

For:
Introduction and referral to Planning Commission: 1/6/20
Planning Commission Review and Recommendation: 4/27/20
Re-introduction w/ amendment: 5/4/20¹
Public Hearing _____
Adoption _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2020-1

**AN ORDINANCE TO AMEND PART II
OF THE CODE OF THE TOWN OF MOUNT AIRY
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 SECTION 98-61 ENTITLED “MIXED USE
DEVELOPMENT WITHIN CC DISTRICT (MXU-CC)”;
CHAPTER 112 ENTITLED “ZONING”,
ARTICLE V ENTITLED “PROVISIONS GOVERNING
COMMERCIAL DISTRICTS” AND CREATING NEW
SECTION 112-37.2 ENTITLED “MIXED USE DISTRICT” (MXD),
AMENDING ARTICLE VIII ENTITLED “BOARD OF APPEALS”,
SECTION 112-62 ENTITLED “SPECIAL EXCEPTIONS”**

WHEREAS, the Planning Commission and Town Planning Staff have recommended the creation of a Mixed Use District (MXD); and

WHEREAS, the Town’s current zones do not provide within a single zoning district the kind of flexibility and mixture of residential and non-residential uses that the Planning Commission and Town Planning Staff envision for the MXD; and

WHEREAS, the Town Council has determined that the MXD would foster economic development within the Town and would facilitate the integrated and orderly development of commercial, office, employment, and residential uses on vacant tracts of commercial, industrial, and high density residential zoned land within the Town of Mount Airy where high quality mixed use developments can occur in harmony with surrounding land uses, especially in parts of the downtown area, among other benefits; and

¹ In interim since original introduction on 1/6/20, Section 98-23 underwent some changes by virtue of Ordinance 2019-12.

WHEREAS, changes to Chapter 98 and to Section 112-62 have been determined to be necessary and desirable in light of the creation of this new zoning district; and

WHEREAS, this ordinance was introduced at the Town Council meeting that occurred on January 6, 2020 and, pursuant to the Town Code, Section 112-67, referred to the Town Planning Commission for review and recommendation; and

WHEREAS, the Planning Commission reviewed this ordinance at its regular meetings on January 27, 2020, February 24, 2020 and April 27, 2020, and at a workshop on February 6, 2020; and

WHEREAS, pursuant to Emergency Ordinance 2020-14, in response to the COVID-19 State of Emergency, the Town Council extended the 60 day deadline under Section 112-67 to make a recommendation as to this Ordinance to April 27, 2020 or be deemed to have approved same; and

WHEREAS, at its regular meeting on April 27, 2020, the Planning Commission recommended approval of this ordinance with modifications; and

WHEREAS, at its regular meeting on May 4, 2020, the Town Council reintroduced this ordinance as reflected above, with slight modification, and set a public hearing for _____ pursuant to the Town Code, Section 112-66A and the Land Use Article of the Maryland Code, Section 4-203(b), which was held on the aforementioned date.

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

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 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

Base Density (du/ac)	Open Space Required (percentage of net developable acreage)
Conservation/R-1	25%
R-2/RE	35%
R-3 – R-5	45%
R-5 – R-7	50%
<u>MXD</u>	<u>10%</u>

* * *

§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 District (MXU-CC).

* * *

§98-61. Mixed-use Development within CC District (MXU-CC) and Mixed Use District (MXD) developments.

- A. Purpose and scope. The purpose and intent of this section is to provide supplemental requirements for the approval of development plans for properties zoned in the CC District and in the Mixed Use District (MXD) in order to implement the mixed-use development as set forth in §§ 112-39C(12) and 112-62F(29), and in Section 112-37.2.
- B. Pattern Book. As part of the site plan phase of the development approval process, the applicant shall provide the Commission with a Pattern Book that will address the site planning, architectural, and signage requirements for the proposed development. Once approved by the Commission, the Pattern Book shall govern development of the ~~MXU-CC~~ mixed use development. The applicant will follow the Design Guideline provisions adopted by the Town of Mount Airy. The Pattern Book shall be prepared by a licensed professional landscape architect, architect, or engineer. The Pattern Book shall include, at a minimum, the following sections:
- (1) An introduction that shall contain:
 - (a) Description of the overall development.
 - (b) Market analysis for the proposed uses.
 - (c) Relationship between the proposed development and the existing Town limits.
 - (2) Site Planning Components
 - (a) Relationship of uses within the development.
 - (b) Focal points of the development and how they have been maximized.
 - (c) Vehicular and pedestrian connectivity within the development and to the Town, to include walking and cycling paths.
 - (d) Proposed recreational areas within and adjacent to residential areas, including proposed improvements to recreational areas to serve the intended residential population.
 - (e) Building and parking setbacks.
 - (f) Parking ratios per use shall be in accordance with § 112-7.
 - (g) Proposed service and loading spaces.
 - (h) Pedestrian oriented scale and design.

- (i) Any area utilized for outdoor storage, as defined in §112-71.
- (j) The locations for outdoor displays.
- (k) Drive through service location and layout.
- (l) Set back requirements from public streets, other structures within the development, the property boundaries and, with respect to property lines that abut less intensive zoning districts, buffers.

