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

Resolution No.: 10-06
Introduced: October 13, 2010
Adopted: November 10, 2010
Effective Date: December 11, 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, 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 several amendments to Chapter 4 of the Town Code; and

WHEREAS, the Town Council introduced the following Ordinance in an open meeting conducted on the 13th day of October, 2010; and

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

WHEREAS, Jeffrey Zyontz, legislative attorney for the County Council, submitted a comment about the proposed definition of "lot" and expressed concern that it could result in confusion because it may suggest to building permit applicants that they may construct new houses across lot lines in contradiction to Montgomery County Code Section 50-20; 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 10th day of November, 2010; 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 clarified or amended, certain definitions should be added or amended; certain provisions should be renumbered to improve internal consistency; and duplicative provisions should be deleted to avoid confusion; and

WHEREAS, in response to the comment submitted by Mr. Zyontz, the definition of "lot" has been further clarified to reflect that it applies for purposes of the Town Code; 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 CLARIFY TERMINOLOGY AND ORGANIZATION, IMPROVE INTERNAL CONSISTENCY, DELETE UNNECESSARY AND DUPLICATIVE DEFINITIONS AND PROVISIONS, ADD AND CLARIFY DEFINITIONS AND PROVISIONS AND MODIFY CERTAIN BUILDING REQUIREMENTS.

SECTION 1. BE IT ORDAINED AND ORDERED, this 10th day of November, 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.**

(a) In this chapter, the following terms shall have the meanings indicated.

(b) Terms defined.

*Accessory building:* A building subordinate to, and located on the same lot or lots with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land and which is not attached by any part of a common wall or common roof to the main building **including, but not limited to, a shed or detached garage**.

* * *

*Attic:* Any area under the roof structure with structural headroom of six (6) feet six (6) inches or more, regardless of whether a floor has been laid. [Structural headroom, for the purpose of this definition, shall include areas between the top of the floor joist and up to the underside of the top chord of any truss.]

* * *

*Building height:* The vertical distance measured from the average elevation of the finished grades along the front of the building to either: (a) the highest point of roof surface regardless of roof type, or (b) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. However, for the purposes of determining building height and story, at no point may the finished grade be higher than the pre-development grade. [In all cases, building height is limited to the specified maximum height in feet and the number of stories within the specified maximum height in feet.]

*Building line:* A line extending from [property] **lot** line to [property] **lot** line at the outermost wall of a building.

* * *

*Driveway:* An improved surface that provides vehicular ingress to and egress from a [property] **lot**.

***Dumpster*: A large container, including, but not limited to, a detached wheeled trailer, designed or used to store rubbish, construction or demolition debris, or other material to be discarded.**

*Established building height:* A [height] building **height restriction** line, which is the average height of all buildings that:

(a) Are within three hundred (300) feet of each side lot line of the lot in question (excluding corner lots);

(b) Are along the same side of the street;

(c) Are between intersecting streets or to the point where public thoroughfare is denied;

(d) Exist at the time the building application request is filed;

(e) [Are not unlawfully constructed or constructed pursuant to a variance] **Were constructed pursuant to a valid building permit;**

**(f) Were not constructed pursuant to a variance; and**

([f]**g**) Are not the subject building.

For corner lots, a property owner may decide which adjoining street to use as reference for establishing building height.

*Established building line:* A front yard building restriction line, which is greater than the twenty-five-foot minimum required setback.

(a) The established building line shall be the average setback of all buildings that meet the following criteria:

(1) Are within three hundred (300) feet of [the side property line of the proposed construction site (excluding corner properties)] **any side lot line of the lot in question (excluding corner lots)**;

(2) Are along the same side of the street;

(3) Are between intersecting streets or to the point where public thoroughfare is denied;

(4) Exist at the time the building application request is filed;

(5) Are set back at least twenty-five (25) feet from the front [property] **lot** line;

(6) Were constructed pursuant to a valid building permit;

(7) Were **not** constructed pursuant to a variance;

(8) Are not located on a pipestem or flag-shaped [property] **lot**;

(9) Are not buildings on the subject [property] **lot**; and

(10) Are on properties that are at least fifty (50) feet wide at the twenty-five-foot minimum front setback.

(b) At least two (2) buildings shall be used in calculating the average setback. If only one (1) building meets the foregoing criteria, the proposed construction site shall not be subject to an established building line requirement.

(c) In calculating the setbacks of buildings to determine the established building line, the following shall be excluded:

(1) Steps, stoops, terraces, decks and covered porches projecting from the building wall;

(2) Bay windows, oriels, entrances, vestibules and balconies ten (10) feet or less in width and projecting not more than three (3) feet from the building wall; and

(3) Cornices, eaves, exterior stairways, chimneys, air conditioners, heat pumps and generators.

(d) Corner properties have established building lines on both streets.

(e) The setback of buildings used in calculating the established building line shall be determined by measuring the shortest distance from the front [property] **lot** line of each building to its nearest:

(1) Foundation wall; or

(2) Cantilevered floor.

The measurement shall be taken at a ninety-degree angle from the front [property] **lot** line.

* * *

*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 [sub]section 4-4(e[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.

* * *

*Lot:* The land designated as a separate and distinct lot or parcel of land on a legally recorded subdivision plat or deed filed among the land records of the county. **Where a distinct tract of land is comprised of more than one lot or parts thereof as shown on a subdivision plat, the separate lots and parts of lots shall constitute one lot for the purposes of this chapter.**

**Lot lines: The outermost boundary lines of a lot.**

[*Lot coverage:* Portion of lot which may be covered by buildings or other raised structures, but not including structures that are not raised such as walkways, patios, terraces, driveways, swimming pools and tennis courts.]

*Main building:* A building in which the principal use of the lot [on which it is situated] is conducted. The residence shall be deemed to be the main building unless the lot is lawfully used exclusively for nonresidential purposes.

*Porch:* A roofed platform attached to the main structure.

***Portable storage unit*: A large portable container designed or used for the outdoor storage of personal property including, but not limited to, portable containers that are leased for temporary use.**

**Rear yard: The area defined by the rear lot line, the rear building line, and the side lot lines. In cases where no building exists, the rear building restriction line will be substituted for the rear building line.**

*Shared driveway:* A driveway that provides ingress to and egress from more than one (1) [property] **lot**.

* * *

*Structural headroom:* The vertical distance between the **floor and ceiling and in the absence of a floor or ceiling, between the** top of the floor joist and the underside of the top chord of any truss, **respectively** [in the absence of a floor or ceiling].

* * *

(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. 09-12, § 1, 3-10-10, eff. 4-10-10**; Res. No. 00-00, 00-00-00**)

**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**,** [or] wall**, or front-yard hedge**;

(5) Install any pool, outdoor therapeutic bath, [or] tennis court**, or driveway**;

(6) Disrupt any town right-of-way, including, but not limited to, streets, sidewalks, curbs, gutters and grassy areas; [or]

(7) Place any dumpster **or portable storage unit** on public or private property[.]**;**

**(8) Erect or install any structure, tree, earth berm, hedge, shrubbery, or other plant growth along any sidewalk, street, or alley; or**

**(9) Install any overhead or underground wires, cables, hoses, pipes, and similar facilities on public property devoted to private use.**

(b) Requirements for a preliminary plan and a pre-permit application consultation prior to filing a building permit application for certain work.

(1) A preliminary plan shall be filed with the town manager before a person may file a building permit application for:

a. A new building in excess of five hundred (500) square feet;

b. One (1) or more addition(s) or alteration(s) to a building that individually or cumulatively increases the square footage of any floor of an existing building by more than five hundred (500) square feet; or

c. The demolition of more than fifty (50) percent of the exterior walls of a [structure] **main building** (measured in linear feet and including only that area which is entirely above grade).

(2) The preliminary plan shall include at least the following:

a. Schematic **or** [(]conceptual[)] floor plans and elevations for buildings, and for any planned decks, porches, or patios, drawn to scale;

b. A preliminary site plan showing:

1. The front, back and side setbacks; and

2. The location of:

A. Impacted trees that are regulated by Chapter 29 "Urban Forest";

B. Existing right-of-ways;

C. Planned walkways, driveways, and other impervious surfaces;

D. Planned retaining walls; and

E. Other planned structures;

c. A context sketch, photograph or other image showing the planned structures and front and rear elevations in relation to existing structures on adjoining and confronting lots; and

d. Any other documents or information that the town manager may determine are necessary in order to evaluate the scope of the contemplated work.

(3) Whenever a preliminary plan is filed, the town manager shall hold a pre-permit application consultation with the filer of the plan for the purposes of exchanging information, receiving feedback, and making and considering non-binding recommendations:

a. The pre-permit application consultation shall be held prior to the filing of a building permit application.

b. Each pre-permit application consultation shall be attended by at least one (1) representative of the town government, and shall be open to the public.

