TOWN OF FAYETTE
LAND USE ORDINANCE

Amended as of
JUNE 14, 2014

Attestation:  
Clarissa Herrin, Deputy Town Clerk

NOTE: Words appearing in italics are defined in Article 9, Definitions
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### Article 9

**Definitions**

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ARTICLE I - GENERAL PROVISIONS

SECTION 1. TITLE

This Ordinance is known and cited as the Town Of Fayette Land Use Ordinance and will be referred to as "this Ordinance."

SECTION 2. AUTHORITY

This Ordinance is adopted pursuant to the enabling provisions of Article VIII-A of the Maine Constitution, and the following:


SECTION 3. PURPOSES

A. The purposes of this Ordinance are to promote, protect and facilitate the health, safety and general welfare of Fayette residents;

B. To protect and conserve our land, water, fisheries and wildlife, soils, scenic, recreational and natural resources;

C. To protect our rural character;

D. To promote sound land use practices and conservation through the regulation of certain land use activities including, but not limited to, building sites and placement of structures, waste disposal, resource extraction (timber harvesting), traffic;

E. To anticipate impacts of development, and

F. To advance the Growth Management Policies and Strategies for Implementation set forth in our Comprehensive Plan.
SECTION 4. APPLICABILITY

All structures and uses within the boundaries of Fayette shall comply with the conditions and provisions of this Ordinance.

SECTION 5. EFFECTIVE DATE

A. This Ordinance was adopted by the Town of Fayette on June 14, 2008. The following sections were amended on June 13, 2009: Article 7, Section 5, Table of Land Uses and Table of Dimensional Requirements; Article 2 Section 3(C)(1); Article 3 Section 3(G)(6); Article 3, Section 5(B)(2); Article 4 Section 1(A)(1); Article 4 Section 6(D); Article 6 Section 5(B)(1); Article 8 Section 3(E); and Article 8 Section 7.

For the Protected Districts (Resource Protection, Stream Protection, Wetland Protection and Shoreland District), shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested to and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance within the forty-five (45) day period of his/her receipt of the Ordinance, it shall be automatically approved. Upon approval of this Ordinance, the Site Plan Review Ordinance, dated March 5, 1988, and the Town of Fayette Zoning and Land Use Ordinance, adopted in March 1994, amended in August 1999, on June 17, 2000, in 2001 and 2002 are hereby repealed. Any application for a permit regarding Protected Districts, submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance if the Ordinance is approved by the Commissioner.

SECTION 6. AVAILABILITY

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted at the Town Office.

SECTION 7. SEVERABILITY

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 the Ordinance.

SECTION 8. CONFLICTS WITH OTHER ORDINANCES

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 administered by the Town of Fayette, the more restrictive provision shall control.

SECTION 9. AMENDMENTS

A. An amendment to this Ordinance may be initiated by:
   1. The Planning Board, provided that there is a quorum vote of the members.
   2. Request of the Select Board to the Planning Board.
   3. Request of the Code Enforcement Officer to the Planning Board.
4. Written petition of a number of voters equal to at least 10% of the number of votes cast in the Town at the last gubernatorial election, and submitted to the Select Board.

B. This Ordinance may be amended by majority vote of the legislative body, but only after public hearings upon the proposed changes and/or amendment. Copies of amendments, regarding Protected Districts (Resource Protection, Stream Protection, Wetland Protection and Shoreland District), attested to and signed by the municipal clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment the amendment is automatically approved. Any application for a permit regarding any Protected District, submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

C. The Planning Board shall hold at least one public hearing on the proposed amendment prior to a vote at a Town Meeting. Notice of the hearing shall be posted at least 14 days in advance in the Town Office, and shall be published at least 7 days in advance in at least 2 newspapers of general circulation in the area. Property owners affected by the proposed amendment shall be notified as required by Title 30-A MRSA, Section 4352.

