

P&Z Review: 11/19/14  
Public Notice: 12/17/14  
Public Hearing: 01/20/15  
Ord. No.: 021-14

**AN ORDINANCE TO AMEND APPENDIX A ( "ZONING") OF THE TOWN CODE OF THE TOWN OF SMYRNA BY AMENDING SECTION 5 ( "DISTRICT REGULATIONS ") BY DELETING SUBSECTION 9 ("CENTRAL COMMERCIAL DISTRICT (CC)") AND ADDING A NEW SUBSECTION 9 "CENTRAL COMMERCIAL DISTRICT (CC)" AND TO CLARIFY REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS AND TO MAKE CORRESPONDING CHANGES TO RELATED DEFINITIONS**

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Appendix A ("Zoning") of the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Amend section 5 ("District Regulations"), by deleting in its entirety subsection 9 ("Central Commercial District (CC)") and inserting in its place thereof a new subsection 9 "Central Commercial District (CC)" as follows:

9. Central Commercial District CC. This district is the centralized, historic core of the Town and is intended to provide for establishments offering a mix of retail, office, and residential uses which are consistent with the existing scale and character of the surrounding historic district, in order to promote the economic viability of the community and surrounding area.

a. [Permitted uses.] The following uses are permitted:

(1) General Retail Business

(2) Offices (Except those offices located on the first floor of a building fronting on Main Street between Mt. Vernon and South Streets and fronting on Commerce Street between U.S. Route 13 and Union Street, shall require Conditional Use approval)

(3) Financial Institutions

(4) Restaurant or café'

(5) Restaurant patios and sidewalk cafes provided that:

(a) Total size shall not exceed 1,000 square feet.

(b) Food and beverages shall be served only to seated patrons.

(c) Outdoor cooking facilities are prohibited.

(d) No electronically amplified sound shall be permitted except that one person electronically amplified performances intended as accessory or background music or non-electronically amplified performances shall be permitted

(e) No overflow of patrons on sidewalks and/or street right-of-way shall be permitted.

(f) A minimum four-foot wide clear pedestrian path between any obstruction and the restaurant patio/sidewalk cafe shall be maintained at all times, but in no case shall the restaurant patio sidewalk cafe encroach into the public right-of-way.

(g) Tables, chairs, umbrellas, and any other objects provided in connection with a facility located directly on sidewalks shall be secured in an orderly fashion or removed sidewalk area when dining facility is closed to the public.

from the

be fixtures. (h) No tables and chairs nor any other parts of restaurant patios or sidewalk cafes shall attached, chained, or in any manner affixed to any tree, post, sign, or other public

be times. (i) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall maintained in a clean and attractive appearance and shall be in good repair at all

(j) No vending machines of any kind shall be permitted.

disposed of (k) For facilities directly on sidewalks, such facilities shall be swept and washed daily by restaurant operator including the adjoining sidewalks to the street curb. Raised decks, porches, and similar structures shall also be swept daily. Debris shall be properly in owner/manager's containers.

(6) Lodging to include hotels and motels

(7) Bed and breakfast establishments offering no more than five (5) bedrooms for lodging purposes and subject to the following requirements:

(a) The owner or owner's representative must reside full-time on the premises.

breakfast permanent guests. Such register shall be Inspections office. (b) Not more than three (3) guests shall be permitted per guest room. All bed and establishments shall maintain a current guest register including names, addresses, dates of occupancy, and motor vehicle license of all open to inspection by the Town's Planning and

(c) No guest shall be permitted to lodge on the premises for more than seven (7) consecutive days.

(d) Breakfast and/or light fare may be served to registered guests only, not to include lunch and/or dinner. No food preparation shall be permitted in any guest room.

occupancy as a off-street parking the availability of on-street (e) One (1) off-street parking space shall be available on-site for the owner/owner's representative and for each guest room (or connected rooms arranged for single guest room unit); provided however, that the total number of spaces required hereunder shall be reduced by two (2) to reflect parking to serve such establishments.

a (f) No construction, remodeling, reconstruction, or other revisions shall be made to the exterior of the premises as would materially change the appearance thereof from that of single-family dwelling.