(4) At least ten (10) days before the pre-permit application consultation:

a. The applicant shall erect a sign, to be furnished by the town, on the subject property within ten (10) feet of the boundary line of each public road which abuts the property, facing in such manner as may most readily be seen by the public. The bottom of the sign shall be not less than two and one-half (2 1/2) feet from the ground. The sign shall be of such material, color, height and width as the town shall specify, and shall state the nature of the plan, the file number, the telephone number of the town manager or other official who has custody of the plan and the date, time and location of the pre-permit application consultation.

b. The town manager shall provide written notice of the filing and the pre-permit application consultation (in a manner and format prescribed by the town manager) to owners of adjoining and confronting properties. Failure of the town manager to provide such written notice shall not invalidate any permit which may be issued by the town with respect to the subject property.

c. The town manager shall post a notice of the filing and pre-permit application consultation on the town's website.

(5) The pre-permit application consultation required by this subsection is separate and distinct from the requirement to hold a site management meeting under subsection (c) of this section.

(6) Subject to the requirements of this subsection, a town building permit application may be filed at any time; however, no town building permit shall be issued unless

and until a county building permit for the same work has been issued and the applicant has held a site management meeting, if required by subsection (c) below.

(c) Requirement for a site management meeting prior to issuing a building permit application for certain work.

(1) Any person required to file a preliminary plan under subsection (b) of this section shall hold a site management meeting with the town manager or the manager's designee for purposes of discussing site management issues and assisting the manager in establishing site management requirements, as a condition to the issuance of the building permit, as the town manager is authorized to impose under subsection (e) of this section to protect the public health, safety and welfare.

(2) At least ten (10) days before the site management meeting required under this subsection:

a. The town manager shall provide written notice of such meeting to the owners of all adjoining and confronting properties; and

b. The applicant shall amend the sign for the pre-permit application consultation to state the nature, time and place of the site management meeting.

c. The town manager shall post a notice of the site management meeting on the town's website.

(d) Application requirements:

(1) All applications for building permits shall be made to the town manager, and shall:

a. State a date by which the building, alteration, and/or construction project shall be finished; and

b. Be accompanied by plans and specifications of the work contemplated.

(2) The town manager shall retain and file a copy of the application.

(3) The plans and specifications for new construction shall be accompanied by a survey and a plat of the lot with the location of all existing structures and a plan of all proposed structures indicated thereon.

a. The plat required by this subsection (3) shall be prepared by a licensed Maryland surveyor, prepared to scale, showing the location of all currently existing improvements. The plat shall be accompanied by the property owner's certification that the plat accurately represents the current condition of the property with respect to the existence and location of all structures that are located on the property. The proposed construction shall be overlayed on the plat clearly and accurately showing the distances to the front, rear and side lot lines. A plat or survey must be of sufficient accuracy for the town manager to determine if any

existing or proposed improvements encroach or may encroach into any required setback. If the proposed structure is to be located within one (1) foot of a setback line, a boundary survey, with accompanying plat, showing the distances of all existing structures from all boundaries with a margin of error of one (1) inch or less, is required. The location of a proposed structure must be determined by measuring from the boundary line to the proposed structure.

b. [For all variance requests, except for variances under article[s] II or III of this chapter, a boundary survey with a margin of error of one (1) inch or less is required.] For all new main buildings, additions with a footprint of over five hundred (500) square feet and new accessory buildings with a footprint of over one hundred fifty (150) square feet, a wall check shall be required.

c. The requirements of this subsection (3) shall not be applicable for applications solely to construct or widen a driveway.

(4) For applications solely to construct or widen a driveway, the plans and specifications shall be accompanied by a house location plat.

(e) The town manager shall issue a permit bearing the signature of the town manager and the mayor upon the town manager's approval of the plans and specifications.

(1) The town manager shall grant such approval only if the proposed work would comply with all laws, rules, regulations and ordinances. The town manager may impose conditions on a permit that the town manager deems reasonably necessary to assure compliance with this chapter and/or to protect the public health, safety or welfare. The conditions that the town manager may impose shall include, but are not limited to:

a. Prohibiting or limiting the parking of contractors or other construction-related vehicles in the public right-of-way;

b. Limiting the locations upon private property where contractors or other construction-related vehicles may be parked;

c. Limiting the locations upon which construction materials may be stored;

d. Limiting the locations upon which portable toilets may be placed or maintained, or prohibiting the placing or maintaining of portable toilets;

e. Limiting the locations upon which construction debris may be stored, whether or not such debris is contained; [and]

**f. Requiring a performance bond or other surety sufficient to cover the cost of restoring the right of way to its pre-construction condition; and**

[f.] g. Such other terms or conditions as may be determined by the town manager to be necessary to protect the public health, safety or welfare.

**(2)** The permit shall be issued in the name of the property owner who may authorize, in writing, an agent to represent the owner in connection with the application and any permit issued by the town manager.

[(2)]**(3)** If the plans and specifications are not approved, they may, together with the application and reasons for requesting a reconsideration, be referred by the applicant to the town council for final decision **according to article IV of this chapter.**

(f) It shall be unlawful for any person to modify or alter any plans or specifications after they have been submitted and a permit issued thereon without the prior written approval of the town manager.

(g) No person or persons shall proceed with the building of any structure, material alteration or addition, and/or a construction project, except in accordance with the terms and conditions of the building permit and the plans and specifications approved therefor, and the terms and conditions of any applicable approved variance, or in accordance with deviations or alterations approved in advance in writing by the town manager. Each violation of a term or condition of a building permit and the plans and specifications approved therefor, or a term or condition of a variance, shall be a separate infraction.

(h) Work on buildings, alterations, additions, and/or a construction project, must be commenced within six (6) months of [[the]] **the** date the permit is issued and shall be completed by the time stated in the application but not later than twelve (12) months from date the permit is issued, or the permit shall be void, unless an extension is granted in writing by the town manager. The town manager may grant an extension, upon such conditions as the town manager may set, upon a reasonable showing by the permittee that there has been no material change in circumstances since the issuance of the permit and despite due diligence by the permittee, additional time is necessary to accomplish the approved construction.

(i) A permit may be revoked by the town manager if the work has stopped for thirty (30) days.

(j) Failure to complete all work, in accordance with the terms and conditions of a building permit, by the expiration date of such building permit (as the same may be extended pursuant to subsection (h) above) shall be a violation of this chapter. Each day, after the permit expires, that such work is incomplete shall constitute a separate violation.

(k) The fee for a permit shall be as established by council resolution. All permit fees shall be payable to the town.

(l) The town manager may suspend or revoke a building permit or impose additional conditions on a permit as deemed reasonably necessary to protect the public

health, safety or welfare. The conditions that the town manager may impose shall include, but are not limited to:

(1) Prohibiting or limiting the parking of contractors or other construction-related vehicles in the public right-of-way;

(2) Limiting the locations upon private property where contractors or other construction-related vehicles may be parked;

(3) Limiting the locations upon which construction materials may be stored;

(4) Limiting the locations upon which portable toilets may be placed or maintained, or prohibiting the placing or maintaining of portable toilets;

(5) Limiting the locations upon which construction debris may be stored, whether or not such debris is contained; [and]

**(6) Requiring a performance bond or other surety sufficient to cover the cost of restoring the right-of-way to its pre-construction condition; and**

([6]7) Such other terms or conditions as may be determined by the town manager to be necessary to protect the public health, safety or welfare.

(m) It shall be unlawful to continue work when a permit has been revoked or suspended.

(Res. No. 06-10, 7-12-06; Res. No. 07-01, 1-10-07; Res. No. 08-01, § 1, 4-16-08, eff. 5-17-08; Res. No. 09-02, § 1, 3-11-09, eff. 4-11-09 **Res. No. 00-00, 00-00-00**)

**Note:** Formerly § 4-3.
[**Charter references:** Building permits, § 301(b)9.]

**Sec. 4-3. Building height, massing, and neighborhood compatibility.**

(a) *Purposes.*

(1) To maintain privacy and space between properties, ensure adequate air and light, and maintain safe passageways between buildings.

(2) To minimize the flow of stormwater from lots by encouraging the maintenance of open spaces and tree canopy and reduced building and surface [lot] coverage.

(3) To protect the town's distinct character by encouraging the retention and maintenance of open space and shade trees on residential lots, and the preservation of existing houses and accessory structures.

(4) To encourage the construction of additions to existing houses and new houses that are compatible with existing houses in terms of height, scale, massing, and arrangement.

