

**Town of Chevy Chase
Ordinance to Amend Chapter 4**

Resolution No.:
Introduced: April 24, 2019
Adopted: June __, 2019
Effective Date:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO AMEND THE REAR SETBACK REQUIREMENTS; TO ALLOW A MISDEMEANOR TO BE PROSECUTED AS A MUNICIPAL INFRACTION; TO ALLOW FENCES TO BE CONSTRUCTED UP TO 8 FEET IN HEIGHT ALONG A REAR YARD ADJOINING A RAIL LINE RIGHT-OF-WAY; TO AMEND THE HEIGHT REQUIREMENTS FOR A RETAINING WALL ALONG A DRIVEWAY IN A SIDE OR REAR YARD; TO ALLOW NON-CONFORMING FENCES AND GUARDRAILS TO BE ALTERED OR REPLACED; AND TO PROVIDE THAT VARIANCE DECISIONS ARE TO BE RECORDED IN LAND RECORDS AND BINDING ON SUCCESSORS AND ENFORCEABLE BY THE TOWN.

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 24th day of April, 2019;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 29th day of April, 2019, a copy of the following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council acknowledged receipt of the Ordinance by letter dated _____, 2019, and indicated it had 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 ___th day of June, 2019;

WHEREAS, after receiving a report and recommendation from the Land Use Committee, compiled with the assistance of Town staff, and upon consideration of the testimony and evidence presented at the public hearing, 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 ___th day of June, 2019, 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. 4-4. - Building location requirements; prohibitions.

* * *

(a) *Front setback.*

* * *

(2) *Additions to existing main buildings, interior lots:* No additions to existing main buildings, or any part or projection thereof, may be erected or located nearer to any front lot line than:

- a. ~~the~~ front building line of the existing main building; or
- b. ~~the~~ established building line, if being used at the option of the applicant ~~to determine the front setback,~~ **provided its use is not prohibited by Section 4-4(c)(2)b.iii.**

but in no event, ~~however,~~ shall the front setback for an addition be less than twenty-five (25) feet.

* * *

(4) *Additions to existing main buildings, corner lots:* For corner lots, any and all lines bordering upon a street shall be considered a front lot line. No additions to existing main buildings, or any part or projection thereof, may be erected or located nearer to any front lot line than:

- a. ~~the~~ front building line of the existing main building; or
- b. ~~the~~ established building line, if being used at the option of the applicant, ~~to determine the front setback,~~ **provided its use is not prohibited by Section 4-4(c)(2)b.iii.**

but in no event, ~~however,~~ shall the front setback for an addition be less than twenty-five (25) feet. Notwithstanding the foregoing, if there is no interior lot between the corner lot and the adjoining corner lot on one of the streets, the setback from that street shall be at least fifteen (15) feet.

* * *

(c) *Rear setback.*

(1) *Main buildings, computation for interior lots:* No main building, or any part or projection thereof, may be erected or located nearer to the rear lot line than **the greater of twenty (20) feet or** the following setbacks:

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

~~b.a.~~ For lots that are more than one hundred (100) feet in depth, but **less than** one hundred twenty-~~three~~ **(123)** 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; and~~

e. ~~b.~~ For lots that are **one hundred twenty-three (123) feet or** 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~~ **thirty (30) 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 shall the rear setback for the lot be less than twenty (20) feet; and~~

~~ed.~~ For lots that are more than one hundred 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.

(2) Main buildings, computation reduction for interior lots: The rear setback computed according to subparagraphs (c)(1)a or (c)(1)b above may be reduced as follows, for the following types of construction:

a. New construction. For a new main building, 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;

b. Addition.

(i) For an existing main building that is located in front of the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that the front building line of the existing house exceeds thirty (30) feet, as measured to the front property line;

(ii) For an existing main building that is located on the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that the established building line exceeds thirty (30) feet, as measured to the front property line;

(iii) For an existing main building that is located behind the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that either:

a. the established building line front setback for the lot exceeds thirty (30) feet, as measured to the front property line, or

b. the front building line of the existing house exceeds thirty (30) feet, as measured to the front property line, provided, however, no part of any addition may project beyond the existing front building line. If a rear setback credit based on the front building line has previously been used, no addition may project beyond the front building line.

