

## ***ARTICLE 11. AMENDMENTS, REMEDIES AND PENALTIES, AND SEPARABILITY***

### **1100 Power of Amendment**

The Town Council may from time to time amend, supplement, change, modify or repeal the Comprehensive General Plan, this Ordinance or any part thereof, including the Zoning Map. When doing so the Town Council shall proceed in the manner prescribed in this Article.

### **1101 Who May Initiate**

Proposals to amend, supplement, change, modify, or repeal may be initiated by the Town Council on its own motion, or by any member thereof, by the Mayor, the Planning Commission, if by a majority of its members, or by petition of one or more owners of property which is the subject of the proposed amendment, if by change to the Zoning Map; and shall be subject to the following provisions:

#### **A. Proposals originated by the Town Council any member thereof or the Mayor**

Any proposal originated by the Town Council, by its own motion, or any member thereof, or by the Mayor of the Town, shall be referred immediately by the Town Council to the Planning Commission. Within thirty days of the referral of the said proposal, whether to amend, supplement, change, modify or repeal, the Planning Commission shall submit to the Town Council a report containing the Commission's recommendations, which may include any suggestions the Commission may wish to make for additions or modifications to the original proposal.

#### **B. Proposals originated by the Planning Commission**

The Planning Commission may, at any time transmit to the Town Council any proposal for the amendment, supplementation, change or modification, or repeal of this Ordinance, and shall accompany any such proposal with a written report, stating its reasons therefor, and any additional information it may wish to submit with the proposal.

#### **C. Proposals originated by a Citizen**

1. Each petition by one or more owners of the property which is the subject of a proposed amendment, supplementation, change, or modification, to the Zoning Map, shall be submitted to the Zoning Administrator on forms provided therefor. The Zoning Administrator shall transmit such petitions to the Town Council, and a copy thereof to the Planning Commission.
2. The Planning Commission may at its discretion, notify the Town Council of its intention to conduct promptly a public hearing on any such petition.

Within thirty days following receipt of such petition, or if a public hearing is held, within thirty days following such hearing, the Planning Commission shall transmit to the Town Council a report containing its recommendations thereon, which may include additions or modifications it may wish to suggest to the original proposal.

3. The Town Council shall then proceed in accordance with Section 1103 below.

D. In any instance where this Ordinance requires a written report from the Planning Commission, the Planning Commission shall consider any Findings of Fact required by this Ordinance for a decision on any given proposal, and shall make recommendations with respect to each finding of fact, in writing, and shall supply such technical data and information as it deems necessary and appropriate, in its report.

## **1102**      **Fees**

All applicants petitioning under subsection 1101-C above, for amendment to the Zoning Map shall, at the time of making application, pay to the Zoning Administrator for the use of the Town, a fee in accordance with a fee schedule adopted by resolution of the Town Council upon enactment of this Ordinance, or as such schedule may be amended by resolution of the Town Council.

## **1103**      **Public Hearing and Notice**

No amendment, supplement, change, modification, or repeal shall become effective until ten days after a public hearing by the Town Council in relation thereto at which the parties in interest and citizens shall have an opportunity to be heard, and of which a complete record shall be kept. Notice shall be given as follows:

- A. Publish a notice containing the name of the applicant, if any; the date, time, and place of the hearing, and a summary of the proposed change (regulation, restriction or boundary) in at least one newspaper of general circulation in the Town, once each week for two successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.
- B. When such hearing concerns a Zoning Map change, a notice of pending action containing the same information as in subsection **1103-A** above, shall be posted in a conspicuous place on the property involved, such posting to take place at least fifteen days prior to the date fixed for public hearing.
- C. When such hearing concerns a Zoning Map change, written notice of the time and place of such hearing shall be sent by certified mail to the applicant, if any, and to the owners of property contiguous to and opposite the property affected.

- D. At the discretion of the Town Council, written notices of hearing may be sent to other interested persons, organizations or agencies.

