

TOWN OF CHEVY CHASE
COUNCILWORK SESSION
TOWN HALL
January 6, 2016

- I. [Council Work Session on Urban Forest Ordinance \(7:00-8:00 p.m.\)](#)
- II. [Council Work Session on Buildings Ordinance \(8:00-9:00 p.m.\)](#)
 - a. Administrative Variances
 - b. Retaining Walls

**Town of Chevy Chase
Administrative Variance and Retaining Wall Ordinance**

Resolution No.:
Introduced: December 9, 2015
Adopted:
Effective Date:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO EXPAND THE LIST OF CONSTRUCTION PROJECTS THAT ARE ELIGIBLE FOR ADMINISTRATIVE VARIANCES AND TO ALLOW CERTAIN RETAINING WALLS TO BE CONSTRUCTED WITHOUT A VARIANCE.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality;

WHEREAS, Maryland Code, Local Government Article, Section 5-211, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings to be erected within the limits of the municipality, including a building code and the requirement for building permits;

WHEREAS, Maryland Code, Land Use Article, Section 20-509 grants to the legislative body of incorporated municipalities in the Maryland-Washington Regional District general power to adopt building regulations for the protection of the public health, safety, and welfare; the preservation, improvement, and protection of lands, water, and improvements in the municipal corporation; and to regulate the construction, repair, or remodeling of buildings on land zoned for single-family residential uses at it relates to fences, walls, hedges, and similar barriers; signs; residential parking; residential storage; the location of structures, including setback requirements; the dimensions of structures, including height, bulk, massing, and design; and lot coverage, including impervious surfaces;

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 9th day of December, 2015;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the ___ day of _____, 2015, a copy of following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council acknowledged receipt of the Ordinance by letter dated _____, 2016, and indicated that the County Council had no comments;

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council considered the following Ordinance in public session assembled on the ___ day of _____, 2016;

WHEREAS, after receiving a report and recommendation from Town staff, and upon consideration of the testimony and evidence presented at the public hearing, the Town Council finds that expanding the list of construction projects that are eligible for administrative variances, and allowing certain retaining walls to be constructed without a variance, would lessen the costs incurred and time spent by building permit applicants while preserving the intents and purposes of the building regulations;

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town.

THEREFORE, BE IT ORDAINED AND ORDERED, this ___ day of _____, 2016, by virtue of the authority given to it by the Maryland Code and the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance.

SECTION 1. BE IT ORDAINED AND ORDERED, this ___ day of _____, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that Chapter 4 of the Town Code is hereby amended to read as follows:

* * *

Sec. 4-7. - Developmental nonconformities.

A developmental nonconformity may be maintained, altered and repaired, but not replaced, provided that it may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter. Notwithstanding the foregoing, nonconforming porches, decks,

stoops, steps, stairways, chimneys, bay and bow windows, and similar projections may be maintained, altered, repaired, or replaced provided that they may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter.

* * *

Sec. 4-51. - Structures, walls, fences, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth, on public property that are devoted to private use.

(a) Excepted as provided below, ~~N~~no structure, wall, fence, guardrail, berm, tree, hedge, shrubbery or any plant growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use. Subject to the provisions of section 4-49, a handrail may be placed on public property devoted to private use upon approval by the town manager.

(b) Notwithstanding the above, and ~~S~~subject to the provisions of section 4-49, ~~structures, walls, fences, berms, trees, hedges, shrubbery and other plant growth that are located on public property devoted to private use on July 13, 2007, may be maintained, altered, repaired, but not enlarged or replaced,~~ the following private improvements may be allowed, provided that they: ~~(1) D~~o not extend into sidewalks or roadways so as to interfere in any manner with street trees, other public or private improvements, public utilities, or pedestrian or vehicular traffic on any sidewalk or road; ~~and (2) A~~re maintained in such a manner and at such height that a clear and unobstructed view is available to approaching traffic, both pedestrian and vehicular-, and otherwise do not interfere with the public health, safety, and welfare:

- (1) Structures, walls, fences, berms, trees, hedges, shrubbery and other plant growth that are located on public property devoted to private use on July 13, 2007, may be maintained, altered, repaired, but not enlarged or replaced;
- (2) A retaining wall that is four (4) feet or less in height may be constructed in a public right-of-way, provided that it is set back at least two (2) feet from the nearest public improvement within the public right-of-way; and
- (3) A retaining wall or guardrail located on public property devoted to private use, as of _____, 2016, may be maintained, altered, repaired, and replaced, provided the location is not changed and no dimension is enlarged.

