

Town of Somerset
Ordinance to Amend Building Regulations

Resolution No.: 8-20
Introduced: 11/2/20
Adopted: 12/7/20
Effective Date: 1/14/21

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO CHANGE INSTANCES OF VICE-PRESIDENT TO PRESIDENT; CLARIFY THE PROCEDURES FOR CREATION OF COMMITTEES; ADD A DEFINITION OF LOT; AMEND THE PROCEDURES FOR APPEALS SO THAT COUNCIL DECISIONS ARE NOT STAYED PENDING A PROSPECTIVE PETITION FOR JUDICIAL REVIEW; DELETE UNNECESSARY PROVISIONS; AND OTHERWISE AMEND AND CLARIFY EXISTING PROVISIONS.

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 of 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 an open meeting conducted on the 2nd day of November, 2020;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 29th day of October, 2020, a copy of 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 November 24, 2020, and indicated that the County Council had no comments;

WHEREAS, after proper notice to the public, and after at least thirty (30) 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 7th day of December, 2020;

WHEREAS, after receiving a recommendation from 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, 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 7th day of December, 2020, 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:

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**Chapter 5
ADMINISTRATION OF GOVERNMENT**

§ 5-19. Disbursements.

All checks, drafts, notes or orders drawn against the accounts of the Town must be signed by any two of the following: the Mayor, the ~~Vice~~—President of the Council, one designated Councilmember, and the Clerk-Treasurer. Their signatures shall be duly certified to the appropriate depositories. No checks, drafts, notes, or orders drawn against said depositories shall be valid unless signed in this manner.

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§ 5-22. Council agenda.

The agenda for the meetings of the Mayor and the Council shall be formulated by the Mayor, with the assistance of the Clerk-Treasurer; provided, however, that no item shall be placed on the agenda by the Mayor without the approval of the ~~Vice~~ President of the Council or, if the ~~Vice~~ President is not reasonably available, with the approval of the next most senior member of the Council. The Clerk-Treasurer shall circulate the agenda to all members of the Council. Any agenda item proposed in a timely manner by two Councilmembers shall be included in the agenda.

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Chapter 13 COMMITTEES

§ 13-1. Establishment.

The Mayor may establish, with the approval of the Town Council, such committees as he ~~deems~~ **deemed** necessary from time to time.

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Chapter 112 BUILDING CONSTRUCTION

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§ 112-2. Definitions.

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

ADJOINING AND CONFRONTING PROPERTY - Land in the Town of Somerset which touches the boundary line of other property at least at one point, which may be a corner, or which would do so except for an intervening road, street, or right-of-way.

BUILDING - Includes any permanent structure, whether a primary 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 ~~any additions, such as decks or balconies, and modifications thereto.~~ "Building" includes any permanent storage structure, such as a toolshed. "Building" also includes any excavation for such structures, all parts of the structure, including, but not limited to, projections and appurtenant structures.

ESTABLISHED BUILDING LINE - A front yard building restriction line, which is greater than the twenty-five-foot minimum required setback. The established building line shall be the average setback of all main buildings that meet the following criteria:

- A. Are within **three hundred (300)** feet of any side lot line of the lot in question (excluding corner lots);
- B. Are along the same side of the street;
- C. Are between intersecting streets or to the point where public thoroughfare is denied;
- D. Exist at the time the building application request is filed;
- E. Are set back at least **twenty-five (25)** feet from the front lot line;
- F. Were constructed pursuant to a valid building permit;
- G. Were not constructed pursuant to a variance;
- H. Are not located on a pipe-stem or flag-shaped lot;
- I. Are not buildings on the subject lot; and
- J. Are on properties that are at least **fifty (50)** feet wide at the twenty-five-foot minimum front setback.

LOT - The land designated as a separate and distinct lot or parcel of land on a legally recorded subdivision plat or deed filed among the land records of the County. Where a distinct tract of land is comprised of more than one lot or parts thereof as shown on a subdivision plat, the separate lots and/or parts of lots shall constitute one lot for the purposes of this Part 1.

PERSON - Includes persons, firms, partnerships, corporations, estates, trusts, associations, and government institutions or agencies.

§ 112-3. Circumstances requiring building permits; exceptions.

