

For:
Introduction and Referral to Planning Commission: 8/5/19
Planning Commission Review: 8/26/19
Second referral to Planning Commission with revisions: 10/7/19
Public Hearing _____
Adoption _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2019-12

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"; AND 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"

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 as respects parks/open space; and

WHEREAS, Subsection G(2) allows the Town Planning Commission to provide a waiver to a development that itself provides 3 acres of open space for every 100 new residents that the development proposes, or a pro rata share thereof; and

WHEREAS, while purely industrial or commercial development is not hindered by the APFO open space provisions because such developments, proposing to add zero new residents, can qualify for the aforementioned waiver by providing zero open space, purely residential developments, and developments proposing mixed uses with residential components, must meet this threshold to qualify for a waiver; and

WHEREAS, the Town wishes to promote development in its downtown area, located in the Downtown Zone (DTZ), to otherwise promote mixed use development where appropriate, and to encourage as a part of such developments commercial development in order to promote economic activity within the DTZ and in commercial zones appropriate for mixed use development; and

WHEREAS, several properties in the DTZ and other properties that may otherwise be developed as mixed use, pursuant to the Mixed Use in the Community Commercial Zone special exception (MXU-CC), are not large enough to provide enough open space to meet the threshold to qualify for the Section 25-5G(2) exemption; and

WHEREAS, consequently, the Town Council proposes relaxing the standards for meeting the threshold to qualify for a waiver under Section 25-5G(2) for DTZ and MXU-CC properties in a way that will at the same time promote significant commercial components of such mixed use development projects; and

WHEREAS, in addition, when the Town Council enacted the MXU-CC special exception, it made such properties subject to the open space requirements contained in Section 98-23 of the Town Code, but with anticipation that new standards would be later adopted specific to such mixed use development; and

WHEREAS, the Town Council at this time now desires to implement the same open space requirements for MXU-CC development under Section 98-23 as it is now proposing to adopt under the APFO for qualifying for a Planning Commission waiver under Section 25-5G(2), again while at the same time promoting or giving incentive to significant commercial components of such mixed use development; and

WHEREAS, the Town Council finds that the changes recommended in this Ordinance are desirable and in the best interests of the Town and its residents.

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 exception:
- (a) Only for developments located in the Downtown Zone (DTZ) or which have a Mixed-Use Development in the Community Commercial (CC) District (MXU-CC) special exception and are proposed to be developed as a MXU-CC development 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:
 - (i) Where providing 3 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 3 acres per 100 persons in order to qualify for the exemption; or
 - (ii) Where providing 3 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.

Section 2. That Part 2, Article VI, Chapter 98, Section 98-23 of the Code of the Town of Mount Airy is hereby repealed and reenacted with amendments as follows:

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

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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 or special exemption residential

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uses in commercial zones, and any development with a residential component located in the Downtown Zone (DTZ) or which have a Mixed-Use Development in the Community Commercial (CC) District (MXU-CC) special exception and is proposed to be developed as a MXU-CC development 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.

* * *

- E. Generally, A a percentage of open space must be reserved as detailed in this section and is based on housing density. The denser a development is, the greater the amount of open space required will be. However, when the Planning Commission determines it appropriate, it shall recommend to the Town Council that such development shall be required to pay a fee in lieu of dedication of land. The Council, in such case, shall request the recommendation of the Board of Recreation and Parks. Any such fee shall be equal to the value of the land which otherwise would be required to be dedicated (based upon the average appraisal value of the site at its new or current zoning, whichever is higher) based upon any bona fide sale of the land to be developed that occurred within 12 months prior to preliminary subdivision approval or if there is no such sale, determined by an appraiser selected and paid for by the Town and reimbursed by the developer and approved by the Town Council. The fee shall be used for recreational purposes in the Town's park system and shall be paid prior to recording the final plat. The Planning Commission and the Board of Recreation and Parks shall make their recommendations, in writing, regarding the proposed open space, or fee in lieu thereof, and the final decision in each case shall be made by the Town Council.

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- G. Open space requirements for proposed developments to which this ordinance is applicable shall be as follows:

- (1) Except a set forth in Subsection 2 below, ~~T~~the total number of residential units allowable within an open space development shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional development. The total number of units allowed shall be determined using the following formula:

$$T = BD*[A - (U+R)]$$

Where:

T	=	Total units (dwelling units)
BD	=	Base density (dwelling units/acre)
A	=	Total site area (acres)
U	=	Unbuildable land as defined in Section II[1] (acres)
R	=	Road and utility right-of-way (acres)

(2) Developments with a residential component located in the Downtown Zone (DTZ) or which have a Mixed-Use Development in the Community Commercial (CC) District (MXU-CC) special exception and is proposed to be developed as a MXU-CC development in accordance with the requirements set forth in this Code applicable thereto, shall provide open space as follows:

(a) Where providing 3 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 3 acres per 100 persons; or

(b) Where providing 3 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.

H. Except for developments with a residential component located in the Downtown Zone (DTZ) or which have a Mixed-Use Development in the Community Commercial (CC) District (MXU-CC) special exception and is proposed to be developed as a MXU-CC development in accordance with the requirements set forth in this Code applicable thereto, Lot width, rear, front and side yard setbacks may be reduced to 25% of the requirements in the base zoning, subject to the following rules:

- (1) Lot size may be reduced to 25% of base density but no smaller than 1/8 of an acre;
- (2) Conservation zoned lots may be reduced up to 75%; and
- (3) R-1 zoned lots may be reduced by 50%.

I. Except for developments with a residential component located in the Downtown Zone (DTZ) or which have a Mixed-Use Development in the Community Commercial (CC) District (MXU-CC) special exception and is proposed to be developed as a MXU-CC development in accordance with the requirements set forth in this Code applicable thereto, 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

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

- (1) A request for 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 if it is established by the 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 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.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the _____ day of _____, 2019.

Introduced this 5th day of August, 2019.

Enacted this _____ day of _____, 2019 by a vote of _____ in favor and _____ opposed.

ATTEST:

Jason Poirier, Secretary

Larry Hushour,
President of the Town Council

Approved this _____ day of _____, 2019.

ATTEST:

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY

This _____ day of _____, 2019.

Thomas V. McCarron, Town Attorney

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