

DRAFT MINUTES

In response to a question from a resident regarding the status of the Village Code regarding building regulations, and more specifically setbacks, Mr. Podolsky provided the following summary.

In 1922, the Maryland General Assembly created Section 5 of the Village of Chevy Chase (the "Village") as a special taxing area. In 1923, the Board of County Commissioners for Montgomery County approved a series of regulations for the welfare and government of the Village as submitted by the Chevy Chase Citizens Committee of Section 5. These regulations included a requirement that "no part of any house or of any structure appurtenant thereto shall be erected or maintained within five (5) feet of the sidelines of the premises, nor within ten (10) feet of the nearest adjacent house."

In 1927, the Maryland General Assembly adopted the Regional District Act. This Act created a regional planning and zoning district which encompassed the portions of Montgomery and Prince George's County in close proximity to the District of Columbia. Although the Regional District has been expanded to include almost all of Montgomery and Prince George's Counties, the original district included the Chevy Chase area, including the Village. The Regional District Act gave planning authority to the Maryland-National Capital Park and Planning Commission and gave exclusive zoning authority for the Montgomery County portion of the Regional District to the Montgomery County Council sitting as a District Council. Accordingly, as of 1927, the authority to "zone" was taken from municipalities in the Regional District Act and given to the County.

In 1982, the Village converted from a special taxing area to a municipal corporation. Municipal corporations have the authority under State law to adopt building codes. Municipalities in Montgomery and Prince George's County enforced setback requirements under the belief that "setbacks" could be imposed under the authority to adopt building regulations.

In 1991, in the case of *Chevy Chase View v. Rothman*, the Maryland Court of Appeals (the highest Court in Maryland) ruled that, although court decisions in some States have

held that setbacks can be part of a building code, under Maryland law, setbacks are "zoning" - not building regulations (which according to the Court of Appeals include electrical, plumbing, HVAC and other safety codes) and, therefore, were within the exclusive jurisdiction of the County Council sitting as a District Council.

In 1992, the Maryland General Assembly, at the request of Chevy Chase Village and other municipalities, adopted remedial legislation to grant to municipalities in the Montgomery County portion of the Regional District, the authority to impose setback restrictions. This legislation was codified as Article 28, Section 8-115.1 of the Maryland Code. However, during the legislative process, the law granting setback authority was amended to include two significant prerequisites to the exercise of such authority. First, any ordinance or regulation imposing setbacks must provide a procedure for the waiver of the strict application of the requirements. Second, before adopting an ordinance or regulation imposing setbacks, a municipal corporation must hold a public hearing on the ordinance and, at least thirty (30) days before the public hearing, transmit a copy of the proposed ordinance or regulation to the Montgomery County Council.

In 1992, or soon thereafter, most of the "down-county" municipalities re-adopted their setback regulations after transmitting a copy to the Montgomery County Council, holding a public hearing and incorporating a procedure for obtaining a waiver from the strict application of the setback requirements.

The Village Manager, Ms. Higgins, has advised that there is no record indicating that the Village re-adopted the setback requirements following the procedures required by State law and there is no record of the adoption of a waiver provision.

In 1999, the Municipal Code Corporation, publisher of codes for municipalities throughout the country, prepared a proposed comprehensive revision to the Village Code. This document has been circulated as the 1999 Code of Ordinances. However, Ms. Higgins has advised that the 1999 Code was never adopted by the Village Council.

In light of the foregoing, Mr. Podolsky explained that the 1999 version of the Code is not enforceable because it was

never adopted by the Council and the setback requirements and any other "zoning" requirements in the 1923 Regulations would not be enforceable because they were not adopted in accordance with the requirements of Article 28, Section 8-115.1. Mr. Podolsky noted that sections of the 1923 Regulations that do not involve "zoning" and are within the authority of the Village Council to adopt, appear to remain in effect, as they may otherwise have been amended, and generally continue to be enforceable.

Mr. Podolsky noted that, in 2006, Article 28, Section 8-115.1 was amended to expand the regulatory authority of municipalities to include height, bulk, mass, design and lot coverage in addition to setbacks.

After hearing comments from the community, the Council agreed to consider the possible adoption of regulations in accordance with the requirements of Section 8-115.1, but recognized that this would be a substantial undertaking and that there were probably many residents who were not in attendance but who might have thoughts on the matter.