

## CHAPTER 8 BUILDINGS AND BUILDING REGULATIONS

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## **Article I. In General**

### **Sec. 8-1. Definitions.**

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

*Accessory building:* A building subordinate to, and located on, the same lot or lots with a main building, the use of which is clearly incidental to that of the main building or to the use of the land and which is not attached by any part of a common wall or common roof to the main building, including without limitation sheds of any size.

*Administrative Special Permit; administrative variance:* Special Permits and variances that would otherwise require the approval of the Board of Managers but that may, in certain circumstances set out in Sec. 8-11, be granted by the Village Building Officer and Village Manager.

*Alley:* A right-of-way which provides secondary access for vehicles to the side or rear of abutting properties.

*Antenna:* Equipment designed for the transmission or reception of electromagnetic waves. All wires, poles, dishes, towers and other appurtenant equipment shall be deemed to be a part of the antenna.

*Building:* A structure having one (1) or more stories and a roof, designated primarily for the shelter, support or enclosure of persons, animals or property of any kind.

*Building height:* The vertical distance measured from the average elevation of the finished grade or pre-development grade, whichever is lower, along the front of the building to:

- (1) The highest point of roof surface regardless of roof type, and
- (2) The mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

Accessory structural elements located on the roof shall be subject to the building height requirements.

*Building line:* A line, parallel to a lot line, creating an area into which a structure must not project.

*Building Officer:* One member of the Board of Managers, appointed annually or at such other times as the Board of Managers may determine is in the public interest, to act as the designee of the Board of Managers to perform the functions of the Building Officer as described in this Chapter.

*Cheek wall:* A retaining wall immediately adjacent to steps that is in reasonable proportion to the rise and run of the steps.

*Curb cut:* A depression in the curb, for the purpose of accommodating a driveway that provides vehicular access between private property and an improved roadway, or where there is no curb, the intersection of the driveway and edge of the improved roadway.

*Developmental nonconformity:* Any part of an existing structure that was lawful when constructed or installed, but that no longer conforms to the requirements of this Chapter because of the amendment thereof.

*Dumpster:* A receptacle designed or used to store construction and/or demolition debris awaiting transportation to a disposal site, including, but not limited to, detached wheeled trailers.

*Floor area ratio (FAR):* The ratio of the total gross floor area of all buildings on a lot to the total square footage of the lot.

*Footprint:* The external or outer boundaries of a building's architectural plan. "Footprint" includes fixed external protrusions such as bay or bow windows, porches, porticos, decks, stoops and eaves.

*Front lot line:* The boundary line or lines of a lot separating the lot from any and all streets.

*Front yard:* The area located between the front lot line and the front main building line or, in cases where no building exists, the front building restriction line.

*Gross floor area:* The sum of the gross horizontal areas of all stories (whether or not a floor has actually been laid) of all buildings on the lot. Gross horizontal areas are measured from the exterior faces of exterior walls.

- (1) The following areas are included in the gross floor area for the purpose of computing the floor area ratio.
  - a. Except as provided below, all floor area at or above the first floor joists.
  - b. If an attic has a clear ceiling height of seven (7) feet at any point, all areas of the attic with at least five (5) feet of clear ceiling height shall be included.
  - c. Multi-story space. Any space with a clear ceiling height greater than ten (10) feet from floor to ceiling shall count at the rate of ten (10) percent for each foot of average height over ten (10) feet, rounded to the nearest foot. For example, a room with an average ceiling height of fourteen (14) feet will count at the rate of one hundred forty (140) percent (one hundred (100) percent for the base floor and forty (40) percent for the virtual floor).
  - d. Enclosed porches. A porch shall be deemed enclosed if it is enclosed on at least three (3)

sides. A side shall be deemed enclosed if:

1. It is screened; or
2. It has a wall over thirty-eight (38) inches in height.

e. Basements and cellars. All sections of a basement or cellar with at least five (5) vertical feet of exposed exterior wall shall count toward gross floor area at the rate of seventy-five (75) percent.

(2) The following areas are excluded from the gross floor area for the purpose of computing floor area ratio.

- a. The first two hundred forty (240) square feet of one accessory building per lot.
- b. If an attic does not have a clear ceiling height of seven (7) feet at any point, all attic space.
- c. If an attic has a clear ceiling height of seven (7) feet at any point, all attic space with a clear ceiling height of less than five (5) feet.
- d. Unenclosed roofed porches.
- e. Porches, balconies, patios, breezeways, carports, decks, overhangs, eaves, awnings and similar structures which are enclosed on fewer than three (3) sides.
- f. Sections of a basement or cellar with less than five (5) vertical feet of exposed exterior wall.

*Landscape Lighting:* Lighting fixtures, not to exceed twenty (20) inches in height, used to illuminate a path, sidewalk, landscaping, outdoor area, garden or structures.

*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 (also sometimes referred to as a "property").

*Lot coverage:* The portion of a lot which is covered by buildings, accessory buildings, and raised structures such as covered and uncovered porches, balconies, and decks, covered and uncovered steps, stairways, and stoops, and bay and bow windows. Lot coverage does not include: (1) eaves, gutters, and similar overhangs; and (2) features that are not raised such as walkways, patios, terraces, driveways, swimming pools and tennis courts.

*Outdoor therapeutic bath:* A bath commonly known as a spa or hot tub, or having similar characteristics, built above or below ground outside of a residential building, provided such bath does not exceed a depth of forty-eight (48) inches at any point or a diameter or length of eight (8) feet. If these dimensions are exceeded, the bath shall be considered a swimming pool for the purposes of this Chapter.

*Plane length:* The horizontal length along the face of any exterior wall of a building.

*Plate height:* For a building with a flat or a sloping roof, the height to the top horizontal framing member of a wall from the top surface of the first finished floor.

*Portable storage unit:* A container designed or used for the outdoor storage of personal property which is movable and is typically rented to owners or occupants of a property for their temporary use.

*Portable swimming pool:* Any swimming pool (as defined below), which is movable and less than eight (8) feet in diameter or length, shall be deemed a portable swimming pool.