(m) 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. **[Edit note: probably belongs in Section 112-37.2K. Also need to determine if we want this section to apply to MXU-CC]**

(3) Architectural Design.

- (a) Architectural style and overall design principles.
- (b) Graphic examples of selected style.
- (c) Design details and materials.
- (d) Green initiatives.

(4) Landscape Architectural Design.

- (a) Public spaces.
- (b) Hardscape and softscape design details and materials.
- (c) Streetscape design.
- (d) Site furnishing details and products.
- (e) Landscape screening (perimeter buffers, parking lots, service and loading areas).
- (f) Lighting details and materials.

(5) Signage Plan. All sign regulations under Town Code Section 112-11 shall apply unless expressly waived by the Planning Commission or are otherwise expressly waived or made inapplicable by the provisions of this Code that apply to MXU-CC or the MXD.

(6) Management and Maintenance Program.

(a) For privately owned property.

(b) For common areas.

(7) Phasing of the Development.

(a) The anticipated timeframe when various milestones of the development are anticipated to be developed. Consideration as to balancing the development of various uses to maximize the fiscal benefit to the development and the Town should be given. In addition, consideration as to the availability of planned community amenities should be balanced with the development of retail services.

(b) The relative mix of uses and the development milestones and phasing of permits for each stage of development shall be determined to be reasonable in the discretion of the Planning Commission.

C. The Pattern Book shall be evaluated based on the Purpose and Objectives of the Mixed Use Development as outlined in § 112-39.1A and B or, as applicable, the Mixed Use District as outlined in § 112-37.2.

D. Approval process. A MXU-CC development shall follow the two-step approval process of concept plan and final site plan in accordance with Article VIII of this chapter. A development in the MXD shall follow the three step approval process of Concept Plan, Preliminary Plan, and Final Site Plan or Final Subdivision Plan in accordance with Articles VIII, IX or X of this Chapter, whichever shall be applicable. In addition, the Planning Commission may require a charrette(s) or special work session(s) to facilitate collaboration on the conceptual design and layout.

(1) An applicant shall submit all concept, preliminary (if applicable) and final plans to the Planning Commission for consideration, in order for the Commission to have sufficient information to determine the practicality and suitability of the proposed development.

(2) The Planning Commission shall hold at least one public hearing when considering the final plan (including the Pattern Book). *[Edit note: the MXD draft from Engineering said at concept and preliminary. Final is in this existing subsection]* The following notice shall be given:

(a) At least 30 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town.

- (b) The Property upon which a mixed-use development is proposed shall be posted conspicuously by a notice at least 24 inches by 36 inches in size, for at least 30 consecutive days before the date of the hearing.
 - (c) Notice of the hearing shall be sent by first-class mail to that person making application to the Commission no less than 30 days prior to the first scheduled hearing.
 - (d) At least 30 days prior to the first scheduled hearing, notice of the hearing shall be sent by first-class mail to those persons identified by the applicant as persons owning property contiguous to the property which is the subject of the proceeding. Notice shall be sufficient if given to the person shown as the owner on the tax rolls and sent to the address where tax bills are sent.
- (3) The Commission may approve or disapprove the ~~concept~~ final plan (including the Pattern Book) after a public hearing.
- (4) Should the Planning Commission determine that additional assistance to review an application is required, the Town may hire licensed professionals (such as a landscape architect, architect, and/or engineer) to assist in the review of the application. The cost of any outside professionals shall be paid for by the applicant. The Town shall make every effort to minimize all costs associated with any outside professional assistance.
- (5) Amendments to concept, or if applicable preliminary, plans must be approved by the Planning Commission in the following instances:
- (a) A change in use is involved;
 - (b) Increases in the height of building structures by 10 feet or more provided the increase does not exceed the building height standard set forth in § 112-37.2H or § 112-39.1F;
 - (c) Changes in the orientation or location of buildings or parking areas;
 - (d) Any decrease in the number of off-street parking spaces required by code or as agreed upon by the Planning Commission;
 - (e) An increase of nonresidential building floor area by more than 10% or by more than 5,000 square feet; and

(f) An increase in the number of residential dwelling units by more than 10% or more than five units.

(6) Any application for amendment of concept plans, preliminary plans and final site plans that must be approved by the Planning Commission must be submitted in accordance with Appendix A and Appendix E to this chapter.

(7) Elements of a concept, or if applicable preliminary, plan not materially affected by a proposed amendment may move forward in the development process while the amendment is processed and considered by the Planning Commission.

E. Drive-Through Services. Drive-Through Services permitted pursuant to § 112-39.1C(1)(c), (f), (h) and (k) and § 112-37.2C(1)(b), (f), (h) and (k) shall be subject to the following development standards unless the Planning Commission grants a variation pursuant to Section 98-49:

(1) Drive-through lanes and service windows shall be located only in the back or sides of buildings.

(2) Drive-through lanes shall not be located along the street frontage(s) of a building.

(3) A maximum of two lanes shall be permitted.

