

Advisory Workgroup Kickoff Meeting Notes

12/20/2017

Suggested Kickoff Meeting Goals

- Establish a schedule/ timeline
- Agree on the meeting administration
- Review and refine the second tier goals
- Assign some homework to define and evaluate our options for some of the key policy issues
- Invite a guest participant for our next meeting?

Proposed Meeting Administration

- Meet First and Third Wednesdays of each month; 7 pm Town Hall
- Emails for schedules, drafts, information - NOT for debate and discussion
- All meetings will be public and advertised, but are not public hearings. Nonetheless we should devote the last 15 minutes of each meeting for public comment/suggestions.
- The meetings will be recorded; the chair or his/her designee will issue a brief summary of each meeting to capture progress and identify next issues.
- This is a workgroup, not the Planning Board (even though we may have a quorum of PB members). PB voting will occur only at regularly scheduled PB meetings.

Overall Process

1. Determine First and Second tier goals (nearly done)
2. Determine Key Policy positions that support these goals (strategies)
3. Look to our professional planners to determine how to best implement these policies (tactics)

Advisory Workgroup Kickoff Meeting Notes

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Some obvious key issues for future discussion/resolution

- It is fairly obvious how we support pre-existing, non WD uses in the district; it is less obvious how we support the existing WD uses.
- How do we achieve the desired public access?
- Building height
 - 30 feet or existing height or 35 feet with view corridors?
 - Allowance for increased ground floor elevation requirements?
 - Could it depend on distance from the road; from the water?
- How to handle residential and common wall construction in the district?
- Revision of permitted uses
- What is the structure of the new zoning; is it a revision of the current M/WD district; an overlay district; a new district? How will the distinction between lots with existing WD uses and lots with pre-existing, non-WD uses be handled?

Advisory Workgroup Kickoff meeting Summary

The Advisory Workgroup Kickoff meeting was held on 12/20/17. **Next meeting 1/4/18 at 7 pm.**

Attending were	From the Planning Board	Absent
Bill Hamblen, Geoff Smith, Dan Bacon, Bob Faunce, Mike Tomko, Tim Brown	Chris Swanson	Jeanne Fuller

The goals of the meeting were previously stated as:

1. Establish a schedule/ timeline
2. Agree on the meeting administration
3. Review and refine the second tier goals
4. Assign some homework to define and evaluate our options for some of the key policy issues
5. Invite a guest participant for our next meeting?

1. Establish a schedule - The group agreed we should be aggressive and complete this as fast as we can. We will aim for the end of March, but recognize there is considerable risk, perhaps even a likelihood, that we will not make this deadline. At the next meeting we should establish specific dates for certain key topics.

2. Agree on meeting administration - The group adopted the meeting administration guidelines as proposed. In subsequent discussion Bill Logan was also OK with this approach.

- Meet First and Third Wednesdays of each month; 7 pm Town Hall (however the next meeting is on Thursday, 1/4/18).
- Emails for schedules, drafts, information - NOT for debate and discussion
- All meetings will be public and advertised, but are not public hearings. Nonetheless we should devote the last 15 minutes of each meeting for public comment/suggestions.
- The meetings will be recorded; the chair or his/her designee will issue a brief summary of each meeting to capture progress and identify next issues.
- This is a workgroup, not the Planning Board (even though we may have a quorum of PB members). PB voting will occur only at regularly scheduled PB meetings.

3. Review and refine the second tier goals - The group discussed various issues arising from the second tier goals; in no particular order

Construction on existing concrete piers - Dan would like to be able to build/rebuild over the water where pier structures currently exist. Others in the group would like to adhere to the 25 foot setback for non WD uses. DEP's position on this may determine the outcome of this issue. Homework assigned to query DEP.

Height of structures - A complex issue. The group felt more information on the existing structures is needed before we can come to closure on this. Nonetheless I believe it is the sense of the group that existing heights should be allowed to continue, and that the height of the building should be allowed to increase by any amounts

Advisory Workgroup Kickoff meeting Summary

that ground floor elevations are raised to meet floodplain and storm surge requirements. Homework assigned to gather data on existing building heights and ground floor elevations.

Residential density & Common wall construction - I believe that the group was accepting of low densities of common wall construction (condos) but did not want to see the harbor "surrounded by condos". Homework assigned as to how to do this equitably.

Extent of rezoning /Permitted uses/Is this spot zoning-

A) I believe the sense of the group is that we are proposing zoning changes for the entire Marine/Water Dependant district; from the foot bridge in the north to Brown's in the south.

B) There was spirited discussion about whether all parcels in the district should have the same set of permitted uses (including hotels), or should some parcels (those currently utilized for water dependant commercial use) be restricted to these uses in the future (as they are now). Having the same set of uses for all parcels is equitable for all owners, and avoids any appearance of spot zoning. However this approach fails to address the goal of protecting or encouraging existing maritime/water dependant uses.

C) Possible alternatives to the zoning approaches listed above were raised. One approach was called "contract zoning" where a specific area is zoned to a specific proposal from a developer. Another suggested approach was to zone all parcels in the district to the same set of permitted uses, but to protect and encourage water dependant commercial uses through tax abatements, similar to current forestry law. Homework was assigned to investigate this latter approach.

Public Access - Consistent with our stated goal I believe the group firmly believes we need to promote/create publicly owned access to the waterfront, but we have not converged on an equitable way to accomplish this. All members were tasked with considering how best to accomplish this.

4. Homework-

1. Gather information of on the existing parcels and buildings in the zone e.g., building location, size, height, ground floor elevation, etc. - Geoff Smith and Dan Bacon
2. Request written DEP position on setbacks for new construction and renovated structures - Geoff Smith to request from DEP
3. Develop some strategies for modest common wall construction densities in the district - Dan Bacon and Bob Faunce
4. Provide meeting notices to east side residents - Geoff Smith
5. Contact Maine Municipal Association for information/opinions on tax reductions for certain land use(s)- Bill Hamblen
6. Consider how to equitably create public access to the harbor- All

5. Invite guest participants-

Invite John Seitzer (east side resident)? Others? - Bill Hamblen

Advisory Workgroup Meeting 2 Agenda/Goals

1/1/2018

Suggested Meeting 2 Agenda/Goals

- Review Kickoff meeting Summary
- Refine schedule/timeline (see below)
- Discuss Homework results (if available)
 - Review information of on the existing parcels and buildings in the zone e.g., building location, size, height, ground floor elevation, etc.
 - Review DEP position on setbacks for new construction and renovated structures. See DEP email (attached separately)
 - Review strategies for modest common wall construction densities in the district.
 - Review information/opinions on tax reductions for certain land use(s).
 - Continue to consider how to equitably create public access to the harbor.

- Review Dan's schedule of permitted uses for a Mixed Use Zone (see below)
- Hear from East Side Residents
- Assign new homework.

Further Details

A. Refine Schedule - It might be useful to set more specific schedule goals. Below are some initial suggestions, but I anticipate we would discuss and refine these entries.

- 1/4/18 - Meeting 2 - Resolve permitted uses, zoning approach
- 1/17/18 - Meeting 3 - Resolve residential density and location approach
- 2/7/18 - Meeting 4 - Colin Clark, DEP, resolve setbacks
- 2/21/18 - Meeting 5 - Resolve building height
- 3/7/18 - Meeting 6 - Resolve Public Access
- 3/21/18 - Meeting 7 - Remaining issues??
- 4/4/18 - Meeting 8 - Final Recommendation/drafts to Planning Board

B. Review Dan's schedule of permitted uses for a Mixed Use Zone - In Dan's initial proposal (*Draft Overview of a Proposed Harbor Mixed Use District*-attached separately) he enumerated a number of proposed uses for the district. Please review these and come to the meeting prepared to discuss what should, and should not, be in the district.

Advisory Workgroup Meeting 2 Summary

1/15/18

The Advisory Workgroup Meeting 2 was held on 1/10/17. Next meeting 1/24/18 at 7 pm.

Attending were	From the Planning Board	Absent
Bill Hamblen, Geoff Smith, Dan Bacon, Bob Faunce, Mike Tomko, Tim Brown	Lee Corbin Jon Dunsford Chris Swanson	Jeanne Fuller

The goals of the meeting were previously stated as:

1. Review Kickoff meeting Summary
2. Refine schedule/timeline
3. Discuss Homework results (if available)
 - a) Review information of on the existing parcels and buildings in the zone e.g., building location, size, height, ground floor elevation, etc.
 - b) Review DEP position on setbacks for new construction and renovated structures. See DEP email
 - c) Review strategies for modest common wall construction densities in the district.
 - d) Review information/opinions on tax reductions for certain land use(s).
 - e) Continue to consider how to equitably create public access to the harbor.
4. Review schedule of permitted uses for a Mixed Use Zone
5. Hear from East Side Residents
6. Assign new homework.

1. Review Kickoff meeting Summary - The group had no issues with the Kickoff Meeting Summary as provided. In discussion I believe the group affirmed that our approach is to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses. Chris Swanson expressed interest in extending the district to the north, however, several members of the group felt this might not be a good fit and might distract from our current effort.

2. Refine schedule/timeline- We addressed this toward the end of the meeting. We revised the dates of the next few meetings, but did not really address the meeting topics as suggested in the Meeting 2 Agenda. I will continue to carry these forward with the understanding that they are suggestions and not mandates. All meetings start at 7:00 pm with the exception of Meeting 4 which will be scheduled in the afternoon to accommodate DEP.

