

# CHAPTER 101

## LAND USE ORDINANCE

DAMARISCOTTA, MAINE

Including Proposed Revisions for Medical Marijuana Establishments

*Approved by Board of Selectmen for November 5, 2019 Ballot (Proposed revisions are underlined)*

<b>§101.1</b>	<b>AUTHORITY.....</b>	<b>2</b>
<b>§101.2</b>	<b>PURPOSE.....</b>	<b>2</b>
<b>§101.3</b>	<b>APPLICABILITY.....</b>	<b>2</b>
<b>§101.4</b>	<b>DEFINITIONS.....</b>	<b>2</b>
<b>§101.5</b>	<b>LAND USE DISTRICTS.....</b>	<b>7</b>
<b>§101.6</b>	<b>GENERAL PROVISIONS.....</b>	<b>11</b>
<b>§101.7</b>	<b>ADULT ENTERTAINMENT ESTABLISHMENTS.....</b>	<b>16</b>
<b>§101.8</b>	<b>ADMINISTRATION.....</b>	<b>21</b>
<b>§101.9</b>	<b>APPEALS AND CONDITIONAL USES.....</b>	<b>24</b>
<b>§101.10</b>	<b>SEVERABILITY.....</b>	<b>27</b>
<b>§101.11</b>	<b>CONFLICTS WITH OTHER ORDINANCES.....</b>	<b>27</b>
<b>§101.12</b>	<b>AMENDMENTS.....</b>	<b>27</b>
<b>§101.13</b>	<b>EFFECTIVE DATE.....</b>	<b>27</b>
<b>§101.14</b>	<b>REPEAL OF EXISTING ORDINANCES.....</b>	<b>27</b>
<b>APPENDIX A</b>	<b>DISTRICT DESCRIPTIONS.....</b>	<b>29</b>

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**Revised June 10, 2015: Art. 3.C.2.b - Change to Comm. C2 boundary near Biscay Rd.**

**Revised June 15, 2016: Art. 3.C.2.b – Change from Rural to C2 District, Lots 1/67 & 3/32**

**Revised November 16, 2016: Art. 2, 4, 5, 6, 9 – insert Accessory Apartment Ordinance**

# LAND USE ORDINANCE

## §101.1 AUTHORITY.

This ordinance is enacted pursuant to MRSA T30-A §4352.

## §101.2 PURPOSE

The purpose of this Ordinance is to further the maintenance of safe and healthful conditions and the general welfare, to prevent and control water pollution, to protect wildlife, to control building sites and location of structures and land uses, and to conserve shoreland areas, at the same time providing the greatest possible latitude in individual choices of land use. The Ordinance is intended to preserve the character and objectives of the community as determined by its citizens and outlined in its Comprehensive Plan. This ordinance is designed to implement the purposes included in the Maine Revised Statutes for Municipal Land Use plans.

## §101.3 APPLICABILITY

This ordinance shall apply to all of the land area within the Town of Damariscotta.

## §101.4 DEFINITIONS

Except where specifically defined, all words used in this ordinance shall carry their customary meanings. The Word "shall" is always mandatory. The word "may" is always permissive. For the purposes of this Ordinance, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise.

**Accessory Apartment:** A small dwelling, either attached or detached (unattached) which is part of an existing single family owner-occupied home on the same lot and which is secondary to the single family home. Both units shall be occupied as primary residences and neither unit may be rented for less than on a monthly basis.

**Accessory Use or Structure:** A use of structure of a nature incidental and subordinate to those of the principal use or structure.

**Alteration:** Any change, addition or modification in construction, or change in the structural members of a building, such as bearing walls, columns, beams, and girders.

**Apartment Building:** A building containing dwelling units arranged, intended, or designed to be occupied by 3 or more families living independently of each other.

**Building:** A structure for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

**Building Height:** The building height shall be the height measured from the mean ground level at the foundation line to the highest point of the roof. Features of buildings and structures, such as chimneys, towers, ventilators, and spires shall not be considered as part of the roof. Buildings within the shoreland zone shall meet the definition of that ordinance.

**Campground:** Any area or tract of land used to accommodate two or more groups of people, in temporary living quarters, including tents, travel trailers or other temporary shelters.

**Code Enforcement Officer:** A person appointed by the Board of Selectmen to administer and enforce this Ordinance. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Electrical Inspector, and the like, where applicable.

**Conditional Use:** A conditional use of land or buildings is a use that would not be appropriate in the land use district for which it is proposed, except with certain restrictions and controls, it will meet the intentions and purposes of this Ordinance. Except for Home Occupations, conditional uses are permitted only after review and approval by the Planning Board for conformance with the Site Review Ordinance.

**Condominium:** A building containing dwelling units arranged, intended or designed to be individually owned by their occupants under Maine State Law prevailing.

**Dwelling:** A building designed or used as the permanent or seasonal living quarters for one or more families.

**Dwelling Unit:** a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The term shall include mobile homes, but not recreational vehicles or motels, hotels and other similar facilities not equipped with a kitchen.

**Emergency Operations:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

**Excavation:** Any removal of earth or earth material from its original position.

**Family:** One or more persons living together as a single household under a unified management with obligations of mutual support.

**Forest Management Activities:** Activities designed and intended to manage timber resources, including timber cruising and other forest resources evaluation activities, management planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting, and other harvesting, rejuvenation of forest stands, and other similar associated activities, not including the construction of roads.

**Frontage:** The length of a lot bordering on a street, road, or right-of-way. For a lot fronting on public waters, the length in a straight line measured between the intersections of the side lot lines with the shoreline at normal high water elevation. For a corner lot, the frontage shall be on the way most traveled, as determined by the Code Enforcement Officer.

**Gallery:** An establishment that displays and sells works of art.

**Home Cultivation of Marijuana:** Cultivation for personal adult use by a person 21 years of age or older is limited to cultivation of three (3) mature marijuana plants, twelve (12) immature marijuana plants, and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land.

**Home Occupation:** An occupation or profession which is customarily conducted on or in a

residential structure or property and which is 1) clearly incidental to and comparable with the residential use of the property and surrounding residential uses; and 2) which employs no more than 2 persons other than family members residing in the home.

**Light manufacturing:** Businesses manufacturing, assembling or storing products where there is no exterior effect of the manufacturing use, including no exterior noise, odors, or air pollution, as defined in the site review ordinance. It may include laboratory or research facilities, printing or publishing plants, warehousing, wholesale business or storage, building materials, contractor's offices, dry batch concrete plants, trade shops, (including cabinetry, carpentry, plumbing, electrical or finishing); and related exterior equipment and product storage for those uses. It shall not include heavy manufacturing or industrial uses such as asphalt and wet batch mixing **plants**, rock crushing or processing or chemical reprocessing and storage.

**Lot:** A single parcel of land, described on a deed, plot, or other similar legal document.

**Lot Coverage:** The ratio of the total area of all structures on a lot divided by the area of the lot.

**Marijuana Cultivation:** The planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. "Cultivation" or "cultivate" does not include manufacturing, testing or marijuana extraction.

**Marijuana Establishment:** A cultivation facility, a products manufacturing facility, a testing facility or a marijuana store licensed under State and local laws.

**Marijuana Manufacturing or Manufacture:** The production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not include cultivation or testing.

**Marijuana Product:** A product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include marijuana concentrate.

**Medical Facilities:** Hospital and related uses shall include acute care, intermediate care, adult day care facilities, physician's offices, clinics, and other related uses.

**Medical Marijuana Establishment:** A registered caregiver retail store, registered dispensary, medical marijuana testing facility, or medical marijuana manufacturing facility.