(4) Drive-through services must be designed so as to not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets, sidewalks, or drive aisles.

(5) Drive-through speakers shall not be audible from adjacent residential uses or residentially zoned properties.

(6) Drive-through canopies and other structures, where present, shall be constructed from the same material as the primary building and with a similar level of architectural quality and detailing.

F. Outdoor Storage Areas. Inventory shall be delineated on the Final Site Plan or Preliminary Subdivision Plan and shall be screened from view of public and private right(s) of way and adjacent property. Landscaping, or screening, will be required along the perimeter of the outdoor storage area in a manner acceptable to the Planning Commission. Only those outdoor storage areas approved on the approved Final Site Plan or Preliminary Plan shall be permitted in the MXD.

G. Seasonal Displays. Seasonal sidewalk displays shall be conducted in a manner which does not unreasonably interfere with vehicular or pedestrian traffic or with any other business establishment or residences.

Section 3. That Chapter 112, Article V of the Code of the Town of Mount Airy is hereby amended to enact new Section 112-37.2 of the Code 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 non-residential uses where high quality mixed use developments can occur in harmony with surrounding land uses.
- B. Objectives. The following objectives are sought in the MXD:
- (1) Provide a more attractive residential and non-residential 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 a reduction of vehicle miles traveled.
 - (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 cultural entertainment entity 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 non-residential permitted uses:
 - (a) Administrative, financial, real estate, bank and professional offices.

- (b) Banks and savings and loan institutions with or without drive-through service compliant with Section 98-61E.
 - (c) Bed and Breakfast establishments.
 - (d) Bookstores, with the exception of adult entertainment.
 - (e) Breweries, distilleries
 - (f) Coffee shops, with or without drive-through services compliant with Section 98-61E that may facilitate live performances or readings.
 - (g) Day-care facilities.
 - (h) Drugstores, with or without drive-through services compliant with Section 98-61E.
 - (i) Health services such as medical, dental, optical offices.
 - (j) Home occupations.
 - (k) Laundry or dry-cleaning establishments with or without drive-through service compliant with Section 98-61E.
 - (l) Physical fitness facilities.
 - (m) Public buildings, structures and properties.
 - (n) Recreational Entertainment
 - (o) Restaurants and lunchrooms, without drive-through service.
 - (p) Retail sales and service.
 - (q) Short-term rentals or Airbnb's
 - (r) Veterinary Clinic, Animal Hospital.
 - (s) 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 Semi-Detached 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) The Planning Commission may consider uses that exceed 25,000 square feet up to a maximum of 65,000 square feet of floor space per single user.

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) Hotels. [General standards, § 112-62E] *[Edit note: Special standards?]*

(3) Nursing Home, including assisted living centers. [§ 112-62F(4)]

E. Minimum Use Percentage Guidelines. Mixed Use Developments shall incorporate the following residential to non-residential ratios with respect to the site design and proposed land use:

(1) Required Land Use Mix. Residential to non-residential land use mix shall represent a ratio of no greater than 75% residential and no less than 25% non-residential, and no less than 25% residential and no greater than 75% non-residential, of the net developable acreage.

(a) The developer shall propose a ratio of the overall mix in its concept plan and provide a table showing the number of acres proposed for non-residential, residential, and relative land use mix percentage. The developer shall propose a ratio of open space to net developable acreage (see reference 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 planning community amenities, infrastructure and the character of the properties surrounding the project.

F. 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.

G. Density. A maximum of seven dwelling units per net developable acre shall be permitted.

H. Building Height. No structure shall exceed 40 feet in height or a maximum of three stories. *[Edit note: MXU-CC allows 40 feet without saying how many stories. Should that be corrected?]*

I. 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 Section 112-7F, related to paving.

- J. 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.
- K. 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 Section 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.
- 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 Section 98-61.

Section 4. That Chapter 112, Article VIII of the Code of the Town of Mount Airy, Section 112-62 is hereby amended to repeal and enact with amendments as follows:

§ 112-62. Special exceptions.

* * *

- F. Specific standards for special exception uses. In addition to the general standards for all special exceptions as contained in § 112-62E, the following specific standards for particular uses must be met prior to the granting of a special exception:

* * *

- (3) Clubs, fraternal and service organizations. In R-5, ~~and~~ R-7 and Mixed Use Districts and subject to the requirements of the district in which located except as herein provided:
- (4) Convalescent or nursing home. In R-5, R-7, ~~and~~ CC and Mixed Use Districts and

subject to the requirements of the district in which located except as herein provided.

* * *

(30) Hotels. Section 62-F(30). [Edit note: Specific standards?]

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that
this Ordinance shall take effect on the _____ day of _____, 2020.

Introduced on the 6th day of January, 2020.

Reintroduced with slight amendment on the 4th day of May, 2020.

Enacted this _____ day of _____, 2020 by a vote of _____ in favor and
_____ opposed.

ATTEST:

Jason Poirier, Secretary

Larry G. Hushour
President of the Town Council

Approved this _____ day of _____, 2020.

ATTEST:

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This _____ day of _____, 2020.

Thomas V. McCarron, Town Attorney

B2286380