D. No proposed changes in the Ordinance which have been unfavorably acted upon by the Town Meeting shall be considered within 2 years after the date of such unfavorable action unless adoption of the proposed change is recommended by the vote of a majority of the Planning Board.

ARTICLE 2 - NON-CONFORMANCE

SECTION 1. PURPOSE

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto, shall be allowed to continue, subject to the requirements set forth in this Article. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

SECTION 2 GENERAL

A. Legal non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the legal non-conforming structure or lot, subject to the provisions of this Ordinance.

B. This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs and renovations which do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as Federal, State or local building and safety codes may require.

SECTION 3. LEGAL NON-CONFORMING STRUCTURES

A. Expansion. A legal non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs 1(a), (b), (c), (d), (e) and (f), below:

1. Legally existing non-conforming principal and accessory structures that do not meet the current water body, tributary stream or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met:
a. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream or upland edge of a wetland is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream or wetland setback requirement.

b. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream or wetland setback requirement.

c. For structures located between 25 and 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.

d. For structures located between 75 and 100 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75 and 100 feet distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 75 and 100 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of paragraph A 1 (c), above.

e. For the purpose of Section 3A (1) above, a basement is not counted toward floor area.

f. See definition of Increase in Nonconformity of a Structure.

2. Whenever a new, enlarged, or replacement foundation is constructed under a legal non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 3C(1), Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

B. Special Expansion Allowance:

1. Existing principal and accessory structures that exceed the floor area or height limits set forth in Section 3 A1(e)(d), above may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met:

   a. The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.

   b. A well-distributed stand of trees and other natural vegetation as defined in Article 8 Section 15(B)(2), below, extends at least 50 feet, horizontal distance, in depth as measured
from the *normal high-water line* of a water body or upland edge of a wetland for the entire width of the property. If a "well distributed stand of trees and other vegetation," meeting the requirements of Article 8 Section 15(B)(2), below, is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board to reestablish a buffer of trees, shrubs, and other *ground cover* within fifty (50) feet, horizontal distance, of the shoreline or tributary stream.

c. Adjacent to water bodies, tributary streams, and wetlands, except for the allowable footpath, there exists complete natural *ground cover*, consisting of forest duff, shrubs, and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the *normal high-water line*. Where natural *ground cover* is lacking, the area must be supplemented with leaf or bark mulch with a minimum thickness of 4 inches and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of storm water.

d. A written plan by the property owner, including a scaled site drawing (if required by the Planning Board), is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the Shoreland Zone:

(1) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams and wetlands.

(2) Roofs and associated drainage systems, driveways, parking areas, and other non-vegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or land depressions. Avoid directing flow into septic systems and wells.

(3) The Planning Board may require the current waste water disposal system to be approved by a Licensed Plumbing Inspector.

2. Planting Requirements: Any planting or re-vegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, shall be implemented at the time of construction, and be designed to meet the rating scores contained in Article 8, Section 15(B)(2), below, and *ground cover* requirements in paragraph c, above, when the vegetation matures within the fifty (50) foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than 3 feet tall for coniferous species and no less than 6 feet tall for deciduous species. The planting plan must include a mix of at least 3 *native* tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted, unless otherwise approved by the Planning Board, based on adjacent stand comparison. All aspects of the implemented plan must be maintained in a timely manner, including the replacement of dead and dying plants and washed out mulch, by the applicant as well as by future owners. The Planning Board shall make specific findings of fact showing that the proposed change will be environmentally beneficial or have no adverse impact on the environment.

3. Filing and Reporting Requirements: Written plans required pursuant to this section must be filed with the Kennebec County Registry of Deeds. A copy of all permits issued pursuant to
this section must be forwarded by the Town to the Department of Environmental Protection within 14 days of the issuance of the permit.

C. Relocation. A legal non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements as stated in the Table of Dimensional Requirements in the Fayette Land Use Ordinance to the greatest practical extent in regard to the resource as determined by the Planning Board or its designee, and provided that the applicant demonstrates 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.

1. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. A structure that is relocated in the Shoreland Zone cannot be placed so that it is more non-conforming with respect to a waterbody, tributary stream, or wetland setback requirement. The Applicant must file notice of the activity with the DEP prior to beginning work on the relocation. The notification form must be sent to the DEP by certified mail, (return receipt requested), on a form provided by the DEP, and must include any submissions requested, including the Planning Board’s findings of fact supporting its approval.

2. In determining whether the building relocation meets the setback to the Resource by the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, 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 and the greatest benefit to the environment.

3. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

   a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. Planted saplings may be no less than 3 feet tall for coniferous species and no less than 6 feet tall for deciduous species. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

   b. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

   c. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

D. Reconstruction or Replacement: Any legal non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is damaged or destroyed, regardless of the cause, and which damage or destruction reduces the market value of the structure by more than 50% may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage or destruction, and provided that such
reconstruction or replacement is in compliance with the waterbody, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

1. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 3 (A)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location.

2. If the total amount of floor area of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

3. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 3C3 (b) and 3C3(c) above.

4. Any legal non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

5. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 3C(2) above, the physical condition and type of foundation present, if any.

E. CHANGE OF USE OF A LEGAL NON-CONFORMING STRUCTURE. The use of a legal non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

1. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

2. Professional consultation may be required by the Planning Board.

SECTION 4. NON-CONFORMING USES

A. EXPANSIONS: Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Sections 3(A) and (B), above.

B. RESUMPTION PROHIBITED. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure if the structure has been used or maintained for residential purposes during the preceding five (5) year period.

C. CHANGE OF USE. An existing non-conforming use may be changed to another
non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 3, above.

SECTION 5. NON-CONFORMING LOTS

A. NON-CONFORMING LOTS: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals. For an exception to this rule, refer to Article 6 Section 6E. Special Review for Single-Family Dwelling on Legal Undersized Lot in a Protected District.

B. CONTIGUOUS BUILT LOTS: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption 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, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) is met and are in compliance with the State of Maine Subsurface Wastewater Disposal Rules.

1. 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 on a separate lot provided that the above referenced law and rules are complied with.

2. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

C. CONTIGUOUS LOTS - VACANT OR PARTIALLY BUILT: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements. This provision shall not apply to two (2) or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on October 2, 1993 and recorded in the Registry of Deeds if:

1. The lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

2. Each lot contains at least 100 feet of shore frontage, if applicable, and at least 20,000 square feet of lot area, or any lots that do not meet the frontage (if applicable) and lot size requirements (Table of Dimensional Requirements, Article 7, Section 6, below) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

D. Lots of record which are situated in subdivisions approved by the Planning Board on or after July 22, 1988 under standards applicable at the time of approval of those subdivisions shall not be affected by the requirements of paragraphs A, B, and C above.

ARTICLE 3 - ADMINISTRATION AND ENFORCEMENT
SECTION 1. CODE ENFORCEMENT OFFICER

A. The Code Enforcement Officer shall be appointed or re-appointed annually in July.

B. The Code Enforcement Officer shall have the following powers and duties:

1. To interpret and enforce the provisions of this Ordinance.

2. To issue permits, perform permit reviews and certificates of occupancy as authorized by this Ordinance.

3. To issue stop work orders and other appropriate notices of violations.

4. To investigate within fifteen (15) days all complaints and reported violations received.

5. To maintain an appropriate public record of all permits issued, permit applications, enforcement actions, and other appropriate documents.

6. To provide the State of Maine with information concerning permits and development activity within the Protected Districts as required.

7. To act upon permit applications and to refer requests for Variances and administrative appeals to the Board of Appeals.

8. To assist the Planning Board and the Board of Appeals in the performance of their duties.

9. To assist the public with inquiries and other requests for information concerning this Ordinance.

10. To enter property at reasonable hours or enter any building with the consent of the property owner, occupant or agent to inspect the property or building for compliance with this Ordinance.

