

For:
Introduction 4/3/17
Referred to PC: 4/3/17
Public Hearing 7/10/17
Adoption 9/11/17

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2017-7

**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 XVII ENTITLED "SPECIAL DEVELOPMENT
REGULATIONS", SECTION 98-60 ENTITLED "TOWNHOUSE DEVELOPMENTS"
AND TO CREATE NEW SECTION 98-61 ENTITLED "MIXED USE
DEVELOPMENTS WITHIN THE CC DISTRICT (MXU-CC) SPECIAL EXCEPTION";
CHAPTER 112 ENTITLED "ZONING",
ARTICLE II ENTITLED "GENERAL REGULATIONS",
SECTION 112-7 ENTITLED "OFFSTREET PARKING",
ARTICLE V ENTITLED "PROVISIONS GOVERNING
COMMERCIAL DISTRICTS" AND
SECTION 112-39 ENTITLED "CC COMMUNITY COMMERCIAL DISTRICT" AND
THE CREATION OF NEW SECTION 112-39.1 ENTITLED "MIXED USE
DEVELOPMENT IN THE CC DISTRICT (MXU-CC)",
AND AMENDING ARTICLE VIII ENTITLED "BOARD OF APPEALS",
SECTION 112-62 ENTITLED "SPECIAL EXCEPTIONS"; ARTICLE X
ENTITLED "WORD USAGE AND DEFINITIONS",
SECTION 112-71 ENTITLED "DEFINITIONS"**

WHEREAS, the Planning Commission and Town Planning Staff have recommended that the Town encourage additional mixed use development in the Town, beyond the Downtown Zone (DTZ), and that the Town Council should adopt changes to the Town Code that would allow and promote such development on properties that are for the most part currently zoned in the Community Commercial (CC) District; and

WHEREAS, the Town's current zones do not provide within a single zoning district the kind of flexibility and mixture of commercial and residential uses that the Planning Commission and Town Planning Staff has envisioned; and

WHEREAS, the Town Council has determined that within certain parameters, mixed use development within the CC District (MXU-CC) would foster economic development within the Town and would facilitate the integrated and orderly development of commercial, office, and residential uses on vacant tracts of commercial and high density residentially zoned land along the MD 27 Corridor from the intersection at Twin Arch and Park Avenue northbound to the northern Town boundary at MD 27 and MD 808 in locations 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 MXU-CC separate and apart from the townhouse regulations set forth in Section 98-60, to Sections 112-7 concerning parking requirements 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 type of special exception development within the CC zone.

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:

§98-60. 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 approved as Mixed Use Developments within the CC District (MXU-CC).

* * *

§98-61. Mixed Use Development within the CC District (MXU-CC).

- 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

in order to implement the mixed use development as set forth in Sections 112-39C(12) and 112-62F(29).

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. 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.

(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.

(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 MXU-CC.

(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 MXU-CC as outlined in Section 112-39.1A and B.

D. Approval process. A MXU-CC shall follow the two step approval process of Concept Plan, and Final Site Plan in accordance with Article VIII of this Chapter. 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 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 Final Plan (including the Pattern Book). 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) 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 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 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.

(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 non-residential building floor area by more than ten (10) percent or by more than five (5,000) square feet; and

(f) An increase in the number of residential dwelling units by more than ten (10) percent or more than five (5) units.

(6) Any application for amendment of Concept Plans and Final Site Plans that must be approved by the Planning Commission must be submitted in accordance with Appendix A of the Town of Mount Airy Code.

(7) Elements of a Concept 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 Section 112-39.1C(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 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 Concept Plan shall be permitted.

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 2. That Chapter 112, Article II of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 112-7 of the Code as follows:

§112-7. Off-street parking.