1/24/18 -	Meeting 3 - Resolve residential density and location
TBD (week of Feb 5th to 9th) -	Meeting 4 - Colin Clark, DEP, resolve setbacks
2/28/18 -	Meeting 5 - Resolve building height
3/7/18 -	Meeting 6 - Resolve public Access
3/21/18 -	Meeting 7 - Remaining issues/review
4/4/18 -	Meeting 8 - Final Recommendation/drafts to Planning Board

Advisory Workgroup Meeting 2 Summary

1/15/18

3. Discuss Homework results (if available)

- a) **Review information of on the existing parcels and buildings in the zone e.g., building location, size, height, ground floor elevation, etc.** - This information was not available at this meeting. I believe we did reiterate the sense of the group that a) existing heights can be maintained, and b) any increase in ground floor elevations to accommodate new floodplain rules, should also be reflected with a corresponding increase in maximum height.
- b) **Review DEP position on setbacks for new construction and renovated structures.** *I believe the baseline position of the group is a setback of 25 feet for the new district.* I further believe Dan would like to see this setback reduced for some of the parcels based on preexisting conditions and/or incentives. Dan presented material on setbacks within the district that showed 5 parcels had structures within 25 feet of the high water mark and were not water dependent uses, and thus might fall into this category. He has provided examples of other districts in Maine where these concepts have been implemented.
- c) **Review strategies for modest common wall construction densities in the district.** The group discussed the desired number of common wall construction residential units that would be appropriate for this district; attempting to balance residential units (that realistically, may be empty a good part of the year) and commercial development. *The group charged our professional planners to look at zoning rules that would allow flexibility, but would limit the density of common wall units so that the district would have a maximum possible build out of about 40 units.*
- d) **Review information/opinions on tax reductions for certain land use(s).** We presented information on Maine's Working Waterfront Tax law. The law provides for a 20% reduction in taxes for parcels that are "working waterfront land" and a 50% reduction if the land is permanently protected from a change in use. More information on this program can be found at the Maine Revenue Services website.
- e) **Continue to consider how to equitably create public access to the harbor.** During discussion Bob Faunce suggested the best mechanism for creating public access (or other desirable development) would be through incentives that would relax certain requirements in return for providing certain improvements (viewsheds, public easements, public lands, etc.). Thus zoning requirements might consist of Table A - with standard lot sizes, setbacks, and heights, (consistent with other districts in the town), and Table B - with concessions on lot sizes, setbacks, and heights, if certain conditions are met. This is a worthwhile structure. The question was raised as to how to quantify the conditions that must be met to qualify for relaxed requirements. One possible answer to this question is in the material provided by Dan in his January 1st memorandum. He attached what I believe is Rockland's zoning code which provides specific language on setback relaxation when (for example) the developer provides for the "construction and maintenance of a 12-foot wide public walkway along the entire length of the water frontage". This code is not without its problems, but does provide some features we could utilize.

4. Review schedule of permitted uses for a Mixed Use Zone - The group reviewed over 60 Open Space, Water-Oriented, Residential, Commercial, Industrial, Institutional and Public uses. In general terms the guidance was to keep any existing Water-Oriented uses, and add the Commercial uses that prompted this effort (e.g. Motels,

Advisory Workgroup Meeting 2 Summary

1/15/18

hotels, inns) along with those that were consistent with the town's Downtown Business district. Attached is a list from my notes on what we decided, but I am sure there are some errors. Please review and correct.

5. Hear from East Side Residents and the public - We heard from several residents. Major concerns seemed to be maintaining views of the harbor, parking and maintaining the character of the town.

6. Assign new Homework

1. Dan and Bob: develop common wall construction zoning that will limit the maximum possible build out to about 40 units. If possible, distribute this for review prior to our meeting on the 24th.
2. Geoff: Contact Colin Clark and set up Meeting 4 for the week of February 5th.
3. Publicize Maine's working waterfront tax law; Geoff has already done this!
4. All: Review permitted uses list for errors
5. All: review Rockland and other zoning examples that provide incentives for various forms of public access.



The matrix below is a draft of what could be allowed in this new district listed next to the schedule of uses in the existing Maritime/Water Dependent (MW) District and the Downtown Business (DB) District for comparison purposes. The MW District is the zone that applies to this area now, while the DB District is nearby and has a direct relationship with this area and a connection via the footbridge. Changes from original in Yellow

Schedule of Uses (Y-allowed, C-CEO Permit, P-Conditional Use Requiring PB)

HMU – Proposed Harbor Mixed Use District

MW – Existing Maritime/Water Dependent District

DB – Downtown Business District

Open Space Uses	Proposed HMU	MW	DB
Accessory uses or structures	C	C	C
Earthmoving activities of less than 100 cubic yards but greater than 10 cubic yards	C	C	P
Earthmoving activities of more than 100 cubic yards	P	P	P
Outdoor conservation and recreational uses not operated for profit	P	P	P
Forest management, except timber harvesting	Y	Y	Y
Roads, driveways and parking areas	Y	Y	Y
Nonresidential	P	P	C
Fire prevention activities	Y	Y	Y

Water-Oriented Uses	Proposed HMU	MW	DB
Accessory uses or structures	C	C	C
Aquaculture uses. No processing or storage	P	C	P
Aquaculture products, processing, warehousing, retail and wholesale sales	P	P	
Boat building and repair, commercial operations	P	C	P
Boathouses	C	C	C
Breakwaters and causeways	P	P	P
Marinas	P	P	P
Marina expansion	P	P	P
Piers, docks and wharves	C	C	C
Seafood products, processing, warehousing, retail and wholesale sales	P	P	
Tour or charter boat operations	C	C	C

Residential Uses	Proposed HMU	MW	DB
Accessory structures	C	C	C
Residential association uses or structures	P		C
Boardinghouses	C*		C
Duplexes	C*	P	C
Home occupations	C	P	C
Manufactured Housing exclusive of mobile homes (modular)	C	P	C
Multifamily dwellings	P*		
Single-family dwellings	C*	P	C



Commercial Uses	Proposed HMU	MW	DB
Accessory uses and structures	C	P	C
Auction barns			C
Automobile sales			P
Banks and financial institutions	P		C
Bed and breakfasts	p*		P
Commercial farms, gardens, nurseries and greenhouses			P
Commercial gymnasiums, fitness centers	p*		P
Funeral homes			C
Gasoline service stations			P
Laundromats, dry cleaning			C
Micro-breweries	p*	P	P
Motels, hotels, inns	p*		
Neighborhood grocery stores			C
Outdoor recreational uses operated for profit	p*	P	
Parking areas/lots	C	P	C
Parking facilities	C		C
Professional uses	C	C	C
Recreation facilities (indoor)	p*		P
Resort areas			
Restaurants	p*	P	P
Retail establishments	p*		C
Service establishments	p*		C
Theaters			P
Veterinary clinics			P
Wholesale establishments			C
Wireless communications facilities			C

Industrial Uses	Proposed HMU	MW	DB
Accessory uses and structures	C		C
Light industry			P

Institutional and Public Uses	Proposed HMU	MW	DB
Accessory structures	C	P	C
Churches	C	C	C
Community service organizations	C		C
Health clinics (do not include marijuana or methadone clinics or dispensaries)	P		P
Hospice			P
Hospital			P
Municipal, county, state and federal uses and structures not otherwise listed	C	C	C
Nursing homes			P
Public recreation	C	C	P
Social and fraternal organizations	C		C
Yacht clubs (private and non-profit)	C	P	C



Other uses	Proposed HMU	MW	DB
Public utilities, uses and buildings	P	P	P
Public utility lines and substations	C	C	C

***Uses that require compliance with the Waterfront Investment and Town Infrastructure Investments Funds (as outlined below)**

FreeText

Advisory Workgroup Meeting 3 Agenda/Goals

1/20/2018

Suggested Meeting 3 Agenda/Goals

1. Comments/revisions to Agenda?
2. Review Meeting 2 Summary
3. Discuss/Resolve high water setback requirements
 - Prepare for Feb 7th Meeting with DEP
4. Review and discuss Bob Faunce memo dated January 16
 - Review proposed residential density standards
 - Review Table A , Table B content and criteria
 - Discuss what specific public benefits should trigger Table B
 - Discuss what dimensions should be relaxed
 - Public View Corridors
5. Summarize Current Zoning Guidelines
6. Public comment
7. Assign new homework.

Further Details

A. **Current Schedule** (from last meeting) At BBH town hall. 7:00pm unless noted differently

- 1/24/18 - Meeting 3 - Resolve residential density and location approach
- 2/7/18 - Meeting 4 - **At 1:00 pm**; Colin Clark, DEP, resolve setbacks
- 2/28/18 - Meeting 5 -
- 3/7/18 - Meeting 6 -
- 3/21/18 - Meeting 7 -
- 4/4/18 - Meeting 8 - Final Recommendation/drafts to Planning Board

B. **Discuss/Resolve high water setback requirements** - I believe the baseline position of the group is a setback of 25 feet for the new district. Dan points out there are 5 parcels with buildings within 25 feet of the high water mark and would like to see reduced setbacks for these parcels. Reduced setbacks for parcels (with or without existing buildings?) certainly might be appropriate for "Table B". However, given that the buildings will become permitted uses, even our current zoning would allow these structures to be expanded by 30% and/or rebuilt entirely provided the applicant could show that the new structure was compliant "to the greatest practical extent" as determined by the Planning Board. In any event we should be prepared to present DEP with a clear vision of what we are suggesting.

