

CHAPTER 6

BUILDING CODE

Article I. Purpose and Definitions

- § 6-101. Purpose
- § 6-102. Definitions

Article II. Montgomery County Building Code

- § 6-201. Adoption of Montgomery County Executive Regulations
- § 6-202. Enforcement of Montgomery County Chapter on Buildings
- § 6-203. Applicability of Town Building Code

Article III. Town Building Permits

- § 6-301. Town of Somerset Building Permit -- When Required
- § 6-302. Inapplicability of Section 8-24B(e) of Montgomery County Code
- § 6-303. Town of Somerset Building Permit -- Application Form
 - (a) Duty of Mayor to Prepare Application Form
 - (b) Completed Application Required
 - (c) County Permit Required
 - (d) Signing of Application
 - (e) Required Information
 - (f) When Filed
- § 6-304. Town of Somerset Building Permit -- Documents to Accompany Application
- § 6-305. Town of Somerset Building Permit -- Conditions
 - (a) Time for Completing Work
 - (b) Duration of Permit
 - (c) Signature on Permit
 - (d) Location of Permit and Plans
 - (e) Compliance with Permit
 - (f) Stop Work Order
 - (g) Revocation of Building Permit
- § 6-306. Action on Building Permit
 - (a) Standard Procedure
 - (b) Late Procedure
 - (c) Expedited Procedure
 - (d) Determination Whether to Hold Late or Expedited Procedures

Article III. Town Building Permits (cont.)

- § 6-307. Criteria for Permit Decisions
- § 6-308. Decisions on Building Permit Applications
 - (a) Hearing
 - (b) Decision
 - (c) Judicial Review
- § 6-309. Modification of Approved Plans
- § 6-310. Building Permit Fees
- § 6-311. Deposit for Repairs
- § 6-312. Increased Setbacks for Certain New Construction
 - (a) Applicability
 - (b) Definitions
 - (c) Setback Requirements
 - (d) Other Requirements
 - (e) Waiver
 - (f) Procedure for Waiver

Article IV. Requirements During Construction

- § 6-401. New Structures
 - (a) Notice of Somerset Quiet Hours
 - (b) Parking Plan
 - (c) Wall Check
 - (d) Height Check
- § 6-402. Additions
 - (a) Notice of Somerset Quiet Hours
 - (b) Parking Plan
 - (c) Footers Check
 - (d) Height Check
- § 6-403. Noise Control

Article V. Subdivisions

- § 6-501. Subdivision of Land

Article VI. Penalties

- § 6-601. Penalties

**Article VII. Regulation and Permitting of Certain
Fences and Walls**

- § 6-701. Purpose

Article VII. Regulation and Permitting of Certain
Fences and Walls (cont'd)

- § 6-702. Definitions
- § 6-703. Town of Somerset Permit for Fence or Wall Construction
(a) When Required
(b) Exemptions
- § 6-704. Applicable Provisions of Montgomery County Code
- § 6-705. Materials Required for Construction of Certain Fences
- § 6-706. Requirements for Finished Side of Certain Fences and Walls
and For Removal of Existing Fences
- § 6-707. Requirements for Walls
- § 6-708. Requirements for Fences on Interior Lots
- § 6-709. Requirements for Fences on Corner Lots
- § 6-710. Permit for Fence or Wall Placement or Construction-
Application Form
(a) Duty of Mayor to Prepare Application Form
(b) Completed Application Required
(c) Signing of Application
(d) Required Information
(e) Available to Public
(f) Fee
- § 6-711. Mayor's Request for Additional Information
- § 6-712. Mayor's Decision on Permits for Fence or Wall Placement or
Construction
- § 6-713. Criteria for Mayor's Permit Decisions
- § 6-714. Exceptions Granted by the Town Council
- § 6-715. Procedures for Decision on Permit for Fence or Wall Placement
or Construction
- § 6-716. Nonconforming Fences and Walls

Article VIII. Property Restriction Signs

- § 6-801. Property Restriction Signs
(a) Defined
(b) Restrictions

Article IX. Miscellaneous

- § 6-901. Previous Approvals
- § 6-902. Town Exempt
- § 6-903. Limitations on Dumpsters

CHAPTER 6
BUILDING CODE

Article I. Purpose and Definitions

Section 6-101. Purpose.

It is the purpose of this Chapter to ensure public safety, health and welfare insofar as they are affected by building construction; to ensure the safety to life and property from all hazards incident to the design, erection, repair, removal, and demolition of buildings, and to ensure compliance with all applicable town, county, state and federal laws.

Source: Ord. No. 1-88, eff. 6-29-88.

Section 6-102. Definitions.

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

(a) "Adjoining and confronting property" is land in Somerset which touches the boundary line of other property at least at one point, which may be a corner, or which would do so except for an intervening road, street, or right of way.

(b) "Building" includes any permanent structure, whether a primary 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 any additions,

such as decks or balconies, and modifications thereto. "Building" includes any permanent storage structure, such as a toolshed. "Building" also includes any excavation for such structures.

(c) "Person" includes persons, firms, partnerships, corporations, estates, trusts, associations, and government institutions or agencies.

Source: Ord. No.2-97, eff. 12-10-97;
Ord. No.1-95, eff. 7-27-95;
Ord. No.8-92, eff. 8-24-92;
Ord. No.1-88, eff. 6-29-88.

Article II. Montgomery County Building Code

Section 6-201. Adoption of Montgomery County Executive Regulations

In addition to the adoption of Chapter 8 of the Montgomery County Code pursuant to Town Code section 10-101, all executive regulations or amendments to regulations hereafter adopted by the County Executive for Montgomery County Code shall be effective within the Town of Somerset unless the Town Council by ordinance elects not to adopt any such regulation or amendment to regulations.

Source: Ord. No. 2-89, /eff. 4-24-89;
Ord. No. 1-88, eff. 6-29-88.

Section 6-202. Enforcement of Montgomery County Chapter
on Buildings

Montgomery County, Maryland, is hereby requested to enforce within the corporate limits of the Town of Somerset the provisions of Chapter 8 of the Montgomery County Code, adopted by this Chapter and Somerset Town Code section 10-101.

Source: Ord. No. 1-88, eff. 6-29-88.

Section 6-203. Applicability of Town Building Code

(a) In addition to the provisions of Chapter 8 of the Montgomery County Code adopted by this Chapter and section 10-101, the Town of Somerset shall be governed by this Chapter, which contains supplemental procedures and provisions.

(b) The Town of Somerset shall administer any and all provisions in this Chapter that contain provisions additional to those required under Chapter 8 of the Montgomery County Code adopted by this Chapter and section 10-101 and may request the assistance of Montgomery County and the State's Attorney in enforcement.

