

2.2 Definitions

Elderly Housing: A dwelling or group of dwellings and shared community space, providing shelter and services to elderly persons, which may include meals, housekeeping, transportation, recreational activities, personal-care assistance, and the like. Elderly persons shall mean a person 55 years old or older.

Fringe Financial: A lending institution that typically has but is not limited to the following features: the loans are for small amounts; the loans are typically due in 4 weeks or less; and associated finance charges exceed 100% APR. These businesses include but are not limited to payday and auto title loan services.

Workforce Housing: Dwelling units that may be purchased or rented for year-round occupancy by a working household whose income is between 50 % and 60% of the median income for the Town per most recent census data.

6.3 Dimensional Requirements.

Lots and principal buildings in all districts shall meet or exceed the following minimum requirements. If more than one principal building is constructed on a single parcel of land all dimensional requirements shall be met separately for each principal building. Additional requirements may be imposed by other provisions of this ordinance.

DIMENSIONAL REQUIREMENTS TABLE

<u>REQUIREMENTS</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>C/I</u>	<u>RC/I</u>	<u>AP</u>	<u>V</u>
Minimum Lot Size with Public Sewer and Water in square feet	10,000	20,000	90,000	10,000	50,000	20,000	See Note 10
Minimum Lot Size with Septic in square feet	20,000	60,000	90,000	20,000	90,000	120,000	See Note 10
Minimum Lot Width in feet	100	150	300	100	200	300	See Note 10
Minimum Frontage in feet	100	150	300	100	200	300	See Note 10
Minimum Front Yard Setback in feet	25	50	75	25	50	75	See Note 10
Minimum Side Yard Setback in feet	25	25	50	15	25	50	See Note 10
Minimum Rear Yard Setback in feet	25	25	50	25	25	50	See Note 10
Maximum Building Height in feet	35	35	35	45	45	35	45
Maximum Lot Coverage percentage	50	35	20*	80	80	20	See Note 10

Shoreline Setback from River or Great Pond	25
Shoreline Setback from Wetlands and Streams	See Note 10
Shoreline Frontage	See Note 10

Notes:

1. The setback may be reduced to the average of like setbacks of the exiting structures on abutting properties.
2. The setback along a railroad spur may be waived for loading facilities that require rail access.
3. Two-family dwellings require twice the lot size as single-family dwellings. Multifamily dwellings require a minimum lot size which equal that required for the equivalent number of single family dwelling units.
4. No land in a deeded right of way may be used to meet any of the dimensional requirements of this ordinance.
5. The frontage requirement for lots on curves with a centerline radius of 100 feet or less may be reduced by 20 percent provided the lot width requirements are met.
6. For all structures side and rear setbacks may be reduced by the percentage that the non-conforming lot is less than the requirement.
7. For lots with public water and sewer in the R-2 District the front setback requirement may be reduced to 25 feet.
8. Additions to existing non-conforming buildings may be built to meet the existing line of non-conformity but may not be less than ten feet from a side or rear property line. However the non-conforming portion of the building shall not expand by 30 percent or more in volume or floor area during the lifetime of the structure. Average of the abutters (footnote #1 above) would apply if this average was less than ten feet.
9. One acre equals 43,560 square feet or 4,840 square yards.
10. All uses within the Urban **Village** Overlay District are exempt from dimensional requirements of the underlying C/I or R1 District and subject to the requirements established in Section 6.4. Uses within the Urban **Village** Overlay District that are located in the Shoreland Zoning District are subject to all applicable dimensional requirements of the underlying Shoreland zone pursuant to Section 14.15.
11. If more than one single family dwelling is located on a single lot, the lot size shall equal that required for the equivalent number of single family dwelling units. The dwelling units shall be placed on the lot and separated from one another in such a manner that if the lot were divided each dwelling unit would meet all dimensional requirements.

* Lots containing only commercial or industrial uses may be allowed a maximum lot coverage percentage of 50%.

6.3.1 Residential Growth Limitation Provisions.

- A. Within the R-3 District, the number of residential building permits issued within any given subdivision during any calendar year, commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E below.
- B. Within the R-2 District the number of residential building permits shall be limited to 20 permits in any given subdivision within any given calendar year, if such subdivision is served by public water and sewer service (See Section 7.10, Sanitary Provisions and 7.19, Water Supply). The Planning Board may require the phasing of a project according to Section 13.6 of the Berwick Subdivision Regulations. Any subdivision within the R-2 District and not served by both water and sewer will be limited to three (3) building permits per calendar year per subdivision from the effective date of this ordinance amendment except as noted in Section 6.3.1.E., below.
- ~~C. Within the R-1 District, the number of residential building permits issued within any given subdivision during any calendar year commencing the effective date of this ordinance amendment shall be limited to ten (10).~~
- D. ~~C.~~ Within the RC/I District, the number of residential building permits issued within any given subdivision during any calendar year commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E., below.
- E. ~~D.~~ For those subdivisions either approved or pending (according to MRSA, Title 1, section 302) as of the effective date of this ordinance amendment, the limit on the number of permits to three (3) shall not apply, however those subdivisions either approved or pending as of the effective date of this ordinance amendment will be subject to a limit of nine (9) permits per calendar year.
- F. ~~E.~~ For determining number of permits to be issued; if a parcel is split or conveyed into 2 parcels 3 years prior to application for subdivision, the number of permits will be issued based on the parent parcel.

