

Chapter V

HOUSING AND BUILDING REGULATIONS

Article 1. Building Code

Section 5-101. Montgomery County Building Code Adopted

(a) Chapter 8 of the Montgomery County Code (1984 Edition) entitled “Buildings” which regulates all matters concerning the construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings and structures, on-site access facilities to such buildings and structures, and their service equipment, for both existing and proposed buildings and structures, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 8 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-102. Town Building Permit Required

(a) It shall be unlawful to construct, enlarge, place, alter, remove, or demolish any building or structure or part thereof, to include without limitation driveways and all parking surfaces, and dumpsters or other storage receptacles, without first obtaining a building permit from the Town. Application therefor, together with a copy of the plans and specifications for the work to be done, shall be filed with the Town. A permit shall be issued at the discretion of the Town Manager or designee who shall be satisfied that all such work shall comply with all ordinances of the Town.

(b) Before any permit is issued, the applicant shall pay to the Town a permit fee, the amount of which shall be determined by resolution of the Council from time to time.

(c) The permitting requirements of this Chapter do not exempt any person, firm, corporation, or developer from obtaining proper permits from Montgomery County as required by County law.

(d) A violation of this Section shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances. Notification in writing will be sent allowing three (3) business days to comply.

Section 5-103. Deposit Required

(a) Before any permit is issued pursuant to the provisions of this Article, the applicant shall post a bond or make a cash deposit with the Clerk-Treasurer for each permit issued in an amount of not less than fifty dollars (\$50) and no greater than five thousand dollars (\$5,000) to be determined by the Mayor which shall be security for the payment of the cost of repairing any damage the permittee may do to the streets or sidewalks of the Town,. Such bond or deposit or any unexpended balance thereof shall be returned by the Clerk-Treasurer to the permittee after inspection and approval by the Building Inspector.

(b) A bond or deposit in excess of five thousand dollars (\$5000) may be required by the Mayor if, upon advice of the Building Inspector, the Mayor determines the interests of the Town so require.

Section 5-104. Building Lines

It is the purpose of this section to:

1) Preserve the unique setting of the low density 19th and 20th century suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses; and

2) Encourage a compatible relationship between new or expanded houses and neighboring structures in scale, siting, and orientation on the lot; and

3) Maintain housing diversity and choice by retaining existing housing stock yet allowing a reasonable amount of expansion in living space.

4) Address the concerns of owners of certain lots with improvements erected prior to the establishment of current set-backs, which lots may have unique character and narrowness, with the understanding that it would be an unnecessary hardship to prohibit certain expansions of those improvements.

(a) For all setbacks and building lines, the Town of Kensington shall follow the laws of Montgomery County, Maryland, except as set forth herein.

(b) Side Yards. Unless a variance is granted in accordance with this section, no dwelling or any part or projection thereof erected on land zoned for single-family residential use shall approach nearer than ten (10) feet to either of the side lines of the lot on which said

dwelling is located or is to be located, or nearer than fifteen (15) feet to any other dwelling, subject to the following Exceptions:

Exceptions: When building an addition with a footprint of 650 sq ft or less, one side of the addition is permitted to conform to no less than the existing dwelling setback on that side, or seven (7) feet, whichever is greater. The sum of the side yards of the completed structure must total at least twenty feet (20) feet, or the existing dwelling combined setback, whichever is less. All additions must still maintain fifteen (15) feet to any other building.

(c) Any dwelling legally erected with side building lines that do not comply with this section must, if rebuilt, conform to this section unless the dwelling is destroyed by fire, wind, earthquake or flood. In the event of destruction by fire, wind, earthquake or flood, said dwelling may be reconstructed in the footprint existing at the time of destruction.

(d) An applicant may file a written request for a variance. The Town Council may grant a petition for a variance upon proof by a preponderance of the evidence that:

- (1) There are specific situations or conditions that are peculiar to the property that makes it unique from neighboring properties, including, but not limited to: (i) shape (narrowness/shalowness); (ii) topography; (iii) historic significance; (iv) environmental features; or (v) other extraordinary conditions unique to that property. The conditions must result from the application of building or zoning standards and not from the action, inaction or the personal circumstances of the property owner or the owner's predecessor(s);
- (2) The requested variance is the minimum necessary to overcome the unique condition of the property; and
- (3) The requested variance is not detrimental to neighboring properties or the community as a whole.