Source: Ord. No. 188, eff. 6-29-88.

Article III. Town Building Permits

Section 6-301. Town of Somerset Building Permit -- When Required

No building located within the Town of Somerset shall be commenced, constructed, extended, repaired, removed or altered, nor shall excavation for a building be commenced, without obtaining a building permit from the Town of Somerset, except that no such permit is required for ordinary repairs as defined in Montgomery County Code (1984), Chapter 8, Section 8-3, which definition is incorporated herein by reference; and except repairs or changes that do not alter the exterior dimensions of the building.

Source: Ord. No. 18, eff. 6-29-88.

Section 6-302. Inapplicability of Section 8-24B(e) of Montgomery County Code

Section 8-24B(e) of the Montgomery County Code shall not apply within the Town of Somerset. That section would otherwise require applicants for building permits from Montgomery County to obtain a building permit from the Town of Somerset prior to applying for a building permit from Montgomery County, Maryland, when the property for which the building permit is sought is located within the Town of Somerset.

Source: Ord. No. 1-88, eff. 6-29-88.

Section 6-303. Town of Somerset Building Permit --
Application Form

(a) Duty of Mayor to Prepare Application Form. The Mayor shall prepare a building permit application form. The form shall state conspicuously that a permit can be granted solely by the Town Council after a public hearing at which the applicant and any other interested persons may be heard.

(b) Completed Application Required. No building permit shall be issued in the absence of a completed application for a Town building permit.

(c) County Permit Required. No building permit shall be issued in the absence of a valid building permit issued by Montgomery County for the identical work which is the subject of the Town permit.

(d) Signing of Application. The building permit application shall be signed by the owner, and/or his authorized agent, of the site upon which the proposed work is to take place. If the application is made by a person other than the owner of the site, it shall be accompanied by written statement of the owner that the proposed work is authorized by the owner and that the applicant is authorized to make such application.

(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:

- (1) the street address, legal description (lot number) and the date of subdivision plat recordation of the lot upon which the proposed work is to be performed;
- (2) the full name and address or addresses of each owner;
- (3) a brief description of the work to be performed for which a building permit is requested;
- (4) the names and addresses of all owners of adjoining and confronting property as shown in the records of the Town maintained by the Clerk-Treasurer at the time of submission of the application, or of the occupants of said property if the owners are not the occupants;
- (5) the cost of the proposed work, as set forth on the Montgomery County building permit for this project;
- (6) the date which the applicant anticipates the proposed work will commence and will be completed;

- (7) a description and the location of any easements located on the lot upon which the proposed work is to be performed;
- (8) name and phone number of contractor and MD Home Improvement Commission license number, unless the home owner is serving as the general contractor;
- (9) the location and size of all facilities which conduct or discharge stormwater, including downspouts and pipes, to be located, constructed or altered pursuant to the project for which the building permit is sought, and a description, in written or diagram form, indicating the direction and approximate course on the applicant's lot of the stormwater from such facility;
- (10) for new houses and extensions in front, the front yard setback and side yard setback of corner houses measured according to Division 59-B-3.1 and 2 of the Montgomery County Zoning Ordinance for all houses on the same side of the street in the same block on lots any part of which is within three hundred feet (300') of

- subject lot or four (4) consecutive adjacent lots, whichever distance is greater;
- (11) for new houses and additions of a second or third story, the height of the house according to the Montgomery County Zoning Ordinance;
 - (12) for new houses and accessory buildings and additions to houses and/or accessory buildings that cover more of the lot, the percent coverage of the lot according to the Montgomery County Zoning Ordinance;
 - (13) for additions or alterations to existing houses and new or altered accessory buildings, a photograph of the front of the house;
 - (14) a tree plan showing:
 - (i) the location of all living trees on the lot on the abutting Town right-of-way and on adjoining and confronting property if the tree drip line overhangs subject property, provided the trees are four inches (4") or more in diameter measured four feet (4') from the ground;
 - (ii) the species, trunk diameter four feet (4') from the ground and drip line of each of the above trees; and
 - (iii) location of temporary fences that will be installed to protect the trees;

(15) such further information which the Mayor or Town Council deems necessary for review of the building permit application.

(f) When Filed. In order to permit sufficient time for the Town Council to consider the application, and to provide notice in the Town Journal, the complete permit application shall be filed by the 15th of the month prior to the month during which the permit is to be considered, except if a late or expedited procedure is requested as set forth in Section 6-306 below.

Source: Ord. No. 10-04, eff. 1-12-05;
Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-01, eff. 6-13-01;
Ord. No. 2-01, eff. 3-14-01;
Ord. No. 4-00, eff. 9-13-00;
Ord. No. 1-95, eff. 7-27-95;
Ord. No. 4-92, eff. 5-25-92;
Ord. No. 1-88, eff. 6-29-88.

Section 6-304. Town of Somerset Building Permit
Documents to Accompany Application

An applicant for a Town of Somerset building permit shall submit the following materials with the permit application in addition to any other materials that may be requested by the Mayor:

(a) A copy of the Montgomery County building permit granted by Montgomery County for the identical work for which the applicant seeks a permit from the Town of Somerset.

(b) A copy of the application for a building permit as submitted to Montgomery County for the identical work for which the applicant seeks a permit from the Town of Somerset along with all site plans and architectural drawings submitted in connection with that application. For proposed work costing \$25,000 or more, the following are required: two full-size sets; eight additional full-size site plans; and eight sets, either 8 1/2" x 14" or 8 1/2" x 11". The site plan must include:

- (1) New and replacement locations for air conditioners, heat pumps and generators;
- (2) Removal of trees with a diameter of four inches (4") or more, as measured four feet (4') above the ground;
- (3) New curb cuts;
- (4) New fences and walls.

(c) A parking plan, whenever it is likely that more than three vehicles of persons involved in construction sought to be authorized by a Town building permit (other than the owner of the property which is the subject of the permit) will be parked within the Town at any one time. Such plan shall identify the location of the parking areas to be used by such vehicles. Compliance with a parking plan approved by the Town Council shall be a condition of the issuance of the building permit and a

violation of the parking plan shall be grounds for revocation of such permit. The parking plan shall provide that:

(1) To the maximum extent feasible, parking shall be located on the property which is the subject of the Town building permit;

(2) To the maximum extent feasible, if additional parking is needed, parking shall be located on more than one street in the immediate area of the property which is the subject of the Town building permit; and

(3) To the extent feasible, parking more than three vehicles in the same area of a Town street shall not be permitted.

(d) A plan showing location and screening of portable toilet or statement that there will be none.

