

**ARTICLE 13 APPEALS**

**1301. BOARD OF APPEALS**

The Board or Zoning Board of Appeals, referred heretofore, shall be the Board of Appeals of the City of Brewer, as constituted under Chapter 34 of the City of Brewer Charter, Codes and Ordinances, and shall have all the powers set forth in this Article and in Chapter 34.

**1302. JURISDICTION AND AUTHORITY**

For the purpose of this Land Use Code, the Board of Appeals shall have the jurisdiction and authority:

**1302.1. ADMINISTRATIVE APPEALS**

To hear and decide appeals in accordance with Chapter 34 of the City of Brewer Charter, Codes and Ordinances.

**1302.2. VARIANCE APPEALS**

To authorize variances upon appeal within the limitations set forth in this Land Use Code.

**1303. APPEAL PROCEDURE**

**1303.1. MAKING AN APPEAL**

1. An administrative or variance appeal may be taken to the Brewer Zoning Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Brewer Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.
2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal on forms available from the Code Enforcement Officer which includes:
  - 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 and proposed buildings and structures, contours at realistic intervals, and other physical features of the lot pertinent to the relief sought.
  - C. the names and addresses of abutting property owners.

Additional information deemed necessary by the Board of Appeals to make a fair and equitable decision, shall be supplied by the applicant upon request. The application must be signed by the applicant. All variances and Administrative Appeals by an aggrieved party shall be accompanied by a fee set forth in the City Council adopted fee schedule, payable to the City of Brewer.

3. Upon being notified of an appeal, the Code Enforcement Officer or Brewer Planning Board, as appropriate, shall transmit to the Brewer Zoning Board of Appeals all of the papers constituting the record of the decision appealed from.

#### **1304. VARIANCES**

**1304.1** A variance may be granted by the Board only where strict application of the Ordinance, or provision thereof, to the petitioner and the petitioner's property would cause undue hardship. To prove undue hardship, the petitioner shall demonstrate to the satisfaction of the Board that all of the following conditions exist: (#14)

1. The land in question cannot yield a reasonable return unless a variance is granted; and
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
3. The granting of a variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

**1304.2** Establishment or expansion of a use otherwise prohibited in the district shall not be granted by a variance.

**1304.3** The Board of Appeals may permit a variance from a setback requirement strictly limited to a single-family dwelling that is the primary year-round residence of the petitioner not to exceed 20% of a setback requirement and shall not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board of Appeals may allow for a variance under this subsection to exceed 20% of a setback requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, Maine Revised Statutes Chapter 3, Subchapter 1, Article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner. The Board of Appeals may permit a variance from a setback requirement under this subsection only when strict application of the zoning ordinances to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection shall mean: (#14)

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

#### **1304.4 DISABILITY VARIANCE**

The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses that 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, Maine Revised Statutes, Section 4553, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

#### **1304.5 SHORELAND ZONE (#15)**

Expansions of structures within the shoreland zone which do not meet setback requirements from rivers, streams, wetlands or other water bodies regulated under the mandatory Shoreland Zoning Act, 38 MRSA, Section 438-A(2) are limited by State statute expansion of any portion of a structure which does not meet said setback requirement to less than 30% of the existing floor area or volume. The limitation applies for the lifetime of the structure. This subsection 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 petitioner. A variance under this subsection 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. The Maine Department of Environmental Protection shall be notified of all variances granted in the Shoreland Zoning Protection District pursuant to this Section.

**1304.6** “Pursuant to Title 30-A § 4353 4-C. Variance from dimensional standards, the Board of Appeals of the City of Brewer is hereby authorized to grant a variance when strict application of the ordinance to the petitioner and the petitioner’s property would cause a practical difficulty and when the following conditions exist:

- a. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- c. The practical difficulty is not the result of action taken by the petitioner or a prior owner;

- d. No other feasible alternative to a variance is available to the petitioner;
- e. The granting of a variance will not unreasonably adversely affect the natural environment; and
- f. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, “dimensional standards” means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, “practical difficulty” means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.” (#15)

#### **1304.7 FLOODPLAIN VARIANCES (#14)**

The following provisions shall govern variances in the areas of special flood hazard, as set forth in Article 8, Section 805 of this Land Use Code. The Board of Appeals of the City of Brewer may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provision of this Article. The Board of Appeals may grant a variance from the requirements of this Article consistent with state law and the following criteria:

- 1. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- 2. Variances shall be granted only upon:
  - A. a showing of good and sufficient cause; and,
  - B. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and,
  - C. a showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,
  - D. a determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
    - 1) that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - 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; and,
    - 3) that the granting of a variance will not alter the essential character or the locality; and,
    - 4) the hardship is not the result of action taken by the applicant or a prior owner.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
4. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - A. other criteria of Section 1304.7 and Article 8, Section 805 and 802.K of this Land Use Code are met; and,
  - B. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- 4-A. Variances may be issued for the repair, reconstruction, rehabilitation, or Restoration of Historic Structures upon the determination that:
  - A. the development meets the criteria of 1304.7; and
  - B. the proposed repair, reconstruction, rehabilitation, or restoration Will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and the design of the structure.
5. Any applicant who meets the criteria of 1304.7 paragraphs 1 through 4-A shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  - A. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  - B. Such construction below the base flood level increases risks to life and property; and,
  - C. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

**1304.8 EXPIRATION DATE**

If the Board of Appeals grants a variance with or without restriction, the variance shall expire if the variance is not used within one (1) year after it is granted and/ or a building permit obtained from the Code Enforcement Officer and the construction substantially completed within said one (1) year period.

**1304.9 RECORDING OF VARIANCES**

The applicant shall record a Certificate in the Penobscot County Registry of Deeds in accordance with Title 30-A M.R.S.A. § 4353, as the same may be amended from time to time.

**1305. ADMINISTRATIVE APPEALS**

An Administrative Appeal may be taken to the Board of Appeals in accordance with Chapter 34 of the City of Brewer Charter, Codes and Ordinances.