Advisory Workgroup Meeting 3 Agenda/Goals

1/20/2018

C. Review and discuss Bob Faunce memo dated January 16

Review proposed residential density standards - Bob and Dan have discussed an approach to limit the overall number of common wall units, and I believe are in agreement as to structure of the standards, but still have some differences as to the specific numbers. The advisory group had stipulated that the maximum number of new units in district should be about 40. We should run the numbers, make a selection, and bring this topic to closure.

Review Table A , Table B content and criteria - I believe we have coalesced on a Table A (standard zoning requirements) and Table B (relaxed requirements in return for additional public benefits from the applicant) approach. The questions then remain; a) what public benefits should trigger Table B and, b) what specific dimensions should be relaxed? Some candidate public benefits from the Rockland zoning ordinance include "1) construction and maintenance of a 12 foot wide public walkway along the entire length of the waterfrontage, 2) 50-foot spaces between buildings at least every 150 feet to provide a view corridor from the street..., 3) development, dedication and maintenance of an additional 10% of the site for public open space."

Public View Corridors - Bob's memo suggests that given the importance of public view corridors, requirements for public view corridors should be part of the baseline zoning requirements. Time permitting we should discuss this issue.

D. Summarize the Zoning Guidelines established thus far - I think it will be helpful to summarize our major policy positions. I have provided a first draft below and, as always, welcome any and all improvements. I also think we should start to capture what additional zoning issues the Planning Board might pursue beyond this specific effort, for example examining the impact of this effort on the west side of the harbor and/or examining the zoning in the head of the harbor (Union Street).

In the District we seek....

- to re-define the existing Maritime/Water Dependiant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.
- to keep existing Water-Oriented uses, and add Commercial uses (e.g. Motels, hotels, inns) along with uses that are consistent with the town's Downtown Business district.
- to limit the maximum possible number of additional common wall residential units to about 40.
- to have a baseline zoning requirements that include high water setbacks of 25 feet and building heights of 30 feet.
- to relax the baseline zoning requirements (setback, building height, ...) in return for specific public benefits

Advisory Workgroup Meeting 3 Summary

1/30/18

2) Any issue with reducing the setback (possibly to zero) if the developer meets certain specific criteria of value to the town (e.g. public access, green space, view corridors)? Does limiting the option of reducing the setback to parcels that have existing structures (or paved parking) within the 25 foot setback change the thinking?

3) Would it be possible to develop additional, district specific, guidance on what constitutes the "greatest practical extent" in considering relocation of structures that are within the 25 foot setback and seek to be extensively renovated or rebuilt.

4) We are considering substantially reducing residential and probably non-residential lot sizes but using a density standard to limit the total number of DUs to about 40 units. Also, we are also considering provision of some degree of physical and visual access in exchange for reduced water setbacks, reduced lot sizes, etc. Finally, we potentially would like to encourage conversion of a waterfront parking lot on Cap'n Fish to a public greenspace. Any issue with that?

5) Would the 25 setback for the district alter the 0 setback for water dependant/ working waterfront parcels?

- **Review and discuss Bob Faunce memo dated January 16**
 - a) **Review proposed residential density standards**
 - b) **Review Table A , Table B content and criteria**
 - c) **Public View Corridors**

We started to discuss Bob's memo of 16 January, which presumed an incentive structure to the district's zoning, but the discussion rapidly widened as the pros and cons of the incentive approach were discussed. In particular Bob suggested that view corridors might be better addressed as part of the core zoning requirements rather than a feature to be provided in return for an incentive. After about fifteen minutes we agreed to take some time to think through approaches like this and return to the topic at a future meeting.

The discussion then shifted to residential (multifamily, MF) density and how to achieve the desired level of about 40 units. Dan's suggested allowable density of one dwelling unit per 5000 sf would seem to allow for up to 69 units (see attached table from Bob Faunce) and thus did not seem to meet the intent established by the group. This discussion then focused on the concept of residential transfer development rights (TDR). There was clearly confusion as to the definition of TDRs and how they would be applied. I believe most of the group thought they were a mechanism that enabled increased density of MF units on one lot, to be offset by decreased density (deeded open space) on another lot in the district. Upon discussion, Dan indicated that what had been proposed was that only additional residences would be precluded from being built on the parcel selling the TDR, thus, for example, commercial development could proceed on that lot without restriction; there was no decreased density requirement at all. This definition was not well received. It is my sense that the group will not endorse any TDR, unless there is a requirement that the selling parcel implement a permanent restriction on future development of any sort on the square footage that is "transferred".

4) **Summarize Current Zoning Guidelines**

We briefly reviewed the summary provided in the agenda (given below). We further identified the need to start keeping track of additional issues and topics that are probably outside the scope of this advisory group, but that should be considered by the Planning Board in the future. Candidates might include application of

Advisory Workgroup Meeting 3 Summary

1/30/18

some of the concepts under discussion here to the west side of the harbor, developing a harbor wide master plan, and examining the head of the harbor for similar zoning changes.

The summary we presented was:

In the District we seek....

- **to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.**
- **to keep existing Water-Oriented uses, and add Commercial uses (e.g. Motels, hotels, inns) along with uses that are consistent with the town's Downtown Business district.**
- **to limit the maximum possible number of additional common wall residential units to about 40.**
- **to have a baseline zoning requirements that include high water setbacks of 25 feet and building heights of 30 feet.**
- **to relax the baseline zoning requirements (setback, building height, ...) in return for specific public benefits**

5) Public comment

We heard comments and concerns on a variety of topics including parking, stormwater runoff, setbacks less than 25 feet, multfamily housing, and public access.

6) Assign new homework.

The homework for the group is a) to formulate specific questions for DEP to address at our next meeting (done), and b) as raised during discussion, consider integrating many of the zoning concerns (setback, height, residential density, public access, view corridors) into the core zoning regulations in a fashion that protects and enables the vision for the east side yet still facilitates and promote development and growth.

Table of Possible MultiFamily Units

M	L	Current Use	Lot Size (Tax Records)	Lot Size (G-P)	G-P Lot #	7,500 sf Residential Density			6,500 sf Residential Density			6,000 sf Residential Density			5,000 sf Residential Density								
						Transferrable DU(s)	MLS Required for DU(s)	MLS Available for Non-Res Use	DU Allocation	Transferrable DU(s)	MLS Required for DU(s)	MLS Available for Non-Res Use	DU Allocation	Transferrable DU(s)	MLS Required for DU(s)	MLS Available for Non-Res Use	DU Allocation	Transferrable DU(s)	MLS Required for DU(s)	MLS Available for Non-Res Use			
Residential																							
16129		Cottages	13,939	14,168	10	1	0	7,500	6,439	2	0	7,500	6,439	2	0	7,500	6,439	2	0	7,500	6,439		
16228a		SFR	3,920	3,920	4	1	0	N/A	0	1	0	N/A	0	1	0	N/A	0	1	0	N/A	0		
16127		Cottage	10,890	11,259	9	1	0	2,500	8,390	1	0	2,500	8,390	1	0	2,500	8,390	2	1	5,000	5,890		
16126		Prof. Bldg. + 2 bunkhouses	11,326	10,809	8	1	0	5,000	1,326	1	0	5,000	1,326	1	0	5,000	1,326	2	0	5,000	1,326		
16125		SFR	11,326	11,322	2	1	0	2,500	8,826	1	0	2,500	8,826	1	0	2,500	8,826	2	1	5,000	6,326		
10136		SFR + Cottage	7,841	9,535	17	1	0	5,000	2,841	1	0	5,000	2,841	1	0	5,000	2,841	1	0	5,000	2,841		
Non-Residential																							
16133A		Squirrel Is. Parking Lot	14,375	25,329	13	1	1	2,500	11,875	2	2	5,000	9,375	2	2	5,000	9,375	2	2	5,000	9,375		
16132.33		Oceanside	66,747	78,183	6,7	8	8	20,000	46,747	10	10	25,000	41,747	11	11	27,500	39,247	13	13	32,500	34,247		
16133B.35		BBH Inn	59,677	59,402	11,12	7	7	17,500	42,177	9	9	22,500	37,177	9	9	22,500	37,177	11	11	27,500	32,177		
16130		Vacant	16,117	16,468	5	2	2	5,000	11,117	2	2	5,000	11,117	2	2	5,000	11,117	3	3	7,500	8,617		
16128		Lobster Deck	35,640	36,766	3	5	5	12,500	27,140	6	6	15,000	24,640	6	6	15,000	24,640	7	7	17,500	22,140		
16124		Cap'n Fish	37,026	36,423	1	4	4	10,000	27,026	5	5	12,500	24,526	6	6	15,000	22,026	7	7	17,500	19,526		
16121		Sea Pier	25,700			3	3	7,500	18,200	3	3	7,500	18,200	4	4	10,000	15,700	5	5	12,500	13,200		
1619.20		BBH Lobster Wharf	28,178			3	3	7,500	20,768	4	4	10,000	18,178	4	4	10,000	18,178	5	5	12,500	15,678		
10134.35		Brown Bros. Mid-Coast	53,579	78,454	16	7	7	17,500	36,079	8	8	20,000	33,579	8	8	20,000	33,579	10	10	25,000	28,579		
10132A		Marine Services	23,958	9,412	15	3	3	7,500	16,458	3	3	7,500	16,458	3	3	7,500	16,458	4	4	10,000	13,958		
						43			52			55			69								
						424,239																	

Advisory Workgroup Meeting 4 Agenda/Goals

2/5/2018

Suggested Meeting 4 Agenda/Goals

1. Comments/revisions to Agenda?
2. Review Meeting 3 Summary
3. Meet with DEP and resolve questions
4. Discuss the overall vision for the east side zoning
5. Public comment
6. Assign new homework.