(e) A building permit fee, as set forth in Section 6-310 below.

(f) A deposit or bond for repairs, as set forth in Section 6-311 below.

(g) A certification by the applicant that, before submitting the application to the Clerk-Treasurer, he provided to each owner of adjoining and confronting property whose property is located within the Town of Somerset, and to the occupants of said property if the owners are not the occupants:

(1) a reasonable opportunity to inspect the construction specifications, plans, surveys and all other

documents to be filed with the application explaining the nature of the work to be performed;

(2) notice of the anticipated date of hearing on the application before the Town Council.

(h) The certification required by subsection (g) shall include an explanation of the steps taken to comply with the requirements of this section and shall identify those persons who have been contacted. Unless there are unusual circumstances, initials of those persons who have been contacted are required on the building permit form.

(i) If an expedited procedure is requested, a written request for expedition, and reasons therefore, and the applicable fee.

(j) If a late filing procedure is requested, the applicable fee.

(k) The application and all accompanying documents shall be available for public inspection at the Town Hall.

Source: Ord. No. 12-06, eff. 12/13/06;
Ord. No. 7-06, eff. 8-11-06;
Ord. No. 9-04, eff. 12-8-04;
Ord. No. 7-04, eff. 11-10-04;
Ord. No. 6-03, eff. 8-13-03;
Ord. No. 4-03, eff. 5-14-03;
Res. No. 2-98, eff. 3-3-98;
Ord. No. 6-93, eff. 8-23-93;
Ord. No. 5-91, eff. 6-24-91;
Ord. No. 1-88, eff. 6-29-88.

Section 6-305. Town of Somerset Building Permit
Conditions

- (a) Time for Completing Work. Any permit issued under this Chapter shall become invalid if the authorized work is not commenced within six (6) months from the date of approval or is suspended or abandoned for a period of six (6) months; provided, however, that the Town Council, for good cause shown, may extend a permit for an additional six (6) months upon payment by applicant of 50 percent of original building permit fee. This additional fee may be waived by the Council for good cause shown.
- (b) Duration of Permit. A building permit shall be valid for the date requested but not more than a one (1)-year period. The Town Council, upon written request, for good cause shown, may grant a permit for a longer time, or may grant an extension of time for an existing permit of six (6) months upon payment by applicant of 50 percent of original building permit fee.
- (c) Signature on Permit. The Mayor shall sign each permit issued.
- (d) Location of Permit and Plans. The permit or a true copy of it and a copy of all plans and other documents submitted with the permit shall be kept on the site of the property and shall be available for inspection by officials of the Town, in the course of their duties, during the entire time that the work is in progress and until its completion.

(e) Compliance with Permit. All work shall conform to the approved application and plans for which the permit has been issued.

(f) Stop Work Order. Whenever the Mayor may determine that actions are being taken in violation of the provisions of this Chapter, including actions outside the scope or contrary to a permit validly issued, he may order such work to be stopped immediately. The stop work order shall be issued in writing by the Mayor and served upon the owner of the property or the owner's agent or the person doing the work. It shall be unlawful for any person to continue or permit the continuation of work in or about the property after having been served with the stop work order. The permit holder may appeal such order to the Town Council which, upon request, shall hold a hearing within fourteen (14) days, pursuant to the procedures set forth in Section 6-308 below.

(g) Revocation of Building Permit.

- (1) The Mayor may revoke a permit issued under this Chapter in case of any false statements or misrepresentations of fact in the application or on the plans on which the permit was based or in case of violation of any of the conditions upon which the permit was issued.
- (2) The Mayor may revoke a permit issued under this chapter where work relating to the permit has

resulted in, or is likely to result in, a violation of Chapter 8, Protection of Trees.

- (3) The Mayor may revoke a permit issued under this Chapter upon the revocation of a permit issued by Montgomery County for the identical work which is the subject of the Town permit.
- (4) The permit holder may appeal any such revocation to the Town Council which, upon request, shall hold a hearing within fourteen (14) days, pursuant to the procedures set forth in Section 6-308 below.

Source: Ord. No. 5-05, eff. 6-8-05;
Ord. No. 10-02, eff. 11-13-02;
Ord. No. 8-91, eff. 7-15-91;
Ord. No. 1-88, eff. 6-29-88.

Section 6-306. Action on Building Permit.

(a) Standard Procedure. The Mayor shall submit to the Town Council for its consideration at its next regularly-scheduled session any building permit application which has been filed with the Clerk-Treasurer by the 15th of the month prior to such session. The Town Council, in its discretion, may defer or continue consideration of the application until the next regularly-scheduled session or until a special session.

(b) Late Procedure. A building permit application filed with the Clerk-Treasurer after the 15th of the month prior to the

next regularly-scheduled Town Council session, but no later than the 22nd of the month may be submitted to the Town Council by the Mayor and considered by the Town Council, in its discretion, at the next regularly-scheduled session. The Town Council, in its discretion, may defer or continue consideration of the application until the next regularly-scheduled session or until a special session. A late fee of \$200.00 shall be charged in addition to all other permit fees for consideration by the Town Council under this procedure.

(c) Expedited Procedure.

- (1) An applicant may request in writing that a building application be considered by the Town Council on an expedited basis at a special session of the Town Council. The Town Council, in its discretion, may hold a special session to consider such application. The Town Council, in its discretion, may continue consideration of the application until the next regularly-scheduled session or until a special session.
- (2) An expedited consideration fee of \$400.00 shall be charged in addition to all other permit fees for consideration by the Town Council under this procedure.
- (3) No special session of the Town Council to consider a permit application shall be held on less than

seven (7) days notice nor more than thirty (30) days after submission of the request for the expedited procedure.

- (4) Notice of a special session of the Town Council to consider a permit application shall be given by posting such notice on the Town Hall bulletin board, by broadcasting on the Town e-mail network and by the applicant notifying property owners and residents as set forth in the certification of the applicant as required under Section 6-304(f).

(d) Determination Whether to Hold Late or Expedited Procedures. The Town Council has discretion to determine whether to consider a building permit application under the late or expedited procedures that are set forth in this section. In exercising its discretion, the Town Council shall consider such factors as: reasons for late filing; need for expedition; nature, extent, and complexity of the work proposed to be performed; effect upon adjoining and confronting properties; extent of prior notice to interested persons; actual or likely opposition; and hardship to the applicant.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 8-91, eff. 7-15-91;
Ord. No. 1-88, eff. 6-29-88.

Section 6-307. Criteria for Permit Decisions.

The Town Council shall consider, in approving or disapproving an application for a building permit, such factors as:

(a) Whether the application is complete and conforms to the requirements of this Chapter.