- A. Except as set forth herein, no building, air conditioner, heat pump or generator located within the Town of Somerset shall be commenced, installed, constructed, extended, repaired, removed or altered, nor shall excavation for a building be commenced, without first obtaining a building permit from the Town of Somerset. **Before a Town permit will be issued, a Montgomery County permit, if required, must be delivered to the Clerk-Treasurer.**
- B. No building permit from the Town of Somerset is required for:
 - (1) Ordinary repairs as defined in Montgomery County Code Section 8-3, as amended **or replaced**; or
 - (2) Repairs or changes that do not alter the **three-dimensional** exterior dimensions of the building.

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§ 112-6. Documents to accompany application.

An applicant for a Town of Somerset building permit shall submit the following materials with the permit application ~~in addition to any other materials that may be requested by the Mayor~~; the application and all accompanying documents shall be available for public inspection at the Town Hall:

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§ 112-7. Permit conditions.

A. Time for completing work. Any permit issued under this Part 1 shall become invalid if the authorized work is not commenced within six **(6)** months from the date of approval or is suspended or abandoned for a period of six months; provided, however, that the Town Council, for good cause shown, may extend a permit for an additional six **(6)** months upon payment by the applicant of **fifty percent (50%)** of the original building permit fee. This additional fee may be waived by the Council for good cause shown.

B. Duration of permit. A building permit shall be valid for the date requested but not more than a one-year period. The Town Council, upon written request, for good cause shown, may grant a permit for a longer time, or may grant an extension of time for an existing permit of six **(6)** months upon payment by applicant of **fifty percent (50%)** of the original building permit fee.

C. Signature on permit. The Mayor shall sign each permit issued.

D. Location of permit and plans. The permit or a true copy of it and a copy of all plans and other documents submitted with the permit shall be kept on the site of the property and shall be available for inspection by officials of the Town, in the course of their duties, during the entire time that the work is in progress and until its completion.

E. Compliance with permit, **approved plans, and permit conditions**. All work shall conform to the approved application and plans for which the permit has been issued, **the permit, and all permit conditions**. **The Town Council or the Mayor, as the case may be, may issue the permit subject to conditions determined necessary for the protection of the public health, safety, or welfare; to protect trees; to protect against interference with residential parking, sidewalk or street traffic; and to protect against noise, including, without limitation, the following:**

a. Prohibiting or limiting the parking of contractor or other construction-related vehicles in the public right-of-way;

b. Limiting the locations upon private property where contractors or other construction-related vehicles may be parked;

c. Limiting the locations upon which construction materials may be stored;

d. Limiting the locations upon which portable toilets may be placed or maintained;

e. Limiting the locations upon which construction debris may be stored, whether or not such debris is contained; and

f. Such other terms or conditions as may be determined to be necessary to protect the public health, safety or welfare.

F. Stop-work order. Whenever the Mayor determines that actions are being taken in violation of the provisions of this chapter, including actions outside the scope of or contrary to a permit validly issued, he may order such work to be stopped immediately. The stop-work order shall be issued in writing by the Mayor and be served upon the owner of the property or the owner's agent or the person doing the work. It shall be unlawful for any person to continue or permit the continuation of work in or about the property after having been served with the stop-work order. The permit holder may appeal such order to the Town Council which, upon request, shall hold a hearing within **fourteen (14)** days, pursuant to the procedures set forth in § 112-10 below.

G. Revocation of building permit.

(1) The Mayor may revoke a permit issued under this Part 1 in case of any material false statements or misrepresentations of fact in the application or on the plans on which the permit was based or in case of violation of any of the conditions upon which the permit was issued.

(2) The Mayor may revoke a permit issued under this Part 1 where work relating to the permit has resulted in, or is likely to result in, a violation of Chapter 182, Trees.

(3) The Mayor may revoke a permit issued under this Part 1 upon the revocation of a permit issued by Montgomery County for the identical work which is the subject of the Town permit.

(4) The permit holder may appeal any such revocation to the Town Council which, upon request, shall hold a hearing within **fourteen (14)** days, pursuant to the procedures set forth in § 112-10 below.

(5) Upon revocation, the construction must be removed within **thirty (30)** days or such other time period as the Mayor may specify.

H. Inspections. The Town shall have the right to on-premises inspection of a lot to ensure compliance with the Town Code, the application and plans submitted, and/or the Town permit issued.