Further Details

A. Current Schedule (from last meeting) At BBH town hall. 7:00pm unless noted differently

2/7/18 - Meeting 4 - **At 1:00 pm**; Colin Clark, DEP, resolve setbacks

2/28/18 - Meeting 5 -

3/7/18 - Meeting 6 -

3/21/18 - Meeting 7 -

4/4/18 - Meeting 8 - Final Recommendation/drafts to Planning Board

B. Meet with DEP and resolve questions -

From the Meeting 3 Summary:

- 1) Any issue with a 25 foot setback as the baseline setback in the east side mixed use district?
- 2) Any issue with reducing the setback (possibly to zero) if the developer meets certain specific criteria of value to the town (e.g. public access, green space, view corridors)? Does limiting the option of reducing the setback to parcels that have existing structures (or paved parking) within the 25 foot setback change the thinking?
- 3) Would it be possible to develop additional, district specific, guidance on what constitutes the "greatest practical extent" in considering relocation of structures that are within the 25 foot setback and seek to be extensively renovated or rebuilt.
- 4) We are considering substantially reducing residential and probably non-residential lot sizes but using a density standard to limit the total number of DUs to about 40 units. Also, we are also considering provision of some degree of physical and visual access in exchange for reduced water setbacks, reduced lot sizes, etc. Finally, we potentially would like to encourage conversion of a waterfront parking lot on Cap'n Fish to a public greenspace. Any issue with that?
- 5) Would the 25 setback for the district alter the 0 setback for water dependant/ working waterfront parcels?

Advisory Workgroup Meeting 4 Agenda/Goals

2/5/2018

C. Discuss the overall goals for the east side zoning-

If time permits I believe it would be useful to take a few moments to discuss, or perhaps reaffirm, the overall goals or vision for the east side to ensure that the zoning regulations we are considering support that vision. At the last meeting we got somewhat bogged down in particulars and it would be useful to remind ourselves what we are seeking to achieve. Hopefully this will help us bring some of our outstanding issues to closure. It is beginning to feel like we are discussing the same issues again and again.

As an initial talking point I might offer the statement:

The east side should consist of mixed uses (hotels, restaurants, shops, (limited) condos, marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), and some level of public access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

Also here is what we said and the last meeting:

In the District we seek....

- *to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*
- *to keep existing Water-Oriented uses, and add Commercial uses (e.g. Motels, hotels, inns) along with uses that are consistent with the town's Downtown Business district.*
- *to limit the maximum possible number of additional common wall residential units to about 40.*
- *to have a baseline zoning requirements that include high water setbacks of 25 feet and building heights of 30 feet.*
- *to relax the baseline zoning requirements (setback, building height, ...) in return for specific public benefits*

Advisory Workgroup Meeting 5 Summary

3/4/2018

The Advisory Workgroup Meeting 5 was held on 2/28/18. Next meeting 3/7/18 at 7 pm.

Attending were From the Planning Board

Bill Hamblen Jon Dunsford

Geoff Smith,

Dan Bacon,

Bob Faunce,

Mike Tomko,

Tim Brown

Jeanne Fuller

The goals of the meeting were previously stated as:

1. Comments/revisions to Agenda?
2. Review Meeting 4 Summary
3. Discuss the overall vision for the east side zoning
4. Current zoning approaches
5. Public comment
6. Assign new homework.

1) There were no comments to the Agenda

2) Meeting 4 Review - We reviewed the DEP comments and observations from Meeting 4. The key DEP positions are summarized below.

- DEP had no issue with a 25 foot setback for new structures in the district. DEP would expect this setback to be justified by the town's vision for the district and the existing conditions.
- DEP would not allow the setback to be reduced in return for certain features that would benefit the town. The setback is the setback.
- Existing (non water-dependant) structures within the setback must be relocated "to the greatest practical extent" when they are redeveloped by more than 50% of the assessed value. Colin Clark felt that "greatest practical extent" was self-evident, but agreed that several of the parcels in this district were unique in their situation. DEP would consider additional guidance on greatest practical extent provided it was not less restrictive than current state guidelines.
- DEP had no particular issue with the zoning structures we were considering for multi-family housing density or view corridors. Their concern is in protecting the resource.
- DEP confirmed that water-dependant/working waterfront uses would still have a zero setback.
- DEP had no clear guidance on increasing flood plain elevations, but did provide the names of towns that had addressed this issue.
- In discussion Colin highlighted the difficulty with establishing any sort of waterfront walkway or path. Every instance of this that he is familiar with was permitted because of a pre-existing (typically railway) right-of-way or use.

Advisory Workgroup Meeting 5 Summary

3/4/2018

3) Discuss the overall vision for the east side zoning

We discussed the following as a first draft of the vision for the east side.

The east side should consist of mixed uses (hotels, restaurants, shops, (limited) condos, marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), and some level of public access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

Comments from the group and the audience suggested adding

- easy pedestrian mobility
- single family residential
- water access not just public access

If we embrace these comments the vision might become:

The east side should consist of mixed uses including hotels, restaurants, shops, residences (both single and limited multi-family), marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), with easy pedestrian mobility and some level of public waterfront access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

4) Current Zoning Approaches

We then discussed the list of current zoning approaches as follows:

In the District we seek....

- *to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*

[no comments]

- *to continue all current uses (including Water Dependant uses) in the new District, and add new Commercial uses (e.g. Motels, hotels, inns) consistent with a Mixed Use District.*

[no comments]

- *to have a high water setback of 25 feet for all new construction except Water Dependant uses which will continue to have a 0 foot setback.*

[confirmation that "new construction" applies to residential uses as well as commercial uses]

- *to permit common wall residences (condos) in the district, subject to the same density requirements that currently exist for every other district in town (6 units per acre).*

[no comments]

Advisory Workgroup Meeting 5 Summary

3/4/2018

And for discussion;

- *to add requirements for significant developments to maintain view corridors from Atlantic Avenue to the water.*

This was discussed for a significant amount of time. The group was OK with the concept of view corridors, but was concerned about its implementation, particularly on smaller lots. The group felt that to be meaningful a view corridor should have a minimum width, perhaps 20 or 25 feet. Bob Faunce agreed to examine what the implication of this requirement would be for the lots in the district.

- *to permit new construction heights of 35 feet or 2 1/2 stories whichever is less. (Note for comparison, current west side heights are 30 feet or 2 1/2 stories plus up to a 6 foot façade)*

The discussion on this topic centered on the justification for 35 feet and the implication of the 2 1/2 story requirement. Factors in the height discussion include existing building heights, the likely increase in ground floor elevations due to an increased flood plain elevation, the unique topography of the district (sloping from Atlantic Ave to the water) and the existence of 35 foot heights elsewhere in the town. Factors in the 2 1/2 story discussion include the use of this requirement everywhere else in town, the implication on roof lines and the visual impact of the buildings and the current wording of the definition of a half story that calls out residential use for special treatment. Dan Bacon and Geoff Smith have agreed to look into existing building height and the half story definition respectively.

- *to require impact fees on new common wall construction and significant non-residential development "to meet the additional needs for recreation, pedestrian access and open space..."*

Again there was reasonable support for the concept of impact fees, but significant concern about the implementation details. Discussion topics included the need to emphasize Fire, Police and Safety issues as well as public (waterfront) access issues, and the need understand the administration of the fees. Bill Hamblen agreed to contact the Selectboard and other town officials to ensure everyone is on the same page with respect to the concept of impact fees. Everyone should be considering how to improve and clarify this zoning requirement.

Advisory Workgroup Meeting 5 Summary

3/4/2018

- *to permit a minimum lot size (MLS) per common wall construction dwelling unit of 2500 sq. ft. and to allow transfer rights to be used within the district. Lots wishing to sell transfer rights must have a contiguous undeveloped area equal to the MLS and must place that area under a permanent restriction precluding any future development on that area.*

The discussion of transfer rights highlighted the same issues that we have been discussing for the last two meetings. To help break this logjam, Dan Bacon has agreed to provide some transfer rights wording so we can evaluate the impact of this concept on the district. Geoff Smith has agreed to contact other Maine towns that have transfer rights and see what their experience has been.

- *and finally to maintain all other existing development standards in the district; side yard and front yard setbacks, impervious area lot coverage limitations, storm water runoff controls, etc.*

We did confirm that currently the side yard setbacks are 10 feet for commercial and 15 feet for residential uses in the district. Jon Dunsford agreed to look at the front yard setback in the district.

5) Public Comment - See section 3) above.

6) Assign Homework

From above the homework assignments are:

Bob Faunce agreed to examine how a 20 foot or 25 foot minimum requirement for a view corridor might impact the lots in the district.