* * *

B. Spaces required. Off-street parking spaces must be provided for each building erected or enlarged in accordance with the following schedule except as may be authorized below:

Type of Use	Minimum Parking Space	Time of Use ¹
	* * *	

H. With respect to Mixed Use Development within the Community Commercial District (MXU-CC) by special exception pursuant to Section 112-39C(12), the Planning Commission, at the time of the Concept Site Plan shall determine if the appropriate, approximate number of spaces have been provided. At the time of the Final Site Plan approval, the Commission shall determine the final number of spaces, based upon the considerations of safety, convenience, pedestrian and vehicular circulation, and added landscaping within the parking areas provided. In addition, the Planning Commission may reduce the number of spaces required for any use in Chapter 112, Article II, Section 112-7.

I. Parking Design Standards: With respect to Mixed Use Development within the Community Commercial District (MXU-CC) by special exception pursuant to Section 112-39C(12), where appropriate, the following design guidelines shall be considered during the Concept Plan phase of the development:

(1) Surface Parking:

(a) Surface parking lots shall be located to the rear of principal buildings or the side.

(b) Adhere to dimensional standards for parking spaces as prescribed in Section 112-7(A).

* * *

Section 3. That Chapter 112, Article II of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 112-39 of the Code and to create new Section 112-39.1 as follows:

§112-39. CC Community Commercial District

* * *

C. Special exceptions in the CC District. The Board of Appeals may authorize the following principal uses as special exceptions in accordance with the provisions of Article VIII, § 112-62:

- (1) Residential uses, only in conjunction with commercial uses [§ 112-62F(14)].
- (2) Hospitals, institutions, convalescent and nursing homes [§ 112-62F(8)].
- (3) Gasoline stations [§ 112-62F(5)].
- (4) Private and commercial schools: dance, business, trade [§ 112-62F(11)].
- (5) Shopping centers [§ 112-62F(15)].
- (6) Nursery schools, child-care centers [§ 112-62F(10)].
- (7) Convalescent or nursing homes [§ 112-62F(4)].
- (8) Fire and rescue stations [§ 112-62F(20)].
- (9) Elderly housing, apartments/condominiums [§ 112-62F(16)].(10)
- (10) Retail and commercial uses in excess of 65,000 square feet. [§ 112-62F(23)].
- (11) Freestanding signs. [§ 112-62F(25)].
- (12) Mixed Use Development (MXU-CC) in accordance with § 112-39.1 below [§ 112-62F(29)]

§112-39.1. Mixed Use Development in the CC District (MXU-CC) special exception.

A. Purpose. The purpose of the MXU-CC 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 with respect to MXU-CC:

- (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, 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.
- (5) Expand the opportunity to support diversified housing options within an integrated site design of varying land uses.

C. Permitted Uses. An MXU-CC special exception shall combine one or more of the uses listed in Subsection C (1) below 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 shops, with or without drive-through services compliant with Section 98-61E.
 - (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.
 - (r) Clubs, Fraternal organizations and service organizations [must meet specific standards contained in § 112-62F(3)].
 - (s) Hotels.
 - (t) Nursing Home, including assisted living centers [must meet specific standards contained in § 112-62F(4)].
- (2) The following are the residential uses permitted:
- (a) Townhouse.
 - (b) Dwelling, Multifamily, to include apartments and condominiums.
 - (c) Dwelling, Semidetached.
 - (d) Dwelling, Detached.
- (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 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 MXU-CC 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. 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 the exception contained in subsection D(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, and no less than 25% residential and no greater than 75% non-residential, of the net developable acreage, and in the case of mixed use within a single building project shall be no greater than 75% residential and no less than 25% non-residential of the square footage of the building.
- (2) Notwithstanding subsection D(1) above, the Planning Commission may authorize greater land use mix ratios of up to but no greater than 85% residential and down to but no less than 15% non-residential, or up to but no greater than 85% nonresidential and down to but no less than 15% 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.
 - (b) Meets or accomplishes the purposes, objectives and minimum standards of the zone, and other requirements of the Town Code;
 - (c) Will be internally and externally compatible and harmonious with existing and planned land uses in the MXD and adjacent areas;
 - (d) Existing and planned public facilities are adequate to service the proposed development proposed in the plan; and
 - (e) The plan, if approved, would be in the public interest.

