

ORDINANCE NO. 1770

AN ORDINANCE TO AMEND SECTION 19 OF THE CODE OF ORDINANCES OF THE CITY OF MOUNTAIN BROOK, ALABAMA

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that the following Sections of Chapter 19 of The Code of the City of Mountain Brook, Alabama are hereby amended to read as follows:

1. **Amendatory Provision.** The following definitions shall be added to or amended in Section 19-1-2 of the City Code of the City of Mountain Brook, Alabama, which hereby is amended as follows:

Sec. 19-1-2 Definitions

Building Official. The building inspections superintendent of the City of Mountain Brook.

Certificate of occupancy. A final certification issued by the building ~~official inspector~~ with respect to a building, or a part thereof, which has been completed or otherwise made ready for occupancy or use in accordance with the ordinances and regulations of the city. Such certification indicates conformity with the provisions of this chapter as well as with other applicable codes and ordinances and shall be the approval required for the occupancy or other intended use of such building or part thereof. No occupancy or use of such building, or part thereof, may begin until the certificate of occupancy has been issued.

City planner. The city planner of the City of Mountain Brook.

2. **Amendatory Provision.** The first sentence of the fifth paragraph of Section 19-14-4 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-14-4 Development Plan (Mixed Use District)

~~Twelve (12)~~ **Seventeen (17)** copies of the preliminary development plan and any materials supplemental thereto shall be delivered to the ~~city clerk~~ **zoning officer** at least ~~fifteen (15)~~ **twenty-four (24)** days before the date of the hearing at which the planning commission will consider the rezoning application. **Revised plans for cases which are heard by the planning commission and then carried-over to the next regular meeting of the planning commission, whether at the request of the planning commission or the applicant, must be submitted at least seventeen (17) days before the date of the hearing at which the planning commission will hear the revised case.**

3. **Amendatory Provision.** Section 19-14-6 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-14-6 Pre-hearing conference (Preliminary Development Plan for Mixed use District)

Prior to the submission of the preliminary development plan to the planning commission for its consideration, at the option of the zoning officer or the applicant, there shall be a conference at which the preliminary development plan, and the other information referred to in the foregoing subsection, shall be reviewed and discussed by

the applicant and the zoning officer. The party who elects to have the conference shall give the other party ~~written~~ notice thereof at least ~~ten (10)~~ **fifteen (15)** days before the public hearing to be held by the planning commission, and the conference shall be held at the city hall of the city at a time which is convenient to all parties.

4. **Amendatory Provision.** The first sentence of Section 19-16-5 (b) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-16-5 (b) Application (PUD)

(b) *Application.* After the preapplication conference has been held, the applicant may file with the ~~city clerk~~ **zoning officer** an application for the rezoning of the parcel.

5. **Amendatory Provision.** Section 19-16-6 (e) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-16-6 (e) Application (PUD)

When the PUD application is filed, a processing fee, as provided for in Section 19-27-1(c), must be paid to the ~~city clerk~~ **zoning officer**, and the applicant shall provide the city with ~~fifteen (15)~~ **seventeen (17)** copies of the preliminary plan and attendant documents and information. During the time the preliminary plan is under consideration by the planning commission, the applicant shall furnish the ~~city clerk~~ **zoning officer** with ~~fifteen (15)~~ **seventeen (17)** copies of any revisions of the preliminary plan. During the time the preliminary plan or the master development plan is under consideration by the city council, the applicant shall furnish the ~~city clerk~~ **zoning officer** with fifteen (15) copies of any revisions of the preliminary plan or the master development plan.