Dan Bacon and Geoff Smith have agreed to look into existing building height and the half story definition respectively.

Bill Hamblen agreed to contact the Selectboard and other town officials to ensure everyone is on the same page with respect to the concept of impact fees.

Dan Bacon has agreed to provide some transfer rights wording so we can evaluate the impact of this concept on the district.

Geoff Smith has agreed to contact other Maine towns that have transfer rights and see what their experience has been

Jon Dunsford agreed to look at the front yard setback in the district.

Advisory Workgroup Meeting 6 Agenda/Goals

3/4/2018

Suggested Meeting 6 Agenda/Goals

1. Comments/revisions to Agenda?
2. Review Meeting 5 Summary
3. Re-visit East Side Goals
4. Re-visit Current zoning approaches
5. Public comment
6. Assign new homework.

Further Details

A. **Current Schedule** - At BBH town hall. 7:00pm unless noted differently

3/7/18 - Meeting 6 -

3/21/18 - Meeting 7 -

4/4/18 - Meeting 8 - Final Recommendation/drafts to Planning Board?

B. Revised East Side Vision

If we embrace the comments from the last meeting the vision statement might become:

The east side should consist of mixed uses including hotels, restaurants, shops, residences (both single and limited multi-family), marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), with easy pedestrian mobility and some level of public waterfront access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

C. Revisit /discuss current approaches

In the District we seek...

- *to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*
- *to continue all current uses (including Water Dependant uses) in the new District, and add new Commercial uses (e.g. Motels, hotels, inns) consistent with a Mixed Use District.*
- *to have a high water setback of 25 feet for all new construction except Water Dependant uses which will continue to have a 0 foot setback.*
- *to permit common wall residences (condos) in the district, subject to the same density requirements that currently exist for every other district in town (6 units per acre).*

Advisory Workgroup Meeting 6 Agenda/Goals

3/4/2018

And for discussion;

- *to add requirements for significant developments to maintain view corridors from Atlantic Avenue to the water.*

The group was OK with the concept of view corridors, but was concerned about its implementation, particularly on smaller lots. The group felt that to be meaningful a view corridor should have a minimum width, perhaps 20 or 25 feet. Bob Faunce agreed to examine what the implication of this requirement would be for the lots in the district.

- *to permit new construction heights of 35 feet or 2 1/2 stories whichever is less. (Note for comparison, current west side heights are 30 feet or 2 1/2 stories plus up to a 6 foot façade)*

Factors in the height discussion include existing building heights, the likely increase in ground floor elevations due to an increased flood plain elevation, the unique topography of the district (sloping from Atlantic Ave to the water) and the existence of 35 foot heights elsewhere in the town. Factors in the 2 1/2 story discussion include the use of this requirement everywhere else in town, the implication on roof lines and the visual impact of the buildings and the current wording of the definition of a half story that calls out residential use for special treatment. Dan Bacon and Geoff Smith have agreed to look into existing building height and the half story definition respectively.

- *to require impact fees on new common wall construction and significant non-residential development "to meet the additional needs for recreation, pedestrian access and open space..."*

Discussion topics included the need to emphasize Fire, Police and Safety issues as well as public (waterfront) access issues, and the need understand the administration of the fees. Bill Hamblen agreed to contact the Selectboard and other town officials to ensure everyone is on the same page with respect to the concept of impact fees. Everyone should be considering how to improve and clarify this zoning requirement.

Advisory Workgroup Meeting 6 Agenda/Goals

3/4/2018

- *to permit a minimum lot size (MLS) per common wall construction dwelling unit of 2500 sq. ft. and to allow transfer rights to be used within the district.*

The discussion of transfer rights highlighted the same issues that we have been discussing for the last two meetings. To help break this logjam, Dan Bacon has agreed to provide some transfer rights wording so we can evaluate the impact of this concept on the district. Geoff Smith has agreed to contact other Maine towns that have transfer rights and see what their experience has been.

- *and finally to maintain all other existing development standards in the district; side yard and front yard setbacks, impervious area lot coverage limitations, storm water runoff controls, etc.*

We did confirm that currently the side yard setbacks are 10 feet for commercial and 15 feet for residential uses in the district. Jon Dunsford agreed to look at the front yard setback in the district.

Advisory Workgroup Meeting 6 Summary

3/25/2018

The Advisory Workgroup Meeting 6 was held on 3/21/18. Next meeting 4/4/18 at 7 pm.

Attending were	From the Planning Board
Bill Hamblen	Jon Dunsford
Geoff Smith,	Lee Corbin
Dan Bacon,	Chris Swanson
Mike Tomko,	
Tim Brown	
Jeanne Fuller	

The goals of the meeting were previously stated as:

1. Comments/revisions to Agenda?
2. Review Meeting 5 Summary
3. Re-visit East Side Goals
4. Re-visit current zoning approaches
5. Public comment
6. Assign new homework.

1) Revise Agenda? -There were no comments to the Agenda

2) Review Meeting 5 Summary - There were no substantive comments on the Meeting 5 summary. We did review the schedule in light of the snow delays we have incurred. I believe we will need at least one and perhaps two more meetings. We scheduled the next meeting for April 4th at 7:00 pm.

We briefly discussed the format of our recommendations to the planning board. It would seem to make sense to have a brief, bulleted summary of both the vision for the east side, and the key policy positions (similar to remainder of this summary), followed by the detailed wording that has been generated by our professional planners.

3) Re-visit East Side Goals - Incorporating the comments from the last meeting, the group agreed on the following vision for the east side mixed use zone.

The east side should consist of mixed uses including hotels, restaurants, shops, residences (both single and limited multi-family), marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), with easy pedestrian mobility and some level of public waterfront access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

Advisory Workgroup Meeting 6 Summary

3/25/2018

4) Re-Visit Current Zoning Approaches

We then discussed the list of current zoning approaches:

In the District we seek...

- *to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*
- *to continue all current uses (including Water Dependant uses) in the new District, and add new Commercial uses (e.g. Motels, hotels, inns) consistent with a Mixed Use District.*
- *to have a high water setback of 25 feet for all new construction except Water Dependant uses which will continue to have a 0 foot setback.*
- *to permit common wall residences (condos) in the district, subject to the same density requirements that currently exist for every other district in town (up to 6 units per acre).*

And for discussion;

- *to include requirements for significant developments to maintain view corridors from Atlantic Avenue to the water.*

The group supports this policy. The initial discussion focused on a) the size of the view corridor, with consensus that any view corridor should be at least 20 feet wide, and b) the frontage threshold above which view corridors would be required. Arguments were provided for both 100 foot and 125 foot thresholds with a slight majority favoring 125 feet. Finally most of the group felt the proposed definition of a "significant development" as activities of 1,000 sq. ft. or more was too restrictive and that the square footage threshold should be increased. We discussed, but rejected the concept that view corridors and side yard setbacks could be shared.

- *to permit new construction heights of 35 feet or 2 1/2 stories whichever is less. (Note for comparison, current west side heights are 30 feet or 2 1/2 stories plus up to a 6 foot façade)*

The group supported the 2 1/2 story concept, so the bulk of the discussion centered on whether 30 feet or 35 feet should be the permitted maximum height. Dan Bacon presented some limited data that showed current structures in the district with heights that varied from 40' (a single family residence) to 30' or less for many of the commercial buildings. The majority of the group favored 35 feet. Chris Swanson presented the case for, whatever we choose, making the requirement the same on the west side. The Planning Board members agreed to carry this forward as a separate item.

The town's definition of 2 1/2 stories was reviewed and the group confirmed they wished to proceed with:

Advisory Workgroup Meeting 6 Summary

3/25/2018

The space under a sloping roof which has the line of intersection of the roof decking and wall face not more than three feet above the top floor level, and in which space not more than 1/2 of the floor area is finished off for use. A half story containing independent apartments or living quarters shall be counted as a full story.
thus deleting the last sentence that references apartments and living quarters.

- *to require impact fees on new common wall construction and significant non-residential development "to meet the additional needs for recreation, pedestrian access and open space..."*

The group is fully supportive of this concept. As part of last meeting's homework, the Selectboard was contacted and is also supportive of the concept. They, like everyone else, will need to see the detailed wording of the permitted uses of these funds. Discussion on this topic centered on the need to keep the benefits of the impact fees local to the district and focused on town owned (or acquired) properties. As with the height requirement there is an argument to carry this forward to other districts in the town.

- *to permit a minimum lot size (MLS) per common wall construction dwelling unit of 2500 sq. ft. ~~and to allow transfer rights to be used within the district~~*

The group supports the 2500 sq. ft. MLS for common wall construction (together with the 6 per acre density maximum), but did not support transfer rights. Research into other towns use of transfer rights revealed that none of these towns were using transfer rights in the manner proposed here. As an alternative, it was suggested to allow two lots, both within the district, **and in the same ownership**, to be treated as if they were contiguous for the purposes of calculating density and positioning multifamily housing. This removes the concerns about "double dipping", while allowing the development flexibility needed and does not require any other changes to our zoning laws. This concept seemed strongly supported.

- *and finally to maintain all other existing development standards in the district; side yard and front yard setbacks, impervious area lot coverage limitations, storm water runoff controls, etc.*

Dan Bacon raised the issue of reducing residential side yard setbacks from 15 to 10 feet, which was discussed by the group. His concern was the reduction in the amount of developable land, particularly for small lots. In the end it was felt we should not alter the town wide setbacks just for this district, and that for the two lots that would be most impacted by this requirement, a reasonable case for a variance could be made.