*Public right-of-way:* Any land within the borders of the Village over which the Village has control, ownership, or which has been dedicated to public use, including any sidewalk or street.

*Rear yard:* The area located between the rear main building line and the rear lot line. In the case of a corner lot, the determination as to which portions of the property constitute the rear and side yards shall be made by the owner/s of the lot in accordance with the Montgomery County zoning ordinance for determining the rear yard of a corner lot.

*Side wall:* A wall running parallel (or approximately so) to a side property line.

*Single family:* An individual, or two (2) or more persons related by blood, adoption or marriage, together with not more than one (1) other unrelated person, excluding service personnel, living together as a single housekeeping unit.

*Special Permit:* Permission granted by the Board of Managers pursuant to, and subject to the conditions of, Sec. 8-9(b) of this Chapter, to construct, install, remove or alter a structure or planting, or take any other action for which a Special Permit is required by this Chapter. Except as provided in Sec. 8-11, a Special Permit can be granted only by the Board of Managers.

*Street:* A public or dedicated right-of-way, including, but not limited to, roadways, parkways, avenues, highways or other public thoroughfares or ways for vehicular or pedestrian traffic. A public sidewalk constitutes an adjunct or accessory to a street to be used for pedestrian traffic.

*Structure:* An assembly of materials forming a construction including, but not limited to, buildings, accessory buildings, open sheds, shelters, tennis courts, antennae, air conditioners, generators, heat pumps, swimming pools, therapeutic baths and permanently anchored play equipment, but not including walkways, patios, or driveways.

*Swimming pool:* Any outdoor pool or container for water, either above or below ground, over eighteen (18) inches deep at any point or having a capacity for a minimum of eighteen (18) inches of depth, which has been dammed up, produced, or constructed by human labor and skill and which is used or intended to be used for swimming, wading, diving or water play. The words "swimming pool" shall not include a portable pool eight (8) feet or less in diameter or length, or an outdoor therapeutic bath as previously defined herein.

*Variance:* Permission granted by the Board of Managers pursuant to, and subject to the conditions of, Sec. 8-9(c) of this Chapter, to construct, install, remove or alter a structure or planting, or take any other action that does not otherwise meet the requirements of this Chapter. Except as provided in Sec. 8-11, a variance can be granted only by the Board of Managers.

*Walkway:* An improved surface greater than twenty (20) square feet in total area constructed on a base and intended for private use by pedestrians.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-02-02, 10-14-02; No. 06-01-08, 06-16-08; No. 10-05-08, 12-08-08; No. 06-03-09, 07-13-09; No. 03-02-10, 05-10-10; No. 04-01-14, 04-14-14; No. 03-01-16, 03-14-16; No. 06-01-19, 06-10-19.)

## **Sec. 8-2. County Building Code.**

The Building Code of Montgomery County, Maryland, shall be applicable in the Village as a County ordinance and shall be in addition to and not in lieu of the specific provisions of this Chapter or the building restrictions which are incorporated in deeds of conveyance within the Village. Nothing in this Chapter shall be construed to relieve any person from the requirement of obtaining a Building Permit from the County Department of Permitting Services or its successor agencies, or from obtaining approval from any other County or State agency regulating such construction. On any property within the Village, any new construction, or material alteration, replacement or addition to an existing building, structure or property, shall be governed by the County Building Code, except as otherwise required by this Chapter or the building restrictions incorporated in deeds of conveyance. Any person proposing to erect such new building or structure, or make a material alteration, replacement or addition to such existing building, structure or

property, must first obtain any required County permit and then any required Village Building Permit as provided in Sec. 8-5.

(9-13-93; No. 04-01-14, 04-14-14.)

**Sec. 8-3. Reserved.**

**Article II. ADMINISTRATION**

Division A. Permits

**Sec. 8-4. Delegation of authority by Board of Managers.**

(a) Delegation to Village Manager. Under the authority vested in it by the legislature of the State, and subject to the review authority set forth in Sec. 8-9, the Board of Managers has delegated to the Village Manager the duty and authority to enforce, or cause to be enforced, the requirements of all deeds or covenants of properties situated within the Village and the requirements of this Building Code. In the exercise of this duty, the Village Manager is authorized to issue Building Permits.

(b) Report on permits issued. The Village Manager shall report to the Board of Managers at each regular monthly meeting all Building Permits issued during the preceding month.

(9-13-93; No. 04-01-14, 04-14-14)

**Sec. 8-5. Building Permits.**

A. Residential Building Permit - Any person intending to construct, install, replace, alter, add to, expand, or make any material alteration to any of the following, whether on private property or in the public rights of way (see Chapter 25) must first obtain any required County Building Permit, and then obtain any required Building Permit from the Village. While not all structures require a Building Permit, all structures as defined in this Chapter are subject to location and setback requirements.

- (1) A new building,
- (2) An existing building where such action would expand the existing boundaries or footprint or increase the height of such existing building,
- (3) A garage or accessory building, including sheds of any size (see Sec. 8-20),
- (4) A raised exterior deck,
- (5) A swimming pool or outdoor therapeutic bath (see Sec. 8-24),
- (6) A tennis court (see Sec. 8-23),
- (7) Permanently anchored play equipment (see Sec. 8-21(f)),
- (8) A lamp post or hand rail (see Sec. 8-16(c)(2) and (3), Sec.8-21 and Chapter 25),
- (9) A driveway or any material part thereof (see Sec. 8-26 and Chapter 25),
- (10) A walkway or any material part thereof (see Chapter 25),
- (11) A fence or any material part thereof (see Sec. 8-21 and Chapter 25),
- (12) Any external antenna, air conditioner, generator or heat pump, including the replacement of any such external feature that is a developmental nonconformity (see Sec. 8-19 and 8-22).

- (13) A geothermal system,
- (14) Impermeable surfaces, such as patios, terraces or other paving, or gutters, sewers, stormwater or drainage systems, that alter the existing flow of water and/or may cause water to flow onto neighboring property or onto the public right-of-way (see Sec. 8-25),
- (15) A dumpster (see Sec. 8-7),
- (16) A portable storage unit (see Sec. 8-7), or
- (17) A wall or any material part thereof:
  - a. On public property (see Chapter 25)
  - b. Exceeding twelve inches in height on private property (See Sec. 8-21).