11. To exercise additional powers and duties authorized by statutes.

12. To refer to the Planning Board for decision any application which s/he concludes warrants further review.

SECTION 2. PLANNING BOARD

A. There shall be a Town of Fayette Planning Board, in accordance with the provisions of Title30-A, MRSA Section 1917 and Const. Art VIII-A as may be amended from time to time.

B. The Planning Board shall be appointed by the Select Board and shall consist of 5 members and four alternate members, all of whom shall be legal residents of the Town, serving staggered terms of one, two and three year terms. The Board shall annually elect a Chair from its members, and may appoint a secretary from outside the Board, who will be compensated at a predetermined rate for duties performed. The Secretary shall keep the minutes of each meeting which shall show the vote of each member upon each question. All meetings shall be recorded, and copies of the
recordings shall be made available to the public at reasonable cost. All minutes of the Board shall be 
public information and a copy of each meeting shall be filed at the Town office within 10 days of the 
approval of the minutes. A quorum of the Board must be present in order to hold a meeting. A 
quorum shall be at least 3 members. A vote shall be carried by a simple majority of the members 
present at an approved meeting.

C. Neither a municipal officer nor his/her spouse may serve as a member nor as an alternate 
member of the Planning Board.

D. Any question or whether a conflict of interest exists to disqualify a member from voting 
thereon shall be decided by a majority vote of the Board, or the member may disqualify him or 
herself.

E. A member of the Board may be dismissed for cause, by the Select Board, upon written 
charges and after public hearing. The Select Board may also remove a member of the Planning 
Board under the following conditions: the member no longer resides within the Town of Fayette; or 
the Select Board has been notified by the Planning Board chairperson that a member has been absent 
from at least 4 consecutive meetings.

F. The Planning Board shall have the following powers and duties:

1. To hear and decide upon applications in accordance with this Ordinance. The Planning Board shall approve, approve with conditions, or disapprove all use applications.

2. To develop application forms for permits, conditional use applications and subdivision applications.

3. To exercise additional powers and duties authorized by statutes.

4. To review and propose updates to this Ordinance as necessary.

5. To review and propose updates to the Comprehensive Plan as necessary.

6. To perform other duties as authorized by the Town of Fayette.

7. To review subdivision applications as authorized by the Town of Fayette Subdivision Ordinance.

8. To review changes and expansions in non-conforming uses, lots and structures as authorized by this Ordinance.

9. To enter property at reasonable hours or enter any building with the consent of the property owner, occupant or agent to inspect the property or building for compliance with this Ordinance

SECTION 3. BOARD OF APPEALS

A. There shall be a Town of Fayette Board of Appeals, in accordance with the provisions of 
title 30-A M.R.S.A. Section 2691.

B. The Board of Appeals shall be appointed by the Select Board and shall consist of 5 
members and 2 alternate members, all of whom shall be legal residents of the Town, serving
staggered terms of two, three and five year terms. A quorum shall be at least 3 members. The Board shall annually elect a Chair from its members, and may appoint a secretary from outside the Board, who will be compensated at a predetermined rate for duties performed. The Secretary shall keep minutes of each meeting which shall show the vote of each member upon each question. All meetings shall be recorded, and copies of the recordings shall be made available to the public at reasonable cost. A copy of all minutes of the Board shall be public information and shall be filed at the Town Office within ten (10) days after each meeting.

1. Neither a municipal officer nor his/her spouse may serve as a member nor as an alternate member of the Board.

2. Any question of whether a conflict of interest exists to disqualify a member from voting thereon shall be decided by a majority vote of the Board, or the member may disqualify him or herself.

3. A member of the Board may be dismissed for cause, by the Select Board, upon written charges and after public hearing.

4. The Board of Appeals shall have the following powers and duties:

   a. To authorize variances upon appeal, within the limitations set forth in this Ordinance.

   b. To revoke an authorized variance if information upon which an approval is based is, at a later date, discovered to be erroneous.

   c. To 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. An appeal regarding the Code Enforcement Officer shall be heard de novo. An appeal regarding the Planning Board shall be decided on the record created before the Planning board.

