

**Town of Somerset
Ordinance to Amend Building Regulations
(Building Height)**

Resolution No.: 9-23-1
Introduced: 10/2/23; 11/6/23
Adopted: 12/4/23
Effective Date: 1/17/2024

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO ADD INTENTS AND PURPOSES; ADD BUILDING HEIGHT REQUIREMENTS APPLICABLE TO MAIN AND ACCESSORY BUILDINGS; ADD DEFINITIONS; CLARIFY THE APPLICABILITY OF EXISTING PROVISIONS; ADD A GRANDFATHERING PROVISION FOR BUILDINGS; AND AMEND PROVISIONS FOR INTERNAL CONSISTENCY

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 2nd day of October, 2023, and reintroduced on the 6th day of November, 2023;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 6th day of October, 2023, 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 26th day of October, 2023 and provided no comments;

WHEREAS, the Town Council considered the following Ordinance in public session assembled on the 4th day of December, 2023;

WHEREAS, the Town Council finds that the Town building regulations do not currently address building heights and should therefore be amended, as the County building heights are not adequate in order to accomplish the purposes and intents of the Town building regulations;

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 4th day of December, 2023, 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:

* * *

§ 112-1 **Purpose.**

It is the purpose of this Part 1 to:

- (a) ensure public safety, health and welfare insofar as they are affected by building construction;
- ~~to~~ (b) ensure the safety to life and property from all hazards incident to the design, erection, repair, removal, and demolition of buildings;

~~to~~ **(c)** protect, maintain and enhance the public safety, health, and welfare by: **(i) maintaining privacy and space between properties, ensuring adequate air and light, and maintaining safe passageways between buildings;** **(ii) protecting the Town's distinct character by encouraging the retention of open space and shade trees on residential lots, the preservation of existing houses, and the construction of new buildings that are compatible with existing buildings in terms of setbacks and height;** **(iii)** establishing minimum requirements to control the adverse impacts associated with stormwater runoff from developed and developing land; ~~to~~ **and (iv) reduce****ing** stream channel erosion, pollution, siltation and sedimentation and local flooding; and

~~to~~ **(d)** ensure compliance with all applicable Town, county, state and federal laws.

§ 112-2 **Definitions.**

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

* * *

ACCESSORY BUILDING

A building subordinate to and located on the same lot as a main building, the use of which is incidental to the use of the main building or to the use of the land. An Accessory Building is not attached by any part of a common wall or common roof to the main building.

ACCESSORY DWELLING UNIT

A second dwelling unit **that is an accessory use and is** located within a main building or an accessory building.

* * *

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 and appurtenant structures.**

* * *

BUILDING HEIGHT

For a main building, the building height is the vertical distance measured from the average elevation of the grade along the facade of the building facing the front lot line to: (1) the highest point of the building regardless of roof type, and (2) the mean height level between the eaves and ridge of a gable, hip, pyramidal, mansard, or gambrel roof.

For an accessory building, the building height is the vertical distance measured from the average elevation of the grade along the façade of the building facing the front lot line, or the façade facing the rear lot line, whichever is lower, to: (1) the highest point of the building regardless of roof type, and (2) the mean height level between the eaves and ridge of a gable, hip, pyramidal, mansard, or gambrel roof. For the purposes of this definition, height does not include a chimney, flue, or vent.

For the purpose of this definition, grade is either the finished development grade or the pre-development grade, whichever is lower. The pre-development grade is the grade that existed before the application for a building permit. Building height is separately measured on both street-facing sides of a corner lot.

* * *

ESTABLISHED BUILDING HEIGHT

A height building line, which is the average height of all main buildings that are: a. within three hundred (300) feet of each side property line of the proposed construction site; b. along the same side of the street; c. between intersecting streets or to the point where public thoroughfare is denied; d. existing at the time the building permit application is filed; e. conforming to the maximum building height restriction, not unlawfully constructed, and not constructed pursuant to a lawfully granted variance; or f. not located on a pipestem or flag-shaped lot. Corner lots are subject to the established building height of both of the streets.