**1104 General Criteria**

The Town Council shall consider and make findings of fact with respect to the following general criteria when considering any request or petition to amend, supplement, change, modify, or repeal this regulation or any part or section thereof, or any part or section of the Zoning Map:

- A. The effect of the proposed amendment, supplement, change, modification, or repeal upon the public health, safety, morals and general welfare of the community and its present or future inhabitants.
- B. Whether the proposed amendment, supplement, change, modification or repeal is in harmony with the general purpose and intent of the adopted plan of the Town and the overall scheme of these regulations.
- C. The possibility of traffic generation and congestion, including truck, passenger car and pedestrian traffic, as well as present and future transportation patterns.
- D. The generation of noise, smoke, dust, fumes, vapors, gases, heat, odors, glare or vibration.
- E. The effect of the proposed amendment, supplement, change, modification or repeal upon any historic district, area or building within the Town.
- F. Any population changes.

**1105 Amendments to the Zoning Ordinance-Regulations**

When considering an application for an amendment to this Ordinance, in the form of an amendment, supplement, change, modification, or repeal of these regulations, the Town Council shall be acting as a legislative body, and shall take into account such additional general considerations as may be appropriate to the legislative change, including, but not limited to, the following, and shall make Findings of Fact thereon:

- A. The report and recommendations of the Planning Commission.
- B. Any changes in the character of the Town, which would make the proposed change to these regulations beneficial and legislatively appropriate.
- C. The harmony and relationship of the proposed change to the remaining sections of this Ordinance and the intent thereof.

- D. Whether the proposed change would operate to impose an extreme hardship, or a confiscation upon any particular property or any particular properties.
- E. Whether the proposed change might result in future development which would adversely affect the character of any neighborhood, or the character or developmental direction of the Town of Mountain Lake Park.

**1106**      **Amendments to the Zoning Map**

When the Town Council sits to consider an application requesting a change in the Zoning Map which would operate to specifically rezone one or more pieces of individual property, it shall sit in a quasi-legislative capacity, and shall make its decision in accordance with this Section, and Section 1104.

- A.      Mistake in the Original Zoning
  - 1. If the application for the specific rezoning alleges that there was a mistake in the classification (i.e. zoning) of the subject property, the Council shall consider and make findings of fact upon the following specific issues:
    - a. The report and recommendations of the Planning Commission.
    - b. The adopted plan of the Town, and the reason, if any set forth therein, for the classification of the property when originally zoned.
    - c. The testimony, if any is available, of any member of the Planning Commission and/or Town Council, or the Mayor, as to why the subject property was classified as it was when originally zoned.
    - d. Any documents, plats, or information which may be available, which may shed some light on the reasons the subject property was so classified when originally zoned.
    - e. Any other information which may bear upon the reasons for the classification of the property when originally zoned, including its appropriateness.
    - f. Whether the owner or owners are denied reasonable use of the property under its present zoning classification.
  - 2. If the Council shall determine that there was no mistake in the original zoning, it shall deny the requested map amendment.

3. The Council may enact the proposed map amendment if it determines there was a mistake in the original zoning, based upon its Findings of Fact as required herein, but an affirmative finding in each category shall not automatically compel the rezoning requested.

B. Change in the Character of the Neighborhood

When considering an application for a map amendment, based upon the petitioner's claim that there has been a substantial change in the character of the neighborhood where the property is located, the Council shall consider and make findings of fact on the following issues and matters:

1. The report and recommendations of the Planning Commission.
2. Population change in the area of the proposed change.
3. Availability of public facilities such as police and fire protection, water and sewerage to service the area, and any change in the availability of said services.
4. Present and future transportation patterns in the area.
5. Compatibility with existing and proposed development in the area.
6. The relationship of the proposed amendment to the adopted plan for the Town, and whether any of the alleged changes in the character of the neighborhood has impacted upon the adopted plan for the Town.
7. Whether there has been a convincing demonstration that the proposed map change would be appropriate and logical for the subject property.
8. Whether, assuming there has been a change in the character of the neighborhood, the said change has made the neighborhood more or less compatible with the uses which would be permitted should the proposed map amendment be adopted.

