

AROD Land Use Ordinance Amendments

1. Amend Section 7 Zoning Districts to create a new sub-section 7.9 Adaptive Reuse Overlay District to read as follow:

7.9 Adaptive Reuse Overlay District

7.9.1 Purpose

The older, built-up areas of the City contain a number of larger, older non-residential structures that may no longer be economically viable for their prior or historic use. The update of the City's Comprehensive Plan recognizes that it is desirable that these properties be reused in a manner that preserves the character of the neighborhoods within which these buildings are located while allowing for the creative reuse of these properties. The City recognizes that the reasonable reuse of these buildings may help stimulate new business investment, stabilize and enhance property values in the vicinity of these properties, and allow for the long-term maintenance and upkeep of these properties. The purpose of the Adaptive Reuse Overlay District (AROD) is to allow for the reasonable reuse of these buildings based upon case-by-case review and approval by both the Planning Board and the City Council. Therefore the provisions of this district provide for a two-step review and approval process in which the Planning Board approves the details of the reuse of the property and the City Council decides, based on the approved reuse proposal, if the standards for the creation of an AROD are met and therefore that the property should be included in the AROD. The intention of the City in creating the AROD is that it will only be utilized when traditional zoning methods and procedures such as variances and alterations to the zone boundaries are inadequate to promote desirable growth as identified by Gardiner's Comprehensive Plan. The AROD will only be used to preserve existing buildings that, due to their design, size, or functional obsolescence are not economically viable or physically suitable for uses allowed in the zoning district in which they are located in accordance with the standards of that district. The AROD shall not be used to rezone property or land for new commercial construction, and will be subject to immediate revocation in the event that a building is removed or damaged beyond use.

7.9.2 Applicability to properties in the High Density Residential District

The provisions of the Adaptive Reuse Overlay District (AROD) shall apply only to properties that meet all of the following requirements and that the City Council has specifically included in the AROD. Property owners are not guaranteed any right to any of the additional allowed uses, variations in the development standards, or other provisions of the AROD, unless they are specifically granted by City Council following the process outlined in this Section. To be eligible to be included in the AROD, a property must meet all of the following:

1. The lot is located within the High Density Residential (HDR) District,
2. The principal building on the lot was constructed prior to 1964 for a non-residential use,
3. Since 2000, the principal building has been used primarily for non-residential uses when it was occupied,
4. The principal building contains not less than 3,500 square feet in existing habitable floor area, and
5. The lot has its primary vehicular access from a street that is functionally classified as a minor arterial or major/urban collector by the Maine Department of Transportation's functional classification system or is on a lot to which vehicular access can be provided without disrupting the character of the adjacent neighborhood based on the projected type and volume of traffic.

7.9.3 Allowed modification of requirements of the HDR District

The Adaptive Reuse Overlay District (AROD) is intended to allow the City Council to modify the zoning provisions that apply to the use and redevelopment of specified properties in the HDR District to allow the creative reuse of those properties. In applying the AROD to a specific lot, the City Council shall identify the specific uses of the property that will be permitted in addition to uses allowed in the HDR District and/or the modifications to the development standards including maximum residential density (if applicable) that shall apply to the lot based on the reuse plan approved by the Planning Board. The standards of the underlying HDR zone and other performance standards and requirements of the zoning ordinance shall apply to the use and development of the lot except as specifically varied by the approved reuse plan and/or the action of the City Council to include the property in the AROD.

7.9.3.1 Additional Allowed Uses in the HDR District:

In addition to the uses allowed in the High Density Residential (HDR) District, the City Council may authorize the following additional nonresidential uses that are not otherwise permitted in the HDR District in conjunction with the approval of an AROD. There shall be no provisions for drive-through or drive-up services in conjunction with any additional allowed use permitted on the lot. In approving the creation of an AROD for a specific lot, the City Council shall specifically identify the additional uses to be allowed on the property:

1. Bank
2. Catering
3. Funeral Home
4. Laboratories/Research Facilities
5. Meeting Space up to 2000 square feet
6. Offices up to 2000 square feet
7. Offices 2,000 square feet or larger
8. Restaurant
9. Retail up to 3500 square feet
10. Service Business
11. Facility for the processing, distribution, and/or sale of agricultural products
12. Light Manufacturing in which all activity including material storage occurs within a building
13. Studios of artists and craftsmen
14. Community Nonprofit Facility