(b) Whether the proposed work complies with the provisions of Chapter 8 of the Montgomery County Code, incorporated into this Chapter.

(c) Whether the proposed work complies with all applicable subdivision and zoning requirements.

(d) Whether the proposed work complies with all other applicable Town ordinances, including Chapter 8, Protection of Trees, county, state and federal laws.

(e) Whether the proposed work unduly and adversely affects the health and safety of adjoining or confronting property owners and residents, or the enjoyment of their property.

(f) Whether the proposed work otherwise unduly and adversely affects the health, safety and general welfare of the Town, its property, and its residents.

Source: Ord. No. 6-05, eff. 6-08-05;
Ord. No. 1-88, eff. 6-29-88.

Section 6-308. Decisions on Building Permit Applications.

(a) Hearing. The Town Council shall conduct fact-finding hearings on building permit applications. The applicant and all interested parties shall be given the opportunity to present evidence and testimony, so long as it is relevant and not repetitive. The hearing shall be conducted so as to afford fundamental fairness to all parties. The technical rules of evidence shall not apply.

(b) Decision. The decision of the Town Council, by a majority vote of those members present at the hearing on the application, shall be rendered within forty (40) days of the date of the hearing. The decision shall be in writing and shall state the Town Council's findings of fact and conclusions of law. The decision of the Town Council shall become final unless an appeal is taken as set forth below within thirty (30) days. The decision of the Town Council shall approve the building permit application, disapprove it, or approve it with modifications. Unless stated to the contrary, approval of a building permit includes permission to remove trees for which removal authority is requested in the building permit application.

(c) Judicial Review. Any person aggrieved by a decision of the Town Council with regard to an application for a building

permit filed under the provisions of this Chapter and who appeared before the Town Council in person, by an attorney, or in writing, shall have the right to appeal the decision of the Town Council to the Circuit Court for Montgomery County, Maryland under the provisions of Title 7, Chapter 200 of the Maryland Rules of Procedure. In any judicial proceeding under this section, the findings of the Town Council as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

Source: Ord. No. 2-05, eff. 5-18-05;
Ord. No. 7-96, eff. 12-13-96;
Ord. No. 8-93, eff. 10-25-93;
Ord. No. 1-88, eff. 6-29-88.

Section 6-309. Modification of Approved Plans.

No person shall modify or alter any plans or specifications after they have been submitted and a permit issued. Notice of intention to deviate materially from the approved plans and specifications shall be given in writing to the Mayor and Town Council and their written approval obtained before such deviation or alteration is made.

Source: Ord. No. 1-88, eff. 6-29-88.

Section 6-310. Building Permit Fees.

Any applicant for a Town of Somerset building permit shall pay a fee for the processing of such permit, as follows:

One-half of the building permit fee charged by Montgomery County for the same demolition and construction.

Source: Ord. No. 5-03, eff. 6-11-03;
Res. No. 1-99, eff. 4-6-99;
Ord. No. 1-88, eff. 6-29-88.

Section 6-311. Deposit for Repairs

(a) Each applicant shall submit with the application for a Town of Somerset building and demolition permit a deposit in the form of a check or a bond in a form satisfactory to the Mayor in the amount of half of the Town building permit and demolition fees for the same project or \$2,000, whichever is greater.

(b) The deposit, or so much of it as may be necessary, shall be used or applied to restore or repair any damage to the Town rights-of-way, sidewalks, curbs, streets or parklands. The deposit, or so much of it as may remain after the restoration of Town rights-of-way, sidewalks, curbs, streets or parklands to as close to their original condition as possible, shall be returned to the owner of the property by the Mayor.

(c) The Town, in its discretion, shall determine how the deposit funds shall be spent if there has been damage or injury to Town rights-of-way, sidewalks, curbs, streets or parklands.

(d) Any interest earned on the deposit shall be retained by the Town of Somerset to be applied toward the costs associated with administering this Chapter. The deposit shall not be returned until the work for which the permit had been issued is

completed. Such completion shall be determined by the Mayor after notification by the applicant.

Source: Ord. No. 5-07, eff. 6-13-07;
Ord. No. 6-03, eff. 8-13-03;
Ord. No. 5-95, eff. 12-25-95;
Ord. No. 1-88, eff. 6-29-88.

Section 6-312. Increased Setbacks for Certain New Construction

(A) Applicability. Section 6-312 shall apply to all "New Building Construction" as defined below, for which a Town building permit is required under the Town Building Code and for which a Town building permit has not been approved as of the effective date of this section. Section 6-312 shall apply only to such New Building Construction on land zoned for single-family residential use. Section 6-312 shall not apply to buildings owned by the Town of Somerset.

(B) Definitions. "New Building Construction" for the purposes of this section only:

- (1) the construction or erection of a new building; or
- (2) the repair, alteration, replacement or remodeling of an existing building which would change its exterior dimensions, to the extent of such change.

(C) Setback Requirements. New Building Construction shall be set back from property lot lines at least as follows:

(1) Primary building, non-corner lot:

Side: Eight feet (8') one side;

Eighteen feet (18') sum for both sides;

Rear: Twenty feet (20').

Front: A front yard setback must be at least twenty-five feet (25') as measured according to §59-B-3.1 and §59-B-3.2 of the Montgomery County Code, and must also be consistent with the setbacks of nearby houses. For the purposes of this paragraph, "nearby houses" are those houses that are: (i) on the same side of the street as the subject property; (ii) not separated from the subject property by an intersecting street; and (iii) on a lot any part of which is within three-hundred feet (300') or four (4) consecutive adjacent lots of each side lot line of the subject property, whichever distance is greater. The setback for the new building construction shall be the average of the setbacks on the nearby houses, or twenty-

five feet (25'), whichever distance is greater. For the purposes of this paragraph, if any of the nearby houses is on a corner lot and fronts on a different street, the setback of the side yard closest to the subject property shall be the setback used to determine the average.

If the setback determined according to this paragraph is less than the setback that would result by applying the Montgomery County Code, the setback according to the County Code shall apply.

(2) Primary building, corner lot:

Side: The setback from the adjoining non-address right-of-way for the new building construction must be at least twenty-five feet (25') as measured according to §59-B-3.1 and §50-B-3.2 of the Montgomery County Code, and must also be consistent with front setbacks of the nearby houses on the adjoining non-address right-of-way. For the purposes of this paragraph, "nearby houses" are those houses that are: (i) on the same side of the street as the subject

property; (ii) not separated from the subject property by an intersecting street; and (iii) on a lot any part of which is within three-hundred feet (300') of the subject lot, or four (4) consecutive adjacent lots of the rear lot line of the subject property, whichever distance is greater. The setback from the adjoining non-address right-of-way for the new building construction shall be the average of the front setbacks for the nearby houses, or twenty-five feet (25'), whichever distance is greater. For the purpose of this paragraph, if any of the nearby houses is on a corner lot and fronts on a different street, the setback of the side yard closest to the subject property shall be the setback used to determine the average. If the setback determined according to this paragraph is less than the setback that would result by applying the Montgomery County Code, the setback according to the County Code shall apply.

