

For: Introduction and Referral Planning Commission: 12/7/20
Planning Commission Recommendation: _____
Public Hearing: _____
Adoption: _____

**THE TOWN OF MOUNT AIRY, MARYLAND
ORDINANCE NO. 2020-30**

**AN ORDINANCE TO AMEND THE TOWN CODE
OF THE TOWN OF MOUNT AIRY, PART II
ENTITLED “GENERAL LEGISLATION”,
CHAPTER 98 ENTITLED “SUBDIVISION OF LAND
AND SITE PLAN REVIEW”, ARTICLE XVII
ENTITLED “SPECIAL DEVELOPMENT
REGULATIONS”, CREATING NEW SECTION 98-62
ENTITLED “DEVELOPERS’ RIGHTS AND
RESPONSIBILITIES AGREEMENTS” IN ORDER
TO ENABLE THE TOWN TO ENTER INTO
DEVELOPERS’ RIGHTS AND RESPONSIBILITIES
AGREEMENTS (DRRAs) FOR MIXED USE
DEVELOPMENT IN THE COMMUNITY
COMMERCIAL (CC) DISTRICT (MXU-CC), AND
FOR MIXED USE DISTRICT (MXD)
DEVELOPMENTS.**

WHEREAS, the Land Use Article of the Maryland Code, Sections 7-301, *et seq.*, permit a municipality, among other types of local jurisdictions, to approve and enter into Developers’ Rights and Responsibilities Agreements (DRRAs) and, by local law, establish procedures and requirements for the consideration and execution of DRRAs; and

WHEREAS, on August 3, 2020, the Town Council adopted Ordinance 2020-1, thereby creating a new Mixed Use Development (MXD) Zoning District (see Section 112-37.2 of the Town Code); and

WHEREAS, Ordinance 2020-1 also amended Town Code provisions already in existence by virtue of adoption in 2017 of a special exception for Mixed Use Development in the Community Commercial (CC) District (MXU-CC) (see Ordinance 2017-7, which among other things created Section 112-39.1); and

WHEREAS, Ordinance 2020-1 also created new regulations specific to the MXD District, that would also apply to MXU-CC special exceptions, among them that, as a part of the approval process of for such developments, the Town and person(s) with legal or equitable interest in the real property at issue may enter into a DRRA after the Concept Plan has been approved for the development (see Section 98-61E(6)); and

WHEREAS, as a result of the enactment of Ordinance 2020-1, it was anticipated that additional amendments to the Town Code would be required or advisable, to include this enabling ordinance to permit the Town to enter into DRRAs for MXD and MXU-CC developments.

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

Section 1. That the Town Code, Part II, Chapter 98, Article XVII be and is hereby amended to enact new Section 98-62 as follows:

§98-62. Developers’ Rights and Responsibilities Agreements (DRRAs).

A. Applicability.

(1) The Town may enter into a Developers’ Rights and Responsibilities Agreement (DRRA) with person(s) with legal or equitable interest in real property on which a mixed use development is proposed within the Mixed Use District (MXD) pursuant to Section 112-37.2, or pursuant to a special exception for Mixed Use in the Community Commercial (CC) District (MXU-CC pursuant to Section 112-39.1.

(2) The Town of Mount Airy may include a federal, State, or local government or unit as an additional party to the agreement.

B. Mandatory provisions. A DRRA shall include:

(1) A legal description of the real property subject to the DRRA;

(2) The names of the persons having a legal or equitable interest in the real property subject to the DRRA;

(3) The duration of the DRRA;

(4) The permissible uses of the real property pursuant to the approved Pattern Book and Concept Plan;

(5) The density or intensity of use of the real property pursuant to the approved Pattern Book and Concept Plan;

(6) The maximum height and size of structures to be located on the real property;

(7) A description of the permits required or already approved for the development of the real property;

- (8) A statement that the proposed development is consistent with this Code and the Town’s Comprehensive Plan in effect when the DRRA is executed;
- (9) A description of the conditions, terms, restrictions, or other requirements determined by the Town Council to be necessary to ensure the public health, safety, or welfare; and
- (10) To the extent applicable, provisions for the:
 - (a) Dedication of a portion of the real property for public use;
 - (b) Protection of sensitive areas;
 - (c) Preservation and/or restoration of historic structures;
 - (d) Construction or financing of public facilities; and
 - (e) Default provisions and responsibility for expenses incurred by the Mayor and Town Council in the event a DRRA is abandoned or breached by the applicant.

C. Optional Provisions. A DRRA may:

- (1) Fix the time frame and terms for development and construction, and
- (2) Provide for other terms as may be agreed upon by the parties consistent with this Section and/or consistent with the Town’s Comprehensive Plan, or the approved Pattern Book and Concept Plan for the proposed development.

