

Ordinance No.: 04-1
Introduced: 12/18/03
Passed: 1/12/04
Approved: 1/12/04
Effective: 1/12/04

ORDINANCE TO AMEND THE
TOWN OF GLEN ECHO CODE
ARTICLES 3 AND 9, TO PROVIDE
SETBACKS UNDER CERTAIN
CONDITIONS AND ENFORCEMENT

WHEREAS, the Regional District Act, Article 28, Section 8-115.1 of the Maryland Code Annotated permits municipal corporations to impose additional or stricter setback requirements for single-family residential structures on land zoned for single family residences;

WHEREAS, the Montgomery County Zoning Code (December 2003 Edition) provides for single-family houses in the zone applicable to the Town of Glen Echo to be setback at least twenty-five feet (25') from any street line with the exception that in the case of a corner lot, if the adjoining lot on one of the streets either does not front on that street or is in a nonresidential zone, the setback from that street line must be at least fifteen feet (15'); (§59-C-1.323(a));

WHEREAS, the Town Council finds that houses permitted by this exception fifteen feet (15') from the street line have an adverse impact upon the Town, nearby properties and streets;

WHEREAS, the Town Council finds that new construction is likely to utilize this exception which will result in houses as close as 15 feet to a street line, particularly construction on existing vacant lots and on lots on which there is an existing house which is demolished and replaced by a house with a different footprint;

WHEREAS, the Town Council finds that adopting setback requirements stricter than that of Montgomery County by eliminating the exception to the twenty-five foot (25') setback will be beneficial to the health, safety and welfare of the Town and its residents;

WHEREAS, the Town Council is desirous of adopting such stricter setback requirements, and an enforcement mechanism together with a waiver procedure as required by state law; and

WHEREAS, in accordance with state law, a copy of this proposed ordinance was timely transmitted to the Montgomery County Council and a public hearing duly held.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Glen Echo to amend the Town Building Code, Article 3, and Applicability of County Legislation, Article 9, as follows:

1. Article 3, Building Code, is hereby amended to read as follows:

3.1.1 Setbacks of Houses

a. The provision of the Montgomery County Zoning Code (§59-C-1.323(a), December 2003 Edition) that permits a fifteen foot (15') setback for a house from a street line in the case of a corner lot, if the adjoining lot on one of the streets either does not front on that street or is in a nonresidential zone, is not applicable in the Town of Glen Echo. The setback from a street line for a house on such a corner lot shall be at least twenty-five feet (25').

b. This setback provision shall apply to: (i) a house for which a building permit is required from the Town of Glen Echo or Montgomery County or both and no such valid permit(s) was issued by the Town or the County or both as of January 12, 2004; or (ii) a house for which a building permit is required from the Town of Glen Echo or Montgomery County or both and for which all valid permits have been issued but actual physical commencement of some significant and visible construction has not occurred as of January 12, 2004.

c. Any house existing on the effective date of this section situated closer than twenty-five feet (25') to the street line in accordance with §59-C-1.323(a) of the Montgomery County Zoning Code and which does not meet the setback requirements of this section, is a conforming building. Such a house may be:

(i) reconstructed after a fire, flood or similar event provided that the footprint of the house may not be closer to the street line to which this section is applicable than the pre-existing building or structure as of the effective date of this section; and

(ii) altered, renovated, or enlarged provided that the location of such house may not be closer to the street line to which the section is applicable than the pre-existing house as of the effective date of this section.

d. The Town Council may grant a waiver of the setback requirements of the Building Code, subject to the following limitations:

(1) The Town Council finds after a duly noticed public hearing, based on the evidence before it, that good cause has been shown on either of the following grounds:

(a) The proposed new construction would not unduly interfere with light and air between residences or other structures, would not be unduly incompatible with the scale, massing, and character of the Town or of nearby residences or other structures, and would otherwise not unduly adversely affect the use, enjoyment or value of nearby properties. In mak-

ing such finding, the Council may consider such factors as:

- (1) size and location of proposed new building construction;
 - (2) size and location of existing and potential buildings and other structures on nearby lots; and
 - (3) topography and existing or planned vegetation of the lot on which the proposed new building construction will be located and of nearby lots. Should the Council be requested to consider planned vegetation, the applicant for the waiver shall submit a landscape plan with the waiver application, or
- (b) that the strict and literal application of this section would result in peculiar or unusual practical difficulties to the owner of the lot on which the proposed new construction is to be located due to longstanding pre-existing buildings on the specific parcel or property, exceptional narrowness, shallowness, shape, topographical conditions or other ex-

traordinary situations or conditions peculiar to the specific parcel of property. The following do not constitute practical difficulties for the purposes of this section:

- (1) the existence of nearby structures or buildings on other parcels of property which do not comply with this section; or
- (2) the granting of a waiver on other lots.