**Medical Marijuana Testing Facility:** A public or private laboratory authorized under State and local laws to test medical marijuana for contamination, potency or cannabinoid profile.

**Medical Marijuana Manufacturing Facility:** A manufacturing facility authorized under State and local laws to manufacture marijuana products for medical use or to engage in marijuana extraction for

medical use.

**Marina:** A shore front commercial facility with provisions for one or more of the following: boat storage, boat launching, or the sale of supplies and services for watercraft and their equipment and accessories.

**Mobile Homes:** A prefabricated self-contained dwelling unit manufactured on a permanent chassis and transported as a single unit to the site where it is to be occupied.

**Mobile Home Park:** A lot on which 2 or more mobile home sites are to be rented.

**Modular Home:** A prefabricated self-contained dwelling unit which is manufactured and transported in 2 or more sections to the site where it is to be occupied, and there joined together and set on a permanent foundation.

**Motel:** A building or facility of more than 10 lodging rooms with each room having its own private bathroom and each room having its own entrance. For the purpose of determining land area requirements, 3 lodging rooms shall require the same land area as one dwelling unit.

**Multi-family Dwellings:** Three or more dwelling units in single or multiple buildings on a single lot.

**Non-conforming Use:** A building, structure, or use of land, or portion thereof, existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.

**Non-combustible:** A material that, in the form in which it is used and under the conditions anticipated, will not aid combustion or add appreciable heat to an ambient fire. Materials, where tested in accordance with ASTM E136, Standard Test Method for Behavior of Materials in a Vertical Tube Furnace at 750 degrees C, shall be considered as noncombustible.

**Planned Unit Development:** A concept of planned development to allow maximum variations of design provided that required residential densities are not exceeded. The development must be planned as a whole according to comprehensive and detailed plans including street, utilities, lots or building sites, design of all buildings to be constructed, and other uses and improvements on the land.

**Principal Building:** The building in which the primary use of the lot is conducted.

**Professional Office:** Offices for the practice of the professions of medicine, law architecture, engineering, accounting, and dentistry, and other commonly accepted professions.

**Public Utility:** Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public, and subject to regulations by the Public Maine Utilities Commission.

**Recreational Vehicle:** A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, which is not a dwelling. It may include a pick-up camper, travel trailer, tent trailer, or motor home.

**Retail Business:** Business establishment for the sale of merchandise to the public.

**Registered Caregiver:** A person who is registered by the Maine Department of Administrative and Financial Services, or other Department designated by Statute, per 22 M.R.S. § 2425-A.

**Registered caregiver retail store:** A store licensed under State and local laws that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

**Registered dispensary:** A dispensary authorized under State law to cultivate and dispense medical marijuana to qualifying patients and caregivers.

**Rooming & Bed and Breakfast Houses:** A building of up to 10 rooms in which lodging or boarding and lodging capabilities are provided to the public for compensation.

**Service Establishment:** Profit and non-profit business whose function it is to provide service to the public.

**Setback:** The minimum horizontal distance from a lot line to the nearest part of a building.

**Sewered:** Connected to the municipal sewer system.

**Structure:** Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground.

**Two-family Dwelling:** A single building containing two separate dwelling units separated by a common wall or on separate levels.

**Wholesale Business:** Business established for the sale or distribution of products to retail businesses.

**Water supply Standpipe:** A structure associated with municipal utility that is a large water container on top of a tower usually 35 feet or more above ground to store water and to facilitate gravity flow, e.g. water pressure, to customers in buildings in the service area of a municipal water supply utility.

**Wireless Telecommunications facility or facilities-** any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

**Yard:** The area of land on a lot not occupied by the principal building or accessory structure.

**Yard, Front:** The area of land between the front lot line and the front line of any building, and extending the full width of the lot.

**Yard, Side:** The area of land between the side lot line and the side line of any building, and extending from the front yard to the rear yard. Any yard area not a front yard or rear yard, shall be deemed a side yard.

**Yard, Rear:** The area of land between the rear lot line and the rear line of any building, and extending the full width of the lot. A corner lot has no rear yard.

## **§101.5 LAND USE DISTRICTS**

### **A. Districts and Purposes**

To implement the provisions of this Ordinance, the Town of Damariscotta is hereby divided into the following Land Use Districts with the following purposes:

1. General Residential: To preserve the physical, aesthetic, and social quality of Damariscotta's developed residential areas and to provide for areas within the Town for residential growth.
2. Commercial: To provide general retail sales, service, and business space within the Town of Damariscotta in locations capable of conveniently servicing community wide and/or regional trade areas. To preserve the scale character, and economy of the Downtown in accordance with the Comprehensive Plan by implementing a 35,000 square foot size cap on retail development in all commercial districts, effective November 1, 2005
  - a. (C1) Downtown
  - b. (C2) Other Commercial
3. Rural: To allow a maximum diversity of uses, while still maintaining the essential rural character of this area.
4. Wireless Communication: This district is an overlay district within portions of the C2 and Rural districts. All wireless telecommunication facilities are limited to this area. All standards and procedures for permitting these facilities are contained in the Site Review Ordinance.
5. Municipal: To allow a maximum use of the land by the Town of Damariscotta for the purpose of Municipal offices.

The Shoreland area is controlled by the existing Damariscotta Shoreland Zoning Ordinance and shall be considered an "overlay" district. In other words, in the Shoreland areas the Shoreland Use requirements and permit procedures of the Shoreland Ordinance shall be in effect in addition to the requirements of this Land Use Ordinance.

### **B. MAP**

1. The location and boundaries of the above districts are hereby established on the map entitled "Land Use Map of the Town of Damariscotta," dated January 23, 1998, filed with the Town Clerk, which map is hereby made a part of this Ordinance. And, as amended June 10, 2015 on the map entitled "Damariscotta Maine – June 10, 2015 - Zoning Map" filed with the Town Clerk.
2. Where uncertainty exists with respect to district boundaries as shown upon such map the following rules shall apply:
  - a. Unless otherwise indicated, district boundary lines are the center lines of roads, streets or rights of way.
  - b. Where discrepancy exists between the map and written description of each district, the written word shall prevail.
  - c. Where discrepancy exists between physical features existing on the ground and the official map and/or written district description, the Board of Appeals shall interpret the district

boundaries.

## C. DISTRICT DESCRIPTIONS (see Appendix A)

## D. DISTRICT REGULATIONS

### 1. SCHEDULE OF LAND USES

Land Use	District (P = Permitted Use; C = Conditional Use)					
	GR	C1	C2	R	WC	M
Single family dwellings	P	P	P	P		
Two family dwellings	P	P	P	P		
Mobile homes	P	P	P	P		
Accessory buildings and uses	P	<sup>2</sup>	<sup>2</sup>	<sup>2</sup>		
Accessory apartments	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>		
Home occupations	C	C	C	C		
Professional offices	C	C	C	C		
Multi-family dwelling units and condominiums	C	C	C	C		
Rooming houses	C	C	C	C		
Planned unit development	C		C	C		
Antique shops and galleries	C	C	C	C		
Retail and wholesale businesses and services establishments		C <sup>3</sup>	C			
Motels, hotels and restaurants		C	C			
Clubs and movies theaters		C	C			
Banks		C	C			
Service station garages		C	C			
Public buildings such as schools, recreational facilities, utility structures, and other community related uses		C	C			
Light manufacturing			C			
All medical and medical related uses			C			
Wireless communications facilities			C <sup>4</sup>	C <sup>4</sup>	C	
Adult entertainment establishments			C			
Agricultural and gardening businesses				P		
Forest management activities				P		
Campgrounds				C		
Mobile home parks				C		
Uses related to environmental study and education				C		
Veterinary hospital stables				C		
Structures associate with municipal utilities				C		



All occupancies and uses to serve the municipal services of the town						P
<u>Home Cultivation of Marijuana</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	-	
<u>Medical marijuana manufacturing facilities</u>			<u>C<sup>5</sup></u>	<u>C<sup>5</sup></u>		
<u>Registered caregiver retail stores</u>			<u>C<sup>5</sup></u>	<u>C<sup>5</sup></u>	-	
<u>Medical marijuana testing facilities</u>			<u>C<sup>5</sup></u>	<u>C<sup>5</sup></u>		

<sup>1</sup>As long as the requirements of Article 9.Q are met, accessory apartments are allowable under a permit from the Code Enforcement Officer (CEO). The CEO may forward an accessory apartment application to the Planning Board for review as a 'Conditional Use Permit' under the Site Plan Review Ordinance. NOTE: Accessory apartments are not allowed in overlay Shoreland Zones.