**B. Non-Residential Building Permit** - On any property within the Village which is not residentially zoned, any new construction, or material alteration, replacement or addition to an existing building or structure shall be governed by the County Building Code; provided, however, that any person proposing to erect such a new building or structure or make a material alteration, replacement or addition to such an existing building property must first obtain any required County Building Permit, and then obtain any required Building Permit from the Village.

(9-13-93; No. 02-02-10, 02-16-10; No. 06-01-13, 06-10-13; No. 04-01-14, 04-14-14; No. 03-01-16, 03-14-16.)

**Cross reference(s)**--Urban Forest, Ch. 17. Public Rights-of-Way, Ch. 25. Fine for violation of this Section, Sec. 6-3(a)(1).

**Sec. 8-6. Building Permit issuance and conditions.**

(a) **Application.** An application for a Building Permit, and for any Special Permit, variance and license requests, shall be made to the Village Manager accompanied by a set of plans and specifications of the construction intended, at a scale sufficient to facilitate review by the Village Manager. The Village Manager shall retain a copy thereof. To be accepted as complete by the Village Manager, the plans shall include a survey that, in the judgment of the Village Manager, is accurate and reasonably current, and show the location of the existing and intended structures on a site plan of the applicant's lot. When the plans and specifications are approved, the Village Manager shall indicate approval thereon and issue a Building Permit. By application for a Building Permit, Special Permit, or variance or license, the applicant and owner give consent to the Village Manager or designee to enter onto the property to inspect any activity encompassed in the permit, variance or license, as often and at such times as deemed necessary during the course of the activity to ensure compliance with this Chapter, covenants, and other applicable law.

(b) **Conditions.** The Village Manager is authorized to impose conditions to protect the public health, safety or welfare when issuing a Building Permit. The conditions which the Village Manager may impose shall include, but are not limited to:

- (1) Prohibiting or limiting the parking of contractors' or other construction-related vehicles in the public right-of-way;
- (2) Limiting the locations upon private property where contractors' or other construction-related vehicles may be parked;
- (3) Limiting the locations upon which construction materials may be stored;
- (4) Limiting the locations upon which portable toilets may be placed or maintained, including prohibiting the placing or maintaining of portable toilets;
- (5) Limiting the locations upon which construction debris may be stored, whether or not such debris is contained;

- (6) Requiring that construction and/or demolition activities strictly comply with a tree preservation plan approved by the Village Manager;
- (7) Such other terms or conditions as may be determined by the Village Manager to be necessary to protect the public health, safety or welfare.

(c) Duration. Work on buildings or alterations or additions must be commenced within six (6) months after the issuance of any Building Permit, and must be completed within one (1) year from the date of issuance. The Village Manager may grant an extension of up to one additional year, upon such conditions as the Village Manager may set, upon a reasonable showing by the permittee that there has been no material change in circumstances since the issuance of the permit and that, despite due diligence by the permittee, additional time is necessary to accomplish the approved construction. A denial of an extension by the Village Manager may be appealed to the Board of Managers within 15 days of the effective date of such denial pursuant to Sec. 8-10.

(d) Modification of approved plans. No person or persons shall erase, modify or alter any plans or specifications after they have been approved and a permit issued thereon. If during the progress of work it is desired to deviate materially from the approved plans or specifications, notice of such intent shall be given in writing to the Village Manager, and his/her written approval shall be obtained before such amendment is made. No person or persons shall proceed with any activity requiring a Village Building Permit except in accordance with the approved plans and specifications, and any amendments approved by the Village Manager.

(e) Covenants. No Building Permit shall be issued unless it conforms to the applicable requirements and covenants of deeds of conveyance.

(9-13-93; No. 9-2-95, 9-11-95; No. 3-1-96, 3-11-96; No. 3-4-96, 3-11-96; No. 3-01-99, 4-05-99; No. 06-01-05, 06-13-05; No. 02-03-09, 02-09-09; No. 04-01-14, 04-14-14.)

**Cross reference(s)**—Municipal infraction fines, Sec. 6-3(a)(3) and Sec. 6-3(a)(16).

### **Sec. 8-7. Dumpsters and portable storage units.**

(a) Duration. The Village Manager may issue a permit for a dumpster for up to ninety (90) days, and a permit for a portable storage unit for up to thirty (30) days.

(b) Extension. Notwithstanding Sec. 8-6, the Village Manager may authorize an extension of a permit for a dumpster for up to ninety (90) days, and a permit for a portable storage unit for up to thirty (30) days, upon such conditions as the Village Manager may deem necessary, provided the applicant demonstrates that factors beyond the applicant's control warrant such extension.

(c) Location. No person shall place or maintain a dumpster or a portable storage unit or dumpster on public property or in the public right-of-way.

(No. 10-02-02, 10-14-02; No. 10-05-08, 12-08-08; No. 04-01-14, 04-14-14.)

### **Sec. 8-8. Reserved.**

## Division B. Appeals, Special Permits and Variances

### **Sec. 8-9. Review authority of Board of Managers.**

In addition to any other authority it may have, the Board of Managers shall have the following powers:

- (a) Appeals. To hear and decide appeals on a de novo basis arising from the granting or denial of a

Building Permit or any allegation that there is an error in any requirement, determination or decision by the Village Manager in the administration or enforcement of this Chapter.

(b) Special Permits. To hear and decide any application for a Special Permit required by this Chapter. Such a Special Permit may be granted by the Board of Managers only if it finds that:

- (1) The proposed Special Permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties;
- (2) The proposed Special Permit can be granted without substantial impairment of the intents and purposes of this Chapter; and
- (3) For all Special Permits, the structure authorized by the proposed Special Permit would not violate any covenant applicable to the property.