Delaware and an Smyrna. (g) No bed and breakfast shall offer guest rooms to the general public until a business license to operate such establishment has been obtained from the State of approved Certificate of Zoning Compliance from the Town of

breakfast shall be plumbing, electrical, safety, inspection office upon not less than ten days' compelling exigent circumstances involving the public health or notice). (h) No bed and breakfast shall offer guest rooms to the general public until all applicable State and Town permits have been approved and issued. Every bed and required to meet all governing state and town building, fire, housing, and property maintenance codes as a continuing be subject to inspection by the town building prior notice (except where safety requires less

(8) Restaurant, Full-Service; provided that:

(a) Suitable on-site kitchen facilities are provided.

(b) The primary use consists of sit-down, full meal service to patrons.

(c) Adequate seating arrangements for patrons are provided on the premises.

(d) Those facilities serving alcohol shall be licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant or brewery pub and shall provide sit-down, full meal service to patrons with lunch, dinner and dessert menus during all hours of operation; except that limited late meal service may be substituted beginning 90 minutes before the time alcoholic beverages are no longer served. The limited late meal service shall consist of such foods as sandwiches, salads, pizza, and similar items.

(e) Alcoholic beverages served for consumption on the premises shall be ancillary to the primary food service use. "Ancillary" for purposes of this section means subordinate, auxiliary, smaller and less intensive than the primary use.

(f) Sale, consumption and closing. There shall be no alcoholic beverages sold on the premises after 1:00 a.m. There shall be no alcoholic beverages consumed on the premises after 2:00 a.m. All facilities which sell alcohol for on-premise consumption must close to the public by 2:00 a.m.

(9) Theaters

(10) Personal Services (Except those Personal Service Establishments which are located within 250 feet of another Personal Service Establishment shall require a Conditional Use approval)

(11) Libraries, Museums

(12) Craft Distillery and microbrewery establishments, as defined at 4 Del. C. Sections 512(c) and 512(e), provided that:

a. All permits and approvals required by the Delaware Alcoholic Beverage Commission are obtained and remain in full force and effect.

b. All aspects of the distilling or brewing process are completely confined within a building, including storage of all materials and finished products.

c. Such establishment offers the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).

d. Tasting rooms associated with a craft distillery or microbrewery establishment shall be permitted upon compliance with all of the following criteria:

i. The tasting room shall be located on the premises of the craft distillery or microbrewery establishment and shall be ancillary to the primary use. "Ancillary" for purposes of this section means subordinate, auxiliary, smaller and less intensive than the primary use.

ii. The tasting room shall not operate as a stand-alone bar or tavern;

iii. The tasting room shall only serve those beverages produced on the premises.

iv. The tasting room shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Commission.

(13) Accessory use and structures:

(a) Minor home occupations pursuant to Section 6.19 of this ordinance.

(b) Major home occupations only if approved as a Special Exception pursuant to Section 6.19 of this ordinance.

(c) Accessory uses and structures clearly incidental and customary to and associated with the operations of the permitted uses.

(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 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% 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 concealed from any street.

fully

(iii) All aspects of the production or processing of goods are completely confined within the building, including storage of all materials and products.

finished

(iv) Not more than four (4) employees are engaged in such production or processing.

e. Funeral homes, including associated display and sales of monuments, when screened from public view.

(15). [Uses permitted as Conditional Uses.] The following uses are permitted only if approved as a conditional use pursuant to Section 6.14 of this ordinance:

a. Emergency Services

b. Commercial Services

c. Day Care Center

d. Parking Structures

e. Public utility uses

f. Alcoholic Beverage Establishments provided that:

1) The Alcoholic Beverage Establishment and its permittee shall comply with all applicable Delaware Alcoholic Beverage Commission rules and regulations. Suspension of the Alcoholic Beverage Establishment's or its permittee's DABCC license may constitute sufficient cause or basis for review and possible revocation of its Conditional Use approval.