(b) *Maximum height.*

(1) *Main building:* The height of the main building shall not exceed the greater of (a) or (b), except as provided in (c)[, as hereinafter set forth] below:

a. Thirty-three (33) feet when measured from the average pre-development grade in front of the structure to the highest point of roof surface regardless of roof type, or

b. Twenty-eight (28) feet when measured from the average pre-development grade in front of the structure to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

c. Exceptions to height limits.

1. The town manager may, upon finding that the established building height exceeds the greater of a. or b., authorize construction of a building that meets the established building height, provided that no building may exceed the greater of the following:

i. Thirty-five (35) feet when measured from the average pre-development grade in front of the structure to the highest point of roof surface regardless of roof type; or

ii. Thirty (30) feet from the average pre-development grade in front of the structure to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

2. If the height of an existing main building exceeds the limits in [subparagraphs] **subsections** 4-3(b)(1)a. and b., an addition to such existing main building shall not exceed the height of the existing building.

d. It shall be the responsibility of the applicant seeking to build to the established building height, as provided for in **sub**section 4-3(b)(1)(c), to document the established building height to the satisfaction of the town manager.

[(2) *Accessory building:* The height of an accessory building shall not exceed the greater of:

a. Fifteen (15) feet when measured from the average pre-development grade in front of the structure to the highest point of the roof surface, regardless of roof type; or

b. Twelve (12) feet when measured from the average pre-development grade to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.]

([3]**2**) *Wall plane height:* No wall plane of any wall on any facade of any structure shall exceed thirty-six (36) feet in height.

(c) *Maximum floor area ratio (FAR).*

[(1) The FAR for a lot shall not exceed .50.

(2) Notwithstanding subsection 4-3(c)(1), buildings on a lot may contain gross floor area of three thousand (3,000) square feet or less without restriction to FAR.

(3) For the purpose of preventing the construction of excessively large buildings counter to the intent of this section, for lots larger than twelve thousand (12,000) square feet in size, the FAR for the first twelve thousand (12,000) square feet shall be .50 and the FAR for the lot area over twelve thousand (12,000) square feet shall be .25.]

**(1) Buildings on a lot containing six thousand (6,000) square feet or less may have a gross floor area of not more than three thousand (3,000) square feet.**

**(2) For lots containing more than six thousand (6,000) square feet but not more than twelve thousand (12,000) square feet, the FAR shall not exceed .50.**

**(3) For lots containing more than twelve thousand (12,000) square feet, the FAR for the first twelve thousand (12,000) square feet shall not exceed .50 and the FAR for the lot area over twelve thousand (12,000) square feet shall not exceed .25.**

(d) *Wall plane length:* No wall plane on any facade of any structure shall exceed thirty-four (34) feet in length unless there is an offset or articulation in the wall plane that measures at least two (2) feet deep and five (5) feet long, so that no section of wall plane continues for more than thirty-four (34) feet without an offset or articulation.

(e) *Maximum nonvegetative surface area.*

(1) The nonvegetative surface area in [the front yard] **front of the main building** shall not exceed thirty-five (35) percent [of the area of the front yard]. **For purposes of this section, the area in front of the main building to be considered includes all area between the front lot line, the side lot lines, and the front walls of the main building. In addition to the segment of the front wall closest to the front lot line, other segments of wall facing the street shall be considered front walls, if the width of the segment is greater than the distance it is**

**offset from the adjoining segment. For corner lots, the limit on nonvegetative surfaces shall apply to all areas in front of the main building, cumulatively.**

[(2) For corner lots, the limit on nonvegetative surfaces shall apply to the front yard in front of the architectural front facade of the main building. Any other front yard shall be deemed a side yard solely for the purposes of subsection 4-3(e)(1).]

**[Note: the graphic is deleted]**

([3]**2**) Subsection 4-3(e)(1) shall not apply to lots with frontage on Bradley Lane, Connecticut Avenue or East West Highway.

**(3) *Nonvegetative surface area existing prior to November 10, 2010.* Notwithstanding any provision to the contrary contained herein, nonvegetative surface area existing prior to November 10, 2010 may be maintained, altered, repaired, and replaced, including a change in materials, provided that it may not be enlarged beyond the dimensions that existed on November 10, 2010, except in accordance with this chapter.**

(f) *Buildings existing prior to May 17, 2008.* Notwithstanding any provision to the contrary contained in section 4-3, a building or structure existing prior to May 17, 2008 that sustains a total physical loss or a substantial physical loss (fifty (50) percent or more) due to accidental causes including, but not limited to fire, storm, falling tree(s), flooding, natural disaster, acts of war or terrorism, may be rebuilt, provided (i) the replacement building or structure does not encroach farther into the front and side building setbacks than the previous building or structure, (ii) the footprint of the replacement building or structure is not more than five hundred (500) square feet larger than the previous footprint for a main building and one hundred fifty (150) square feet larger than the previous footprint for an accessory building, and (iii) the replacement building or structure does not exceed the building height of the previous building or structure.

**Cross Reference: Section 4-5, governing accessory buildings.**

(Res. No. 08-01, § 1, 4-16-08, eff. 5-17-08**; Res. No. 00-00, 00-00-10**)

**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 [or alley] shall be considered a front lot line. Notwithstanding the foregoing, in the case of a corner lot, if there is no interior lot between the corner lot and the adjoining corner lot on one of the streets, or if the adjoining lot is in a nonresidential zone, the setback from that street shall be at least fifteen (15) feet.

(b) *Side setback.*

(1) *Generally.* No main building, or any part or projection thereof, may be erected or located nearer to a side lot line than the following setbacks:

a. Sum of both sides, the greater of

1. Thirty (30) percent of the width of the lot as measured at the established building line, or if there is no established building line, measured twenty-five (25) feet from the front lot line, or

2. Sixteen (16) feet,

b. One side, the greater of

1. Eight (8) feet, or

2. Forty (40) percent of the total side setbacks as required in subsection 1 of this paragraph.

(2) *Buildings in existence as of February 22, 2006.*

a. A building that is less than seven (7) feet from a side lot line may be altered or enlarged only if the new construction complies with the general side setbacks set forth in subsection (b)(1).

b. A building that is seven (7) feet or more from a side lot line may be altered or enlarged if:

1. The new construction is no closer to the side lot line than the wall of the existing building;

2. The sum of the side setbacks equals or exceeds thirty (30) percent of the width of the lot at the location of the new construction or sixteen (16) feet, whichever is greater; and

3. At least seventy (70) percent of the **area of** [existing] exterior walls in existence as of February 22, 2006 are retained **(including only that area which is entirely above grade)**.

c. In the case of a building described in subsection b. above, for any construction that is permitted to encroach into the building setback pursuant to subsection [(f)]**(e)**, the minimum yard shall be calculated in accordance with subsection (1) above.

(c) *Rear setback.* No main building [of any kind], or any part or projection thereof, may be erected or located nearer to the rear lot line than the following setbacks:

(1) For lots that are one hundred (100) feet or less in depth, twenty (20) feet;

(2) For lots that are more than one hundred (100) feet in depth, but one hundred twenty (120) feet or less in depth, twenty (20) feet plus seventy (70) percent of the depth in excess of one hundred (100) feet, provided that the rear setback shall be reduced by one (1) foot for each foot that the established building line front setback for the lot exceeds thirty (30) feet, but in no event shall the rear setback for the lot be less than twenty (20) feet;

(3) **For lots that are more than one hundred twenty (120) feet in depth, but one hundred thirty-six (136) feet or less in depth, thirty-four (34) feet plus the depth in excess of one hundred twenty (120) feet, provided that the rear setback shall be reduced by one (1) foot for each foot that the established building line front setback for the lot exceeds thirty (30) feet, but in no event shall the rear setback for the lot be less than twenty (20) feet; and**

**(4)** For lots that are more than one hundred [twenty (120)] **thirty-six (136)** feet in depth, twenty-five (25) feet plus seventy (70) percent of the depth in excess of one hundred (100) feet, provided that the rear setback shall be reduced by one **(1)** foot for each foot that the established building line front setback for the lot exceeds thirty (30) feet, but in no event shall the rear setback for the lot be less than twenty-five (25) feet.

(d) *Corner lots.*

(1) The side and rear setbacks of subsections (b) and (c) of this section, shall not apply to corner lots.