Section 5-105. Gasoline Stations

(a) For the purposes of this Section "gasoline filling station" shall mean any place of business supplying consumers with gasoline, lubrication oil, and some automotive accessories and repairs for a retail price, or any other commercial establishment which, for its own use, dispenses motor or other fuel from underground storage tanks.

(b) No building appurtenant to any gasoline filling station, shall be erected or located nearer than one hundred (100) feet to the center line of any street on which the property abuts. Nor shall any such building or structure be located nearer than thirty-five (35) feet to a side line or rear line of the lot or lots on which the building is situated.

(c) No pumps, tanks, islands, or signs shall be located closer than seventy-five (75) feet to the center line of any street or thirty five (35) feet to either the side or rear lot lines. No gasoline or fuel storage tank shall be located within one-thousand (1000)feet of any residential dwelling.

(d) All gasoline filling stations existing within the Town as of September 28, 1992 are exempt from the provisions of this Section, except that no future buildings and appurtenant structures may violate the provisions of this Section.

(e) A violation of this Section shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances.

Section 5-106. Plumbing and Gas Fitting

(a) Chapter 34 of the Montgomery County Code (1984 Edition) entitled “Plumbing and Gas Fitting” which regulates certain matters concerning the installation, alteration, addition, repair, removal, use, location, and maintenance of plumbing and gas fittings, and licensing of persons or firms doing such work, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 34 of the Montgomery County Code shall be kept in the Town of Kensington office and shall be made available during normal business hours.

Section 5-107. Driveways and Parking Surfaces – Single Family Residential Zones

(a) In the single family residential zone, except as authorized in this Section, no driveway, parking space, parking area, surface used or intended for parking, or parking structure, may be constructed or reconstructed:

- (1) Between the lot line and the existing front building line, or required front building setback line, whichever is greater; or
- (2) On a corner property, between the lot line and the required side setback line.

(b) A driveway not exceeding eleven feet (11’) in width, and a driveway no wider than its associated garage, may be installed between the lot line and the existing front building line, or required front building setback line, whichever is greater, or on a corner property between the lot

line and the required side setback line. No driveway authorized by this subsection may exceed the surface parking area requirements of the Montgomery County Zoning Ordinance, including the limit of 35% or 320 square feet of surface area and maximum width of twenty (20) feet.

(c) No permit required by Section 5-102 shall be issued without approval of the Town Manager or designee.

(d) No permit shall be issued if the Town Manager or designee determines that the proposed driveway would:

- (1) Create a traffic hazard, result in unreasonably restricted use of the streets, or impede the free movement of vehicles upon the streets;
- (2) Unreasonably restrict the distribution of parking spaces at the curb of streets;
- (3) Negatively affect the free and safe travel of pedestrians;
- (4) Pass through or be located within four (4) feet of a regular street crosswalk;
- (5) Pass through or be within four (4) feet of any designated bus loading zone;
- (6) Cross the outer grass strip and the sidewalk at an angle of less than thirty degrees to the curb line; or
- (7) Place an undue burden on the storm drainage system of the area or involve a storm drainage problem, unless construction plans make adequate provisions for solving any storm drainage problem as determined by the Council.

(e) If a permit application for a driveway or other parking surface is denied by the Town, an applicant may seek a variance from this section within 15 days of the date of denial. A variance may be granted after a hearing when the council finds that:

- (1) Strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship, upon the owner of the property;
- (2) The variance is the minimum reasonably necessary to overcome any exceptional conditions; and
- (3) The variance can be granted without substantial impairment of the intent, purpose, and integrity of this article.

(f) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the Council.

(g) The Council may not grant a variance that is not in compliance with the Montgomery

County Zoning Ordinance.

(h) This Section does not prohibit the reconstruction or replacement, with same dimensions and placement, of any driveway or parking surface legally existing before the effective date of this Section, or for which a variance has been granted.

