

APPENDIX A

Adopted June 4, 2005
Amended March 7, 2009

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APPROVED 5/3/09
(WRITTEN VOTE 7-30, N-6)
AT TOWN MEETING

Town of Etna Minimum Lot Size, Frontage and Setback Ordinance

- I. TITLE – Town of Etna Minimum Lot Size, Frontage and Setback Ordinance
- II. AUTHORITY – This Ordinance is adopted and hereafter may be amended pursuant to, and consistent with, Article VIII, pt. 2, Section 1 of the State of Maine Constitution and Title 30-A, M.R.S.A. Section 3001 (Home Rule).
- III. PURPOSE – To provide for the preservation of the rural character of the Town of Etna, and to maintain a rate of growth that allows for a manageable increase in essential municipal services.
- IV. DEFINITIONS:
 - Non-conforming lot** – a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area or frontage requirements.
 - Non-conforming structure** – a structure which does not meet setback requirements, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
 - Road** – a public or private one-way or two-way road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with cul-de-sacs and dead-end roads. This definition includes secondary roads, but does not include driveways.
 - Driveway** – a private road, easement, or private right-of-way, giving access from a public road, private road, or private right-of-way, leading to a building. A driveway does not serve more than two buildings that have or require separate power meters to be installed for electrical service.
 - Structure** – anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and trailers.
- V. SCOPE (APPLICABILITY) – Legal lots of record existing on or before June 4, 2005 are exempt from lot size and frontage requirements imposed after that date, and structures in legal existence as of that date are exempt from setback requirements imposed after that date.
- VI. ORDINANCE REQUIREMENTS & ADMINISTRATION – No lot shall be created with; nor shall any existing lot be reduced in size; by transfer, title, lease or otherwise to less than 2 (two) acres in area, and any lot so created or reduced shall not have less than 200 (two hundred) feet of frontage along a public or private road.

The minimum setback for all structures shall be 50 feet from the closest edge of the road rights of way and 25 feet from each of the other property lines.

- A. Setback: No building, mobile home or accessory structure shall be constructed closer than 25 feet from any boundary line, and all buildings and accessory structures shall have a setback of at least 50 feet from the closest edge of the road right of way.
- B. Minimum lot size: A building may not be constructed on a lot of less than 2 (two) acres, except a permit may be issued for construction on a non-conforming lot of record in accordance with Section XI of this Ordinance.
- C. Road Frontage: Except as provided in Section XI of this Ordinance, all building shall be constructed on a lot or parcel of land with a public or private road frontage of at least two hundred (200) contiguous feet.
- D. Back Lots: The establishment of and/or construction or building on so-called back lots is authorized, provided such lots are provided with legal rights-of-way to a public road, of not less than 50 (fifty) feet in width and further, that such rights-of-way do not reduce the road frontage or area requirement of an already existing lot fronting on a road to below the minimum required size and road frontage. Back lots so established must be generally rectangular, having no side of less than 200 (two hundred) feet and contain a minimum of 87,120 square feet, the equivalent of two (2) acres, within their boundaries and have no more than a 4-to-1 ratio of depth to frontage.
- E. Multiple Dwelling Units on a Single Lot: If more than one dwelling unit is constructed on a single lot or parcel, the parcel shall contain at least two (2) acres and two hundred (200) feet of frontage on a public or private road for each dwelling unit or conform to requirements of Section XI.

VII. SEVERABILITY & CONFLICT

- A. Should any section or provision of this Ordinance be declared by the Courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
- B. This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law.

VIII. AMENDMENTS – This Ordinance may be amended in part or whole, by a majority vote at any Etna Town Meeting, after proper procedures.

IX. EFFECTIVE DATE – March 7, 2009

X. REPEAL – This Ordinance repeals and replaces any ordinance or provisions of any ordinance currently in effect which has established lot size, frontage, and/or setback requirements.