(c) Variances. To hear and decide any application for a variance from the requirements of this Chapter. Such a variance may be granted by the Board of Managers only if it finds that:

- (1) The proposed variance is required because special conditions exist whereby the enforcement of the requirements of this Chapter would result in unwarranted hardship and injustice to the owner.
- (2) The proposed variance would most nearly accomplish the intents and purposes of the requirements of this Chapter; and
- (3) For all variances the structure authorized by the proposed variance would not violate any covenant applicable to the property.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-2-05, 10-27-05; No. 06-01-13, 06-10-13; No. 04-01-14, 04-14-14.)

**Cross reference(s)**--Public Rights-of-Way, Chp. 25.

### **Sec. 8-10. Review procedures.**

(a) Filing of appeals. Any person aggrieved by a decision or action of the Village Manager arising from the granting or denial of a Building Permit may file a de novo appeal to the Board of Managers. Such appeal shall be filed within (30) days after issuance of the decision by the Village Manager. The Village Manager shall transmit to the Board of Managers all documents and papers pertaining to the appeal which shall constitute the record on appeal.

(b) Applications for Special Permits or variances. An applicant who has been denied a Building Permit by the Village Manager for nonconformance with this Chapter may apply to the Board of Managers for a Special Permit or variance. An application shall also be made prior to construction or installation of any structure that does not require a Building Permit if the location or setback would require a variance. The application and accompanying maps, plans or other information shall be submitted to the Village Manager, who shall place the matter on the board agenda and announce a public hearing thereon, which shall be held at a regular monthly or special meeting of the Board of Managers. The Village Manager shall give written notice of such hearing to the applicant and owner, and to abutting and confronting property owners, at least ten (10) days prior to the meeting of the Board of Managers at which such application is to be heard. In addition, the property shall be posted with a sign which shall include the case number, nature of the application, and the date, time and place of the hearing. The sign shall be placed no more than five (5) feet from the sidewalk, if one exists, or five (5) feet from the curb or the edge of the paved portion of the street if there is no curb. In the case of a lot abutting more than one (1) street, a sign shall be posted for each abutting street.

(c) Quorum. For the conduct of any such review hearing, a quorum shall be not less than four (4) members of the Board of Managers and in all instances an affirmative vote of four (4) members of the Board of Managers shall be required to overrule any decision or action of the Village Manager or to approve any

Special Permit or variance, provided that nothing in this section shall be construed to relieve any person from the requirements of obtaining any required County Building Permit, Special Permit or variance.

(d) Decision. At the review hearing, any party may appear in person or by agent or attorney. In exercising its powers, the Board of Managers may reverse or affirm, wholly or in part, or may modify, the decision or action of the Village Manager as it deems appropriate. In any event, the decision of the Board of Managers may not expand the request originally advertised to the public. The decision of the Board of Managers shall be made in writing. The effective date of any decision of the Board of Managers shall be the date that notice of the board's written decision is mailed to the appellant.

(e) Record of decisions. The Secretary of the Board of Managers shall keep minutes of all review hearings, showing the vote of each member, and whether any member was absent or declined to vote. These minutes and the Board of Managers' decisions shall be filed in the Village office and shall be a public record.

(f) Extension. The Village Manager may extend any time limit imposed as a condition of a Special Permit or variance for a period of up to one additional year upon a reasonable showing that there has been no material change in circumstance since the Special Permit or variance was granted and that, despite due diligence by the permittee, additional time is necessary to accomplish the approved construction.

(9-13-93; No. 11-1-93, 11-22-93; No. 9-2-95, 9-11-95; No. 10-1-01, 10-8-01; No. 10-02-05, 10-27-05; No. 04-01-14, 04-14-14.)

#### **Sec. 8-11. Administrative Special Permits, administrative variances and the Building Officer.**

(a) Administrative action. Notwithstanding anything in this Chapter to the contrary, variances and Special Permits that would otherwise be subject to approval by the Board of Managers may be granted administratively as provided in this Section.

(b) Scope of administrative action. The Building Officer and the Village Manager, by joint action, may grant administrative Special Permits and administrative variances for the following construction:

- (1) Replacement of an existing fence, provided that there are no material differences between the replacement fence and the existing fence with respect to location, height and materials and that the replacement fence does not block light and air to a greater extent than the existing fence.
- (2) Replacement of an existing driveway, provided that:
  - (a) the replacement driveway is not wider than the existing driveway, and
  - (b) the replacement driveway is in substantially the same location as the existing driveway.
- (3) Replacement of an external air conditioner, generator or heat pump (collectively referred to as "equipment"), provided that the replacement equipment is not materially larger and does not encroach farther into any setback than the existing equipment.
- (4) Demolition of buildings.

(c) Application process. Upon receipt of an application that has been accepted as complete for an administrative Special Permit or administrative variance, the Village Manager shall give written notice of the application to all abutting and confronting property owners and to all members of the Board of Managers. In addition, the property shall be posted with a sign which shall include the case number, nature of the application, and the date by which comments may be submitted. An abutting or confronting property owner, a member of the Board of Managers or a Village resident or owner, within 15 days of the date notices are issued, may submit written comments and/or may request that the application be submitted to the Board of Managers in accordance with Sec. 8-10 of this Chapter. The Building Officer and the Village Manager may, in

their discretion, grant a request to have the application considered by the Board of Managers. The Building Officer and the Village Manager may, on their own initiative, refer the application to the Board of Managers. Notwithstanding the foregoing, for Special Permits and variances for equipment described in Sec. 8-11(b)(3), the Building Officer and the Village Manager may waive the 15-day notice and comment period upon a showing of good cause. Absent the filing of request for review by the Board of Managers, the administrative Special Permit or administrative variance may be granted by the Building Officer and Village Manager.

(d) Decision. The decision to grant or deny a request for an administrative variance or Special Permit shall be made in writing. The effective date of the decision shall be the date the written decision is approved by the Building Officer and the Village Manager. The decision shall promptly be provided to the applicant and to any other person who submitted comments and/or requested a hearing by the Board of Managers.

(e) Appeal. A denial by the Building Officer and the Village Manager may be appealed de novo to the Board of Managers within 15 days of the effective date of the decision denying the administrative Special Permit or administrative variance. (See Sec. 8-10.)

