

Vol 3/7/15

**Town of New Sharon (Proposed)**  
**Minimum Lot Size Ordinance**

**SECTION I. Purpose**

The purpose of this Ordinance is to establish minimum lot sizes, setbacks, and other dimensional requirements in the Town of New Sharon in order to promote the health, safety, and welfare of the residents of New Sharon and to protect the environment.

**SECTION II. Authority, Effective Date, Administration, Severability, Conflicts**

- A. This Ordinance is adopted and hereafter amended pursuant to and consistent with Article VIII, Part 2, Section 1 of the Constitution of The State of Maine, and Title 30-A, M.R.S.A., Sections 3001-3014 (Ordinances) and the Planning and Land Use Regulation Act 30-A M.R.S.A. Section 4312, et seq. and 30-A M.R.S.A. Section 4452.
- B. This Ordinance shall be known as and cited as the “Town of New Sharon Minimum Lot Size Ordinance.” The effective date of this Ordinance shall be the date this Ordinance was certified and filed by the Board of Selectmen with the Town Clerk pursuant to 30-A M.R.S.A. §3002(2) and shall, subject to the severability clause in Paragraph D. below, be applicable to the maximum extent permitted by law to all actions, activities, proceedings, and applications pertaining to new construction or uses of land, dwellings, or structures. No person may proceed with the new construction of a structure or a new use of land without the Code Enforcement Officer’s prior written approval, or occupy a new structure without a certificate of compliance with the Ordinance duly issued by the Code Enforcement Officer.
- C. The Code Enforcement Officer shall administer this Ordinance.
- D. Should any section or provision of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.
- E. This Ordinance shall not be construed to repeal any existing ordinances, except that upon approval, this Ordinance repeals and replaces all prior versions of the Town of New Sharon Minimum Lot Size Ordinance. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute applicable in the Town or from any jurisdiction, the more restrictive provision shall control. This Ordinance shall not impair private restrictions placed upon property, provided however, that where this Ordinance imposes greater restrictions, its provisions shall control.

### **SECTION III. Definitions**

In general, words and terms used in this Ordinance shall have their customary dictionary meanings. Words used in this Ordinance not defined herein, which are defined in the New Sharon Shoreland Zoning Ordinance, have the same meaning as defined therein. More specifically, certain words and terms used herein are defined as follows:

**Back Lot:** A parcel of land which does not have sufficient ~~any~~ frontage, as prescribed in this Ordinance, on a state or town accepted road or street.

**Contiguous Lots:** Lots that share at least one boundary line, or are separated at any point by a body of water less than 15 feet wide or by a private road, driveway, or right-of-way, used by owners abutting the private road or right-of-way.

**Dwelling:** Any building or structure or portion thereof designed or used for residential purposes. The term "dwelling" includes manufactured housing.

1. Single-Family Dwelling- Any structure containing only one (1) dwelling unit for occupation by not more than one (1) family.
2. Two-Family Dwelling- A building containing only two (2) dwelling units, for occupation by not more than two (2) families.
3. Multi-Family Dwellings- A building containing three (3) or more dwelling units, such buildings being designed exclusively for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units.
4. Dwelling Unit- A room or group of rooms designed and equipped for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing sleeping, living, cooking and eating facilities regardless of the time period rented. Recreational vehicles are not residential dwellings.

**Industrial:** Any activity which includes the fabrication, servicing, manufacturing, storage, processing, shipping of products, or the extraction of minerals.

**Institutional:** Of or by a governmental, educational, religious, medical, charitable, or nonprofit organization, either public or private.

**Legally Nonconforming Back Lot of Record:** A legally nonconforming lot of record that is a back lot.

**Legally Nonconforming Lot of Record:** A lot of record that conformed to the dimensional requirements of any and all applicable laws and ordinances in effect at the time of its creation (including any earlier version of this Ordinance) but does not conform with the dimensional requirements of this Ordinance.

**Lot:** To be given same meaning as Lot of Record.

**Lot of Record:** A contiguous defined parcel of land in the same ownership segregated from all adjacent land by deed, plat, or plan recorded in the Franklin County Registry of Deeds.

**Manufactured Housing:** A structural unit or units designed and built in a manufacturing facility for occupancy as residential dwellings and transported by the use of its own chassis, or an independent chassis, to a building site. This includes units commonly called “mobile homes” or “modular homes.”

**Parcel of Land:** All contiguous land in the same ownership, whether or not the tract is separated at any point by a body of water less than 15 feet wide, or a private road established by abutting landowners.

**Right-of-Way:** A legal right of passage acquired by deed, prescription, implication, statute, court order, or other means.

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway.

**Road Frontage:** The horizontal distance, measured in a straight line, without regard to road curvature, between the points of intersection of the side lot lines with the nearest legal limit of the road, if ascertainable in accordance with Section VI.D. below, or if not, the edge of pavement or traveled way of the road.

