

**Town of Chevy Chase**  
**Ordinance to Amend the Building Regulations**

Resolution No.: 12-02  
Introduced: May 9, 2012  
Re-introduced  
as Amended: September 12, 2012  
Adopted: October 10, 2012  
Effective Date: November 10, 2012

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, 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; and

WHEREAS, Article 23A, Section 2(b)(5) of the Maryland Code, 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; and

WHEREAS, Article 28, Section 8-115.1 of the Maryland Code authorizes municipal corporations in Montgomery County, such as the Town of Chevy Chase, to regulate the construction, repair, erection or remodeling of buildings or other structures; the location of structures, including setback requirements; the dimensions of structures, including height, bulk, massing, and design; and lot coverage, including impervious surfaces; 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 resident(s) of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, the Land Use Committee held public meetings and submitted a report to the Council recommending amendments to Chapter 4 of the Town Code; and

WHEREAS, the Town Council introduced a draft ordinance in an open meeting conducted on the 9<sup>th</sup> day of May, 2012; and

WHEREAS, the Town Council discussed and amended the draft ordinance in an open meeting conducted on the 31<sup>st</sup> day of July, 2012; and

WHEREAS, the Town Council re-introduced the following Ordinance, as amended, in an open meeting conducted on the 12<sup>th</sup> day of September, 2012; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 7<sup>th</sup> day of September, 2012, a copy of the following Ordinance was submitted to the Montgomery County Council for its comments; and

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 conducted a public hearing at which it considered the following Ordinance in public session assembled on the 10<sup>th</sup> day of October, 2012; and

WHEREAS, upon consideration of the report and recommendation of the Land Use Committee and the record of the public hearing, the Town Council finds that portions of Chapter 4 should be amended to define and regulate guardrails and handrails, and two typographical errors in the existing Code should be corrected; and

WHEREAS, the Town Council finds that regulations pertaining to guardrails and handrails are necessary to distinguish guardrails and handrails from fences, which are prohibited in the front yard; and

WHEREAS, the Town Council finds that (i) handrails of open construction should be permitted to be installed on private property along walkways, steps, and outside stairways as a matter of right, without a permit, (ii) handrails of open construction should be permitted to be installed along access ramps and wheelchair lifts, with a permit; (iii) guardrails and handrails on stoops, decks, and porches should be treated as part of the stoop, deck, or porch and not separately regulated, (iv) handrails of open construction should be permitted to be installed on public property along walkways and steps, with a permit; and (v) certain guardrails of open construction should be permitted to be installed along front yard retaining walls pursuant to an administrative variance; 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 4 OF THE TOWN OF  
CHEVY CHASE MUNICIPAL CODE TO DEFINE AND  
REGULATE GUARDRAILS AND HANDRAILS.

SECTION 1. BE IT ORDAINED AND ORDERED, this 10<sup>th</sup> day of October, 2012, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and Section 301 of the Town Charter, that Chapter 4 of the Town Code is hereby amended to read as follows:

\* \* \*

**Sec. 4-1. Definitions.**

- (a) In this chapter, the following terms shall have the meanings indicated.
- (b) Terms defined.

\* \* \*

**Guardrail: A protective railing located along a retaining wall, measuring no more than thirty-eight (38) inches in height, excluding post caps and fennels, having a fenestration of at least seventy (70) percent, and having no gate. A railing not meeting the foregoing criteria, or the criteria for a handrail, shall be deemed a fence, provided, however, a railing on a porch, deck, or stoop, shall be deemed part of the porch, deck, or stoop and not separately regulated.**

\* \* \*

**Handrail: A railing grasped by the hand for support, located along a walkway, steps, outside stairway, access ramp, or wheelchair lift, measuring no more than thirty-eight (38) inches in height, excluding post caps and fennels. A railing not meeting the foregoing criteria, or the criteria for a guardrail, shall be deemed a fence, provided, however, a railing along a porch, deck, or stoop, shall be deemed part of the porch, deck, or stoop and not separately regulated.**

\* \* \*

**Sec. 4-2. Building permit, in general.**

- (a) Unless a permit has been issued by the town manager, it shall be unlawful for any person to:
  - (1) Erect any building;
  - (2) Make any material structural alterations or additions to a building;
  - (3) Demolish any building (in whole or in part);
  - (4) Erect any fence, **guardrail, handrail**, wall, berm, or front-yard hedge, **provided, however, a handrail may be erected along a walkway, steps, or outside stairway on private property without a permit;**

- (5) Install any pool, outdoor therapeutic bath, tennis court, or driveway;
- (6) Disrupt any town right-of-way, including, but not limited to, streets, sidewalks, curbs, gutters and grassy areas;
- (7) Place any dumpster or portable storage unit on public or private property;
- (8) Construct an access ramp or wheelchair lift; or
- (9) Install any overhead or underground wires, cables, hoses, pipes, and similar facilities on public property devoted to private use.

\* \* \*

**Sec. 4-4. Building location requirements; prohibitions.**

\* \* \*

*(e) Exemptions from yard requirements for projections.*

\* \* \*

(4) *Access ramps and wheelchair lifts.* An open and uncovered access ramp or wheelchair lift, **and any handrails associated therewith,** may project into any minimum front, side, or rear setback provided the following conditions are met:

(a) The access ramp or wheelchair lift, **and any handrails associated therewith,** cannot reasonably be constructed without projecting into the required setback;

(b) The access ramp or wheelchair lift, **and any handrails associated therewith,** project into the required setback the minimum distance reasonably necessary to provide a person a reasonable accommodation; and

(c) The access ramp or wheelchair lift has the minimum dimensions reasonably necessary to comply with all applicable provisions of the Americans with Disabilities Act, as amended.