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§ 112-10. Hearing and decision on application; judicial review.

- A. Hearing. The Town Council shall conduct fact-finding hearings on building permit applications. The applicant and all interested parties shall be given the opportunity to present evidence and testimony, so long as it is relevant and not repetitive. The hearing shall be conducted so as to afford fundamental fairness to all parties. The technical rules of evidence shall not apply.
- B. Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on the application, shall be rendered within 40 days of the date of the hearing. The decision shall be in writing **if the decision includes a denial of an application in whole or in part or if an objection was raised by an interested person,** and shall state the Town Council's findings of fact and conclusions of law. ~~The decision of the Town Council shall become final unless an appeal is taken as set forth below within 30 days.~~ The decision of the Town Council shall approve the building permit application, disapprove it, or approve it with modifications. Unless stated to the contrary, approval of a building permit includes permission to remove trees for which removal authority is requested in the building permit application.
- C. Judicial review. Any person aggrieved by a decision of the Town Council with regard to an application for a building permit filed under the provisions of this Part 1 and who appeared before the Town Council in person, by an attorney, or in writing shall have the right to appeal **petition for judicial review of** the decision of the Town Council to the Circuit Court for Montgomery County, Maryland under the provisions of Title 7, Chapter 200, of the Maryland Rules of Procedure, **as amended or replaced.** In any judicial proceeding under this section, the findings of the Town Council as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

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§ 112-14. ~~Increased setbacks for certain new construction~~ Building requirements.

- A. Applicability. ~~This § 112-14 shall apply to all "new building construction," as defined below, for which a Town building permit is required under the Town Building Code and for which a Town building permit has not been approved as of the effective date of this section. This § 112-14 shall apply only to such new building construction on land zoned for single-family residential use. This § 112-14 shall not apply to buildings owned by the Town of Somerset. **[Reserved]**~~
- B. Definitions. ~~For the purposes of this section only, the following terms shall have the meanings indicated:~~

~~NEW BUILDING CONSTRUCTION—~~

- ~~(1) The construction or erection of a new building; or~~

~~(2) The repair, alteration, replacement or remodeling of an existing building which would change its exterior dimensions, to the extent of such change. **[Reserved]**~~

C. Setback requirements. ~~New~~ A building ~~construction~~ shall be set back from ~~property~~ lot lines at least as follows, **as measured from the final face of the building walls as constructed:**

(1) ~~Primary~~ **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 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] Steps, stoops, decks, terraces and porches, and their roofing, may extend not more than nine **(9)** feet into any minimum front or rear setback.

[2] Bay windows, oriel entrances, vestibules and balconies.

[a] Except as provided in Subsection C(1)(d)[2][b] below, a bay window, oriel entrance, vestibule or balcony, **ten (10)** feet or less in width and not more than one story in height, may project not more than three **(3)** feet into any minimum front or rear setback.

[b] No more than two **(2)** bay windows may project into any required setback.

[3] Cornices, eaves, outside stairways, chimneys, air conditioners and heat pumps.

[a] Cornices and eaves may project **two and one-half (2 ½)** feet or less into any minimum setback, but such projection shall be not less than two **(2)** feet from the vertical plane of any lot line.

[b] Sills, leaders, belt courses, and similar ornamental features may project not more than six **(6)** inches into any minimum setback.

[c] Outside stairways may project not more than five **(5)** feet into any minimum rear setback.

[d] Chimneys may project not more than **twenty-four (24)** inches into any minimum setback.

[e] Chimneys used as walls **of a building, or built within walls,** may not project into any minimum setback.

[f] Air conditioners and heat pumps may project not more than five **(5)** 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 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**.

(2) Accessory buildings.

