

**Town of Chevy Chase  
Public Right-Of-Way Improvements Ordinance**

Resolution No.: 08-08  
Introduced: June 11, 2008  
Adopted: September 10, 2008  
Effective Date: October 11, 2008

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Article 28, Section 8-115.1 of the Maryland Code authorizes the legislative body of a municipal corporation within the Regional District to regulate the construction, repair, erection or remodeling of single family residential houses, buildings or other structures on land zoned for single family residential use including, but not limited to, fences, walls, hedges and similar barriers and to establish setback requirements; and

WHEREAS, Section 301(a) of the Charter of the Town of Chevy Chase authorizes the Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter 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 or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and for such other police or health matters as it may deem necessary; and

WHEREAS, the Town Council introduced the following ordinance in public session on the 11<sup>th</sup> day of June, 2008; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, the following ordinance was submitted to the Montgomery County Council on the 12th day of June 2008, for its comments; and

WHEREAS, the Town Council considered the following ordinance in public session assembled on the 10th day of September, 2008; and

WHEREAS; the public right-of-way is primarily for use by the public, and

WHEREAS, it has been the intent of the Town to restrict private improvements in the public right-of-way so as to provide open vistas along streets, promote the free flow of light and air, to maintain the character of the neighborhood, and to preserve the Town's flexibility in protecting the public's right to use the public right-of-way; and

WHEREAS, the Town Council finds that some of the existing provisions of the Town Code may be confusing and difficult to administer and that the following amendments to the Town Code to clarify the Council's intent will provide clearer guidance to property owners, their architects, builders and others as to what is required to comply with the Town's requirements; and

WHEREAS, the Town Council finds that this ordinance will provide clearer guidance to Town staff in the administration of the Town Building Code; and

WHEREAS, the Town Council finds that authorizing the Town Manager and Mayor to grant administrative variances for the replacement of fences and walls in the public right-of-way will improve the efficient administration of the Town Building Code and avoid unnecessary expense and inconvenience to property owners, their architects, builders and others and to the Town; 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 or 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 SECTION 4-50 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO AUTHORIZE THE TOWN MANAGER AND MAYOR TO GRANT ADMINISTRATIVE VARIANCES FOR THE REPLACEMENT OF WALLS AND FENCES IN THE PUBLIC RIGHT-OF-WAY AND TO ESTABLISH FILING REQUIREMENTS AND STANDARDS TO BE MET FOR VARIANCES INVOLVING NEW FENCES AND WALLS IN THE PUBLIC RIGHT-OF-WAY

SECTION 1. BE IT ORDAINED AND ORDERED, this 10th day of September, 2008, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code, Article 28, Section 8-115.1 of the Maryland Code, and the Town Charter, that Section 4-50 of the Town Code is hereby amended to read as follows:

\* \* \*

Sec. 4-50. Variances

(a) *Authority of town council.*

(1) **With respect to variances regarding private property,** [W]here 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 [variation] **variance** from the provisions of this article as may be reasonably necessary to grant relief; provided that the [variation] **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 [variation] **variance** from this article shall be addressed to the town council, in writing, stating all facts warranting [variation] **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.

\* \* \*

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.**

([2]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.

([3]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.

(Res. No. 87-003, 10-14-87; Res. No. 04-01, 1-14-04; **Res. No. \_\_\_\_\_, § 1, \_\_\_\_\_**).

\* \* \*

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 10th day of September, 2008, 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 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

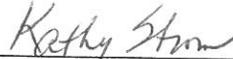
(2) This ordinance shall take effect on the 11th day of October, 2008.

ATTEST:

TOWN OF CHEVY CHASE



David Lublin, Secretary



Kathy Strom, Mayor  
Town of Chevy Chase

**Bold and Underline** indicates new material

[ ] indicates material deleted

\* \* \* indicates material unchanged