

ARTICLE 5 - NON-CONFORMANCE

501 PREAMBLE

Each building, structure or land area in the City of Brewer shall conform to the use restrictions, lot size requirements, site development requirements and all other applicable provisions of this Land Use Code which govern the zone (district) in which it is located, except as provided in Section 502. Uses not listed as permitted uses or uses subject to site plan review in Article 3 are not permitted.

Unless otherwise provided for in this ordinance, all uses shall comply with the following regulations, as follows:

502 NON-CONFORMING LOTS AND USES

502.1 NON-CONFORMING LOTS AND LOTS OF RECORD

1. SINGLE LOT OF RECORD

- A. In any district, notwithstanding limitations imposed by other provisions of this Land Use Code, a single lot at the effective date of adoption of this Land Use Code may be built upon. Such a lot must be in separate ownership or lotted in a development approved by the Planning Board and City Council prior to the adoption of this Land Use Code. It must not be of continuous frontage with other such lots in the same ownership except as aforesaid. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, of the lot shall conform to the regulations for the district in which the lot is located. Variance of area, width and yard requirements may be obtained only by approval of the Board of Appeals.
- B. Abutting lots in subdivisions approved by the City Council which were in separate ownership at the time of a zone change, altering the lot and yard requirements, may be altered upon Site Plan approval of the Planning Board. The Site Plan approval, if granted, would allow alteration of a lot to no less than the minimum lot and area requirements in existence for the district in which the lot was created at the time of subdivision approval.
- C. The intent of this provision is to provide a method of relief to abutting property owners in instances where surveyor's errors, placement of structures by previous owners or similar instances of an error which are not due to the action of the current or the previous owner, affect the reasonable use of the lot.

2. CONSIDERATION

The Planning Board, in reviewing the site plan application, shall consider the following:

- A. The original approved subdivision and the pattern of lotting.
- B. A surveyor's plan showing the lot as it currently exists and as it is proposed. A statement by the owner detailing the reason(s) for the special exception request.
- C. The impact of the proposed special exception alteration upon the pattern of development within the subdivision and its impact upon the property values within the subdivision.

The applicant shall bear the responsibility for providing items A thru C above and the costs for advertising for a public hearing. The Planning Board shall hold a public hearing following the notification and public hearing procedures set forth for site plan review (Article 5).

3. CRITERIA

Before granting a special exception, the Planning Board shall determine that the proposed alteration of abutting lots:

- A. Will not significantly alter the pattern of existing development in the original subdivision. Lots smaller than 90 per cent of median lot size of the original subdivision are considered as to have the effect of significantly altering the platting pattern.
- B. Will not contravene the purpose and intent of the zoning ordinance by creating a new lot.
- C. Will not cause harm to the public welfare by adversely affecting property values in the subdivision.

4. ADJACENT LOTS

If two (2) or more lots or combinations of lots and portions of lots with Continuous frontage are in undivided ownership at the time of the passage or amendment of this Land Use Code, and if all or part of the lots do not meet the requirement for lot width and area as established by this Land Use Code, then the lands involved shall be considered to be an individual parcel for the purpose of this Land Use Code. No portion of such parcel shall be sold, leased developed or used which does not meet lot width and area requirements established by this Land Use Code.

502.2 NON-CONFORMING USES

1. CONTINUATION OF USE

A non-conforming use or facility may be continued, but may not be extended or changed unless to a conforming use, except as permitted in accordance with the provisions of this Land Use Code.

2. REBUILDING

Any non-conforming structure damaged by fire, flood, explosion or other casualty may be rebuilt within one (1) year of said damage so long as the structure conforms to the following:

- A. Has the same size foundation, slab or foundation support as it had prior to the damage being sustained;
- B. Has the same number of square feet or less of usable floor area in the structure as before the damage was sustained;
- C. Is built with the same type of building materials or better as is determined by Marshall & Swift, Residential Cost Handbook, 1998 or some comparable publication;
- D. Is the same design as the structure replaced; and
- E. Complies with all other City Codes and Ordinances at the time the rebuilding takes place.