(a) Accessory buildings shall be located only in the rear yard of an interior lot, must not occupy more than **twenty-five percent (25%)** of the rear yard, must be a minimum of **sixty (60)** feet from the front lot line and set back a minimum from side and rear yard property lines as follows:

Building Height (feet)	Minimum Setback (feet)
10 or less	5
Over 10 but less than 15	5 plus 1 for each foot or fraction of a foot in excess of 10
15 or over	10 plus 2 for each foot or fraction of a foot in excess of 15
Linear dimension (feet)	
24 or less	5
Over 24	5 plus 1 foot for every foot or fraction of a foot in excess of 24

[1] If an accessory building has both a height greater than **ten (10)** feet and a linear dimension greater than **twenty-four (24)** feet, the building must be

set back the minimum setback distance of five **(5)** feet, plus the distance as determined according to the provisions of this subsection above for building height, plus the distance as determined according to the provisions of this subsection above for linear dimension. Example: The setback for a building with a height of **fifteen (15)** feet and a linear dimension of **thirty (30)** feet would be **sixteen (16)** feet (five **(5)** feet minimum setback plus five **(5)** feet additional feet for the height in excess of **ten (10)** feet, plus six **(6)** feet additional feet for the linear dimension in excess of **twenty-four (24)** feet).

[2] Setbacks for accessory buildings on corner lots must be in accordance with the Montgomery County Zoning Ordinance, Chapter 59, Article 59-4, Division 4.4, **as amended or replaced**, adjusted for height and linear dimensions as established above in this subsection.

(b) Accessory building height is the vertical distance measured to the highest point of the roof surface regardless of roof type, from the lowest of the following points:

[1] The average elevation of the pre-development grade along the front of the structure;

[2] The average elevation of the finished grade along the front of the structure;

[3] The average elevation of the pre-development grade along the rear of the structure;

[4] The average elevation of the finished grade along the rear of the structure.

(c) Pre-development grade is the grade that existed at the time of the application for a building permit.

(d) The provisions of this Subsection C(3) shall apply to all property within the Town, except the following properties which shall be subject to the provisions of the Montgomery County Code regarding setbacks for accessory buildings:

[1] Any lot with less than **sixty (60)** feet of frontage;

[2] Any lot that has a rear lot line adjoining a lot that fronts on Drummond Avenue;

[3] Any lot with a side or rear lot line adjoining land that is not owned by the Town that is dedicated for use as parkland.

D. Other requirements.

(1) ~~Effective date.~~ All new building construction shall comply with this section regardless of the date on which the lot, on which new building construction is proposed, was recorded or the date of construction of an existing building or structure.

(2) ~~Town grandfathering created.~~ Any building existing on ~~the effective date of this section~~ **November 28, 1994** and which **was lawfully constructed** ~~met the setback requirements in effect immediately prior to the effective date of this section, but which does not meet the setback requirements of this section, shall continue to be a lawful use and shall not be deemed a nonconforming use.~~ Such a building may be extended to the rear, provided that the extension is no closer to the side property line than the existing building, excluding **permissible** projections (such as stoops, decks and chimneys), and the extension otherwise complies with this section **Article**. ~~However, e~~**Except as provided in the previous sentence, new building construction, as defined in this section, relating or an addition to such an existing building, must comply with this section Article.**

(3) ~~County grandfathering abrogated.~~ ~~Notwithstanding any provision to the contrary in the Montgomery County Zoning Code, the setback requirements set forth herein shall apply.~~

(4) ~~Height limitations.~~ ~~Height limits shall not be affected by these provisions.~~

(5) ~~Compliance or waiver required.~~ ~~No Town building permit shall be granted for such new building construction unless it complies with these provisions or waiver has been granted by the Town Council, as provided in Subsection E below.~~

E. ~~Waiver~~ **Variance**. The Town Council may grant a ~~waiver of~~ **variance from** the requirements of this section, subject to the following limitations: (1) The Town Council finds after a duly noticed public hearing, based on the evidence before it, that good cause has been shown on either of the following grounds:

(a) The proposed new building construction would not unduly interfere with light and air between residences or other structures, would not be unduly incompatible with the scale, massing, and character of the Town or of nearby residences or other structures, and would otherwise not unduly adversely affect the use, enjoyment or value of nearby properties. In making such finding, the Council may consider such factors as:

[1] Size and location of proposed new building construction;

[2] Size and location of existing and potential buildings and other structures on nearby lots; and

[3] Topography and existing or planned vegetation of the lot on which the proposed new building construction will be located and of nearby lots. Should the Council be requested to consider planned vegetation, the applicant for the ~~waiver~~ **variance** shall submit a landscape plan with the ~~waiver~~ **variance** application; or

(b) The strict and literal application of this section would result in peculiar or unusual practical difficulties to the owner of the lot on which the proposed new building construction is to be located due to exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property. The following do not constitute practical difficulty for the purposes of this section:

[1] The existence of nearby structures or buildings which do not comply with this section;

[2] The granting of a ~~waiver~~ **variance** on other lots; or

[3] Any condition resulting from the conduct of the applicant or applicant's predecessor(s) in title.

