

**Local Law E of 2022**

**A Local Law amending Chapter 140 of the Code of the Town of Rochester**

**§ 140-12. Yard (Setback) Regulations**

**Section 1. Chapter 140 Amendment**

Chapter 140 of the Code of the Town of Rochester **§ 140-12. Yard (Setback) Regulations** shall be deleted and replaced as follows.

**§ 140-12. Yard (Setback) Regulations**

~~A. Front yard determination. Front yards shall be measured from the edge of the road right-of-way, which shall be assumed to be 50 feet in width in all cases where unknown. The assumed edge of right-of-way in such instances shall be measured from the centerline of roadway and established at a distance of 25 feet from such centerline.~~

A. The starting point of the front yard setback shall be measured starting at the near edge of the road right-of-way which shall be established, depending on road jurisdiction, as follows in all cases:

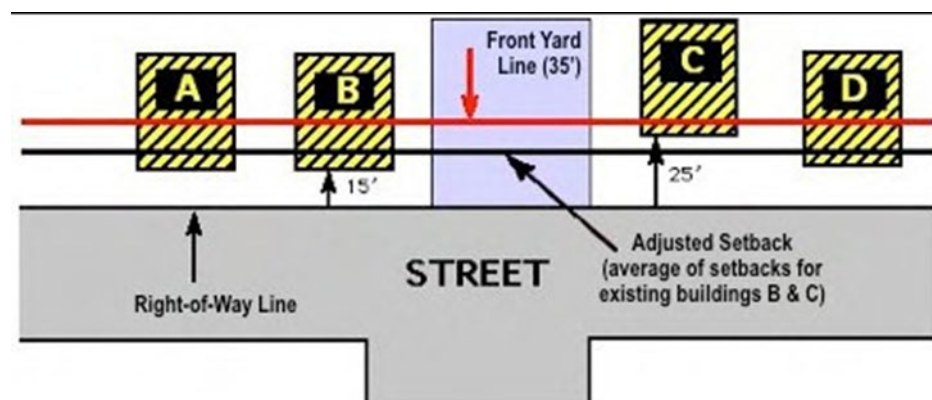
1. Parcels which have road frontage on a public NYS Dept. of Transportation or Ulster County Dept. of Public Works controlled roadway: The front yard setback shall be measured beginning from the lot line nearest the road as documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
2. Parcels which have road frontage on a public Town of Rochester controlled roadway: The front yard setback shall be measured from a point established at 25 feet from the centerline of such paved roadway unless otherwise documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
3. Parcels which have road frontage on a private controlled roadway: The front yard setback shall be measured beginning from the edge of the established or traveled private road right-of-way unless otherwise documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
4. Parcels which have no road frontage and are accessed via a shared driveway or right-of-way: The front yard setback shall be measured from the edge of the lot line as documented by the recorded survey, plat, or deed to the satisfaction of the Code Enforcement Officer.
5. Parcels where the front yard setback starting point cannot be ascertained shall be determined by the Code Enforcement Officer.

## B. Overlay District Yard Setbacks

For parcels with road frontage within an Overlay District the yard setback requirements of an Overlay District shall supersede the yard setback regulations outlined herein.

## C. Yard Setback Exceptions.

1. Side yard **setback** exception. Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard **setback** may be varied. In such case, the average width of the side yard **setback** shall not be less than the otherwise required minimum width; provided, however, that such yard **setback** shall not be narrower at any point than one-half the otherwise required minimum width. The Building Department shall have discretion to interpret and clarify this provision as it applies to individual structures of an irregular nature.
2. In the case of a nonresidential use in the B or AB-3 District, a front yard **setback** may be reduced to 10 feet where parking is provided in the rear or side or reduced to 20 feet when facing another B or AB-3 zoned parcel.
3. In the case of a nonresidential use in the Industrial (I) Zoning District, front, **side, and rear yard setbacks** may be reduced to 20 feet where the given parcel side is facing another Industrial (I) Industrial (I) zoned parcel.
4. When an unimproved lot is situated adjacent to or between improved lots already having a **nonconforming** principal building within the required front yard **setback**, the front yard **setback** for the unimproved lot may be reduced to the average depth of the front yards for the two nearest adjoining improved lots, but shall not be less than 10 feet.