(2) The following setbacks shall apply to corner lots:

a. *Side setback.* No main building, or any part or projection thereof, may be erected or located nearer to a side lot line than the following setbacks:

1. For lots seventy (70) feet or less in width, there shall not be a required side setback; and

2. For lots that are more than seventy (70) feet in width, the side setback shall be eight (8) feet.

b. *Rear setback.* No main building [of any kind], or any part or projection thereof, may be erected or located nearer to the rear lot line than the following setbacks:

1. For lots that are one hundred twenty (120) feet or less in depth, twenty (20) feet.

2. For lots that are more than one hundred twenty (120) feet in depth, twenty (20) feet plus seventy (70) percent of the depth in excess of one hundred twenty (120) feet, provided that the rear setback shall be reduced by one (1) foot for each foot that the established building line front setback for the lot exceeds thirty (30) feet, but in no event may the rear setback for the lot be less than twenty (20) feet.

[(e) Accessory buildings may be erected only to the rear of the main building on a lot.]

([f]**e**) *Exemptions from yard requirements for projections.*

(1) *Steps, stoops, decks, terraces and porches.*

a. Open and uncovered steps, stoops, decks, terraces and porches may extend [into any minimum front or rear yard] **not more than nine (9) feet into any minimum front or rear setback** [not more than nine (9) feet].

b. On a corner lot having a minimum side yard twenty-five (25) feet or more in width, open and uncovered steps, stoops, decks, terraces and porches may extend [into the minimum side yard] **not more than nine (9) feet into any minimum side setback** [not more than nine (9) feet]. There may not be any encroachment [upon the minimum side yard] **into any minimum side setback** of a corner lot when such yard is less than twenty-five (25) feet in width.

c. Except in the case of a corner lot, open and uncovered steps, stoops, decks, terraces and porches may extend [into any minimum required side yard] **not more than three (3) feet into any minimum side setback** [not more than three (3) feet].

d. Steps and stoops, decks, terraces, porches and outside stairways which extend into the minimum required [yards] **front or rear setback** may be roofed but not enclosed; provided, that the roofing may extend [into the minimum required yards] **not more than three (3) feet into the minimum front or rear setback** [not more than three (3) feet].

(2) *Bay windows, oriel entrances, vestibules and balconies.*

a. Except as provided in subsection b. below, a bay window, oriel entrance, vestibule or balcony, ten (10) feet or less in width and not more than one (1) story in

height, may project not more than three (3) feet into any minimum front or rear [yard] **setback** and not more than two (2) feet into any minimum side [yard] **setback**.

b. For buildings described in subsection (b)(2)b. of this section, a bay window, oriel entrance, vestibule or balcony must be at least six (6) feet from the side lot line. No more than two (2) bay windows may project into any required setback.

(3) *Cornices, eaves, outside stairways, chimneys, air conditioners and heat pumps.*

a. Cornices and eaves may project two and one-half (2 1/2) feet or less [over yard] **into any minimum setback**, but such projection shall be not less than two (2) feet from the vertical plane of any lot line.

b. Sills, leaders, belt courses, and similar ornamental features may project not more than six (6) inches [over any yard] **into any minimum setback.**

c. Outside stairways may project not more than five (5) feet [over a minimum rear yard only] **into any minimum rear setback**.

d. Chimneys may project not more than twenty-four (24) inches into any minimum [front, rear, or side yard] **setback**.

e. Chimneys used as walls may not project into any minimum [yard] **setback**.

f. Air conditioners and heat pumps may project not more than five (5) feet into any minimum front or rear [yard] **setback**. Additional projection may be permitted for the purpose of adding noise abatement devices. Air conditioners or heat pumps existing within any minimum side yard prior to July 27, 1982, shall not be considered a nonconforming use, and may be continued and replaced.

**Cross Reference: Section 4-5, governing accessory buildings.**

(Res. No. 06-10, 7-12-06; Res. No. 09-12, § 1, 3-10-10, eff. 4-10-10**; Res. No. 00-00, 00-00-00**)

**Sec. 4-5. [Garage and a]Accessory building construction; prohibitions.**

(a) *Interior lot.* A**n** [detached garage or other] accessory building shall:

(1) Be located in the rear yard;

(2) Not occupy more than twenty-five (25) percent of the rear yard; [and]

(3) Be set back from the front lot line a minimum of sixty (60) feet[.]**; and**

**(4) Conform to the following setback requirements:**

a. A**n** [detached garage or other] accessory building less than twelve (12) feet in height when measured **from the average pre-development grade** to the highest point, shall be set back a minimum of five (5) feet from the rear lot line and the side lot lines.

b. A**n** [detached garage or other] accessory building twelve (12) feet or greater in height when measured **from the average pre-development grade** to the highest point, shall be set back a minimum of seven and one-half (7 1/2) feet from the rear lot line and the side lot lines.

(b) *Corner lot.* A**n** [detached garage or other] accessory building shall:

(1) Be located in the rear yard. **For purposes of this section, the rear yard is the area that is behind both front building lines and is behind at least one of the rear building lines. For new construction the property owner may choose which yard is the rear yard, provided that the main building does not encroach into the rear yard setback for such rear yard.**

(2) Not occupy more than twenty-five (25) percent of the rear yard; [and]

(3) [Not be closer to the front lot line than a main building as:

a. Set forth under subsection 4-4(b)(1) of this chapter; and

b. 1. If the adjoining lot has frontage on the side street then the setback from that side street line is twenty-five (25) feet and the setback] **Be set back** from the rear lot line [shall be at least] **a minimum of** ten (10) feet**; and**[; or

2. If the adjoining lot does not have frontage on the side street then the setback from the side street is fifteen (15) feet and the setback from the rear lot line is ten (10) feet.]

**(4) Be set back from the side lot line a minimum of five (5) feet.**

(c) For any [garage or] accessory building with a height[,] of twelve (12) feet or greater [f]or a flat roof o[r]**f** fifteen (15) feet or greater when measured to the ridge of [a] **the** roof [other than a flat roof], the side yard and rear yard minimum setbacks must be increased from the requirements in subsections (a) and (b) of this section at a ratio of one and one-half (1 1/2) feet of additional setback for each foot of height in excess of twelve (12) feet for a flat roof or fifteen (15) feet for any other type of roof.

(d) The minimum setback from [the] **a** rear or side lot line[s] for a**n** [detached garage or] accessory building [with a length along a side or rear lot line,] which has a linear dimension greater than twenty-four (24) feet **along such side or rear lot line**, shall be increased from the

requirements under subsections (a), (b) and (c) of this section at a ratio of one and one-half (1 1/2) feet for each foot that the dimension exceeds twenty-four (24) linear feet.

(e) The increased setback required by subsection (d) of this section shall be in addition to any increased setback required by subsection (c) of this section, so that the required setback shall be the total of the setbacks required by subsections (a) or (b) and (c) and (d) of this section.

**(f) The height of an accessory building shall not exceed the greater of:**

**(1). Fifteen (15) feet when measured from the average pre-development grade in front of the structure to the highest point of the roof surface, regardless of roof type; or**

**(2). Twelve (12) feet when measured from the average pre-development grade to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.**

[(f) The door of a front-loading garage shall not exceed nine (9) feet in width.

(g) There shall be not more than one (1) door for a front-loading garage per main building.

(h) A front-loading garage shall be set back or set forward by a minimum of three (3) feet from the front building line of the main building.]

(Res. No. 06-10, 7-12-06; Res. No. 08-01, § 1, 4-16-08, eff. 5-17-08; **Res. No. 00-00, 00-00-00**)

**Sec. 4-6. [Dumpsters.**

Any person placing or maintaining a dumpster within the town must first obtain a permit for such dumpster from the town manager. The town manager may condition the permit upon such terms or restrictions as the town manager deems necessary to protect the public health, safety or welfare.] **Front-loading garages.**

**(a) The door of a front-loading garage shall not exceed nine (9) feet in width.**

**(b) There shall be not more than one (1) door for a front-loading garage per main building.**

**(c) A front-loading garage shall be set back or set forward by a minimum of three (3) feet from the [front building line] adjoining front wall planes of the main building. If an adjoining wall plane is not at least three (3) feet in width, the set back shall be measured from the depth of the nearest wall plane measuring at least three (3) feet in width.**

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

**Sec. 4-7. Developmental nonconformities.**

A developmental nonconformity may be maintained, altered [or] **and** [,] repaired, **but not replaced,** provided that it may not be enlarged beyond the dimensions that existed on [February 22, 2006] **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**.

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

**Cross Reference: Section 4-4, governing air conditioners and heat pumps.**

**Sec. 4-8. Protection of streets, sidewalks, etc.**

(a) Any person intending to undertake construction which may disrupt a public right-of-way, including but not limited to streets, sidewalks, curbs, gutters and grassy areas, whether the construction is for public or private use, including, but not limited to, construction or expansion of a driveway, shall first obtain a building permit.

