

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: May 27, 2020
SUBJECT: Nonconforming lots/setbacks amendments

Introduction

The Town Council referred to the Ordinance Committee Recommendations #30 and #82 from the 2019 Comprehensive Plan. The committee reviewed the recommendations as a pair because they both relate to nonconforming lots. The committee is recommending that the attached amendments to the minimum nonconforming lot size be discussed at the Town Council workshop prior to referral to the Planning Board.

Nonconforming lot size recommendation

The Ordinance Committee reviewed the recommendations at the April 29th and May 13th meetings. Recommendation #30 follows:

#30 Evaluate reducing the minimum lot size for existing, vacant, nonconforming lots to allow construction on infill lots of between 5,000 sq. ft. and 10,000 sq. ft. in size that will be served by public sewer and water and will comply with the Mandatory Affordable Housing provisions for low-income housing.

The review of infill lots in the 2019 Comprehensive Plan (p. 76-77) was discussed, and the excerpt is included below.

Infill lots

Approximately 200 hundred subdivisions have been recorded in the town dating back to the late 1880's. Many of the town's charming neighborhoods were developed from these early land development plans. Scattered in these neighborhoods are unbuilt lots that do not comply with current zoning requirements, but are of the same relative size as the built lots in the neighborhood. Some of these vacant lots could be built upon if the minimum nonconforming lot size of 10,000 sq. ft. were reduced, especially if infill lots of less than 10,000 sq. ft. were required to be served by public sewer and water. The small size of the lots also has the potential for construction of more affordable homes.

In 2000 and again in 2004, the town council referred to the planning board a request to review undersized nonconforming lots. The 2004 analysis indicated that if the 10,000 sq. ft. nonconforming lot size was reduced to 7,500 sq. ft.,

approximately 41 lots may become buildable. If the nonconforming lot size was reduced to 5,000 sq. ft., potentially 72 additional lots may become buildable. The analysis was based on all lots having access to public sewer. In 2005, the planning board recommended that the minimum size for nonconforming lots be reduced to 7,500 sq. ft, and that lots of less than 10,000 sq. ft. must be in compliance with the Mandatory Affordable Housing provisions. These changes were not adopted by the town council.

From a financial perspective, infill lots have high potential for increasing the municipal tax base. Most of the lots have frontage on town roads where connections to public sewer and water can be made. The town is already maintaining the roads and utilities, so there is little increase in municipal infrastructure costs. The lots are typically valued as unbuildable, or "extra land," and their change in status to "buildable" will have a very significant increase in assessed value. For example, an existing undersized 7,800 sq. ft. lot has an assessed value of \$23,000. If the lot became buildable, the land value would increase to \$100,000, plus the value of any home constructed (subject to change with affordable housing requirements).

From a growth management perspective, allowing construction on infill lots discourages sprawl, because less of the growth that the town experiences is located in "green field" developments. Because infill lots are located in developed areas, environmental impacts are typically less. New road construction is usually not needed so there is less increase in impervious surface and less stormwater generated. There is less fuel consumption as the town is already plowing and driving school buses over the existing roads adjacent to the infill lots. Infill lots also tend to be located closer to goods and services, so homeowners have the choice to drive less.

From an affordable housing perspective, the small size of infill lots will limit the size of the new home. Nevertheless, Cape Elizabeth's compact neighborhoods have a history of retaining and increasing in value. If allowing development on undersized lots is intended to promote affordable housing, permanent affordable housing requirements should be attached to lot buildability.

Maps showing the approximate number and location of lots that are between 5,000 sf. and 9,999 sq. ft. were reviewed. *Approximately* 24 lots may become buildable with this minimum lot size change. The actual number of potential lots could be higher or lower depending on other factors for each lot. The existing zoning ordinance requirements for determining nonconforming lot buildability would continue to apply.

The proposed amendment not only reduces the minimum lot size, it also requires that the lot must comply with the Mandatory Affordable Housing requirements (Zoning Ordinance, Sec. 19-7-4) for low-income housing. At this time, the maximum sale price for low-income affordable housing is \$236,868 with a maximum income of \$71,900. The requirements preserve the lots as permanently affordable to low-income households.

In its discussions, the committee noted both the potential for additional municipal revenue and the opposition in compact neighborhoods to making vacant lots buildable.

Nonconforming lot setbacks recommendation

The committee also discussed the following comprehensive plan recommendation:

#82 Review the regulation of existing, nonconforming lots (infill lots) and recommend ordinance revisions that allow nonconforming lots a reasonable opportunity to be built upon and/or buildings expanded to meet the needs of modern households while also protecting the character of neighborhoods.

The committee reviewed the existing reduced setbacks for nonconforming lots and maps showing the distribution of nonconforming lots townwide. In the RC District, existing lots of less than 20,000 sq. ft. in size are nonconforming. In the RA District, lots of less than 80,000 sq.ft. in size are nonconforming. The Nonconforming chart in Sec. 19-4-3 of the Zoning Ordinance provides for lesser side and rear yard setbacks for nonconforming lots.

Recommendations

The Ordinance Committee voted 2-1 (Straw) to recommend the nonconforming lots minimum lot size amendments to the Town Council for a workshop.

The Ordinance Committee voted 3-0 to not recommend any changes to the nonconforming lots setbacks at this time.

**Nonconforming Lots
Zoning Ordinance Amendment**

ARTICLE IV. NONCONFORMANCE

**SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING
DISTRICTS EXCEPT THE SHORELAND AND
RESOURCE PROTECTION DISTRICTS**

A. Nonconforming Lots

The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or similar requirement of the district within which they are located. Lots that do not meet the minimum street frontage requirement shall also comply with Sec. 19-7-9, Private Access Provisions, before a building permit can be issued. (Effective November 14, 2015)

1. Vacant Nonconforming Lots

b.Space and Bulk Standards. The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met:

	RA District	RC District	TC District
Front setback for principal structure			
-- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
-- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area ¹	10,000 <u>5,000</u> -sq.ft.	10,000 <u>5,000</u> sq. ft.	As required by Sec. 19-6-4.D
-- with public sewerage			
-- with on-site sewage disposal	20,000. sq.ft. *	20,000 sq.ft. *	
Maximum building coverage			
-- with public sewerage	25%	25%	N/A
-- with on-site sewage disposal	20%	20%	N/A

[¹Lots that are less than 10,000 sq. ft. in size may be built upon only if the lot is developed as a low-income affordable home in compliance with Sec. 19-7-4, Mandatory Affordable Housing Provisions.](#)