
CHAPTER 112 ENTITLED “ZONING”, ARTICLE V ENTITLED  
“PROVISIONS GOVERNING COMMERCIAL DISTRICTS”, SECTION 112-37.2  
ENTITLED “MIXED USE DISTRICT (MXD)”**

**WHEREAS**, the Town Council has determined that certain changes in ordinances related to Mixed Use District (MXD) development would better balance the fostering of economic development within the Town, and the integrated and orderly development within the MXD so as to be in better harmony with surrounding existing land uses, especially in parts of the Town near the downtown area, while mitigating the impacts on existing neighboring improved properties; and

**WHEREAS**, this ordinance was introduced on February 6, 2023 before the Town Council at its regular meeting and pursuant to the Town Code, Sections 98-55 and 112-67 was referred to the Town Planning Commission for review and a recommendation; and

**WHEREAS**, on February 27, 2023, the Planning Commission took up this ordinance for review, discussion and recommendation and voted to provide a favorable recommendation, with amendment, to the Town Council; and

**WHEREAS**, pursuant to the Town Code, Sections 98-55 and 112-66A, and the Land Use Article of the Maryland Code, Sections 4-203 and 4-204, a public hearing was held on this ordinance on December 5, 2022, where public comment was taken by the Town Council.

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

Section 1: That Chapter 25, Article II of the Code of the Town of Mount Airy be and is hereby amended to repeal and reenact with amendments Section 25-5 as follows:

**§25-5 Adequate facilities**

\* \* \*

G. Parks and open space.

\* \* \*

(2) Until such time as the Town’s inventory of parks and open space meets the three acres per 100 persons standard, the Planning Commission may waive strict application of the park and open space adequacy standard, provided that each development project that is granted a waiver under this subsection provides at least three acres of park and open space per 100 persons, or a pro-rata portion thereof, of projected population from residents in the proposed development project, with the following exception:

\* \* \*

(c) A development project in the Mixed Use District (MXD) may be granted a waiver under this subsection if it provides a minimum of 4025% of the total gross acreage of the project for open space.

\* \* \*

Section 2: That Chapter 98, Article VI of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 98-23 as follows:

**§98-23. Required open space/recreation areas to be dedicated.**

\* \* \*

B. Open space development shall be required in the Town of Mount Airy and shall apply, along with the provisions of this section, to all residential zones, the Mixed Use District (MXD), or special ~~exemption~~ exception residential uses in commercial zones, and any development with a residential component located in the Downtown Zone (DTZ) in accordance with the requirements set forth in this Code applicable thereto, except that plats recorded before the adoption of this section are exempt from the provisions of this section.

\* \* \*

I. Except for developments with a residential component located in the Downtown Zone (DTZ), the total area of dedicated open space shall equal the amount by which all dwelling unit lots are reduced below the base zoning and shall meet the requirements outlined in Table 1 below.

**Table 1: Open Space Required For Various Densities**

<b>Base Density (du/ac)</b>	<b>Open Space Required (percentage of net developable acreage)</b>
Conservation/R-1	25%
R-2/RE	35%
R-3 – R-5	45%
R-5 – R-7	50%

- (1) The open space requirement for developments in the Mixed Use District (MXD) shall be a minimum of 4025% of the total gross acreage of the project.
  
- (2) A request for ~~a reduction~~ the adjustment of the above percentages can be made to the Planning Commission based upon any unique features of the parcel. The Planning Commission, in its discretion, may grant an adjustment to the percentages set forth in Table 1 and the open space percentage for the MXD as set forth in subsection (1) above if it is established by the ~~applicant~~ property owner that the adjustment will be more beneficial to the needs of the community for that specific parcel. In determining whether to grant such ~~a reduction~~ an adjustment, the Planning Commission may seek input from the Board of Parks and Recreation or from any other source that the Planning Commission deems beneficial. No MXD zoned parcel shall be granted a reduction that would lower the overall total open space for a parcel to an amount less than 20% of the total gross acreage of the project.

\* \* \*

Section 3: That Chapter 98, Article XVII of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 98-60 as follows:

**§98-60. Townhouse developments.**

A. Purpose and scope. The purpose and intent of this section is to provide minimum standards for townhouse developments to ensure the necessary amenities normally associated with such developments; to provide for design requirements that will promote appropriate and acceptable layout and grouping of such units to create a quality environment to live in; to provide minimum standards for the ownership and maintenance of common areas; to ensure adequate public improvements such as streets, walks, etc., are provided, to prevent detrimental effects on the use and development of adjoining properties; and to promote the health, safety and welfare of the residents of the development and neighborhood. The provisions of this section shall apply to all townhouse developments regardless of zoning district in which located, except that this section shall not apply to properties ~~in the Mixed Use District (MXD)~~ or approved as mixed-use developments within the CC (MXU-CC).

