

Town of Somerset
Ordinance to Amend Building Regulations
(Micro-Bioretenention Planter Boxes)

Resolution No.: 11-23-1
Introduced: December 4, 2023
Adopted: January 8, 2024
Effective Date: March 5, 2024

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO
CLARIFY THAT ABOVE-GRADE STORM WATER COLLECTION
AND DRAINAGE DEVICES, INCLUDING MICRO-
BIORETENTION PLANTER BOXES, ARE SUBJECT TO
BUILDING REGULATIONS

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, 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 83-17 of the Town Charter authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Town Charter, as it may deem necessary for the good government of the Town; for the protection and preservation 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 and visitors thereto and sojourners therein;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in public session assembled on the 4th day of December, 2023;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 11th day of December, a copy of following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council indicated receipt of the draft on 12th day of December, 2024 and provided no comments;

WHEREAS, the Town Council considered the following Ordinance in public session assembled on the 8th day of January, 2024;

WHEREAS, officials from the Montgomery County Department of Permitting Services have indicated that certain storm water drainage devices, including, but not limited to, micro-bioretenion planter boxes, are deemed exempt from County building regulations, including setbacks, even in situations where, due to sloping topography, such devices may be significantly above grade;

WHEREAS, the County Code, Sec. 59-4.1.7.B.5.b.ii, provides that “[a] permanent rainwater collection or harvesting system may project a maximum of 3 feet into any side street, side, or rear setback,” but the Town Code does not currently afford such exception;

WHEREAS, the Town Council finds that the Town building regulations should be clarified to address above-grade stormwater drainage devices;

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 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 and visitors thereto and sojourners therein.

NOW, THEREFORE, the Town Council does hereby adopt the foregoing Ordinance.

BE IT ORDAINED AND ORDERED, this 8th day of January, 2024, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town Charter that the Code of Ordinances is hereby amended as follows:

* * *

§ 112-2 **Definitions.**

As used in this Part 1, the words set forth below shall be defined as follows:

* * *

BUILDING

~~Includes a~~Any permanent structure, whether a primary main or accessory structure, having one or more stories and a roof, designed primarily for the shelter, support or enclosure of persons or property of any kind, and including all parts of the structure, including, but not limited to, projections, elements, and ~~appurtenant structures~~ appurtenances, and equipment that is/are attached to or located within ten (10) feet of a building surface. "Building" excludes projections, elements, appurtenances, and equipment that is/are constructed at or below grade, such as a window well or patio.

* * *

§ 112-14 **Building requirements; stormwater drainage.**

* * *

C. Setback requirements. A building, or any part thereof, shall be set back from lot lines at least as follows, as measured from the final ~~face of the building walls~~ surface of the building, or any part thereof, as constructed:

(1) Main building:

(a) Side: eight (8) feet one side; eighteen (18) feet sum for both sides.

(b) Rear: twenty (20) feet.

(c) ~~No main building, or any part or projection thereof, may be constructed nearer to any front lot line than~~ **Front:** the established building line or twenty-five (25) feet, whichever results in a greater setback. For corner lots, any and all lot lines bordering upon a street shall be considered a front lot line.

(d) Exceptions for projections and appurtenant structures:

[1] Cornices and eaves may project 2 1/2 feet or less into any minimum setback, but such projection shall be not less than two feet from the vertical plane of any lot line.

~~{a}~~

[2] Steps, stoops, decks, terraces, porches, bay windows, oriel entrances, vestibules, balconies, outside stairways, chimneys, and similar projections may not project into any required setback.

[3] Air conditioners and heat/cool pumps may project not more than five feet into any minimum front or rear setback. Additional projection may be permitted for the purpose of adding noise abatement devices. Nonconforming air conditioners or heat/cool pumps projecting into any

minimum side setback prior to November 1, 2017, may be maintained, altered, repaired and replaced.

[4] Access ramps and wheelchair lifts. An open and uncovered access ramp or wheelchair lift, and any handrails associated therewith, may project into any minimum front, side, or rear setback, provided the following conditions are met:

[a] The access ramp or wheelchair lift, and any handrails associated therewith, cannot reasonably be constructed without projecting into the required setback;

[b] The access ramp or wheelchair lift, and any handrails associated therewith, project into the required setback the minimum distance reasonably necessary to provide a person a reasonable accommodation; and

[c] The access ramp or wheelchair lift has the minimum dimensions reasonably necessary to comply with all applicable provisions of the Americans with Disabilities Act, as amended or replaced

[5] Stormwater collection, harvesting, infiltration, and drainage devices with a height not exceeding twelve (12) inches, including but not limited to micro-bioretenion planter boxes, may project a maximum of three (3) feet into any side or rear setback area. Height is measured from the surface of the adjoining ground. Where the elevations of adjoining grounds differ, the measurement shall be made from the surface of the lower ground.

[6] Any other projection, element, appurtenance, or equipment not expressly listed in this subparagraph (d) shall not be afforded an exception and must comply with the required setback for the building.

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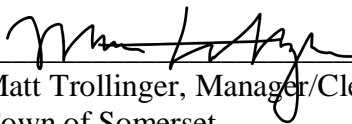
AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by the Maryland Code and the Town Charter, that:

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

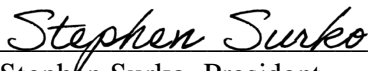
2. This Ordinance shall take effect on the 5th day of March, 2024 (36 calendar days after approval by the Mayor).

ATTEST:

TOWN OF SOMERSET



Matt Trollinger, Manager/Clerk-Treasurer
Town of Somerset



Stephen Surko, President
Town Council

Approved:



Jeffrey Slavin, Mayor
Town of Somerset

Date: 1/29/2024

Bold and Underline indicates new material
~~Strikethrough~~ indicates material deleted
* * * indicates material unchanged