7.9.3.2 Modified Development Standards

In approving the creation of an AROD for a specific lot, the City Council may modify the Minimum Dimensional Requirements for the HDR District as set out in Section 7.7 including the density or lot size standards, the District Performance Standards set out in Section 7.8.4, the General Performance Standards set forth in Section 8, the Specific Activity Performance Standards of Section 10, and the traffic and parking standards of Section 11. In approving the creation of an AROD, the City Council shall specify exactly which standards are being modified and to what extent. The modifications to the standards shall be based on the reuse plan for the reuse proposal approved by the Planning Board. Any modification of the applicable standards shall be consistent with the following limitations:

1. All modifications of the development standards to facilitate the reuse of the property must be to accommodate existing nonconforming conditions of the lot and the building on the lot (such as lot size or setbacks) or to allow enhancements which are

not designed to increase the building capacity, but are required to make the building functional for the intended new use (i.e. reconfiguration of the existing floor area and/or accessibility and safety enhancements such as lighting, elevator, railings, ramps, etc.),

2. The modifications will be the minimum necessary to allow reasonable reuse of the property,
3. The converted premises will be adequately landscaped in a way that meets performance standards and promotes conformity and harmony with the neighborhood.
4. The primary vehicular access to the lot on which the use is located shall be from a public street that is functionally classified as a minor arterial or major/urban collector street or from another street from which vehicular access can be provided without disrupting the character of the adjacent neighborhood based on the projected type and volume of traffic.
5. The primary activity shall occur within the building. Any outside storage of materials, equipment, dumpsters, or products must not be located within required yard setbacks and must be screened from abutting streets and residential properties by landscaping, fencing, and/or berms in accordance with Section 8. General Performance Standards including the provisions of Sections 8.9. Exterior Material Storage and Section 8.11 Buffer and Screening Standards.
6. Parking associated with the use shall not be located in any required setback. Parking associated with the use shall not be located in the front yard of a residential property. If a building is located within 50 feet of the front lot line, no parking shall be permitted between the front lot line and the front wall of the building extending the full width of the lot unless an existing driveway is already in use. Parking must be screened from abutting properties in residential use through landscaping, fencing, or topography in accordance with Section 8.11. Buffer and Screening Standards. Parking must be sufficiently buffered and landscaped to reduce distraction on any sides facing public streets.
7. The use shall not produce sustained noise, odors, fumes, vibrations, or electrical interference at the boundaries of the parcel that significantly exceed the levels produced by typical single-family residential uses even if those levels are lower than those established by the performance standards of Section 8. General Performance Standards.
8. The hours of operation of the use must be compatible with surrounding uses and may be limited by the Planning Board as part of the approval of the reuse plan to assure compatibility.

9. The AROD shall displace any other existing Special Exemptions or legally existing, non-conforming uses currently allowed on the property. Property owners may apply for an AROD in exchange for relinquishing any claims to such pre-existing conditions upon approval of the AROD by the City Council.

7.9.4 Limitations on Expansion or Additional Structures

The following additional restrictions shall apply to the reuse of property in an AROD approved by the City Council:

1. The reuse shall occur entirely within the building envelope of the existing principal building and accessory buildings or structures except as provide for in the following sections.
2. Additions to the existing structure(s) may be allowed only for compliance with the Life Safety Code and the Americans with Disabilities Act, or as an operational necessity for the proposed reuse and then only after approval of the reuse plan by the Planning Board.
3. The total of all additions to the existing principal building shall not exceed ten percent of the existing gross floor area of the building or five hundred square feet whichever is less.
4. No additional buildings or structures may be constructed or located on the lot unless they are approved as part of the AROD proposal or as provided for in 5.
5. Accessory structures may be placed on the lot subsequent to approval of the AROD by the City Council in accordance with an amended reuse plan approved by the Planning Board. All such structures must be consistent with the intent of the AROD and shall meet the dimensional and setback requirements of the HDR District, and the applicable performance standards of Section 8.