* * *

MAIN BUILDING

A building in which the principal use of the property is conducted.

* * *

§ 112-5 Application form.

* * *

E. Required information. The building permit application shall be submitted to the Clerk-Treasurer and shall contain the following minimum information, in addition to other information requested:

* * *

(2) Project description.

* * *

(g) For new ~~houses~~ **buildings** and additions of a second or third story, the height of the ~~house~~ **building** according to the Montgomery County Zoning Ordinance;

(h) For new ~~houses~~ **buildings** and accessory buildings and additions to ~~houses~~ **buildings** and/or accessory buildings that cover more of the lot, the percent coverage of the lot according to the Montgomery County Zoning Ordinance;

(i) For additions or alterations to existing ~~houses~~ **buildings** and new or altered accessory buildings, a photograph of the front of the ~~house~~ **building**;

* * *

§ 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:

* * *

M. A certification by the applicant, on a form prepared by the Town, that the applicant will comply with the Montgomery County requirements for **building address and/or** house numbers.

* * *

§ 112-8 Action on permit.

* * *

E. Air conditioning and heat/cool pump administrative procedure. In addition to the procedures set forth in this section on processing an application for a building permit, the following procedures may be utilized regarding a building permit for an air conditioner or heat pump; provided, however, that in the case of an application submitted with a building permit application for new construction of a ~~house~~ **building** or an addition, or while such a project is in process, the application shall be reviewed by the Town Council.

* * *

§ 112-14 Building requirements; stormwater drainage.

A. Any property without a structure or which has a building undergoing construction or renovation for which a permit has been granted shall display a **building address and/or** house number on ~~the main~~ **any**-building **containing a dwelling unit** or on a post so that it is visible from the street. The **building address and/or** house number must be displayed in accordance with Montgomery County Code Section 22-97, as amended or replaced.

B. ~~(Reserved)~~ **Building Height.**

(1) Main building:

- (a) The height of a main building shall not be greater than thirty-three (33) feet to the highest point of the building regardless of roof type, and twenty-eight (28) feet to the mean height level between the eaves and ridge of a gable, hip, pyramidal, mansard, or gambrel roof.**
- (b) Administrative exception: The Mayor may, upon finding that the established building height exceeds the standards in paragraph (1) above, authorize construction of a main building that meets the established building height provided that no main building may exceed the following:**
 - i) Thirty-five (35) feet when measured to the highest point of the the building, regardless of roof type, and**
 - ii) Thirty (30) feet to the mean height level between the eaves and ridge of a gable, hip, pyramidal, mansard, or gambrel roof.**

(2) Accessory building:

The height of an accessory building may not be greater than twenty-five (25) feet when to the highest point of the building regardless of roof type, and twenty (20) feet to the mean height level between the eaves and ridge of a gable, hip, pyramidal, mansard, or gambrel roof.

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:

(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 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.

* * *

(2) Accessory buildings.

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 **set back** 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

* * *

~~(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)~~ **(b)** The provisions of this Subsection C(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; **or**
- [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) 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 November 28, 1994, and which was lawfully constructed, 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, and the extension otherwise complies with this article. Except as provided in the previous sentence, **and except as stated in subsection (4) below**, new construction or an addition to an existing building must comply with this article.

* * *

(4) Buildings existing prior to December 4, 2023. Notwithstanding any provision to the contrary contained this chapter, a building existing prior to December 4, 2023 that sustains a total physical loss or a substantial physical loss (fifty (50) percent or more) due to accidental causes including, but not limited to fire, storm, falling tree(s), flooding, natural disaster, acts of war or terrorism, may be rebuilt, provided: (1) the replacement building does not encroach farther into any required setbacks than the building that was lost or damaged; (2) the footprint of the replacement building is not larger than the previous footprint; and (3) the height of the replacement building is not taller than the previous height, as measured to the highest point and the mean height.

* * *


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

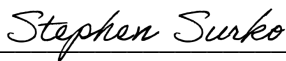
2. This Ordinance shall take effect on the 17th day of January, 2024 (36 calendar days after approval by the Mayor).

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: 12/12/23

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