5) Public Comment - Several members of the public asked for clarification on topics we had discussed during the meeting. Kay Wilder noted we appeared to have inadvertently dropped the Carousel property from our frontage table. I checked and note that the Marina was included (Map 10 Lot 32A, which has no frontage) but

Advisory Workgroup Meeting 6 Summary

3/25/2018

the condominiums (Map 10 Lot32 with roughly 335' of frontage) was not. It is unlikely the condo property could ever be redeveloped and thus does not really impact our deliberations. Wendy Wolf supported the concept of the impact fee, but did not support allowing multi family units in the district. Finally two people spoke in favor of the 35 foot height limit and one person spoke in favor of the 30 foot limit.

6) Assign Homework

We did not review homework assignments, but from the above I would suggest:

- Bob Faunce might rework the structure of the view corridor wording (his draft Section 170-69, M. Shoreland Relationship, (3a and 3b)) to capture the notion that the minimum view corridor shall be 20 ft wide, and shall apply to lots with frontage in excess of xxx feet.
- All - Review the draft section on impact fees particularly the sections on Applicability (170-117) and Use of Impact fees (170-21) for additions, revisions, consistency, etc. and in light of our most recent discussions.
- Bill Hamblen - Refine the concept that would allow two lots, both within the district, and in the same ownership, to be treated as if they were contiguous for the purposes of calculating density and positioning multifamily housing. Work with Bob Faunce and Dan Bacon to generate specific wording.
- Planning Board Members - Carry over the height and impact fee discussions to the PB for consideration elsewhere in town.

Advisory Workgroup Meeting 7 Agenda/Goals

4/2/2018

Suggested Meeting 7 Agenda/Goals

1. Comments/revisions to Agenda?
2. Review Meeting 6 Summary
3. Review/Edit Draft Workgroup Report
4. Recommendations for Issues to be carried forward
5. Public comment

Further Details

A. **Current Schedule** - At BBH town hall. 7:00pm unless noted differently

~~3/21/18 - Meeting 6 -~~

4/4/18 - Meeting 7 - Transmit Recommendations/drafts to Planning Board?

B. **Review Meeting 6 Summary**

C. **Review/Edit Draft Workgroup Report**

Attached is a draft of the Workgroup report that follows the format that we discussed at our last meeting. It provides a brief introduction, a summary of the east side vision, and a bulleted list of the key policy positions, followed by the detailed wording that has been generated by our professional planners. The hope is that we can review this document and agree to pass it on to the BBH Planning Board for further refinement and action. I realize there are issues that are not fully resolved, or where the advisory group's opinions are mixed, but my sense is that resolution of these issue should move to the full Planning Board.

D. **Recommendations for Issues to be carried forward**

Throughout this process we have identified zoning issues that extend beyond the confines of the east side district. We have said all along that we want to capture these issues and maintain a "to-do" list for the Planning Board to address in the coming months. Please come to the meeting with your list of such issues. For example:

- Investigate extending some of the zoning recommended for the east side to other districts in the town
 - building height
 - impact fees
- Adapting our land use code to the increased flood plain elevations

Introduction

The Planning Board Advisory Workgroup was formed in mid December 2017 to examine possible zoning changes to the Maritime/Water Dependent District of Boothbay Harbor (the East Side). Because the district prohibited most uses that were not water dependant, most new businesses were prohibited, and existing businesses (established prior to zoning regulations) were prohibited from re-investing in any meaningful way. Thus the initial charge to the group was to consider zoning changes that would allow existing businesses to renovate, relocate, rebuild and reinvest, while not harming our existing water dependant uses and maintaining public access and connectivity to the waterfront. To facilitate this goal the advisory group was formulated to include professional planners, east side business owners, residents, planning board members and the BBH Code Enforcement Officer.

The advisory group has met seven times, conducted significant research into similar districts in Maine, met with the Department of Environmental Protection, considered (and rejected) numerous zoning strategies and finally formulated what we feel are sensible zoning recommendations. These recommendations are consistent with zoning regulations elsewhere in the town and with the Comprehensive Plan for BBH. They will provide an appropriate economic stimulus, while protecting the important features essential to our town. The recommendations are presented in the remainder of this document and consist of a statement of the guiding vision for the east side, a list of key policy positions, and, in the appendix, draft sections of our zoning codes that implement the proposed changes.

These recommendations will be delivered to the BBH Planning Board for further refinement and additional public hearings. Once these are concluded, the proposed changes will be forwarded to the Selectboard who will formulate the warrant articles, hold one final public hearing on the warrant, and then, we believe, schedule a special town meeting to vote on the warrant articles. As always the voters of the town will have the final say.

I wish to thank the members of the Advisory Group for their dedication to this endeavor and for their high level of professionalism and willingness to have productive discourse, even when opinions differ. Finally I wish to thank the citizens of BBH who came to meeting after meeting to contribute to this effort.

Planning Board Advisory Group Members

	<u>Planning Board</u>
Dan Bacon, Gorrill Palmer, Planner	Tom Churchill, Vice Chair
Tim Brown, Brown's Wharf Inn	Lee Corbin
Bob Faunce, Lincoln County Planner	Jon Dunsford
Jeanne Fuller, Harbor Bait	Bill Hamblen, Chair
Geoff Smith, Code Enforcement Officer	John Hochstein
Mike Tomko, Selectman	Margret Perrit
	Chris Swanson

A. The group recommends the following vision statement for the east side district.

The east side should consist of mixed uses including hotels, restaurants, shops, residences (both single and limited multi-family), marinas, water dependent uses (bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair), with easy pedestrian mobility and some level of public waterfront access, all developed at a density that is somewhat less than the west side in order to support visual and physical connectivity to the waterfront.

B. The key policy provisions for the east side district are:

- *to re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*

This provision defines the new district (with boundaries identical to the old district), introduces the mixed use concept, and makes clear that every parcel in the district will have the same set of permitted uses (no "special" parcels).

- *to continue all current uses (including Water Dependant uses) in the new District, and add new commercial uses (e.g. motels, hotels, inns) consistent with a Mixed Use District.*

In many ways this is the key new provision for the district. It allows new commercial uses in the district and will allow many of the existing business to re-invest, as they will become permitted uses.

- *to have a high water setback of 25 feet for all new construction except Water Dependant uses which will continue to have a 0 foot setback.*

This will allow for flexibility in locating buildings on the parcel, still protect the shoreline, and is consistent with DEP requirements for a mixed use district.

- *to permit common wall residences (condos) in the district, subject to the same density requirements that currently exist for every other district in town (up to 6 units per acre).*

This will permit additional common wall residences to be built, but will control the density to be consistent with the rest of the town and limit the number to an amount consistent with the overall vision for the district.

- *to set a minimum lot size (MLS) per common wall construction dwelling unit of 2500 sq. ft. and allow lots in common ownership (in the district) to be treated as if they are contiguous for the purposes of calculating density and locating these units.*

This will allow design flexibility in positioning these structures and result in better utilization of the district without increasing the overall density of the multi-family units. The 2500 sq. ft. MLS will also encourage commercial development in the district (one of the primary goals of the effort).

- *to require that significant developments on lots with over xxx of frontage on Atlantic Avenue maintain view corridors from Atlantic Avenue to the water.*

This will maintain the visual connection to the waterfront that exists today and prevent development that results in an impenetrable "wall" of buildings. It will be limited to those lots big enough to maintain a view corridor without an undue hardship on development.

- *to permit new construction heights of 35 feet or 2 1/2 stories whichever is less.*

The 2- 1/2 story requirement is consistent with the remainder of the town and will promote sloped roofs and structures that visually match the region. The current Downtown Business District (the west side) permitted height is 36 feet (30 feet or 2 1/2 stories plus up to a 6 foot façade). Thus 35 feet is appropriate, particularly since several existing structures are higher than this. For consistency the Planning Board expects to recommend the same height requirement (35 feet or 2 1/2 stories) for the Downtown Business District.

- *to require impact fees on new common wall construction and significant non-residential development to meet the additional public needs for recreation, pedestrian access and open space.*

The group wrestled with ways to promote waterfront access and improve public amenities in the district. We concluded that the best way was to require an impact fee that would allow the town to improve (and perhaps to acquire) public properties in the district. These actions will provide benefits to both the town and the developer.

- *and finally to maintain all other existing development standards in the district; side yard and front yard setbacks, impervious area lot coverage limitations, storm water runoff controls, etc.*

We do not recommend relaxing any of the development standards that are currently in the land use codes. This is a significant point; the reality is that these standards provide numerous protections to landowners, neighbors and the town. In many cases these standards will be the limiting factor in new development.

C. Appendix 1: Detailed wording of the proposed changes

Zoning Amendments -

Sections 170-21, 170-25 to 170-28, 170-69

Shoreland Amendments -

Sections 170-101.4, 170-101.8, 170-101.10, 170-101.11

Article XII. Impact Fees

Sections 170-114 to 170-126

3/29/18 Zoning Amendments

§ 170-49 Multifamily dwellings.