2) Exterior lighting shall be installed as necessary to adequately illuminate the sidewalk or other public right of ways adjacent to the establishment and any parking lots or landscaped areas located on the premises. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

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concerns.

3) The permittee shall, for the first six (6) months, schedule a monthly meeting the Manager of Planning and Zoning and the Chief of Police in order to mitigate any noise/parking/lighting problems and/or neighborhood

4) In conjunction with granting a conditional use approval as authorized herein, Mayor and Council may impose conditions on the proposed use as deemed necessary by Mayor and Council to ensure that the public health, safety, morals, and general welfare of persons and property will not be adversely affected and to provide for the protection of surrounding property, persons and neighborhood values.

5) Failure to comply with any of the conditions of approval may result in Mayor and Council terminating the conditional use approval.

b. [Restriction of uses and structures.] The foregoing uses and structures are subject to the requirements as set forth in the supplementary district regulations.

c. Parking. Shall be in accordance with Section 6. Supplementary District Regulations.

d. Minimum requirements.

(1) Minimum lot area, none except for dwellings where R-3 applies.

(2) Minimum Lot width, none except for dwellings where R-3 applies.

(3) Minimum Lot depth, none except for dwellings where R-3 applies.

(4) Maximum height, 45 feet , R-3 District requirements shall apply to residential uses.

(5) Minimum front yard, none.

(6) Minimum side yard, none except 20 feet shall be provided and shall be planted when adjoining residential zoning district.

(7) Minimum rear yard, none except 20 feet shall be provided and shall be planted when adjoining a residential zoning district.

**Section 2.** Amend Section 19 ("Definitions"), by deleting the definition "Bed and Breakfast" and inserting in its place thereof the following definition:

Bed and breakfast establishment. A single family dwelling in which lodging or lodging and meals are offered to the general public for compensation, offering no more than five (5) bedrooms for lodging purposes.

**Section 3.** Amend Section 5 (“District regulations”), subsection 4 (“Residential district R-2) by making additions as shown by underlining as follows:

C. [Uses permitted as special exception.] The following uses are permitted only if approved as a special exception pursuant to section 9(2) of this ordinance:

(1) Temporary real estate offices in developments containing a minimum of ten lots.

(2) Bed and breakfast establishments, provided that (a) for at least three (3) years prior to the application for special exception use, all guest rooms shall have been a part of the primary structure and not constructed, reconstructed, or remodeled to create such guest rooms; (b) not more than one (1) softly-illuminated (not to exceed 100 watts) exterior sign, not exceeding 2' by 3' shall be permitted which shall identify the establishment by name and as a "Bed & Breakfast"; and (c) requirements for bed and breakfast establishments outlined in the Central Commercial District (CC) are complied with. [(3)] If approved as a special exception by the board of adjustment pursuant to § 9(2) of this ordinance, school bus stop shelters as defined in § 19, definitions.

**Section 4.** Amend Section 5 (“District regulations”), subsection 21 (“North corridor (NC)”), by inserting a subscript “6” to the end of “Bed and Breakfast Establishments” as the term appears in the subsection and table entitled “n. Land Use” and by inserting the following end note number 6 at the end of the same subsection and table as follows:

6. Bed and breakfast establishments shall comply with those requirements outlined in the Central Commercial District CC for bed and breakfast establishments.

**Section 5.** Amend Section 19 (“Definitions”), by inserting the following definitions alphabetically into their corresponding locations:

**Alcoholic Beverage Establishment.** A commercial establishment wherein alcoholic beverages are sold and served for consumption on the premises, excluding full-service restaurants.

**Commercial Services:** A business in which the primary occupation is the rendering of services to persons and/or businesses rather than the sale of products, including but not limited to electricians, plumbers, repair services, installation services, general contractors, cleaning services without bulk storage of chemical cleaning materials, and businesses providing similar commercial services. Commercial services may include, as an accessory use only, retail sales of items related to the services being provided.

**Financial Institution:** Any establishment wherein the primary occupation is concerned with such State regulated businesses as banking, savings and loans, loan companies and investment companies.

