

**TOWN OF NAPLES**

**LAND USE ORDINANCE**

**Adopted at Town Meeting June 27, 1998**

**Revised June 11, 1999**

**Revised November 2, 1999**

**Revised June 12, 2002**

**Attested by Town Clerk**

**TABLE OF CONTENTS**

		Page
<b>SECTION 1</b>	<b>GENERAL</b>	<b>2</b>
<b>SECTION 2</b>	<b>ADMINISTRATION</b>	<b>5</b>
<b>SECTION 3</b>	<b>VILLAGE DISTRICT</b>	<b>12</b>

**SECTION 1                    GENERAL**

**A.     Title**

This Ordinance will be known and cited as the Land Use 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 Article VII, Part 2, Section 1 of the Maine Constitution, the provisions of Title 30-A, MRSA Sections 4351-4358 (home rule), the States growth management law, Title 30-A, MRSA, Sections 4311 et.seq..

**C.     Purposes**

The purposes of this ordinance are:

1.     To implement the provisions of the Town’s Comprehensive Plan;
2.     To encourage growth in the identified growth areas of the Community, and to guide growth in the rural areas;
3.     To promote and protect the health, safety, and general welfare of the residents of the community;
4.     To encourage the most appropriate use of land throughout the community;
5.     To promote traffic safety;
6.     To promote safety from fire and other elements;
7.     To provide an allotment of land in new developments sufficient to allow reasonable growth while maintaining adequate enjoyment of community life;
8.     To conserve natural resources;
9.     To prevent and control water pollution;
10.    To protect fish spawning grounds, aquatic life, bird and other wildlife habitat;

11. To protect buildings and lands from flooding and accelerated erosion;
12. To protect archaeological and historic resources, and to protect the historic character of the Town of Naples;
13. To protect wetlands; to control building sites, placement of structures and land uses; and
14. To conserve natural beauty, rural character, and open space.

**D. Applicability**

The provisions of this Ordinance will apply to all land and all structures within the boundaries of the Town of Naples in the area depicted on the official Land Use Map of the Town of Naples dated 6/27/98.

**E. Conflicts with Other Ordinances**

Whenever a provision of this Ordinance conflicts 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 apply.

**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**

The effective date of this Ordinance shall be when enacted.

**H. Amendments**

1. This Ordinance may only be amended by a majority vote of the Town Meeting or by a majority referendum vote.
2. The selectmen shall not place any proposed Land Use Ordinance amendment on the Town Meeting Warrant or on a referendum ballot until the Planning Board has held a public hearing on the proposed amendment. Notice of the public hearing must:

- a. Be posted in the Town Office at least 14 days before the date of the public hearing.
  - b. Be published at least two (2) times in a newspaper having general circulation in the Town of Naples and that complies with the requirements of Title 1 M.R.S.A. Section 601. The date of the first publication must be at least 14 days before the date of the public hearing. The date of the second publication must be at least 7 days before the public hearing.
  - c. Contain a copy of a map indicating any property proposed to be reclassified.
3. If the proposed amendment includes any change to the Village District boundaries as shown on the Land Use Map of the Town of Naples, owners of property or properties proposed for reclassification, as well as owners of all properties within 500 feet of the area proposed for reclassification, shall be notified of the Planning Board's public hearing date by mail at least 14 days prior to the public hearing date.
  4. Following the public hearing, the Planning Board shall recommend approval or denial of the proposed amendment based on its consistency with the purposes, requirements and restrictions of this Ordinance and with the policies and Future Land Use Plan of the Naples Comprehensive Plan.
  5. Amendments to the text of this Ordinance, or to the Land Use Map of the Town of Naples may be proposed by the Ordinance Review Committee, the Planning Board, the Board of Selectmen, or by a written petition of the Town citizens. Prior to qualifying to receive a public hearing before the Planning Board, a petition for amendment must be signed by the number of Town citizens equal in number to ten (10) percent of the local votes cast in the most recent gubernatorial election. A signed petition shall not be required for the Planning Board to hold a public hearing when the Ordinance Review Committee, the Planning Board, or the Board of Selectmen initiate the proposed amendments.

## **I. General Restrictions**

Except as otherwise provided in this Ordinance, no building shall, after the effective date of this Ordinance, or any amendment of this Ordinance, be used or occupied and no building or part thereof shall be erected,

relocated, or structurally altered unless it is in conformity with the standards of the Village District, and with all other applicable provisions of this Ordinance.

## **SECTION 2                    ADMINISTRATION**

### **A.        Administration**

#### Administrative Bodies and Personnel

1.        Code Enforcement Officer    The Code Enforcement Officer shall be appointed in accordance with the provisions of State Law and is to enforce the provisions of this Ordinance.
2.        Planning Board    The Planning Board shall ensure that all applicable standards of this Ordinance are met by all applications requiring Planning Board review under all applicable ordinances.
3.        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.        Permits Required**

After the effective date of this Ordinance, no building, sign or other structure shall be erected, altered, moved or demolished and no person shall, without first obtaining a building permit and/or certificate of occupancy, engage in any use of land or structure requiring a permit in the district in which said use would occur; or replace an existing use or structure; or renew a discontinued non-conforming use.

