Resolution No.:10-01-07

Introduced: 10-09-07

Adopted: 10-09-07

BOARD OF MANAGERS

For

Chevy Chase Village, MD

Subject: ORDINANCE TO EXTEND A TEMPORARY MORATORIUM ON THE PROCESSING OF APPLICATIONS FOR PERMITS FOR DEMOLITION AND/OR CONSTRUCTION OR ERECTION OF BUILDINGS OR OTHER STRUCTURES

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary 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, and to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Article 23A, Section 2(a)(5) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings and signs to be erected within the limits of the municipality, including a building code and the requirement for building permits; and

WHEREAS, Section 77-14 of the Chevy Chase Village Charter authorizes the Chevy Chase Village Board of Managers to pass ordinances as it may deem necessary for the health, safety or welfare of Chevy Chase Village; for the protection and preservation of Chevy Chase Village property, rights and privileges; for the preservation of peace and good order and for securing persons and property from violence, danger and destruction; and for the suppression and abatement of nuisances; and

WHEREAS, Article 28, Section 8-115.1 of the Maryland Code authorizes municipal corporations in Montgomery County, such as Chevy Chase Village, to regulate the construction, repair, erection or remodeling of buildings or other structures; the location of structures, including setback requirements; the dimensions of structures, including height, bulk, massing, and design; and lot coverage, including impervious surfaces; and

WHEREAS, Chevy Chase Village possesses a special character, manifested by its variety of architecture, open space, sense of scale, mature tree canopy, and sense of community; and

WHEREAS, due to increasing development pressure, the Village has experienced a rise in the number of single-family houses and other structures demolished or substantially demolished, new houses and other structures built and large additions added to existing single-family houses in the Village; and

WHEREAS, the demolition or substantial demolition of houses and other structures, and the resulting construction of significantly larger houses and other structures, as well as the construction of new buildings on vacant but buildable lots, and

the construction of additions with footprints that often exceed the footprint of existing buildings has had a negative and injurious impact on the Village's special character, and has also contributed to: a) the loss of trees, green space and open space; b) an increase in storm water management problems; c) a reduction in the privacy and peaceful enjoyment and use of certain properties, all to the detriment of the best interests and general welfare of the Village and its residents; and

WHEREAS, the Chevy Chase Village Board of Managers, at meetings throughout 2007, has been discussing the impact on the public health, safety and welfare caused by the demolition, construction, repair, erection or remodeling of buildings and other structures; and

WHEREAS, the Board of Managers has been considering adopting ordinances to regulate or amend existing regulations affecting the demolition and/or the construction, repair, erection or remodeling of buildings and other structures; and

WHEREAS, the Board of Managers has advised residents of Chevy Chase Village that the Board is considering amending the Village Code to regulate or amend existing regulations affecting the demolition and/or the construction, repair, erection or remodeling of buildings and other structures; and

WHEREAS, the Board of Managers intends to provide residents and other interested parties with opportunities to provide input to the Board regarding the advantages and disadvantages of amending the Village Code with respect to the demolition and/or the construction, repair, erection or remodeling of buildings and other structures; and

WHEREAS, if the Board of Managers determines that regulations affecting the demolition and/or the construction, repair, erection or remodeling of buildings and other structures should be adopted or modified, it will conduct a formal public hearing on any proposed ordinance to amend the Village Code; and

WHEREAS, the demolition or substantial demolition of buildings and other structures and the construction of new buildings or other structures or expansion of existing buildings and other structures during the pendancy of the legislative processes, will cause further erosion of the Village's special character and will exacerbate the negative and injurious impact these projects may have on the Village and its residents and may frustrate or prevent the Village from implementing measures to protect its special character and the public health, safety and welfare; and

WHEREAS, the Board of Managers finds that, in the absence of a moratorium on the processing of applications for building permits for demolition and/or construction, property owners may be encouraged to hastily apply for building permits to demolish or construct buildings or other structures to avoid being regulated by any new regulations that may be adopted; and

WHEREAS, the Board of Managers is committed to promptly, but not hastily, deciding whether or not to amend the Village Code to add or amend existing regulations relating to the demolition, construction, repair, erection or remodeling of buildings or other structures; and

