

TOWN OF DAMARISCOTTA

PLANNING BOARD MEETING AGENDA

When: Monday, April 5, 2021 - 6:00 PM

Where: ZOOM Meeting

<https://us02web.zoom.us/j/83032264000?pwd=VW9RdS9Gc1hQS1dVdEtCWHFiaExzUT09>

Meeting ID: 830 3226 4000

Passcode: 166871

Pledge of Allegiance

REGULAR MONTHLY MEETING for April 5, 2021

MINUTES for March 1 and March 8, 2021 Meetings

A. OLD BUSINESS

1. Land Use Ordinance - Amendments to Definitions and Land Use Table – Posting of Public Hearing
2. Proposed Formula Business Ordinance- Posting of Public Hearing

B. NEW BUSINESS - None

C. OTHER

1. Questions from the public.
2. Housekeeping
3. Planner's Reports

D. ADJOURN

Memorandum

To: Damariscotta Planning Board
Fm: Bob Faunce
Dt: March 22, 2021
RE: **April 5, 2021 Planning Board Meeting**

The Planning reviewed two ordinance items at its August 3, 2020 meeting (meeting minutes attached). The first was a package of amendments to the Land Use Ordinance. The following is from the memo I prepared on the amendments for the August 3, 2020 meeting.

The Land Use Advisory Committee (LUAC) has spent a considerable amount of time over the past year updating the use table in the Land Use Ordinance. The current list of uses is quite limited and in some ways does not recognize new types of businesses, residential developments, institutional uses, etc. The LUAC also considered into which districts the uses should be allowed. In addition to revisions to the use table, the LUAC also updated and expanded the definition section. In some cases, uses currently listed in the use table were not defined or the definitions were inadequate. Also, definitions were required for any new uses. The LUAC made an effort not to remove any currently listed use from any zoning district so as to avoid requiring individual notifications to property owners within the affected district as is required by state law.

Attached is the current Land Use Ordinance with new definitions underlined in **red** and new uses highlighted in **yellow**. Because of the number of changes to the Land Use Table, it was easier to delete the current table and replace it with a table with the proposed changes. The PB discussed the proposed amendments and posted them for a public hearing at a date to be determined.

The second was a proposal to create a formula business ordinance that defines formula businesses and limit them to the C2 District, thereby prohibiting them from the Downtown (C1) District. The following is from the memo prepared for the August 3, 2020 meeting.

The Land Use Advisory Committee (LUAC) has been working on formula business amendments that would prohibit chain and large franchise operations from being located in the C1 (downtown) District. Attached is their proposal for your consideration.

LUAC members acknowledge that formula businesses as defined in the attached amendments play an important role in the local economy but they are concerned that the addition of such businesses in the C1 District will detract from the ambience and charm of Damariscotta's downtown. As noted in the proposal,

The purpose and intent of these amendments to the Damariscotta Land Use Ordinance is to address the adverse impact of nationwide, standardized businesses on Damariscotta's historic downtown area. The proliferation of formula businesses will have a negative impact on the community's economy, historical relevance, and unique character. These uses are therefore prohibited in the Commercial 1 District in order to maintain a unique retail and dining experience. Formula businesses frustrate this goal by detracting from the overall historic downtown experience and threatening its tourist economy.

The LUAC is proposing to accomplish this by creating a definition for formula businesses and limiting them to the C2 District. That is, such businesses will continue to be permitted in the C2 District but will be prohibited from the downtown.

I have attached the proposed Formula Business Ordinance. This proposal was also posted for a public hearing at a date to be determined.

Since that meeting, the Planning Board and Board of Selectmen have spent much time with well attended public hearings and informational sessions on revisions to the Historic Preservation Ordinance. The changes generated much discussion among town officials and the public. I was concerned that because both the Historic Preservation Ordinance and the proposed Formula Business Ordinance would impact the same areas, considering them simultaneously might create some confusion. Consequently, I decided to postpone scheduling the public hearing until work on the Historic Preservation Ordinance was completed. I also delayed posting a public hearing on the Land Use Ordinance for the same reason.

It's been eight months since the PB consider both proposals. There has been some turnover on the Board so rather than simply posting both items for public hearings, I would like the members to have an opportunity to discuss them once more before a May public hearing.

