

AN ORDINANCE PERTAINING TO THE ZONING AND LAND USE CODE

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the Code of Ordinances of the City of Lewiston, Maine is hereby amended as follows:

APPENDIX A

ZONING AND LAND USE CODE

ARTICLE IX. APPEALS AND VARIANCES

Sec. 1. Applicability.

The procedures and standards set forth in this ~~a~~Article shall apply to appeals and variances that are brought before ~~either the b~~Board of ~~a~~Appeals ~~or planning board~~ under this Code and, except as otherwise provided in ~~a~~Article X, to applications for conditional use permits pursuant to ~~a~~Article X.

Sec. 2. Appeal procedures.

(a) *Petition.*

(2) The petition for appeals shall contain the following information:

g. A drawing, which is substantially to scale, of the site, showing existing and proposed buildings, roads, drives, parking areas and utilities, the actual relationship of these facilities to each other and the boundaries of the parcel and the location of buildings or abutting lots which are within 50 feet of the property line of the site. Where development approval is required by ~~a~~Article XIII of the Code, this drawing shall meet the requirements of ~~a~~Article XIII, subsection 3(h)(3).

(c) *Public notice.* Before taking action on a petition for appeal, the ~~b~~Board of ~~a~~Appeals shall hold a public hearing. The office of the director of code enforcement shall notify, by regular mail, the following parties of the subject matter, time, date and place of the hearing at least seven days before the date of such hearing:

(1) Each member of the ~~b~~Board of ~~a~~Appeals;

(2) The petitioner, the development department, the mayor and city council, the director of code enforcement, and the owner of the property which is the subject matter of the appeal, if other than the petitioner;

(3) The owners of property within 300 feet of all the frontage on both sides of the street and all landowners whose property touches upon the lot involved in the appeal.

The owners of property shall be considered to be the parties listed by the chief assessor as those against whom taxes are assessed. Failure of any property owner to receive said

notice shall not necessitate another hearing and shall not invalidate any action by the ~~b~~Board of ~~a~~Appeals.

Sec. 3. Standards for the granting of appeals.

~~The Board of appeals shall grant an appeal only when it finds that the following standards have been met:~~

~~(1) — *Administrative appeals.* That the code enforcement official erred in either his interpretation of the Code or in the application of the Code to the particular circumstances of the application. If the board of appeals finds that the code enforcement official correctly interpreted and applied the provisions of this Code, the board shall affirm his decision. If the board finds that the code enforcement official erred in the interpretation or application of the Code, the decision of the code enforcement official shall be reversed and the board shall make an official interpretation of the Code to be used by the code enforcement official.~~

~~(2) — *Variances.*~~

~~a. — The board of appeals shall grant a variance only when it finds that the strict application of a provision of this Code to the petitioner and his property would cause undue hardship. The term "undue hardship" as used in this subsection means:~~

~~1. — The land in question cannot yield a reasonable return unless a variance is granted because there are physical conditions unique to the property which are of such an extraordinary nature that strict application of the provisions of this Code greatly decreases its value for any use to which it can be put under the provisions of this Code;~~

~~2. — The need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;~~

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

~~4. — The granting of the variance will not alter the essential character of the locality;~~

~~5. — The granting of the variance will not result in undue impact on adjacent properties due to the placement of buildings or structures, location of storage, parking or service areas, diversion of surface water or blocking of solar access; and~~

~~6. — The granting of the variance will not impede the ability of public safety services to reach or service the property or adjacent properties.~~

~~b. — In addition to the standards contained in subsection a., within mandated shoreland zoning areas or in resource conservation, lake conservation or~~

~~groundwater conservation districts, the board of appeals shall grant a variance only when it finds that the granting of the variance:~~

- ~~1. Will not result in unsafe or unhealthful conditions;~~
- ~~2. Will not result in erosion or sedimentation;~~
- ~~3. Will not result in water pollution;~~
- ~~4. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;~~
- ~~5. Will conserve shoreland vegetation;~~
- ~~6. Will conserve visual points of access to waters as viewed from public facilities;~~
- ~~7. Will conserve actual points of public access to waters;~~
- ~~8. Will conserve natural beauty; and~~
- ~~9. Will avoid problems associated with floodplain development and use, such as erosion, increased risk of flood damage to upstream properties or increased flood damage.~~

