

**Town of Chevy Chase
Ordinance to Modify Section 4-9**

Resolution No.: 17-02
Introduced: November 20, 2017
Adopted: December 13, 2017
Effective Date: January 12, 2018

AN ORDINANCE TO AMEND TOWN OF CHEVY CHASE MUNICIPAL CODE SECTION 4-9 TO ADD FACTORS TO BE CONSIDERED BY THE TOWN MANAGER REGARDING CURB ENTRANCE PERMIT APPLICATIONS AND TO ALLOW THE TOWN COUNCIL TO IMPOSE CONDITIONS IN CONNECTION WITH APPEALS RAISED BY AGGRIEVED PERSONS.

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, 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, Section 702 of the Town of Chevy Chase Charter provides that the Town has control of all public ways in the Town except those that are under the jurisdiction of the State Highway Administration and, subject to the laws of the State of Maryland and the Town Charter, the Town may do whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the Town;

WHEREAS, Section 703 of the Town of Chevy Chase Charter further provides that the Town may regulate and change from time to time the grade lines, width, and construction materials of any town public way or part thereof, bridges, curbs, and gutters;

WHEREAS, the intensification of development in areas adjacent to the Town, and the rezoning of parcels adjacent to the Town from residential to commercial zones, will result in a greater burden on residential streets within the Town; increased motor vehicle, bicycle and pedestrian traffic hazards; traffic and parking congestion; and other detrimental impacts upon Town properties;

WHEREAS, Section 4-9(b) of the Town Code currently provides that the Town Manager shall grant a permit to construct or expand a curb entrance, driveway, driveway apron, or sidewalk only if the proposed construction would comply with all laws, rules, regulations, and ordinances, and would not interfere with the public health, safety, or welfare;

WHEREAS, the Town Council finds that it is necessary to amend Section 4-9(b) to expand the express factors that the Town Manager should consider in determining whether the construction or expansion of a curb entrance, driveway, driveway apron, or sidewalk would interfere with the public health, safety, or welfare;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 20th day of November, 2017;

WHEREAS, after proper notice to the public, the Town Council considered the following Ordinance in public session assembled on the 13th day of December, 2017;

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 13th day of December, 2017, 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, this 13th day of December, 2017, 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:

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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:

* * *

(10) Construct, expand, replace, or remove a curb entrance, driveway, or driveway apron within a public right-of-way or on private property.

* * *

Sec. 4-9. - Driveways and driveway aprons.

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(b) The town manager shall grant a permit to construct or expand a curb entrance, driveway, driveway apron, or sidewalk only if the proposed construction would comply with all laws, rules, regulations, and ordinances, and would not interfere with the public health, safety, or welfare.

(1) In determining whether the construction would interfere with the public health, safety, or welfare, the town manager shall consider the following:

- (1) **a.** Location of ~~street-trees,~~ **hedges, berms, shrubbery, or other plant growth;**
- (2) **b.** Location of fences, walls, **or other structures;** ~~hedges, berms, and shrubbery or other plant growth;~~
- (3) **c.** Location of public utilities;
- (4) **d. Vehicle or pedestrian traffic hazards, including obstruction of visibility;**
Possible obstruction of visibility of or by pedestrian and/or vehicular traffic;
- (5) **e.** Location of other public and private improvements in the public right-of-way;
- f. Location of other potential access points for the subject property;**
- g. Distance from other existing and proposed curb cuts on the same street;**
- (6) **h.** Water drainage; and
- i. Traffic and parking congestion;**
- j. Detrimental impacts on other public and private property in the town resulting from noise and/or litter; and**
- (7) **k.** Other factors as may be determined by the town manager to be necessary to protect the public health, safety, or welfare.

(2) Any person aggrieved by a decision or action of the town manager under this section may file an appeal to the town council according to section 4-61. In addressing such an appeal, the town council may affirm or overturn the decision of the town manager, may direct the town manager to issue a permit, or may direct the town manager to issue a permit upon such conditions, terms, or restrictions as the town council may deem necessary to accomplish the intent and purposes of this chapter.

(c) Construction. The applicant shall be responsible for all costs associated with initial construction and/or expansion of a curb entrance, driveway, and/or driveway apron.

(d) Maintenance. The town shall pay the cost of maintenance and repair of an existing curb entrance, driveway, driveway apron, and public sidewalk within a public right-of-way 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 driveway apron, by trucks or construction equipment shall not be considered ordinary use. Notwithstanding the foregoing, the town shall not be obligated to pay the cost of maintenance and repair of any betterments, or alternative materials, installed by property owners.

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

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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 thirty (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.

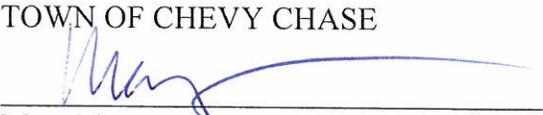
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SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 13th day of December, 2017, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that:

- (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 12th day of January, 2018.

ATTEST:

Cecily Baskir, Secretary

TOWN OF CHEVY CHASE

Mary Flynn, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
~~Strike-through~~ indicates material deleted
* * * indicates material unchanged