Proposed Formula Business Amendments

July 21, 2020

The Damariscotta Land Use Ordinance is hereby amended as follows:

Add the following definition to §101.4

Formula business means a type of retail sales establishment (i.e. chain store, outlet store), restaurant, tavern, bar, or take-out food establishment, which along with 20 or more other establishments maintains two or more of the following features:

- (1) Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- (2) Trademark or service mark, defined as a word, phrase, symbol or design, or a combination or words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others, on products or as part of store design.
- (3) Standardized interior décor including but not limited to style of furniture, wall-coverings or permanent fixtures.
- (4) Standardized color scheme used throughout the interior or exterior of the establishment.
- (5) Standardized uniform including but not limited to aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags).

Amend §101.4.D.1, Schedule of Uses, by adding “formula businesses” as follows:

Commercial-Service	GR	C1	C2	R	WC	M
Formula businesses			C ³			

Purpose of the amendments. The purpose and intent of these amendments to the Damariscotta Land Use Ordinance is to address the adverse impact of nationwide, standardized businesses on Damariscotta’s historic downtown area. The proliferation of formula businesses will have a negative impact on the community’s economy, historical relevance, and unique character. These uses are therefore prohibited in the Commercial 1 District in order to maintain a unique retail and dining experience. Formula businesses frustrate this goal by detracting from the overall historic downtown experience and threatening its tourist economy.

CHAPTER 101

LAND USE ORDINANCE

DAMARISCOTTA, MAINE

3-19-21

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§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

occupied by 3 or more families living independently of each other.

Automobile Services: Facilities for major maintenance and repair of passenger vehicles, motorcycles, pickup trucks and similar vehicles. The type of work normally provided includes engine overhauls, transmission repairs, glass replacement, body work, painting and similar work. Automobile services shall include muffler shops, brake shops, body shops, paint shops, tune-up centers, car washes, detailing, automotive diagnostic centers, lubricating services, road services, rustproofing and other service uses similar to those listed.

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Bed and Breakfast Establishment: A single family dwelling occupied by the owner as his/her principal place of that accommodates paying guests for a limited duration with sleeping and dining facilities; payable on a per-diem basis; having more than three (3) but less than ten (10) sleeping rooms; and in which some bath, sitting room and dining rooms are used in common by such guests. All dining facilities are limited to use by overnight guests of that particular establishment. For purposes of this definition, principal place of residence means that the owner of the land and buildings must be in residence on the premises while the bed-and-breakfast business is conducted. The residence of the owner must be in the main building where all bed and breakfast activities occur. Additional buildings on the lot that meet space, set back and parking requirements may be used for additional bed and breakfast activities. This use is considered a commercial use.

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Bed and Breakfast Establishment as a Home Occupation: A single family dwelling occupied by the owner as his/her principal place of residence that accommodates paying guests for a limited duration with sleeping and dining facilities; payable on a per-diem basis; having between two (2) and three (3) guest rooms and limited to serving breakfast to said overnight guests shall be considered a home occupation accessory to principal use of the dwelling and shall be allowed under the standards applicable to home occupations. For purposes of this definition, principal place of residence means that the owner of the land and buildings must be in residence on the premises while the bed-and-breakfast business is conducted.

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Boarding House, Rooming House or Lodging House: A building with a maximum of ten room, which, for compensation, lodging, or lodging and meals are provided. No provisions for cooking in individual rooms other than a main kitchen is allowed.

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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.

Farmers Market: A food market at which local famers sell fruit, vegetables, meat, cheese, bakery products and similar items directly to consumers.

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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.

Gasoline Station: A facility that sells fuel and lubricants for motor vehicles.

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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.~~

Home Occupation: An occupation conducted in a dwelling unit or a structure accessory thereto, provided that all of the following criteria are met:

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(1) No more than two persons other than a member of the family residing on the premises shall be employed in such occupation; and

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(2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the total floor area of the dwelling unit and accessory structures used in the home occupation shall be used in the conduct of the home occupation; and

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(3) There shall be no change in the outside appearance of the building or premises, or any visible evidence of the conduct of such home occupation other than one (1) sign, except as hereinafter permitted; and

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(4) No traffic shall be generated by such home occupations in greater volumes than would normally be expected in the neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required yard; and

5) No equipment or process shall be used in such home occupation which noise, vibration, glare,

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.

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.

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.

