Town of Garrett Park

Ordinance No.: 2008-_____
Introduced: _____
Adopted: _____
Effective Date: _____

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Garrett Park, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and

WHEREAS, Section 78-17(55) of the Charter of the Town of Garrett Park empowers the council to regulate or restrict size of buildings and other structures, the percentage of lot occupancy, the size of yards, courts and other open spaces, location of buildings, structures, and land for residence or other purposes; and

WHEREAS, in 1992 the Maryland General Assembly enacted Chapter 573 of the 1992 Laws of Maryland, codified at Article 28, Section 8-115.1 of the Maryland Code, to authorize the legislative body of a municipal corporation within Montgomery County, such as the Town of Garrett Park, to regulate the construction, repair, erection or remodeling of single family residential houses, buildings or other structures on land zoned for single family residential use, as it relates to, among other things, the location of structures on a property, including setback requirements, and to ratify building requirements imposed before October 1, 1992; and

WHEREAS, on July 20, 1992, the Town Council adopted Ordinance Number 92-2 which added Section 402(b)(3) to the Town Code and established a minimum combined setback requirement pursuant to the Town Council's authority to impose building requirements, including the regulation of building setbacks; and

WHEREAS, in 2006, Article 28, Section 8-115.1 of the Maryland Code was amended to grant to municipal corporations in Montgomery County, such as the Town of Garrett Park, the

authority to regulate, among other elements, the dimensions of structures, including height, bulk, massing and design, and lot coverage, including impervious surfaces; and

WHEREAS, the Town Council finds that the amendment of Section 402(b)(3) of the Town Code will provide clarity and certainty regarding the requirements for construction of buildings within the Town; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 8th day of August, 2008, a copy of the following Ordinance was submitted to the Montgomery County Council for its comments; and

WHEREAS, no comments were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council, in public session assembled on the 8th day of September, 2008, conducted a public hearing at which it considered the following Ordinance; and

WHEREAS, on September 8, 2008, as a result of public comments, the Council decided to defer consideration of the Ordinance and to consider both the original version and an alternate version at its October 13, 2008 meeting; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on September 11, 2008, copies of both the original version and the revised version, as set forth herein, of the following Ordinance were submitted to the Montgomery Council for its comments, and

WHEREAS, no comments were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the original and revised versions of the Ordinance were transmitted to the Montgomery County Council, the Town Council, in public session assembled on the 13th day of October, 2008, conducted a public hearing at which it considered both versions of the following Ordinance; and

WHEREAS, the Town Council finds that amendment of Section 402(b)(3) of the Garrett Park Town Code and of related provisions in Chapter 4 of the Town Code as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, the Town Council of the Town of Garrett Park does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT PARK TOWN CODE TO DELETE THE COMBINED SETBACK REQUIREMENT AND TO ADD A LOT COVERAGE REQUIREMENT.

SECTION 1. BE IT ORDAINED AND ORDERED, this ___ day of _____, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code, Article 28, Section 8-115.1 of the Maryland Code, and the Town Charter, that Section 402 of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 402. Building Setback Lines **and Lot Coverage**

(a) Purpose.

(1) To protect the public health, safety and welfare of the Citizens of Garrett Park and, more specifically, to preserve and protect the lands and improvements within the Town by ensuring that all proposed new construction and alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development.

(2) To establish stricter or additional building location, ~~or~~ setback **and lot coverage** requirements than those of the current Montgomery County Zoning Ordinance for the construction, repair, erection, or remodeling of houses, buildings, or other structures on land zoned for single-family residential use.

(3) To provide a procedure for a variance from the strict application of the building requirements contained in this section.

(b) Setback **and Lot Coverage** Requirements. All buildings on land zoned for single-family residential use hereafter erected or altered shall adhere (except as provided in Section 403(d)) to the setback **and lot coverage** requirements of the Montgomery County Zoning Ordinance and definitions in effect at the time of the application for a building permit, and to the additional setback **and lot coverage requirements** set forth below:

* * *

(3) ~~**Minimum combined setback. The total of the combined setback areas for main buildings, being the sum of front, rear, and side yards, shall not be less than eighty-two (82) per cent of the entire lot area.**~~ **Maximum lot coverage. The maximum percentage of the net lot area that may be covered by a main building, including, but not limited to, chimneys, covered and uncovered porches, decks, steps and stoops, covered breezeways, bay and bow windows and any other structure**

above the ground plane and attached to such building, is eighteen (18) per cent.

(4) Adjustments of setback **and lot coverage** requirements.

(4.1) Where applicable, either of the following adjustments may be made in the required setback:

(4.1.1) If the total side setback requirement is more than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line, it may be reduced to not less than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line provided the resulting reduction in side yard areas is offset by an equivalent increase in the square footage of the rear and/or the front yard areas.

(4.1.2) If the rear setback requirement is more than twenty-five (25) feet for lots with over ninety (90) feet in depth or more than fifteen (15) feet for lots with ninety (90) feet or less in depth, it may be reduced to not less than twenty-five (25) feet for lots with over ninety (90) feet in depth or fifteen (15) feet for lots with ninety (90) feet or less in depth provided the resulting reduction in rear yard area is offset by an equivalent increase in the square footage of the side and/or the front yard areas.

(4.2) Building setback lines **and lot coverage requirements** shall be subject to adjustment under Section 403 (Variances) of this Code of Ordinances to the extent necessary to assure that a reasonable net lot area is available for the construction of any additions to main and accessory buildings.

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ___ day of ___, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that Section 403(c)(1)(1.1) of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 403. Variances

* * *

(c) Conditions upon which relief may be predicated

(1) No variance shall be granted unless the Council finds, on the basis of the evidence of record that good cause has been shown on the following grounds for relief from the strict application of the building requirements.

(1.1) Because of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the setback **or lot coverage** requirements of Section 402 are strictly applied to the construction and the strict and literal application of Section 402 to the lot would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

SECTION 3. AND BE IT FURTHER ORDAINED AND ORDERED, this ___ day of ___, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ___ day of ____, 2008.

ATTEST:

TOWN OF GARRETT PARK

_____

Edwin Pratt, Jr., Clerk-Treasurer
Town of Garrett Park

_____

Christopher Keller, Mayor
Town of Garrett Park

Bold and Underline indicates new material
~~**Bold and Strikethrough**~~ indicates material deleted
* * * indicates material unchanged

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