(c) The town manager shall determine whether there is compliance with the provisions of this section.

(d) ~~Notwithstanding the above, and subject to the provisions of section 4-49, a retaining wall or guardrail located on public property devoted to private use may be maintained, altered,~~

repaired, and replaced, provided the location and materials are not changed and no dimension is enlarged.

Sec. 4-52. - Structures, walls, fences, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.

(a) The property owner and the property occupant shall maintain walls, fences, guardrails, handrails, berms, structures, trees, hedges, shrubbery, and other plant growth located on private property so that they:

- (1) Do not, at any time, exceed the maximum height as specified in this chapter;
- (2) Do not project into any public right-of-way so as to interfere in any manner with pedestrian or vehicular traffic;
- (3) Do not obstruct the view of sightlines necessary for safety;
- (4) Do not present a risk of harm to pedestrians and/or vehicles; and
- (5) Do not otherwise present a risk of harm to the public health, safety and welfare.

(b) Front yard walls. No wall that is one (1) foot in height or higher may be constructed in a front yard. ~~A, provided, however, a retaining wall that is four (4) feet or less than one (1) foot in height may be constructed in a front yard provided that it is set back at least two (2) feet from the nearest public improvement within the public right-of-way. In the event a wall is located within thirty (30) inches of another wall, as may be the case in terracing, the walls shall be considered one (1) wall and the height of the wall shall be measured cumulatively. Height is measured in accordance with subsection (f) below. Notwithstanding the above, a retaining wall in a front yard may be replaced provided the location is not changed and no dimension is enlarged.~~

(c) Front yard fences and berms. No fence or berm may be constructed in a front yard.

* * *

Sec. 4-53. - Nonconforming fences, walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.

(a) Fences, walls, guardrails, handrails, trees, berms, hedges, shrubbery, and other plant growth on private property existing as of November 8, 1986, and not conforming to this article shall be regarded as nonconforming and may be maintained and repaired, but not relocated, altered, or replaced.

(b) Nonconforming fences, walls other than retaining walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property which are relocated, altered, or replaced shall comply with all provisions of this article.

(c) Nonconforming retaining walls on private property which are relocated, altered, or replaced shall comply with all provisions of this article, provided, however, a nonconforming retaining wall located in a front yard may be altered or replaced, if the location and materials are not changed and no dimension is enlarged.

* * *

Sec. 4-60. - Variances from requirements of building restrictions.

* * *

(c) *Administrative variances.*

(1) ~~Front yard fences and walls.~~ The town manager and mayor may grant variances as follows **for the following:**

a. New or relocated front yard retaining walls **taller than four (4) feet in height, and/or set back less than two (2) feet from the nearest public improvement within the public right-of-way;**

b. **New front yard fences measuring four (4) feet or less in height;**

~~b.~~ **c.** Front yard fences and walls which replace an existing fence or wall provided the replacement fence or wall does not materially alter the location or increase the height or length of the fence or wall;

(2) ~~d.~~ **Fences and walls in the public right of way.** The town manager and mayor may ~~grant variances for r~~**Replacement fences and walls in a** public right-of-way;

(3) ~~e.~~ **Front yard guardrails.** ~~The town manager and mayor may grant variances for n~~**New, relocated, or replacement guardrails, provided the guardrail is set back at least two (2) inches from the retaining wall and located along only portions of the retaining wall measuring thirty (30) inches or more in height;**

f. **New or relocated steps, stoops, outside stairways, and their roofing; decks, terraces, porches, and their roofing; chimneys, air conditioners, and heat pumps; and/or oriel entrances, vestibules, and balconies;**

g. New or relocated bay windows in a front or rear yard, provided they are no more than one (1) story in height and ten (10) feet or less in width;-

h. Driveway width in a front yard and/or in a public-right-of-way;-

i. Extension of an existing wall plane;- and/or

j. Replacement of a structure or portion thereof, provided the location is not changed and no dimension is enlarged.