Mixed Residential Development: A residential development involving a mixture of detached single-family dwellings, single-family attached dwellings with less than eight (8) common walls, two-family dwellings or multifamily dwellings with less than five (5) dwelling units per structure. A mixed residential development may contain a mixture of the listed building types; but, multifamily dwellings shall not constitute more than sixty (60) percent of the total number of dwelling units in the development. Mixed single-family residential development means a planned residential development involving a mixture of single-family detached dwellings and attached single-family dwellings.

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Mixed-use Structure: A building containing one (1) or more dwelling units and nonresidential space. Said nonresidential space must be permitted in the underlying zoning district.

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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.

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.

Recycling and Reprocessing Facility: A commercial enterprise involving the handling, storing and processing of waste materials including but not limited to scrap metal, paper, rags, chemicals, oils, solvents and similar materials but not including automobiles or involving the onsite disposal of these materials.

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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.

Restaurant: A business or commercial establishment which serves food to the public for consumption on the premises and may include the sale of food for consumption off premises. Restaurants serving alcoholic beverages, also referred to as food service establishments FSE-Class A, B, C, and E, must offer full course meals at all times while open, shall not exclude persons under the age of twenty-one (21) from full use of the establishment at all times, and shall not possess a special amusement permit for dancing. Restaurants serving alcoholic beverages that do not satisfy the above provisions shall be deemed to be and regulated as drinking places.

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

~~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

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	-	-

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Registered caregiver retail stores			E ⁵	E ⁵	=	-
Medical marijuana testing facilities			E ⁵	E ⁵		

¹As 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.

²Accessory buildings and uses to permitted uses are permitted; accessory buildings and uses to conditional uses are conditional.

³No outside storage

⁴Within the bounds of the Wireless Communications District

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

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Land Use ^{2,7}	District (P=Permitted; C=Conditional) ⁶					
	GR	C1	C2	R	WC	M
Commercial-Service						
Veterinary facilities excluding kennels and humane societies	!	!	C	C	!	!
Veterinary facilities including kennels and humane societies	!	!	!	C	!	!
Small day care facilities (3-12 children under 13 years of age)	C	C	C	C	!	!
Day care centers (more than 12 children under 13 years of age)	!	!	C	C	!	!
Day care centers accessory to public schools, religious facilities, MF or mixed res. developments, and MH parks (see note 2)	!	!	!	!	!	!
Engineering, management and professional offices and related services	!	C	C	C	!	!
Research and testing laboratories	!	!	C	C	!	!
Restaurants	-	C	C	-	-	-
Drinking places	!	C	C	!	!	!
Adult business establishments	-	-	C	-	-	-
Hotels, motels, inns	-	C	C	-	-	-
Movie theaters except drive-in theaters	-	C	C	-	-	-
Places of indoor assembly, amusement or culture	!	C	C	C	!	!
Financial institutions including banks	!	C	C	!	!	!
Neighborhood stores	!	C	C	!	!	!
Art and crafts studios, antique shops and galleries	C	C	C	C	!	!
Personal Services	!	C	Banks		C	C
Retail stores	-	C ³	C ³	-	-	-
Lumber and building materials dealer	!	!	C	!	!	-
Gasoline service stations	!	!	C	!	!	-
Gasoline service stations which are a part of and subordinate to a retail use	!	!	C	!	!	-
Service stations		C	C			
New and used car dealers	!	!	C	!	!	-