<sup>2</sup> Accessory buildings and uses to permitted uses are permitted; accessory buildings and uses to conditional uses are conditional.

<sup>3</sup> No outside storage

<sup>4</sup> Within the bounds of the Wireless Communications District

<sup>5</sup> Must be located at least 1,000 feet from schools per Section 101 (S)

Ordinance effective date: January 6, 2020

## 2. DIMENSIONAL STANDARDS

Dimensional Standard <sup>8</sup>	District <sup>2</sup>					
	GR	C1 <sup>7,15</sup>	C2 <sup>7, 14</sup>	R	WC	M
Minimum land area						
-Sewered	10,000 sf per DU	10,000 sf	10,000 sf per first principal building or DU, 6,000 sf thereafter	10,000 sf per principal building or DU	<sup>13</sup>	10,000 sf per principal building
-Non-sewered	40,000 sf per DU	N/A	40,000 sf per principal building or DU	80,000 sf per principal building or DU	<sup>13</sup>	40,000 sf per principal building
Setbacks						
-Front	20 feet <sup>1</sup>	<sup>3</sup>	20 feet <sup>1, 12</sup>	20 feet <sup>12</sup>	<sup>12</sup>	20 feet
-Side	15 feet	<sup>4,5,6</sup>	15 feet <sup>9, 12</sup>	15 feet <sup>12</sup>	<sup>12</sup>	0 feet
-Rear	15 feet	<sup>4,5,6</sup>	15 feet <sup>9, 12</sup>	15 feet <sup>12</sup>	<sup>12</sup>	0 feet
Minimum street frontage						
-Sewered	75 feet	None	100 feet	200 feet	<sup>13</sup>	200 feet
-Non-sewered	100 feet	N/A	100 feet	200 feet	<sup>13</sup>	200 feet
Maximum building height	35 feet	40 feet	40 feet <sup>10</sup>	35 feet <sup>10, 11</sup>	<sup>10</sup>	40 feet <sup>10</sup>
<sup>1</sup> Or the average of existing setbacks on abutting properties						
<sup>2</sup> Or as required by the Shoreland Zoning Ordinance						
<sup>3</sup> For those lots with existing buildings, front yard setbacks shall be the same or greater than the setback of existing buildings on that lot. If a structure is removed as part of the project, the location of that structure may be considered as an existing building provided the permit for new construction remains valid. For those lots with no existing buildings, the setback shall be the average setback of buildings on abutting properties.						
<sup>4</sup> If walls adjacent to side lot lines on buildings on both the applicants and adjacent property are of noncombustible construction as defined in this ordinance, the setback from the property lines may be reduced to 0 feet.						
<sup>5</sup> If the conditions Stated in note 4 are not met, then a minimum 10-foot buffer strip to the side or rear lot lines or a 20-foot separation distance to adjacent building shall be maintained.						
<sup>6</sup> Yards abutting other districts shall be at least 15 feet deep and have a landscaped buffer strip.						
<sup>7</sup> No single retail store whether located in a single building, a combination of buildings, single tenant space, and/or combination of tenant spaces shall exceed 35, 000 gross square feet of floor area in the aggregate. This size restriction shall apply to new retail stores and expansion of existing retail stores, effective November 1, 2005.						
<sup>8</sup> Unless modified by the requirements of § 101.6.						
<sup>9</sup> Except abutting the Municipal District they shall be 0 feet						
<sup>10</sup> Maximum 190 feet for wireless communications facilities						
<sup>11</sup> Water supply standpipes for water supply utilities may be 100 feet above the ground						
<sup>12</sup> A new or expanded wireless telecommunications facility must comply with the setback requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply: i. The setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property. ii. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.						
<sup>13</sup> The standards of the specific district (C2 or Rural) will apply.						
<sup>14</sup> See § 101.7 for additional performance standards for adult entertainment establishments						
<sup>15</sup> The parking standards of the Site Plan Review Ordinance as amended for this district shall apply.						

## **§101.6 GENERAL PROVISIONS**

### **A. Conformance**

1. All buildings or structures hereinafter erected, altered, enlarged, or moved, and all uses the real property in the Town of Damariscotta shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located. The lawful use of real property existing at the time of the adoption of this Ordinance or any subsequent amendment may be continued as provided in this Ordinance.
  - a. Non-conforming uses shall be subject to the following provisions:
    - i. A non-conforming building or structure may be repaired, maintained, and improved, provided that there is no expansion of the non-conforming use.
    - ii. The purchaser of property that is a lawful non-conforming use may continue that use.
    - iii. A non-conforming use may not be enlarged, or extended except as follows:
      - a. Expansion shall be limited to 30 % of the existing Building floor area or volume whichever is less building floor area and volume shall be as defined in the Damariscotta Shoreland Zoning Ordinance.
    - iv. Whenever a non-conforming use is changed to a permitted use, such use shall not revert to a non-conforming status notwithstanding any other provisions of this Ordinance.
    - v. Any non-conforming use shall be presumed extinguished if it is abandoned or not used for a period of one year. The Board of Appeals may find this presumption does not apply because of extenuating circumstances beyond the control of the applicant or undue hardship.
  - b. Undersized lots shall conform to the following criteria:
    - i. A single lot of record, which at adoption of this Ordinance does not meet the area or width requirements, may be built upon provided that such a lot is at least 10,000 square feet in a sewered area of town or 20,000 square feet in other areas of town, adheres to the Maine State Plumbing code as far as sewage disposal is concerned and structures must be in compliance with setbacks and other requirements as designated for the area by this and other ordinances.
    - ii. Except for an approved subdivision, two or more contiguous lots in single ownership at the time of adoption of this Ordinance shall be considered a single parcel.

### **B. Property Damage**

An owner shall not permit any damaged building, structure or other ruins to be left abandoned, but shall remove or repair it within one year of the damage. Owner must secure the property for

proper safety, pending removal or repair.

### **C. Parking Standards**

1. Adequate off street parking shall be provided for residents, guests, and employees. Each space shall be a minimum of 9 feet wide by 20 feet long exclusive of drives, aisles, or entrances, fully accessible for the storage or parking of vehicles. At a minimum, the following off-street parking requirements shall be provided and maintained unless it can be demonstrated fewer spaces will be adequate with requiring on-street parking.

One & two family dwellings and mobile homes: 1 per dwelling unit

For other uses, refer to Site Review Ordinance.

### **D. HUD Code (mobile) Homes**

1. Mobile homes shall meet all of the requirements of this Ordinance for a single family dwelling.
2. In the General Residential district, they shall meet the following additional criteria:
  - a. Mobile homes shall be placed on a permanent foundation of concrete or masonry.
  - b. Mobile homes shall have a pitched shingled roof.
  - c. Mobile homes shall have siding compatible with that of a residential character.