XI. NON-CONFORMANCE

- A. Purpose: It is the intent of these provisions to promote land use conformities, except that legally existing before the effective date of this Ordinance shall be allowed to continue, subject to the requirements set forth in this section.
- B. General Requirements:

1. Transfer of Ownership: Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance: The Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of non-conforming uses and structures.

C. Non-conforming Structures:

1. Expansions:

a. A non-conforming structure may be added to or expanded after obtaining a permit from the Code Enforcement Officer, as per Town of Etna Building Code Ordinance.

b. Said addition or expansion shall not increase the non-conformity of the structure with respect to property setbacks.

c. The installation or construction of accessory structures, such as a garage or shed outbuildings, shall be deemed an expansion or addition of a non-conforming structure.

2. Relocation:

a. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located.

b. The site of relocation shall conform to all setback requirements to the greatest practical extent as determined by the Code Enforcement Officer and the Planning Board.

c. The applicant shall demonstrate, if necessary, that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the Law and said Rules.

d. To determine compliance, the Code Enforcement Officer shall base his/her decision on the size of the lot, the slope of the land, the potential for soil erosion, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

3. Reconstruction or Replacement:

a. Any non-conforming structure may be reconstructed or replaced provided that a permit is obtained from the Code Enforcement Officer within one (1) year from the date of the event or occurrence causing the need to replace or reconstruct such structure.

b. Such reconstruction or replacement shall comply with the setback requirements to the greatest practical extent as determined by the Code Enforcement Officer and the Planning Board.

c. The applicant shall demonstrate that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the Law and said Rules.

D. Non-conforming Uses:

1. Expansion: An existing non-conforming use may be expanded, after obtaining a permit from the Code Enforcement Officer, as per Town of Etna

Building Code Ordinance, unless it is found that the plan does not meet the intent of this Ordinance.

2. Change of Use:

- a. An existing non-conforming use may be changed to another non-conforming use after obtaining a permit from the Code Enforcement Officer.
- b. The Code Enforcement Officer, after consulting with the Planning Board, shall approve a change of use unless it is found that the proposed use is not equally or more appropriate than the existing non-conforming use.
- c. The proposed use shall have no greater adverse impact on adjacent properties than the former existing non-conforming use.
- d. A permitted or conforming use shall not be changed to create a non-conforming use.

3. Discontinuance:

- a. A non-conforming use that has been discontinued or abandoned for one (1) year or longer shall not be resumed and such non-conforming use shall be deemed extinguished.
- b. The removal or demolition of a non-conforming structure, for whatever reason, shall not constitute an abandonment of a non-conforming structure or use, provided that the required permit for such replacement structure is obtained from the Code Enforcement Officer within one (1) year from the date of removal of such non-conforming structure.

4. Succession: Where a non-conforming use is succeeded by a permitted use, the property shall thereafter conform to the permitted use, and such non-conforming use shall not thereafter be resumed.

E. Non-conforming Lots:

1. Vacant Lots:

- a. A vacant, non-conforming lot of record legally existing on the effective date of this Ordinance may be built upon.
- b. Said lot must be held in separate ownership and not contiguous with any other lot in the same ownership.
- c. All provisions of this Ordinance except lot size and frontage must be met.
- d. Any variation from setback requirements shall be obtained by action of the Board of Appeals.
- e. If more than one residential dwelling unit or other use is built, located or created on a non-conforming lot of record, the minimum lot size shall be met for each residential dwelling unit, and the frontage and setback requirements shall be met.

2. Contiguous Lots – Built:

- a. If two or more contiguous lots or parcels are in the same ownership or record at the time of adoption or amendment of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together.
- b. All such lots shall meet the requirements of the Subsurface Wastewater Disposal Rules.

c. When such lots are divided, each lot thus created must conform to the dimensional requirements of this Ordinance, to the greatest practical extent, as determined by the Code Enforcement Officer and the Planning Board.