**General Retail Business:** Establishments engaged in the selling or rental of goods or merchandise directly to the public, including services incidental to the sale of such goods and merchandise. The establishment may process or manufacture some of the products, such as a jeweler or bakery, but such processing or manufacturing is incidental to the selling activities.

Please note: General Retail Business establishments shall not include motor vehicle sales and service uses.

**Libraries, Museums:** Public or quasi-public facilities, examples of which include: aquariums, arboretums, art galleries and exhibitions, botanical gardens, historic sites and exhibits, libraries, museums, observatories, planetariums, and zoos. May also include accessory retail uses such as a gift/book shop or a restaurant.

**Lodging:** A building or group of buildings containing individual rooms or suites of rooms, each having a private bathroom, for the purpose of providing overnight lodging facilities to the general public for compensation with or without meals, and which has common facilities for reservations and cleaning services and on-site management. Includes hotels and motels.

**Offices:** Premises available for the transaction of general business and services including but not limited to professional, management, financial, legal, health, social, or government offices, but excluding retail, artisan, and manufacturing uses.

Permitee: The individual or entity that owns an Alcoholic Beverage Establishment and to whom a Conditional Use approval to operate an Alcoholic Beverage Establishment has been granted.

Personal Services: The primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Personal service establishments shall include, but need not be limited to, the following:

1. Barber shops and beauty salons
2. Establishments in which massage is administered to the upper body of a fully clothed client while seated in a chair and/or to the scalp, face, neck, shoulders, arms, hands and or feet.
3. Laundries/laundromats which provide self-service type washing, drying and ironing facilities for the use of retail customers.
4. Cleaning pickup stations, which are establishments where there is no on-site cleaning of garments, articles or goods of fabric and the use consists of drop off and pickup by customers of such articles that are sent to another location for cleaning.
5. Tailors, dressmaking shops, shoe cleaning or repair shops, and other similar places of business.

Please note: Personal Services do not include motor vehicle related services or body art establishments.

**Restaurant or Café:** An establishment whose function is the preparation and serving of food to patrons primarily on the premises, with carry-out facilities as a subordinate function.

Restaurant, Full-Service. A place which is regularly used and kept open for the serving of meals to guests for compensation which has: 1) suitable kitchen facilities; 2) a primary use of sit-down meal service to patrons; 3) adequate seating arrangements for patrons provided on the premises; 4) a restaurant license or brewery-pub license issued by the Delaware Alcoholic Beverage Control Commission, as applicable; 5) alcoholic beverages served for consumption on the premises are clearly incidental to the primary food services, as applicable. The sale or service of sandwiches and snack foods (whether prepared in a kitchen or made elsewhere) shall not constitute a full service restaurant.

Restaurant Patios and Sidewalk Cafes: Decks, porches, or similar structures, whether covered or uncovered, raised or at grade, or the placing or locating of chairs and tables directly on sidewalks, used in connection with restaurants or cafes.

Theater: An indoor facility for group entertainment, other than sporting events. Examples of these facilities include civic theaters, facilities for live concerts and movie theaters.

### SYNOPSIS

This ordinance deletes in its entirety the former subsection 9 of the Zoning Code Section 5 "District Regulations" entitled "Central Commercial District (CC)" and adopts a new subsection 9 "Central Commercial District (CC)" in place thereof. This ordinance clarifies the standards for bed and breakfast establishments and includes definitions that correspond to these changes.

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 \_\_\_\_\_, 2014/2015.

ATTEST:

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

\_\_\_\_\_  
Mayor

This shall certify that the title and synopsis of this ordinance was published in "The Smyrna/Clayton Sun Times" on \_\_\_\_\_, 2014 2015 and posted at the Town Hall on \_\_\_\_\_, 20142015.

So Certifies:

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Town Clerk

This shall certify that the title, effective date and synopsis of this ordinance was published in "The Smyrna/Clayton Sun Times" on \_\_\_\_\_, 2014 2015 and posted at the Town Hall on \_\_\_\_\_, 20142015.

So Certifies:

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Town Manager