6.4 Village Overlay

Notes:

(5) The Planning Board may permit residential uses on the first floor of new buildings within the Village Overlay on a case by case basis when the application satisfies the following criteria:

- a. The first floor residential use is entirely made up of workforce housing or elderly/congregate housing**

b. New residential uses within the urban overlay do not exceed a 4:1 ratio of residential to commercial use measured by constructed floor space. This statistic is tracked by the Planning Department and updated as new permits are issued.

c. The proposed development application provides substantial improvements to the downtown area that serve to advance the principles defined in the Downtown Vision & Implementation Plan.

7.10 Sanitary Provisions Sewage Provisions

A. When not serviced by the public sewerage system, the approval of building permit applications shall be subject to presentation of a completed site evaluation form (HHE-200) which evidences adequate soil conditions for sewage disposal.

B. When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

C. Industrial or commercial waste waters may be discharged to municipal sewers only and in such quantities and/or of such quality as to be compatible with commonly accepted municipal sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to municipal treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The disposal of industrial or commercial waste waters by means other than the municipal sewerage system must comply with the laws of the State of Maine concerning water pollution. Wash water or other process water carrying stone dust, stone particles, silt or other mineral matter will not be accepted into the municipal system.

D. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.

E. Within the R-1 District, any new proposed subdivision shall be served by public sewer at the expense of the applicant or by negotiated agreement with the Berwick Sewer District. Within the R-1 District any new residential dwelling unit or commercial use requiring a building permit shall be served by public sewer.

~~F. Within the R-2 District any subdivision proposed following the effective date of this ordinance amendment and located within 2,500 of public sewer service shall be connected to that service.~~

G. When a lot is not serviced by public sewage disposal, or unless the lot is part of a cluster development served by a common subsurface disposal system, the following standards shall apply:

- a. Each proposed lot must be served by a septic system located within its boundaries.
- b. If the depth to a limiting factor, as defined by the above rules is less than 24 inches, both the septic system and a replacement system site must be located within each proposed lot. The reserve area shall be shown on the plan and restricted so it will not be built on.

- c. Septic systems serving a structure on one lot are not allowed to be located on abutting or neighboring lots.
- d. In no instance shall a disposal area be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

7.23 Safety and Sanitation Provisions

All lots shall be maintained in a safe and sanitary condition and shall be kept free of accumulations of trash, garbage, refuse or other noxious materials which may constitute a fire hazard or a danger to health or safety. Any such condition shall be repaired, replaced, or removed.

8.12 Agriculture and Animal Husbandry.

The following restrictions apply to agriculture and animal husbandry.

- a. All pastures, barns, barnyards and other areas where the livestock animals or fowl are kept, housed, fed or cared for shall be a minimum of 100 feet from the nearest dwelling other than the applicant's.
- b. Uncovered manure shall be kept 150 feet from the nearest dwelling other than the applicant's and 300 from a well.
- c. All feed and grain must be kept in enclosed rodent proof containers.
- d. All paddocks, barnyards or other enclosures must be adequately fenced to contain livestock, animals or fowl.
- e. ~~The Planning Board may limit the number and species of animals to be kept at any one time after considering the size and layout of the lot, the size of adjacent lots, the presence of vegetative screening and buffer strips and the potential for noise, odor and vermin problems.~~

8.13 Owner Occupied Apartments.

~~The Planning Board may approve, after Conditional Use Review, **The Code Enforcement Officer may approve** the addition of one dwelling unit to an existing single family dwelling and which must comply with the following standards.~~

1. The existing dwelling unit must have a minimum of 1,200 gross square footage of living area to be considered for an accessory apartment. The accessory apartment shall not exceed 30 percent of the total living area of the building.
2. "Owner-occupied" means that either the principal dwelling unit or the accessory apartment is occupied by a person who has a possessory interest in the real estate, who bears all or part of the economic risk of decline in value of the real estate and who receives all or part of the remuneration, if any, derived from the lease or rental of the other dwelling unit.
3. A single family dwelling as contained in this section means the building proposed for conversion and any accessory building attached. Only one accessory apartment shall be permitted per lot. An owner-occupied apartment, however, shall not be allowed in a

single family dwelling within an approved subdivision that contains a note or condition on the plan recorded in the York County Registry of Deeds that specifically allows only single family residential uses.

4. There will be no external expansion of the structure, except for stairwells and elevators.

5. The dimensional standards found in Section 6.3 are waived with the exception of the standards for lot coverage, which can not be increased above set standards or that which is existing at the time of the proposed conversion, whichever is greater.