**(b)** The application shall include a statement as to the reasons therefor and the purpose, mode and character of the proposed excavation or obstruction and the length of time it shall continue, and such other information as the town manager may require. The town manager may condition a permit upon such terms or restrictions as the town manager deems necessary to protect the public health, safety or welfare.

**(c)** Where the construction involves excavation, alteration, modification or planting in the public right-of-way, the town manager may require a cash, surety or performance bond sufficient to cover the cost of restoring the right-of-way to its pre-construction state. The person to whom a building permit is issued shall be responsible for restoring the disrupted area. If the disrupted area is not restored or, as the case may be for a driveway, constructed or expanded in accordance with [subsection (d) of this] section **4-9**, within fifteen (15) days of demand by the town manager, the town may restore the area and charge the permit holder and/or may claim the bond to reimburse the town for the cost of restoration. If the bond is not sufficient to cover the costs, the permit holder shall pay to the town any deficiency **within fifteen (15) days of demand thereof**. The unexpended balance of any bond shall be returned to the permit holder. [If the deposit is not sufficient to repair all damages and restore the public right-of-way, the permit holder shall reimburse the town for the full cost of restoration within fifteen (15) days of demand therefor.] The cost of the restoration shall be a lien against the property and may be collected in the same manner as property taxes, by a suit for damages, or both.

[(b)]**(d)** No person shall store or allow an accumulation of refuse, excavation or construction debris, or any construction materials on any public right-of-way including, but not

limited to, streets, sidewalks, curbs, gutters and grassy areas. Accumulation of mud or dirt must be removed from the public right-of-way daily.

[(c)]**(e)** Any repair, alteration, modification to or closure of any street or sidewalk which prohibits the free passage of vehicles or pedestrians shall be clearly marked with barricades, safety barriers or both and may not exceed ten (10) days unless specifically authorized, in writing, by the town manager.

**Sec. 4-9. Driveways.**

[(d)]**(a)** The construction, expansion, or replacement of a driveway within a public right-of-way or on private property shall require a building permit and, in addition, be subject to the following requirements:

(1) There shall be no more than one (1) driveway for a [property] **lot**;

(2) A driveway shall be no wider than ten (10) feet in the public right-of-way. An additional two and one-half-foot radius apron on each side, for a total width of up to a maximum of fifteen (15) feet inclusive of the aprons shall be allowed at the paved roadway;

(3) A driveway on private property shall be no wider than ten (10) feet in front of the front building line, except that this restriction shall not apply to lots with frontage on Bradley Lane, Connecticut Avenue or East West Highway. Notwithstanding the foregoing, a driveway that is wider than ten (10) feet as of May 17, 2008 may be replaced or repaired provided that such replacement or repair shall not increase the width of the driveway.

(4) In the event a [property] **lot** is served by a shared driveway, the [property] **lot** may not have an additional driveway;

(5) Notwithstanding subsection [(d)]**(a)**(2) of this section, in the event a driveway is shared by more than one (1) [property] **lot**, the driveway width for the shared driveway shall be no wider than twenty (20) feet, with up to an additional two and one-half (2 1/2) foot radius apron on each side, for a total width of up to twenty-five (25) feet at the public roadway; and

(6) A driveway **apron** shall be installed in accordance with county construction standards in effect when the **town** permit is issued.

[(e)]**(b)** The town manager shall grant a permit to construct or expand a driveway only if the proposed driveway would comply with all laws, rules, regulations, and ordinances, and would not interfere with the public health, safety, or welfare. In determining whether the driveway would interfere with the public health, safety, or welfare, the town manager shall consider the following:

(1) Location of street trees;

(2) Location of fences, walls, hedges, earth berms, and shrubbery or other [forms of] plant growth;

(3) Location of public utilities;

(4) Possible obstruction of visibility of or by pedestrian and/or vehicular traffic;

(5) Location of other public and private improvements in the public right-of-way;

(6) Water drainage; and

(7) Other factors as may be determined by the town manager to be necessary to protect the public health, safety, or welfare.

[(f)]**(c)** [(1)] *Construction.* The applicant shall be responsible for all costs associated with initial construction and/or expansion of a driveway and/or apron.

[(2)]**(d)** *Maintenance.* The town shall pay the cost of maintenance and repair of the portion of an existing driveway within a public right-of-way, including, but not limited to, maintenance and repair of an apron, unless such maintenance or repair is necessitated by the actions of the property owner or the property owner's guests or invitees, except for wear and tear from ordinary use. The use of a driveway, or apron, by trucks or construction equipment shall not be considered ordinary use.

[(3)]**(e)** *Removal.* In the event a driveway within a public right-of-way and/or apron is removed, the owner(s) of the [property] **lot** previously served by the driveway and/or apron shall restore the portion of the area within the public right-of-way from which the driveway and/or apron was removed by installing a curb, sidewalk, grass or other ground cover and/or plantings consistent with the adjacent area.

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

**Cross references:** Building permit generally, §4-[3]**2**; protection of streets, etc., during excavations, etc., § 23-1.

**[Sec. 4-9. Variances from requirements of building restrictions.**

(a) *Authority of town council.* Where the property involved in an application filed under this chapter is of such exceptional narrowness, shallowness, shape or subject to such limitations of record, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property that it is impossible or impractical or would cause peculiar or unusual practical difficulties to or undue hardship upon the owner of such property to conform fully to this chapter, the town council may consider such a variance from the provisions of this chapter, as may be reasonably necessary to grant relief; provided that the variance:

(1) May not be detrimental to the use and enjoyment of adjoining or neighboring properties;

(2) Is the minimum reasonably necessary to overcome the exceptional condition; and

(3) Can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved master plan affecting the subject property in the town.

(b) *Procedure for granting variance.* The procedure for applying for and obtaining a variance shall be as follows:

(1) *Written request to town council.* A written request for a variance from the requirements of this chapter shall be addressed to the town council and shall state all facts warranting the variance.

(2) *Supporting data.* Each application for a variance shall be accompanied by the following:

a. Surveys, plats or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of the structures from the nearest lot lines.

b. Plans, architectural drawings, photographs, elevations, specifications or other detailed information depicting fully the exterior appearance of existing and proposed construction involved in the application.

c. If the applicant is not the owner of the property involved, the lease, rental agreement or contract to purchase by which the applicant's legal right to prosecute the application is established.

d. All additional exhibits which the applicant intends to introduce. A summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimonies of expert witnesses, and the estimated time for presentation of the applicant's case.

(c) *Public hearings on applications.* The town council shall hold a public hearing on all applications for the grant of a variance.

(d) *Conditions.* In granting a variance, the town council may require such conditions, as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.

(e) *Decision.* The decision of the town council shall be in writing. The effective date of any decision shall be the date the council approves its written decision.

(f) *Duration.* A building permit for the construction authorized by the variance must be obtained within twelve (12) months of the effective date of the variance or the variance shall be void, unless an extension is granted in writing by the town manager. The town manager may grant an extension of the variance, upon such conditions as the town manager may set, upon a reasonable showing that there has been no material change in circumstances since the effective date of the decision approving the variance and despite due diligence by the recipient of the variance, additional time is necessary to secure a building permit

(Res. No. 06-10, 7-12-06; Res. No. 08-06, § 1, 9-10-08, eff. 10-11-08)]

**[Sec. 4-10. Appeals.**

Any party aggrieved by the decision of the town council under section 4-9 of this chapter may appeal within thirty (30) days to the circuit court for the county and thereafter to the appellate courts of this state within the time and manner prescribed within the Maryland Rules of Procedure relating to judicial review of administrative agency decisions. The time for appeals shall begin to run from the date of the written decision of approval or denial or from the date the application for variance was denied for want of the necessary total of affirmative votes.

(Res. No. 06-10, 7-12-06)]

**Sec. [4-11] 4-10. County building code requirements.**

* * *

(b) Nothing in this chapter shall be construed to relieve any person from the requirement of [first] obtaining a building permit from the county department of [environmental protection] **permitting services** or its successor agencies [prior to applying for a town building permit].

**Note: Formerly § 4-11.**
(Res. No. 06-10, 7-12-06**; Res. No. 00-00, 00-00-00**)

**Sec. [4-12] 4-11. Building inspector authority.**

* * *

**Note: Formerly § 4-12.**
(Res. No. 06-10, 7-12-06; Res. No. 07-01, 1-10-07**; Res. No. 00-00, 00-00-00**)

**Sec. [4-13] 4-12. Remedial action.**

(a) Whenever the town manager finds that work is being performed or has been performed in violation of this chapter or in a manner that may jeopardize the public health or safety, the town manager may issue a stop work order to halt [any] **such** activity [that violates

this chapter or jeopardizes the public health or safety] and may order remedial action as appropriate.