\* \* \*

**Sec. 4-46. Purpose.**

It is the intent of the town council to promote the town's public health, safety and general welfare by providing regulatory requirements for the location, size and features of fences, **guardrails, handrails,** walls, berms, trees, hedges, shrubbery or other plant growth. Frequently, the location, height and design of fences, **guardrails, handrails,** walls, berms, trees, hedges, shrubbery or other plant growth in close proximity to the public right-of-way results in the obstruction of parked and moving vehicles and causes injury to pedestrians and vehicles. The

purpose of this article is to regulate all fences, guardrails, handrails, walls, berms, trees, hedges, shrubbery or other plant growth so as to alleviate, to the extent possible, the aforementioned conditions and to preserve the value of property, to assure the continued attractiveness of the town and to protect the public health, safety and welfare.

**Sec. 4-47. Removal of structures, fences, guardrails, handrails, walls, wires, cables, hoses, pipes, and similar facilities, trees, earth berms, hedges, shrubbery and other plant growth in violation.**

The town manager or designee shall order the removal of any structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery and other plant growth erected or maintained in violation of this article. Ten (10) days' notice in writing shall be given to the owner of such structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth to remove the same or to bring it into compliance with this article. Upon failure to remove it or to comply with the notice, the town shall remove the structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth. The town may remove the same immediately and without notice if it reasonably appears that the condition of the structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth is such as to present an immediate threat to the safety of the public. Any cost of removal incurred by the town shall be assessed against the owner of the property on which such structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth is located and may be collected in the manner of an ordinary debt in the manner of taxes and such charge shall be a lien on the property.

**Sec. 4-48. Permit application.**

All applications for a permit to construct or plant a fence, guardrail, handrail, wall, berm, tree, hedge, shrubbery, or other plant growth may be filed at any time; however, no town permit shall be issued unless and until all applicable county permits for the same work have been issued. The application shall state the name of the applicant, address, location, and type of building materials for any fence, guardrail, handrail, wall, berm, tree, hedge, shrubbery, or other plant growth to be installed. The fee for such permit shall be established by the town council by resolution. All fees shall be payable to the town.

**Sec. 4-49. Public property devoted to private use.**

\* \* \*

(b) The town may revoke the license to use public property by any person violating the provisions of this chapter. Upon revocation of such license, the owner of the abutting property will, upon the demand of the town manager, remove all structures, walls, fences, guardrails, handrails, wires, cables, hoses, pipes, and similar facilities, berms, trees, hedges, shrubbery, and other plant growth on the public property so as to conform to this chapter. If such action is not taken within a period of ten (10) days after the town gives notice of revocation of a license, the

town manager or designee may enter such public property and take any steps that are necessary to bring it into compliance with this chapter. Any cost of any corrective action taken by the town manager or designee shall be borne by the owner of abutting property as provided for in section 4-47 of 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) 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) Subject to the provisions of section 4-49, [S]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, provided that they [do not]:

- (1) **Do not** [E]xtend into sidewalks or roadways so as to interfere in any manner with pedestrian or vehicular traffic on any sidewalk or road; and
- (2) Are maintained in such a manner and at such height that a clear and unobstructed view is available to approaching traffic, both pedestrian and vehicular.

\* \* \*

(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 [section] **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 wall that is 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.

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

(d) Front yard hedges.

\* \* \*

**(e) Guardrails. No guardrail may be constructed in a front yard.**

([e]f) No person shall erect or maintain any wall, fence or berm measuring more than six (6) feet, six (6) inches in height in any side or rear yard. No wall or berm measuring more than one (1) foot in height may be erected within two (2) feet of any side or rear lot line. Height is measured in accordance with subsection (f) below.

([f]g) The measurement of the height of walls, fences, berms, structures, hedges, shrubbery, or other plant growth shall be made from the surface of the adjoining ground. Where the yards on the two (2) sides differ, the measurement shall be made from the surface of the lower yard.

**(h) The measurement of the height of guardrails and handrails shall be made from the surface of the adjoining ground or if mounted on a structure, from the surface of the structure. If a guardrail is attached to a retaining wall, the height of the wall will include the height of the guardrail for purposes of this chapter. If the guardrail is set back from the wall by two (2) inches or more, the height of the wall will not include that of the guardrail.**

**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.

\* \* \*

**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:

a. New or relocated front yard retaining walls;

b. 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) *Fences and walls in the public right-of-way.* The town manager and mayor may grant variances for replacement fences and walls in the public right-of-way.

**(3) Front yard guardrails. The town manager and mayor may grant variances for 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.**

([3]4) *Posting requirement.* Fifteen (15) days prior to the town manager and mayor acting upon the administrative variance application, the town shall post the property and provide written notification to all adjoining and confronting property owners and to all council members.

([4]5) 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.

\* \* \*

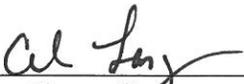
SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 10<sup>th</sup> day of October, 2012, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and Section 301 of the Town Charter, that:

(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 10<sup>th</sup> day of November, 2012.

ATTEST:

TOWN OF CHEVY CHASE

  
\_\_\_\_\_  
Albert Lang, Secretary

  
\_\_\_\_\_  
Patricia Burda, Mayor  
Town of Chevy Chase

**Bold and Underline** indicates new material

[brackets] indicates material deleted

\* \* \* indicates material unchanged