

For:
Introduction _____
Public Hearing _____
Adoption _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2017-__

WITH REVISIONS BY PLANNING COMMISSION AND STAFF THROUGH 06/27/2017
FOR WEBSITE POSTING AND PUBLIC REVIEW 07/10/2017

**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 TO CREATE NEW
SECTION 98-61 ENTITLED “MIXED USE DISTRICT (MXD) DEVELOPMENTS”;
CHAPTER 112 ENTITLED “ZONING”,**

**ARTICLE V ENTITLED “PROVISIONS GOVERNING
COMMERCIAL DISTRICTS” AND CREATING NEW
SECTION 112-37.2 ENTITLED “MIXED USE (MXD) DISTRICT”,
AMENDING ARTICLE VIII ENTITLED “BOARD OF APPEALS”,
SECTION 112-62 ENTITLED “SPECIAL EXCEPTIONS”,
AND AMENDING ARTICLE X ENTITLED
“WORD USAGE AND DEFINITIONS”, SECTION
112-71 ENTITLED “DEFINITIONS”**

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 has envisioned 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

WHEREAS, changes to Chapter 98 creating supplemental development plan approval requirements and process for the MXD separate and apart from the townhouse regulations set forth in Section 98-60, and to

Section 112-62 concerning specific standards for the granting of special exceptions have been determined to be necessary and desirable in light of the creation of this new zoning district.

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

Section 1. That Chapter 98, Article XVII of the Code of the Town of Mount Airy is hereby amended to repeal with amendments Section 98-60 and to create new Section 98-61 of the Code 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 or special exception residential uses in commercial zones except that the provisions of this Section shall not apply in the Mixed Use District (MXD), and except that plats recorded before the adoption of this section are exempt from the provisions of this section.

* * *

Section 2. That Chapter 98, Article XVII of the Code of the Town of Mount Airy is hereby amended to repeal with amendments Section 98-60 and to create new Section 98-61 of the Code 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 zoned within the Mixed Use District (MXD).

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§98-61. 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 Mixed Use District (MXD) in order to implement the objectives of the MXD as set forth in Section 112-37.2.

B. Pattern Book. As part of the Preliminary 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 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.

(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.

(3) Architectural Design.

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

(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.

- (a) 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 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 Section 112-37.2.

D. Approval process. 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 or special work session to facilitate collaboration on the conceptual design and layout.

(1) An applicant shall submit all Concept, Preliminary 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 a public hearing when considering the Concept Plan or Preliminary Plan (including the Pattern Book). The following Notice shall be given:

- (a) At least 15 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 15 consecutive days before the date of the hearing.
- (c) Notice of the hearing shall be sent by first-class mail to those persons making application to the Commission no less than 15 days prior to the first scheduled hearing.
- (d) At least 15 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 Preliminary 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 Plans and 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 112-37.2 G.
- (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) The greater of an increase of non-residential building floor area by more than ten (10) percent or more than five (5,000) square feet, and
- (f) The greater of an increase by more than ten (10) percent or more than five (5) units the number of residential dwelling units.

(6) Any application for amendment of 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 of the Town of Mount Airy Code.

E. Drive-Through Services. Drive-Through Services permitted pursuant to Section 112-37.2C(1)(c), (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.

[Note: if the mixed use special exception in CC Zone ordinance (2017-7) passes, the section above may need changing]

Section 3. That Chapter 112, Article VI 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, recreational, and residential uses where all related structures, parking, and open spaces are designed to establish and maintain a cohesive community while protecting the character of surrounding neighborhoods.
- (5) Expand the opportunity to support diversified housing options within an integrated site design of varying land uses.

C. Permitted Uses. No land to which this zone applies shall be used and no set of buildings or structures in a mixed use development 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, or up to a maximum of 65,000 square feet as permitted by, and under the conditions set forth in, subsection C(4) below, subject to site plan review and approval.

⊕ (1) The following are the non-residential permitted uses:

- (a) Accessory uses and buildings customarily incidental to any permitted uses in this section.
- (b) Administrative, financial, real estate, bank and professional offices.
- (c) Banks and savings and loan institutions with or without drive-through service compliant with Section 98-61E.
- (d) Bed and Breakfast establishments.
- (e) Bookstores, with the exception of adult entertainment.
- (f) Coffee houses, with or without drive-through services.
- (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) Restaurants and lunchrooms, without drive-through service.
- (o) Retail sales and service.
- (p) Veterinary Clinic, Animal Hospital.
- (q) 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) Dwelling, Semidetached.
- (d) Dwelling, Detached.