**E. Mobile Home Parks.** Mobile homes parks shall meet all the requirements of the State Regulations.

### **F. Single Family, Two Family and Multi-Family Dwelling Units**

1. Single Family dwelling units.
  - a. Single family dwelling units shall meet all the dimensional requirements for the district therein.
2. Two family dwelling units.
  - a. Lots for two family units shall meet all the dimensional requirements for single family dwelling units, except that the lot area shall be a minimum of 30,000 square feet per dwelling unit for lots that are unsewered and the road frontage shall exceed by 50% the requirements for a single family dwelling unit.
3. Multi family dwelling units. Multi-family (3 or more) dwelling units shall meet all of the following criteria:
  - a. Lot area shall be equal to the following minimum requirements:
    - i. For lots, other than those in the C2 District, served by a private central collection system, the minimum area for 3 units shall be 60,000 square feet and an additional 10,000 square feet per dwelling unit for each unit thereafter.
    - ii. For lots in the C2 District, the minimum area shall be as specified in Article 5.C.3.b, sewer.
  - b. Lots for multi-family dwelling units shall meet all other dimensional requirements for single-family dwellings.
  - c. No building shall contain more than thirty-two (32) dwelling units, except housing for the elderly associated with extended care facilities, which shall contain no more than 45 dwellings.

- d. Multi family dwelling units shall submit and comply with the requirements of the Damariscotta Site Review Ordinance.

#### **G. Planned Unit Development**

1. Purpose. The purpose of these provisions is to allow for new concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the District in which the development is proposed.
2. Basic requirements. Planned unit developments and cluster developments shall meet all of the following criteria:
  - a. All planned unit and cluster developments shall meet all requirements for a residential subdivision.
  - b. The minimum area of land in a planned unit development or cluster development shall be 10 acres.
  - c. Any lot abutting a public road shall have a frontage and area no less than normally required in the District. On other than public roads, lot area and road frontage may be reduced by not more than 30% from the requirements of the District in which the proposed development is located provided that:
    - i. No building lot shall have an area of less than 10,000 square feet.
    - ii. All lots except those abutting a circular turn-around shall have a minimum frontage of 75 feet. The frontage of lots abutting a circular turn-around may be reduced to 50 feet, provided that the minimum lot width at the face of the building shall be 75 feet.
  - d. In no case shall shore frontage be reduced below the minimum shore frontage normally required in the District.
  - e. Lots in the planned unit development or cluster development shall meet all other dimensional requirements for the District in which they are located.
  - f. The total area of common land within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the District.
  - g. Every building lot that is reduced in area below that amount normally required shall abut such common land for a distance of at least fifty (50) feet.
  - h. All common land for recreational or conservation purposes only shall be owned jointly or in common by the owners of the building lots, by a trust or association or by the Town which has as its principal purpose the conservation or preservation of land in essentially its natural condition.
  - i. Further subdivision of common land or its use for other than non-commercial recreation or conservation, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational conservation uses may be erected on the common land.

#### **H. Home Occupations**

1. The occupation or profession shall be carried on wholly within the principal building or within a building or structure accessory thereto.
2. There shall be no exterior display, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
3. No nuisance shall be operated, including but not limited to offensive noise, vibration, smoke, dust, odors, heat, or glare as defined in the Damariscotta Site Review Ordinance.

4. Bed and Breakfasts and other rooming houses are not considered home occupations.

**I. Businesses and Service Establishments** shall meet the requirements of the Site Review Ordinance.

**J. Campgrounds.** The following provisions apply to campgrounds:

1. An applicant for a campground permit must furnish specific information to the Planning Board concerning the campground, including a site plan illustrating the location and design of the sewage disposal and water supply systems, the means of firefighting, and the type and location of roads proposed within the campground as well as other documentation submitted to the State for their Review.
2. In all other regards, the campground shall comply with the provisions of State law governing campgrounds.

**K. Professional Offices.** In the General Residential District, the following provisions shall apply:

1. Offices shall exist within the conversion of existing buildings without substantial exterior alterations where practical. Additions shall be compatible with the existing structure.
2. The maximum number of separate offices shall be three (3).
3. Offices shall comply with Site Review Ordinances.

**L. Rooming & Bed and Breakfast Houses.** In the General Residential District, the following provisions apply:

1. No parking shall be located within the setback areas.
2. For the purposes of these standards, 2 rooms shall be deemed to be one dwelling unit.  
Lot area per dwelling unit shall be equal to the following minimum requirements.
  - a. Sewered 10,000 square feet
  - b. Non-Sewered 20,000 square feet
3. Rooming houses shall meet all other requirements for single family dwellings.
4. One bathroom shall be provided for at least every 2 rooms of rent.
5. Provide one parking space for each unit.
6. Meet requirements of Site Review Ordinance.

**M. Outdoor Sale and Storage**

1. All outdoor sales and storage shall be stored in a neat and orderly manner.
2. Where this use abuts residential properties, materials shall be screened from ordinary view of occupants of these properties by a suitable fence, wall, or plantings.

**N. Corner Lots.** In districts where yards are required, buildings located at the intersection of two streets shall meet the front yard requirements of both streets and the rear yard shall meet the side yard requirement of the side street.

**O. Conditional Use Standards.** Conditional uses shall meet the requirements of the Site Review Ordinance and Shoreland Ordinance, in addition to any specific requirement of this ordinance.

**P. Wireless Communication Facilities** shall meet all the standards contained in the Site Review Ordinance in addition to the requirements of this ordinance.

**Q. Accessory Apartment**

1. Purpose:

The purpose of accessory apartments is to allow single-family house owners to create a living space for a relative, such as a grandparent, or to rent to another household, thus helping to enable the single-family house owner to remain in her/his home. The house owner may live in the accessory apartment and provide or rent the main house to a relative or another household. The single-family house owner may also use an accessory apartment to rent for additional income.

2 Regulations:

- a. The house owner must reside in either the main house or the accessory apartment.
- b. An accessory apartment may be created in one of the following ways:
  - i. by using space within an existing detached single-family dwelling;
  - ii. by building an addition onto an existing detached single-family dwelling such that the addition is made part of the principal dwelling;
  - iii. by using space within an existing or proposed accessory structure (to a detached single-family structure) that is within 50 feet of the single family dwelling;
  - iv. buildings existing prior to November 8, 2016 that are greater than 50 feet from the single family dwelling may be used for an accessory apartment provided no additions are added to the existing structure;
  - v. new construction as part of a new single-family house.
- c. For the purposes of this section, the accessory apartment shall not be considered to be a second dwelling unit for determining the required minimum lot area, or net residential density.
- d. Accessory apartments shall be part of, or accessory to, a single-family house and cannot be sold as a condominium dwelling.
- e. Accessory apartments may only be converted to a duplex unit under separate (condominium) ownership or (for those accessory apartments in a detached accessory building such as a garage) into a separately owned single-family dwelling only if all the density and dimensional requirements for a duplex or a single-family dwelling are met for both the original dwelling and the newly created dwelling.
- f. If the single-family dwelling -unit is already connected to a public sewer system, both the single family dwelling and the new accessory apartment must be connected to the public sewer system. If the lot is served by on-site subsurface sewage disposal, the owner must demonstrate to the Town Plumbing Inspector that the use conforms to the State of Maine Minimum Lot Size law and that the sewage disposal system(s) for both the single family dwelling and the accessory apartment complies with the Maine Subsurface Wastewater Disposal rules.
- g. In all cases, the accessory apartment shall be no larger than 40% of the finished and heated portion of the single-family house, or more than 650 square feet, whichever is less; and be no smaller in area than 320 square feet, and have no more than two bedrooms.
- h. Any exterior alteration of the single family dwelling or accessory buildings or construction of an accessory building shall preserve the single family appearance, architectural style, and character of the original structure and shall be in harmony with the general appearance of the neighborhood. Any alteration shall preserve the front entrance of the original structure to preserve the single family character. A separate entrance for the accessory apartment may be created but shall be clearly secondary to the main entrance, such as but not limited to an entrance that is setback further from the road than the primary entrance.
- i. At least one off-street parking space shall be available to the occupants of the accessory apartment. The visual impact on abutting residences from the accessory apartment parking area shall be minimized. Suggested aesthetic screening materials may include landscaping, vegetative buffering, wall or fence screening.

