

ZONING ORDINANCE

TOWN OF NAPLES

SECTION 1

GENERAL

SECTION 1. GENERAL

A. Title

This Ordinance shall be known and cited as the “Zoning Ordinance of the Town of Naples, Maine,” and will be referred to herein as “this Ordinance”.

B. Authority

This Ordinance is adopted pursuant to the enabling provisions of 30-A M.R.S.A., Sections 3001 through 3006, 4311 through 4349, and 4351 through 4359.

C. Purposes

The purposes of this Ordinance are:

1. To implement the provisions of the Town’s Comprehensive Plan;
2. To encourage the most appropriate use of land throughout the community; and
3. To promote and protect the health, safety and general welfare of the residents of the community.

D. Applicability

The provisions of this Ordinance shall apply to all land and all structures within the boundaries of the Town of Naples.

E. Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, including the Naples Shoreland Zoning Ordinance, the more restrictive provision shall control.

F. Validity and 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 the Ordinance.

G. Effective Date

This Ordinance shall become effective when enacted by a majority vote at Town Meeting or a referendum vote by the registered voters of Naples.

H. Amendments

1. This Ordinance and the Official Zoning Map may only be amended by a majority vote at a Town Meeting.
2. The Selectpersons shall not place any proposed amendment to this Ordinance or to the Official Zoning Map on the Town Meeting Warrant until the Planning Board has held a public hearing on the proposed amendment. Notice of the public hearing shall be given pursuant to 30-A M.R.S.A. Sections 4352(9) and (10) as amended, and pursuant to 38 M.R.S.A. § 438-A (1-B) in instances where property is being considered for placement in a resource protection zone.
3. Following the public hearing, the Planning Board shall recommend approval or denial of the proposed change.
4. Amendments to the text of this Ordinance or to the Official Zoning Map may be proposed by the Planning Board, the Board of Selectpersons, or by a written petition of Town citizens pursuant to 30-A M.R.S.A. Sections 2522 and 2528. A signed petition shall not be a prerequisite for the Planning Board to hold a public hearing when the Planning Board or the Board of Selectpersons initiate proposed amendments.

SECTION 2
ADMINISTRATION

SECTION 2. ADMINISTRATION

A. Administration

1. Administration Bodies and Personnel
 - a. Code Enforcement Officer. The Code Enforcement Officer shall be appointed in accordance with the provisions of State law and to enforce the provisions of this Ordinance.
 - b. Planning Board. The Planning Board shall ensure that, during development review, all applicable standards of this Ordinance are met by all applications requiring Planning Board review under all applicable ordinances.
 - c. Board of Appeals. The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of subsection H. Appeals.

B. Enforcement

1. Enforcement Procedure
 - a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
 - b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
 - c. The Code Enforcement Officer shall keep a complete record of all essential transactions, including applications

submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. In the case of violations in the Shoreland Zone, the Code Enforcement Officer shall, on a biennial basis [every two years], submit a summary of the record of such violation to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

- d. Legal Actions. When the procedure set forth under subparagraph (a) above does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, may institute any and all actions and proceedings, either legal or equitable, including seeking injunctions or violation and the imposition of civil penalties, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recording fines without Court action.

- e. Civil Penalties. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders, allows or conducts any activity in violation of this Ordinance shall be subject to civil penalties in accordance with Title 30-A MRSA Section 4452.

C. Appeals

1. Administrative Body

The municipal Board of Appeals, as appointed and composed pursuant to the Naples Shoreland Zoning Ordinance, shall decide administrative and variance appeals under this Ordinance and in accordance with 30-A, M.R.S.A., Section 4353, Subsection 4A and 4B.

2. Powers and Duties

- a. Administrative Appeals. The Board of Appeals shall have the following powers and duties: to hear and decide appeals where it is alleged that there is an error in any order, requirement,

decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.

b. Variance Appeals

To authorize variances upon appeal, with the limitations set forth in this Ordinance.