(43) *Posting requirement.* Fifteen (15) days prior to the town manager and mayor acting upon the administrative variance application, the town shall post the property, **post notice on the town website**, and provide written notification to all adjoining and confronting property owners and to all council members.

(54) If prior to the expiration of the fifteen-day notice period, written objection to the variance application is filed with the town manager, the variance application shall be scheduled for public hearing and heard by the town council in accordance with the provisions of subsection (b) above.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ___ day of _____, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ___ day of _____, 2016.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Al Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

~~Strike through~~ indicates material deleted

* * * indicates material unchanged

**Town of Chevy Chase
Ordinance to Amend Urban Forest Ordinance**

Resolution No.:
Introduced:
Adopted:
Effective Date:

WHEREAS, Section 5-202 of the Local Government Article of the Maryland Code grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality; and

WHEREAS, the Natural Resources Article, Title 5, Subtitle 4, Part IV of the Maryland Code authorizes a municipal corporation to implement a local urban and community forestry program within its jurisdiction; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, trees benefit the Town by filtering the air, capturing carbon dioxide, providing shade, buffering noise, harboring wildlife, controlling storm water runoff, and stabilizing soils, and the Town Council has determined that the existing canopy trees in the Town constitute an important natural resource that must be protected, preserved and, replaced: and

WHEREAS, the Town Council asked the Climate and Environment Committee to review the Urban Forest Ordinance, Chapter 29 of the Town Code, and to make any recommendations for amendment thereto deemed appropriate; and

WHEREAS, the Climate and Environment Committee held several public meetings and submitted its findings and recommendations to the Town Council in an open meeting conducted on the 9th day of December, 2015; and

WHEREAS, the Town Council discussed the findings and recommendations of the Climate and Environment Committee in a public meeting held on the ____ day of _____ and introduced the following Ordinance in an open meeting conducted on the ____ day of _____; and

WHEREAS, after proper notice to the public, the Town Council conducted a public hearing at which it considered the following ordinance in public session assembled on the _____ day of _____; and

WHEREAS, upon consideration of the findings and recommendations of the Climate and Environment Committee, the Town Council's deliberations, and the record of the public hearing, the Town Council finds that portions of Chapter 29 should be clarified or amended; and

WHEREAS, the Town Council finds that the Ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town.

NOW THEREFORE, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 29 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO RESTRICT THE DEFINITION OF CANOPY TREE TO CERTAIN SPECIES; TO ALLOW CANOPY TREES TO BE REMOVED BY RESIDENTS WHO PERCEIVE THE TREES TO BE HAZARDOUS PROVIDED A REFORESTATION TREE IS PLANTED OR AN IMPACT FEE IS PAID FOR EACH CANOPY TREE REMOVED; TO NO LONGER DECLARE A SECOND VIOLATION OF CHAPTER 29 TO BE A MISDEMEANOR; TO DESIGNATE THE TOWN COUNCIL AS THE REVIEWING BODY; AND TO REMOVE THE TREE ORDINANCE BOARD.

SECTION 1. BE IT ORDAINED AND ORDERED, this _____ day of _____, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by the Maryland Code, and the Town Charter, that Chapter 29 of the Town Code is hereby amended to read as follows:

* * *

Sec. 29-1 - Findings and purpose.

The town council finds that it is in the interest of the residents of the Town of Chevy Chase to preserve, protect, and maintain the town's tree canopy. Because trees require the span of a human lifetime to mature and can be subject to disturbance at many points in their lives, the town places a high value on the mature trees that have survived to form an intrinsic part of the fabric of our community and a defining feature of its character.