**Setback:** The shortest horizontal distance from a lot line, or right-of-way limit to the closest point of a structure. Front setbacks of structures constructed after the effective date of this Ordinance are measured from the nearest right-of-way limit, as determined in accordance with Section VI.D. below.

**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 (such as decks, walkways, driveways, surfaced parking areas, patios, etc...), exclusive of mailboxes, address signs, fences, and poles, wiring and other aerial equipment normally associated with service drops such as guying and guy anchors. The term includes structures temporarily or permanently located.

#### **SECTION IV. Applicability**

- A.** This Ordinance applies to all lots in the Town of New Sharon upon which dwellings, manufactured housing, seasonal dwellings, commercial, agriculture, industrial and/or institutional buildings or processes are to be located.
- B.** This Ordinance shall not be interpreted to prevent or prohibit the erection of the following on lots of any size so long as setback requirements are met to the greatest practical extent, as determined by the Code Enforcement Officer:

1. Special purpose, small (not over 100 sq. ft.) buildings, such as gate houses, well houses and pump houses.
  2. Shelters, open to the weather, for sheep, cattle, horses, or other animals.
  3. Outbuildings such as garages, sheds, barns, workshops, etc. on lots with dwellings existing at the time of the adoption of this ordinance, so long as the outbuildings are used exclusively by the residents of the dwelling.
- C. An existing land use may be changed to another land use provided that the proposed use has no greater adverse impact on the subject and the adjacent properties and resources than the former use had and provided that the land use standards specified herein for the proposed land use are met, all as determined by the Planning Board.

## **SECTION V. Nonconforming Lots**

### **A. Vacant Nonconforming Lots**

A vacant and unimproved legally nonconforming lot of record may be built upon provided the lot is in separate ownership and not contiguous with any other lot in the same ownership and that all provisions of this Ordinance can be met except that of: either road frontage or lot area.

### **B. Nonconforming Lot with Structure**

A structure which (1) was built or placed on a lot of record that was conforming or legally nonconforming at that time and (2) conformed to any and all laws and ordinances in effect at that time, may be rebuilt, repaired, improved or replaced in conformity with the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules and the requirements imposed by this Ordinance other than lot area and road frontage.

### **C. Contiguous Vacant Lots**

If two or more vacant and unimproved contiguous lots of record were in the same ownership of record at the time of adoption or amendment of this Ordinance, and, if all or part, of these lots does not meet the dimensional requirements imposed by this Ordinance, the lots shall be combined to the extent necessary to meet these standards and no division of the parcel made up of the combined lots shall be made which creates any dimension or area which is less than the requirements established by this Ordinance.

**D. Contiguous Built Lot and Vacant Lot**

If two or more contiguous lots or parcels of record were in the same ownership at the time of adoption or amendment of this Ordinance, and if one lot is developed with one or more structures and the other lot or lots are not developed with one or more structures, all of the lots shall be deemed merged into one lot unless two lots meeting the requirements of this Ordinance can be created.

**E. Contiguous Lots with Existing Structures**

The limitations imposed by the preceding subsection upon the use and transferability of contiguous nonconforming lots of record shall not apply where a principal structure existed on each lot at the time that the lots became legally nonconforming or if the lots were legally created as part of a subdivision approved and recorded after September 22, 1971, and before the adoption of this Ordinance, provided that all other requirements imposed by State law and other local ordinances are met.

**F. Transfer of Ownership**

Ownership of legally nonconforming lots of record together with any rights of use created by this section may be transferred to subsequent owners.

**SECTION VI. Dimensional Requirements**

**A.** For those areas served by municipal water, the following minimum dimensional requirements shall be met.

Minimum Lot Area	20,000 sq. ft.
Minimum Road Frontage	100 feet

**B.** For those areas not served by municipal water, the following minimum dimensional requirements shall be met.

Minimum Lot Area	40,000 sq. ft.
Minimum Road Frontage	150 feet

**C.** If more than one residential dwelling unit is to be built or located on a tract or parcel of land, the minimum dimensional requirements shall be met for each additional dwelling unit, and each dwelling, as that term is defined in this Ordinance, must be separated from every other dwelling located on that tract or parcel of land, by a minimum of 20 feet.

**D.** A structure shall at no time, be closer than 10 feet from any lot line. All structures shall have a front setback of at least 20 feet. Right-of-way widths and locations are to be determined from the latest version of Maine Department of Transportation inventory of public roads when definitive legal layouts by the Town or the authority that established the road are not available. If neither such a layout nor a DOT record

is available, the right of way shall be deemed to extend three rods from limit to limit and to have a centerline in the location of the centerline of the traveled way. Driveways and walkways are exempt from setback requirements. Parking areas are exempt from front setbacks.