7.9.5 Additional Requirements

The following additional requirements shall apply to any proposed reuse of a property within an AROD:

1. Signage – Signs shall conform to the following requirements:
 - a. Signage must meet the standards for signs in the underlying zoning district unless a change in the type, size, and/or number of signs is specifically approved by the Planning Board.

- b. One free standing sign and/or one directory sign may be permitted as part of the reuse proposal and the proposed sign location and sizes must be shown on the approved reuse plan.
- c. Only externally illuminated signs are permitted. Internally lit signs, back-lit signs, neon sign, and electronic signs are prohibited.
- d. Lighted signs may not be illuminated between 8:00 PM and 7:00 AM or at such other times established by the Planning Board in the approval of the reuse plan.

2. Lighting -- Any additional lighting beyond that which exists on the building and/or lot on the date of adoption of AROD by the City Council shall be allowed only after approval by the Planning Board as part of the reuse plan approval. All new or revised lighting shall conform to the requirements of Section 8.7. Exterior Lighting but the Planning Board may require the intensity, height or orientation of luminaires to be less than established by 8.7 if such restriction is necessary to assure compatibility with the surrounding neighborhood.

3. Parking -- The number and location of off-street parking spaces located on the property shall allow the reuse to be compatible with the adjacent neighborhood while meeting the City's parking requirements. The reuse proposal shall provide off-street parking spaces and loading/unloading spaces that conform to the provisions of Section 11 unless the Planning Board grants a waiver to reduce the parking requirements as part of the reuse plan approval. The Board shall grant such a waiver only if it determines that the parking provisions proposed in the reuse plan adequately meet the needs of the proposed use of the property and will not be detrimental to the adjoining neighborhood.

4. Commercial Vehicle Traffic – The type and size of commercial vehicles servicing the property and the number of daily commercial trips shall be appropriate to the means of vehicular access to the property to allow the reuse to be compatible with the adjacent neighborhood. The Planning Board and/or the City Council may limit the types and size of vehicles servicing the site, the number of commercial trips per day, and the hours within which commercial vehicle movement occurs.

5. Open Space for Residential Uses – If the reuse involves a residential use, the reuse plan shall provide for open space of an appropriate type and amount for the anticipated occupancy of the building. The open space shall be improved with facilities that are appropriate to the family-type and age of the intended occupants.

7.9.6 Conditions of Approval

The Gardiner Planning Board and/or City Council may attach additional conditions and limitations to the approval of the AROD as may be necessary to protect the neighborhood and as may be necessary to encourage the most appropriate use of the land and building to be reused. Conditions and restrictions imposed under this section shall relate to the physical development and operation of the property and may include, by way of example:

1. Limitations on the number and types of uses permitted;
2. Conditions on the scale and density of development, including the height, lot coverage and other space and bulk provisions;
3. Specifications for the design and layout of buildings and other improvements;
4. Schedules for commencement and completion of construction;
5. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
6. Preservation of open space and buffers, and protection of natural areas and historic sites;
7. Provision of municipal services required by the development;
8. Provisions for enforcement and remedies for breach of any condition or restriction, including the timing of the effective date of the change and its repeal should conditions not be met;
9. The dedication or conveyance of property for public purposes, including but not limited to, streets, easements, parks and utility systems.

7.9.7 Review Process

7.9.7.1 Two-Step Process

The process of creating an Adaptive Reuse Overlay District (AROD) consists of two steps. Step One is the review and tentative approval of a reuse plan for the reuse of the property by the Planning Board. If the Planning Board tentatively approves the reuse plan or approves the plan with conditions, the reuse plan then goes to the City Council for consideration of the creation of the AROD and approval of the reuse plan. No proposal to create an AROD shall be considered by the City Council until the reuse plan has been reviewed by the Planning Board and the Board has tentatively approved or approved with conditions, the reuse plan.