1.        Building Permits and Certificates of Occupancy    The Code Enforcement Officer shall issue building permits and certificates of occupancy as required by this Ordinance.
2.        Application Fee    An application fee for a building permit or for a certificate of occupancy shall be paid to the Town by the applicant according to an official fee schedule determined by the Board of Selectpersons, copies of which shall be available at the Town Office. Application fees shall be paid by a check payable to the Town of Naples and shall not be refundable. No building permit or certificate of occupancy shall be issued until the fee is paid.

**C. Permit Applications**

1. Every applicant shall submit to the Code Enforcement Officer a written application form with the application fee for the permit or permits required. The application forms will be provided by the Town.
2. All applications and the first page of any plans or supporting documentation must be signed by the owner or owners of the property, or by such other person authorizing the work, certifying that the information in the application is complete and correct. If the person submitting the application is not the owner or the lessee of the property, then that person must submit a letter of authorization from the owner or lessee.
3. Upon receiving the application for any permit, the Code Enforcement Officer will note the date the application was received on the application form. Within thirty (30) business days, the Code Enforcement Officer shall determine if the proposed use is an allowed use under this Ordinance. If the incorrect form(s) and/or fee(s) have been submitted, or if the proposed use is not allowed by this Ordinance, the Code Enforcement Officer shall notify the applicant in writing of the proper forms and fees which must be submitted, or that the proposed use is not permitted.

**D. Procedure for Administering Permits**

1. Determination of Complete Application Within thirty (30) business days of the date of receiving a written application, the Code Enforcement Officer shall notify the applicant in writing that the application has been accepted as a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.
2. Timing of Actions The Code Enforcement Officer shall approve, approve with conditions, or deny a permit application within thirty (30) business days of the date of acceptance of the application as a complete application.
3. Approval Permits shall be approved if the proposed use of the structure is found to be in conformance with the purposes and provisions of this Ordinance.

4. Burden of Proof The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
5. Applications Also Requiring Site Plan, Subdivision, or Planning Board Approval Any applicant for a building permit or certificate of occupancy for a use or structure which is subject to review and approval by the Planning Board under the Site Plan Review Ordinance, the Subdivision Ordinance, or any other Town Ordinance shall first apply to the Planning Board for review and approval as required by those ordinances. Upon receiving the applicable Planning Board approvals, the applicant may then submit an application or a building permit or certificate of occupancy. If any Federal or State approvals are required for the project, they must also be obtained prior to submitting the application for a building permit or certificate of occupancy.

**E. Expiration of Permits**

If no substantial start, as defined in this Ordinance, is made in construction or in use of the property within one year from the date of issuance of a building permit or certificate of occupancy, then that building permit or certificate of occupancy shall lapse and become void.

**F. Installation of Public Utility Service**

No public utility, water district, sanitary district, or utility company of any kind may install services to any structure located in the Shoreland Zone, or to any lot or dwelling unit in a subdivision as defined by Title 30-A, M.R.S.A., Section 4401, unless a written authorization attesting to the validity and currency of all local permits required by this or any other Town Ordinance has been issued by the Code Enforcement Officer. Following installation of service, the company or district shall forward the written authorization to the Code Enforcement Officer indicating that the installation has been completed.

**G. Enforcement**

Enforcement Procedure

1. 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 provisions of this Ordinance, or any of the terms and conditions imposed on any permit issued pursuant to this Ordinance are being violated, he or she shall notify in writing the

person responsible for such violation and order the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and maintained as a permanent record.

2. The Code Enforcement Officer shall conduct on-site inspections to ensure 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.
3. The Code Enforcement Officer shall keep a record of all essential transactions, including applications submitted, permits granted or denied, revocation actions, revocations of permits, appeals, court actions, violations investigated, violations found, and fees collected. In the case of violations, the Code Enforcement Officer shall, on an annual basis, submit a summary of the record of such violations to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.
4. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings that they deem necessary, either legal or equitable, including seeking injunctions of violations and the imposition of civil penalties, that may be necessary to enforce this Ordinance in the name of the Town of Naples. The Municipal Officers or their authorized agent are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations and imposing fines without court action.
5. 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 and other remedies in accordance with Title 30-A M.R.S.A. Section 4452.

## **H. Appeals**

1. Administrative Body The Naples 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 Title 30-A, MRSA Section 4353.

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. Setback Reduction Appeals Setback reduction appeals are available in the Village District, but the setback variance will be limited to ten (10) percent of the required setback.
  
- c. Variance Appeals To authorize variances upon appeal, within the limitations set forth in this Ordinance.
  - 1) Variances may be granted only from dimensional requirements, including frontage, lot area, lot width, structure height and percentage of lot coverage.
  
  - 2) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
  
  - 3) The Board shall allow for disability and handicapped variances that met the requirements of Title 30-A MRSA Section 4353.4-A and 4-B.
  