**R. Limit on Home Cultivation of Marijuana.**

No person shall be permitted to cultivate marijuana plants or seedlings on a parcel or tract of land on which he or she is not domiciled.

**S. Limit on Location of Medical Marijuana Establishments.**

A medical marijuana establishment may not be permitted or operated within 1000 feet of a public or private educational facility including but not limited to child care facility, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school.

**§101.7 ADULT ENTERTAINMENT ESTABLISHMENT DEFINITIONS AND STANDARDS:**

**A. DEFINITIONS:**

**Adult amusement store** means the same as ADULT BOOKSTORE.

**Adult arcade** means any place to which the public is permitted or invited wherein coin operated or slug-operated or anatomical areas.”

**Adult bookstore or adult video store** means a commercial establishment that utilizes at least 15% of the establishment’s floor space for display, sale, or rental, for consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas;” or instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

**Adult cabaret** means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

- a. persons who appear in a State of semi-nudity; or
- b. live performances that are distinguished or characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- c. films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
- d. persons who engage in “exotic” or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

**Adult entertainment establishment** means the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses.

**Adult entertainment nightclub or bar** means the same as ADULT CABARET.



**Adult motel** means a hotel, motel or similar establishment that:

- a. offers accommodations to the commercial public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;” and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or
- b. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
- c. allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than twenty-four (24) hours.

**Adult motion picture theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are distinguished or characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

**Adult novelty store** means the same as ADULT BOOKSTORE.

**Adult theater** means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a State of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

**Adult video store** means the same as ADULT BOOKSTORE.

**Employee** means a person who performs any service on the premises of an adult entertainment establishment on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does “employee” include a person exclusively on the premises as a patron or customer.

**Escort** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**Escort agency** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Establishment** means and includes any of the following:

- a. the opening or commencement of any adult entertainment establishment as a new business;
- b. the conversion of an existing business, whether or not an adult entertainment establishment, to any adult entertainment establishment;
- c. the additions of any adult entertainment establishment to any other existing adult entertainment establishment; or
- d. the relocation of any adult entertainment establishment; or
- e. an adult entertainment establishment or premises on which the adult entertainment establishment is located.

**Establishments featuring strippers or erotic dancers** means the same as ADULT CABARET.

**Nude model studies** means any place where a person who appears in a State of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

**Nudity or State of nudity** means the appearance of a human anus, pubic area, male genitals, or female genitals with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid State even if completely and opaquely covered.

**On-site video screening establishment** means the same as ADULT ARCADE.

**Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

**Premises** means the real property upon which the adult entertainment establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the owner or operator of the adult entertainment establishment.

**Sexual encounter center** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a State of nudity or semi-nudity. A principal business purpose exists if the services offered are intended to generate business income.

**Sexually oriented business** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**Specified anatomical areas** means:

- a. the human male genitals in a discernibly turgid State, even if fully and opaquely covered;
- b. less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

**Specified sexual activities** means and includes any of the following:

- a. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. masturbation, actual or simulated; or
- d. excretory functions as part of or in connection with any of the activities set forth in (a)

through (c) above.

**Substantial enlargement** of an adult entertainment establishment means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on the date of enactment of this ordinance

## B. STANDARDS:

Adult Entertainment Establishments shall meet all of the standards contained in the Land Use Ordinance, Conditional Use Standards, and Site Review Ordinance as applicable, and Additional Standards specific to Adult Entertainment Establishments as set forth below:

### 1. Purpose.

It is the purpose of this ordinance to regulate adult entertainment establishments and related activities to promote the health, safety, and general welfare of the citizens of the municipality, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment establishments within the Town of Damariscotta. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

The Town hereby finds that adult amusement stores in communities in Maine and elsewhere are associated with a wide variety of deleterious secondary effects including, without limitation, personal and property crimes, prostitution, potential spread of disease, public lewdness and indecency, obscenity, illicit drug use and trafficking, negative impacts on the condition and value of closely-situated surrounding properties, urban blight, litter, and sexual assault and exploitation. The location of adult amusement stores in proximity to residences, schools, daycares, places of worship, recreational and other public parks, liquor licensees, and other incompatible land uses are of particular concern. These findings are supported by research and studies by municipalities and others across the Nation, reflected in a substantial published literature on the subject, including materials provided by Town Counsel for the Legislative body's review and consideration, which materials are incorporated herein by reference as part of the record of the adoption of the following regulations for adult amusement stores.

The Town further finds that preventing the deleterious secondary effects associated with adult amusement stores through the adoption of content-neutral regulations of the times, places, and manner in which such establishments may be operated falls within the Town of Damariscotta's inherent police power as a municipal corporation and subdivision of the State of Maine, and its home rule authority granted by the Legislature pursuant to Title 30-A, Maine Revised Statutes, Section 3001, and serves the substantial governmental interest in preventing such deleterious effects. Finally, the proposed regulation is intended to be no greater than is necessary to achieve

the purpose of preventing the deleterious secondary effects associated with adult amusement stores, and to allow for reasonable locations in the Town for such establishments.

2. Location Restrictions. Adult entertainment establishments shall be a conditional use in accordance with Article V of the Town of Damariscotta Land Use Ordinance Section C and also provided that:

- a. The adult entertainment establishment may not be permitted or operated within:
  - i. 1,500 feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  - ii. 1,500 feet of a public or private educational facility including but not limited to child care facility, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;
  - iii. 1,500 feet of a public park or recreational area or private recreational facility which has been designated for park or recreational activities, including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities or a private entity;
  - iv. 1,500 feet of another adult entertainment establishment.
- b. An adult entertainment establishment may not be operated in the same building, structure, or portion thereof, containing another adult entertainment establishment.
- c. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult entertainment establishment is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected recreational facility or licensed child care facility.
- d. For purposes of subsection (C) of this section, the distance between any two adult entertainment establishment uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

3. Adult Entertainment Establishment Signage.

- a. All signs shall be in accordance with any Ordinances or Regulations of the Town of Damariscotta relative to Signs.
- b. Notwithstanding anything to the contrary, an Adult Entertainment Establishment shall not be permitted more than one (1) sign advertising its business, which shall be an on-premise free-standing or attached wall sign only. No such sign shall:
  - i. Be placed in any window, except that one sign no larger than one (1) sq. ft. may be placed on the door to State only the store's hours of operation and that admittance is for adults only;
  - ii. Be neon or internally-illuminated or contain any flashing lights, moving elements, or mechanically changing messages;