* * *

**Note: Formerly § 4-13.**
(Res. No. 06-10, 7-12-06; **Res. No. 00-00, 00-00-00**)

**Sec. [4-14] 4-13. Penalties.**

(a) Violation of any provision of this chapter shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine in the amount specified below**, unless otherwise specified in this chapter**:

(1) First violation . . . $250.00

(2) Second violation . . . $500.00

(3) Third violation . . . $1,000.00

**(4) A fourth and subsequent violations of any provision of this chapter, within a two-year period, shall be a misdemeanor and subject to a fine of one thousand dollars ($1,000.00) and imprisonment for six (6) months.**

(b) Violations of the following provisions of this chapter shall be misdemeanors and subject to a fine of one thousand dollars ($1,000.00) and imprisonment for six (6) months:

(1) [Subsection] **Section** 4-3(a) -- working without a permit;

(2) [Subsection] **Section** 4-3(1) -- working when a permit has been revoked or suspended; and

(3) [Subsection] **Section** 4-13(c) -- violation of a stop work order.

[(c) A fourth and subsequent violations of any provision of this chapter that would otherwise be a municipal infraction, within a two-year period, shall be a misdemeanor and subject to a fine of one thousand dollars ($1,000.00) and imprisonment for six (6) months.]

[(d)]**(c)** Each day that a violation of this chapter exists shall constitute a separate violation.

[(e)]**(d)** Any person who violates this chapter or directs or allows another to commit an act that would violate this chapter, the person's employer if the person acted in the course of the person's employment, and any property owner who allows a violation of this chapter on such owner's property or in the public right of way abutting such owner's property shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in subsections (a)

through [(d)]**(c) above**. [If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.] In any prosecution charging a violation of any provision of this chapter, proof that the particular building, fence, wall, earth berm, tree, hedge or other growth was placed or erected at the point where and during the time when the alleged violation occurred shall create a rebuttable presumption that such placement or erection was done or authorized by the property owner, or the owner's agent at the direction of the owner.

**Note: Formerly § 4-14.**
(Res. No. 06-10, 7-12-06**; Res. No. 00-00, 00-00-00**)

**Sec. [4-15] 4-14. Regulations.**

* * *

**Note: Formerly § 4-15.**
(Res. No. 06-10, 7-12-06**; Res. No. 00-00, 00-00-00**)

Secs. 4-[16]**15**--4-20. Reserved.

(Res. No. 06-10, 7-12-06; Res. No. 09-12, § 1, 3-10-10)

* * *

## ARTICLE III. FENCES, WALLS, TREES, HEDGES, ETC.

**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, [hedges, trees,] walls, earth berms, **trees, hedges,** shrubbery or other [forms of] plant growth. Frequently, the location, height and design of fences, [hedges,] walls, earth berms, trees, **hedges,** shrubbery or other [forms of] 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, [hedges], walls, earth berms, trees, hedges, shrubbery or other [forms of] 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.

(Res. No. 86-006, § 1, 10-8-86; Ord. No. 90-004, 4-5-90**; Res. No. 00-00, 00-00-00**)

*[Note: The following five sections will need to be moved to the end of the article.]*

**[Sec. 4-47. Penalties.**

Any person who violates any provision of this article or directs or allows another to commit an act that would violate any provision of this article, 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 article on his or her property shall be guilty of a municipal infraction and shall be jointly and severally subject to a fine of one hundred dollars ($100.00). 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 article shall be a separate infraction. Each day that a violation exists shall constitute a separate violation.

(Res. No. 86-006, § 9, 10-8-86; Ord. No. 90-004, 4-5-90; Res. No. 09-02, § 1, 3-11-09, eff. 4-11-09; **Res. No. 00-00, 00-00-00**)
**Note: Formerly § 4-47.** ]

**[Sec. 4-48. Presumption and prosecution.**

In any prosecution charging a violation of any provision of this article, proof that the particular fence, wall, earth berm, hedge or other growth described in the notice of violation was placed or erected at the point where and during the time when the alleged violation occurred shall create a rebuttable presumption that such placement or erection was done or authorized by the property owner, or their agent, for whose benefit or on whose behalf the fence was placed or erected.

(Res. No. 86-006, § 8, 10-8-86; Ord. No. 90-004, 4-5-90; **Res. No. 00-00, 00-00-00**)
**Note: Formerly § 4-48.** ]

**Sec. [4-49.] 4-53. Nonconforming fences, walls, [hedges, trees, fences, walls,] earth berms, trees, hedges, shrubbery and other [forms of] plant growth on private property.**

**(a) Fences, walls,** [Hedges,] trees, [fences, walls,] **earth berms, hedges, shrubbery,** and other [forms of] plant growth **on private property** existing as of November 8, 1986 and not conforming to this article shall be regarded as nonconforming [hedges, trees, fences, walls and plant growth which] **and** may be [continued if properly] maintained **and repaired, but not relocated, altered, or replaced**.

**(b)** Nonconforming [hedges, trees,] fences, walls **other than retaining walls,** earth berms, **trees, hedges** shrubbery and other [forms of] 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.**

(Res. No. 86-006, § 6, 10-8-86; Ord. No. 90-004, 4-5-90; **Res. No. 00-00, 00-00-00**)
**Note: Formerly § 4-49.**

**[Sec. 4-50. Variances.**

(a) *Authority of town council.*

(1) With respect to variances regarding private property, where the property involved in an application filed under this article is of such exceptional narrowness, shallowness, shape or subject to such limitations of record, or topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property that it is impossible or impractical or would cause peculiar or unusual practical difficulties to, or undue hardship upon, the owner of such property to conform fully to this article, the town council may consider such a variance from the provisions of this article as may be reasonably necessary to grant relief; provided that the variance shall not be detrimental to the public health, safety and welfare, or use and enjoyment of adjoining or neighboring properties, and that such variance is the minimum reasonably necessary to overcome the aforesaid exceptional condition; and that such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved master plan affecting the subject property in the town.

(2) With respect to variances regarding private use of the public right-of-way, where the property abutting the public right-of-way and/or the public right-of-way involved in an application filed under this section is of such exceptional narrowness, shallowness, shape or subject to such limitations of record, or topographical conditions or other extraordinary situations or conditions peculiar to the specific parcel of property, and/or the specific section of the public right-of-way, that it is impossible or impractical or would cause peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the abutting property to conform fully to this article, the town council may consider such a variance from the provisions of this article as may be reasonably necessary to grant relief; provided that the variance shall not be detrimental to the public health, safety and welfare, or use and enjoyment of adjoining or neighboring properties or the public right-of-way, and that such variance is the minimum reasonably necessary to overcome the aforesaid exceptional condition; and that such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved master plan affecting the subject property or the town.

(b) *Procedure for granting variance.* The procedure for applying for and obtaining a variance shall be as follows:

(1) *Written request to town council.* A request for a variance from this article shall be addressed to the town council, in writing, stating all facts warranting a variance.

(2) *Supporting data.* Each request for a variance shall be accompanied by the following:

a. Surveys, plats or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of such structures from the nearest property lines. For all variances, except for replacement structures, a boundary survey with a margin of error of one (1) inch or less is required. For front yard walls and fences, the boundary survey requirement may be waived if the proposed wall or fence will be erected farther from the nearest property line than the margin of error for the survey, plat or

other accurate drawing. In addition, for all variances involving structures proposed to be erected in the public right-of-way, except for replacement structures, the distances of all proposed structures from the paved roadway(s), to the curb (where a curb is present), sidewalks (if any), and any other improvements within ten (10) feet of the proposed structure shall be shown.

(c) *Public hearings on petitions.* The town council shall hold a public hearing on all petitions for the grant of a variance.

(d) *Conditions.* In granting a variance, the town council may require such conditions, in lieu of full compliance, as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.

(e) *Administrative variances.*

(1) *Front yard fences and walls.* The town manager and mayor may grant variances for:

a. New or replacement 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) *Posting requirement.* Fifteen (15) days prior to the town manager and mayor acting upon the variance application, the town shall post the property and provide written notification to all adjoining and confronting property owners and to all councilmembers.

(4) *Appeal.* If prior to the expiration of the fifteen-day notice requirement, 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 section 4-50 et seq., otherwise the town manager and mayor may approve the variance application with or without conditions.

(f) *Decision.* The decision of the town council, or of the mayor and town manager in the case of an administrative variance, shall be in writing. The effective date of any decision shall be the date the council, or the mayor and town manager in the case of an administrative variance, approves the written decision.