Any structure so damaged which is not rebuilt within said one (1) year period of time shall no longer be considered a non-conforming building and may only be rebuilt if it conforms to all of the other provisions of this Land Use Code.

3. CRITERIA FOR REBUILDING

Any non-conforming structure can be rebuilt in whole or in part so long as the rebuilt structure conforms to the following:

- A. Has the same sized structure, slab or foundation support as it had prior to being rebuilt;
- B. Has the same number of square feet or less of floor area in the structure as it had prior to being rebuilt;

- C. Is built with the same type of building materials or better as is determined by Marshall & Swift, Residential Cost Handbook, 1998 or some comparable publication;
- D. Is the same design as the previous structure;
- E. Complies with all other Codes and Ordinances at the time the structure is rebuilt; and
- F. All rebuilding must be completed within one year from the date the building permit is obtained.

4. CESSATION OF USE

In the event that any non-conforming use conducted in a structure, or otherwise, ceases, for whatever reason, for a period of one (1) year, such non-conforming use shall not be resumed. In a mobile home park when a mobile home leaves a space smaller than this Land Use Code requires, then no replacement mobile home shall occupy that space unless it is enlarged to meet the requirements of this Land Use Code.

A building, structure or use on a lot with frontage and access on Wilson Street, State Street, North Main Street, South Main Street or Parker Street, which is a non-conforming use may be reviewed for the purposes of expansion or enlargement if the following preconditions are met:

- A. The non-conforming use has a "manufacturing," "retail," "wholesale trade," "insurance" or "service" designation according to the Standard Industrial Classification Manual published by statement of Policy Division of the Executive Office of the President of the United States,
- B. The non-conforming has not been abandoned for more than one (1) year,
- C. The non-conforming use was a legitimate use under the Zoning Ordinance of the City of Brewer, either directly or by interpretation of the Code Enforcement Officer of the City of Brewer, in the zone in which it was located when it was created and has become a non-conforming use only as the result of the enactment or modification of the Land Use Code of the City of Brewer, or a modification of the Brewer Zoning Map.

5. REVIEW PROCESS

In the event the preconditions are all met, the review process shall be as follows:

- A. The applicant shall submit three (3) copies of the proposed site plan of the expansion or enlargement, containing the information set forth in Article 6 of

this Land Use Code to the City Clerk, along with a fee established by City Council. The City Clerk shall refer one (1) copy of the plan to the Chairman of the Planning Board; one (1) copy of the plan to the Code Enforcement Officer and one (1) copy to the City Engineer.

- B. The Planning Board shall notify the applicant in writing within thirty (30) days from the receipt of the site plan, or such time as is agreed upon in writing, whether the site plan is complete.
- C. The Planning Board shall hold a public hearing on the site plan. The public hearing shall be held within thirty (30) days from the receipt of the complete site plan or as mutually agreed upon, and the Planning Board shall cause notice of the date, time and place of such hearing to be given to the applicant and to the owners of properties immediately adjoining the use to be expanded or enlarged and to be published at least two (2) times in a newspaper or general circulation in the City of Brewer, the date of the first publication to be at least seven (7) days prior to the date of the hearing.
- D. The Planning Board, within thirty (30) days of the public hearing or as mutually agreed upon, shall make a written recommendation to deny, grant or grant upon such terms and conditions as it may deem advisable subject to the criteria hereinafter set forth.
- E. The Chairman of the Planning Board shall then refer the matter to the Brewer City Council along with the Planning Board's written recommendation and a written statement of findings supporting said recommendation. The City Council shall hold a public hearing within thirty (30) days after receipt of the above material from the Chairman of the Planning Board. The City Council shall cause notice of the date, time and place of such hearing to be given to the applicant and to the owners of properties immediately adjoining the use to be expanded or enlarged and to be published at least two (2) times in a newspaper or general circulation in the City of Brewer, the date of the first publication to be at least (7) days prior to the date of the hearing.
- F. Within thirty (30) days after the City Council holds a public hearing, it shall issue its decision, denying, approving or approving the site plan subject to certain restrictions. In the event of approval or approval subject to certain restrictions, a majority of the City Council members present and voting shall sign the site plan, the site plan shall also be dated. All terms and conditions shall be affixed to the plan.
- G. The applicant shall file the approved site plan with the terms and conditions thereon, in the Penobscot County Registry of Deeds within sixty (60) days thereafter. In the event the site plan is not recorded within said sixty (60) day time period, the approval by the City Council shall be null and void. The