(2) The ~~waiver~~ **variance** must be for the minimum reasonably necessary to avoid the above conditions or situations.

(3) The Town Council may impose, in granting a ~~waiver~~ **variance**, such conditions as it deems in the public interest and necessary to effectuate the purposes of this section.

F. ~~Waiver~~ **Variance** procedure.

(1) The Mayor shall prepare a ~~waiver~~ **variance** application form for execution by the owner(s) of the site or authorized agent of the owner(s), which shall conspicuously state that a ~~waiver~~ **variance** may be granted by the Town Council only after a public hearing at which the applicant and any other interested persons may be heard, and shall state the nature of the information and documents that must accompany the application.

(2) An applicant may, at the time application is made for a Town building permit, submit on the form prepared by the Mayor a written application for a ~~waiver~~ **variance** of this section's requirements, together with documentary exhibits relating to the ~~waiver~~ **variance** and need therefor.

(3) The procedure for hearing, decision and judicial review shall be as provided for building permits in § 112-10.

(4) A separate ~~waiver~~ **variance** application fee in an amount set from time to time by the Town Council shall be paid at the time of filing of the application.

(5) The procedure for late or expedited review of the ~~waiver~~ **variance** application shall be as provided in § 112-8, including Town Council discretion as to whether such late or expedited review shall be held.

(6) Late and expedited review fees shall apply to the ~~waiver~~ **variance** application; provided, however, that should a late or expedited review also be requested for the building permit, which is to be heard simultaneously with the ~~waiver~~ **variance** application, only one late or expedited review fee shall be required.

(7) No ~~waiver~~ **variance** shall be granted unless the Town Council finds, based on the evidence before it, that the ~~waiver~~ **variance** requirements of this section are met.

§ 112-15. New structures and additions.

The following requirements apply to new structures and additions:

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E. Height check. If the structure or new construction will be more than two **(2)** stories high, the contractor must notify the Clerk-Treasurer after the frame and partitions have been erected, but before the installation of insulation and dry wall. **A certified height survey shall be submitted to the Town by the applicant to allow the height to be confirmed.**

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**Part 3
Fences and Walls
ARTICLE VIII**

Regulation and Permitting of Certain Fences and Walls

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§ 112-35. Decision on permit.

The Mayor shall examine the application for the permit for placement or construction of a fence or wall under this Part 3 and the accompanying documents. **In the case of an application submitted with a building permit application for new construction of a house or an addition, or while such a project is in process, the application shall be reviewed by the Town Council.** If the Mayor is satisfied that the proposed fence or wall complies with the criteria for permits under this Part 3, he shall issue a permit for such fence or wall as soon as is practicable. If the application does not conform to the requirements of this Part 3, the Mayor shall disapprove such application in writing, stating the reasons for such disapproval. The Mayor shall act on a permit application within **thirty (30)** days after its submission.

§ 112-36. Criteria for decision.

The **Town Council or the Mayor, as the case may be,** shall only issue a fence permit or wall permit if:

- A. The permit application is complete;
- B. The proposed fence or wall conforms to the requirements of this Part 3;
- C. The Historic Preservation Commission has approved the proposal, if applicable; and

D. The proposed work complies with all other applicable provisions of the Town Code, county, state and federal laws.

§ 112-37. Exceptions granted by Town Council.

A. An owner or his authorized agent may apply for an exception to the requirements of this Part 3. Subject to consideration of the open streetscape purposes of this Part 3, the Town Council may grant an exception to the requirements of this Part 3 under one or more of the following circumstances:

(1) In a case of unnecessary hardship specific to that property;

(2) In the case of a replacement to an existing fence or wall in the same location that was either built as an architectural feature of a house, or approved by the Town Council in connection with a building permit under this Chapter 112, provided that the replacement is of comparable design, materials, and finish;

(3) In the case of a new or replacement fence to be placed or constructed in a front yard, the Council may approve a fence that is:

(a) Up to **forty-eight (48)** inches in height measured from the ground immediately under the fence;

(b) Up to **sixty-five percent (65%)** closed when viewed from straight ahead; or

(c) At least three **(3)** feet from a Town sidewalk measured from the edge of the sidewalk closest to the property.