Academic institutions, including buildings or structures for classroom, administrative, laboratory, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures	I	C	C	I	I	I
-	GR	C1	C2	R	WC	M
Civic and social organizations	I	C	C	C	I	I
Governmental buildings and operations	-	C	C	C	-	-
Residential	-	-	-	-	-	-
Single-family detached dwellings on individual residential lots	P	P	P	PC	-	-
Mobile homes on individual residential lots	P	P	P	P	-	-
Two-family dwellings	P	P	P	P	-	-
Multifamily dwellings	-	C	C	C	-	-
Single-Family attached dwellings	C	C	C	C	I	I
Mixed single-family residential developments (mixed single-family attached and detached dwellings)	C	I	C	C	I	I
Mixed residential developments (mixed single-family attached and detached, two-family and multi-family dwellings)	C	I	C	C	I	I
Mixed use structures (one or more residential units and non-residential space)	I	I	C	I	I	I
Mobile home parks	-	-	-	C	-	-
Planned unit developments	-	-	-	-	-	-
Boardinghouse, rooming house or lodginghouse	C	C	C	C	I	I
Home occupations	C	C	C	C	I	I
Bed and breakfast establishments as a home occupation	C	C	C	C	I	I
Bed and breakfast establishments	C	C	C	C	I	I
In-law or accessory apartments	P ¹	P ¹	P ¹	P ¹	-	-
Natural Resource	-	-	-	-	-	-
Agriculture	-	C	C	P	-	-
Equestrian facilities	I	I	I	C	I	I
Plant nurseries	I	C	C	P	I	I
Forest management and timber harvesting activities	-	-	-	P	-	-
Earth material removal	I	I	I	C	I	I
Community gardens	C	I	C	C	I	I
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet	I	C	C	C	I	I
Recreation	-	-	-	-	-	-
Public or private facilities for nonintensive outdoor recreation	-	-	C	C	-	-
Campgrounds	-	-	-	C	-	-
-	GR	C1	C2	R	WC	M
Golf courses and related facilities	I	I	I	C	I	I

2. DIMENSIONAL STANDARDS

Dimensional Standard ⁸	District ²					
	GR	C1 ^{7,15}	C2 ^{7,14}	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	¹³	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	¹³	40,000 sf per principal building
Setbacks						
-Front	20 feet ¹	³	20 feet ^{1,12}	20 feet ¹²	¹²	20 feet
-Side	15 feet	^{4,5.6}	15 feet ^{9,12}	15 feet ¹²	¹²	0 feet
-Rear	15 feet	^{4,5.6}	15 feet ^{9,12}	15 feet ¹²	¹²	0 feet
Minimum street frontage						
-Sewered	75 feet	None	100 feet	200 feet	¹³	200 feet
-Non-sewered	100 feet	N/A	100 feet	200 feet	¹³	200 feet
Maximum building height	35 feet	40 feet	40 feet ¹⁰	35 feet ^{10,11}	¹⁰	40 feet ¹⁰
¹ Or the average of existing setbacks on abutting properties						
² Or as required by the Shoreland Zoning Ordinance						
³ 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.						
⁴ 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.						
⁵ 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.						
⁶ Yards abutting other districts shall be at least 15 feet deep and have a landscaped buffer strip.						
⁷ 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.						
⁸ Unless modified by the requirements of § 101.6.						
⁹ Except abutting the Municipal District they shall be 0 feet						
¹⁰ Maximum 190 feet for wireless communications facilities						
¹¹ Water supply standpipes for water supply utilities may be 100 feet above the ground						
¹² 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.						
¹³ The standards of the specific district (C2 or Rural) will apply.						
¹⁴ See § 101.7 for additional performance standards for adult entertainment establishments						
¹⁵ The parking standards of the Site Plan Review Ordinance as amended for this district shall apply.						

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

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.

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 on which he or she is not domiciled.

S. Limit on Location of Marijuana Establishments.

A 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.

T. 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.”

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.

indecent, 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

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.

- 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

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

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.

Revised 11/05/2019, effective 01/06/2020 – Medical and Adult-Use Marijuana

§101.14: REPEAL OF EXISTING ORDINANCES:

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

Legislative History:

Revised 3/23/98

Revised 2/23/2000: Article 2 - Definition of Light Manufacturing and Article 3. C.2.b Other Commercial (C2)

Revised June 12, 2002: Wireless Communication

Revised July 10, 2002

Revised December 4, 2003: Article 10 – Building Permits, Article 3 – Districts, Article 5 – Commercial Districts, Article 8 – Municipal District; renumbered several sections for clarity. Revised November 10, 2004: Article 9 F (3)

Revised March 21, 2006: Article 5-Commercial Districts A; B(3)3; C(3); Article 9-General Provisions F(3) a.1.a & b

Revised June 11, 2008 – Revisions to Board of Appeals: Article 11

Revised January 21, 2009 – Revisions to Article 6 – Rural district and Article 2 - Definitions

Revised March 18, 2015-Revisions to -Adult Entertainment, Article 5(C)(2) Conditional Uses, Article 5(C)(3) Standards, Article 12 Adult Entertainment Establishment Definitions and Standards

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

Revised November 5, 2019 – effective January 6, 2020 – Medical and Adult-Use Marijuana & edibles

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

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,

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.