- iii. Contain any depiction of the human form or any part thereof, whether by photograph, painting, drawing, silhouette, or pictorial representation;
    - iv. Contain any sexually explicit or suggestive language such as "nude dancing";
    - v. Be located off-site;
    - ii. Have more than two display surfaces; or;
    - iii. Exceed twenty (20) sq. ft.
  - c. Any sign located on the premises of a multi-unit commercial center such as a shopping center or plaza and identifying one or more of the businesses that comprise the center shall also comply with this subsection if such sign identifies an Adult Entertainment Establishment on the premises.
4. Amortization of Existing Adult Entertainment Establishments.
- a. Any Adult Entertainment Establishment lawfully operating upon the adoption of this Ordinance that is in violation of this Ordinance shall be deemed to be a nonconforming use. This nonconforming use shall be permitted to continue for a period of twenty-four (24) months from the effective date of this Ordinance, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use may not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.
  - b. An Adult Entertainment Establishment lawfully operating as a conforming use as of the effective date of this ordinance, shall not be rendered a nonconforming use by the subsequent location of a church, synagogue, or other house of religious worship, public or private elementary or secondary school, recreational facility, or municipal facility, within the distance limitations of this ordinance.
5. Conflicts. Notwithstanding the foregoing, if there is any conflict between this Section 12 and other Damariscotta Codes and Ordinances, the more stringent provisions shall apply.
6. Severability. If any section, phrase, sentence, or portion of this Section 12 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
7. Retroactivity. The provisions set forth in this Section shall be effective, to the maximum extent permitted by law but subject to the severance clause herein, and shall be applied to all proceedings or applications not pending, and business activities not commenced, established, located or operating within the Town, as of August 20, 2014.

## **§101.8 ADMINISTRATION**

### **A. Jurisdictions**

- 1. The Board of Selectmen shall administer and enforce the provisions of this Ordinance and coordinate all actions of the Code Enforcement Officer, the Planning Board and Board of Appeals to maintain a documented trail of their actions on matters reviewed by them to substantiate proof for legal review.

### **B. Administration**

- 1. The Board of Selectmen shall annually, following the Town Meeting appoint a

Code Enforcement Officer.

**C. Powers and Duties of the Code Enforcement Officer**

1. The Code Enforcement Officer (CEO) shall have the following duties:
  - a. Examine preliminary plans
  - b. Act upon building permit applications received by the Town Office.
  - c. Refer permits requiring Site Review, Conditional Use, Flood and Shoreland approved to the Planning Board as required.
  - d. Inspect sites where building permits have been issued to insure compliance with this Ordinance.
  - e. Investigate complaints and report violations.
  - f. Keep written inspection reports and thorough records stored in the Town Office.
  - g. Issue violation notices.
  - h. Appear in court when necessary.
  - i. Offer advice upon request.
  - j. Participated in appeals procedures.
  - k. All powers conferred by State statute.
2. When there is a question concerning interpretation of this Ordinance, the Code Enforcement Officer shall refer to the Board of Appeals for interpretation.

**D. Violations**

1. If the Code Enforcement Officer believes a violation of this Ordinance has occurred, he shall notify by certified mail the person(s) responsible for such violations indicating the nature of the violation and ordering the necessary action to correct it. He shall order discontinuance of illegal use of land, buildings, or structures, or of any unpermitted additions, alterations, of structural changes thereto; or discontinuance of any illegal activity.

**E. Fines**

1. Any person, firm, or corporation violating a provision of this Ordinance shall be fined not more than \$100.00 for each day such violation exists. All fines shall inure to the benefit of the Town of Damariscotta

**F. Building Permits**

1. Applicability. The provisions of this section apply to all structure(s) constructed, reconstructed, enlarged, relocated or moved in the Town of Damariscotta. This Ordinance does not require permits for maintenance and repair, or for accessory structure(s) or addition(s) of less than 100 square feet. Except that, all accessory structure(s) or addition(s) of less than 100 square feet within the Shoreland Zone shall obtain permits.

The provisions of this Section shall apply to any change in ownership of any commercial enterprise within the Town of Damariscotta.

2. Permits Required. The owner of the property shall obtain a permit issued by the Code Enforcement Officer for all structure(s) constructed, reconstructed, enlarged, relocated in or moved to the Town of Damariscotta, prior to the fact.
  - a. Application. The application for the permit shall be in writing on a form available

from the Municipal Office, and shall contain:

- i. a description of any structure(s) prior to their construction, reconstruction, enlargement, or relocation in or movement to the Town of Damariscotta is contemplated;
- ii. a description of the establishment of any commercial business in the Town of Damariscotta or change in a business establishment, regardless of the size of the floor area;

Each application shall contain a drawing of the structure(s) and a plan of the site shall accompany the application. The drawing shall include project dimensions, distances to property lines, names of abutters, roads, streets and bodies of water, location of sewer disposal and water supply. When required by the State Plumbing Code, the Code Enforcement Officer shall require evidence of adequate capacity of the septic system to support the structure(s) contemplated.

- b. **Permit Approval.** The Code Enforcement Officer, after receipt of the application, shall either issue the requested permit or transmit notice of refusal to the applicant within a reasonable time, not to exceed five (5) working days for residential applicants, and fifteen (15) working days for commercial applicants. The application shall be approved if all relevant ordinance requirements have been met. Notice of any refusal shall be in writing and shall state the reason therefore. All other permits required for the proposal shall be obtained prior to issuance of the permit.
- c. **Modifications.** Any modifications to the description, drawing, or site plan required in Section 6 (a) of the proposed structure(s) shall require a revised permit application and a permit prior to beginning the work.
- d. **Appeals.** An appeal to the Board of Appeals may be taken from an order issued by the Code Enforcement Officer or from his refusal to grant a permit. Such appeal shall be filed within thirty (30) days of the date of the order being appealed, accompanied by a \$50.00 fee to cover the cost of appeal. The board may reverse the decision, or failure to act, of the Code Enforcement Officer only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance or unsupported by weight of the evidence in the record.
- e. **Duration of Permit.** All building permits shall be void unless there is substantial completion of the project within three (3) years of the date of the permit. Construction authorized by a permit and which is not completed within three (3) years of the effective date of the permit shall not continue until another permit is obtained.
- f. **Conditional Use Permit.** In cases where the CEO believes that a Conditional Use Permit is required, the CEO shall also provide a copy of his decision to the Planning Board.
- g. **Records.** Applications for permits with their accompanying plans and Building Permits shall be maintained as a permanent record by the Municipal Officers and the Code Enforcement Officer.

- h. Other Permits. Where plumbing or septic work is required to make a building habitable, no Building Permit shall be issued unless a Plumbing Permit has been previously obtained. All sewerage and water connections and systems must comply with the regulations of the Maine State Plumbing Code.

3. Fees. A fee payable to the Town of Damariscotta in accordance with the following shall accompany each application:

- a. Commercial or Industrial:

Under 10,000 square feet	\$0.30 per square foot
10,001 to 25,000 square feet	\$0.15 per square foot
More than 25,000 square feet	\$0.10 per square foot
- b. Residential

	\$0.15 per square foot
	With a maximum fee of \$250.00
- c. Accessory Structure or Addition (such as deck, garage, greenhouse, barn, etc.

	\$0.10 per square foot
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- d. Swimming Pool, (in-ground or above-ground)

	\$25.00
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- e. After-the-fact Permit Fee:

If work is performed which requires a permit, but the permit is not obtained until after the work has begun, in addition to any other fees and fines, the fees for such after-the-fact permits shall be two (2) times the regular permit fee or \$100.00, whichever is greater.

- f. Variance and Conditional Use Hearing Fee:

For each Variance and Conditional Use hearing required, a fee will be charged to cover administrative and advertising expenses as follows:

administrative expenses	\$50.00
advertising fee	\$30.00

These fees are subject to adjustment as deemed appropriate by the Board of Selectmen after public hearing.

- 4. Proof of Compliance. No building shall be occupied after its construction, reconstruction, enlargement, or relocation in or movement to the Town of Damariscotta until a Certificate of Occupancy has been issued by the Code Enforcement Officer. The Code Enforcement Officer shall issue said Certificate after proper examination shows that all work performed is in compliance with the provisions of all State and Local codes.