A. Prohibited location(s). In addition to other provisions of this chapter, multifamily dwellings shall be prohibited from the following:

- (1) The Downtown Business District, including the Head of the Harbor.
- (2) From St. Andrews ~~Campus-Hospital~~ to Roads End: all areas within 500 feet of the landward side of Western Avenue, West Street from Mill Cove to the intersection with Howard Street, Townsend Avenue north of Union Street to the Congregational Church, Oak Street from the General Business District to Union Street and Atlantic Avenue until its intersection with Roads End except for the Atlantic Avenue Mixed Maritime/Water Dependent District.
- (3) Within 500 feet from the high-water mark in all areas of the coastline except for the Atlantic Avenue Mixed Maritime/Water Dependent District.
- (4) The area of land within 75 feet of all freshwater bodies.
- (5) The area within 300 feet of Route 27 north of the Routes 27/96 intersection.
- (6) Special residential districts and islands.

B. Density. In sewered areas where multifamily units are permitted, the lot size requirement of 10,000 square feet may be reduced to six units per acre as a density bonus or in the Atlantic Avenue Mixed Maritime/Water Dependent District multifamily units may be developed at a density of 7,250 square feet per dwelling unit with a minimum of 2,500 square feet of lot area per dwelling unit with the approval of the Planning Board. Planning Board approval shall be based upon a determination that the development meets all other requirements of this chapter and that it will result in a benefit to the public, such as public waterfront access, a public boat ramp or additional public parking.

C. Building size limitation. There shall be no more than four units per structure. This limitation may be increased to six units per structure with the approval of the Planning Board in accordance with the requirements of Subsection B above. This provision shall not apply to elderly housing projects, as defined.

D. Lots within the Atlantic Avenue Mixed Maritime/Water Dependent District that are in the same ownership. Such lots may be treated as if they are continuous for the purposes of calculating density and siting of common wall multi-family residences except that required setbacks for each lot shall be maintained. Lots used in this calculation shall record the details of the calculation with the Lincoln County Registry of Deeds as part of the deed.

§ 170-21 Districts established.

For the purpose of this Land Use Code, the Town of Boothbay Harbor is divided into the following districts:

General Residential District

Special Residential District

Downtown Business District

~~Maritime/Water Dependent District~~ Atlantic Avenue Mixed Maritime/Water Dependent District

General Business District

Resource Protection District

Shoreland District/Stream Protection Overlay District

§ 170-25 Purpose of districts.

D. Atlantic Avenue Mixed Maritime/Water Dependent District. The purpose of the Atlantic Avenue Mixed Maritime/Water Dependent District is to reserve a reasonable portion of the Boothbay Harbor waterfront for the protection of traditional water-dependent uses such as commercial fishing, boat building, marine service and repair, etc. such as bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair and marinas and similar marine activities while encouraging modernization of existing non-maritime properties, development of new, compatible non-maritime uses such as hotels, restaurants and residences (both single and limited common wall multi-family) and similar uses, creation of new opportunities for public waterfront access and conservation of existing points of public physical and visual access to coastal waters. The intention of this land use district is to protect traditional commercial water dependent uses such as commercial fishing, boat building, marine service and repair, etc., from other competing but incompatible uses; to conserve points of public access to coastal waters; and to give preference in identified areas to commercial water dependent uses over recreational and residential uses.

§ 170-26 Description of districts.

D. Atlantic Avenue Mixed Maritime/Water Dependent District.

(1) The Maritime/Water Dependent District shall be described as all of the area included within the following perimeter: Beginning at the eastern end of the footbridge and continuing in an easterly direction along the footbridge rights-of-way until it intersects Atlantic Avenue; thence south along the center line of Atlantic Avenue to a point between Lot No. 30 and No. 32 of Tax Map No. 10; thence along said property line to the water; thence generally northerly direction along the water's edge to the point of beginning.

(2) Exemption: the lot described by the Town's Year 2000 Tax Maps as Map 16, Lot 30. Change the Zoning Map accordingly.

Added 5-6-2002 by ATM Art. 20}

§ 170-27 Schedule of uses.

A. Activity categories. Land uses permitted in the town's zoning districts, in conformance with the performance standards contained in Article IV, are shown in a matrix in § 170-27E. The various land uses contained in the matrix are organized into the following activity classifications:

- (1) Open Space.
- (2) Residential.
- (3) Commercial.
- (4) Industrial.
- (5) Institutional.
- (6) Miscellaneous.

B. Symbols used in Schedule of Uses. The following symbols contained in the Schedule of Uses have the following meanings:

- (1) District symbols:

- GR General Residential District
- SR Special Residential District
- DB Downtown Business District
- AAM Atlantic Avenue Mixed Maritime/Water Dependent District
- MM
- GB General Business District
- RP Resource Protection District

E. Schedule of Uses

Open Space Uses	AAM District
Accessory uses or structures	C
Earthmoving activities of less than 100 cubic yards but greater than 10 cubic yards	C
Earthmoving activities of more than 100 cubic yards	P
Outdoor conservation and recreational uses not operated for profit	P
Forest management, except timber harvesting	Y
Roads, driveways and parking areas	Y
Nonresidential	P
Fire prevention activities	Y
Water-Oriented Uses	
Accessory uses or structures	C
Aquaculture uses. No processing or storage	P
Aquaculture products, processing, warehousing, retail and wholesale sales	P
Boat building and repair, commercial operations	P
Boathouses	C
Breakwaters and causeways	P
Marinas	P
Marina expansion	P
Piers, docks and wharves	C
Seafood products, processing, warehousing, retail and wholesale sales	P
Tour or charter boat operations	C

Residential Uses	AAM District
Accessory structures	C
Residential association uses or structures	P
Boardinghouses	C
Duplexes	C
Home occupations	C
Manufactured Housing exclusive of mobile homes (modular)	C
Multifamily dwellings	P
Single-family dwellings	C
Commercial Uses	
Accessory uses and structures	C
Auction barns	
Automobile sales	
Banks and financial institutions	P
Bed and breakfasts	P
Commercial farms, gardens, nurseries and greenhouses	
Commercial gymnasiums, fitness centers	P
Funeral homes	
Gasoline service stations	
Laundromats, dry cleaning	
Micro-breweries	P
Motels, hotels, inns	P
Neighborhood grocery stores	
Outdoor recreational uses operated for profit	P
Parking areas/lots	C
Parking facilities	C
Professional uses	C
Recreation facilities (indoor)	P
Resort areas	
Restaurants	P
Retail establishments	P
Service establishments	P
Theaters	
Veterinary clinics	
Wholesale establishments	
Wireless communications facilities	

Industrial Uses	AAM District
Accessory uses and structures	C
Light industry	
Institutional and Public Uses	
Accessory structures	C
Churches	C
Community service organizations	C
Health clinics (do not include marijuana or methodone clinics or dispensaries)	P
Hospice	
Hospital	
Municipal, county, state and federal uses and structures not otherwise listed	C
Nursing homes	
Public recreation	C
Social and fraternal organizations	C
Yacht clubs (private and non-profit)	C

§170-28 Schedule of Dimensional Requirements

Dimensional Requirements for the Atlantic Avenue Mixed Maritime/Water Dependent District			
	Residential	Commercial	Maritime/Water Dependent
Minimum Lot Size	10,000 SF	40,000 SF	None
Minimum Lot Size per Common Wall Multi-Family Residential Dwelling Unit	2,500 SF	N/A	N/A
Maximum Density per Common Wall Multi-Family Residential Dwelling Unit	7,250 SF ³	N/A	N/A
Minimum Street Frontage	50 feet	50 feet	50 feet
Minimum Shore Frontage	150 feet	200 feet	None
Minimum Front Setback ¹	30 feet	25 feet	25 feet
Minimum Side, Rear Setback	15 feet	10 feet	10 feet
Minimum Setback from the High Water Line	25 feet	25 feet	25 feet
Maximum Building Height	35 feet ²	35 feet ²	35 feet ²
Maximum Impervious Area within the shoreland zone	0.7	0.7	0.7
Maximum Number of Dwelling Units per Development Parcel	12	N/A	N/A

¹ From street centerline plus width of any sidewalk

² Or 2 1/2 stories, whichever is less; also see § 170-101.11.H(2)(e)

³ Lots within the Atlantic Avenue Mixed Maritime/Water Dependent District that are in the same ownership may be treated as if they are continuous for the purposes of calculating density and siting of common wall multi-family residences except that required setbacks for each lot shall be maintained. See Section 170-49

§ 170-69 Site Plan Review Standards

M. Shoreland Relationship

(3) For a proposed development on a lot in existence on January 1, 2018 within the Atlantic Avenue Mixed Maritime/Water Dependent District that will consist of reconstruction or redevelopment of an existing principal non-residential structure in excess of 3,000 ~~4,000~~ square feet of floor area, construction of a new principal non-residential structure in excess of 3,000 ~~4,000~~ square feet of floor area or the construction of 3 or more common wall multi-family residential dwelling units, the following view corridor standards shall apply.

(a) An unobstructed view corridor from Atlantic Avenue to the harbor shall be created or maintained. Buildings shall not occupy more than 30 percent maximum of the lineal width of the site.

(b) The view corridor shall be exclusive of any required side setbacks and shall be a minimum of 20 feet in width plus (10%-15%-20%) of the frontage in excess of 100 feet.

(c) Surface parking may be located within these designated view corridors.