6. **Amendatory Provision.** Section 19-17-3(e) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-17-3(e) Use regulations (Flood Plain Overlay District)

(e) *Other uses.* A special exception may be made, upon appeal to, and approval by, the board of zoning adjustment (board), to allow a use other than those listed hereinabove in this section; provided, that such use is permitted by right in the underlying zoning district applicable to the property in question and that the applicant can certify to the board, the building **official** ~~inspector~~ and the zoning officer that:

- (1) The building plans submitted to the board with respect to the proposed use indicate either sufficient structural measures or landfill, or both, will be installed to insure that the proposed use will not sustain flood damage;
- (2) Neither the proposed structure nor the landfill will constitute or create an obstacle to water flow which would be likely to cause the impounding of water and increase the size of the area subject to flooding;
- (3) Neither the proposed structure nor landfill will result in a shift in the path or flow of water, causing an extension or enlargement of the flood plain area elsewhere; and,
- (4) Access to the parcel will not be subject to flooding.

7. **Amendatory Provision.** The second sentence of Section 19-18-5 (b)(6) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-18-5(b) (6) Trunk Sales (Temporary uses)

However, a single permit may be issued for all trunk sales to be held at a

dwelling during any calendar year, provided that either the dates of all such sales are included in the application for the permit; or written notice of the place, date and time of each sale, along with a copy of the permit previously issued for that calendar year, are delivered to the ~~city manager~~ **zoning officer** at least seven (7) days before each such sale is to be held.

8. **Amendatory Provision**. The third sentence of Section 19-19-2 (a) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-19-2(a) Minimum parcel size requirements and determination

When the owner files his application for approval of the resurvey he must provide the ~~city clerk~~ **zoning officer** with satisfactory proof that the owner of the remainder ("remainder owner") has been given notice of the proposed resurvey and an opportunity to include the remainder and a contiguous lot or lots owned by the remainder owner in the resurvey, at the expense of the remainder owner.

9. **Amendatory Provision**. The third sentence of Section 19-20-5 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-20-5 Exceptions to height limitation for fences and walls in residential districts

Application for any such wall or fence shall be filed with the ~~city clerk~~ **zoning officer** and shall be accompanied by a full description of the proposed wall or fence, including the proposed location, height, dimensioned construction plans and materials of construction.

10. **Amendatory Provision**. Sections 19-23-5 (a),(b) and (d) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-23-5(a) Permitting procedures (Home occupations) Permit required

Prior to the use of a dwelling or an accessory structure for a home occupation, and occupant of the dwelling who will be engaged in the home occupation, or his representative, must obtain from the ~~city manager~~ **zoning officer** a permit for the operation of the home occupation.

Sec. 19-23-5(b) Permitting procedures (Home occupations) Application requirements

To obtain the permit, such occupant or his representative must complete and submit to the ~~city manager~~ **zoning officer** an application which must contain the following information.

Sec. 19-23-5(d) Permitting procedures (Home occupations) Changes in home occupations conducted in dwellings

If a different portion of a dwelling is to be used for the home occupation, at least thirty (30) days prior to any such change, the primary occupant of the dwelling, or his representative, must submit to the ~~city manager~~ **zoning officer** a revised plan or drawing of the dwelling which shows, clearly and in reasonable detail, the portion of the dwelling which shall be used for the home occupation.

11. **Amendatory Provision**. The second sentence of Section 19-24-1 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-1 Powers and duties of the zoning officer

The zoning officer shall be an appointed official of the city. The city ~~manager~~ **planner** shall be the zoning officer unless another appointed official of the city is designated by the city council to be the zoning officer. The zoning officer is hereby authorized, and it shall be his/**her** duty, to oversee the enforcement and the administration of the provisions of this chapter.

12. **Amendatory Provision.** Section 19-24-2 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-2 Building permit required for excavation or construction

It shall be unlawful to commence the excavation for, or the construction of, any building or other structure, including accessory structures, or to commence the moving, alteration or repair of any structure, including accessory structures, until the building ~~official inspector~~ **official** has issued a permit for such work ("building permit"). No building permit may be issued without certification from the zoning officer **or the building official** that the plans, specifications and intended use of such structure conform in all respects with the provision of this chapter. If an application for a building permit is not approved, the building ~~official inspector~~ shall state in writing on the application, or on an attachment to the application, the reason or reasons for such disapproval; provided, however, that the building ~~official's inspector's~~ **official's** failure to include one (1) or more of such reasons shall not constitute a waiver of any requirement or condition with which the applicant for the building permit failed to comply. The issuance of a building permit hereunder shall not be construed as waiving any provision of this chapter.

