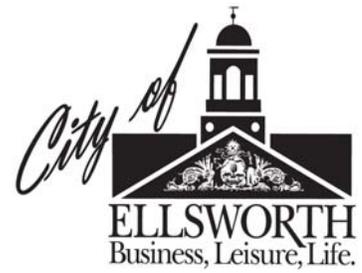


**City of Ellsworth
Chapter 56
Unified Development Ordinance**

**Article 5
Nonconforming Uses**



ARTICLE 5 NON-CONFORMING USES

501 PURPOSE.

The purpose of this Article is to protect the rights of property owners who have lawfully established a use prior to the adoption of this ordinance or prior to any amendment to this ordinance that otherwise renders such use unlawful.

502 GENERALLY

502.1 Applicability. Applies to any nonconformity with the exception of non conformity in the Shoreland Zones which are addressed in Article 4 Shoreland Zoning section 506 Nonconformance in the Shoreland Zone. There are three categories of nonconformities, as defined in Table 502.1 Nonconformities.

Table 502.1 Nonconformities	
Situation	Definition
Nonconforming Uses	A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located.
Nonconforming Structure	A structure that was lawfully erected but that no longer complies with all the regulations applicable to the zoning district in which the structure is located.
Nonconforming Lot	A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the zoning district because of a change in the applicable zoning district regulations or a government action.

502.2 Continuation. On or after the effective date of the adoption of the Unified Development Ordinance, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this Article.

502.3 Abandonment. If a nonconforming use or site is abandoned for 24 months, any future use of such premise shall be in conformity with the provisions of this Article. Abandonment of a nonconforming use or site shall terminate the right to continue the nonconformity.

502.4 Restoration of Unsafe Property. Nothing in this Article or in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any nonconforming building or nonconforming structure declared unsafe by the Code Enforcement Officer or by the Fire Chief.

502.5 Construction Underway. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof upon which lawfully permitted construction has been initiated at the time of the adoption of this ordinance.

503 NONCONFORMING USES

- 503.1 Applicability.** This section applies to the continuation, enlargement, or expansion of a nonconforming use.
- 503.2 Continuance.** The use of any nonconforming structure may be continued. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure, except those made in conformance with the ordinance.
- 503.3 Changes to Conforming Uses.** Any nonconforming use may be changed to a use conforming with this ordinance as established for the zoning district in which the nonconforming use is located, provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use.
- 503.4 Changes to other Nonconforming Uses.** A nonconforming use may be changed to another nonconforming use after determination by the Planning Board that the new nonconforming use is more consistent with the spirit of the Unified Development Ordinance and the neighborhood.
- 503.5 Expansion of Nonconforming Uses.** The Planning Board may allow the expansion of a nonconforming use to proceed if the use was made nonconforming by the adoption of Article 3 Zoning Districts or if the use has been operating for at least 10 years prior to the adoption of Article 3 Zoning Districts. The expansion of a nonconforming use shall be on land where the nonconforming use is taking place or on a piece of land that is contiguous to the land where the nonconforming use is taking place. The Planning Board shall also determine that the expansion of the nonconforming use will not be contrary to the public interest; will not substantially or permanently injure the appropriate use of adjacent conforming property in the same zoning districts; and will not adversely affect the public health, safety, and welfare of the community.
- 503.6 Limitations.** Sections 503.3, 503.4 and 503.5 shall conform to all applicable standards and regulations established in this ordinance including, but not limited to, Article 6 Site Development Review.

504 NONCONFORMING STRUCTURES

504.1 Applicability. No nonconforming structure shall be enlarged or extended.

504.2 Enlargement. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all of the provisions of this ordinance established in Article 3 Zoning Districts for structures in the zoning district in which the nonconforming structure is located. Such enlargement shall also comply with all other applicable Ellsworth ordinances including, but not limited, to Article 6 Site Development Review.

504.3 Termination of Nonconforming Structures.

A. **Damage to Structures.** The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is damaged in any manner and from any cause whatsoever, and the cost of repairing such damage exceeds 65% of the replacement costs of such structure on the date of such damage with the exception listed below:

i. Nonconforming structures located within the Ellsworth Urban Core may be rebuilt or repaired regardless of the extent of damage, so long as there is no increase in nonconformity.

B. **Determination of Replacement Cost.** In determining the replacement cost of any nonconforming structure, the cost of land or any factors other than the replacement cost of the nonconforming structure itself shall not be included.

505 NONCONFORMING LOTS

505.1 Applicability. Applies to the continuation, enlargement or expansion of a nonconforming lot.

505.2 Generally. A permitted allowed use may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership. This provision shall apply even though such lot fails to meet the requirements applicable in the zoning district for area or width or both, provided that yard dimensions and other requirements not involving area or width or both of the lot shall conform to the regulations for the zoning district in which such lot is located (Article 3 Zoning Districts). And the lot is provided with adequate sewage disposal system. A variance of such yard requirements for any requirements other than yard area or width shall be obtained only by permission of the Board of Appeals.

505.3 Contiguous Lots. 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 of Article 3 Zoning Districts unless the lot is served by a public sewer or the lot can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules and contains at least 100 feet of frontage and at least 20,000 square feet of lot area.

505.4 Lots with Contiguous Frontage. If two or more lots or combinations of lots and portions of lots with continuous frontage are in single ownership of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and areas established by this ordinance (Article 3 Zoning Districts), the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used which does not meet lot width and area requirements established by the ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance. The provisions of this paragraph shall not apply where only two lots with continuous frontage are in single ownership at the time of the adoption or amendments of these requirements, provided that: A) There is a principal use structure on one of the lots; and B) Each lot has a minimum of 100 feet of frontage and 20,000 square feet in area.