

Review by P&Z Commission: 11/15/17

Sponsor: Councilman Pressley

First Reading: 12/18/17

Ord. No.: 011-17

**AN ORDINANCE TO AMEND APPENDIX A (“ZONING”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO PERMIT SINGLE-FAMILY DWELLINGS IN THE CENTRAL COMMERCIAL (CC) DISTRICT AND TO CLARIFY THE TYPES OF RESIDENTIAL USES PERMITTED IN THE CENTRAL COMMERCIAL DISTRICT**

WHEREAS, the Town Council of the Town of Smyrna is authorized pursuant to 22 *Del. C.* Chapter 3 and Section 4.2.37 the Town Charter to enact zoning regulations in the town and has enacted zoning regulations in the Town of Smyrna;

WHEREAS, several single-family homes are presently located in the Central Commercial (CC) zoning district, many of which were constructed prior to the enactment of the Zoning Code by the Town of Smyrna;

WHEREAS, single-family homes are not a permitted use in the Central Commercial (CC) zoning district, thereby making all single-family homes nonconforming uses, and the intent of Appendix A (“Zoning”) is to not “encourage the survival of nonconformities and to gradually eliminate those nonconformities which are incompatible with permitted uses”;

WHEREAS, the reference to attached dwellings in the Central Commercial district is not a term defined in Appendix A and should be changed to the defined term of townhouse dwelling;

WHEREAS, the Planning Commission considered this ordinance at a duly noticed meeting held on November 15, 2017, and recommended to the Town Council that this ordinance be approved;

WHEREAS, the Town Council held a public hearing on December 18, 2017, notice for which was published in the Smyrna Clayton Sun Times on November 22, 2017 and posted at Town Hall on November 22, 2017, at which time all interested members of the public were given an opportunity to comment on this ordinance; and

WHEREAS, after considering the recommendation of the Planning Commission and the comments presented at the public hearing, in the opinion of the Town Council, single-family homes have existed for many decades in the area now designated as the Central Commercial (CC) district and are in fact compatible with the other uses in this district. The gradual elimination of single-family homes would cause the Town to lose buildings with architectural character and historic value that enhance the Town of Smyrna and the Central Commercial (CC) district, and it is necessary to allow these structures to remain in order to prevent this loss and to further the public health, safety, and welfare.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Section 5 (“District Regulations”) of Appendix A (“Zoning”) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Amend subsection 9 (“Central Commercial District CC”), subsection a.14 (“Uses permitted as a special exception”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (14) *Uses permitted as a special exception.* The following uses are permitted only if approved as a special exception pursuant to section 9(2) of this ordinance:
- (a) ~~Semidetached, attached and apartment~~ One-family, semidetached, townhouse, and apartment dwellings as permitted in residential district R-3; lot height and yard requirements shall be the same as in the R-3 district.
  - (b) Dwelling units which are part of a building used commercially; however, 30 percent of the existing structure must be of a commercial rather than a residential nature. The commercial portion must be a useable portion of the first floor of the building that fronts the public right of way.
  - (c) Private clubs and lodges.
  - (d) Light manufacturing and/or processing provided that:
    - (i) At least 30 percent of the building shall be used for the sale of goods produced or processed on the premises; the portion of the first floor of the building that fronts the street shall be used entirely for retail purposes.
    - (ii) Such area devoted to the production or processing of goods shall be fully concealed from any street.
    - (iii) All aspects of the production or processing of goods are completely confined within the building, including storage of all materials and finished products.
    - (iv) Not more than four employees are engaged in such production or processing.
  - (e) Funeral homes, including associated display and sales of monuments, when screened from public view.
  - (f) Institutions of a religious nature.

**Section 2. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council’s intent.

**Section 3. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Town Council.

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## SYNOPSIS

This ordinance amends the Zoning Code of the Town of Smyrna to allow single-family dwellings as special exceptions in the Central Commercial (CC) district and to create consistency with how townhouse dwellings are referenced in the Central Commercial (CC) district and the definitions section in the Zoning

Code. Because the Highway Commercial (HC) zoning district permits all uses otherwise allowed in the Central Commercial (CC) district, this ordinance will, by extension, also allow single-family dwellings in the Highway Commercial (HC) zoning district.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

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This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on \_\_\_\_\_, 2017 and posted at the Town Hall on \_\_\_\_\_, 2017.

So Certifies:

\_\_\_\_\_  
Town Clerk