(4) In the case of a new or replacement fence to be placed or constructed in a street side yard of a corner lot, the Council may approve a fence that is:

(a) Up to **seventy-eight (78)** inches in height measured from the ground immediately under the fence;

(b) Up to **sixty-five percent (65%)** closed when viewed from straight ahead; or

(c) At least five **(5)** feet from a Town sidewalk measured from the edge of the sidewalk closest to the property.

(5) In the case of proposed fence building materials other than those specified in this Part 3, provided that the building materials are compatible with neighboring properties; or

(6) In the case of a fence or wall that does not otherwise meet the requirements of this Part 3, construction of which is necessary for abatement of noise from a generator.

B. In addition to the information and material specified in §§ 112-33 and 112-34, the Council may request any further information necessary for it to reach a decision.

C. The Mayor shall prepare, upon the approval of the Council, the necessary forms to implement this section.

D. The request for an exception shall proceed according to the procedures for a variance, as set forth in Section 112-14.F.

§ 112-38. Permit conditions; appeals.

A. Fence or wall permit conditions.

(1) Time for completing work. Any permit issued for a fence or a wall shall become invalid if the authorized work is not commenced within six **(6)** months from the date of approval or is suspended or abandoned for a period of six **(6)** months; provided, however, that the Mayor, for good cause shown, may extend a permit for an additional six **(6)** months and may require payment of a fee in the amount set by a resolution of the Council.

(2) Duration of permit. A fence or wall permit shall be valid for the date requested but not more than a one-year period. The Mayor, upon written request, for good cause shown, may grant a permit for a longer time, or may grant an extension of time of six **(6)** months for an existing permit, and may require payment of a fee in the amount set by a resolution of the Council.

(3) Signature on permit. The Mayor shall sign each permit issued.

(4) Location of permit and plans. The permit or a true copy of it and a copy of all plans and other documents submitted with the permit shall be kept on the site of the property and shall be available for inspection by officials of the Town, in the course of their duties, during the entire time that the work is in progress and until its completion.

(5) Compliance with permit. All work shall conform to the approved application and plans for which the permit has been issued.

(6) Stop-work order. Whenever the Mayor determines that actions are being taken in violation of the provisions of this Part 3, including actions outside the scope or contrary to a permit validly issued, he may order such work to be stopped immediately. The stop-work order shall be issued in writing by the Mayor and served upon the owner of the property or the owner's agent or the person doing the work. It shall be unlawful for any person to continue or permit the continuation of work in or about the property after having been served with the stop-work order. The permit holder may appeal such order to the Town Council which, upon request, shall hold a hearing within 14 days pursuant to the procedures set forth in Subsection C below.

(7) Revocation of fence or wall permit.

(a) The Mayor may revoke a fence or wall permit in case of any material false statements or misrepresentations of fact in the application or on the plans on which the permit was based or in case of violation of any of the conditions upon which the permit was issued.

(b) The Mayor may revoke a fence or wall permit where work relating to the permit has resulted in, or is likely to result in, a violation of Chapter 182, Trees.

(c) The Mayor may revoke a fence or wall permit upon the revocation of a permit issued by Montgomery County for the identical work which is the subject of the Town permit.

(d) The permit holder may appeal any such revocation to the Town Council which, upon request, shall hold a hearing within **fourteen (14)** days, pursuant to the procedures set forth in Subsection C below.

(e) Upon revocation, the construction must be removed within **thirty (30)** days, or such other time period as the Mayor may specify.

B. Modification of approved plans. No person shall modify or alter any plans or specifications after they have been submitted and a fence or wall permit issued. Notice of intention to deviate from the approved plans and specifications shall be given in writing to the Mayor, and his written approval shall be obtained before such deviation or alteration is made.

C. Appeal of permit decisions.

(1) Time of and form for appeal. Any person aggrieved by a decision of the Mayor with regard to an application for a fence or wall permit may appeal such decision to the Town Council within **thirty (30)** days. An appeal shall be in writing and shall be submitted to the Clerk-Treasurer for presentation to the Town Council. The notice of the appeal filed by the appellant shall state the decision of the Mayor for which the review is sought and the manner in which the appellant is aggrieved by the decision.