- E. In the case of a corner lot where the lot is served by more than one public or private way, the minimum dimensional requirements of this section must be met along each way.

## **SECTION VII. Back Lots**

- A. A conforming or legally nonconforming back lots of record may be developed for one single-family dwelling if such development is in accordance with the following:
  1. Legal access can be demonstrated by a right of way defined by limits of no fewer than 20 feet in width.
  2. A legal description of such access or the source of such access shall be attached to the Intention to Build Notification Form.
  3. Legal access as above shall not create or result in a non-conforming front lot by reducing that lot's required road frontage below the required minimum; or, if the front lot is already non-conforming, reduce its road frontage at all. Where access is conveyed by easement, irrevocable license, or some grant less than a fee of interest, the land over which servitude is placed may not be counted toward meeting road frontage requirements for the front lot.
  4. The road over such access shall be at least 20 feet in width, and have a minimum of 13 feet 6 inches of vertical clearance.
  5. Roads of 151 to 750 feet in length shall have fire apparatus turnarounds as set forth in Section D103.4 of the 2003 International Fire Code, appended hereto.
  6. Roads of 751 feet or greater shall be constructed according to Section VII of the Town of New Sharon Subdivision Ordinance of March 3, 2007, or most recent revision, except that neither "Geotextile Cloth" nor "Hot Bituminous Pavement" is required in the construction of a road that is not in a subdivision proposed by the applicant.

## **SECTION VIII. Enforcement**

### **A. Nuisances**

Any violation of this Ordinance shall be deemed to be a nuisance.

## **B. Code Enforcement Officer**

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. The Code Enforcement Officer is given all powers and authority to enforce this Ordinance under 30-A M.R.S.A. 4452. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. A copy of such a notice shall be maintained as a permanent record.

## **C. Legal Actions**

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby 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 the Ordinance in the name of the municipality. The Municipal Officers are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violation of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure(s) or land use to continue unless there is clear and convincing evidence that an illegal structure or land use was constructed or conducted as a direct result of erroneous advice given by an authorized Municipal Official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure(s) or discontinuance of the land use will result in a threat or hazard to public health or safety or will result in substantial environmental damage.

## **D. Fines**

Any person who violates any of the provisions of this Ordinance after receiving notice of such violation shall be guilty of a civil violation, and, on conviction, shall be penalized in accordance with 30-A M.R.S.A. Section 4452, and subject to a minimum fine of \$100 up to a maximum fine of \$2,500 for each violation, which fine shall be recovered on complaint to the use of the Town. Each day the violation exists shall be considered a separate violation. Such persons shall be liable for court costs and attorney fees incurred by the municipality and remedies accorded the Town by Section 4452.

## **SECTION IX. Appeals**

### **A. Variance Appeals**

The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the requirements of the Ordinance under the following conditions.

1. The strict application of the terms of this Ordinance would result in undue hardship to the applicant. The term “undue hardship” shall mean:
  - a. That the land in question cannot yield a reasonable return unless a variance is granted;
  - b. That the need for variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
  - c. That the granting of a variance will not alter the essential character of the locality; and
  - d. That the hardship is not the result of action taken by the applicant or a prior owner.
2. The use for which a variance may be granted must be a permitted use in a particular zone.

#### **B. Administrative Appeals**

The Board of Appeals, may, upon written application of the aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this Ordinance. The written application must be filed within 30 days of the determination. Such hearings shall be held in accordance with State laws, except as follows. Such a hearing is not de novo. No evidence not in the record of the action under review may be considered by the Board of Appeals, and its review is limited to determining whether there has been an error of law. Following such hearing, the Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

#### **C. Meeting**

The Board of Appeals shall conduct its meetings in accordance with the provisions of Title 30-A M.R.S.A. Section 2691, as the same may be amended.

#### **D. Appeals to Superior Court**

An appeal may be taken within 45 days after any decision is rendered by the Board of Appeals by any party to Superior Court in accordance with State laws.

#### **E. Filing of Variances**

The applicant for a variance must record a certificate of zoning variance for any

variance granted by the Board of Appeals in the Franklin County Registry of Deeds in accordance with the requirements of 30-A M.R.S.A. section 4353(5), within 90 days of the Board's final written approval of the variance or the variance is void. The variance is not valid until recorded as provided hereinabove.

**SECTION X. Amendments**

- A.** This Ordinance may be amended by a majority vote at Town Meeting. Amendments may be initiated by a majority vote of the Planning Board, by request of the Board of Selectmen, or by petition of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election.
  
- B.** The Planning Board shall hold a public hearing on the proposed amendment, in accordance with the requirements of 30-A M.R.S.A. section 4353(9), as the same may be amended.