D. Procedures.

- (1) Petition. After approval of the development’s Concept Plan pursuant to Section 98-61E(6), the person(s) having a legal or equitable interest in the real property at issue, or the representative(s) of such person(s), shall submit a petition for approval of a DRRA to the Town Community Administrator. The petition shall contain and/or be accompanied by the following:
 - (a) A copy of the proposed DRRA. The proposed DRRA shall be consistent with the Town’s Comprehensive Plan, and the approved Pattern Book and Concept Plan for the proposed development;
 - (b) A title certificate completed within the last thirty (30) days for the real property setting forth all those with legal or equitable interest in the real property at issue, including any and all lien holders, executed by an attorney authorized to practice law in the State of Maryland; and

(c) The signatures of each person holding a legal or equitable interest in the real property at issue, including any lien holder; and

(d) The payment of any applicable fee(s) set by the Town by ordinance or resolution.

(2) Upon receipt of the proposed DRRA, the Town Community Administrator, with the assistance of the Town Attorney and other Town Staff as needed, shall review the proposed DRRA for consistency with the Town's Comprehensive Plan and approved Pattern Book and Concept Plan for the proposed development, and if found consistent therewith, shall refer the proposed DRRA to the Planning Commission with request for determination by the Planning Commission that the proposed agreement is consistent with the Town's Comprehensive Plan, the approved Pattern Book and the approved Concept Plan.

(3) The Planning Commission shall as reasonably practicable thereafter make a determination as to whether the proposed DRRA is consistent with the Town's Comprehensive Plan, the approved Pattern Book and the approved Concept Plan.

(4) If the Planning Commission determines that the proposed DRRA is consistent with the Town's Comprehensive Plan, the approved Pattern Book and the approved Concept Plan, the Town Council shall as reasonably practicable thereafter hold a public hearing, and shall consider approval of the proposed DRRA. Notice of the hearing shall be published in a newspaper of general circulation in the Town once each week for 2 consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

(5) The Town Council may approve the proposed DRRA only if the Planning Commission has determined that the proposed DRRA is consistent with the Town's Comprehensive Plan, the approved Pattern Book and the approved Concept Plan for the proposed development.

(6) Once approved by the Town Council, the DRRA shall be signed by the Mayor and all person(s) having legal or equitable interest in the real property, including any lien holders or other persons holding superior rights for the purposes of subordinating their rights to those of the Town. Unless an extension is granted by the Town Council, the DRRA shall be executed by all person(s) having legal or equitable interest in the real property within forty-five (45) days of approval by the Town Council, or said Town Council approval shall become null and void.

E. Duration. A DRRA shall be valid for a period of up to five (5) years from the day on which the DRRA has been fully executed by the parties, unless otherwise set forth in the DRRA or extended by amendment pursuant to subsection F below.

F. Amendment.

(1) The parties to the DRRA may amend the DRRA by mutual consent subject to subsection (2). The process for approval of an amendment to an approved DRRA shall follow process set forth in subsection D. above.

(2) The parties may amend a DRRA only after a public hearing before the Town Council, and only if the Planning Commission determines that said amendment is consistent with the Town's Comprehensive Plan, the approved Pattern Book (as amended if applicable) or the approved Concept Plan (as amended if applicable).

G. Termination of agreements; suspension.

(1) The parties to the DRRA may terminate the agreement by mutual consent.

(2) If the Town Council determines that suspension or termination of the DRRA is essential to ensure the public health, safety, or welfare, the Town Council may suspend or terminate a DRRA after a public hearing.

H. Applicable laws, regulations and policies.

(1) Except as provided in paragraph (2) of this subsection, the laws, rules, regulations, and policies, including the Adequate Public Facilities Ordinance standards for adequacy, governing the use, density, or intensity of the real property subject to the agreement shall be the laws, rules, regulations, and policies in force at the time the parties execute the DRRA.

(2) If the Town Council determines that compliance with laws, rules, regulations, and policies enacted or adopted after the effective date of the DRRA is essential to ensure the health, safety, or welfare of residents of all or part of the Town, a DRRA may not prevent the Town from requiring a person to comply with those laws, rules, regulations, and policies.

I. Recording. A DRRA that is not recorded in the land records office of the County in which the property is located within twenty (20) days after the day on which the parties fully execute the DRRA is void. The parties to an agreement and their successors in interest are bound to the agreement after the agreement is recorded.

J. Enforcement. Unless the DRRA is terminated under subsection G. of this section, the parties to the DRRA or their successors in interest may enforce the DRRA.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID,
that this Ordinance shall take effect on the ____ day of _____, 2021.

Introduced this 7th day of December, 2020.

Enacted this ____ day of _____, 2021 by a vote of ____ in favor and
____ opposed.

ATTEST:

Jason M. Poirier, Secretary

Larry Hushour, Council President

Approved this _____ day of _____ 2021.

APPROVED:

Jason M. Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This _____ day of _____, 2021.

Thomas V. McCarron, Town Attorney