(No. 09-01-11, 09-12-11; No. 04-01-12, 04-09-12; No. 04-01-14, 04-14-14.)

**Sec. 8-12. Reserved.**

DIVISION C. ENFORCEMENT

**Sec. 8-13. Remedial action, stop work order, revocation, violations.**

(a) Authority of the Village Manager. Whenever the Village Manager determines that any activity that requires a Building Permit within the Village is being carried out in a manner which threatens the public safety or health, or that any work is being carried out in violation of this Code, the Village Manager may:

- (1) Impose such conditions, in addition to any conditions that were imposed upon the issuance of the Building Permit for the project under Sec. 8-6(b), as the Village Manager deems necessary to protect the public health, safety or welfare, and/or
- (2) Suspend or revoke the Building Permit for the project if the Village Manager deems such action necessary to protect the public health, safety or welfare, and/or
- (3) Request the Board of Managers to take such remedial action as is necessary to eliminate the threat to the public safety or health, or, if he/she certifies that time is critical, he/she may issue a stop work order requiring that such activity to be stopped immediately and promptly notify the chair of the Board of Managers of this action and provide a written certification. A stop work order may be approved or disapproved by the Board of Managers.
  - a. The stop work order described herein shall be issued by the Village Manager to the owner of the property and the permit holder and served by personal service or by mailing a certified mail notice and by posting. The posting of the notice on the property shall be sufficient service upon all persons physically on the property.
  - b. It shall be unlawful for any person to continue work in or about such construction after having been served with a stop work order, except such work as is necessary to remove a violation or to eliminate an unsafe condition.

(b) Revocation of permit. A Building Permit may be revoked by the Village Manager if the work has stopped for thirty (30) consecutive days.

(c) Reforestation. If construction and/or demolition activities do not strictly comply with a tree preservation plan imposed under Sec. 8-6(b) and a tree, the removal of which is regulated by Chapter 17, dies within five (5) years of such violation, the owner of the property on which such violation occurred shall

reforest with a deciduous hardwood canopy tree of at least 2½ inch caliper at the time of installation and of a species that attains a mature height of at least 45 feet. If the permit holder is not the owner of the property, the permit holder and the owner shall be jointly and severally obligated to reforest.

(d) Alteration or removal of equipment or work. Any person violating or failing to comply with this Chapter in whole or in part shall make or cause to be made such alteration or removal of construction equipment or work commenced or finished as may be necessary to abate the violation. If such remedy is not completed within fifteen (15) days from the date of notification of violation, unless the Board of Managers by a carried motion establishes a different time, the Board of Managers may abate the violation, and the cost of such work and the damages resulting therefrom shall be paid by such person upon request of the Board of Managers. The cost of any remedial action and the damages resulting from any such violation may be specially assessed against the property upon which the violation existed to be collected in the same manner as municipal taxes or collected by a suit for damages.

(e) Failure to complete work. Failure to complete all work, in accordance with the terms and conditions of a Building Permit or Special Permit, by the expiration date of such permit (as the same may be extended pursuant to Sec. 8-6(c), shall be a violation of this Chapter. Each day after the permit expires that such work is incomplete shall constitute a separate violation.

(f) Failure to comply with permit or variance. Failure to comply with any term or condition of a Building Permit, or any term or condition of any applicable approved variance, shall be a violation of this Chapter. Each day that a violation exists shall constitute a separate violation.

(9-13-93; No. 06-01-05, 06-13-05; No. 04-01-14, 04-14-14.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(4).

#### **Sec. 8-14. Municipal infraction; penalties.**

(a) Prosecution and penalties. All property owners and occupants are responsible for compliance with this Chapter. Violation of any provision of this Chapter shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to such prosecution and penalties as are provided in Chapters 5 and 6 of this Code. Any person who violates this Chapter or directs or allows another to commit an act that violates this Chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Chapter on his or her property, shall be guilty of a violation and shall be jointly and severally subject to prosecution and the penalties provided in Chapters 5 and 6 of this Code. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.

(b) Legal action. The Village may institute injunctive or any other appropriate action or proceedings at law or equity for enforcement of this Chapter in any court of competent jurisdiction.

(9-13-93; No. 02-03-09, 02-09-09; No. 04-01-14, 04-14-14.)

**Cross reference(s)**--Municipal infraction fines, Sec. 6-3 (a).

#### **Sec. 8-15. Reserved.**

### **ARTICLE III. PRIVATE PROPERTY REGULATIONS**

#### **Sec. 8-16. Residential building construction prohibitions.**

(a) Compliance with this Chapter. On any property zoned in a residential category, no person shall construct any building, structure or shall make any material alteration or addition to the exterior of an existing building or other structure except in accordance with the restrictions set forth in this Chapter.

(b) Residential purposes. All houses in the Village shall be built for residential purposes exclusively, except accessory buildings for use in connection with such residences. No trade, business, manufacture or sales, or nuisance of any kind shall be carried on or permitted upon any premises within the Village.

(c) Front setback. No structure of any description shall be erected within twenty-five (25) feet of the front lot line of any lot, except that:

- (1) One flagpole, not exceeding fifteen (15) feet in height, may be erected not less than fifteen (15) feet from the front lot line; and
- (2) Handrails may be installed:
  - a. on or beside steps in a yard where there is a change in grade upon a finding by the Village Manager that the handrails are required for safety, and
  - b. on or beside steps leading to a door or porch upon a finding by the Village Manager that the handrails are required for safety;
- (3) One lamp post with a single lantern, not exceeding ten (10) feet in height, that complies with Sec. 8-21 may be installed;
- (4) Landscape lighting may be installed; and
- (5) Steps that access the main structure and encroach into the front yard setback when the encroachment is necessitated by compliance with Montgomery County Building Standards for riser height and depth of tread, including when the encroachment would violate a covenant, may be installed.

(d) Recorded lots. Every building shall be located on a recorded lot.

(e) One dwelling on lot. There shall not be more than one (1) single-family dwelling on one (1) lot.

(f) Single family occupancy. Any house erected on any lot shall be designed and constructed for the occupancy of a single family.