   (1) When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

   (2) When the Board of Appeals reviews a decision of the Planning Board, it shall hold an appellate hearing. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall neither receive nor consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

   d. To develop application forms for variance and other requests.

   e. To perform other duties as authorized by this Ordinance and the Town of Fayette.

C. VARIANCE APPEALS

1. A variance may be permitted only under the following conditions: A variance may be granted only from dimensional requirements including but not limited to lot width and frontage,
structure height, percentage of lot coverage and *setback* requirement.

2. A variance shall not be granted for establishment of uses otherwise prohibited by this Ordinance.

3. The Board shall not grant a variance unless it finds that strict application of the terms in this Ordinance will result in undue hardship, and that the proposed structure or use would meet the performance standards contained in this Ordinance except for the specific provisions which have created the non-conformity and from which relief is sought.

4. For areas in the Protected Districts, a copy of each variance request, including the application and all supporting information supplied by the applicant shall be forwarded by the municipal officers to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Appeals Board.

**D. THE TERM "UNDUE HARDSHIP" SHALL MEAN:**

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

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

3. That 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.

**E. SETBACK VARIANCES FOR SINGLE FAMILY DWELLINGS (year round residence)-the term “undue hardship” used here means:**

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions of 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 appellant or a prior owner.

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

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

6. This ordinance is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the applicant. A variance may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. A variance may exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones, if the applicant has obtained written consent of an affected abutting landowner.

7. Any variances must be recorded in the Registry of Deeds by the Town of Fayette.

**F.** The Board of Appeals shall limit any variances granted as strictly as possible in order to
insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any condition imposed. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

G. In addition to the "Undue Hardship Variance", the Board of Appeals may grant a variance to the owner of a dwelling for the purpose of making that dwelling accessible to a person(s) with a disability who is living in or regularly accesses the dwelling. 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 dwelling 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 in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railings, walls or roofs necessary for the safety or effectiveness of the structure.

H. MAKING AN APPEAL

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision made, or from any failure to act by the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within 30 days of the date of the decision appealed from or within a reasonable time after failure to act, and not otherwise, except that the Board of Appeals, upon a showing of good cause, may waive the 30 day requirement. The Board of Appeals shall hold a public hearing on all administrative and variance appeals.

2. The applicant shall have the burden of proof and shall file on the form provided by the Board a written notice of appeal which shall include:

   (a) A concise written statement indicating what relief is requested and why it should be granted.

   (b) 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.

3. The Planning Board and/or the Code Enforcement Officer shall transmit both to the applicant and the Board of Appeals all of the documents constituting the record from which the appeal was made. This includes the following documents which shall be submitted to the applicant and the Appeals Board members by the Code Enforcement Officer for their review at least one week prior to any hearing: the appellant’s application, the application to the Planning Board or Code Enforcement Officer, any permits received, the decision in question, the minutes of the Planning Board or Code Enforcement Officer meeting(s), Code Enforcement Officer’s notes, and any other document(s) related to the decision being appealed.

4. The majority of the Board shall constitute a quorum for the purposes of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

5. The concurring vote of the majority of the members of the Board of appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter in which it is required to decide under this Ordinance, or to effect any variation in the application of this Ordinance from its stated terms. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act,
was clearly contrary to specific provisions of this ordinance.

6. The Board of Appeals shall decide all appeals within 45 days after the close of the hearing, and shall issue a written decision on all appeals. The decision shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or bases thereof, and the appropriate order, relief or denial thereof. All meetings shall be recorded and copies of the recordings shall be available to the public at reasonable cost.

7. The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and, with regard to appeals from the Code Enforcement Officer’s decision or failure to act, receive additional evidence and testimony.

I. Any aggrieved party who participates as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State Laws within thirty (30) days from the date of any decision of the Board of Appeals.