(2) (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.

(3) (4) The Planning Commission may consider uses that exceed 25,000 square feet up to a maximum of 5,000 square feet of floor space per single user only upon the finding that the applicant has met the burden of proof that the use and relative scale of the building as proposed more likely than not:

- (a) Meets or accomplishes the purposes, objectives and minimum standards of the zone, and other requirement of the Town Code;
- (b) Will be internally and externally compatible and harmonious with existing and planned land uses in the MXD and adjacent areas; and
- (c) Existing and planned public facilities are adequate to service the proposed development contained in the plan; and
- (d) The plan, if approved, would be in the public interest.

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]

(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. Subject to subsection E(2) below, residential to non-residential land use mix shall represent a ratio of no greater than 75% residential and no less than 25% non-residential of the net developable acreage after deduction for Open Space as set forth in Subsection E(3) below, and in the case of mixed use within a single building shall be no greater than 75% residential and no less than 25% non-residential of the square footage of the building.. –The non-residential land use component may not be represented by less than two single user building structures. Multi-family dwelling structures shall be counted fully toward the residential component of the ratio. 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 open space and relative land use mix percentage. The burden shall be on the developer to establish that the proposed ratio more likely than not 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.

(2) Notwithstanding subsection E(1) above, the Planning Commission may authorize a greater land use mix ratios of up to, but no greater than, 85% residential and down to, but no less than, 15% non-residential provided the applicant proves that it is more likely than not that the development project:

- (a) Would not be economically viable in the long term at any lower ratio of residential to non-residential 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; Meets or accomplishes the purposes, objectives and minimum standards of the zone, and other requirements of the Town Code;

- (b) Will be internally and externally compatible and harmonious with existing and planned land uses in the MXD and adjacent areas;
- (c) Existing and planned public facilities are adequate to service the proposed development proposed in the plan; and
- (d) The plan, if approved, would be in the public interest.

(3) Open Space. A minimum 10% of the net developable acreage shall be Open Space. The Open Space regulations contained in Section 98-23 shall not apply to properties in the MXD.

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. Building Height. No structure shall exceed 40 feet in height.

H. Location, dimension and buffer 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. 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 the Section 98-61B and govern development of the MXD.

I. 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 of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Part II, Chapter 112, Article VIII, Section 112-62 of the Code as follows:

§ 112-62. Special exceptions.

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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.

* * *

Section 5. That Chapter 112 of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Part II, Chapter 112, Article X, Section 112-71 of the Code as follows:

§ 112-71. Definitions.

For the purpose of this chapter certain terms or words used herein shall be interpreted as follows:

* * *

CLUBS, FRATERNAL, RELIGIOUS AND SERVICE ORGANIZATIONS – An association or organization, whether incorporated or unincorporated, operated for civic, social, cultural, religious, literary, fraternal, political, or recreational activities and operated on a nonprofit or not-for profit basis.

COFFEE HOUSES –an establishment which primarily serves hot coffee, related coffee beverages (e.g., café latte, cappuccino, espresso), tea, and other hot beverages.

COFFEE-ROASTING OPERATION – A facility in which unprocessed, green coffee may be sorted, roasted and processed or packaged for use and consumption.

* * *

MASTER PLAN – The Master Plan of Mount Airy which consists of maps, data, and other descriptive matter, as a guide for the physical development of the Town or any portion thereof, including any amendments, extensions or additions thereto adopted by the Commission and Town Council, or other public open spaces, public building sites, routes for public utilities, zoning districts or other similar information.

MEAT CUTTING AND BUTCHERING - A service consisting of the cutting up of meat for sale, but not the killing or slaughtering of live animals, a slaughterhouse or meatpacking plant.

MEDICAL OR DENTAL CLINIC – Any building or group of buildings occupied by medical practitioners and related services for the purpose of providing health services to people on an out-patient basis.

* * *

NURSING HOME - Includes rest homes, convalescent homes and homes for the aged and shall mean a place devoted primarily to the treatment and care of any persons suffering from illnesses, diseases, deformities or injuries, not requiring extensive care, but who do require care in excess of room and board and who need medical, nursing, convalescent, or chronic care.

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This _____ day of _____, 2017.

Thomas V. McCarron, Town Attorney

B1902705