E. 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.

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

G. Location, dimension and buffer requirements. MXU-CC 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 Section 98-61B and govern development of the MXU-CC. 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 CC District.

H. 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 MXU-CC shall require submission and approval of site and/or subdivision plans, as may be applicable, pursuant to Chapter 98 including Section 98-61.

Section 4. That Chapter 112, Article II of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Section 112-62 of the Code 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 CC Districts and subject to the requirements of the district in which located except as herein provided:

* * *

(29) Mixed Use Development in a CC District (MXU-CC) subject to the following:

- (a) MXU-CC shall facilitate the integrated and orderly development of

commercial, office, and residential uses on vacant tracts of Community Commercial (CC) zoned land in locations where high quality mixed use developments can occur in harmony with surrounding land uses.

- (b) Minimum Tract Size: The vacant tract must be a minimum of 10 acres in order to be considered for MXU-CC.
- (c) Minimum Use Percentage Guidelines. A MXU-CC special exception shall be conditioned upon the minimum use percentage guidelines set forth in Section 112-39.1D and as determined by the Planning Commission pursuant thereto.
- (d) A MXU-CC special exception shall be conditioned on the requirements and process set for in Section 112-39.1 and Section 98-61.

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:

* * *

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.

OUTDOOR STORAGE AREA – The keeping of any inventory, goods, material or merchandise, including raw, semi-finished, and finished materials for any period of time, and as an accessory to the primary use of the establishment, typically retail. Storage related to a residential use, required vehicular areas, nurseries, and the display of automobiles or other vehicles shall not be considered as such.

PET BOARDING - The regular provision of services that entail the boarding of pet dogs or cats owned by members of the general public for a fee. Such a facility or establishment may, in addition to providing shelter, food and water, offer grooming or other services for pet dogs and/or cats.

* * *

ROAD - Includes street, highway, avenue, land, marginal access street, service drive, alley, bridge, viaduct or any segment thereof.

SEASONAL DISPLAY - The temporary and limited display and sales of seasonal products and goods outside of, and immediately adjacent to the front wall or storefront of a principal building, as part of a permitted use.

SETBACK AREA - The area between the street right-of-way line or lot line and setback line within which no principal structures shall be erected or placed.

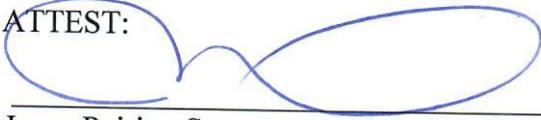
* * *

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that
this Ordinance shall take effect on the 1st day of October, 2017.

Introduced this 10th day of July, 2017.

Enacted this 11th day of Sept., 2017 by a vote of 5 in favor and 0 opposed.

ATTEST:



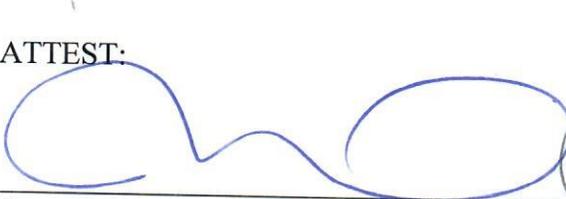
Jason Poirier, Secretary



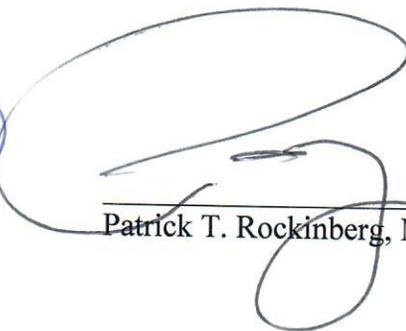
Peter R. Helt, President of the Town Council

Approved this 11th day of Sept., 2017.

ATTEST:



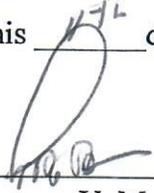
Jason Poirier, Secretary



Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This ^{17th} day of SEPTEMBER, 2017.



Thomas V. McCarron, Town Attorney

B1931430