(2) Hearing before the Town Council. Within **sixty (60)** days, but not earlier than **ten (10)** days, following the filing of the appeal, the Town Council shall conduct a fact-finding hearing on such appeal, after giving at least **ten (10)** days' notice of such hearing to the appellant (and to the applicant if the applicant is not the appellant) and to all owners or occupants of property which adjoins or confronts the property on which is located the fence or wall which is the subject of the application.

(3) Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on said appeal, shall be rendered within **forty (40)** days of the date of the hearing. The decision shall be in writing **if the decision includes a denial of an application in whole or in part or if a permit is granted over an objection from an interested person,** and shall state the Council's findings of fact and conclusions of law. ~~The decision of the Council shall become final unless a judicial appeal is taken as hereinafter set forth within 30 days.~~

D. Judicial review. Any person who is aggrieved by a decision of the Town Council with regard to an application for a fence or wall permit shall have the right to ~~appeal~~ **petition for judicial review of** the decision of the Town Council ~~to the Circuit Court for Montgomery County, Maryland~~ under the provisions of Title 7, Chapter 200, of the Maryland Rules of Procedure, **as amended or replaced**. In any judicial proceeding under this section, the findings of the Town Council as to the facts, if supported by the evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

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Chapter 149

PARKS AND RECREATION

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ARTICLE II

Park Regulations

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§ 149-3. Discharge of water.

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F. Hearing and decision on permit application.

(1) Hearing. The Town Council shall conduct fact-finding hearings on permit applications. The applicant and all interested parties shall be given the opportunity to present evidence and testimony, so long as it is relevant and not repetitive. The hearing shall be conducted so as to afford fundamental fairness to all parties. The technical rules of evidence shall not apply.

(2) Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on the application, shall be rendered within **forty-five (45)** days of the date of the hearing. The decision shall be in writing **if the decision includes a denial of an application in whole or in part or if a permit is granted over an objection from an interested person**, and shall state the Town Council's findings of fact and conclusions of law. ~~The decision of the Town Council shall become final unless an appeal is taken as set forth below within 30 days.~~ The decision of the Town Council shall approve the permit application, disapprove it, approve it with modifications or approve it with conditions.

(3) Judicial review. Any person aggrieved by a decision of the Town Council with regard to an application for a permit filed under the provisions of this section and who appeared before the Town Council in person, by an attorney, or in writing, shall have the right to ~~appeal~~ **petition for judicial review of** the decision of the Town Council ~~to the Circuit Court for Montgomery County, Maryland~~ under the provisions of Title 7, Chapter 200, of the Maryland Rules of Procedure, **as amended or replaced**. In any judicial proceeding under this subsection, the

findings of the Town Council as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

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**Chapter 170
STREETS AND SIDEWALKS**

§ 170-7. Waivers.

The Town Council may grant a waiver of the requirements of this article, subject to the factors and procedures set forth regarding ~~waivers~~ **variances** in Chapter 112, Building Construction, § 112-14, of the Town Code.

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**Chapter 182
TREES**

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§ 182-8. Permit conditions.

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F. Inspections. The Town shall have the right to on-premises inspection of a lot to ensure compliance with the Town Permit, the Town Code, and the application.

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§ 182-9. Action on permit applications.

A. One or two trees. The Mayor shall examine all applications for permits affecting fewer than three trees and/or shrubs and shall seek the advice of the State Forester, county extension agent, or other individuals as he finds appropriate. If the application or the plans do not conform to the requirements of this chapter, or if the work proposed by the application would be inconsistent with the purposes of this chapter, he shall reject such application in writing, stating the reasons therefor; or in the case of an application submitted with a building permit application **for new construction of a house or an addition, or while such a project is in process**, ~~he shall recommend that the~~ **application shall be reviewed by the Town Council** ~~reject the application, with reasons therefor.~~ If he is satisfied that the proposed work conforms ~~with~~ **to** the purpose and requirements of this chapter, he shall issue a permit therefor as soon as practicable; or in the case of an application submitted with a building permit application, he shall recommend that the Council approve the application. Except in the case of an application submitted with a building

permit application, the Mayor may grant a permit immediately if the applicant provides the Mayor written consents by all owners or occupants of property which adjoins or confronts the property on which is located the tree or shrub which is the subject of the application. If the applicant does not provide such written consents, the Mayor may not grant a permit until the fourth calendar day after the day on which the application was submitted. In either event, the Mayor must take action on the application within fifteen (15) days after the application was submitted.

