

**Town of Chevy Chase
Ordinance to Clarify Definition of "Street"**

10-03
Resolution No.: ~~09-12~~
Introduced: January 13, 2010
Adopted: March 10, 2010
Effective Date: April 10, 2010

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, and 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, 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, 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, on April 16, 2008 the Town Council adopted a comprehensive ordinance amending the Town Code with respect to the demolition and/or 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, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 13th day of January, 2010; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 15th day of January, 2010, a copy of following Ordinance was submitted to the Montgomery County Council for its comments; and

WHEREAS, no comments were received from the Montgomery County Council; 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 considered the following Ordinance in public session assembled on the 10th day of March, 2010; and

WHEREAS, upon consideration of the record of the public hearing, the Town Council finds that the Code should clearly provide that the yard of an interior lot abutting an alley is not a front yard; and

WHEREAS, the Town Council finds that, in order to accomplish this clarification, the definition of "street" should be revised in order to distinguish the terms "street" and "alley" for purposes of the building regulations; 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.

THEREFORE, BE IT ORDAINED AND ORDERED this 10th day of March, 2010, that the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority given to it by Articles 23A and 28 of the Maryland Code, and Section 301 of the Town of Chevy Chase Charter, does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO DISTINGUISH THE TERMS "STREET" AND "ALLEY" FOR PURPOSES OF THE BUILDING REGULATIONS.

SECTION 1. BE IT ORDAINED AND ORDERED, this 10th day of March, 2010, 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.

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Alley: A right-of-way **less than thirty (30) feet in width** which provides secondary access for vehicles to the side or rear of abutting properties.

* * *

Front-loading garage: An attached garage the door of which is parallel (or approximately so) to the front building line. An attached garage on a corner lot is deemed to be front-loading if its door faces any public street[, excluding alleys].

Front lot line: The boundary line of a lot separating the lot from any and all streets.

Front yard: The area defined by the front lot line, the front building line, and the side lot lines, excluding: (a) any lawful projection under section 4-4(f)(1); and (b) any unenclosed porch. In cases where no building exists, the front building restriction line will be substituted for the front building line.

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Street: A public or dedicated right-of-way **for vehicular travel thirty (30) feet or more in width** [including, but not limited to, streets, roadways, parkways, avenues, highways or other public thoroughfares].

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(Res. No. 06-10, 7-12-06; res. No. 07-01, 1-10-07; Ord. No. 07-05, § 1, 9-11-07; Res. No. 08-01, § 1, 4-16-08, eff. 5-17-08; **Res. No. 00-00, 00-00-10**)

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

(a) *Front setback.*

- (1) No main building, or any part or projection thereof, may be erected or located nearer to any front lot line than the established building line or twenty-five (25) feet, whichever results in a greater setback. Notwithstanding the foregoing, an addition may be constructed over a nonconforming one-story covered and enclosed structure in existence on February 22, 2006, and may encroach beyond the established building line setback, but not beyond the minimum twenty-five-foot setback, if the addition does not expand the footprint of the building.
- (2) For corner lots, any and all lines bordering upon a street[, avenue,] **or** alley [or parkway] shall be considered a front lot line. Notwithstanding the foregoing, in the case of a corner lot, if the adjoining lot on one of the streets either does not front on that street or is in a nonresidential zone, the setback from that street line shall be at least fifteen (15) feet.

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(Res. No. 06-10, 7-12-06; **Res. No. 00-00, 00-00-10**)

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Sec. 4-54. Public property devoted to private use.

The **unimproved portion of** public property located between public sidewalks and abutting private property, or in the absence of public sidewalks, located between **the improved surfaces of** public streets[,] **or alleys** [avenues, or roadways] and abutting private property and devoted to private use by abutting property owners or occupants, shall be under the immediate care and keeping of such abutting property owners or occupants. The town, by this article, grants to such abutting property owners, their successors, assigns, and occupants so using this area, a license to continue to use such area, provided that this license may be revoked at any time by the town in accordance with the provisions of this article.

(Res. No. 86-006, § 2, 10-8-86; Ord. No. 90-004, 4-5-90; **Res. No. 00-00, 00-00-10**)

* * *

Sec. 4-56. Hedges, trees, fences, walls, etc., on private property.

(a) Trees and shrubbery or any other forms of plant growth located on private property shall be set back at least two (2) feet from the public right-of-way.

(b) Hedges, trees, fences, walls, earth berms, shrubbery or any other forms of plant growth located on private property shall not be permitted to extend into sidewalks, streets, or alleys [avenues, or roadways] so as to interfere in any manner with the pedestrian or vehicular traffic on such sidewalks, streets, or alleys [avenues, or roadways].

(c) All hedges, trees, fences, walls, earth berms, shrubbery or any other forms of plant growth on private property at any intersection shall be maintained by the landowner or occupant in such a manner and at such height that a clear and unobstructed view is available to approaching traffic, both pedestrian and vehicular. The town manager shall determine whether there is compliance with the provisions of this section.