Other: Eight feet (8').

Rear: Twenty feet (20').

Front: A front yard must be at least twenty-five feet (25') as measured according to §59-B-3.1 and §59-B-3.2 of the Montgomery County Code, and must also be consistent with the setbacks of nearby houses. For the purposes of this paragraph, "nearby houses" are those houses that are: (i) on the same side of the street as the subject property; (ii) not separated from the subject property by an intersecting street; and (iii) on a lot any part of which is within three hundred feet (300'), or four (4) consecutive adjacent lots of the side lot line of the subject property, whichever distance is greater. The setback for the new building construction shall be the average of the setbacks in the nearby houses, or twenty-five feet (25'), whichever distances is greater.

For the purposes of this paragraph, if any of the nearby houses is on a

corner lot and fronts on a different street, the setback of the side yard closest to the subject property shall be the setback used to determine the average. If the setback determined according to this paragraph is less than the setback that would result by applying the Montgomery County Code, the setback according to the County Code shall apply.

(3) Accessory buildings:

- i. 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 a minimum of sixty feet (60') from the front lot line and set back a minimum from side and rear yard property lines, as follows:

<u>Building Height</u>	<u>Minimum Setback</u>
Ten Feet (10')	Five Feet (5')
or less	
Over Ten Feet (10')	Five Feet (5')

but less than plus one foot
 Fifteen Feet (15') (1') for each
 foot or fraction
 of a foot in
 excess of Ten
 Feet (10')

Fifteen Feet (15') Ten Feet (10')
 or over plus two feet
 (2') for each
 foot or fraction
 of a foot in
 excess of Fifteen
 Feet (15')

<u>Linear Dimension</u>	<u>Minimum Setback</u>
Twenty-Four Feet (24') or less	Five Feet (5')
Over Twenty-Four Feet (24')	Five Feet (5') plus One Foot (1') for every / foot or fraction of a foot in excess of twenty- four feet (24')

If an accessory building has both a height greater than ten feet (10'), and a linear dimension greater than twenty-four feet (24'), the building must be set back the minimum setback distance of five feet (5'), plus the distance as determined according to the provisions of this paragraph above for building height, plus the distance as determined according to the provisions of this paragraph above for linear dimension. Example: the setback for a building with a height of fifteen feet (15') and a linear dimension of thirty feet (30') would be sixteen feet (16') (five feet (5') minimum setback plus five (5') additional feet for the height in excess of ten (10') feet, plus six (6') additional feet for the linear dimension in excess of twenty-four (24') feet.

Setbacks for accessory buildings on corner lots must be in accordance with the Montgomery County Zoning Ordinance, Division 59-C-1.326(B), adjusted for height and linear dimensions as established above in this paragraph.

- ii. 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:
 - a. The average elevation of the pre-development grade along the front of the structure;
 - b. The average elevation of the finished grade along the front of the structure;
 - c. The average elevation of the pre-development grade along the rear of the structure;
 - d. The average elevation of the finished grade along the rear of the structure.
- iii. Pre-development grade is the grade that existed at the time of the application for a building permit.

iv. The provisions of paragraph 6-312(C)(3) 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: any lot with less than sixty (60') feet of frontage; any lot that has a rear lot line adjoining a lot that fronts on Drummond Avenue; 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) Effective date. 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 the effective date of this section and which lawfully met

the setback requirements in effect immediately prior to the effective date of this section, but which does not meet the setback requirements of this section, shall continue to be a lawful use and shall not be deemed a non-conforming use. Such a building may be extended to the rear provided that the extension is no closer to the side property line than the existing building excluding projections (such as stoops, decks and chimneys) and the extension otherwise complies with this section. However, except as provided in the previous sentence, new building construction, as defined in this section, relating to such existing building, must comply with this section.

- (3) County grandfathering abrogated. Notwithstanding any provision to the contrary in the Montgomery County Zoning Code, the setback requirements set forth herein shall apply.

(4) Height limitations. Height limits shall not be affected by these provisions.

(5) Compliance or waiver required. No Town building permit shall be granted for such new building construction unless it complies with these provisions or waiver has been granted by the Town Council, as provided below.

(E) Waiver. The Town Council may grant a waiver of the requirements of this section, subject to the following limitations:

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

(a) The proposed new building 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 making such finding, the Council may consider such factors as:

- (i) size and location of proposed new building construction;
 - (ii) size and location of existing and potential buildings and other structures on nearby lots; and
 - (iii) 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 building construction is to be located due to exceptional narrowness, shallowness,

shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property. The following do not constitute practical difficulty for the purposes of this section:

- (i) the existence of nearby structures or buildings which do not comply with this section;
 - (ii) the granting of a waiver on other lots; or
 - (iii) any condition resulting from the conduct of the applicant or applicant's predecessor(s) in title.
- (2) The waiver must be for the minimum reasonably necessary to avoid the above conditions or situations.
- (3) 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.

(F) Procedure for Waiver.

- (1) The Mayor shall prepare a waiver application form for execution by the owner(s) of the site or

authorized agent of the owner(s), which shall conspicuously state that a waiver may be granted by the Town Council only after a public hearing at which the applicant and any other interested persons may be heard, and shall state the nature of the information and documents that must accompany the application.

- (2) An applicant may, at the time application is made for a Town building permit, submit on the form prepared by the Mayor a written application for a waiver of this section's requirements, together with documentary exhibits relating to the waiver and need therefor.
- (3) The procedure for hearing, decision and judicial review shall be as provided for building permits in Section 6-308.
- (4) A separate waiver application fee of \$150.00 shall be paid at the time of filing of the application.
- (5) The procedure for late or expedited review of the waiver application shall be as provided in Section 6-306, including Town Council discretion as to whether such late or expedited review shall be held.

- (6) Late and expedited review fees shall apply to the waiver application; provided, however, that should a late or expedited review also be requested for the building permit, which is to be heard simultaneously with the waiver application, only one late or expedited review fee shall be required.
- (7) No waiver shall be granted unless the Town Council finds, based on the evidence before it, that the waiver requirements of this section are met.