* * *

§ 182-10. Appeal of permit decisions.

A. Time and form for appeal. Any person aggrieved by a decision of the Mayor with regard to an application for a permit affecting fewer than three trees may appeal said decision within thirty (30) days to the Town Council. An appeal shall be in writing and shall be submitted to the Clerk-Treasurer for presentation to the Town Council. The notice of the appeal filed by the appellant shall state the decision of the Mayor of which review is sought and the manner in which the appellant is aggrieved by the decision.

B. Hearing before Town Council. Within sixty (60) days, but not earlier than ten (10) days, following the filing of the appeal, the Town Council shall conduct a fact-finding hearing on such appeal, after giving at least ten (10) days' notice of such hearing to the appellant (and to the applicant if the applicant is not the appellant) and to all owners or occupants of property which adjoins or confronts the property on which is located the tree or shrub which is the subject of the application.

C. Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on said appeal, shall be rendered within forty (40) days of the date of the hearing. The decision shall be in writing if the decision includes a denial of an application in whole or in part or if an objection was raised by an interested person, and shall state the Council's findings of fact and conclusions of law. ~~The decision of the Council shall become final unless a judicial appeal is taken as hereinafter set forth in § 182-11 within 30 days.~~

§ 182-11. Judicial review.

Any person who is aggrieved by a decision of the Town Council with regard to an application for a permit filed under the provisions of this chapter shall have the right to ~~appeal~~ petition for judicial review of the decision of the Town Council ~~to the Circuit Court for Montgomery County, Maryland~~ under the provisions of Title 7, Chapter 200, of the Maryland Rules of Procedure, as amended or replaced. In any judicial proceeding under this section, the findings of the Town Council as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

* * *

Chapter 189

UTILITY LINE CONSTRUCTION

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§ 189-8. Action by Town Council.

A. Fact-finding hearing. The Town Council shall examine all applications for permits and shall seek the advice of the State Forester, the county extension agent, or other individuals as it finds appropriate. Within sixty (60) days, but not earlier than ten (10) days, following the filing of the application, the Town Council shall conduct a fact-finding hearing on such application after giving at least ten (10) days' notice of such hearing to the applicant and to all owners and occupants of property which adjoins or confronts the property on which the utility line is to be constructed. If the Council finds that the application or the plan does not conform to the requirements of this chapter or that the actions proposed by the application would be inconsistent with the purposes of this chapter, the Council shall reject such application in writing, stating the reasons therefor. If the Council is satisfied that the proposed work conforms ~~with~~ to the purposes and requirements of this chapter, it shall direct the Mayor to issue a permit therefor as soon as practicable. The Mayor shall affix his signature to each permit issued.

B. Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on said appeal, shall be rendered within thirty (30) days of the date of the hearing. The decision shall be in writing and shall state the Council's findings of fact and conclusions of law. ~~The decision of the Council shall become final unless a judicial appeal is taken as hereinafter set forth within 30 days.~~

§ 189-9. Judicial review.

Any person who is aggrieved by a decision of the Town Council with regard to an application for a permit filed under the provisions of this chapter shall have the right to ~~appeal~~ petition for judicial review of the decision of the Town Council ~~to the Circuit Court for Montgomery County, Maryland~~ under the provisions of Title 7, Chapter 200, of the Maryland Rules of Procedure, as amended or replaced. In any judicial proceeding under this section, the findings of the Town Council as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

* * *

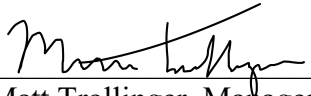
AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by the Maryland Code and the Town Charter, that:

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

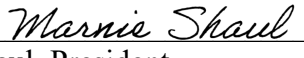
2. This Ordinance shall take effect on the 14th day of January, 2020 (36 calendar days after approval by the Mayor).

ATTEST:

TOWN OF SOMERSET



Matt Trollinger, Manager/Clerk-Treasurer
Town of Somerset



Marnie Shaul, President
Town Council

Approved:



Jeffrey Slavin, Mayor
Town of Somerset

Date: 12/9/2020

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