(d) No person shall erect any fence, wall, earth berm, tree, hedge or other forms of plant growth along any sidewalk, street, or alley [avenue, or roadway] without first obtaining a permit as provided in this article, or suffer or permit any hedges, trees, walls, earth berms, fences, shrubbery or other forms of plant growth along or parallel to any sidewalk, street, or alley [avenue, or roadway] to be more than six (6) feet, six (6) inches in height, provided that no fence or wall shall be erected or hedge or earth berm permitted between properties or at the rear of properties abutting on an alley or private property more than six (6) feet, six (6) inches in height. The measurement of the same shall be made from the surface of the ground next to the hedge, fence or wall and where the yards on the two (2) sides of the same differ in level, the measurements shall be made from the surface of the higher yard. Where lots are graded to conform with the street or alley grade abutting the property to be fenced, the measurement shall be made from the average grade on the building line extending to the party fence; provided, further, however, that with the written consent of the adjoining owner of the property to be fenced, a hedge, fence, earth berm or wall of a greater height than six (6) feet, six (6) inches may be erected or permitted with the approval of the town council pursuant to the variance procedures set forth in section 4-50.

(e) No fence, earth berm, hedge or wall will be permitted to extend into the front yard [that is beyond the house line running along the front of the house and extending to the side lot lines].

(f) Notwithstanding subsection (e) above, a wall that is less than one (1) foot in height shall be permitted to extend into the front yard provided that it is set back at least two (2) feet from all public improvements such as sidewalks, paved streets, and curbs. The measurement of the height of a wall shall be made from the surface of the ground next to the wall, and where the yards on the two (2) sides of the wall differ, the measurement shall be made from the surface of the lower yard. 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.

(g) Front yard hedges.

- (1) Notwithstanding the provisions of subsection (e) above, the town manager, in accordance with the provisions set forth below, may permit the following hedges (any dense row of shrubs, trees or other plant material), to be planted in the front yard, that is, beyond the house line running along the front of the house and extending to the side lot lines:
 - a. Hedges not to exceed a maximum of six (6) feet in height, at any time, may be permitted in the front yard of residences along Bradley Lane, East-West Highway and Connecticut Avenue;
 - b. Hedges not to exceed a maximum of three (3) feet in height, at any time, may be permitted in the front yard of all other residences.
- (2) Any town resident interested in planting a front yard hedge must submit an application to the town manager, prior to planting. All approved hedges must be planted so that hedge plants at all times are at least five (5) feet from the curb, if there is no sidewalk, and hedge plants must at all times be at least two (2) feet from any existing sidewalk. No hedge approved by the town manager shall be permitted to extend into sidewalks, streets, or alleys [avenues or roadways] so as to interfere in any manner with pedestrian or vehicle traffic on such sidewalks, streets, or alleys [avenues, or roadways].
- (3) It shall be the obligation of the town resident to maintain the approved hedge so that the hedge, at no time, exceeds the maximum permitted height described in (2) above, as measured in accordance with the provisions of (d) above, and at no time is closer to the applicable curb or sidewalk as provided in (2) above.
- (4) It shall be the obligation of the town resident to maintain the approved hedge so that the hedge: (a) does not result in the obstruction of parked and/or moving vehicles; (b) will not cause injury to pedestrians and/or vehicles; (c) will not adversely affect the continued attractiveness of the town; and (d) will not otherwise affect the public health, safety and welfare.
- (5) The town manager may approve the application for a front yard hedge subject to such other conditions as deemed appropriate by the town manager.
- (6) The town manager's approval shall be in writing and shall be recorded among the land records of Montgomery County, Maryland. The cost of preparation and recordation shall be paid for by the town resident.

- (7) The town council may revoke the approval for any front yard hedge where the town council, following a public hearing, determines (i) the provisions of this section or the conditions of approval have been violated; or (ii) the hedge must be removed to accommodate a public improvement. Notice of such revocation of approval shall be in writing and mailed to the town resident. Within ten (10) days of the mailing of such written notice, the town resident shall remove the hedge. If removal of the hedge does not occur within the ten-day period, the town may remove the hedge and the cost of such corrective action shall be borne by the town resident as provided for in section 4-52.

(Res. No. 86-006, § 4, 10-8-86; Res. No. 88-002, 2-10-88; Ord. No. 90-004, 4-5-90; Res. No. 98-003, § 1, 5-13-98; Res. No. 98-006, 1-13-99; Res. No. 07-03, § 1, 5-9-07; Res. No. 08-07, § 1, 9-10-08; **Res. No. 00-00, 00-00-10**)

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 10th day of March, 2010, 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 10th day of April, 2010.

ATTEST:

TOWN OF CHEVY CHASE



Patricia Burda, Secretary



Kathy Strom, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

[brackets] indicates material deleted

* * * indicates material unchanged