

Memorandum

To: Damariscotta Planning Board
Fm: Bob Faunce
Date: August 2, 2021
RE: Changes to the Land Use Ordinance Definitions and Use Table

At its August 3, 2020 meeting the Planning Board reviewed changes to the Land Use Ordinance definition section and use table recommended by the Land Use Advisory Committee (LUAC). The LUAC had spent a considerable amount of time in recommending updates to the use table. 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 recommended updating and expanding 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.

The Planning Board voted to the post the proposed changes to the Land Use Ordinance for a public hearing but because of uncertainties related to the Covid situation, the Board left date of the public hearing open. Now that the Board is once again meeting in person, I am asking the Board to post the public hearing for its September 13, 2021 meeting.

I have attached below the proposed changes to the Land Use Ordinance.

Land Use ²	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		C	C			
Neighborhood stores		C	C			
Art and crafts studios, antique shops and galleries	C	C	C	C		
Personal Services		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			
New and used car dealers			C			
Recreational vehicle, mobile home dealers			C			
Equipment dealers and equipment repair			C			
Automotive services including repair		C	C			
Contractor's offices and associated facilities			C	C		
Drive-thru facilities as an accessory use		C	C			
Boat storage and repair			C			
Farmer's market	C	C	C	P		

	GR	C1	C2	R	WC	M
Industrial						
Light manufacturing uses (other than industrial uses)			C			
Industrial uses (includes assembling, fabricating, finishing, manufacturing, packaging or processing operations, including the processing of raw materials)						
Printing facilities including newspaper publishers and information services			C			
Building and construction contractors			C	C		
Fuel oil dealers and related facilities			C			
Wholesale sales			C ³			
Warehousing and distribution facilities and self-storage facilities			C			
Commercial solid waste disposal facilities						
Junkyards and auto graveyards						
Recycling and reprocessing facilities			C	C		
Transportation						
Airports or heliports				C		
Truck wash facilities			C			
Parking facilities as a principal use			C	C		
Transit and ground transportation facilities including bus stations			C	C		
Public and Utility						
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	C	C	C	C	C	C
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C	C	C	C	C	C
Renewable energy generating facility as a principal use				C		
Wireless communication facilities	C ⁴	C ⁴	C ⁴	C ⁴	C ⁴	C ⁴
Municipal buildings and facilities	C	C	C	C	C	C
Institutional						
Religious facilities		C	C			
Cemeteries	C		C	C		C
Congregate care/assisted living facilities		C	C	C		
Hospitals, medical clinics, institutions or services for the disabled, nursing or convalescent homes, group care facilities			C			
Museums, libraries, and non-profit art galleries and theaters		C	C			

	GR	C1	C2	R	WC	M
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		C	C			
Civic and social organizations		C	C	C		
Governmental buildings and operations		C	C	C		
Residential						
Single-family detached dwellings on individual residential lots	C	C	C	C		
Mobile homes on individual residential lots	C	C	C	C		
Two-family dwellings	C	C	C	C		
Multifamily dwellings		C	C	C		
Single-Family attached dwellings	C	C	C	C		
Mixed single-family residential developments (mixed single-family attached and detached dwellings)	C		C	C		
Mixed residential developments (mixed single-family attached and detached, two-family and multi-family dwellings)	C		C	C		
Mixed use structures (one or more residential units and non-residential space)			C			
Mobile home parks				C		
Planned unit developments						
Boardinghouse, rooming house or lodginghouse	C	C	C	C		
Rooming houses						
Home occupations	C	C	C	C		
Bed and breakfast establishments as a home occupation	C	C	C	C		
Bed and breakfast establishments	C	C	C	C		
In-law or accessory apartments	P ¹	P ¹	P ¹	P ¹		
Natural Resource						
Agriculture		C	C	P		
Equestrian facilities				C		
Plant nurseries		C	C	P		
Forest management and timber harvesting activities				P		
Earth material removal				C		
Community gardens	C		C	C		