6. Any request for an accessory apartment shall conform to all provisions of the Maine State Plumbing Code and no dwelling that is served by an on-site wastewater disposal system shall be modified to create an accessory apartment until a site evaluation has been conducted by a licensed soil evaluator which demonstrates that a new system can be installed to meet the disposal needs of the dwelling units or the existing system has adequate capacity for the proposed use.

7. This provision shall not prohibit the conversion of a single family dwelling to a multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling so long as said conversion complies with all district and zoning standards, including but not limited to dimensional requirements.

8. Upon approval by the Planning Board, the owner of the accessory apartment shall record within his/her deed at the York County Registry of Deeds that such dwelling shall be and is to remain "owner occupied" even upon future transactions.

8.24 Elderly Housing

A. Elderly Housing may qualify for a 50% reduction in minimum lot size requirement when the application satisfies the standards outlined below:

1.) All construction will be in conformance with all applicable Americans with Disabilities Act regulations.

2.) Sidewalks are required to be installed along any new roads and shall be constructed in conformance with Article 12.2.j. Design Guidelines Sidewalks in the Berwick Subdivision Regulations.

3.) All buildings and accessory structures shall be maintained in a safe, sanitary, nonhazardous manner. The condition of all buildings, structures, and components thereon shall be maintained so as to prevent and repair deterioration, so that the appearance thereof shall reflect a level of maintenance ensuring that the property itself may be preserved safely, and so that hazards to the public health and safety are avoided.

4.) When three or more residential units are proposed; the applicant shall provide community and/or recreational opportunities for the residents. These community and/or recreational opportunities include but are not limited to common rooms, nature trails, and picnic areas.

5.) The development shall always remain as elderly housing, and any change to the residential use shall require conformance with all district dimensional requirements as prescribed in Article 6.3 Dimensional Requirements.

10.4 Variances.

Variances may be permitted only under the following conditions:

A. Unless otherwise provided in this ordinance, variances are obtainable only for height, minimum lot size, minimum lot width, structure size, setbacks and open space requirements.

B. Variances cannot, under any circumstances, be obtainable for establishment of any uses otherwise prohibited.

C. The Board of Appeals shall not grant a variance unless it finds that all the following criteria are met:

1. That the land in question cannot yield a reasonable return unless a variance is granted;

2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and

4. That the hardship is not the result of action taken by the applicant or a prior owner. Such hardship may be found by the Board of Appeals where the Town of Berwick Land Use Ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Neither financial hardship alone nor pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of unnecessary hardship.

D. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary, to this end.

E. Disability Variance. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this section, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A., Section 4553 and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

F. Setback Variance for Single-Family Dwellings. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's

property would cause undue hardship. The term “undue hardship” as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

2. The granting of a variance will not alter the essential character of the locality;

3. The hardship is not the result of action taken by the applicant or a prior owner;

4. The granting of the variance will not substantially reduce or impair the use of the abutting property; and

5. That the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

14.15 Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. Minimum Lot Standards

(1) See dimensional table below

	SP	RP	LR	SCI
Minimum lot area (square feet.)	40,000	40,000	40,000	60,000
Minimum lot width (feet)	200	200	200	150
Minimum road frontage (feet)	200	200	200	150
Minimum shore frontage (feet)	200	200	200	300
Minimum front yard setback (feet)	50	50	50	25
Minimum side yard setback (feet)	25	25	25	15
Minimum rear yard setback (feet)	30	30	30	25
Maximum building height (feet)	35	35	35	45
Maximum lot coverage (percent)	10	10	20	70
Shoreline setback from river and great ponds	100	100	100	25
Shoreline setback from wetlands and streams	75-100	75-100	75-100	25

- (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

~~NOTE: Municipalities may include provisions for clustered housing within the shoreland zone provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.~~

B. Principal and Accessory Structures

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and ~~seventy-five (75)~~ **100** feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Shoreland Commercial Industrial District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

- (b) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

P. Agriculture

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within ~~one hundred (100)~~ **two hundred fifty (250)** feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within ~~one hundred seventy five (75)~~ **(100)** feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.

NOTE: ~~Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.~~

- (4) There shall be no new tilling of soil within ~~one hundred (100)~~ feet, **two hundred fifty (250) feet** horizontal distance, of the normal high-water line of a great pond classified GPA; within ~~seventy five (75)~~ **one hundred (100)** feet, horizontal distance, from other water bodies; nor within ~~twenty five (25)~~ **one hundred (100)** feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article and not in conformance with this provision may be maintained.

(5) Newly established livestock grazing areas shall not be permitted within ~~one hundred~~ ~~(100)~~ **two hundred fifty (250)** feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within ~~seventy five (75)~~ **one hundred (100)** feet, horizontal distance, of other water bodies, nor; within ~~twenty five (25)~~ **one hundred (100)** feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

(6) Fertilizer application shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or the Salmon Falls River.