

**NOTICE OF PUBLIC HEARING
PROPOSED ZONING CODE NOTICE**

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Monday, March 25, 2024, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall located at 56 Church Street, Mountain Brook, Alabama 35213, the City Council will hold a public hearing to consider proposed amendments to Chapter 129 of the Code of the City of Mountain Brook as it pertains to Article XXV (Amendments), a proposal that the City Council adopt an ordinance in words and figures substantially as follows:

ORDINANCE NO.

AN ORDINANCE AMENDING ARTICLE XXV OF THE CITY CODE

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Article X of the City Code is hereby amended to as follows:

Section 1.

"ARTICLE XXV. – Amendments

Sec. 129-432. – Petitions for rezoning.

The owner of any parcel, or an authorized representative of such owner, may present a request for rezoning of such parcel by filing an application for rezoning and a preliminary site plan of such parcel with the ~~city clerk~~ zoning officer. Materials and/or information in addition to that provided for by the application may be required with respect to requests for changes to certain zoning classifications, as set forth in this chapter. 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 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.

Sec. 129-435. Amendment procedure.

After an application for rezoning has been determined to contain all of the required materials and information, the application will be submitted to the planning commission for consideration. The planning commission will hold a public hearing, after giving notice, as permitted by applicable law, of its consideration of the rezoning application. Following the public hearing, the ~~zoning officer~~ ~~planning commission~~ shall forward to the city council ~~it's~~ the ~~planning commission's~~ recommendation with respect to the proposed rezoning. After receiving the ~~planning commission's~~ recommendation from the ~~planning commission~~ zoning officer, the city council shall also give notice as permitted by applicable law and hold a public hearing to consider the proposed rezoning, after which the city council will take action on the proposed amendment.

Sec. 129-436. Time limit.

- (a) If the city council denies an application for an amendment to this chapter, another application for the same amendment to this chapter ("subsequent application") shall not be considered by the planning commission or the city council until ~~six (6) months~~ ~~two one~~ ~~years have~~ elapsed from the date on which the application was denied by the city council ~~or, If the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, until two years have elapsed from the date on which the planning commission made its recommendation.~~ another application for the same amendment to this chapter may be made to the planning commission at any time.

Notwithstanding the foregoing, within less than ~~six (6) months~~ ~~two years~~ from the date on which an application for an amendment to this chapter was denied by the city council ~~or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, within less than two one years from the date on which the planning commission made such recommendation,~~ the city council, by a resolution adopted by its members, may request the planning commission to make a recommendation to the city council with respect to, a subsequent application and, after receiving such recommendation from the planning commission, consider the subsequent application.

- (b) If the city council denies an application for a change in the zoning classification of a parcel, another application for the same change in the zoning classification of the parcel or any part of such parcel shall not be considered by the planning commission or the city council until ~~six (6) months~~ ~~two years~~ ~~have~~ elapsed from the date on which the application is denied by the city council or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, until ~~two~~ ~~six (6) months~~ ~~years~~ ~~have~~ elapsed from the date on which the planning commission made its recommendation.
- (c) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to grant an application for a change in the zoning classification of a parcel is challenged in the Jefferson County Circuit Court ("circuit court") and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel or any part of such parcel shall not be considered by the planning commission or the city council until ~~two one~~ ~~years have~~ ~~has~~ elapsed from: (i) the date on which the decision or order of the court, whether it be the circuit court or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.

- (d) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to deny an application for a change in the zoning classification of a parcel is challenged in the circuit court and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel, or any part of such parcel, shall not be considered by the planning commission or the city council until five years have elapsed from: (i) the date on which the decision or order of the court, whether it be the circuit court or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.
- (e) Notwithstanding the provisions of subsections (b), (c) and (d) above, the city council may consider an application for a proposed change in the zoning classification of a parcel, or any part of the parcel, which, under subsection (b), subsection (c) or subsection (d) above was not to have been considered within the respective ~~six (6) month one-year~~ periods referred to in said subsections (b), ~~and (c)~~ **within the one year period referred to in subsection (c), or** within the five year period referred to in ~~said~~ subsection (d), after receiving from the planning commission a recommendation with respect to such proposed rezoning of the parcel; provided, that prior to the consideration of the proposed change in the zoning classification of such parcel, or any part of such parcel, by the planning commission: (i) the city council determines that, because of reasons which would be proper for the city council to consider with respect to the proposed change in the zoning classification of the parcel, or such part of the parcel, it would be appropriate for the city council to consider changing the zoning classification of the parcel, or such part of the parcel, at such time; and (ii) the city council adopts a resolution providing that it has made such determination.
- (f) If an application for a change in the zoning classification of a parcel is filed with the ~~city clerk~~ **zoning officer** and: (i) at any time prior to the city council's consideration of the application at a meeting of the city council, the city council determines that the application is one which, under subsection (d) above, is not to be considered by the planning commission or the city council until the expiration of the ~~one five~~ year period referred to in said subsection (d); (ii) the city council does not make the determination and adopt the resolution referred to in subsection (e) above; and (iii) ~~two one years have has~~ elapsed from the date on which the decision or order of the court referred to in subsection (d) above is final and time for appeal, or further appeal, has expired or ~~two one years have has~~ elapsed from the date on which the legal proceeding referred to in subsection (d) above is dismissed if it is dismissed prior to a final judicial determination being made with respect to the application which was the basis for such legal proceeding, the city council may, by a resolution adopted by its members, agree to consider the application on the conditions that the applicant agree in writing that: (i) if the city council denies the application to change the zoning classification of the parcel and the applicant challenges such decision of the city council in the circuit court, the applicant shall be obligated to reimburse the city for the costs incurred by the city in defending such challenge (including, without limitation, attorneys' fees, court costs and fees and expenses of expert witnesses) (collectively,

"costs") if the final court order with respect to such decision of the city council, whether it be the order of the circuit court or a decision of an appellate court, shall uphold the city council's decision to deny the application to change the zoning classification of the parcel; and (ii) that the applicant post a bond in an amount which the city council determines will be sufficient to reimburse the city for the costs ("bond"). ”

Section 2. 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.

Section 3. 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.

Section 4. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.

At the aforesaid time and place, all interested parties will be heard in relation to the changes proposed by said ordinance.

For questions concerning the proposed zoning amendment, please contact:

Dana Hazen, AICP, MPA
Director of Planning, Building & Sustainability
205/802-3816
hazend@mtnbrook.org

CERTIFICATION

I, Tammy Reid, Administrative Analyst for the City of Mountain Brook, Alabama, do hereby certify that I have caused notice of the proposed amendment to the zoning ordinance and of public meeting thereupon set forth above to be published and provided in the manner specified by Article XXV, Sec. 12-431, of the Mountain Brook City Code. I further certify that I have posted said notice in four conspicuous places within the City of Mountain Brook, in the manner and within the time permitted by law, said places being:

Mountain Brook City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
Cahaba River Walk, 3503 Overton Road
Overton Park, 3020 Overton Road

Tammy Reid, Administrative Analyst