Source: Ord. No. 2-06; eff. 3/15/06;
Ord. No. 8-01, eff. 10-11-01;
Ord. No. 7-01, eff. 10-11-01;
Res. No. 14-98, eff. 11-3-98;
Res. No. 3-98, eff. 3-3-98;
Ord. No. 7-94, eff. 11-28-94.

Article IV. Requirements During Construction

Section 6-401. New Structures

- (a) Notice of Somerset quiet hours must be posted on site next to County Building Permit.
- (b) Parking Plan, if approved by Town Council, must be posted on site next to County Building Permit.
- (c) Wall Check. A copy of an engineer's wall check must be delivered or faxed to the Clerk-Treasurer within 24 hours of receipt by the contractor.

(d) Height Check. If the structure will be more than two stories high, the contractor must notify the Clerk-Treasurer after the frame and partitions have been erected, but before the installation of insulation and dry wall.

Source: Ord. No. 4-04; eff. 6-9-04;
Ord. No. 6-03; eff. 8-13-03;
Ord. No. 1-88; eff. 6-29-88.

Section 6-402. Additions

(a) Notice of Somerset quiet hours must be posted on site next to County Building Permit.

(b) Parking Plan, if approved by Town Council, must be posted on site next to County Building Permit.

(c) Footers Check. The contractor must notify the Clerk-Treasurer within 24 hours of completion of excavation for footers so that setback from property lines can be checked.

(d) Height Check. If the new construction will be more than two stories high, the contractor must notify the Clerk-Treasurer after the frame and partitions have been erected, but before installation of insulation and dry wall.

Source: Ord. No. 4-04, eff. 6-9-04;
Ord. No. 6-03, eff. 8-13-03.

Section 6-403. Noise Control

All activity shall be conducted in compliance with the noise limitations set forth in this Code, Chapter 11, Article III, Noise Control except that construction by contractors on Sundays

is prohibited unless it is interior work that cannot be heard by neighbors. Violation of any noise limitations is punishable as set forth in that article.

Source: Ord. No. 13-06, eff. 12/13/06;
Ord. No. 1-04, eff. 6-9-04.

Article V. Subdivisions

Section 6-501. Subdivision of Land

No person shall subdivide any land in the Town without prior notification to the Mayor and Council. Such notification shall be given by filing with the Clerk-Treasurer a description, including a plat, of the land to be subdivided and of each of the lots that comprise the subdivision. Such description shall be filed with the Clerk-Treasurer no later than the filing of a subdivision application for such property with the Maryland-National Capital Park and Planning Commission ("Commission"). All documents filed by the applicant with the Commission shall also be filed with the Clerk-Treasurer at the time of the filing with the Commission or prior thereto.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-88, eff. 6-29-88.

Article VI. Penalties

Section 6-601. Penalties

Violation of this Chapter 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 this Chapter 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. 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 subject to such fine. Further, the Town may abate any such condition at the violator's expense.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 2-00, eff. 3-15-00;
Ord. No. 2-89, eff. 4-24-89;
Ord. No. 1-88, eff. 6-29-88.

**Article VII. Regulation and Permitting of Certain
Fences and Walls**

Section 6-701. Purpose.

The purpose of this Article is to preserve the visual openness of the Town's streetscape by restricting the construction of visual and physical barriers along the public streets.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-91, eff. 4-29-91.

Section 6-702. Definitions.

For the purposes of this Article the following terms have the following meanings:

(a) "Corner lot": a lot in which two or more adjoining sides abut a public street.

(b) "Decorative iron-type materials": materials consisting of wrought iron or a similar material, designed so as to be decorative rather than solely utilitarian.

(c) "Fence": a structure serving as an enclosure, barrier or boundary, including the gate or gate posts.

(d) "Front yard": any portion of a yard of a lot located between a house and the inside front curb line of a public street upon which the house fronts.

(e) "Inside curb line": the line formed by the junction of the horizontal and vertical edges of the portion of the public street curb closer to the individual lot and farther from the public street.

(f) "Interior lot": any lot having access to a public street, other than a corner lot.

(g) "Public street": a road, street, alley or avenue, maintained by the Town, county or state for vehicular use.

(h) "Replacement fence or wall": a fence or wall which replaces a pre-existing fence or wall.

(i) "Retaining wall": a wall constructed for the sole purpose of holding back ground or earth.

(j) "Side/Back yard of corner lot": the portion of the side yard of a corner lot between the side of the house facing away from public street (the back of the house) and the rear property line. For the purpose of this Article, a homeowner may designate either side, but not both sides, of the house facing away from a public street as the back of the house.

(k) "Side yard": For a corner lot - any portion of a yard of a corner lot located between the house and the inside side curb line of a public street, and excluding any portion that lies within a front yard or the side/back yard.

For an interior lot any portion of a yard located between the house and the adjacent lot boundary line(s), and excluding any portion that lies within a front yard or between the house and the rear lot line.

(l) "Unnecessary hardship": a condition under which compliance with the ordinance would prevent the property owner from securing a reasonable return from his property or from making reasonable use of it; provided, however, that undue hardship shall not include conditions of mere financial hardship or an opportunity to get an increased return from the property, conditions that are not peculiar to the property in question, or conditions that are the result of the applicant's own actions.

(m) "Wall": an architecturally-solid erection of stone, brick or other material, greater than twelve inches (12")

in height, and intended for the purposes of privacy, security or enclosure.

Source: Ord. No. 8-06, eff. 8-11-06;
Ord. No. 6-03, eff. 8-13-03;
Ord. No. 8-02, eff. 7-10-02;
Ord. No. 8-91, eff. 7-15-91;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-703. Town of Somerset Permit for Fence or Wall Construction

(a) When Required. A permit is required to be obtained from the Town for any new or replacement fence or wall to be placed or constructed in the Town of Somerset.

(b) Exemptions.

(i) This Article does not apply to a temporary fence or wall placed or constructed to protect the public from construction or other dangerous activity or condition.

(ii) This Article does not apply to retaining walls necessary to retain existing earth, only to the extent of the height of the earth to be retained.

(iii) The Town of Somerset is exempt from all provisions of this Article.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-91, eff. 4-29-91.

Section 6-704. Applicable Provisions of
Montgomery County Code

(a) In addition to the provisions of this Article, provisions of the Montgomery County Code regulating fences and walls are applicable within the Town. Chapter 51 of the Montgomery County Code, Swimming Pools, is applicable as provided in section 10-102(a)(11) of the Town Code. Section 59-B-2.1, Walls or Fences, of the Montgomery County Code, is applicable as provided in section 10-101(hh) of the Town Code.

(b) If there is any conflict between any provision of this Article and of Chapter 51 of the Montgomery County Code, the Montgomery County Code provision shall apply.