	GR	C1	C2	R	WC	M
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		C	C	C		
Recreation						
Campgrounds				C		
Public or private facilities for nonintensive outdoor recreation			C	C		
Golf courses and related facilities				C		
Commercial outdoor recreation such as playgrounds, facilities associated with boating and kayaking classes and rentals, climbing walls, zip line operations, skateboard parks and similar facilities and activities operated as a business and which require payment of a fee for usage or participation		C	C	C		
Drive-in theaters			C	C		
Fitness and recreational sports centers		C	C			
Marijuana-Related						
Home Cultivation of Marijuana	P	P	P	P		
Marijuana cultivation facilities			C ⁵	C ⁵		
Marijuana products manufacturing facilities			C ⁵	C ⁵		
Medical marijuana manufacturing facilities			C	C		
Marijuana stores			C ⁵	C ⁵		
Registered caregiver retail stores			C	C		
Marijuana testing facilities			C ⁵	C 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

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

³ No outside storage

⁴ Within the bounds of the Wireless Communications District

⁵ Must be located at least 1,000 feet from schools

⁶ A use which is not specifically listed as a permitted or conditional use shall be regulated as a conditional use if the planning board determines that the proposed use is substantially similar to and compatible with permitted or conditional uses in that district.

Land Use Ordinance Definitions

Accessory apartment means 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 means a use of structure of a nature incidental and subordinate to those of the principal use or structure.

Agriculture means the cultivation of the soil, production of crops, including crops in commercial greenhouses, and raising and keeping of livestock, including animal husbandry, orchards, truck gardens, plant nurseries, poultry and other nondomestic animals, bees, the use of manure and fertilizers, the processing of agricultural products.

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

Adult use marijuana means marijuana cultivated, manufactured, distributed or sold by a marijuana establishment.

Adult use marijuana product means a marijuana product that is manufactured, distributed or sold by a marijuana establishment.

Automobile services including repair means 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.

Bed and breakfast establishment means 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.

Bed and breakfast establishment as a home occupation means 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.

Boarding house, rooming house or lodging house means 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.

Building means a structure for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

Building height means 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 means 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 means 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.

Community garden means the use of a lot(s) or a portion thereof for the purpose of growing vegetables, flowers and/or other cultivated plants which are intended for consumption and/or use primarily by the surrounding neighborhood.

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.

Congregate care and assisted living facilities means a residential facility that is primarily engaged in providing residential and personal care services for the elderly and/or other persons who are unable to or do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping, community spaces, common dining areas, transportation and specialized services such as medical support and physical therapy.

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

Day care center means a building, structure or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of the day providing protection and child care for more than twelve (12) children under thirteen (13) years of age, who are unattended by parents or guardians for any part of the day.

Drinking place (alcoholic beverages) means a business or commercial establishment which customarily excludes persons under the age of twenty-one (21) from admission to its premises, including, but not

limited to, uses for which a special amusement permit is required class A lounges, dance halls and establishments serving alcoholic beverages other than restaurants as defined herein. Drinking places shall not include retail stores where alcoholic beverages are sold for consumption off premises.

Dwelling means a building designed or used as the permanent or seasonal living quarters for one or more families.

Dwelling Unit means 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 Operation means 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 means any removal of earth or earth material from its original position.

Family means one or more persons living together as a single household under a unified management with obligations of mutual support.

Farmers market means a food market at which local farmers sell fruit, vegetables, meat, cheese, bakery products and similar items directly to consumers.

Forest management activities means 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 means 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 means an establishment that displays and sells works of art.

Gasoline station means a facility that sells fuel and lubricants for motor vehicles.

Home cultivation of marijuana means 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 means an occupation conducted in a dwelling unit or a structure accessory thereto, provided that all of the following criteria are met:

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

(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

(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

(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, fumes, odors or electrical interference detectable to the normal senses off the lot, if the home occupation is conducted in a detached one-family dwelling, or outside the dwelling unit if conducted in any other form of dwelling. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in a radio or television receiver off the premises, or causes fluctuations in line voltage off the premises; and

(6) There shall be no stock in trade regularly maintained or any new commodity sold on the premises; and

(7) The following are specifically excluded as home occupations: Convalescent or nursing home, tourist home, animal hospital, restaurants, doctors' offices, dentists' offices, real estate offices, registered primary caregivers, beauty shops and barber shops, except those that are owner-occupied, one (1) chair, appointment-only shops that meet all the other home occupation criteria.