Section 4: That Chapter 112, Article V of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 112-37.2 as follows:

**§ 112-37.2 Mixed Use District (MXD).**

- A. Purpose. The purpose of the Mixed Use District (MXD) is to facilitate the integrated and orderly development of residential uses and nonresidential uses where high-quality mixed-use developments can occur in harmony with surrounding land uses. The MXD District is intended to provide attractive, residential neighborhoods containing a mixture of detached dwellings, semidetached dwellings, townhouses, and multi-family dwellings in an effort to promote housing diversity and a pedestrian-friendly environment. The MXD District is intended to provide flexibility to design residential neighborhoods in a safe, attractive and environmentally responsible manner.
- B. Objectives. One or more of the following objectives are sought in an MXD project, as applicable:
- (1) Provide a more attractive residential and nonresidential environment than would be possible through the strict application of conventional zoning district requirements.
  - (2) Encourage harmonious and coordinated development of sites that is consistent with the existing natural features, bicycle, pedestrian and vehicular circulation and compatibility with surrounding uses.
  - (3) Encourage development that is of excellent design and architecture with a mix of uses that will create synergy, efficiency of design, and an increase in walkability.
  - (4) Create a mixture of office, retail, cultural, art, recreational, and residential uses, along with restaurants, eateries and cafes, where all related structures, parking, and open spaces are designed to establish and maintain a cohesive community while protecting the character of surrounding neighborhoods and the overall natural environment.
  - (5) Expand the opportunity to support diversified housing options within an integrated site design of varying land uses.
  - (6) Encourage development of sites that promote and support a diverse artistic and if possible cultural entertainment area and that creates a community with live-work space for artists.
- C. Permitted uses. No building, structure, or land to which this zone applies shall be used and no building or structure shall hereafter be erected, structurally altered, enlarged or maintained on land to which this zone applies, except for one or more of the uses listed in Subsection C(1) below combined with one or more of the uses listed in Subsection C(2) below, up to a maximum of 25,000 square feet of floor space per single user, subject to site plan review and approval.
- (1) The following are the nonresidential permitted uses:
    - (a) Administrative, financial, real estate, bank and professional offices.
    - (b) Banks and savings and loan institutions.

- (c) Bed-and-breakfast establishments.
- (d) Bookstores, with the exception of adult entertainment.
- (e) Alcohol sales, breweries, distilleries, and wineries.
- (f) Coffee shops that may facilitate live performances or readings.
- (g) Crafts and artisan services.
- (h) Day-care facilities.
- (i) Drugstores, with the exception of medical dispensaries.
- (j) Educational centers.
- (k) Furniture upholstering and repair.
- (l) Health services, such as medical, dental, optical offices.
- (m) Hotels, with or without conference rooms.
- (n) Home occupations.
- (o) Laundry or dry-cleaning establishments.
- (p) Municipal government services.
- (q) Physical fitness facilities.
- (r) Professional offices.
- (s) Public buildings, structures and properties.
- (t) Recreational entertainment and amusements.
- (u) Restaurants and lunchrooms, including outside or sidewalk dining.
- (v) Retail sales and service, without outdoor storage, with the exception of dispensaries, pawn shops and vape shops.
- (w) Veterinary clinic, animal hospital, with indoor overnight boarding only as is required for veterinary treatment, but not for kenneling or vacation boarding.
- (x) Video rental establishments, with the exception of adult entertainment.

(2) The following are the residential uses permitted:

- (a) Townhouse.
  - (b) Dwelling, multifamily, to include apartments and condominiums.
  - (c) Duplex or semidetached dwelling.
  - (d) Single-family or detached dwelling.
- (3) Accessory uses. The accessory uses allowed in mixed-use developments shall be those uses and structures customarily accessory and incidental to any permitted principal use or authorized conditional use. Accessory uses shall be screened from public view by walls, fencing, landscaping, or a combination of the three.
- (4) Notwithstanding the limitations set forth above, one use may exceed 25,000 square feet up to 65,000 square feet of floor space. Any additional uses that exceed 25,000 square feet shall require Planning Commission approval.
- D. Special exceptions. The Board of Appeals may authorize the following principal uses as special exceptions in accordance with the provisions of Article **VIII**, § **112-62**:
- (1) Clubs, fraternal organizations and service organizations [§ **112-62F(3)**].
  - (2) Nursing home, including assisted living centers [§ **112-62F(4)**].
- E. Nonpermitted uses. The following uses shall not be permitted in the MXD Zone:
- (1) Pawn shops.
  - (2) Vape shops.
  - (3) Dispensaries.
  - (4) A business that primarily sells tobacco products or cannabis for personal or recreational purposes.
- F. 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. 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 total ~~gross~~ net developable acreage of the project.
    - (a) The developer shall propose a ratio of the overall mix in its pattern book and provide a table showing the number of acres proposed for nonresidential, residential, and relative land use mix percentage. The developer shall propose a ratio of open space to total gross acreage. (See § **98-23**.)
    - (b) The burden shall be on the developer to establish that the proposed ratio meets the overall intent of this zone in consideration of the project size, location, access to existing or planned community amenities, infrastructure and the character of the properties surrounding the project.

