

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

Ordinance No.: 16-03  
Introduced: January 13, 2016  
Adopted: March 9, 2016  
Effective Date: April 8, 2016

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

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

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

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

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

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 13<sup>th</sup> day of January, 2016;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 18<sup>th</sup> day of January, 2016, a copy of following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council provided no comments;

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council considered the following Ordinance in public session assembled on the 9<sup>th</sup> day of March, 2016;

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

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

THEREFORE, BE IT ORDAINED AND ORDERED, this 9<sup>th</sup> day of March, 2016, by virtue of the authority given to it by the Maryland Code and the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance.

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

\* \* \*

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

A developmental nonconformity may be maintained, altered and repaired, but not replaced, provided that it may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter. Notwithstanding the foregoing, nonconforming porches, decks, stoops, steps, stairways, chimneys, bay and bow windows, and similar projections may be maintained, altered, repaired, or replaced provided that they may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter.

\* \* \*

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

(a) Excepted as provided below, ~~N~~**n**o structure, wall, fence, guardrail, berm, tree, hedge, shrubbery or any plant growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use. ~~Subject to the provisions of section 4-49, a handrail may be placed on public property devoted to private use upon approval by the town manager.~~

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

(1) Structures, walls, fences, berms, trees, hedges, shrubbery and other plant growth that are located on public property devoted to private use on July 13, 2007, may be maintained, altered, repaired, but not enlarged or replaced;

(2) A retaining wall or guardrail located on public property devoted to private use, as of April 8, 2016, may be maintained, altered, repaired, and replaced, provided the location is not changed and no dimension is enlarged; and

(3) A handrail on public property devoted to private use may be installed, maintained, altered, repaired, or replaced.

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

~~(d) Notwithstanding the above, and subject to the provisions of section 4-49, a retaining wall or guardrail located on public property devoted to private use may be maintained, altered, repaired, and replaced, provided the location and materials are not changed and no dimension is enlarged.~~

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

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

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

(b) Front yard walls. No wall that is one (1) foot in height or higher may be constructed in a front yard. ~~A, provided, however, a retaining wall that is less than one (1) foot~~ **thirty (30) inches** in height may be constructed in a front yard provided that it is set back at least two (2) feet from the nearest public ~~improvement~~ **sidewalk within the public right-of-way** **or, if there is no sidewalk, at least six (6) feet from the curb.** In the event a wall is located within thirty (30) inches of another wall, as may be the case in terracing, the walls shall be considered one (1) wall and the height of the wall shall be measured cumulatively. Height is measured in accordance with subsection (f) below.

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

\* \* \*

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

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

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

(c) Nonconforming retaining walls on private property which are relocated, altered, or replaced shall comply with all provisions of this article, provided, however, a nonconforming

retaining wall located in a front yard may be altered or replaced, if the location and materials ~~are~~ is not changed and no dimension is enlarged.

\* \* \*

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

\* \* \*

*(c) Administrative variances.*

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

**a. New or relocated front yard retaining walls thirty (30) inches or greater in height, provided they are set back at least two (2) feet from the nearest public sidewalk in the public right-of-way or, if there is no sidewalk, at least six (6) feet from the curb;**

**b. New front yard fences measuring four (4) feet or less in height, having a fenestration of at least thirty (30) percent, not constructed of chain link, and on a corner lot abutting any street or on an interior lot abutting East-West Highway, Connecticut Avenue, or Bradley Lane;**

~~b. c.~~ **Front yard fences and walls which in a front yard or in a public right-of-way that 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,

**d. New or relocated retaining walls less than thirty (30) inches in height in a public right-of-way, provided they are set back at least two (2) feet from the nearest public sidewalk in the public right-of-way or, if there is no sidewalk, at least six (6) feet from the curb;**

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

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

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

**h. Additional width of six (6) feet or less for a driveway, other than a shared driveway, in a front yard and/or in a public-right-of-way;-**

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

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

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

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

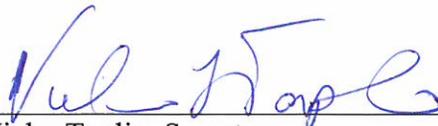
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SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that:

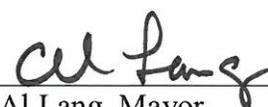
(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the 8<sup>th</sup> day of April, 2016.

ATTEST:

  
\_\_\_\_\_  
Vicky Taplin, Secretary

TOWN OF CHEVY CHASE

  
\_\_\_\_\_  
Al Lang, Mayor  
Town of Chevy Chase

**Bold and Underline** indicates new material

~~Strike through~~ indicates material deleted

\* \* \* indicates material unchanged