SECTION 4. PUBLIC HEARING REQUIREMENTS

Public hearings held by the Planning Board and the Board of Appeals shall follow these requirements:

A. At least ten (10) days prior to the public hearing a notice of the hearing shall be posted.

B. A notice shall by mailed by first class mail to the applicant and abutters in order to notify them of the date, time, place and purpose of the public hearing. Only those abutters having property lines within two hundred fifty (250) feet of the proposed project site shall be notified. The Planning Board or the Board of Appeals shall maintain a list of all persons notified. Failure to receive the notice shall not invalidate the public hearing.

SECTION 5. ENFORCEMENT

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

B. Code Enforcement Officer

1. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. 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 responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of each such notice shall be submitted to the municipal officers and be maintained as a permanent record.

2. The Code Enforcement Officer or designee may conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall investigate all complaints of alleged violations of this Ordinance.

3. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
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 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 in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or 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 or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. The Planning Board shall be kept informed of all steps involved in enforcement proceedings.

D. Fines. Any person, including but not limited to a landowner, a landowner’s agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A M.R.S.A. Section 4452.

**ARTICLE 4 - BUILDING PERMIT REQUIREMENTS**

**SECTION 1. BUILDING PERMITS REQUIRED**

A. After meeting the appropriate review requirements established by this Ordinance, permits shall be obtained from the Code Enforcement Officer and/or, if necessary, by the Licensed Plumbing Inspector for the following:

1. The construction, erection, improvement, addition, enlargement, alteration, demolition, or movement of any building or structure. All dimensional and requirements 2-9 must be met.

2. Installation or construction of a dwelling unit, mobile home or manufactured home.

3. Expansion of a non-conforming use or structure.

4. Mineral extraction activities.

5. Change of use to one that is allowed in a particular district.

6. For a new or expanded land use activity as listed in the Land Use Table.

7. The installation of internal plumbing or subsurface wastewater disposal systems.

8. Conversion of a seasonal residence into a year round residence. (Title 22 MRSA Art. 42, October 1, 2002)

9. Road/driveway entrance and culvert installation.

B. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

C. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.
D. A permit shall be obtained for all those activities listed in Section 1 A. above, prior to the start of any construction, site work, or commencement of a land use activity.

SECTION 2. BUILDING PERMITS NOT REQUIRED

A. Permits are not required for the following:

1. For an allowed land use activity as indicated in the Land Use Table.

2. For the normal repair and maintenance of any structure.

3. One free standing accessory structure other than a deck or porch, 200 square feet or smaller is allowed per year provided the following:

A building notification form as provided by the town must be submitted to the office prior to construction. Once the building notification has been submitted the construction may begin provided all provisions of the Fayette land use ordinance can be met.

4. All setbacks and dimensional requirements as set forth in article 7 – land use districts, section 6-a-table of dimensional requirements, shall be met for the zone in which the structure is located. Where there are two zones present, the stricter requirement applies. It shall be the responsibility of the person(s) filing the building notification to acquire any and all required state and federal permits (i.e. Permit-by-rules, plumbing permits, etc.).

5. The building shall not be utilized for residential or commercial uses other than for agricultural uses as defined in the Fayette land use ordinance.

6. Failure to file a building notification will result in fines as follows:

   A. First offense- $50.00.
   B. Second offense- $200.00
   C. Third offense- $500.00
   D. Fines for subsequent violations will be determined by the Board of Selectmen and may require a consent agreement and forfeiture of the privilege to file a building notification. Fines not to exceed state law 30-a M.R.S.A., section 4452, however, the board of selectmen may require any violator(s) to pay for legal fees and expenses incurred for enforcement action taken against them.

B. A permit is not required for the replacement of an existing road culvert as long as:

   1. The replacement culvert is not more than 25% longer than the culvert being replaced.
2. The replacement culvert is not longer than 75 feet; and

3. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

C. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer’s level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate, timely, temporary and permanent stabilization measures.

SECTION 3. PLUMBING PERMIT REQUIRED

A. A plumbing permit and/or a subsurface wastewater disposal permit shall be obtained for all land use and construction activities or the applicant shall submit a statement that the structure or use for which the application is made does not require a plumbing or a subsurface water disposal permit under this Ordinance or other State Rule, Law or Regulation.