The town benefits from the mature tree canopy because it:

- Contributes significant aesthetic value
- Measurably increases property worth
- Fosters a cherished quality of life
- Recycles the air we breathe by absorbing carbon dioxide and producing oxygen
- Absorbs air pollutants
- Moderates climate extremes and reduces wind speed, thus conserving energy otherwise used for increased air conditioning and heating
- Provides food and shelter for innumerable plant and animal species
- Forms an interrelated part of the regional forest ecosystem, connecting with adjoining forest communities
- Muffles noise
- Stabilizes soils, reducing soil erosion and stormwater runoff

Each mature tree in the town's urban forest plays a critical role in controlling stormwater runoff and supporting the biological and hydrological integrity of the Lower Rockville and Little Falls Branch watersheds, part of the larger Chesapeake Bay watershed. Thus, the regulation of actions affecting the town's tree canopy provides benefits to all town residents and property owners and contributes to the greater good of the Suburban Maryland and Washington region.

Sec. 29-2. -~~Tree ordinance board.~~ Reserved.

~~The provisions of this chapter will be administered by a tree ordinance board made up of residents of the town appointed by the mayor. The board will consist of five (5) members. A quorum shall consist of a majority of the members of the board. A decision may be made by a majority of those present at the hearing as described in section 29-7. Members will be appointed to serve staggered terms of three (3) years.~~

Sec. 29-3. - Trees included.

This chapter applies to all canopy trees on private and public property in the Town of Chevy Chase. A canopy tree is defined as a tree with a trunk that measures at least twenty-four (24) inches in circumference at four and one-half (4½) feet above ground **and is one of the following species: White Oak; Swamp White Oak; Willow Oak; Scarlet Oak; Northern Red Oak; Southern Red Oak; Shingle Oak; American Beech; Red Maple; Sugar Maple; White Ash; Sweetgum; Blackgum (Tupelo); Tulip Poplar; or American Elm.** If a tree divides into branches at less than four and one-half (4½) feet, the trunk shall be measured immediately beneath the dividing point.

Sec. 29-4. - Permit required.

(a) No person shall remove or destroy, or cause the removal or destruction of, a canopy tree, or undertake any action that will substantially impair the health or growth of a canopy tree without first obtaining a permit from the town. Notwithstanding the foregoing, the town retains the right to remove a canopy tree from any public right-of-way, in accordance with the requirements of the Maryland Roadside Tree Law, as amended or replaced.

(b) In the case of an emergency that threatens imminent harm to life or property as determined by the town manager, the provisions of this chapter are waived and the town manager may issue an immediate tree removal permit.

Sec. 29-5. - Permit procedure.

(a) In order to remove or destroy or undertake any action that will substantially impair the health or growth of a canopy tree, a property owner shall first apply in writing for a tree removal permit from the town office using an official town application form that will include:

- (1) The street address of the property upon which the proposed action is to be taken;
- (2) The name, address and telephone numbers of the property owner;
- (3) The species and approximate circumference four and one-half (4½) feet above the ground of all tree(s) to be removed; and
- (4) A description and diagram of the proposed action including the location on the property of all tree(s) to be removed.

(b) Except in the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice in a conspicuous manner on the subject property describing the tree removal permit application prior to evaluating the request.

Sec. 29-6. – Permit standards and requirements.

(a) The town manager is authorized to issue a tree removal permit if ~~in consultation with the town arborist,~~ it is found that one (1) of the following conditions applies:

- (1) The canopy tree is dying, dead, or in danger of falling **as determined by the Town arborist;**
- (2) The canopy tree constitutes a hazard to the safety of persons or property **as determined by the Town arborist; or**
- (3) ~~The canopy tree is a nuisance tree on the town's list of undesirable tree species as adopted by the town council~~ **The canopy tree constitutes a hazard to the safety of persons or property as determined by a resident of the subject property, provided the resident agrees to plant a reforestation tree on the subject property, or pay an impact fee, for each canopy tree removed, as provided below. The resident must obtain and submit to the town the prior written consent of all property owners before the tree removal permit may be issued.**

a. Reforestation requirements.