13. **Amendatory Provision.** Section 19-24-3 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-3 Zoning approval required for building permit

It shall be unlawful for the building ~~official inspector~~ to approve any plans, or to issue a building permit, for any excavation for a structure, or for the construction or alteration of a structure until the building ~~official inspector~~ **official** has inspected such plans in detail and found them to be in compliance with the provisions of this chapter. The building ~~official inspector~~ shall require zoning approval as part of every application for a building permit. Application for zoning approval shall be filed in written form with the ~~city clerk~~ **zoning officer or building official** and shall be accompanied by a scaled plan or plat which shows the following in sufficient detail to enable the zoning officer to ascertain whether the proposed excavation, construction, use of land or alteration complies with the provisions of this chapter.

14. **Amendatory Provision.** Section 19-24-4 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-4 Zoning approval required for building permit

No building or other structure, or part thereof, hereafter constructed, moved or altered in its use, may be occupied or used until a certificate of occupancy is issued stating that such building or structure, or part thereof, is found to be in compliance with the provisions of this chapter and all other applicable ordinances, codes and regulations of the city. Within three (3) business days after the owner of such building or structure, or his agent, has notified the **building official or the zoning officer** that a building or other

structure, or part thereof, is ready for occupancy or use, it shall be the duty of the building ~~official inspector~~, or other appropriate city official to make a final inspection thereof and to issue a certificate of occupancy if such building or structure, or part thereof, is found to:

- (1) Comply with the provisions of this chapter;
- (2) Comply with the provisions of any other applicable chapters of the city code;
- (3) Comply with the provisions of any other applicable ordinances, codes or regulations; and
- (4) Comply with the site development plans and other information submitted in an application for the rezoning of the parcel upon which such building or structure is located and any restrictions or conditions accompanying any change of zoning.

If a certificate of occupancy is not issued for such building or structure, the building ~~official inspector~~ shall provide a written statement containing the reason or reasons for not issuing the certificate; provided, however, that the building ~~official's inspector's~~ failure to include one (1) or more of such reasons shall not constitute a waiver of any requirement or condition with which the applicant for the certificate of occupancy failed to comply.

15. **Amendatory Provision.** Section 19-24-6 (c) of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-6 (c) Advisory design review required in the Villages of Mountain Brook

In addition to the information and documents referred to in section 19-24-3 which each applicant for a zoning approval certificate must furnish to the ~~city clerk~~ **zoning officer**, such applicant must furnish the following information to the ~~city clerk~~ **zoning officer** with respect to the improvements to be constructed or renovated on the property for which the zoning approval certificate is sought. Sixteen (16) copies of all documents and drawings related to the following information must be delivered to the ~~city clerk~~ **zoning officer**. The ~~city clerk~~ **zoning officer** shall promptly deliver five (5) copies of such documents and drawings to the village design review committee, one (1) copy to the zoning officer, nine (9) copies to the planning commission and ~~she~~ shall retain one (1) copy of each drawing and document **for the record**.

- (1) Building elevations;
- (2) Types and colors of construction materials;
- (3) Outdoor lighting;
- (4) Visibility from neighboring properties, buildings and public streets;
- (5) Vehicles, equipment and materials to be stored;
- (6) Landscape and planting;
- (7) Screening of any part of the property by fences, walls, vegetation or other means; and
- (8) Signs.

Each applicant for a permit to install, replace or modify a sign must furnish the following information with respect to the new sign to be installed (either an initial sign or a replacement sign) or the modifications to an existing sign. Seven (7) copies of all documents and drawings related to the following information must be delivered to the city clerk. The ~~city clerk~~ **zoning officer** shall promptly deliver five (5) copies of such documents and drawings to the village design review committee, one (1) copy to the zoning officer and ~~she~~ shall retain one (1) copy of each drawing and document **for the record**.

