

**Town of Chevy Chase
Ordinance to Add Variance and Appeal Provisions
for Small Wireless Telecommunications Facilities**

Resolution No.: 20-03
Introduced: February 19, 2020
Adopted: March 12, 2020
Effective Date: April 12, 2020

AN ORDINANCE TO AMEND CHAPTER 26, CONCERNING
SMALL WIRELESS TELECOMMUNICATIONS FACILITIES TO
ADD VARIANCE AND APPEAL PROCESSES.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed 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;

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services; and does not prohibit the provision of personal wireless services;

WHEREAS, the Town of Chevy Chase holds and maintains the streets and highways within its municipal boundaries in trust for the benefit, use, and convenience of the general public;

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 residents 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 19th day of February, 2020;

WHEREAS, after proper notice to the public, the Town Council considered the following Ordinance in an open meeting conducted on the 11th day of March, 2020;

WHEREAS, 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.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this 11th day of March, 2020, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town Charter, the Town Council does hereby adopt the foregoing Ordinance and amend the Town Code as follows:

* * *

Chapter 26.

TELECOMMUNICATIONS

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Sec. 26-48. - Permit and access agreement required.

(a) No person shall construct, install, maintain, or perform any work in the public right-of-way related to a communications facility or any tower, without first receiving a permit and ~~paving~~ **paying** any applicable fee, as required under this article. No permit shall be issued until the applicant has entered into a right-of-way access agreement in a form approved by the town, according to this article. A permit shall not be required for ordinary maintenance and repair, as determined by the town. **A permit application shall be filed with the town no later than seven (7) calendar days after a permit application has been filed with Montgomery County, Maryland, for the same work.**

(b) The right-of-way access agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the basis for termination; (b) the scope of the authority; (c) the operator's maintenance obligations; (d) the operator's indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the town's right to access and inspect the operator's books and records.

(c) A right-of-way access agreement may be terminated by the town, in its sole discretion, if this chapter is amended or replaced. In such event, a new permit and right-of-way access agreement shall be required according to the requirements of the amended or replaced chapter.

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Sec. 26-51. Variances.

(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 that strict compliance would effectively prohibit the provision of service, and the variance is the minimum reasonably necessary to overcome the aforesaid prohibition and allow service.

(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, 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 public right-of-way 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. The lease, rental agreement or contract to purchase any utility pole involved in the application, to demonstrate the applicant's legal right to prosecute the application.

d. 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.

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

(3) Public hearings on applications. 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 area of the right-of-way involved in the application, 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. 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.

(7) Duration. A 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.

Sec. 26-52. - 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 or action. 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 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. 26-53. - 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.

* * *

AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by 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

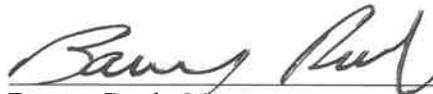
2. This Ordinance shall take effect on the 10th day of April, 2020 (30 days after adoption).

ATTEST:

TOWN OF CHEVY CHASE



Wicca Davidson, Secretary



Barney Rush, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

~~Strikethrough~~ indicates material deleted

* * * indicates material unchanged