(32) Main buildings, computation for corner lots: No main building, or any part or projection thereof, may be erected or located nearer to the rear lot line than **the greater of twenty (20) feet or** the following setbacks:

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

b. a. 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.

(4) Main buildings, reduction of computation for corner lots: The rear setback computed according to subparagraph (c)(3)a above may be reduced as follows, for the following types of construction:

a. New construction. For a new main building, 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;

b. Addition.

(i) For an existing main building that is located in front of the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that the front building line of the existing house exceeds thirty (30) feet, as measured to the front property line;

(ii) For an existing main building that is located on the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that the established building line exceeds thirty (30) feet.

(iii) For an existing main building that is located behind the established building line for the lot, the rear setback shall be reduced by one (1) foot for each foot that either:

a. the established building line front setback for the lot exceeds thirty (30) feet, or

b. the front building line of the existing house exceeds thirty (30) feet, as measured to the front property line, provided, however, no part of any

addition may project beyond the existing front building line. If a rear setback credit based on the front building line has previously been used, no addition may project beyond the front building line.

* * *

Sec. 4-13. - Penalties.

* * *

(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 (c) above. In any prosecution charging a violation of any provision of this chapter, proof that the particular building, fence, wall, 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. **Notwithstanding the declaration of a violation of this code as a misdemeanor, any violation of any provision of the code may be prosecuted as a municipal infraction, at the town's discretion, and be subject to a fine in the amount specified above, unless otherwise specified in this chapter.**

* * *

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

* * *

(g) No person shall erect or maintain any wall, fence or berm measuring more than six (6) feet, six (6) inches in height in any side or rear yard. **Notwithstanding the foregoing, a fence measuring eight (8) feet or less in height may be erected and maintained along a rear property line of a lot adjoining a rail line right-of-way.** No wall or berm measuring more than one (1) foot in height may be erected within two (2) feet of any side or rear lot line. **Notwithstanding the foregoing, a retaining wall less than thirty (30) inches in height may be constructed along a driveway in a side or rear yard without the required two (2) foot setback. In the event such 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 (h) below.

* * *

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

- (a) ~~Fences, **Non-retaining** 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) **Notwithstanding subsection (b) above, n**Nonconforming retaining walls, **fences, and guardrails** 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 or along a driveway in a side or rear yard may be altered or replaced, if the location is not changed and no dimension is enlarged,~~ **and in the case of fences, the fenestration is not decreased.**

* * *

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

* * *

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

* * *

(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. **A building permit for the construction authorized by the variance shall be obtained from the town within twelve (12) months of the date of the decision or the variance shall be void, unless an extension is granted in writing by the town manager. The decision shall be recorded among the Land Records of Montgomery County, Maryland, at the town's expense. The terms and conditions of the decision shall run with the land and be binding upon the applicant, and the applicant's successors and assigns. If the town is required to enforce the decision, the applicant, and the applicant's successors and assigns shall be responsible for all the town's costs to enforce, including reasonable attorneys' fees.**

* * *

- (c) *Administrative variances.*

(1) The town manager and mayor may grant variances for the following:

* * *

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;

c. ~~Fences and walls~~ **(i) Walls 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; **(ii) fences in a front yard that replace an existing fence, but are ineligible for replacement according to section 4-53 due to a decrease in fenestration, provided the replacement fence does not materially alter the location or increase the height or length of the fence and the replacement fence has a fenestration of at least thirty (30) percent; (iii) fences in a public right-of-way, provided the replacement fence does not materially alter the location or increase the height or length of the fence and the replacement fence has a fenestration of at least thirty (30) percent;**

* * *

e. New, **or** relocated, ~~or replacement~~ guardrails in a front yard, 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;

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ___th day of June, 2019, 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 ___th day of _____, 2019 (30 days after adoption).

ATTEST:

TOWN OF CHEVY CHASE

Kirk Renaud, Secretary

Barney Rush, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

~~Strike through~~ indicates material deleted

* * * indicates material unchanged