

**Town of Somerset**  
**Ordinance to Amend Building Regulations**  
**(Technical Corrections; Wall and Height Check Survey; Maintenance Agreement)**

Resolution No.: 9-22-1  
Introduced: 10/3/22  
Adopted: 11/7/22  
Effective Date: 1/10/2023

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO AMEND AND CLARIFY EXISTING PROVISIONS; TO REQUIRE A WALL CHECK AND HEIGHT SURVEY; TO REQUIRE A MAINTENANCE AGREEMENT FOR STORMWATER DRAINAGE SYSTEMS; AND TO SPECIFY WHAT MUST ACCOMPANY A VARIANCE APPLICATION

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 3rd day of October, 2022;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 18th day of October, 2022, 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 24th day of October, 2022 and provided no comments;

WHEREAS, the Town Council considered the following Ordinance in public session assembled on the 7th day of November, 2022;

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 \_\_\_th day of \_\_\_\_\_, 2022, 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:

\* \* \*

**Chapter 112  
BUILDING CONSTRUCTION**

\* \* \*

§ 112-5 **Application form.**

\* \* \*

**C.** County permit required. No building permit shall be issued in the absence of a valid building permit issued by Montgomery County for the identical work which is the subject of the Town permit. With respect to new construction, a permit must be sought from the Town before a permit is sought from the county, at the same time, or within 7 days after an application is filed with the county. The Town Council may approve a ~~new construction~~ **building** permit application in the absence of a county permit but the Town permit shall not be issued by the Town until a copy of

the county permit for the identical work is provided to the Town. As a condition of a permit for construction related to an accessory dwelling unit, an applicant must submit a copy of the Montgomery County landlord license for the proposed accessory dwelling unit, if applicable, prior to approval of the final inspection of the project.

\* \* \*

**§ 112-6 Documents to accompany application.**

An applicant for a Town of Somerset building permit shall submit the following materials with the permit application; the application and all accompanying documents shall be available for public inspection at the Town Hall:

**A.** A copy of the Montgomery County building permit granted by Montgomery County for the identical work for which the applicant seeks a permit from the Town of Somerset, and, if applicable, a copy of the Montgomery County landlord license for any accessory dwelling unit. **The Town Council may approve a permit application in the absence of a County permit but the Town permit shall not be issued by the Town until a copy of the county permit for the identical work is provided to the Town.**

**B.** A copy of the application for a building permit as submitted to Montgomery County for the identical work for which the applicant seeks a permit from the Town of Somerset along with all site, sediment control, and stormwater drainage plans and architectural drawings submitted in connection with that application, including but not limited to elevation drawings of the exterior of the proposed construction. **If the Town building permit application is filed before the county application, the applicant shall provide to the Town the copy of the county application and the accompanying documents once filed with the County.** For proposed work costing \$25,000 or more, the following are required: two full-size sets; eight additional full-size site plans; and eight sets, either 8 1/2" x 14" or 8 1/2" x 11". In addition, an electronic version of all documents, printable in either 8 1/2 inches by 14 inches or 8 1/2 inches by 11 inches, shall be submitted to the Town Manager. The site plan must include:

\* \* \*

**§ 112-7 Permit conditions.**

\* \* \*

**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.

**I. Wall check survey. Prior to final inspection of new construction or an addition, the applicant shall submit a certified wall check survey to confirm that construction has been properly located in accordance with the permit and approved plans.**

**J. Height check survey. Prior to final inspection of new construction or an addition, the applicant shall submit a certified height check survey if proposed construction is within 6 inches of the maximum height allowed by the County.**

\* \* \*

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

\* \* \*

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

\* \* \*

(2) Accessory buildings.

\* \* \*

(d) The provisions of this Subsection C~~(3)~~ (2) 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.**

\* \* \*

(4) Stormwater drainage.

\* \* \*

**(d) Maintenance responsibilities.**

**[1] The owner of the property upon which the stormwater drainage plan is implemented, and all successors in interest, must maintain in good condition and promptly repair and restore all grade surfaces, structures, drains, and other elements of the approved stormwater drainage system.**

**[2] Before issuing a building permit for activity for which a stormwater drainage plan is required, the town manager shall require the applicant to execute an inspection and maintenance agreement, in a form approved by the town manager, binding on all owners and subsequent owners of land served by the stormwater drainage system. If any part of the system is located on another property, all owners of that property must consent to the presence of the water drainage system on their property.**

**[a] The agreement shall provide for access to the system at reasonable times for annual inspection by the town manager.**

**[b] The agreement shall be recorded among the land records of Montgomery County. The agreement shall provide that if, after notice by the town manager to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) within thirty (30) days, the town manager may, but is not obligated to, have all necessary work performed to place the system in proper working condition. The owner(s) of the system shall be assessed the cost of the work and applicable penalties. The assessment shall constitute a lien on the property. The unpaid portion of the assessment shall be placed on the tax bill and collected as property taxes or collected by a suit for damages.**

\* \* \*

**E. Variance.** The Town Council may grant a 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 set forth in Subsection **E(1)(a)** or **(b)**:

(a) With respect to any variance, 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 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 variance must be for the minimum reasonably necessary to avoid the above conditions or situations.** 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 variance on other lots; or

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

(b) With respect to a variance not concerning stormwater drainage requirements, the proposed construction would not significantly interfere with light and air between residences or other structures, would not be incompatible with the scale, massing, and character of the Town or of nearby residences or other structures, and would otherwise not unreasonably 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 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 construction will be located and of nearby lots. Should the Council be requested to consider planned vegetation, the applicant for the variance shall submit a landscape plan with the variance application.

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

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

**F. Variance procedure.**

(1) The Mayor shall prepare a 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 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. The applicant shall identify and describe all ~~waivers~~ **variances** sought in the application. The applicant shall submit with the ~~waivers~~ **variance** application ~~the same documents required to accompany a building permit application, as provided in § 112-6~~ **a site plan that includes locations and dimensions of existing and proposed buildings, air conditioners, heat/cool pumps and generators and architectural drawings sufficient to depict proposed construction. The site plan must be supported by a recent boundary survey with a margin of error of one inch (1") or less. The site plan must show the lot boundaries, driveways, and the locations and dimensions of existing and proposed buildings, air conditioners, heat pumps and generators, and the distances of the same to the lot lines.**

(2) An applicant may, at the time application is made for a Town building permit, **or before such application is made,** submit on the form prepared by the Mayor a written application for a variance of this section's requirements.

(3) The procedure for hearing, decision and judicial review shall be as provided for building permits in § 112-10. **A hearing shall be conducted after giving at least ten (10) days' notice of such hearing to the applicant and the adjoining and confronting neighbors.**

(4) A separate 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 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 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 variance application, only one late or expedited review fee shall be required.

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

\* \* \*


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:

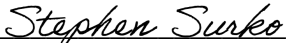
1. If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and

2. This Ordinance shall take effect on the 10th day of January, 2023 (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: 12/5/2022

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