B. If an application is for construction which expands the floor space and/or the number of rooms enclosed in a structure or expands the use of a structure from seasonal to year-round (permanent) use, the Planning Board may require the licensed plumbing inspector to inspect the existing waste water disposal system to determine its adequacy under current plumbing regulations.

SECTION 4. EXPIRATION OF A BUILDING PERMIT

Permits shall expire one year from the date of issuance if a substantial start (30% completion) is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

SECTION 5. BUILDING PERMIT FEES

A. Building Permit fees shall be established by the Select Board from time to time and a list of fees shall be available at the Town Office.

B. All building permit fees shall be paid upon submission of the permit application and shall be non-refundable. Fees shall be made payable to the Town of Fayette.

C. A double fee shall be charged for any application which is submitted after the proposed use or construction has been initiated. This shall be in addition to any fines or actions or Ordinance violations.

SECTION 6. GENERAL PERMIT REQUIREMENTS

A. BUILDING PERMIT APPLICATION. Every applicant for a building permit shall submit a written application, including a site plan, on a form provided by the Town of Fayette, to the appropriate official as indicated in this Ordinance. The Code Enforcement Officer may require the site plan to be scaled.

B. All applications shall be signed by the owner(s) of the property, or an individual who can show evidence of right title or interest in the property, or by an agent, representative, tenant, or contractor of the owner(s) with authorization from the owner(s) to apply for a permit hereunder. The applicant shall certify that the information in the application is complete and correct.

C. Whenever possible, the applicant shall submit with the application a list of the names and addresses of all Abutters. A notice to all abutters shall by mailed by the Town Office to notify them of the date, time, place and purpose of the public hearing. Only those abutters having property
lines within two hundred fifty (250) feet of the proposed project site shall be notified.

D. All applications shall be dated and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date of its receipt.

E. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing building permit, including the site evaluation approved by the licensed plumbing inspector shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

F. The applicant shall have the burden of proof to show that the proposed activity is in conformity with the purposes and provisions of this Ordinance.

G. If a building permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the Town of Fayette.

H. Applications for building permits will be maintained as a permanent record by the Town.

I. Every building permit shall contain the following statement: “This Building Permit is issued on the condition that all material representations made by the applicant are true. The Planning Board may revoke or amend a permit if, after a hearing, it concludes that a material representation was inaccurate or missing.”

SECTION 7. CERTIFICATE OF OCCUPANCY

No new structure may be occupied without a Certificate of Occupancy issued by the Code Enforcement Officer. The Code Enforcement Officer shall inspect the structure to determine if it complies with all applicable requirements of this Ordinance.

ARTICLE 5. PERMIT REVIEW REQUIREMENTS

SECTION 1. PURPOSE

A. Activities listed in Article 4 above that require a permit shall be reviewed according to the review classification established in this Article.

B. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the a Protected District unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

SECTION 2. PLUMBING AND SUBSURFACE WASTEWATER DISPOSAL

A. Internal and subsurface wastewater disposal systems that require a permit according to the State of Maine Internal and Subsurface Wastewater Disposal Rules and this Ordinance shall be inspected by the Licensed Plumbing Inspector. (A Code Enforcement Officer, at times, may also be a Licensed Plumbing Inspector). A permit shall be issued if the permit application complies with all applicable State and Local Regulations. (Title 30-A M.R.S.A, Section 4211.)

B. A dwelling being converted from a seasonal to a year-round residence may require the installation of a new, or enhancement of an existing, subsurface waste disposal system. A seasonal
conversion permit shall not be approved if a holding tank is used as a means of wastewater storage or disposal. (Title 30-A MRSA Section 4215, subsection 2.)

SECTION 3. ALLOWED USES

Allowed uses as indicated in the Land Use Table do not require a permit or a permit review. Applicants are responsible for meeting the applicable provisions of this Ordinance.