(g) Side and rear setback. Except as otherwise specifically stated in this Chapter, no part of any building or structure shall be erected or maintained within seven (7) feet of the side or rear lot lines, nor within ten (10) feet of the nearest adjacent dwelling, provided, however, that externally attached gutters shall not be considered part of any building or structure for purposes of this subsection (see Sec. 8-19.)

(h) Rear setback for main building. No part of any main building shall be erected within twenty (20) feet of the rear lot line of the property upon which it is to be located.

(i) Frontage and area of lot. No permit shall be issued for the construction of any dwelling house upon a lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet; provided, however, that these limitations shall not apply to any lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet which is embraced in any subdivision of lots recorded prior to July 12, 1982.

(j) Corner lots. No permit shall be issued for the erection of more than one (1) dwelling house on any corner lot, as such lot may be embraced in any subdivision duly recorded prior to July 12, 1982, but this subsection shall not apply in the case of any lot containing six thousand five hundred (6,500) square feet or more, which shall have been created by a re-subdivision of any such corner lot duly authorized by the Maryland-National Capital Park and Planning Commission.

(k) Rear of house. No permit shall be issued for the construction of any dwelling house, the rear of which shall face upon any public street.

(l) New construction. The restrictions in subsections (2) through (5) below shall apply only to the construction of new houses on vacant lots and to construction subsequent to the substantial demolition of an existing main building.

- (1) For the purposes of this subsection 8-16(l) the following definitions and rules apply.
  - A. The term “substantial demolition” shall mean the removal of fifty (50) percent or more of the area of exterior walls in existence as of June 16, 2008, measured by wall plane length and height.
  - B. In calculating the floor area ratio, the square footage of a lot shall include any land area severed from the lot by a conveyance to the Village, in fee simple, without monetary compensation.
- (2) No permit shall be issued for construction which would result in floor area ratio in excess of .50. Notwithstanding the foregoing, for lots containing less than six thousand (6,000) square feet, buildings may contain gross floor area of three thousand (3,000) square feet.
- (3) No permit shall be issued for construction which would result in gross floor area of greater than seven thousand five hundred (7,500) square feet, unless a Special Permit has been obtained from the Board of Managers.
- (4) For all buildings, the maximum side wall plate height within twelve (12) feet of a side lot line shall be twenty-one (21) feet.
- (5) For all buildings, the side wall plane length shall not exceed forty (40) feet unless there is an offset, jog, or articulation in the side wall plane that measures at least two (2) feet in depth and five (5) feet in length.

(m) Lot coverage. The lot coverage on any residentially zoned lot shall not exceed thirty-five (35) percent.

(n) Main building height. None of the following restrictions may be exceeded.

- (1) The height of a main building shall not exceed thirty-five (35) feet when measured to the highest point of the roof surface regardless of roof type.
- (2) The height of a main building shall not exceed thirty (30) feet when measured to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof.
- (3) The height of a main building shall not exceed thirty (30) feet when measured at the roof surface of a flat roof.

(o) Injury to trees. Unless a Special Permit has been obtained from the Board of Managers, no permit shall be issued for the construction of any improvement which may reasonably be expected to injure a tree:

- (1) Of any size on an abutting or nearby property, unless the owner of such property grants written permission; or
- (2) The removal of which is regulated by Chapter 17.

(p) Awnings and canopies. No awning, canopy or other protrusion shall be erected between the front building restriction line and the front lot line.

(9-13-93; No. 11-1-93, 11-22-93; No. 6-01-97, 7-14-97; No. 10-01-03, 10-13-03; No. 09-02-05, 09-12-05; No. 06-01-08, 06-16-08; No. 06-03-09, 07-13-09; No. 04-01-14, 04-14-14; No. 06-01-19, 06-10-19; No. 10-02-19, 10-14-19.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(5).

**Sec. 8-17. Unsafe conditions during construction.**

If the Village Manager determines that any activity requiring a Building Permit within the Village or any part thereof to be dangerous or to constitute a safety hazard, the Village Manager shall serve notice upon the owner of such property, or the owner's agent, and the occupant of such property. The Village Manager may request that the structure or any part thereof is not to be occupied and should be immediately vacated. This notice shall be in writing and shall be posted on the property and personally served upon the occupant and owner. If the Village Manager is unable personally to serve the occupant and the owner, service may be accomplished by posting the property and mailing a copy of the notice by certified mail to the property address and to such other address as the owner or the owner's agent has provided. The written notice shall set forth in detail the repairs necessary to remedy the dangerous condition of the structure. If the owner or occupant refuses or neglects to correct the dangerous condition within such reasonable time as the Village Manager may direct, then the owner and occupant shall be guilty of a municipal infraction and shall be subject to the penalties therefore.

(9-13-93; No. 04-01-14, 04-14-14.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(6).

**Sec. 8-18. Demolition of buildings.**

Any person intending to demolish, raze or tear down more than fifty (50) percent of the exterior features of an existing building, garage or accessory building within the Village must first obtain an administrative Special Permit pursuant to Sec. 8-11 for such demolition in order to ensure that such work will be carried out in such a manner that abutting property owners will not be adversely affected and that the interests of the Village in public health, safety and welfare are not jeopardized by such work.

(9-13-93; No. 11-1-93, 11-22-93; No. 04-01-14, 04-14-14.)

**Sec. 8-19. Developmental nonconformities.**

(a) Replacement and repair. A developmental nonconformity that is part of a structure or is attached to a structure may be replaced or repaired. A developmental nonconformity that is detached from a structure may be replaced or repaired only if such work involves less than fifty (50) percent of the nonconformity. A developmental nonconformity may not be expanded.

(b) Buildings existing prior to June 16, 2008. Notwithstanding any provision to the contrary contained in Sec. 8-16 or 8-20, a building or structure existing prior to June 16, 2008 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 or structure does not encroach farther into any setbacks than the building or structure that was lost,
- (2) The footprint of the replacement building or structure is not larger than the previous footprint for the main building or structure, and
- (3) The replacement building or structure does not exceed the building height of the building or structure that was lost.