- (i) **The species of a reforestation tree must be approved by the town. The town council may by resolution establish a list of approved reforestation trees.**
- (ii) **As a condition of a tree removal permit, any reforestation tree must be planted at a time and location on the subject property as approved in**

advance by the town arborist, within twelve (12) months of the date of issuance of the tree removal permit, unless extended in writing by the town manager. A reforestation tree planted pursuant to this chapter must measure at least two and one-half (2.5) inches in caliper at the time of installation.

(iii) The applicant shall, at the applicant's sole cost and expense, be responsible for the maintenance and replacement of any reforestation tree required by this chapter for a period of two (2) years from the time of planting. The warranty period for any tree that dies during the two (2) year period shall commence from the date of planting a replacement tree. Any replacement tree must be planted at a time and location on the subject property as approved in advance by the town arborist.

(iv) Prior to the issuance of a tree removal permit for which reforestation is required, the applicant shall post a cash bond acceptable to the town manager to assure the proper installation of any required reforestation tree, or replacement thereof, during the warranty period required by this subsection a.

1. The cash bond may be forfeited, in the discretion of the town manager, if the reforestation tree, or a required replacement thereof, is not properly installed. Forfeited cash bonds shall be used to plant reforestation trees within the town or fund such other tree canopy preservation measures or programs established by the town.
2. The amount of the cash bond may not be less than the total impact fee that would apply if the reforestation tree or trees, or replacements thereof, are not installed as required.
3. The cash bond may be released upon conclusion of the warranty period if the town arborist confirms that all required reforestation trees, or any replacements thereof, have been properly installed and have not died.

b. Impact fees. The town council may by resolution establish the required impact fee. Impact fees paid to the town shall be used to plant reforestation trees within the town or fund such other tree canopy preservation measures or programs established by the town.

(b) Except in the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice of approval of a tree removal permit in a conspicuous manner on the subject property and on the canopy tree(s) to be removed. The canopy tree(s) shall not be removed until at least seven (7) calendar days after the posting of the notice(s).

(ed) In the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice of emergency approval as soon as practicable in a conspicuous manner on the subject property.

(de) If the town manager determines that none of the ~~above~~ conditions **in section 29-6(a) or (b)** apply, ~~he/she~~ **the town manager** shall issue a written denial of the application.

Sec. 29-7. - Appeals.

An applicant who is denied a permit by the town manager may appeal the decision by filing a written appeal to the ~~tree ordinance board~~ **town council** within thirty (30) days of the town manager's denial of the application for a permit. The appeal must include the following information:

- (1) A copy of the denied tree permit application;
- (2) A brief statement explaining why the proposed action is reasonable and necessary and consistent with the purposes of this chapter; and
- (3) A statement whether the applicant intends to perform reforestation after tree removal is completed and if so, a diagram showing the number, size and species of the replacement tree or trees.

Sec. 29-8. - Appeals procedures.

(a) Upon the filing of an appeal, the town manager will transmit to the ~~tree ordinance board~~ **town council** the appeal record.

(b) Upon receipt of the appeal, the ~~tree ordinance board~~ **town council** will schedule a public hearing.

(c) At least seven (7) days prior to the public hearing the town manager shall:

- (1) Issue a notice of public hearing to the applicant and to owners of all adjacent and confronting properties or to those persons who are in residence, which shall include the nature of the application, the date and time of the public hearing, and the location of the public hearing;
- (2) Post the notice of public hearing at the property in a conspicuous manner similar to the posting of a county building permit notice; and
- (3) Provide a copy of the appeal file to the owners of all adjacent and confronting properties or to those persons who are in residence.

(d) At the hearing, any party may appear in person or by agent or by attorney. The decision by the ~~tree ordinance board~~ **town council** shall be issued in writing as soon as practical following the hearing.

(e) In exercising its powers, the ~~tree ordinance board~~ **town council** may affirm the denial of a permit, may direct the town manager to issue a permit, or may direct the manager to issue a

permit upon such conditions, terms or restrictions as the ~~board~~ **town council** may deem necessary to accomplish the intent and purposes of this chapter.