- c. Except as described in subsection (4) below, variances may be granted only from dimensional requirements, including frontage, lot area, lot width, structure height, percent of lot coverage and setback requirements.
- d. Variances shall not be granted for establishments of any uses otherwise prohibited by this Ordinance.
- e. The Board shall not grant a variance unless it finds that:
- i. The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the nonconformity and from which relief is sought; and
 - ii. The strict application of the terms of this Ordinance would result in undue hardship. The term “undue hardship” has the same meaning as set forth in 30-A M.R.S.A. § 4353(4).
- f. A variance may be granted to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling, pursuant to the provisions of 30-A M.R.S.A., Section 4353(4-A). A variance granted under this subsection shall be restricted to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. Conditions on such a variance may be imposed, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A., Section 4553 and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- g. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed and the failure to comply with any conditions imposed is a violation of this Ordinance.
- h. In areas subject to the Mandatory Shoreland Act, a copy of all variances considered by the Board of Appeals shall be submitted to the Department of Environmental Protection at least twenty (20) days prior to action by the Board.

3. Appeal Procedures

a. Time Limit

If the Code Enforcement Officer or Planning Board disapproves an application or grants approval with conditions that are objectionable to the applicant or to any abutting landowner or other aggrieved party, or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance has been misconstrued or wrongfully interpreted, the applicant, any abutting landowner, or other aggrieved party may appeal the decision of the Code Enforcement Officer or Planning Board in writing to the Board of Appeals within 30 days after the Code Enforcement Officer's decision is rendered.

b. Written Notice

Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, which includes:

- (1) A concise written statement indicating what relief is requested and why it should be granted.
- (2) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.

c. Record of Case

Upon being notified of an appeal the Code Enforcement Office or Planning Board shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

d. Public Hearing

The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request. Notice of the public hearing on each appeal shall be published at least once in a newspaper of general circulation within the Town of Naples at least fourteen (14) days prior to the date of the hearing. Notice of the public hearing on each appeal shall also be mailed to the applicant, the Municipal Officers and abutting property at least fourteen (14) days prior to the hearing date.

e. Decision by Board of Appeals

- (1) Quorum. A majority of the Board shall constitute a quorum for the purpose of deciding on an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- (2) Majority Vote. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse an order, requirement, decision or determination of either the Code Enforcement Officer or Planning Board or to decide in favor of the applicant on any matter which it is required by this Ordinance to decide, or to grant a variance from the Ordinance's stated terms.
- (3) Burden of Proof. The person filing the appeal shall have the burden of proof.
- (4) Action on Appeal. The Board of Appeals shall not conduct a de novo hearing, but shall review the record that was before the Code Enforcement Officer or Planning Board and may hear oral argument on that record. If the Code Enforcement Officer's

or Planning Board's record is insufficient, the Board of Appeals may remand the matter to the Code Enforcement Officer or Planning Board for further proceedings. The Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon finding that the decision is contrary to the provisions of this Ordinance or that the decision is unsupported by substantial evidence in the record. Whenever the Board of Appeals does not affirm the decision of the Code Enforcement Officer or Planning Board, the case shall be remanded to the Code Enforcement Officer or Planning Board with instructions.

- (5) Time Frame. The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, unless that timeframe is not practical or the parties consent to a longer timeframe, and shall issue a written decision on all appeals. The Board of Appeals must issue written notice of its decisions to petitioner, the petitioner's representative or agent and the Municipal Officers within seven (7) days after the decision is rendered, as required by Title 30-A M.R.S.A., Section 2691 (3) E.
- (6) Findings. All decisions shall become a part of the public record and shall include a statement of findings and conclusions as well as the reasons or basis therefor, and the appropriate order, relief or denial thereof.

f. Appeal to Superior Court

Any party may take an appeal, within forty-five (45) days of the date of the vote on the original decision of the Board of Appeals to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B.

g. Reconsideration

The Board of Appeals may reconsider any decision reached within thirty (30) days of its prior decision. A vote to reconsider and the action taken on that reconsideration must occur and be completed within thirty (30) days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony.

h. Certificate of Variance

A certificate evidencing the variance shall be recorded in the Cumberland County Registry of Deeds within 90 days after it was granted, in accordance with the provisions of 30-A M.R.S.A., Section 4353, Paragraph 5.