**1107**      **Action By the Town Council**

- A. The Town Council may approve or deny the proposed amendment, modification, repeal, or reclassification based upon the Finding of Fact as required herein. A complete record of the findings and of the vote of all members shall be kept.

- B. When considering a request for a map amendment, based upon the petitioner's contention that there has been a change in the character of the neighborhood, the Town Council may entertain any offer by the petitioner that the petitioner is willing to agree to conditions precedent being set by the Town Council if, based upon its findings of fact, it should agree to reclassify the subject property. Under such an agreement, the Council may impose such additional restrictions, conditions, or limitations as may be appropriate to preserve, improve, or protect the general character and design of the land and improvements being zoned or rezoned, or of the surrounding or adjacent land and improvements, and may, upon the zoning or rezoning, and pursuant to such an agreement, retain or reserve the power and authority to approve or disapprove the design of buildings, construction, landscaping, or other improvements, alterations, and changes to be made on the subject land to assure conformity with the intended purpose of this Ordinance and of the adopted plan of the Town, and to effectuate the agreement. In the event such an agreement is reached, it shall be reduced to writing, and thereafter all stated conditions shall be conditions precedent and the requested map change shall not become finally effective until all such conditions are carried out in full. In the event all such conditions are not carried out in full, the map change shall become null and void and the property shall revert to its former classification.

1108

**Procedures for Maintaining Commercial (C) District Zoning Once Granted**

The procedure for maintaining any change of the zoning Classification of land to a Commercial (C) District duly enacted and adopted as an amendment pursuant to this Article, such change having been petitioned by persons other than the Town Council or Planning Commission, shall be as follows:

- A. Within one year of the granting of Commercial (C) District Zoning, application shall be made for a zoning permit for use of the said land; otherwise the zoning for the Commercial (C) District shall revert automatically to its prior district classification without notice and public hearings.
- B. Within one year of issuance of zoning permits, construction or use shall be commenced on the land so zoned; otherwise the zoning for the Commercial (C) District shall revert automatically to its prior district classification without notice and public hearings.
- C. Within two years of the issuance of zoning **permits for the land so zoned**, the subject land shall be substantially devoted to such use or uses as may be permitted in the zoning districts; otherwise the zoning for the Commercial (C) District shall revert automatically to its prior classification without notice and public hearings.

**1109**

**Enforcement**

- A. Violation of any provision(s) of this ordinance is a municipal infraction and is subject to the Enforcement Ordinance and the fines or penalties provided in the Resolution of Fines for Municipal Infractions. The Mayor and Town Council may change the amount of fines and penalties in the Resolution of Fines for Municipal Infractions after the changes have been duly posted in accordance with the policy of the Mayor and Town Council of Mountain Lake Park for advertising for the adoption of resolutions.
- B. The Town, upon proper order from the District Court of Maryland, shall have the right, in addition to other remedies or penalties set forth in these regulations, to enter upon said property and to remove the offending violation(s) and to assess the property owner for the cost thereof, and such assessment shall be collectable under the laws of Maryland as in any other legitimate Town charge or assessment.

**1110**

**Separability**

It is hereby declared to be the legislative intent that the provisions of this Ordinance are separable, whereby:

- A. If a court of competent jurisdiction declares any provision of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to the provision expressly stated in the court's decision, and all other provisions of this Ordinance shall continue to be separately and fully effective, the Mayor and Town Council hereby declaring that they would have adopted the remaining provisions without the word, phrase, clause, items, sentence, paragraph or section, or the application thereof, so declared invalid.
- B. If a court of competent jurisdiction finds the application of any provision of this Ordinance to any lot, building or other structure, or tract of land to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property, or situation immediately involved in the court's decision, and the application of any such provision to other persons, properties or situations shall not be affected thereby.