(9-13-93; No. 06-01-08, 06-16-08; No. 04-01-14, 04-14-14.)

**Sec. 8-20. Garages and accessory buildings.**

(a) Rear yard coverage. No detached garage or other accessory building or structure shall be erected, except in the rear yard of any premises. The combined lot coverage of all accessory buildings shall not exceed twenty (20) percent of the rear yard.

(b) Rear and side setbacks. Any detached garage or other accessory building shall be located at least five (5) feet from any rear or side lot line or alley line.

(c) Increased setbacks. For any detached garage or other accessory building with a length along a rear or side lot line which has a linear dimension greater than twenty-four (24) feet, the minimum setback from that rear or side lot line shall be increased from the requirement in subsection (b) above at a ratio of two (2) feet for every one (1) foot that the dimension exceeds twenty-four (24) linear feet.

(d) Height. No person shall construct any detached garage or other accessory building, or make any material replacement, alteration or addition to any existing detached garage or other accessory building, which shall exceed one (1) story in height.

(1) The height of any detached garage or other accessory building, when measured from the average grade in front of the building to the highest point of the roof surface of a flat roof, shall not exceed twelve (12) feet.

(2) The height of any detached garage or other accessory building, when measured from the average grade in front of the building to the highest point of the roof surface regardless of roof type, shall not exceed sixteen (16) feet.

(e) Attachment of any garage or other accessory building to a dwelling house shall not be permitted unless the resulting building complies with all requirements of this Chapter for a main building, including the residential building construction prohibitions set forth in Sec. 8-16.

(9-13-93; No. 06-01-08, 06-16-08; No. 04-01-14, 04-14-14.)

**Sec. 8-21 Installation and maintenance of fences, walls, trees, hedges, shrubbery, lamp posts, landscape lighting, hand rails and arbors.**

(a) Location. No person shall install any tree trunk, hedge, shrubbery, fence, wall, lamp post, landscape lighting or hand rail on private property within three (3) feet of a public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the private property, within six (6) feet of the curb, or if there is no public sidewalk and no curb, within six (6) feet of the nearest edge of the street or alley.

(b) Interference with traffic. No fence, wall, cheek wall, tree, hedge, shrubbery, lamp post or hand rail on private property shall be permitted to extend into public sidewalks, streets or alleys so as to interfere in any manner with pedestrians or vehicular traffic.

(c) Obstruction of view. No person shall install or maintain any fence, wall, tree, hedge, shrubbery, lamp post or hand rail on private property at or near any street intersection in such a manner or at such a height as to interfere with a clear and unobstructed view of approaching pedestrians or vehicular traffic.

(d) Fence and wall height in rear yard. No person shall construct any fence or wall at any location between the front building restriction line and the rear property line nor along any rear property line having a height greater than six and one-half (6 ½) feet. The measurement shall be made from the surface of the ground of the lower yard next to the fence or wall. With the written consent of the owner(s) of any adjoining property, a fence or wall of greater height than six and one-half (6 ½) feet at its highest point, may be erected or permitted if a Special Permit is obtained from the Board of Managers.

(e) Fence and wall height in front yard. No person shall construct any fence or wall which exceeds forty-eight (48) inches in height at any location between the front lot line and the front building restriction line.

(f) Existing features. Notwithstanding subsection (a) above, any play equipment, fence, (except as provided in subsection (f) (6)), wall, tree, hedge or shrubbery existing on December 8, 2008, or any lamp post existing on April 14, 2014, may be maintained, repaired or replaced so that the maintained, repaired or replacement structure or growth:

- (1) Is in the same location as the existing structure or growth;
- (2) Does not encroach any farther into the public improvement setback than the existing structure or growth;
- (3) Does not exceed the height of the existing structure or growth;
- (4) Is of substantially similar material or species as the existing structure or growth; and
- (5) Is installed or constructed within six (6) months of the removal of the existing structure or growth.
- (6) In the event that a sidewalk, street or alley maintained by the Village or other public entity is installed adjacent to a fence after the permit which authorized the construction of the fence, or if it is determined by the Village Manager to be necessary for the public's health, safety or welfare, a replacement fence must comply with the setbacks required in subsection (a).

(g) Arbors. An arbor or trellis, of lattice or other open construction, shall be subject to the same setback and location requirements as a fence, provided it does not exceed three (3) feet in depth, five (5) feet in width, and eight and one-half (8 ½) feet in height when located in a front yard, or five (5) feet in depth, ten and one-half (10 ½) feet in width, and eight and one-half (8 ½) feet in height when located in a side or rear yard. An arbor that is not of open construction or that exceeds any of the foregoing dimensions shall be subject to the setback requirements for structures.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-03-08, 12-08-08; No. 10-04-08, 12-08-08; No. 02-04-10, 03-08-10; No. 04-01-14, 04-14-14; No. 11-03-14, 11-10-14; No. 03-01-16, 03-14-16; No. 06-01-19, 06-10-19.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(7).

**Sec. 8-22. Antennae, air conditioners, heat pumps and generators.**

(a) Size and location. An antenna may not extend more than six (6) feet above the highest point of the building to which it is attached.

- (1) No antenna shall exceed one (1) meter in diameter without a Special Permit from the Board of Managers. In addition to any other requirements for a Special Permit, the Board of Managers shall not grant a Special Permit for an antenna under this Section unless it finds that the antenna will be located and screened so it is not visible from adjacent or public property.
- (2) Free standing antennae are prohibited.

(b) Setbacks. No person may:

- (1) Install an external air conditioner or heat pump within seven (7) feet of any side lot line or rear lot line or in the front yard of any property.
- (2) Replace an external air conditioner or heat pump within five (5) feet of any side lot line or rear lot line or in the front yard of any property.
- (3) Install or replace a generator within seven (7) feet of any side lot line or rear lot line or in the front yard of any property.

All external air conditioners, heat pumps and generators must comply with County and Village noise regulations.(see Sec. 8-11(b)(3)).

(9-13-93; No. 11-1-93, 11-22-93; No. 9-01-99, 9-13-99; No. 04-01-14, 04-14-14.)