## **§101.9 APPEALS AND CONDITIONAL USES**



## **A. Authority**

1. All Appeals or applications for conditional Use Permits shall be based upon a written decision of the Code Enforcement Officer or the Planning Board.
2. Board of Appeals Authorization:
  - a. The Board of Appeals as established in the Town of Damariscotta Board of Appeals Ordinance shall hear and decide applications for variances and appeals in accordance with State law and the provisions of that Ordinance.
  - b. The Planning Board shall hear and approve, approve with modifications or conditions, or deny an application for a Conditional Use Permit. A Conditional Use Permit shall not be issued unless specific provision for such conditional Use is made in this Ordinance.
  - c. On request of the Board of Appeals, the Planning Board shall prepare an informational report on pending requests for a variance.

## **B. Procedure**

1. Application
  - a. These procedures and limitations apply to all appeals and requests for variances or conditional use permits. In all cases, a person aggrieved by a decision shall commence his appeal within 30 days after that decision is made. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and shall specifically set forth the grounds for the appeal.
  - b. A person informed by the Code Enforcement Officer that he requires a Conditional Use Permit shall file an application for the Permit with the Planning Board on forms provided by the Town of Damariscotta. In order to describe the conditions adequately the applicant may be requested by the Code Enforcement Officer or the Planning Board to supply the following information.
    - i. Detailed information to demonstrate compliance with the applicable standards or criteria.
    - ii. Plans showing location of new and existing buildings, parking areas, traffic access, driveways, landscaping, open spaces.
2. Notification
  - a. Publication: Within 30 days of the filing of an appeal or application for a variance, the Board of Appeals shall hold a public hearing in accordance with Section 4.D of the Board of Appeals Ordinance. The Board shall notify the Code Enforcement Officer and, in the case of an appeal, the Planning Board, at least 20 days in advance, of the time and place of the hearing. It shall publish notice of the hearing at least 10 days in advance of it in a newspaper of general circulation in the county.
  - b. Notification of abutters: The Board of Appeals shall notify by certified mail, the appellant or applicant at least 10 days in advance of the hearing. The appellant or applicant shall be responsible for notifying all abutting property owners and owners of property within 500 feet of the property involved (even if the property is on the other side of the road) of the nature of the hearing and the time and place of the hearing. For the purpose of this section, abutting property owners shall include properties directly across a street from the property

involved.

- c. The owners of property shall be determined on the basis of town tax records. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.

3. Hearing:

- a. At any hearing, a party may be represented by agent or attorney. Hearings may be continued for good cause.
- b. The Code Enforcement Officer shall attend all hearings and may present to the Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- c. The hearing shall proceed according to the By-Laws of the Board of Appeals.

4. Decision:

- a. A decision shall require an affirmative vote of a majority of the members in accordance with Section 3 of the Board of Appeals Ordinance.
- b. The Board of Appeals shall reach a decision at the initial or continued public hearing and shall inform, in writing, the appellant or applicant, the Code Enforcement Officer, the Planning Board (on appeals) and the Municipal Officers of its decision with the conditions of the approval, or reasons for its denial.
- c. Upon notification of the decision of the Board of Appeals, the Code Enforcement Officer, as instructed, shall immediately issue or deny a permit, with or without conditions, as prescribed by the Board of Appeals.

**C. Standards**

1. Variance

- a. A variance may be granted in accordance with Title 30-A Section 4353 by the Board of Appeals only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used are defined in accordance with Title 30-A Section 4353.
- b. A variance is not justified unless all elements are present in the case.
- c. As used in this Ordinance, a variance is authorized only for height, area, parking requirements and size of structures or size of yards or open spaces. Establishment of a use otherwise prohibited shall not be allowed by a variance. Financial hardship shall not constitute grounds for granting a variance.
- d. Variances for dimensions are not allowed within the Shoreland Zone.

2. Conditional Uses:

- a. The Planning Board may grant a conditional use upon presentation by the applicant of proof of the following:

- i. Certain Requirements Met: That the use requested meets the requirements of this Ordinance as set forth in Articles 1 through 8 and the requirements for the Damariscotta Site Review Ordinance.
- ii. Effect not adverse: That the use requested will not have an adverse effect on the health, safety, or general welfare of the residents of the area or the general public. In making this determination, the Planning Board shall take into consideration the potential effect of the use on the environment from air, water, or soil pollution, noise, traffic, congestion, soil erosion, the burden on the sewage disposal, or water supply systems or other municipal facilities, services, or public ways, and any other relevant factors as set forth in Articles 1 through 8.
- iii. Conditions attached to Conditional Uses: The Planning Board may attach such conditions as necessary to ensure that the above requirements are met.

#### **§101.10 SEVERABILITY**

Should any section or provision of this ordinance be declared by the Courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

#### **§101.11 CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not repeal, annul, or in any other way impair the necessity of compliance with any other rule, regulation, bylaw or provision of the Federal, State or local government including Damariscotta's Shoreland Zoning Ordinance. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures than the State or Federal regulations, this Ordinance shall control.

#### **§101.12 AMENDMENTS**

All changes and amendments to this Ordinance must be made at a regular or special Town Meeting of Damariscotta, by a majority of the governing body.

#### **§101.13 EFFECTIVE DATE**

The effective date of this Ordinance is 1 April 1998 and revisions as of 2/23/2002, 6/12/2002, 7/10/2002, 12/4/03, 11/10/04, 3/21/06 6/11/08,1/21/09, 3/18/15, 3/10/15 and June 15, 2016.

#### **§101.14: REPEAL OF EXISTING ORDINANCES:**

The enactment of this ordinance hereby amends the Land Use Ordinance of November 16, 2016.

Ordinance effective date: January 6, 2020

## APPENDIX A

### DISTRICT DESCRIPTIONS

#### 1. GENERAL RESIDENTIAL DISTRICT

##### a. Land South of Business Route One.

Beginning at the intersection of Bristol Road and the town line of Bristol and Damariscotta; thence easterly along the town line 2700 feet; thence North to the Northeast Corner of Lot 14-19 of Map 1; thence westerly along the southerly bound of Lot 19, Map 1 to a point 500 feet east of the center line of Bristol Road; thence northeasterly parallel to the center line of Bristol Road and School Street, 500 feet east of each to a point making the southeast corner of Lot 25, Map 10; thence northwesterly along the easterly line of Lot 25 to a point 500 feet from the center line of Business Route 1; thence westerly parallel to and 500 feet from the center line of Business Route 1 until converging at the southerly corner of Lot 30, Map 9; thence

along the easterly and northerly lines of Lot 31A to the intersection with the westerly line of Lot 31, Map 9; thence northwesterly to the southwest corner of Lot 119, Map 6; thence northerly along the easterly lines of Lots 122, 121, and 120 of Map 6 to the intersection with the center line of Business Route 1; thence northwesterly along Business Route 1 to its intersection with the Bristol Road Extension; thence southwest along the center line of the Bristol Road Extension to the Bristol Road; thence southeasterly along the center line of Bristol Road to the intersection with Cross Street; thence westerly along Cross Street to the northeast corner of Lot 128, Map 6; thence southerly to the southeast corner of Lot 128; thence westerly to the northwest corner of Lot 125; thence southerly to the southeast corner of Lot 134; thence westerly along the northerly bound of Lot 134A to the center line of Water Street; thence northerly along Water Street to the northeast corner of Lot 3, Map 6; thence westerly along the northerly bound of Lot 3 to the shore and water of the Day's Cove; thence following the shore and water of Day's Cove to the southwest corner of Lot 3, Map 9; thence following the northerly, easterly, bounds of Lot 63, Map, the easterly bounds of Lots 29, 30 of Map 11, and the easterly and southerly bound of map 27, Map 11 to the Shore of the Damariscotta River; thence following the shore south to the Bristol Town line; thence easterly to the point of the beginning.