Section 5-108. Dumpsters and Other Storage Receptacles

No dumpster or other receptacle for the storage or transport of construction or other debris, or for the storage of household or other items, greater in size than two cubic yards or greater, shall be placed on residential property without a permit issued by the Town. Permits shall expire not later than 30 days after issuance, and shall be subject to such further conditions as the Town Manager or designee may require. A permit may be extended for up to an additional 120 days in any twelve-month period by the Town Manager or designee upon good cause shown. Any further extension within the same period, not to exceed one year in the aggregate, may be authorized only by the Mayor and Town Council upon a showing of exceptional circumstance. Minimum Montgomery County setback and location requirements apply. A violation of this section shall be a Class A municipal infraction and shall be subject to penalties as provided in Chapter X of this Code of Ordinances. Each day a violation continues may be deemed a separate offense.

Section 5-109. Fences, Walls and Retaining Walls

(a) All fences, walls and retaining walls are required to be permitted in accordance with Sections 5-101 and 5-102 of this Code.

(b) The maximum height of a fence, wall or retaining wall within the front plane of a residential property is four (4') feet, except as follows:

(1) The height of a fence or retaining wall within the front plane of a house may have a maximum height of six (6') feet six (6'') inches, if the residential property is abutting a commercial or mixed-use property.

(c) The finished side of a fence must face outward when constructed within the front plane of a residential property, or on a corner lot.

(d) A fence or retaining wall will be considered an accessory structure if it exceeds six (6') feet six (6'') inches and setbacks will be applied to those structures as necessary.

(e) An application for construction of a fence or retaining wall to be installed on the property line must be accompanied by a letter of approval from the property owners(s) who share that property line.

(f) A fence or wall may not be located within the public right-of-way.

(g) A fence, wall other than a retaining wall, terrace, structure, shrubbery, hedge, planting or other visual obstruction on a corner lot in a residential zone may not exceed a maximum height of three (3) feet above the curb level for a distance of fifteen (15') from the intersection of the front and side street lines.

(h) A fence or wall must not be located within a utility or similar easement, or required drainage area, unless approved by the agency with jurisdiction over the easement.

(i) An applicant may seek a variance from this section within fifteen (15) days of the date of denial of an application. A variance may be granted after a hearing when the Council finds that:

(1) Strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property;

(2) The variance is the minimum reasonably necessary to overcome any exceptional conditions; and

(3) The variance can be granted without substantial impairment of the intent, purpose, and integrity of this article.

(j) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the council.

(k) A violation of Section 5-109 (a) shall be a Class A municipal infraction and all other violations shall be a Class E municipal infraction. Any property owner cited with a notice of violation of Section 5-109 (a) shall have three (3) days to bring the property into compliance before a municipal infraction will issue and ten (10) days for all other violations.

Article 2. Housing Code

Section 5-201. Montgomery County Housing and Building Maintenance Standards Adopted

(a) Chapter 26 of the Montgomery County Code, entitled “Housing and Building Maintenance Standards”, which sets minimum requirements for dwellings and provides for the inspection and condemnation of buildings by County officials, including any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference, except as otherwise provided herein.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) Montgomery County is hereby authorized to enforce the provisions of this Section within the corporate boundaries of the Town.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 26 of the Montgomery County Code.

(e) A violation of this Section shall be a Class D municipal infraction for commercial properties and a Class E municipal infraction for residential properties, subject to the penalties prescribed in Chapter X of this Code of Ordinances. Any person cited with a notice of violation of this Section shall have 30 days to bring the property into compliance before a municipal infraction will issue.

(f) A copy of Chapter 26 of the Montgomery County Code shall be kept in the Town office and made available during normal business hours.

Section 5-202. Maintenance of Structures and Fixtures

(a) All residential and non-residential structures and fixtures shall be maintained by the owner and occupant in good condition.

(b) All residential and non-residential structures must be maintained by the owner and occupant free of the following:

1. rust
2. graffiti
3. broken glass

(c) No residential or non-residential structure may exhibit flaking or peeling exterior paint, or unprotected wood, which covers more than ten (10) percent of the surface area of the structure.

(d) A violation of this Section shall be a Class D municipal infraction for commercial properties and a Class E municipal infraction for residential properties as subject to the penalties prescribed in Chapter X of this Code. Any person cited with a notice of violation of this Section shall have 30 days to bring the property into compliance before a municipal infraction will issue.