applicant at his expense shall be responsible to record the site plan at the Penobscot County Registry of Deeds.

- H. The Code Enforcement Officer shall not issue a building permit until the approved site plan has been recorded in the Penobscot County Registry of Deeds.

6. REVIEW CRITERIA

In reviewing the site plan, the Planning Board and City Council shall use the following criteria:

- A. The proposed expansion or enlargement is for the existing non-conforming use, which was a legitimate use under the Land Use Code of the City of Brewer when the use was created.
- B. The proposed expansion or enlargement will not include the acquisition and use of additional land which exceeds 25% of the total area of the lot upon which the use was located at the time it became non-conforming.
- C. The existing non-conforming use and the proposed expansion and enlargement thereof will not exceed the Performance Standards set forth under Article 4 of this Land Use Code.
- D. The proposed expansion or enlargement shall meet all the area, front yard, side yard, rear yard, height and structure coverage requirements of the District in which the proposed expansion or enlargement is to be located.
- E. Off-street parking and loading spaces shall be provided for both the existing and proposed expansion enlargement. The off-street parking and loading spaces shall meet the following requirements.
 - 1) All off-street parking areas and loading spaces shall be totally screened from the view of the adjoining property by trees, shrubs, fences and other landscaping material.
 - 2) No new parking areas or loading spaces shall be located within the front yard, side yard or rear yard setback requirements of the District in which the proposed expansion or enlargement is to be located.
 - 3) No maneuvers for off-street parking or loading spaces shall take place in any public way.
- F. All signs, including existing and proposed, shall conform to the sign provisions of Article 4, except as follows:

- A. Where the posted speed limit is 30 miles per hour (MPH) more or less a total of 22 square feet of signage is permitted, with no single sign exceeding 12 square feet; and
- B. Where the posted speed limit is greater than 30 MPH, a maximum of 35 total square feet of signage with no single sign exceeding 25 square feet.
- G. Access for vehicles to off-street parking areas and loading spaces shall meet the following conditions:
 - 1) Access shall be located so as to meet the design standards in Section 906.1.4 of Article 9 of this Land Use Code.
 - 2) Access to the public way, shall be a maximum of 30 feet in width; at least 100 feet from an intersection; and have a grade of no more than 3% (3 foot rise in 100 feet).
- H. The proposed expansion or enlargement of buildings, shall be designed and located (and renovations to existing structures are designed) to fit in with established neighborhood patterns in a complementary fashion. In making such a determination the following shall be considered:
 - 1) Do the color and materials match or complement those used on nearby structures?
 - 2) Is there similarity or successful transition in scale, building form and proportion between the proposed expansion and existing structures located within four hundred (400') feet thereof?
 - 3) Does the proposed expansion propose to use plant materials, fencing and walkways which are compatible with the character of the neighborhood in size, scale, material and color?
 - 4) In making such a determination the Planning Board and City Council at the expense of the applicant may engage the services of qualified professionals such as architects and landscape architects to help them in making their determination.
- I. The hours of operation may be restricted so as to not exceed the present hours of operation.
- J. The proposed expansion or enlargement will conform to the general character of the neighborhood in which it is located.