~~e. Variance from the floodplain management standards of article XIV.~~

- ~~1. The board of appeals shall grant a variance from the floodplain management standards of article XIV only when it finds that the granting of the variance:
 - ~~a. Within any designated regulatory floodway will not result in an increase in flood levels during the base flood discharge;~~
 - ~~b. Is supported by good and sufficient cause;~~
 - ~~c. Will not result, should a flood comparable to the base flood occur, 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;~~
 - ~~d. Will not cause a conflict with other state, federal or local laws or ordinances;~~
 - ~~e. 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; and~~
 - ~~f. Would result in "undue hardship," which in this subsection means:
 - ~~i. that the land in question cannot yield a reasonable return unless a variance is granted; and~~~~~~

- ~~ii. 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~~
 - ~~iii. that the granting of a variance will not alter the essential character of the locality; and~~
 - ~~iv. that the hardship is not the result of action taken by the applicant or a prior owner.~~
- ~~2. The board of appeals shall grant a variance for new construction, substantial improvements, or other development for the conduct of a functionally dependent use only when it finds that:~~
- ~~a. Other criteria of article IX and article XIV, subsection 6(k) are met; and~~
 - ~~b. The structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.~~
- ~~3. The board of appeals may grant a variance for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a state inventory of historic places. Upon the determination that:~~
- ~~a. The development meets the criteria of subsections 3(2)(a) through (d) above; 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 design of the structure.~~
- ~~4. Any applicant who meets the criteria of article IX, subsections (1) through (3) 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 \$25.00 per \$100.00 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.

5. ~~The board of appeals shall submit to the code enforcement official a report of all variance actions, including justification for the granting of the variance and an authorization for the code enforcement official to issue a flood hazard development permit, which includes any conditions to be attached to said permit.~~
6. ~~Any aggrieved party who participated as a party during the proceeding before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty five days from the date of any decision of the Board of appeals.~~
- (3) ~~Changes from one nonconforming use to another nonconforming use. That the criteria set out in article VI, section 4 have been met.~~
- (4) ~~Determination of zoning district boundaries. That the criteria set out in article IV, section 3 have been met.~~
- (5) ~~Appeals of staff decisions on development reviews. That the staff review committee erred in the interpretation or application of the approval criteria set forth in article XIII. If the board finds that the staff review committee correctly interpreted and applied the provisions of this Code, the board shall affirm its decision. If the board finds that the committee erred in its decision, the decision of the committee shall be reversed and the board shall approve, approve with conditions or deny the application.~~
- (6) ~~Modifications of off street parking requirements. That the criteria set out in article XII, section 17, subsections (e) and (h) have been met.~~
- (7) ~~Modification of wall and fence requirements. That the criteria as set out in article XII, section 7, subsection (f), have been met.~~
- (8) ~~Appeals of historic preservation review board actions on certificates of appropriateness. That the historic preservation review board erred in the application of the approval criteria set forth in article XV. If the board of appeals finds that the historic preservation review board correctly interpreted and applied the provisions for granting a certificate of appropriateness, the board of appeals shall affirm its decision. If the board of appeals finds that the historic preservation review board erred in its decision, the decision of the review board shall be reversed and the board of appeals shall approve, approve with conditions, or deny the application.~~
- (9) ~~Modifications of setbacks, yards, maximum lot coverage ratio, maximum impervious surface ratio, minimum open space ratios, and maximum building height requirements by not more than 25 percent; for lots in the highway business and community business zoning districts with frontage on Main Street, Sabattus Street or Lisbon Street, the modification may be up to 30 percent. The requested modifications of the aforementioned space and bulk requirements shall meet the following criteria:~~

- a. ~~Detached single family dwellings and their accessory structures may be located a minimum of ten feet from the nearest point of any existing principal structure or building on any adjacent lot.

All other residential and nonresidential structures requesting modifications must be constructed in accordance with the current building code.~~
- b. ~~The granting of the reduction will not result in undue impact on adjacent properties due to the placement of buildings or structures, location of service, parking or storage areas, diversion of surface water or blocking of solar access;~~
- c. ~~The modification will not impede the ability of public safety services to reach or service the property or adjacent properties;~~
- d. ~~The modification provisions cannot be used to further modify space and bulk requirements already reduced pursuant to the cluster provisions found under article XIII, sections 7 and 9; or to reduce the minimum lot size, minimum frontage, minimum setback and minimum yard requirements for article XI for single family cluster developments, mixed residential developments, mixed single family residential developments and mobile home parks as they apply to the development in its entirety as if it were a single unit; or to further modify yard and setback reductions allowed for awning and canopy installations, and existing service stations, pursuant to article V, subsections 3(q) and (t), respectively.~~