Section 5-203. New Home Warranty and Builder Licensing

(a) Chapter 31C of the Montgomery County Code (2017 edition, as amended) entitled “New Home Warranty and Builder Licensing” which sets minimum warranty requirements for new homes and requires builders of new homes to obtain licenses from the County, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 31C of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-204. Parking on Yards and Greenspace

(a) Parking on Yards and Greenspace Prohibited – Parking of vehicles, including trailers, chassis and other vehicles designed for use on the road, in the front and side yards of residential property shall be limited to surfaced parking areas, driveways, and designated parking structures such as garages and carports. Parking of vehicles on green space and yards in the front or side yards is prohibited. It is unlawful for any owner or occupant of the residence to allow any such vehicle to park on the front or side yard green spaces or yards. A violation of this section shall be a Class E municipal infraction subject to the penalties prescribed in Chapter X of this Code of Ordinances. Any person cited in violation of this Code shall have five days to remove any improperly parked vehicle after notification of violation.

(b) Exception – This section does not apply to parking of less than 24 hours duration that is related to a specific, not regularly occurring event, such as a social occasion or overflow parking for a religious service, or to temporary conditions, such as construction related parking.

Article 3. Electrical Code

Section 5-301. Montgomery County Electrical Code Adopted

(a) Chapter 17 of the Montgomery County Code (1984 edition) entitled “Electricity” which regulates the installation of certain electrical apparatus for light, heat or power, or power supply to radio and television transmitting and receiving stations in or on buildings, structures, and outdoor properties, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 17 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 4. Historic Preservation

The Town accomplished the inclusion of its historic district on the National Register of Historic Places in 1980. In 1986, the district was designated as a Montgomery County Historic District. The district is distinguished as a collection of late 19th and early 20th century houses exhibiting a variety of architectural styles popular during the Victorian period including Queen Anne, Shingle, Eastlake, and Colonial Revival. The houses share a uniformity of scale, set back, and construction materials that when coupled with the subdivision plan creates a Victorian garden suburb. The Vision of Kensington has been adopted as the Preservation Plan for the Town's Historic District.

Section 5-401. Montgomery County Historic Preservation Law

(a) Chapter 24A of the Montgomery County Code (1984 Edition) entitled "Historic Resources Preservation" which establishes guidelines for preservation of historic structures or sites and regulates work done on such structures and sites, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 24A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-402. Montgomery County Historic Property Notification Law

(a) Chapter 40 (entitled "REAL PROPERTY"), Section 12A of the Montgomery County Code which requires sellers of real property to disclose to prospective buyers whether the property is designated as a historic site, located in a historic district, or listed on the locational atlas of historic sites, and if so, that special land use and physical change restrictions may apply, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of the Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of the Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 40, Section 40-12A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 5. Landlord-Tenant Relations

Section 5-501. Montgomery County Landlord-Tenant Relations Code

(a) Chapter 29 of the Montgomery County Code (1984 Edition) entitled “Landlord-Tenant Relations” establishing guidelines and regulations for the relationships and obligations between landlords and tenants, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 29 of the Montgomery County Code shall be kept in the Town of Kensington office and shall be made available during normal business hours.

Section 5-502. Tenant Displacement

(a) Chapters 53A and 11A of the Montgomery County Code (1984 Edition) entitled “Tenant Displacement” and “Condominiums” respectively, establishing guidelines and regulations for the displacement of any tenants in a rental unit(s) resulting from the sale of said rental unit(s) or its conversion into condominiums, including any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapters 53A and 11A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 6. Moderately Priced Housing

Section 5-601. Moderately Priced Housing

- (a) Chapter 25A of the Montgomery County Code, entitled “Housing, Moderately Priced”, which provides for low-and moderate-income housing to meet existing and anticipated future employment needs, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code. The annually revised standards of eligibility for the moderately priced dwelling unit (“MPDU”) program set by regulation by the County Executive for Montgomery County are hereby adopted. These standards specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. Regulations under Section 25A (10) of the Montgomery County Code, and as they are adopted or amended, are hereby adopted.
- (b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.
- (c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.
- (d) A copy of Chapter 25A of the Montgomery County Code shall be kept in the Town Office and shall be made available during normal business hours.