(g) *Duration.* A building permit for the construction authorized by the variance must be obtained within twelve (12) months of the effective date of the variance or the variance shall be

void, unless an extension is granted in writing by the town manager. The town manager may grant an extension of the variance, upon such conditions as the town manager may set, upon a reasonable showing that there has been no material change in circumstances since the effective date of the decision approving the variance and despite due diligence by the recipient of the variance, additional time is necessary to secure a building permit.

(Res. No. 87-003, 10-14-87; Res. No. 04-01, 1-14-04; Res. No. 08-06, § 2, 9-10-08, eff. 10-11-08; Res. No. 08-07, § 1, 9-10-08; Res. No. 08-08, § 1, 9-10-08, eff. 10-11-08)]

[**Sec. 4-51. Appeals.**

Any party aggrieved by the decision of the town council on an application for variance from the provisions of this article may appeal within thirty (30) days to the circuit court for the county and thereafter to the appellate courts of this state within the time and manner prescribed in the Maryland Rules of Procedure relating to administrative appeals. The time for appeals shall begin to run from the date of the decision of approval or denial or from the date the application for variance was denied for want of the necessary total of affirmative votes.

(Res. No. 86-006, § 4, 10-8-86; Res. No. 88-004, 5-11-88)]

[*Note*: the *following sections will need to be moved up in the article.*]

**Sec. [4-52.] 4-47. Removal of structures, fences, walls, wires, cables, hoses, pipes, and similar facilities, trees, earth berms, hedges, [and other forms of] shrubbery and other plant growth in violation.**

The town manager or designee shall order the removal of any **structure**, fence, wall, **wire, cable, hose, pipe, and similar facility,** earth berm, **tree**, hedge, [and other forms of] **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, wall, **wire, cable, hose, pipe, and similar facility,** earth berm, **tree,** hedge, [and other forms of] **shrubbery, and other** plant growth to remove the [fence, wall, earth berm, hedge and other forms of plant growth] **same** or to bring it into compliance with this article. Upon failure to remove [the fence, wall, earth berm, hedge and other forms of plant growth] **it** or to comply with the notice, the town shall remove the **structure**, fence, wall, **wire, cable, hose, pipe, and similar facility,** earth berm, **tree,** hedge, [and other forms of] **shrubbery, and other** plant growth. The town may remove the **same** [fence, wall, earth berm, hedge and other forms of plant growth] immediately and without notice if it reasonably appears that the condition of the **structure**, fence, wall, **wire, cable, hose, pipe, and similar facility,** earth berm, **tree**, hedge, [and other forms of] **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, wall, **wire, cable, hose, pipe, and similar facility,** earth berm, **tree,** hedge, [and other forms of] **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.

(Res. No. 86-006, § 7, 10-8-86; Ord. No. 90-004, 4-5-90; **Res. No. 00-00, 00-00-00**)
**Note: Formerly § 4-52.**

**Sec. [4-53.] 4-48. Permit application.**

All applications for **a permit to construct or plant** a fence, wall, earth berm, **tree,** hedge, **shrubbery,** [tree] or other [forms of] plant growth [permit] **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** [shall be made to the town manager or designee, after first obtaining all applicable permits from the county]. The application shall state the name of the applicant, address, location, and type of building materials for any fence, wall, [or] earth berm, **tree, hedge, shrubbery, or other plant growth** to be [erected or type of planting 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.

(Res. No. 86-006, § 5, 10-8-86; Ord. No. 90-004, 4-5-90; **Res. No. 00-00, 00-00-00**)
**Note: Formerly § 4-53.**

**Sec. [4-54.] 4-49. Public property devoted to private use.**

**(a)** The [unimproved] portion of [public property located between public sidewalks] **the public right-of-way** [and] abutting private property, [or in the absence of public sidewalks, located between the improved surfaces of public streets or alleys and abutting private property and devoted to private use by abutting property owners or occupants,] **that is not improved with a sidewalk, paved roadway, or other public improvement**, shall be under the immediate care and keeping of [such] **the** abutting property owners [or occupants]. The town, by this article, grants to such abutting property owners, their successors, **and** assigns[, and occupants so using this area], a license to continue to use such area, **provided such usage does not violate the provisions of this chapter and** provided that this license may be revoked at any time by the town in accordance with the provisions of this [article] **chapter**.

**(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, wires, cables, hoses, pipes, and similar facilities, earth 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.**

(Res. No. 86-006, § 2, 10-8-86; Ord. No. 90-004, 4-5-90; Res. No. 09-12, § 1, 3-10-10, eff. 4-10-10; **Res. No. 00-00, 00-00-00**)

**Cross Reference: Section 4-12, governing building inspector authority.**
**Note: Formerly § 4-54.**

**Sec. [4-55.] 4-51. Structures, walls, fences, earth berms, trees, hedges, shrubbery and other plant growth, on public property that are devoted to private use.**

(a) No structure, wall, fence, 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.

(b) Structures, walls, fences, **earth berms,** trees, hedges, shrubbery and other [forms of] 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) Extend 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.

(c) **The town manager shall determine whether there is compliance with the provisions of this section.** [The town may revoke the license to use public property by any person violating the provisions of this section. Upon revocation of such license, the former licensee will, upon the demand of the town manager, remove all structures, walls, fences, trees, hedges, shrubbery and **other** plant growth on the public property so as to conform to this section. If such action is not taken within a period of ten (10) days after revocation of a license by the town is given to such licensee, the town manager may enter such public property and take steps as are necessary to return it to a condition satisfying the provisions of this section. The cost of any corrective action taken by the town manager shall be borne by the licensee as provided for in section 4-52.]

**(d) Notwithstanding the above, a retaining wall 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.**

(Res. No. 86-006, § 3, 10-8-86; Ord. No. 90-004, 4-5-90; Res. No. 07-04, § 1, 6-13-07**; Res. No. 00-00, 00-00-00**)

**Note: Formerly § 4-55.**

**Sec. 4-50. Overhead or underground wires, cables, hoses, pipes, and similar facilities on public property devoted to private use.**

**(a) Any person or persons, firm or corporation desiring to string, lay, hang, suspend or in any manner place wires of any kind, cables, hoses, pipes, and similar facilities**

**on, over, or under any street or other public right-of-way within the town including, but not limited to, electronic pet containment and sprinkler systems must obtain a building permit from the town manager. The town manager shall issue a building permit upon such terms and conditions as the town manager deems appropriate to protect the current and future use of the public right-of-way by the public and governmental and utility entities. Such building permit shall contain a contract provision for holding the town harmless from loss, injury or damage related to any such facilities.**

**(b) A written revocable license to use the public right-of-way shall be required for the installation or replacement of wires, cables, hoses, pipes, and similar facilities installed on, over, or under any street or other public right-of-way, except for telecommunication, electric transmission lines, and other facilities operated by a public utility or similar service. The town manager may issue a written license to use the public right-of-way upon such terms and conditions as the town manager deems appropriate to protect the current and future use of the public right-of-way by the public and governmental and utility entities.**

**(Res. No. 00-00, 00-00-00)**

**Sec. [4-56.] 4-52. [Hedges, trees, fences, walls, etc.,] Structures, walls, fences, earth berms, trees, hedges, shrubbery and other plant growth 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] **Structures, walls, fences, earth berms, trees, hedges, shrubbery and other plant growth** located on private property shall not be permitted to extend into sidewalks, streets, or alleys so as to interfere in any manner with the pedestrian or vehicular traffic on such sidewalks, streets, or alleys.

(c) All [hedges, trees, fences, walls, earth berms, shrubbery or any other forms of plant growth] **structures, walls, fences, earth berms, trees, hedges, shrubbery and other 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] **structures, walls, fences, earth berms, trees, hedges, shrubbery and other plant growth** along any sidewalk, street, or alley without first obtaining a permit as provided in this article, or suffer or permit any [hedges, trees, walls, earth berms, fences,] **walls, fences, earth berms, trees, hedges,** shrubbery or other [forms of] plant growth along or parallel to any sidewalk, street, or alley to be more than six (6) feet, six (6) inches in height. **The measurement of this height shall be made from the surface of the ground next to the structures, wall,**

**fence, earth berm, tree, hedge, shrubbery and other plant growth, and where the yards on the two (2) sides of a retaining wall differ, the measurement shall be made from the surface of the lower yard.** [, 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 person shall erect, plant or maintain any wall, fence, earth berm, or hedge measuring more than six (6) feet, six (6) inches in height in any side or rear yard. The measurement of the height shall be made from the surface of the ground next to the wall, fence, earth berm, or hedge, and where the yards on the two (2) sides of a retaining wall differ, the measurement shall be made from the surface of the lower yard, provided, however, that with the written consent of the adjoining owner, a wall, fence, earth berm, or hedge of a height greater 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 herein.**

([e]**f**) No fence, **wall**, earth berm [,] or hedge [or wall] will be permitted to extend into the front yard.