WHEREAS, if building permits are issued for the demolition, construction, repair, erection or remodeling of buildings and

other structures while the Board of Managers is conducting public hearings and deliberating on a proposed ordinance, the purpose and intent of such a proposed ordinance will be undermined; and

WHEREAS, the Board of Managers finds that: a) some properties in the Village are within the Chevy Chase Historic District; b) demolition and construction projects in the Chevy Chase Historic District are subject to an extensive review process by the Montgomery County Historic Preservation Commission (HPC); c) the HPC attempts to assure that demolition and construction projects do not harm the historic and architectural value of the Historic District; and d) the HPC issues an Historic Area Work Permit (HAWP) only after a review by the HPC staff, an opportunity for input from the Chevy Chase Local Advisory Panel, interested citizens and organizations and a public hearing by the HPC; and

WHEREAS, the Board of Managers finds that: a) a project for which an HAWP has been issued is not likely to be a project that has been hastily proposed to avoid the effect of either this Temporary Moratorium or any regulations that eventually may be adopted; b) a project for which an HAWP has been issued has been through an extensive process which limits the likelihood that the project would substantially harm the character of the neighborhood; and c) the burden on an applicant who has already successfully navigated the HAWP process of requiring him/her to wait until this Temporary Moratorium has expired to have his/her application for a Village demolition and/or building permit processed, outweighs the benefits to the public that would be obtained by requiring such an applicant to wait until this Temporary Moratorium has expired; and

WHEREAS, on March 12, 2007, the Board of Managers adopted an emergency ordinance to impose a Temporary Moratorium on permits for demolition and/or construction or erection of buildings or other structures; and

WHEREAS, the aforesaid emergency ordinance provided that the Temporary Moratorium would expire on October 31, 2007; and

WHEREAS, the Board of Managers has diligently considered the possible exercise of the authority granted to it by Article 28, Section 8-115.1 of the Maryland Code and 1) has retained a planning consultant to assist in the process of determining what new regulations, if any, would be feasible, desirable and effective; 2) has conducted a survey, focus group meetings, and other efforts to obtain input from Village residents and others; 3) has received reports, advice and recommendations from the planning consultant regarding regulatory options and the potential impacts of the various options; and 4) has received considerable input from Village residents regarding various regulatory options; and

WHEREAS, due to the broad range of regulatory options, the considerable feedback provided by Village residents and the planning consultant and the complexity of the issues that have been raised, the Board has not been able to complete the legislative process by its October 2007 meeting; and

WHEREAS, it is anticipated that one or more amendments to the Village Code relating to the demolition, construction, repair, erection or remodeling of buildings and other structures will be approved, approved with amendments or disapproved by the Board of Managers at or before its January, 2008 meeting; and

WHEREAS, a demolition or construction project for which a building permit application was filed and accepted by Montgomery County as of the effective date of the original Temporary Moratorium ordinance would not be initiated in an attempt to avoid the effect of the regulatory ordinance, if any, that may result from the process described above; and

WHEREAS, the Chevy Chase Village Board of Managers considered the following Ordinance in public session assembled on the 9th day of October, 2007; and

WHEREAS, the Chevy Chase Village Board of Managers finds that the ordinance as hereinafter set forth is necessary to protect the health, safety, welfare of Chevy Chase Village; for the protection and preservation of Chevy Chase Village property, rights and privileges; to assure the good government of Chevy Chase Village; for the preservation of peace and good order and for securing persons and property from violence, danger or destruction; and to protect the health, comfort and convenience of the citizens of Chevy Chase Village; and

NOW, THEREFORE, BE IT ORDAINED AND ORDERED this 9th day of October, 2007, by the Chevy Chase Village Board of Managers, acting under and by virtue of the authority given it by the Act of Legislature approved March 28, 1951, and Acts subsequent thereto, Article 23A of the Maryland Code, Article 28 of the Maryland Code and the Chevy Chase Village Charter that:

1. Recitals. The recitals set forth above are incorporated in this Ordinance as the findings of the Board of Managers.

2. Temporary Moratorium. The Temporary Moratorium established by ordinance on March 12, 2007, on the processing of any and all applications for any building permits involving any demolition, construction or erection of any building(s) or other structure(s) is hereby extended until January 31, 2008, and the Village Manager is hereby directed not to process any building permits for the demolition, construction, or erection of any buildings and other structures, except as otherwise provided in this Ordinance, until January 31, 2008 or until this moratorium is repealed, whichever occurs first.