Sec. 29-9. - Factors to be considered in evaluating an appeal.

The ~~tree ordinance board~~ **town council** shall consider the following factors in deciding whether to approve or deny a request for a tree removal permit for a tree that does not qualify for removal under section 29-6.

- (1) The reasons cited by the applicant for wanting to remove the canopy tree.
- (2) The applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the canopy tree to be removed.
- (3) The applicant's intention to retain and protect existing trees.
- (4) The facts in support or opposition presented by town residents.
- (5) Information provided by the town arborist.
- (6) The extent to which no alternative to canopy tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the town building code.
- (7) The desirability of preserving a canopy tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.
- (8) The overall effect on the tree canopy of the adjacent properties, the neighborhood and the town.
- (9) The aggregate or cumulative effect of the proposed canopy tree removal(s), including any and all canopy tree removals from the property within the prior two-year period.

Sec. 29-10. - Judicial review of a decision of ~~tree ordinance board~~the town council**.**

Within thirty (30) days of the date of the issuance of a decision of the ~~tree ordinance board~~ **town council** any aggrieved party may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, **as amended**.

Sec. 29-11. - Protection of trees at risk.

(a) Before undertaking any activity that poses a potential risk to any canopy tree on the property in question, or poses a potential risk to any canopy tree on an adjoining property or on the town right-of-way, a property owner shall submit a tree protection plan for review and approval by the town manager in consultation with the town arborist. It is the responsibility of the property owner to ascertain whether a construction-related activity places any canopy tree in jeopardy.

(b) Activities that pose a potential risk to canopy trees include but are not limited to (i) the demolition, in whole or in part, of an existing home or structure; (ii) the construction of a new home or structure; (iii) the expansion of the footprint of an existing home or structure; (iv) the construction of a driveway, patio or other impervious surface; (v) the construction of walls,

(vi) installation of underground utility lines, and (vii) regarding or excavating within the dripline of a canopy tree.

(c) In those instances in which a town building permit is required, compliance with the tree protection plan will become a condition of the building permit.

Sec. 29-12. - Tree protection plans.

(a) A tree protection plan is defined as a plan that delineates tree root protection areas and other measures to be taken to ensure the safety and survivability of all canopy trees on the subject property and all canopy trees at risk on adjoining properties and on the town right-of-way.

(b) Tree protection plans shall comply with the standards set forth in section 29-13 of this chapter.

(c) Prior to submission to the town manager, the applicant must provide a copy of the complete plan with any attachments to owners of all adjacent and confronting properties or to those persons who are in residence. An applicant shall submit with the tree protection plan an affidavit confirming compliance with this section. Before the tree protection plan is submitted to owners of adjacent and confronting properties, a preliminary tree protection plan shall be submitted to the town manager. The town manager may, in consultation with the town arborist, preliminarily review the accuracy of the plan. The town manager may require the applicant to amend or expand the plan before it is submitted to owners of adjacent and confronting properties.

(d) The town manager may require the applicant to amend or expand the tree protection plan as a condition of approval of the town building permit when he/she deems it necessary to protect a canopy tree.

(e) No construction or demolition shall begin until an approved tree protection plan has been implemented. The town manager will provide ongoing oversight of the plan to ensure compliance through completion of the project.

(f) In those instances in which a town building permit is required, the approved tree protection plan shall be incorporated by reference as a condition of the town building permit. Violation of the provisions of the tree protection plan shall be considered a violation of the conditions of the town building permit and subject to the same sanctions.

(g) The approved tree protection plan shall be posted at the property prior to the commencement of construction in a conspicuous manner similar to the posting of a county building permit notice and left in place until construction is finished.

Sec. 29-13. - Requirements for tree protection plans.