## D. Provision of yard or other open space.

No yard **setback** or other open space provided about any buildings for the purpose of complying with the provisions of the law shall be considered as providing a yard **setback** or open space for any other building, and no yard **setback** or other open space on another lot shall be considered as providing a yard **setback** or open space for a building on any other lot.

## E. Waterfront yards.

~~Each lot fronting on a named stream depicted on United States Geological Survey maps shall include a setback of 100 feet in depth from the high water mark of such stream. No principal structure shall be located within such setback. The Planning Board shall, however, be authorized to modify this requirement where necessary or to accommodate reasonable use of properties outside the floodplain, provided other mitigating measures such as deed covenants limiting clearing near the stream are employed to protect stream quality.~~

1. For the purposes of this section, wetlands are defined by both local, state and federal governing regulations. Stream and Wetland Buffer areas apply to all identified wetlands greater than 0.1 acre. Protected streams are depicted on United States Geological Survey maps, NYS DEC Environmental Resource Mapper or are defined as streams and small water bodies with a surface area of 10 acres or less that are located in the course of a stream with a NYSDEC classification of AA, A, or B, or C with or without a standard of (T) or (TS). Unnamed streams are streams that do not appear on official USGS maps
2. Each lot fronting on a named and/or protected stream or identified wetland depicted on United States Geological Survey maps shall include a stream buffer setback of: 100 linear feet from the high water mark of the named stream or identified wetland; and 50 linear feet from the high water mark of any intermittent stream, as defined in §140-16D of this code..
3. The Planning Board, in the course of other review shall ~~;~~ ~~however,~~ be authorized to modify this requirement where necessary or to accommodate reasonable use of properties outside the floodplain, provided other mitigating measures such as deed covenants limiting clearing near the stream are employed to protect stream quality.
4. Unless superseded by state or federal regulations, these buffer areas may be increased or decreased by up to 50% at the discretion of the Planning Board provided that the water quality from the impacts of erosion and sedimentation will not be compromised.
5. No buildings, paved areas, storage of machinery, waste storage or disposal (including but not limited to disposal and dumping of snow and ice; recyclable materials; barnyards, silos and animal pens; hazardous or noxious chemicals; used automobiles or appliances; and other abandoned materials); or disturbance of more than 25% of the vegetation and trees shall be allowed within the stream buffer setback. Fences, decks, and structures as defined in 140-60 J (2) are allowed within the stream buffer setback provided that they do not store non-permitted waste.
6. If a lot is in the Flood District (FD) Overlay the stream buffer setback, shall be to the 100 year floodplain verified high water mark for all waterbodies and wetlands.
7. All sewage systems, both drain fields and raised systems, must adhere to a 100- foot stream buffer setback in compliance with the New York State Codes, Rules and Regulations. Cesspools shall further be restricted to a 200 foot stream buffer setback.
8. All manure piles shall be located 200 feet from the stream buffer setback. All chemical storage not within a containment structure (for example, salt or salt/sand storage) shall be located 300 feet from the stream buffer setback and the containment structure shall not be used to store any hazardous materials in violation of any federal, state, or local requirements.
9. Mining or removal of soil, sand and gravel, and quarrying of raw materials in a stream buffer setback shall be prohibited.

10. No widening, straightening or any such alteration of the beds and banks of streams except where the New York State Department of Environmental Conservation has issued a permit expressly allowing such activities on the parcel shall be permitted.
11. Tree cutting within 25 feet of the top of any stream bank shall be prohibited. Any clearing activity within a stream buffer setback must retain at a minimum 25% of the preexisting tree canopy at all times. Removal of trees in any location shall be permitted provided the tree or trees pose an immediate threat to property or public safety.
12. Delineation of any applicable stream & wetland buffer setbacks shall be recorded on all subdivision plats, site plans and special use permits.
13. The Planning Board in site plan review shall have the ability to request ecological landscaping to protect and/restore stream beds.
14. Any deviation from these stream buffer setback requirements shall require an area variance.

F. Planned new streets.

In the case where a road right-of-way line for future streets, for future extensions of existing streets or for future street widening is established on the site plan, buildings and structures shall be set back from such line as though it were a street line.

## **Section 2. Severability**

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

## **Section 3. Effective Date**

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.