([f]**g**) Notwithstanding subsection [(e)]**(f)** 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]**i**) Front yard hedges.

(1) Notwithstanding the provisions of subsection [(e)]**(f)** 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**ing** a maximum of six (6) feet in height, at any time, may be permitted in the front yard**s** [of residences] along Bradley Lane, East-West Highway and Connecticut Avenue;

b. Hedges not [to] exceed**ing** a maximum of three (3) feet in height, at any time, may be permitted in the front yard**s** of all other [residences] **lots**.

(2) Any [town resident] **person** interested in planting a front yard hedge must [submit an application to] **obtain a permit from** the town manager, prior to planting. All approved hedges must be planted so that hedge plants at all times are at least **two (2) feet from any existing sidewalk and if there is no sidewalk, at least** (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 so as to interfere in any manner with pedestrian or vehicle traffic on such sidewalks, streets, or alleys.

(3) It shall be the obligation of the [town resident] **property owner and the property occupant** 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] **property owner and the property occupant** 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)]**(6)** 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] **4-47**.

(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. 09-12, § 1, 3-10-10, eff. 4-10-10**; Res. No. 00-00, 00-00-00**)

**Note: Formerly §4-56.**

Secs. 4-54--4-59. Reserved.

## ARTICLE IV. VARIANCES AND APPEALS

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

(a) *Authority of town council.* The town council may grant variances from the requirements of this chapter, upon proof by a preponderance of the evidence of the following.

(1) With respect to variances regarding private property:

(a) the property involved in the application is of such exceptional narrowness, shallowness, shape or subject to such limitations of record, or topographical conditions or other extraordinary situations or conditions peculiar to the specific property that it is impossible or impractical or would cause peculiar or unusual practical difficulties to, or undue hardship upon the owner of such property to conform fully to this chapter

(b) the variance is reasonably necessary to grant relief;

(c) the variance would not be detrimental to the public health, safety and welfare, or use and enjoyment of adjoining or neighboring properties;

(d) the variance is the minimum reasonably necessary to overcome the aforesaid extraordinary situation or condition; and

(e) the variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved master plan affecting the subject property.

(2) With respect to variances regarding private use of the public right of way:

(a) the property abutting the public right-of-way involved in the application is of such exceptional narrowness, shallowness, shape or subject to such limitations of record, or topographical conditions or other extraordinary situations or conditions peculiar to the specific property and/or specific section of the public right-of-way, that is impossible or impractical or would cause peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the abutting property to conform fully to this chapter;

(b) the variance is reasonably necessary to grant relief;

(c) the variance would not be detrimental to the public health, safety and welfare, or use and enjoyment of adjoining or neighboring properties or the public right-of-way;

(d) the variance is the minimum reasonably necessary to overcome the aforesaid extraordinary situation or condition; and

(e) the variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved master plan affecting the subject property.

(b) *Procedure for granting variance.* The procedure for applying for and obtaining a variance shall be as follows:

(1) *Written request to town council.* A written request for a variance from the requirements of this chapter shall be addressed to the town council and shall state all facts warranting the variance.

(2) *Supporting data.* Each application for a variance shall be accompanied by the following:

a. Surveys, plats or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of the structures from the nearest lot lines.

b. For all variances, except for replacement structures, a boundary survey with a margin of error of one (1) inch or less is required. For front yard walls and fences, the boundary survey requirement may be waived if the proposed wall or fence will be erected farther from the nearest lot line than the margin of error for the survey, plat or other accurate drawing. In addition, for all variances involving structures proposed to be erected in the public right-of-way, except for replacement structures, the distances of all proposed structures from the paved roadway(s), to the curb (where a curb is present), sidewalks (if any), and any other improvements within ten (10) feet of the proposed structure shall be shown.

c. Plans, architectural drawings, photographs, elevations, specifications or other detailed information depicting fully the exterior appearance of existing and proposed construction involved in the application.

d. If the applicant is not the owner of the property involved, the lease, rental agreement or contract to purchase by which the applicant's legal right to prosecute the application is established.

e. A summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimonies of expert witnesses, and the estimated time for presentation of the applicant's case.

f. All additional exhibits which the applicant intends to introduce.

(3) *Public hearings on applications.* Except as provided in subsection (c) below, the town council shall hold a public hearing on all applications for the grant of a variance.

(4) *Posting requirement.* At least fifteen (15) days prior to the public hearing, the town shall post the property and provide written notification to all adjoining and confronting property owners and to all council members.

(5) *Conditions.* In granting a variance, the town council may require such conditions, as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.

(6) *Decision.* The decision of the town council shall be in writing. The effective date of any decision shall be the date the council approves its written decision.

(7) *Duration.* A building permit for the construction authorized by the variance must be obtained within twelve (12) months of the effective date of the variance or the variance shall be void, unless an extension is granted in writing by the town manager. The town manager may grant an extension of the variance, upon such conditions as the town manager may set, upon a reasonable showing that there has been no material change in circumstances since the effective date of the decision approving the variance and despite due diligence by the recipient of the variance, additional time is necessary to secure a building permit.

(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 public right-of-way.

(3) *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) 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.**

**(Res. No. 06-10, 7-12-06; Res. No. 08-06, § 1, 9-10-08, eff. 10-11-08; Res. No. 00-00, 00-00-00)**
**Note: Formerly §§ 4-9 and 4-59.**

**Sec. 4-61. Appeals to the Town Council.**

**Any person aggrieved by a decision or action of the town manager under this chapter may file an appeal to the town council. Such appeal shall be filed within (30) days after issuance of the decision. The town manager shall transmit to the town council all documents and papers pertaining to the appeal which shall constitute the record on appeal. The town council shall hold a public hearing on the appeal. At least fifteen (15) days prior to the public hearing, the town shall post the property and provide written notification to all adjoining and confronting property owners and to all council members. The effective date of any decision shall be the date the council issues its written decision.**

**Sec. 4-62. Appeals to the Circuit Court.**

**Any party aggrieved by the decision of the town council under this chapter may appeal within thirty (30) days to the Circuit Court for Montgomery County and thereafter to the appellate courts of this state within the time and manner prescribed within the Maryland Rules of Procedure relating to judicial review of administrative agency decisions. The time for appeals shall begin to run from the date of the written decision.**

**(Res. No. 06-10, 7-12-06; Res. No. 00-00, 00-00-00)**
**Note: Formerly §§ 4-10 and 4-51.**

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 10th day of November, 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 11th day of December, 2010.

ATTEST:

Albert Lang, Secretary

TOWN OF CHEVY CHASE

David Lublin, Mayor
Town of Chevy Chase

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

Resolution No. 10-05
Introduced: 10/13/10
Adopted: 10/13/10
Effective Date: 10/13/10

**RESOLUTION OF**
**THE TOWN OF CHEVY CHASE**

SUBJECT: RESOLUTION TO SUPPORT THE EFFORTS OF *REBUILDING TOGETHER*, A NON-PROFIT ORGANIZATION THAT PROVIDES HOME REPAIRS FOR LOW-INCOME HOMEOWNERS IN MONTGOMERY COUNTY UTILIZING COMMUNITY VOLUNTEERS.

WHEREAS, *Rebuilding Together* Montgomery County is a local non-profit organization that was founded in 1989 and proposes to undertake a project within Montgomery County to provide repairs for low-income homeowners with volunteer labor; and

WHEREAS, the goal of a *Rebuilding* project is to make homes warm, safe and dry. *Rebuilding* looks at the house and family in a holistic way accessing critical needs (e.g. failing roofs, nonfunctioning furnaces or water heaters), energy efficiency and weatherization changes that would reduce utility bills (e.g. attic insulation, weather stripping, air sealing), home modifications that would make the home safe and prevent falls (e.g. grab bars, ramps, railings, repairing sidewalks) and of course basic home repairs (e.g. plumbing, electrical, structural); and

WHEREAS, *Rebuilding Together* has applied to the Department of Housing and Community Development of the State of Maryland for approval of the project and an allocation of tax credits for business entities and individuals that contribute to the Project, under the Department's Community Investment Tax Credit Program; and

WHEREAS, the Mayor and Council of the Town of Chevy Chase are interested in promoting home improvements and volunteerism.

NOW, THEREFORE, BE IT RESOLVED THAT THE MAYOR AND COUNCIL OF THE TOWN OF CHEVY CHASE do hereby support the efforts of *Rebuilding Together* to improve the homes of low income residents within the Montgomery County community.

I, Al Lang, Secretary of the Town Council, hereby certify that the foregoing Resolution was adopted by the Council at its meeting on October 13, 2010.

Al Lang, Secretary