##### b. Land westerly of Business Route 1.

Beginning at the shore of Cottrell's Cove at the Northeast corner of Lot 41, Map 6; thence southeasterly along the sideline of Lot 41 to the centerline of Elm Street; thence along Elm Street to the Northeast corner of lot 70; thence following the easterly line of Lot 70, and the northerly and easterly lines of Lot 83 to Business Route 1, thence along Business Route 1 to the intersection of Vine Street and Business Route 1; thence easterly along Vine Street to lot 112, Map 6; thence follow the westerly bound of Lot 112 to the Southeast corner of Lot 95; thence to the southwest corner of Lot 94; thence easterly to the southeast corner of Lot 90; thence along the westerly bound of Lot 90 to the centerline of Chapman Street; thence along Chapman Street to the southwest corner of Lot 11 Map 7; thence north along sideline of Lot 11 100 feet; thence easterly to the southeast corner of Lot 18A. Northerly along the East bound of Lot 18A to the

centerline of Church Street; thence easterly along Church Street to the Northeast corner of Lot 13; thence along the west, south and east lines of Lot 16 to the southeast corner of Lot 15; thence easterly along the north bound of Lot 13, crossing School Street and along the south bound of Lot 49, Map 7 to the centerline of the "Crick"; thence south along the stream to the southwest corner of Lot 48; thence following the southerly line of Lot 48 to its intersection with Lot 23, Map 8; thence continuing to a point of intersection with a line 200 feet from and parallel to Business Route 1; thence easterly along this line to its intersection with Lot 21; thence westerly to the centerline of Church Street; thence along Church Street to the southwest corner of Lot 7, map 8; thence along the west line of Lot 7 and across Lot 6 to the intersection of the north line of Lot 6 and 500 feet from the centerline of Business Route 1; thence northerly along this line 500 feet from and parallel to the centerline of said road to Lot 17, Map3; thence westerly to the shore of the Damariscotta River; thence southerly following the shoreline to the point of beginning.

## **2. COMMERCIAL**

### **a. Downtown Commercial (C1)**

Beginning at the shore of Day's Cove and the north bound of Residential I; thence easterly along the northerly line of Residential I to its intersection with Business Route 1 and Bristol Road; thence to the southwest corner of Lot 84, Map 6; thence along the easterly and northerly lines of Lot 83 and the east line of Lot 70 to the center line of Elm Street; thence west along Elm Street to the southeast corner of Lot 41; thence northerly along the sideline of Lot 41 to Cottrell's Cove; thence westerly along the shore to the point of beginning.

### **b. Other Commercial (C2)**

Beginning at the intersection of Business Route 1 and Main Street; thence northerly along the boundary of the C1 District to the northeast corner of lot 83, Map 6; thence along the western and southern and eastern boundary of General Residential district (west of Business Route 1 to Lot 17, Map 3; thence continuing 500 feet west of Business Route 1 to the intersection with the southerly bound of Lot 32, Map 3; thence westerly along the southern bound of Lot 32, Map 3; thence northerly along the western bound of Lot 32, Map 3 to a point 500 feet south of the centerline of Belvedere Road; thence westerly 500 feet south of the centerline and parallel to Belvedere Road to the intersection with the eastern bound of Lot 33-1, Map 3; thence northerly to a point 500 feet north of Belvedere Road; thence easterly to the intersection with the western bound of Route 1; thence northerly following Route 1 to the intersection with the eastern side of the Midcoast Road; thence following Midcoast Road and the Center Street to the northwest corner of Lot 64E, Map 3; thence easterly to the northeast corner of Lot 64E; thence south to the intersection with lot 64C, thence easterly to a point 500 feet easterly of the centerline of Route 1; thence south following a line 500 feet from the centerline and parallel to Route 1 to its intersection with Business Route 1; thence southerly following a line 500 feet east of and parallel to Business Route 1 to the northerly bound of lot 14, Map 3, thence easterly to the northeast corner of lot 14; thence southerly following the easterly bound of lot 14 to the southwest corner of lot 12B, Map3; thence easterly in a straight line parallel to the northerly bound of lot 10, Map 3,

crossing lot 7 Map 3 to the northeast corner of Lot 8, Map 3 (which is also the southwestern corner of Lot 12-4 Map 3), thence northerly along the eastern boundary of Lot 7, Map 3 (which is also the western boundary of Lot 12-4 Map 3) to the northeasterly corner of Lot 12-4, thence easterly along the northerly boarder of Lot 12-4, Map 3 to a point about 325 feet to the east, thence southerly along a straight line (approximately parallel to the eastern boundary of Lot 7, Map 3) to the northeastern corner of Lot 8, Map 3 and then following the northerly bound of Lot 7-1, Map 3 to a point 200 feet east of the southwest corner of Lot 9, Map 3; thence southerly to a point 500 feet south of Biscay Road; thence westerly (parallel to and 500 feet from Biscay Road) to the easterly bound of Lot 67, Map 1; thence southerly along the easterly bound of Lot 67, Map 1 to the southerly bound of Lot 67, Map 1; thence westerly along the southerly bound of Lot 67, Map 1 to the center line of Heater Road; thence southerly to the southeast corner of Lot 59, Map 1; thence westerly to the intersection with the point 1000 feet east of Business Route 1; thence southerly following a line 1000 feet east of and parallel to Business Route 1 to the intersection of the general Residential District (south of Business Route 1); thence westerly following the northerly bound of the Residential District to the point of beginning. Also included are the Lots 63, 64, 65 and 66 of map 9 and Lots 27, 29 and 30 of Map 11. Excluded from the C-2 District is the new lot 13A, Map 7 created by the gift of land given to the Town and defined in the new Municipal District.

### **3. RURAL DISTRICT**

Beginning at the westerly shore of Biscay Pond at the Bristol Town line; thence westerly along the town line to a point of intersection with the General Residential District (south of Business Route 1); thence northerly following the boundary of the General Residential District to its intersection with the southerly bound of District C2; Thence along the boundary of C2 north to its northerly terminus; thence westerly and southerly following the westerly boundary of C2 to its intersection with the northerly bound of General Residential District at Lot 17, Map 3; thence westerly to the shore of the Damariscotta River; thence northerly following the shore of the Damariscotta River and Oyster Creek to the intersection with the Nobleboro town line; thence easterly along the town line to its intersection with the shore of Pemaquid Lake; thence southerly following the western shores of Pemaquid Lake and Biscay Pond to the point of beginning.

### **4. WIRELESS COMMUNICATIONS DISTRICT**

Beginning at the intersection of Route 1 and the northerly town line, proceed easterly along the town line a distance of 1000 feet; thence southerly parallel to and 1000 feet from Route 1 to the intersection of the northerly bound of Lot 10, Map 3; thence easterly along the north boundary of the C2 district to its easterly extent; thence southerly to the centerline of Biscay Road; thence westerly along Biscay road to the intersection of Business Route 1; thence north following Business Route 1 and Route 1 to the point of beginning.

### **5. MUNICIPAL DISTRICT**

Beginning at the Southeast corner of Lot 13A, Map 7, of the Town Tax Maps,

2003, proceed northerly along the easterly boundary of Lot 13A, Map7, to the northeast corner of the lot, thence westerly along the northerly boundary to the northwest corner of the lot and thence southerly along the west boundary to its intersection with Chapman street, thence easterly to the point of beginning.