

For:  
Introduction and Referral to Planning Commission: 3/6/23  
Planning Commission Review: \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Adoption \_\_\_\_\_  
Effective: \_\_\_\_\_

**THE TOWN OF MOUNT AIRY, MARYLAND**

**ORDINANCE NO. 2023-8**

**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 “ADEQUATE PUBLIC FACILITIES”, SECTION 25-5 ENTITLED “ADEQUATE FACILITIES” FOR THE PURPOSE OF PROVIDING GUIDELINES FOR THE PLANNING COMMISSION TO GRANT AN OPEN SPACE INADEQUACY WAIVER UNDER SECTION 25-5G(2)**

**WHEREAS**, the Parks Board has certified that the Town’s parks and open space facilities are “inadequate” as defined in the Town’s Adequate Public Facilities Ordinance (APFO), Section 25-5G(1), applicable to all proposed development within the Town; and

**WHEREAS**, under the current APFO, if the Town is inadequate in terms of parks/open space, a development may not receive concept plan approval unless granted a waiver, and the current APFO does not allow for mitigation or payment of a fee in lieu to allow the development process to proceed during periods of inadequacy with respect to parks/open space; and

**WHEREAS**, Subsection G(2) allows the Town Planning Commission to provide a waiver to a development that itself provides a certain amount of open space as set forth therein depending on the use and/or zoning of the property in question; and

**WHEREAS**, Subsection G(2) does not contain any guidelines by which the Planning Commission is to consider and weigh to guide its decision on whether to grant an open space inadequacy waiver; and

**WHEREAS**, the Town wishes to adopt specific guidelines to aid the Planning Commission’s decision making on whether in any given case an open space inadequacy waiver is granted or denied; and

**WHEREAS**, this Ordinance was introduced at the Town Council meeting that occurred on March 6, 2023, and was referred to the Planning Commission for review pursuant to the Town Code, Section 98-55; and

**WHEREAS**, after review at its regular meeting on \_\_\_\_\_, the Planning

Commission voted to forward a \_\_\_\_\_ recommendation; and

**WHEREAS**, a public hearing on this Ordinance was duly noticed and advertised, and took place on \_\_\_\_\_; and

**WHEREAS**, the Town Council finds that the changes recommended in this Ordinance as set forth below are desirable and in the best interests of the Town and its residents and hereby adopts this ordinance on the date below indicated with an effective date also below indicated.

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

Section 1. That Part I, Article II, Chapter 25, Section 25-5 of the Code of the Town of Mount Airy is hereby repealed and reenacted as follows:

**§ 25-5. Adequate facilities.**

\* \* \*

G. Parks and open space.

(1) Parks and open space provisions are adequate if the Parks Department certifies that the ratio of parks and open space acreage to population will meet or exceed at least three acres per 100 persons, considering:

- (a) Existing population from existing homes;
- (b) Projected population from future building from residences approved at the preliminary plan stage;
- (c) Projected population from future building from residences under construction or from recorded lots from previously approved preliminary plans for which a permit could be issued at any time in the future;
- (d) Projected population from residents in the proposed development project.

(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 exceptions:

- (a) Only for developments located in the Downtown Zone (DTZ) with lots less than or equal to 15,000 square feet, the parks and open space requirement will be fully exempted.
- (b) Only for developments located in the Downtown Zone (DTZ) with lots greater than 15,000 square feet in accordance with the requirements set forth in this Code applicable thereto, a development project may be granted a waiver under this subsection as follows:

POS - Parks and open space required to be dedicated to the Town of Mount Airy, in acres

TA - Total gross acres of parcel

P - Projected number of resident persons added

CSF - Total gross commercial space in square feet being provided

- [1] Where providing three acres of parks and open space per 100 persons would equate to less than or equal to 5% of the total gross parcel acreage of the proposed development, then the development must provide the pro-rata share of three acres per 100 persons (no exceptions required); or

$$\text{If } \text{POS} < 0.05 \times \text{TA};$$

$$\text{POS} = (3/100) \times \text{P}$$

- [2] Where providing three acres of parks and open space per 100 persons would equate to more than 5% of the total gross parcel acreage of the proposed development, then the development must provide the pro rata share of 3 acres per 100 persons less 1 person for every 200 square feet of commercial space provided in the proposed development project, or 5% of the gross parcel acreage, whichever is greater, in order to qualify for the exception:

$$\text{If } \text{POS} > 0.05 \times \text{TA};$$

$$\text{POS} = (3/100) \times (\text{P} - \text{CSF}/200)$$

or

$$\text{POS} = 0.05 \times \text{TA};$$

whichever is greater.