3. Demolition defined. For purposes of this Temporary Moratorium only, a demolition shall be defined as demolition of fifty percent (50%) or more of the exterior walls (measured in linear feet) of an existing building or structure. The term "exterior walls," includes only that area which is entirely above grade. In calculating whether fifty percent (50%) of a building or structure is being demolished, all demolition work on or after March 12, 2007 shall be counted cumulatively.

4. Exceptions. Notwithstanding the limitations set forth in Section 2 of this Ordinance, the following permits may be issued while the Temporary Moratorium is in full force and effect, provided the project complies with all other Village Ordinances, regulations and rules: (a) a permit for the demolition or substantial demolition of an existing building or other structure for which the Village building permit was approved on or before March 12, 2007; (b) a permit for the construction of an addition to an existing single-family house provided the footprint of the addition to the existing single-family house, does not exceed 500

square feet and the height of the addition does not exceed the height of the existing house; (c) a permit for the construction of an addition to an existing garage or other accessory building provided the footprint of the addition does not exceed 150 square feet; (d) a permit for the demolition or construction of a building or an addition to an existing building, if the subject property is in the Chevy Chase Historic District and an Historic Area Work Permit for such demolition or construction has been duly issued by the Montgomery County Historic Preservation Commission; (e) a permit for demolition or construction, if an application for a Montgomery County permit for such demolition or construction was filed and accepted by Montgomery County on or before March 12, 2007; or (f) a permit for the demolition or substantial demolition of an existing building or structure that sustains or has sustained a total physical loss or a substantial physical loss (50% or more) due to accidental causes including but not limited to fire, storm, falling tree(s), flooding or natural disaster. If the property owner elects to build a replacement building or other structure during the Temporary Moratorium, the replacement building or structure must (i) maintain the existing front and side building setbacks; (ii) the footprint shall not be more than 500 square feet larger than the previous footprint for a main building and 150 square feet larger than the previous footprint for an accessory building; and (iii) the building or structure may not exceed the height of the previous building or structure.

5. Waiver for Undue Hardship.

A. General Rule and Procedure. Notwithstanding the limitations set forth in Section 2 of this Ordinance, an

applicant for a permit for the demolition or substantial demolition of a building or other structure or for the construction of or addition to a building or other structure that exceeds the limitations set forth above, may seek relief from the Temporary Moratorium, on the grounds of undue hardship, by filing a request for a waiver with the Village Manager. Such request shall be considered at a public hearing by the Board of Managers following notice in accordance with the process required for the granting of a variance under Section 8-12 of the Village Code. The Board of Managers, following receipt of the recommendations of the Village Manager, may grant the applicant a waiver to the provisions of this Temporary Moratorium, to the extent necessary to relieve that hardship, provided that the applicant has demonstrated by clear and convincing evidence, and the Board of Managers has determined, that undue hardship would otherwise result and that any such waiver can be granted without substantial impairment to the purposes and objectives of the Temporary Moratorium.

B. Appeals. Any party aggrieved by the decision of the Board of Managers on an application for waiver, may appeal such decision within thirty (30) days to the Circuit Court for Montgomery County and thereafter to the appellate courts of Maryland within the time and in the manner prescribed within the Maryland Rules of Procedure relating to judicial review of administrative agency decisions. The time for appeal shall begin to run from the date of the written decision of approval or denial.

BE IT RESOLVED, that the foregoing ordinance shall take effect on the 24th day of October, 2007, provided the same is posted at the Village office for fourteen (14) days prior thereto.

Douglas B. Kamerow, Chairman
Chevy Chase Village Board
of Managers

ATTEST:

Susie Eig, Secretary

DATED: October 9, 2007

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