- (10) ~~Modifications of front setbacks limited to vertical expansions, side and rear yards, side and rear setbacks, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, maximum building height requirements by more than 25 percent (or by more than 30 percent for lots in the highway business and community business zoning districts with frontage on Main Street, Sabattus Street or Lisbon Street), but not greater than 50 percent. The requested modifications of the aforementioned space and bulk requirements shall meet the criteria contained in subsection 3(9) above and the following additional criteria:~~

~~For modifications to the front setbacks, side and rear yards, side and rear setbacks, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios and maximum building height requirements, the proposed structure, building, storage area, parking or other impervious area cannot otherwise be practically located on the lot to satisfy the code requirements from which relief is sought. In assessing practicality, the board shall take into consideration impediments to development imposed by floodplains, wetlands, shore land zoning, topography, geology, lot size and configuration and limitations caused due to existing conditions of development.~~

~~The reviewing authority shall also assess the need for the development and the use of the property in relation to the relief requested such as could the proposed~~

~~improvements be reduced in scope or be reasonably placed at another location on the lot and still generally meet the petitioners objectives; or are there aesthetic, architectural or structural considerations that warrant that the proposed relief be granted.~~

- ~~(11) Modifications of side and rear yard and side and rear setback requirements by more than 50 percent. The requested modification of the aforementioned space and bulk requirements shall meet the criteria contained in subsections 3(9) and 3(10) above. In addition, the reviewing authority shall require that the petitioner obtain a maintenance easement/agreement from the owner(s) of adjacent impacted property(ies), (i.e. those properties that are immediately adjacent to the proposed improvement(s) requiring relief that will, in the reviewing authority's opinion, be impacted due to construction, maintenance, stormwater runoff, snow and the potential to limit future development opportunity). The easement/maintenance agreement shall be in a form acceptable to the reviewing authority and shall be recorded at the Androscoggin County Registry of Deeds by the petitioner prior to the issuance of any required permits. In addition, the property boundary subject to the requested relief shall be established by a licensed land surveyor with verification provided to the code enforcement official prior to the issuance of any permits for the requested improvements.~~

Sec. 3. Standards for the granting of appeals and variances.

- (a) Appeals. The Board of Appeals shall grant an appeal only when it finds that the following standards have been met:
- (1) Administrative appeals. That the code enforcement official erred in either his interpretation of the Code or in the application of the Code to the particular circumstances of the application. If the Board of Appeals finds that the code enforcement official correctly interpreted and applied the provisions of this Code, the Board shall affirm his decision. If the Board finds that the code enforcement official erred in the interpretation or application of the Code, the decision of the code enforcement official shall be reversed and the Board shall make an official interpretation of the Code to be used by the code enforcement official.
 - (2) Appeals of staff decisions on development reviews. That the Staff Review Committee erred in the interpretation or application of the approval criteria set forth in Article XIII. If the Board finds that the Staff Review Committee correctly interpreted and applied the provisions of this Code, the Board shall affirm its decision. If the Board finds that the Committee erred in its decision, the decision of the Committee shall be reversed and the Board shall approve, approve with conditions or deny the application.
 - (3) Appeals of Historic Preservation Review Board actions on certificates of appropriateness. That the Historic Preservation Review Board erred in the application of the approval criteria set forth in Article XV. If the Board of Appeals finds that the Historic Preservation Review Board correctly interpreted and applied the provisions for granting a certificate of appropriateness, the Board of Appeals shall affirm its decision. If the Board of Appeals finds that the

Historic Preservation Review Board erred in its decision, the decision of the review Board shall be reversed and the Board of Appeals shall approve, approve with conditions, or deny the application.

(b) Variances.

(1) General. Except as provided in parts 2 through 6 of this subsection, the Board of Appeals shall grant a variance only when it finds that the strict application of a provision of this Code to the petitioner and his property would cause undue hardship. The term "undue hardship" as used in this subsection means:

a. The land in question cannot yield a reasonable return unless a variance is granted, including where strict application of the zoning ordinance would result in the practical loss of all beneficial use of the land;

b. The need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;

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

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

e. The granting of the variance will not result in undue impact on adjacent properties due to the placement of buildings or structures, location of storage, parking or service areas, diversion of surface water or blocking of solar access; and

f. The granting of the variance will not impede the ability of public safety services to reach or service the property or adjacent properties.