(c) To the extent the provisions of this Article are more restrictive than those of section 59-B-2.1 of the Montgomery County Code, this Article shall apply. In such cases, the Town of Somerset shall administer any such more restrictive provisions.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-705. Materials Required for Construction
of Certain Fences

Any new or replacement fence to be placed or constructed within thirty-nine feet (39') of the inside front curb line in a front yard or within twenty-nine feet (29') of the inside side curb line in a corner lot shall consist primarily of wood or decorative iron-type materials.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-91, eff. 4-29-91.

Section 6-705

Section 6-706. Requirements for Finished Side
of Certain Fences and Walls and
For Removal of Existing Fences

(a) Any new or replacement fence or wall located in a front or side yard of a corner lot or interior lot, or side/back yard of a corner lot, facing and visible from a public street shall have a finished side facing the street. Any fence or wall located in the same area but not facing the street shall have a finished side facing the property of the nearest neighbor unless the fence is not visible from that neighbor's property. Any fence or wall in a back yard shall have a finished side facing the property of the nearest neighbor unless the fence or wall is not visible from the neighbor's property.

(b) Any existing fence on the applicant's property that is visible from a neighbor's property or from a street must be removed by the applicant as a condition of the grant of a permit for the erection of a new or replacement fence, provided the new or replacement fence is located in the same yard as the existing fence and approximately parallel to, and in proximity with, the existing fence. The Town Council may grant an exception from this provision for good cause.

Source: Ord. No. 9-06, eff. 8/11/06;
Ord. No. 8-05, eff. 12-13-05;
Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-02, eff. 4-10-02;
Ord. No. 5-94, eff. 8-21-94;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-707. Requirements for Walls.

(a) No new or replacement wall shall be permitted within thirty-nine feet (39') of the inside front curb line in a front yard or within twenty-nine feet (29') of the inside side curb line in a side yard. This section shall not apply to building walls or to retaining walls necessary to retain existing earth, only to the extent of the height of the earth to be retained.

(b) A new or replacement wall to be placed or constructed in any location other than those locations described in section 6-607(a) shall be no more than six and one-half feet (6 1/2') in height. This section shall not apply to building walls or to retaining walls necessary to retain existing earth, only to the extent of the height of the earth to be retained.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-708. Requirements for Fences on Interior Lots.

(a) On interior lots, any new or replacement fence to be placed or constructed within thirty-nine feet (39') of the inside front curb line shall be forty-two inches (42") or less in height measured from the ground immediately under the fence, and shall be at least fifty percent (50%) open when viewed from straight ahead, with solid parts being evenly distributed throughout and no solid part being greater than four inches (4")

in width, with the exception of brick fence posts, which may be up to twelve inches (12") in width.

(b) On interior lots, any new or replacement fence to be placed or constructed in a location other than that described in section 6-608(a) shall be no more than six and one-half feet (6-1/2') in height measured from the ground immediately under the fence.

(c) Notwithstanding the forgoing, no new or replacement fence shall be placed within three feet (3') of a Town sidewalk.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-709. Requirements for Fences on Corner Lots.

(a) On corner lots, any new or replacement fence placed or constructed within thirty-nine feet (39') of the inside front curb line in a front yard or within twenty feet (20') of the inside side curb line in a side yard shall be forty-two inches (42") or less in height measured from the ground immediately under the fence and shall be at least fifty percent (50%) open when viewed from straight ahead, with solid parts being evenly distributed throughout and no solid part being greater than four inches (4") in width, with the exception of brick fence posts, which may be up to twelve inches (12") in width;

(b) On corner lots, any new or replacement fence placed or constructed between twenty feet (20') and twenty-nine

feet (29') of the inside side curb line in a side yard shall be five feet (5') or less in height measured from the ground immediately under the fence and shall be at least fifty percent (50%) open, with solid parts being evenly distributed throughout and no solid part being greater than four inches (4") in width, with the exception of brick fence posts, which may be up to twelve inches (12") in width; or

(c) On corner lots, any new or replacement fence placed or constructed in a location other than those described in sections 6-609(a) and (b) shall be no more than six and one-half feet (6 1/2') in height measured from the ground immediately under the fence.

(d) Notwithstanding the foregoing, no new or replacement fence shall be placed within three feet (3') of a Town sidewalk.

Source: Ord. No.6-03, eff. 8-13-03;
Ord. No.8-91, eff. 7-15-91;
Ord. No.3-91, eff. 5-7-91;
Ord. No.1-91, eff. 4-29-91.

Section 6-710. Permit for Fence or Wall Placement or Construction - Application Form

(a) Duty of Mayor to Prepare Application Form. The Mayor shall prepare an application form for a permit to be issued pursuant to this Article.

(b) Completed Application Required. A permit shall be issued only if a completed application has been provided.

(c) Signing of Application. The permit application shall be signed by the owner of the site upon which the fence or wall is to be placed or constructed, or by his authorized agent.

(d) Required Information. The permit application shall be submitted to the Clerk-Treasurer and shall contain the following information, in addition to other information that may be requested by the Mayor or Town Council:

- (I) The street address of the site upon which the fence or wall is to be placed or constructed, or the legal description, if no address;
- (II) The full name and address of each owner of the property upon which the fence or wall is to be placed or constructed;
- (III) A plan or drawing showing the location of the fence or wall in relation to the entire property, and showing the location of adjacent streets and sidewalks;
- (IV) A description of the fence or wall to be placed or constructed, including design, height, width of wall, width of solid parts of fence, and openness;
- (V) A specific description of the materials of which such fence or wall shall consist;
- (VI) A copy of the Historic Preservation Commission work permit approving the identical

fence or wall for which the applicant seeks a Fence or Wall Permit, if such permission is required.

(VII) Signature of occupant of each property in Somerset whose property is adjacent to the proposed fence or wall indicating that the neighbor has seen the plans for the proposed fence or wall.

(e) Available to Public. The application and all accompanying documents shall be available for public inspection at the Town Hall.

(f) Fee. A twenty-five dollar (\$25.00) Fence or Wall Permit fee shall accompany the application.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 9-02, eff. 7-10-02;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-711. Mayor's Request for Additional Information.

The Mayor, in his discretion, may require such additional documents to accompany the permit application as:

(a) A drawing of the fence or wall viewed from the public street; and

(b) A photograph or sketch of a representative segment of the outside of a fence or wall identical to or as similar as possible in design and materials to the one to be placed or constructed.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-91, eff. 4-29-91.