7.9.7.2 Reuse Plan Contents

The petitioner for an AROD shall submit electronically a written application for the AROD to the Gardiner Office of Planning and Development, which shall include, at a minimum,

the following elements:

1. The address or exact location of the request, including the Gardiner Assessor's map references for the property to be rezoned;
2. The name, address and telephone number of the property owner and of the applicant, if the applicant is not the owner;
3. Evidence of the applicant's right, title or interest in the property;
4. A non-refundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the City Council.
5. A statement describing the existing and former uses of the property and a detailed statement of the proposed use of the property and the precise modifications to the zoning district and other standards requested to accommodate the proposed reuse.
6. A description of the property's unusual nature which requires uses allowed under an AROD;
7. A plot plan showing the boundaries of the parcel and its dimensions, as well as the existing buildings and structures;
8. A plan showing the location of existing streets and driveways within two hundred (200) feet of the property;
9. A development plan showing the layout of all buildings, structures, streets, driveways, parking areas, exterior lighting, signs, stormwater management provisions, and other significant improvements to be constructed on or above the surface of the ground plus any proposed open spaces, conservation areas, buffer areas or other features of the development which would be required for a site plan;
10. If any changes are proposed to the exterior of the building, elevation drawings prepared by a professional engineer or architect showing the existing conditions and the proposed changes including a description of the materials to be used for any alterations;
11. A neighborhood compatibility plan detailing the potential impacts of the reuse on the adjacent neighborhood, the actions taken to reduce these potential impacts, and steps that will be taken to mitigate the remaining impacts on the neighborhood. At a minimum, this plan shall address traffic, noise, exterior lighting, hours of operation, material handling and storage, and stormwater. The plan shall address how the proposed reuse plan conforms to the standards for factors in the Land Use Ordinance.

7.9.7.2 Planning Board Review

7.9.7.2.1 Completeness of Application

The Gardiner Office of Planning and Development will review the application and, upon being satisfied that the application is sufficiently complete for review by the Planning Board and the City Council, will schedule a Planning Board meeting to commence review of the request for the establishment of an AROD and the reuse plan.

7.9.7.2.2 Review Process

The Planning Board shall review the reuse plan using the procedures and criteria set out in Sections 6.12 Planning Board Review and 6.13 Site Review except as specifically revised by the provisions of this section. In addition to the criteria set forth in Section 6.13.4, the Planning Board shall consider if the establishment of an AROD is necessary to provide for the reuse of the property.

The Planning Board, at the conclusion of its review, shall vote to either:

1. Tentatively approve the reuse plan subject to City Council's establishment of the proposed AROD; or
2. Tentatively approve the reuse plan with modifications, restrictions, requirements, and/or conditions subject to City Council's establishment of the proposed AROD; or
3. Deny approval of the reuse plan.

The Planning Board shall make findings of fact and conclusions of law as part of its action on the reuse plan. If the action of the Board is to tentatively approve or approve with conditions, the findings shall specify the specific provisions of the zoning district requirements or other standards that will need to be modified in the creation of the AROD to accommodate the reuse proposal.

7.9.7.3 City Council Review

If the Planning Board tentatively approves the reuse plan or approves it with conditions, the request to create an Adaptive Reuse Overlay District shall be forwarded to the City Council. The City Council shall consider the request within thirty (30) days of its receipt of the request. The City Council shall consider the request as a zoning amendment in accordance with Section 1.8. Amendments and the City's procedures for ordinance amendments.

Before taking its vote on approving the AROD request, the City Council shall determine whether it agrees with the Planning Board's findings of fact and conclusions in law, and whether the proposed AROD amendment:

1. Is consistent with the City of Gardiner Comprehensive Plan,
2. Is compatible with the existing uses and permitted uses within the adjacent neighborhood,
3. Provides for beneficial use and new investment in balance with protecting the essential character of the surrounding neighborhood.
4. Is in the public interest, and
5. Will have beneficial effects on the city as a whole which would not result if the property were developed under the existing zoning district classification.

To approve the establishment of the AROD, the City Council must find that all of the five preceding standards are met. The City Council will state its reasons for its findings and conclusions on each of those determinations to be recorded as part of the minutes of the meeting. If the City Council has concerns about the reuse plan as approved by the Planning Board, the City Council may vote to remand the plan to the Planning Board for further review and consideration before voting on the establishment of the AROD.