- (c) A development project in the Mixed Use District (MXD) may be granted a waiver under this subsection if it provides 10% of the total gross acreage of the project for open space.

(3) In determining whether to grant or deny a waiver under Subsection G(2) above, the Planning Commission shall consider and weigh the following:

- (a) The number of new residents, if any, that the new development proposes;
- (b) The amount of open space proposed for the development and its percentage in relation to the net developable acreage of the entire development;
- (c) The extent to which the open space in the proposed development exceeds the minimum requirements for the development as set forth in Section 98-23 of the Town Code;
- (d) The magnitude of the Town's parks and open space deficit at the time that the waiver is under consideration;
- (e) The proposed development's effect on the Town's parks and open space deficit (e.g., will the proposed development add to or lessen, and if so by how much, or will the proposed development have no effect on the deficit) relative to the size, density and/or other relevant characteristics of the proposed development;
- (f) Whether the proposed development optimizes the proposed open space in consideration of the amount, nature, dimensions, quality and location of the open space within the proposed development, specifically in consideration of:
  - (i) Whether the open space and/or any of its proposed amenities (e.g., equipment, play equipment, gazebos, benches) enhances the quality of life of the residents of the development and/or Town residents outside the development;
  - (ii) Whether and to what extent the open space proposed on the development is "Green Space" as defined in Section 98-23 of the Town Code;

- (iii) Whether and to what extent the open space proposed on the development is in the form of larger parks, pocket parks, plazas, and/or a mix of types of open space;
  - (iv) Whether the proposed open space is suitable for multiple uses (e.g., active and passive recreation, programmed activities and events, conservation) and different user types (e.g., children, the elderly, families, special needs and/or the disabled);
  - (v) Whether the proposed open space addresses a critical Town need or shortage relative to (iv) above (e.g., active recreation);
  - (vi) Whether the proposed open space is located on non-buildable land;
  - (vii) The topography of the open space proposed;
  - (viii) The accessibility of the proposed open space in consideration of its proposed location within the development and in consideration of the Americans with Disabilities Act;
  - (ix) Whether the proposed open space provides connection to other open space within the development or to any larger network of open space or trails;
  - (x) Whether the proposed open space minimizes burdens on traffic and neighboring properties in consideration of its proposed location within the development;
  - (xi) Whether the proposed open space will be located on impervious surfaces; and
  - (xii) Whether the proposed open space embodies environmental sustainability best practices (e.g., energy and water conservation; green infrastructure as defined by the United States Environmental Protection Agency).
- (g) The type of development at issue (e.g., MXD, single family dwellings) and whether the proposed open space is suitable for the type of development at issue;

- (h) The effects of the proposed open space on property values within the development and of neighboring properties (i.e., as recognized by governmental and private sources, including the United States Environmental Protection Agency, that greater amounts and diversity of open space are correlated to greater property values, and open and green spaces in communities enhance the attractiveness of properties to prospective buyers and generate multiple economic benefits for local governments, homeowners and businesses);
  - (j) While not creditable as public open space, the qualities of any shared on-site open space (e.g., such as shared open space associated with apartments and townhomes), and private open space (e.g., provided by single family homes and their associated property sizes), that would contribute to the overall feel of open space within a community and development can be considered; and
  - (j) Any other factors that the Planning Commission deems relevant in consideration of a waiver specific to a proposed development.
- (4) The Planning Commission may reasonably impose conditions on the granting of any waiver under Subsection G(2) above.
- (5) The Planning Commission shall memorialize its determination to grant or deny a waiver under Subsection G(2) above, and its supporting rationale in reference to the guidelines enumerated in Subsection G(3) above, in a formal written memorandum, which shall be made available to the public.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the \_\_ day of \_\_\_\_\_, 202\_.

Introduced this 6th day of March, 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 \_\_\_\_\_, 202\_.

ATTEST:

\_\_\_\_\_  
Pamela Reed, Secretary

\_\_\_\_\_  
Larry Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This \_\_\_ day of \_\_\_\_\_, 202\_.

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