### **Sec. 8-23. Tennis courts.**

(a) Setbacks. A tennis court must be set back at least fifteen (15) feet from the front building restriction line of the property or from the main building line, whichever is greater. No tennis court shall be constructed within twenty-five (25) feet of any side or rear lot line. All measurements shall be made from the outermost portion of the court, including the fencing. Property shall include all lots under common ownership.

(b) Enclosure. Every tennis court or the property on which such tennis court is situated shall be surrounded by a fence or wall or equivalent enclosure of not less than six and one-half (6½) feet in height.

(9-13-93; No. 11-1-93, 11-22-93; No. 9-01-99, 9-13-99; No. 04-01-14, 04-14-14.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(8).

### **Sec. 8-24. Swimming pools and outdoor therapeutic baths.**

(a) Setbacks. Any swimming pool or outdoor therapeutic bath shall be located as follows:

- (1) A swimming pool or outdoor therapeutic bath must be set back at least fifteen (15) feet from the front building restriction line of the property or from the front main building line, whichever is greater.
- (2) No swimming pool or outdoor therapeutic bath shall be placed within fifteen (15) feet of any side or rear lot line. Such measurement shall be made from the inside wall of the swimming pool or outdoor therapeutic bath.
- (3) No apron, deck or diving board shall be placed within ten (10) feet of any side or rear lot line.
- (4) No pump, filter or other accessory shall be constructed or installed within seven (7) feet of any side or rear lot lines without a Special Permit from the Board of Managers.

(b) Enclosure of pools. Any swimming pool or the property upon which a swimming pool is situated shall be surrounded by a fence or wall or equivalent enclosure not less than sixty (60) inches in height above grade at the exterior of the fence, which shall be so constructed as not to be easily climbed or penetrated. Gates and/or doors to any such enclosure shall comply in all respects with County regulations pertaining to swimming pool enclosures, and shall be maintained in good condition. A dwelling house or accessory building may be used as part of such enclosure.

(c) Screening of outdoor therapeutic baths. An outdoor therapeutic bath shall be screened from neighbors by fencing, planting, or otherwise, so as to provide privacy to users thereof and not to impinge on the privacy of the neighbors.

(d) Protective cover. Unless enclosed by a fence of the same dimensions as required for swimming pools in subsection 8-24(b), an outdoor therapeutic bath shall be equipped with a protective cover that shall be secured in place covering any such bath and shall be locked so as to prevent access when the bath is not in use. The protective cover shall be made of any fabric, plastic, rubber, metal or net capable of covering the entire outdoor therapeutic bath and, when in use, be able to be firmly secured or anchored and capable of supporting a minimum of two hundred fifty (250) pounds.

(e) Lighting. Lights used to illuminate any swimming pool or outdoor therapeutic bath and/or any areas adjacent to any swimming pool or outdoor therapeutic bath shall be so arranged and shaded so as to reflect light away from neighboring property, and shall be maintained and operated in such a manner as not to be a nuisance or annoyance to any neighboring property. In no event shall any such lights be on after midnight.

(f) Equipment. Any diving board, slide or other equipment used in or around any pool shall be constructed, affixed, designed, fastened or snubbed as to minimize unnecessary noise resulting from the use or operation of such diving board, slide or other equipment (see Chapter 20).

(g) Existing pools and outdoor therapeutic baths. Any swimming pool or outdoor therapeutic bath which was lawful when constructed may be continued, provided the swimming pool or outdoor therapeutic bath is operated and maintained in accordance with all requirements of this Chapter with the exception of subsection (b) above. If, in the discretion of the Village Manager, the existing pool is surrounded by natural planting which is equivalent to a fence or wall inasmuch as the natural planting in question cannot be easily climbed or penetrated, it may be continued under this sub-section.

(h) Portable swimming pools. Every portable swimming pool shall be stored in a safe place or condition when not in actual use.

(i) Runoff and drainage. Any swimming pool, portable swimming pool or outdoor therapeutic bath within the Village shall be maintained so that pool water does not collect, seep, overflow, splash or run onto or across abutting property or onto the public right-of-way. Intentional drainage of swimming pools must ensure that such drainage flows into a storm drain.

(9-13-93; No. 11-1-93, 11-22-93, No. 04-01-14, 04-14-14; No. 10-03-19, 10-14-19.)

**Cross reference(s)**—Fine for violation of this Section, Sec. 6-3(a)(9).

### **Sec. 8-25. Alteration of water flow or drainage.**

(a) Permit required. Any person intending to perform grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or the installation of any downspout, pipe, sump pump discharge pipe, or drain which, in the opinion of the Village Manager, could alter the existing or natural flow of water in such a way that it may reasonably be expected to cause such water or drainage to flow onto abutting property or onto the public right-of-way, must obtain a Building Permit therefore from the Village Manager. No permit will be issued for activity that allows or redirects water to flow onto another private property or, for sump pump discharge, onto the public right-of-way.

(b) Adverse effect. No grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or the installation of any downspout, pipe, sump pump discharge pipe, or drain which will alter the flow of water or drainage so as to have an adverse effect on abutting or nearby properties or on the public right-of-way shall be approved by the Village Manager.

(c) Conditions. The Village Manager may issue a Building Permit for grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or the installation of any downspout, pipe, sump pump discharge pipe, or drain which will alter the flow of water or drainage, upon such terms or conditions as the Village Manager deems necessary to avoid adverse effects upon abutting or nearby properties or onto the public right-of-way.

(9-13-93; No. 04-01-14, 04-14-14; 03-01-16, 03-14-16.)

### **Sec. 8-26. Driveways.**

Any driveway on private property may not exceed fifteen (15) feet in width without a Special Permit from the Board of Managers, except that the driveway in front of a two-car garage may extend the full width of the two-car garage, provided that such driveway does not exceed twenty (20) feet in length. An existing driveway that does not comply with the previous sentence may be replaced pursuant to Sec. 8-11.

(9-13-93; No. 11-1-93, 11-22-93; No. 04-01-14, 04-14-14.)

### **Sec. 8-27. Reserved.**

**RESERVED**

**RESERVED**

**RESERVED**