- G. 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.
- H. ~~Density, lot area and setback requirements of the MXD District: A maximum of eight dwelling units per total gross acre shall be permitted.~~

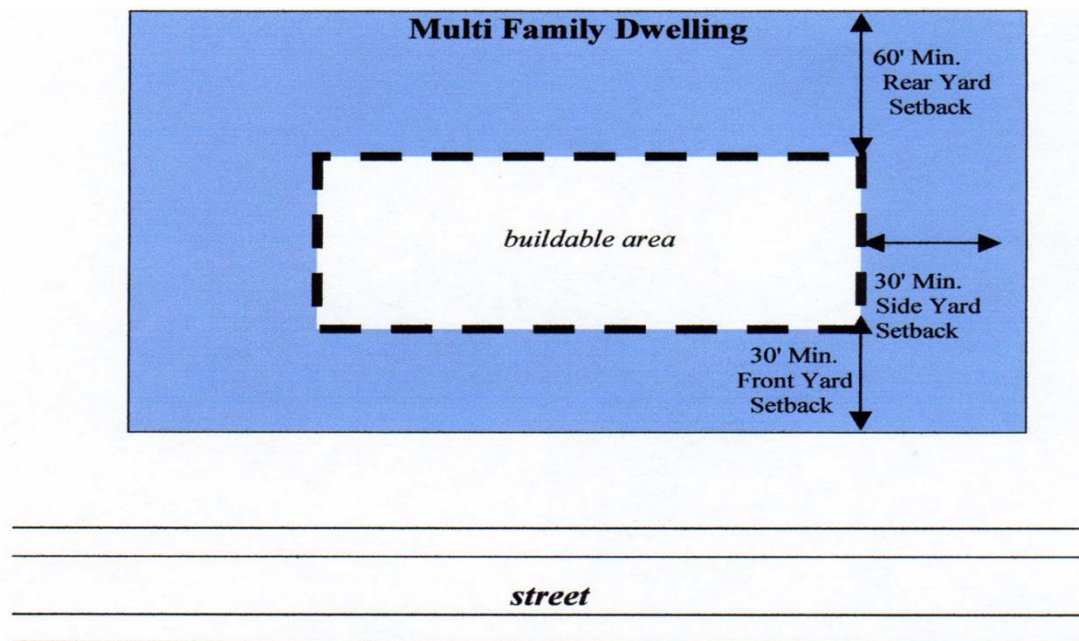
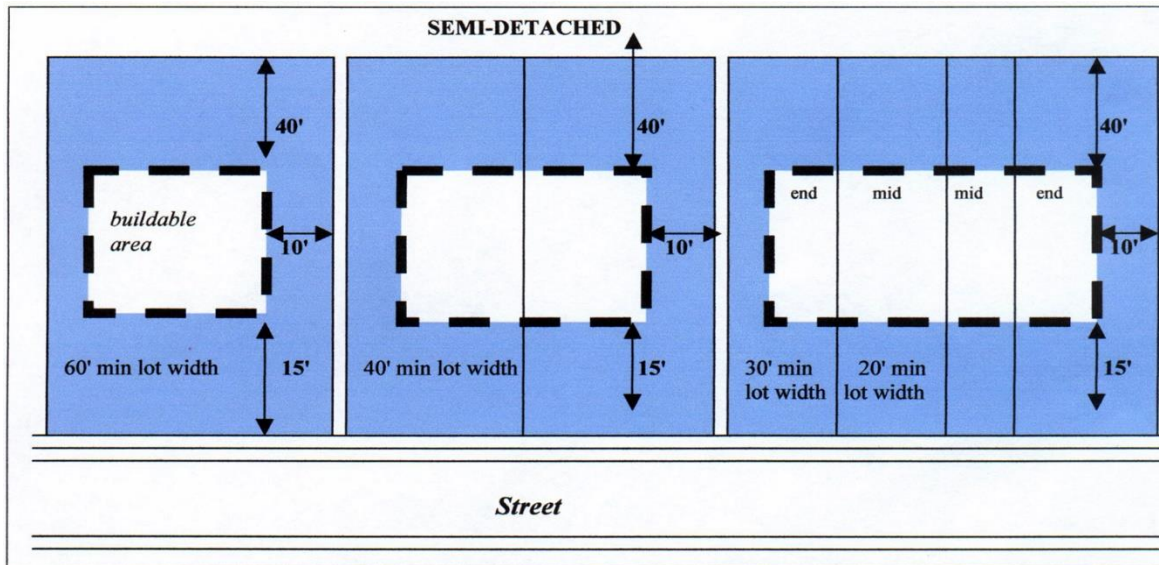
- (1) A maximum of 7 dwelling units per total net developable acre shall be permitted.
- (2) Maximum number of attached townhouses. No more than five dwelling units may be attached in any one townhouse group.
- (3) Lot size, width and yards. The minimum lot size, lot width and yard areas shall be the following for the various allowed residential housing options: as required by the zoning district in which the development is located, except when adjacent to collector or higher classification streets as designated on the Town Master Plan, the yard area abutting the street shall be at least 35 feet.
- (4) The following additional requirements shall apply:

<u>MXD District</u>	<u>Detached</u>	<u>Semidetached</u>	<u>Townhouse (mid-unit)</u>	<u>Townhouse (end-unit)</u>
<u>Minimum lot area* (square feet)</u>	<u>6,000</u>	<u>4,000</u>	<u>2,000</u>	<u>3,000</u>
<u>Minimum lot width (feet)</u>	<u>60</u>	<u>40</u>	<u>20</u>	<u>30</u>
<u>Front yard setback (feet)</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<u>Side yard setback (feet)</u>	<u>10</u>	<u>10**</u>	<u>N/A**</u>	<u>10**</u>
<u>Rear yard setback (feet)</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>

NOTES:

\*Minimum lot area does not include common areas such as parking and sidewalks.

\*\*Side yard setbacks are not applied where dwelling units adjoin a common lot line.



**MXD District Multifamily Dwelling**

<u>Minimum lot area (square feet/unit)</u>	<u>3,000</u>
<u>Front yard setback (feet)</u>	<u>30</u>
<u>Side yard setback (feet)</u>	<u>30</u>
<u>Rear yard setback (feet)</u>	<u>60</u>



(h) Setbacks and buffer requirements. Buffer requirements may not be eliminated through consolidation of parcels outside the MXD with parcels located within the MXD. Any residential or commercial structure that abuts a right of way for a state highway must leave 20 ft from the edge of the right of way to any property line. This extra 20 ft shall be placed in forest conservation.

(i) In the Mixed Use District (MXD), front yard setbacks within priority areas, especially along Center Street, shall be similar to the Downtown Zoning District with wide sidewalks and buildings near the street, or a distance equal to the average of the front yard setbacks for existing improved properties immediately adjacent to the subject property.

- I. Building height. No structure shall exceed 40 feet in height.
- J. Off-street parking and loading. There shall be provided in the MXD adequate off-street parking and loading areas in accordance with the requirements in Article II. Temporary storage of motor vehicles and motor equipment is subject to the requirements for off-street parking set forth in § 112-7F, related to paving.
- K. Location, and layout requirements. Mixed-use development 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.
- ~~L. Setbacks and buffer requirements. During the concept plan phase of the development approval process, the applicant shall provide the Planning Commission with a list of building setback requirements from public streets or other structures within the development and the property boundaries to be similar to existing individual zoning requirements. Once approved by the Commission, these bulk requirements shall be included in the pattern book described in § 98-61B and govern development of the MXD. 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 MXD with parcels located within the MXD. Buildings with commercial, townhomes, and/or apartments that abut an existing residential district must maintain a fifty foot yard buffer with no impervious area, except parking within half the yard distance.~~
  - ~~(1) In the Mixed Use District (MXD), front yard setbacks within priority areas, especially along Center Street, shall be similar to the Downtown Zoning District with wide sidewalks and buildings near the street, or a distance equal to the average of the front yard setbacks for existing improved properties immediately adjacent to the subject property.~~
- M.L. 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 MXD shall require submission and approval of site and/or subdivision plans, as may be applicable, pursuant the Chapter 98, including § 98-61.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the \_\_\_ day of \_\_\_\_\_, 2023 (upon expiration of 20 calendar days following approval by the Mayor or passage by the council over his veto by 4/5ths of the whole Council).

Introduced the 6<sup>th</sup> day of February, 2023.

Enacted this \_\_ day of \_\_\_\_\_, 2023 by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

ATTEST:

_____	_____
Pamela Reed, Secretary	Jason Poirier
	President of the Town Council

Approved this \_\_ day of \_\_\_\_\_, 2023.

ATTEST:

_____	_____
Pamela Reed, Secretary	Larry Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This \_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Thomas V. McCarron, Town Attorney