Hotel, motel or inn means a commercial building or group of buildings of more than 10 lodging rooms with each room having its own private bathroom and each room having its own entrance and built primarily to accommodate for a fee travelers and other transient guests, who are staying for a limited duration, with sleeping and associated rooms. A hotel or motel may include suites or rooms, cooking and similar facilities within the rooms to accommodate guests, restaurant facilities where food is prepared and meals served to its guests and other customers, and associated facilities for the convenience and servicing of guests. A hotel or motel room or suite of rooms, as distinguished from a dwelling unit, each shall contain less than a total of six hundred (600) square feet of living area, provided that the area may be larger if, in the sole opinion of the planning board, the facility will function or is functioning as a hotel or motel and not as a residential dwelling unit. For the purpose of determining land area requirements, 3 lodging rooms shall require the same land area as one dwelling unit.

Light manufacturing means 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 means a single parcel of land, described on a deed, plot, or other similar legal document.

Lot coverage means the ratio of the total area of all structures on a lot divided by the area of the lot.

Marijuana cultivation means 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 means a cultivation facility, a products manufacturing facility, a testing facility or a marijuana store licensed under state law.

Marijuana manufacturing or manufacture means 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 means 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 means a 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 means a registered caregiver retail store, registered dispensary, medical marijuana testing facility, or medical marijuana manufacturing facility.

Medical marijuana testing facility means a public or private laboratory authorized under state law to test medical marijuana for contamination, potency or cannabinoid profile.

Medical marijuana manufacturing facility means a manufacturing facility authorized under state law to manufacture marijuana products for medical use or to engage in marijuana extraction for medical use.

Mixed residential development means 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.

Mixed residential developments 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.

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

Mobile home means 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 means a lot on which 2 or more mobile home sites are to be rented.

Modular home means 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.

Multi-family dwellings means three or more dwelling units in single or multiple buildings on a single lot.

Neighborhood stores means a retail store that occupies less than five thousand (5,000) square feet of total floor space and within which no alcoholic beverages are consumed.

Non-conforming use means 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 means 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.

Parking facilities as a principal use means a facility for the short or long term parking of passenger vehicles which is not accessory to another use.

Personal service means a service exemplified by the types of services listed under NAICS 812, including but not limited to laundry and cleaning services, photography studios, shoe repair shops, funeral homes, mortuaries, beauty salons, barber shops, day spas, and similar services to the general public. This definition does not include tattoo parlors.

Places of assembly, amusement, recreation, entertainment, or culture means facilities designed to accommodate the public for amusement, entertainment, recreation or social activities including halls, auditoria, sports arenas, gymnasiums, skating and hockey rinks, stadia, golf courses, racetrack operations (excluding motorized vehicle racing), meeting rooms, theaters, and similar facilities but not including movie theaters.

Planned unit development means 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 means the building in which the primary use of the lot is conducted.

Professional office means offices for the practice of the professions of medicine, law architecture, engineering, accounting, and dentistry, and other commonly accepted professions.

Public utility means 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 means 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 means 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.

Registered caregiver retail store means 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 means a dispensary authorized under state law to cultivate and dispense medical marijuana to qualifying patients and caregivers.

Restaurant means 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.

Retail business means a business establishment for the sale of merchandise to the public.

Service establishment means a profit or non-profit business whose function it is to provide service to the public.

Setback means the minimum horizontal distance from a lot line to the nearest part of a building.

Sewered means connected to the municipal sewer system.

Structure means 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 means a single building containing two separate dwelling units separated by a common wall or on separate levels

Warehousing means the storage of goods, wares and merchandise in a warehouse.

Water supply standpipe means 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.

Wholesale business means a business established for the sale or distribution of products to retail businesses.

Wireless telecommunications facility or facilities means 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 means the area of land on a lot not occupied by the principal building or accessory structure.

Yard, front means 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 means 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 means 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.