- (i) The Waiver must be for the minimum reasonably necessary to avoid the above conditions or situations.
- (ii) The Town Council may impose, in granting a waiver, such conditions as it deems in the public interest and necessary to effectuate the purposes of this section.

e. Violation of Setback Requirement

i. Violation of a setback requirement of the Building Code shall constitute a municipal infraction. Any person, including an owner of property, any authorized or unauthorized agent, any contractor for such owner, and any person performing work on or about the owner's property, that violates a

setback requirement shall be subject to a fine of \$500.00 for each violation. Each day that the violation continues may be considered a further and separate offense subject to such fine.

ii. In addition to the fine, a violator may be required to remove or restore, within fifteen (15) days of the date of notification of the violation, any structure, alteration, addition or excavation, erected or commenced, and constituting the basis of the violation, and if so required, upon expiration of such fifteen (15) days, each additional day during which that person shall not have so removed or restored the same, shall constitute a further and separate violation of subject to such fine.

iii. The Town also may abate any such condition at the violator's expense.

iv. In addition to any other fine penalty, or remedy, the Town may seek in a court of competent jurisdiction, to enjoin any violation of a setback requirement of the Building Code and may recover from any violator the costs of such action, including reasonable attorney's fees.

f. If any word, phrase, clause, item, sentence, paragraph, section or part in or of the setback provisions of the Building Code shall judicially be declared to be invalid or the applicability thereof to any person or circumstances held invalid, the validity of the remainder of the provisions of the Building Code and the applicability thereof to other persons and circumstances shall not be affected thereby.

2. Article 3, Building Code, is hereby amended further as to the first existing paragraph:

Section 3.1 Permits

No building of any kind or description shall be erected within the corporate limits of the Town without first having obtained permit for same from the Clerk or the Mayor and Council. A permit from the county Building Inspector shall also be obtained, all buildings or remodeling to comply with the County Building Code. No permit for any building shall be issued by the Clerk or Mayor and Council unless the building complies with the setback requirements of the Montgomery County Zoning Code as modified by the Town of Glen Echo Building Code.

3. Article 9, Applicability of County Legislation, is hereby amended as follows:

9.1 Exemption From County Code

Except for the Chapters or part of Chapters listed below, the provisions of the Montgomery County Code, as amended, are hereby adopted and shall apply and be enforced within the corporate limits of the Town of Glen Echo. Any amendments to such Chapters shall become ef-

fective within the Town to the extent not disapproved by the Town Council by Ordinance. Pursuant to the authority granted to municipal corporations by laws of the State of Maryland and Montgomery County, the Town of Glen Echo hereby exempts itself from the following Chapters of the Montgomery County Code:

- 2B - Agricultural Land Preservation
- 11B - Contracts, Purchases, and Dispositions
- 13A - Development Rights Fund
- 19A - Ethics
- 20 - Finance
- 20A - Financial Disclosure
- 23 - Gaming
- 23A - Group Residential Care Facilities
- 24B - Homeowners' Associations
- 25B - Housing Policy
- 27 - Human Relations and Civil Liberties
- 29A - Legislative Oversight
- 30 - Licensing and Regulations Generally
- 33 - Personnel
- 41 - Recreation and Recreation Facilities
- 48 - Solid Waste
- 49 - Streets and Roads
- 56 - Urban Renewal and Community Development
- 59 - Montgomery County Zoning Code, §59-C-1.323(a) (corner lot fifteen feet (15') setback)
- 60 - Silver Spring, Bethesda, Wheaton and Montgomery Hills Parking Lot Districts
- 60 - Battery Park
- 62 - Chevy Chase Section 3
- 63 - Chevy Chase Section 5
- 64 - Chevy Chase View
- 65 - Drummond
- 66 - "Friendship Heights" and "The Hills"
- 67 - Martin's Addition
- 68 - Montgomery County Suburban District
- 69 - North Chevy Chase
- 70 - Oakmont

Effective date: This is an emergency ordinance which shall become effective upon passage by the Town Council and approval by the Mayor or passed over the Mayor's veto by the Town Council.

PASSED:

TOWN COUNCIL

1/12/04
Dated

By: Catherine Polak
Clerk/Treasurer

APPROVED:

Deborah M. Beers
Deborah M. Beers, Mayor

1/12/04
Dated