SECTION 3
ZONING DISTRICTS
ZONING MAP

3.1 Establishment of Districts

The Town of Naples is hereby divided into the following Districts:

1. **Rural Area.**
Limited Residential Area. Home occupations and commercial activities in the rural area are grandfathered for their present use. Forestry, agricultural activities and residential uses except for mobile home parks are allowed in the rural area. Excessive growth and sprawl should be discouraged in the rural area.
2. **Critical Rural Area:**
Conservation land and easements, parks, critical habitat areas, significant wetlands and stream protection areas, lake and stream setbacks as shown on Shoreland Zoning Map, State of Maine Critical Wildlife Area Map, 100 year Floodplain Map (F.E.M.A.), National Wetlands Inventory Map, State, Regional and Local Public Land Trust Maps: this area shall remain undeveloped and not allow residential or commercial uses except for non profit non residential facilities.
3. **Commercial:**
The area where future commercial development outside of the village district shall take place. Residential use, except for mobile home parks will be allowed in the commercial area.
4. **Residential Growth Area:**
The area of the town where residential growth shall be encouraged. The area will allow all types of residential development including mobile home parks.
5. **Village District Area:**
The Village District area shall be a mixed residential, commercial and municipal service area. It is recommended that architectural design matching the historical character and small town image of the area be applied to all new construction and maintenance of existing buildings.

3.2 Official Zoning Map

1. The Official Zoning Map is hereby adopted as part of this Ordinance. It shall be located at the town office in paper and computer image form and shall be the final authority as to the current zoning status of the land and water areas, buildings, and other structures of the town.

2. If action of the Town Meeting amends districts or district boundaries, such change shall promptly be entered on the Official Zoning Map and certified on the map as follows: “on (date), by the action of the Town Meeting, the following changes were made on the Official Zoning Map: (brief description of the nature of changes),” which entry shall be signed by the Planning Board and attested by the Town Clerk.
3. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature of number of changes or additions, the Town Meeting may adopt a new Official Zoning Map, which shall supercede the prior Official Zoning map. The new Official Zoning Map which shall be identified by the signature of the Planning Board attested by the Town Clerk, under the following words: “This is to certify that this Official Zoning Map supercedes and replaces the Official Zoning Map (date of adoption of map being replaced) as part of the Zoning Ordinance of the Town of Naples, Maine.” The superceded Official Zoning Map shall be preserved together with available records pertaining to its adoption or amendment.

3.3 Zoning District Boundaries

Where uncertainty exists with respect to the boundaries of any district as shown on the Official Zoning Map, the following rules shall apply:

1. Where district boundaries are so indicated as to approximately follow lot lines, such lot lines shall be construed to be such district boundaries;
2. Where District Boundaries are indicated as approximately following the center lines of roads, streets, highways, streams, rivers or other public/semi-private rights-of-way, such center lines shall be construed to be such boundaries;
3. Boundaries indicated as following shorelines shall be construed to follow such shores, and in the event of change in the shoreline shall be construed as moving with the actual shoreline;
4. Where uncertainty exists in determining the precise location of any district boundary line, or where physical or cultural features existing on the ground are in conflict with those shown on the Official Zoning Map, the Board of Appeals with advice from the Planning Board, shall interpret the district boundaries.

3.4 Existing Commercial Activities outside the commercial area are grandfathered for their present use only, and home occupations will be allowed in all areas except the critical rural area.

3.5 All activity in any of the Zoned area shall comply with all applicable Naples Ordinances and the Shoreland Zoning Ordinance, and shall be in compliance with the Naples Comprehensive Plan.