  - 4) The Board shall not grant a variance unless it finds that:
    - aa) The proposed structure or use would meet the requirements of this Ordinance except for the specific provisions which have created the nonconformity and from which relief is sought; and
  
    - bb) The strict application of this Ordinance would result in undue hardship. The term “undue hardship” shall mean all of the following:

1} That the land in question cannot yield a reasonable return unless the variance is granted;

2} That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3} That the granting of a variance will not alter the essential character of the neighborhood;

4} That the hardship is not the result of any action taken by the applicant, by the owner, by any prior owner, or by anyone with the consent of the owner or any prior owner.

- 5) The Board of Appeals shall limit any variances granted as strictly as possible to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and, in doing so, may impose such conditions for a variance as it deems necessary. The party receiving the variance must comply with the conditions imposed and the failure to comply with any conditions imposed is a violation of this Ordinance.

3. Appeal Procedures

a. Time Limit An administrative or variance appeal may be submitted to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be submitted within thirty (30) days of the date of the decision appealed.

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 along with other

physical features of the lot pertinent to the relief requested.

- c. Record of Case Upon being notified of an appeal, the Code Enforcement Officer 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 within thirty-five (35) days of its receipt of an appeal request. Notice of the public hearing of each appeal shall be published at least once in a newspaper of general circulation in the Town of Naples at least fourteen (14) days prior to the date of the hearing. Notice of the hearing shall also be mailed to the applicant, the Planning Board, the Municipal Officers, and to the abutting property owners at least fourteen (14) days prior to the hearing date.
- e. Decision by the Board of Appeals
  - 1) A majority of the Board shall constitute a quorum for the purpose of deciding an appeal.
  - 2) The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or the Planning Board, or to decide in favor of the applicant on any matter which it is required by this Ordinance to decide.
  - 3) The person filing the appeal shall have the burden of proof.
  - 4) Following the public hearing on an appeal, the Board may affirm, affirm with conditions, reverse, or reverse with conditions, the decision of the Code Enforcement Officer or the Planning Board. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or the Planning Board only upon a finding that the decision or failure to act, was clearly contrary to specific provisions of this Ordinance. Whenever the Board of Appeals does not affirm the decision of the Code Enforcement Officer or the Planning Board, the case

shall be remanded to the Code Enforcement Officer or Planning Board with instructions.

- 5) The Board shall decide all appeals within thirty-five (35) days after the close of the public hearing, and shall issue a written decision on all appeals. The Board of Appeals must issue written notice of its decisions to the petitioner, the petitioner's representative or agent, the Planning Board and the Municipal Officers as required by Title 30-A MRSA, Section 2691 (3)(E), and to the Code Enforcement Officer.
  - 6) All decisions shall become 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 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 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 ninety (90) days after it was granted in accordance with the provisions of Title 30-A MRSA, Section 4353, paragraph 5.

### **SECTION 3 VILLAGE DISTRICT**

The Village District is depicted on the Official Town of Naples Land Use Map dated 6/27/98.

**A. Permitted Uses**

1. Residential Uses:

Single family detached dwellings, which may include manufactured housing, but shall not include mobile homes or doublewides.

Two family dwellings which may include manufactured housing, but shall not include mobile homes or doublewides.

Multi-family dwellings which may include manufactured housing but shall not include mobile homes or doublewides.

2. Commercial Uses:

Retail businesses, street vendors with less than 64 square feet of sales area, pushcarts, service businesses, and professional offices.

3. Municipal and Other Governmental Uses

4. Institutional Uses

5. Mixed Uses Including Home Occupations:

Residential use and non-residential use are permitted on the same lot in the Village District (this includes only those uses otherwise allowed in the Village District).

**B. Prohibited Uses**

All uses not specifically permitted in Section 3A are prohibited. In addition, commercial towers, new and used motor vehicle sales, unlicensed massage businesses, street vendors utilizing more than 64 square feet of sales area, and any uses prohibited in the Naples Shoreland Zoning Section 15 F are not permitted in the Village District.

**C. Standards**

The following space and bulk standards shall apply in the Village District:

Minimum lot size for newly created lots:	
Residential:	60,000 sq.ft.
Commercial:	40,000 sq.ft.

Minimum lot area per principal non-residential structure:	
1. On lots without public water and sewer	40,000 sq.ft.
2. On lots with public water and sewer	15,000 sq.ft.

\*\* Existing Lots: Reference the Minimum Lot Size Ordinance\*\*

Minimum lot frontage	100 ft.
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Minimum setbacks:

Front - Non-residential structure	10 ft.
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Front - Residential structure	20 ft.
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Side - all structures	10 ft.
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Rear - Principal Structures	20 ft.
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Rear - Accessory Structures	10 ft.
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Maximum structure height	55 ft.
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Maximum lot coverage - total of all building footprints is not to exceed	50%
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Maximum impervious surface - total of all impervious non-vegetated surfaces, including buildings is not to exceed	75%
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