The City Council's action to establish an AROD shall identify the specific provisions of the zoning district and other standards that are being modified through the creation of the AROD. Upon establishment of an AROD by a vote of City Council, the City Clerk or delegate shall incorporate the language of the AROD by reference into Section 7 Zoning Districts—, of this Ordinance. The location of the AROD shall be indicated on the Official Zoning Map by the Office of Planning and Development. The City Clerk shall record the action of the City Council including a complete description of all modifications to the Land Use Ordinance requirements and any conditions of approval together with the approved reuse plan in the Kennebec County Registry of Deeds. No permits for the project shall be issued until the Code Enforcement Officer is provided with written documentation of the filing in the registry.

Upon the establishment of an AROD by action of the City Council, the provisions of the AROD shall become the zoning requirements for the property in conjunction with the unmodified provisions of the zoning district in which it is located and the other unmodified provisions of the Land Use Ordinance. These provisions shall govern all future use of the property regardless of the future ownership of the property until and unless the zoning of

the property is amended by formal action of the City Council either by amendment of the AROD or thorough the rezoning of the property to another zoning district.

7.9.7.4 Performance Guarantees

As part of the establishment of an AROD, the City Council may require from the petitioner a performance bond, escrow agreement, irrevocable letter of credit, or other surety equal to at least 25% of the estimated cost of the improvements proposed in the reuse plan. The bond shall become payable to the City if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning. Where the City deems it necessary to ensure continued compliance, it may require such surety to remain in effect after occupancy of the rezoned property. If required, such surety shall be posted before the issuance of any permits required for the reuse of the property.

7.9.7.5 Failure to Act

If the applicant fails to begin construction or use in a substantial manner and in accordance with the approved reuse plan within one (1) year of the effective date of the City Council approval of the rezoning, the AROD is null and void, the performance bond shall become payable to the City, and the applicant must re-submit to the Planning Board under whatever mechanism may be currently in place to accommodate the proposed use.

7.9.8 Modifying the Adaptive Reuse Overlay District

7.9.8.1 Modifications

Subsequent to the establishment of the AROD by vote of the City Council, the future use of the property shall be subject to the approved reuse plan, the modifications of the zoning provisions included in the establishment of the AROD, and any conditions imposed by the Planning Board and/or City Council. The use of the property shall be limited to the allowed uses in the underlying zoning district and any additional uses specifically permitted through the AROD. Any use of the property not allowed by these provisions may be established only through an amendment to the AROD enacted by the City Council in accordance with the provisions of this section. This shall include the submission of a revised reuse plan, review by the Planning Board, and consideration by the City Council.

The improvement and use of the property shall be carried out in accordance with the reuse plan approved by the Planning Board including any conditions imposed by the Planning Board or City Council. The property owner may request that the Planning Board amend the

reuse plan in the future but only with respect to the physical development and operational use of the parcel. The Planning Board may not allow a use that is not otherwise permitted under the provisions of the AROD. A request for an amendment to the reuse plan shall follow the same procedure as for the original consideration of the reuse plan and shall be subject to the same standards and limitations as set forth in this section.

7.9.8.2 Reversion of the Property to the Underlying Zoning

If the principal building is removed or destroyed by action of the owner or agent, the AROD will cease, the lot will return to its underlying zoning classification, and any use not allowed by the Land Use ordinance for that zone must cease immediately. If the building is ever damaged by more than 50 percent of market value by any cause other than that of the owner or agent, a building may be rebuilt and the allowed use under the AROD may be resumed within the pre-destruction or pre-damaged dimensions, within two (2) years. An owner who fails to meet this deadline will be required to submit an application for a new AROD. Any other replacement, reconstruction, or relocation of the building(s) must be in compliance with the space and bulk regulations of the underlying zoning district.

2. Amend Section 17 Definitions by adding new definitions of in proper alphabetical order in sub-section 17.2.1 to read as follows:

Facility for the processing, distribution, and/or sale of agricultural products:

Buildings, structures, and equipment used for the commercial processing, storage, distribution, and/or sale of plant or animal products.

Studios of artists and craftsmen: Buildings or structures (or portions thereof) used by an artist or craftsman for the production, display, and sale of works of art or crafts. Only works of art or crafts produced by artists or craftsmen who work in the studio shall be displayed or sold in the studio.