Section 6-712. Mayor's Decision on Permits for Fence
or Wall Placement or Construction

The Mayor shall examine the application for the permit for placement or construction of a fence or wall under this Article and the accompanying documents. If the Mayor is satisfied that the proposed fence or wall complies with the criteria for permits under this Article, he shall issue a permit for such fence or wall as soon as is practicable. If the application does not conform to the requirements of this Article, the Mayor shall disapprove such application in writing, stating the reasons for such disapproval. The Mayor shall act on a permit application within thirty (30) days after its submission.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-713. Criteria for Mayor's Permit Decisions.

The Mayor shall consider, in approving or disapproving an application for a Fence or Wall Permit, such factors as:

- (a) Whether the application is complete and conforms to the requirements of this Article;
- (b) Whether the Historic Preservation Commission has approved the proposal, if applicable; and
- (c) Whether the proposed work complies with all other applicable Town Code provisions, county, state and federal laws.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 1-91, eff. 4-29-91.

Section 6-714. Exceptions Granted by the Town Council.

(a) Upon the application of an owner or his authorized agent, the Town Council may grant an exception to the requirements of this Article under the following circumstances:

(I) In any case of unnecessary hardship specific to that property; or

(II) For front yard fences up to four feet (4') high and up to sixty-five percent (65%) closed and with solid parts up to six inches (6") in width, if they will otherwise meet the open streetscape purposes of this Article and will not be closer than three feet (3') from a Town sidewalk; or

(III) For fences in the side/back yards of corner lots of up to five and one-half feet (5 1/2') high and up to sixty-five percent (65%) closed and with solid parts up to six inches (6") in width, if they will otherwise meet the open streetscape purposes of this Article, will be suitably obscured from the public street by plantings, and will not be closer than five feet (5') from a Town sidewalk. In determining whether the proposed fence will be suitably obscured from the

public street, the Council shall consider the type, location, and density of proposed plantings; the degree to which the fence and plantings will be in harmony with neighboring properties; and a landscape plan, if the owner submits one; or

(IV) In the case of building materials other than those specified in Section 6-605, if the fence materials are in harmony with the neighboring properties and the fence will otherwise meet the open streetscape purposes of this Article.

(b) In addition to the information and material specified in sections 6-610 and 6-611, the Council may request any further information necessary for it to reach a decision.

(c) The Mayor shall prepare, upon the approval of the Council, the necessary forms to implement this section.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-715. Procedures for Decision on Permit for Fence or Wall Placement or Construction

The procedures and other requirements set forth in the following provisions of the Town Code relating to building and tree permits shall be applicable to a permit and exception for fence or wall placement or construction pursuant to this Article:

(a) Section 6-305, regarding conditions for a permit, except that the reference to the Town Council in Sections 6-305(a) and (b) shall refer to the Mayor;

(b) Section 6-309, regarding modification of plans or specifications, except in the case of a Fence or Wall Permit, it shall mean modifications of the information contained in the application and accompanying documents as to design, location, height, width of wall, width of solid parts of fence, openness, and appearance of the fence or wall;

(c) Section 8-208, which as applied to this Article VI of Chapter 6, shall authorize appeals of the Mayor's decisions under this Article VI to the Town Council; and

(d) Section 8-209, which as applied to this Article VI of Chapter 6, shall authorize judicial review of Town Council decisions to the Circuit Court for Montgomery County, Maryland; and

(e) Section 6-308 shall apply to this Article VI of Chapter 6 to provide the procedure for and judicial review of Town Council decisions for exceptions provided for in Section 6-614 above. In addition, the Town Council shall conduct the required fact-finding hearing within sixty (60) days following the filing of the exception application, after giving at least ten (10) days notice of such hearing to the applicant and to all owners or occupants of property which adjoins or confronts the property which is subject to the exception application.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 7-92, eff. 7-28-92;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Section 6-715

Section 6-716. Nonconforming Fences and Walls.

Nothing in this Article shall be construed to make unlawful nonconforming fences or walls placed or constructed prior to April 29, 1991 and not changed, replaced, modified or repaired so as to constitute a replacement fence or wall.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 3-91, eff. 5-7-91;
Ord. No. 1-91, eff. 4-29-91.

Article VIII. Property Restriction Signs

Section 6-801. Property Restriction Signs.

(a) Defined. Property Restriction Signs are those signs designed to give notice to deter public entry on private property, including "no trespassing", "no soliciting", "keep off the grass", and "beware of dog" signs.

(b) Restrictions. The posting of a Property Restriction Sign is subject to the following:

- (1) A Property Restriction Sign shall not exceed 6 x 11 inches in size.

(2) The upper horizontal edge of a Property Restriction Sign shall not be higher than two and one-half feet (2-1/2') from the ground.

(3) A Property Restriction Sign must be set back at least twenty feet (20') from the front property line.

(4) A maximum of one Property Restriction Sign may be placed in the front yard, one in the rear yard, and one in each side yard; however, if the yard is greater than one hundred fifty feet (150') in length, there may be one sign for each one hundred fifty feet (150').

(5) A Property Restriction Sign cannot be attached or fastened in any way to any structure, house, including any window, or tree.

(6) A Property Restriction Sign may not be illuminated.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 8-91, eff. 7-15-91;
Ord. No. 1-91, eff. 4-29-91;
Ord. No. 4-90, eff. 4-23-90.

Article IX. Miscellaneous

Section 6-901. Previous Approvals.

Nothing in this Chapter shall affect the validity of any building permit issued by the Town prior to the effective date of this Chapter; provided, however, that the construction under such permit shall have been commenced within six (6) months of the date of approval of such permit. If work has not been commenced during such six (6) month period, the Town Council, at its next regularly-scheduled meeting, upon a permit holder's request, shall determine whether to require or to waive compliance with this Chapter.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 4-90, eff. 4-23-90;
Ord. No. 1-88, eff. 6-9-88.

Section 6-902. Town Exempt

The provisions of this Chapter shall not apply to the Town of Somerset when it is performing construction on any building or property owned by the Town, except that the Town must follow the notification-of-neighbors requirements of Sections 6-304 (e) and (f) of this Chapter.

Source: Ord. No. 6-03, eff. 8-13-03;
Res. No. 13-98, eff. 11-3-98;
Ord. No. 1-91, eff. 4-29-91;
Ord. No. 4-90, eff. 4-23-90;
Ord. No. 1-88, eff. 6-29-88.

Section 6-903. Limitations on Dumpsters.

No dumpster may be parked on the Town's streets without written approval of the Mayor. The Mayor may grant approval if he finds that the parking of the dumpster on a Town street will not impede traffic, will be in the public interest and will not adversely affect the public health, safety and welfare.

Source: Ord. No. 6-03, eff. 8-13-03;
Ord. No. 8-91, eff. 7-15-91.