SECTION 4. CODE ENFORCEMENT OFFICER PERMIT REVIEW

Applications for land use activities designated “CEO” in the Land Use Table shall be reviewed by the Code Enforcement Officer. After review, if the proposal complies with the applicable provisions of this Ordinance, the Code Enforcement Officer shall issue a permit.

SECTION 5. PLANNING BOARD REVIEW

Land use activities designated “PB” in the Land Use Table shall be reviewed by the Planning Board. After the Planning Board approves the application, a permit may be obtained from the Code Enforcement Officer. The Planning Board shall approve an application if the proposal complies with the applicable provisions of this Ordinance.

SECTION 6. SELECT BOARD REVIEW

Land use activities designated “SB” in the Land Use Table shall be reviewed by the Select Board. After the Select Board approves the application, a permit may be obtained from the Code Enforcement Officer. The Select Board shall approve an application if the proposal complies with the applicable provisions of this Ordinance.

SECTION 7. LICENSED PLUMBING INSPECTOR REVIEW

Land use activities designated “LPI” in the Land Use Table shall be reviewed by the Licensed Plumbing Inspector (also referred to as the Local Plumbing Inspector). After the Licensed Plumbing Inspector approves the application, a permit may be obtained from the Licensed Plumbing Inspector, whose contact information may be obtained at the Town Office. The Licensed Plumbing Inspector shall approve an application if the proposal complies with the applicable provisions of this Ordinance. Some projects require permits from both the Licensed Plumbing Inspector and the Planning Board / Code Enforcement Officer. Article 7, Section 5, below. (See Land Use Table)

ARTICLE 6. BUILDING PERMIT REVIEW PROCEDURES AND STANDARDS

SECTION 1. PURPOSE

The purpose of the permit review system is to provide a level of municipal review that is proportional to the anticipated impact of the particular land use activity upon the entire Town and to the area where it is proposed.

SECTION 2. REVIEW CRITERIA

The applicant shall demonstrate that the proposed use or project meets the criteria listed below. Either the Code Enforcement Officer or the Planning Board shall approve the application unless it makes written findings that one or more of the following criteria have not been met:

A. The application is complete and the applicable permit fee has been paid.
B. The proposal conforms to all applicable provisions of this Ordinance.

C. The proposal will not result in water pollution, erosion, or sedimentation to surface waters.

D. All wastewater will be properly disposed of by the use of an approved treatment method.

E. The proposal will not have an adverse impact upon spawning grounds, fish, aquatic life, bird or other wildlife.

F. The proposal will conserve shore cover, vegetation and visual quality, as well as actual points of access to inland waters.

G. Archeological and historic resources as designated in the comprehensive plan will be protected.

H. The proposal will avoid problems associated with floodplain development and use.

I. The proposal will maintain safe and healthful conditions.

J. The proposed use will be established and maintained in accordance with an approved erosion and sediment control plan.

K. Access to the site from existing or proposed roads is safe and adequate.

L. The proposed use will not cause or aggravate undue traffic conditions.

M. The proposed use will have adequate water supplies to meet the demands of the proposed use and for fire protection.

N. The proposed use will provide for adequate management of storm water runoff without adverse impact on the site, adjacent land, or water bodies.

O. The proposed use will not decrease the quality, or significantly decrease the quantity, of groundwater.

P. The proposed site design provides adequate buffer space and on-site drainage and landscaping to protect neighboring property from detrimental factors of the proposed development.

SECTION 3. SITE INSPECTION

A. The Code Enforcement Officer, the Planning Board and/or the Appeals Board may conduct an on-site inspection of the proposed project site in order to obtain knowledge about the site and the surrounding area.

B. Whenever the Planning Board and/or the Appeals Board conduct a site inspection, appropriate public notice shall be provided.

SECTION 4. CONDITIONS

A. Upon consideration of the appropriate review criteria, the Code Enforcement Officer, the Planning Board or the Appeals Board may attach conditions to the requested permit if it finds it necessary to further the purposes of this Ordinance.