16. **Amendatory Provision.** Section 19-24-7 (d) (2) (c) of the City Code of the City of

Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-24-7 (d) (2) (c) Duties (Village Design Review Committee)

Within five (5) business days following the completion of the committee's advisory design review: (1) to submit a written report to the applicant, the planning commission and the zoning officer about its findings, including any comments and recommendations made to owners, developers and architects; (2) certify completion of the advisory design review to the zoning officer. Notwithstanding any other provision of this section, if the report is not submitted to the applicant, the zoning officer and the planning commission within thirty (30) days (or such longer period of time which may be agreed upon by the applicant and the committee) of the applicant's submission of all required information and materials to ~~the city clerk~~ **zoning officer**, the applicant's submission shall be considered to have been approved as submitted, and the zoning approval certificate may be issued by the zoning officer at the end of such period.

17. **Amendatory Provision**. The first and second paragraphs of Section 19-25-2 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-25-2 Petitions for rezoning

Such additional materials or information must be filed with the application, or, if some or all of such additional materials are requested by the zoning officer or the planning commission after the application has been filed, such materials must be filed with the ~~city clerk~~ **zoning officer** within a reasonable time after such request, to enable the members of the planning commission to review the materials prior to the public hearing to be held by the planning commission.

The hearing of a request for the amendment of this chapter or the zoning map will be scheduled for the next regularly scheduled meeting of the planning commission, provided that the application and all materials and information required to be submitted therewith are submitted to the ~~city clerk~~ **zoning officer** at least ~~fifteen (15)~~ **twenty-four (24)** days prior to such meeting. Any application which is incomplete with regard to any of the materials or information required by this article shall not be considered at such meeting, but will be postponed until the next regularly scheduled meeting of the planning commission which is to be held at least ~~fifteen (15)~~ **twenty-four (24)** days after all of the required materials and information have been submitted by the applicant to the ~~city clerk~~ **zoning officer**. **Revised plans for cases which are heard by the planning commission and then carried-over to the next regular meeting of the planning commission, whether at the request of the planning commission or the applicant, must be submitted at least seventeen (17) days before the date of the hearing at which the planning commission will hear the revised case.**

18. **Amendatory Provision**. The third sentence of Section 19-26-3 of the City Code of the City of Mountain Brook, Alabama, shall be and hereby is amended as follows:

Sec. 19-26-3 Hearing of appeals (from the decision of the zoning officer to the Board of Zoning Adjustment)

An appeal from the decision of the zoning officer may be taken to the board by any person aggrieved, or by any officer, department, board or bureau of the city affected by such decision. Such appeal shall be taken within a reasonable time, as provided by the rules for the board, by filing with the zoning officer and with the board a notice of appeal specifying the grounds thereof. Any such notice must be filed at least ~~fifteen (15)~~

twenty-four (24) days prior to the meeting of the board at which the applicant wished to have the appeal heard, and shall be accompanied by a survey or drawing which shows, in reasonable detail, the property which is the subject of the appeal and the aspect of such property, or the improvement thereon, which is the reason for the appeal.

19. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama, that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

20. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

21. **Effective Date.** This ordinance shall become effective July 1, 2008, and upon adoption and publication as provided by law.

ADOPTED: This 12th day of May, 2008.

Virginia C. Smith, Council President

APPROVED: This 12th day of May, 2008.

Lawrence T. Oden, Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on May 12, 2008, as same appears in the minutes of record of said meeting, and published by posting copies thereof on May ____, 2008, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
Piggly Wiggly Foodstore 4, 93 Euclid Avenue

Joe Muggs Newsstand, 2037 Cahaba Road
The Invitation Place, 3150 Overton Road

Steven Boone, City Clerk