(2) Disability variance; vehicle storage. The Board of Appeals may grant a disability variance to an owner of a dwelling only in the following circumstances:

a. Accessibility. For the purpose of making the dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.

1. The Board shall restrict any variance granted under this section 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.

i. For the purposes of this section, 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.

2. The Board may impose conditions on the variances granted pursuant to this section including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

b. Storage and parking of a noncommercial vehicle. To allow an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability to construct a place of storage and parking for a noncommercial vehicle owned by that person.

1. For the purposes of this subsection, "noncommercial vehicle" mean a motor vehicle as defined in Title 29-A section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.

2. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle.

3. The owner shall include in an application to the Board proposed plans for such structure.

4. The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

c. All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

(3) Code enforcement officer; authority for disability structures permits. Notwithstanding Article IX, Section 3(b), the code enforcement office may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The code enforcement officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling. All medical records submitted to the code enforcement officer and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.

For the purposes of this section, the term "structures necessary for access to or egress from the dwelling" includes ramps and associated railings, walls or roof systems necessary for the safety or effectiveness of the ramps.

For the purposes of this section, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

(4) Setback variance for single-family dwellings. The Board of Appeals shall grant a variance from setback requirements only under the following conditions:

a. The strict application of the ordinance to the petitioner and the

petitioner's property would cause undue hardship;

1. The term "undue hardship" as used in this subsection means:
 - i. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - ii. The granting of the variance will not alter the essential character of the locality;
 - iii. The hardship is not the result of action taken by the applicant or a prior owner;
 - iv. The granting of the variance will not substantially reduce or impair the use of abutting property; and
 - v. The granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
 - b. The request for a variance is for a single-family dwelling that is the primary year-round residence of the petitioner;
 - c. The variance does not exceed twenty percent (20%) of the prescribed setback requirement, provided that a variance under this subsection may 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, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner;
 - d. The variance will not cause the area of the dwelling to exceed the maximum permissible lot coverage.
- (5) Variance from dimensional space and bulk standards. The Board of Appeals shall grant a variance from the dimensional space and bulk standards of the Zoning and Land Use Code 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.

(6) Variance from shoreland zoning standards. The Board of Appeals shall grant a variance within mandated shoreland zoning areas or in Resource Conservation (RC), Lake Conservation (LC), or Groundwater Conservation (GC) districts only when it finds that the granting of the variance, in addition to meeting the standards contained in subsection (b)(1), also:

a. Will not result in unsafe or unhealthful conditions;

b. Will not result in erosion or sedimentation;

c. Will not result in water pollution;

d. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;

e. Will conserve shoreland vegetation;

f. Will conserve visual points of access to waters as viewed from public facilities;

g. Will conserve actual points of public access to waters;

h. Will conserve natural beauty; and

i. Will avoid problems associated with floodplain development and use, such as erosion, increased risk of flood damage to upstream properties or increased flood damage.

(7) Variance from the floodplain management standards of Article XIV. The Board of Appeals shall grant a variance from the floodplain management standards of Article XIV only when it finds that the granting of the variance, in addition to meeting the standards contained in subsection (b)(1), also:

a. Will not result in an increase in flood levels during the base flood discharge;

b. Is supported by good and sufficient cause;

c. Will not result, should a flood comparable to the base flood occur, 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;

d. Will not cause a conflict with other state, federal or local laws or ordinances; and

e. Is limited to 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.

(7a) Variance for new construction and improvements within the floodplain. The

Board of Appeals shall grant a variance for new construction, substantial improvements, or other development for the conduct of a functionally dependent use only when it finds that the standards in subsection b(6) have been met and that:

- a. Other criteria of Article XIV, subsection 6(k) are met; and
- b. The structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(7b) Variance for historic structures within the floodplain. The Board of Appeals may grant a variance for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a state inventory of historic places upon the determination that the proposed repair, reconstruction, rehabilitation, or restoration, in addition to meeting the standards of subsection b(6), will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

(7c) Disclaimer. Any applicant who meets the criteria of Article IX, Section 3(6)() subsections (a) through (c) 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 \$25.00 per \$100.00 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.

(7d) Report to Code Enforcement. The Board of Appeals shall submit to the code enforcement official a report of all variance actions, including justification for the granting of the variance and an authorization for the code enforcement official to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

(7e) Appeals to Superior Court. Any aggrieved party who participated as a party during the proceeding before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of appeals.

Note: Additions are underlined; deletions are ~~struck out~~.