3. Contiguous Lots – Vacant or Partially Built;

- a. If two or more contiguous lots or parcels are in the same ownership of record at the time of the adoption or amendment of this Ordinance, and
- b. they do not individually meet the dimensional requirements of this Ordinance, or subsequent amendments, and
- c. if one or more of the lots are vacant or contain no principal structure, then
- d. the lots shall be combined to the extent necessary to meet the dimensional requirements.

4. Single Lot with Multiple, Principal Structures – Division:

- a. If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold as/on a separate lot.
- b. All resulting lots shall meet the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
- c. A permit from the Code Enforcement Officer shall be required prior to the creation of a non-conforming lot through the division of a lot of record with multiple, principal structures or uses thereon.
- d. The Code Enforcement Officer, after consulting with the Planning Board, shall issue the required permit upon his/her findings that each lot created by the division conforms, to the greatest practical extent, to the setback, lot size and frontage requirements of this Ordinance.

XII. SETBACK REDUCTION APPEALS: The Board of Appeals may grant reductions from the minimum setback requirements set forth in Section VI of this Ordinance according to the following criteria:

- A. Setback reduction appeals are only available to reduce the minimum requirements for setbacks of structures from lot boundary lines. Setback reduction appeals shall not be used, and are not available, to reduce the required minimum setbacks of structures from bodies of water.
- B. Setback reduction appeals may only be granted and are only available for lots created before June 4, 2005 and for lots with a residential dwelling as the principal structure.
- C. The Board of Appeals shall not grant a setback reduction appeal if the Board finds that granting the setback reduction will result in unreasonable interference with the privacy interests of the abutting landowners.
- D. In granting a setback reduction the Board of Appeals may attach reasonable conditions which it may deem necessary to serve the purpose of this Ordinance.
- E. A setback reduction appeal shall not be granted to enable construction or renovation that will create additional dwelling units.

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- F. Setback reduction appeals may only be granted to the minimum extent necessary to accomplish the purpose of the appeal. Setbacks may not be reduced by appeal to less than the following absolute minimum setbacks: side yard -10 feet; front yard - 15 feet; rear yard - 15 feet.

XIII. APPEAL PROCEDURE:

A. Making an Appeal:

1. Appeals may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. The Board of Appeals will hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or the Planning Board in the administration of this Ordinance.
2. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board of Appeals, upon showing of good cause, may waive the thirty (30) day requirement.
3. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes: (1) A concise written statement indicating what relief is requested and why it should be granted, and (2) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
4. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
5. The Board of Appeals will review each appeal application in an appellate capacity, by reviewing the record created by the Code Enforcement Officer and/or the Planning Board and deciding whether or not the record supports the decision being appealed. If it is decided that the appeal can proceed, the applicant will make out a check for \$50 to the Town of Etna to cover the costs of the appeal process.
6. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request. Abutting landowners shall be notified in writing at least two weeks in advance of the hearing.

B. Decision by the Board of Appeals:

1. A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
2. The Board of Appeals shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
3. The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

XIV. ENFORCEMENT/VIOLATIONS

- A. Enforcement Procedure: If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. A copy of such notice shall be sent to the Board of Selectmen for the Town of Etna and shall be kept as a permanent record.
- B. Legal Actions: If such notice does not result in the correction or termination of the violation, the Code Enforcement Officer shall notify the Selectmen of the Town of Etna for further action. The Selectmen are herein authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines that may be appropriate or necessary to enforce the provisions of this Ordinance. Any person(s) in violation of any of the provisions of this Ordinance, after receiving notice thereof from the Selectmen, shall be guilty of a civil violation, and on conviction, shall be subject to a minimum fine of \$200.00 (two hundred dollars) up to a maximum of \$5,000.00 (five thousand dollars) per violation, which fine or fines shall be recovered on complaint to the use of the Town of Etna. Each day the violation exists shall be considered a separate violation. Such person(s) in violation shall also be liable for court costs and attorney fees incurred by the Town of Etna.

Respectfully submitted by the Planning Board;

John Merrill, Chair

Date

Paige Blouin, Member

Date

Deb Garcia, Secretary

Date

Stacy Green, Member

Date