(a) The objectives of a tree protection plan are to minimize the impacts of construction activities on canopy trees, including but not limited to: mechanical injury to roots, trunks and

branches; compaction of soil which degrades functioning roots and inhibits the development of new ones; and changes in grade which can cut off or suffocate roots. A tree protection plan shall, where applicable, include the following:

- (1) Existing and proposed property lines, structures, utility lines, driveways, sidewalks, and other paved surfaces.
- (2) The size (circumference at four and one-half (4½ feet above the ground), species, state of health, estimated location of dripline, and accurate location of all trees on the project property, as well as canopy trees on neighboring properties where their driplines lie over the proposed construction zone.
- (3) A delineation of the tree protection zones within which all construction activities, grading or drainage changes, trenching, heavy equipment, or storage of materials will be excluded. All tree protection zones must be surrounded by chain link fences six (6) feet in height with signage affixed warning workers to stay away in English and Spanish.
- (4) Boundaries of tree protection zones will be located to provide the maximum protection for tree roots.
- (5) The delineation of areas to be excavated, regraded, and/or disturbed, as well as mitigation measures to be used to protect remaining trees if substantial grading changes are proposed.
- (6) The location of any proposed trenching for underground utility lines.
- (7) The location of any temporary gravel construction access drives and where construction materials and equipment will be stored.
- (8) All trees proposed for removal.
- (9) All trees to be protected in tree protection zones, including all trees in the town right-of-way.
- (10) The location, species and diameter of each ~~replacement~~ **reforestation** tree proposed or required.
- (11) The methods by which tree branches and roots are to be protected before construction. Branch and root pruning must adhere to International Society of Arboriculture standards.
- (12) The maintenance program for trees to be protected during construction as well as for ~~replacement~~ **reforestation** trees for two (2) years ~~following construction~~ **from the time of planting**.
- (13) Contact information for a designated individual who will ensure that all work adheres to the approved tree protection plan.
- (14) A copy of the approved tree protection plan posted on the property on a board covered with plastic prior to the commencement of construction and left in place until construction is finished.

Sec. 29-14. - Penalties.

(a) Violation of any provision of this chapter, including but not limited to removing, destroying, or impairing the health of a canopy tree without obtaining a permit (section 29-4), removing a canopy tree prior to the expiration of the seven-day notification period (section 29-6), undertaking any activity that poses a potential risk to any canopy tree without filing a tree

protection plan (section 29-11), failing to provide a copy of the complete tree protection plan to owners of all adjacent and confronting properties or to those persons who are in residence (section 29-12), or failing to comply with any part or provision of an approved tree protection plan, shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine, per canopy tree, of one thousand dollars (\$1,000.00) or the maximum amount permitted by state law, whichever is greater.

(b) Whenever the town manager finds that a violation of this chapter may jeopardize the health or safety of a canopy tree, he/she may issue a stop work order to halt any activity that may damage the tree and may order remedial action as appropriate.

(c) A stop work order issued pursuant to this chapter, posted on the property in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the town manager.

~~(d) A second violation of this chapter within a two-year period, or a violation of a stop work order, shall be a misdemeanor and upon conviction shall be punishable by a fine, per canopy tree, of one thousand dollars (\$1,000.00) or the maximum amount permitted by state law, whichever is greater, and imprisonment for six (6) months or the maximum duration permitted by state law, whichever is greater.~~ **In addition to any fine imposed, the town may require abatement of the violation. Such abatement may include the planting of a reforestation tree or payment of an impact fee, for each canopy tree removed, destroyed, harmed, or subjected to potential risk in violation of this chapter.**

(e) Any person who violates any provision of this chapter, or directs or allows another to commit an act that would violate any provision of this chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this chapter on his or her property shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in subsections (a) and (d) above. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each violation of a provision of this chapter shall be a separate infraction. Each day that a violation exists shall constitute a separate violation.

(f) The town may institute injunctive or any other appropriate action or proceedings at law or equity for the enforcement of this chapter in any court of competent jurisdiction.

Sec. 29-15. -- Severability.

~~Should any part or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part held to be invalid.~~

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Maryland law and the Town Charter, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the ____ day of _____.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Albert Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
[brackets] indicates material deleted
* * * indicates material unchanged