(d) §179-69.M(3) shall apply to all lots in the Atlantic Avenue Mixed Marine/Water Dependent District except the following:

- i. Map 16 Lot 29
- ii. Map 16 Lot 28A
- iii. Map 16 Lot 27
- iv. Map 16 Lot 26
- v. Map 16 Lot 25
- vi. Map 16 Lot 33A
- vii. Map 16 Lot 33B
- viii. Map 16 Lot 30
- ix. Map 16 Lot 21
- x. Map 10 Lot 32A

§170-113 Definitions

HALF STORY - The space under a sloping roof which has the line of intersection of the roof decking and wall face not more than three feet above the top floor level, and in which space not more than 1/2 of the floor area is finished off for use. A half story containing independent apartments or living quarters shall be counted as a full story.

3/29/18 Shoreland Zoning Amendments

§ 170-101.4 Official Shoreland Zoning Map; districts.

A. Official Shoreland Zoning Map. The areas to which this article is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this article:^[1]

Resource Protection District

Special Residential District/Limited Residential

General Residential District/Limited Commercial

Downtown Business District

General Business District/General Development

~~Atlantic Avenue Mixed Maritime/Water Dependent District~~ ~~Maritime Water Dependent District/~~
~~Commercial Fisheries/Maritime Activities~~

Stream Protection District

§ 170-101.8 Establishment of districts.

A. Resource Protection District. The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland Zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial, General Development I, or ~~Atlantic Avenue Mixed Maritime/Water Dependent Districts~~ ~~Commercial Fisheries/Maritime Activities Districts~~ need not be included within the Resource Protection District.

B. Special/Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District, the General Development Districts, or the ~~Atlantic Avenue Mixed Maritime/Water Dependent District~~ ~~Commercial Fisheries/Maritime Activities District~~.

The ~~Atlantic Avenue Mixed Maritime/Water Dependent District~~ ~~Commercial Fisheries/Maritime Activities District~~ includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, § 170-101.9, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

- (1) Shelter from prevailing winds and waves;
- (2) Slope of the land within 250 feet, horizontal distance, of the shoreline;
- (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- (4) Available support facilities, including utilities and transportation facilities; and
- (5) Compatibility with adjacent upland uses.

§ 170-101.10 Land use standards.

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	30,000 ^(Note 1)	150
(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure		
(i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
(ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	NONE ^(Note 1)	NONE ^(Note 1)
(iii) Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
(c) Public and Private Recreational Facilities		
(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200

NOTE: In a district equivalent to a General Development District that is served by municipal water and sewer systems the Department may approve a municipal shoreland zoning ordinance that provides for greater residential densities than set forth in Section 15(A)(1) above.

(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (5) Except as provided for in Note 1, if more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

(Note 1 –common wall multi-family residences in the Atlantic Avenue Mixed Maritime/Water Dependent District shall not exceed a density of 7,250 square feet per dwelling unit and shall require a minimum of 2,500 square feet of lot area per dwelling unit. Commercial structures in the Atlantic Avenue Mixed Maritime/Water Dependent District shall require 40,000 square feet of lot area a 200 feet of shore frontage per principal structure.) Lots within the Atlantic Avenue Mixed Maritime/Water Dependent District that are in the same ownership may be treated as if they are contiguous for the purposes of calculating density and siting of common wall multi-family residences except that required setbacks for each lot shall be maintained.

B. Principal and accessory structures.

(1) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Downtown Business I District and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Atlantic Avenue Mixed Maritime/Water Dependent District there shall be no minimum setback except that the minimum setback for residential structures shall be 75 feet and for commercial structures shall be 25 feet. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply. In addition:

(2) Except as provided for in § 170-101.11.H(2)(e) and (f) principal or accessory structures and expansions of existing structures, which are permitted in the Resource Protection, Special Residential District, General Residential District, and Stream Protection District, shall not exceed 30 feet in height. Principal or accessory structures and expansions of existing structures, which are permitted in the Atlantic Avenue Mixed Maritime/Water Dependent District shall not exceed 35 feet in height or 2 ½ stories, whichever is less. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

(3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least three feet one foot above the elevation of the one-hundred-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the Maine Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may

be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this subsection.

(4) The total footprint area of all structures, parking lots and other nonvegetated surfaces, within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Downtown Business District adjacent to tidal waters and rivers that do not flow to great ponds classified GPA, and in the Atlantic Avenue Mixed Maritime/Water Dependent District ~~Maritime Water Dependent District~~, where lot coverage shall not exceed 70%.

C. Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland.

(8) Except in the business districts and Atlantic Avenue Mixed Maritime/Water Dependent District ~~Commercial Fisheries/Maritime Activities District~~, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

(G) Parking areas.

(1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Atlantic Avenue Mixed Maritime/Water Dependent District ~~Maritime Water Dependent District~~, parking areas shall be set back at least 25 feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat-launching facilities, in districts other than the Downtown Business District and Maritime Water Dependent District, shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

P. Clearing or removal of vegetation for activities other than timber harvesting.

(4) Cleared openings.

(a) In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Business District or Atlantic Avenue Mixed Maritime/Water Dependent District ~~Maritime Water Dependent District~~.

§ 170-101.11 Administration

D. Procedure for Administering Permits

(3) After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

(g) Will not adversely affect existing commercial fishing or maritime activities in the Atlantic Avenue Mixed Maritime/Water Dependent District ~~Maritime Water Dependent District~~;

3/29/18

Recreational and Pedestrian Facilities and Open Space Impact Fee Ordinance

Article XII. Impact Fees

§170-114 Authority.

This article is adopted pursuant to home rule powers as provided for in Article VIII, Part 2, Section 1, of the Maine Constitution and 30-A M.R.S.A. §§ 3001 and 4354.

§170-115 Short title.

This article shall be known and may be cited as the "Recreational and Pedestrian Access Facilities and Open Space Impact Fee Ordinance of the Town of Boothbay Harbor, Maine" and will be referred to herein as "this article."

§170-116 Purpose.

The general purposes of this article are to maintain the Town's financial capacity to provide adequate public facilities to meet the additional needs for recreation, pedestrian access and open space created by future year-round and seasonal residents and visitors to the east side of Boothbay Harbor. Further, this article establishes a fair and equitable process by which to ensure that new residential and commercial development in the Atlantic Avenue Mixed Maritime/Water Dependent District will be accomplished in a safe and healthful manner and that such development will bear a proportional or reasonably related share of the cost of new, expanded or modified recreational and pedestrian infrastructure and open space necessary to service such development through the payment of impact fees that shall be dedicated to paying for the needed improvements.

§170-117 Applicability.

A. New residential structures:

- (1) This article shall apply to the issuance of any building permit for a new common wall residential structure within the Atlantic Avenue Mixed Maritime/Water Dependent District.
- (2) This article shall not apply to the issuance of a building permit for the repair, replacement or reconstruction of a residential structure that was unintentionally damaged or destroyed by fire, flood or other natural disaster, provided that the number of dwelling units is not increased.
- (3) This article shall apply to the issuance of a building permit for the replacement or reconstruction of a residential structure that was intentionally demolished if such replacement or reconstruction results in a new common wall residential structure.

B. Non-residential structures. This article shall apply to the issuance of a building permit for a new or substantially renovated nonresidential, non-maritime structure and associated facilities that exceed 3,000 ~~1,000~~ square feet in gross floor area.

C. No building permit shall be granted for any construction activity described herein that requires payment of an impact fee under this article until the impact fees hereby required have been paid.

§170-118 Definitions.

As used in this article, the following terms shall have the meanings indicated:

Common Wall Residential Structure. A type of residential building in which a wall separates two units in a condominium, duplex, or other multi-unit property.

Developer. A person who has received an approval for construction under either Article V Site Plan Review or Article IX Subdivision Review or a person who has otherwise applied for a building permit for any activity described herein.

Gross Floor Area. Includes the entire floor area of each floor measured from the outside of exterior walls, and shall include all interior partitions and spaces whether finished or not, but shall exclude basements, garages intended for the storage of automobiles, unheated porches and any portion of a room or attic with sloping ceilings measuring less than five feet from floor to ceiling.

Impact Fees. Charges or assessments imposed by the Town of Boothbay Harbor against structures described in §170-117 to help with the acquisition and development of recreation lands and facilities and for the acquisition and preservation of open space for the future use and enjoyment of the Town's year-round and seasonal residents and visitors.

Pedestrian Facilities. Includes sidewalks and pedestrian paths open to the public.

§170-119 Collection of fees.

The Code Enforcement Officer (CEO) shall collect the impact fee prior to the issuance of any building permit for residential construction that is subject to the fee. The amount of the fee shall be based upon the procedure set out in §170-24 below.

§170-120 Impact fee account.

All impact fees collected under the provisions of this article shall be segregated from the Town's general fund revenue and be accounted for in a separate impact fee account.

§170-121 Use of impact fees.

A. Impact fees collected under the provisions of this article shall only be used to pay for site acquisition and capital improvements for the creation or expansion of recreational facilities, for the acquisition and related improvements of open space and the creation of ~~pedestrian facilities a sidewalk on the westerly side of Atlantic Avenue or between Atlantic Avenue and the waterfront~~ within the Atlantic Avenue Mixed Maritime/Water Dependent District or to enhance harbor access for boaters and pedestrians from the Pedestrian Footbridge. No portion of the fee shall be used for routine maintenance or operation activities.

B. The following costs are examples of, but are not intended to limit, capital improvements:

- (1) Acquisition of land or easements, including conservation easements and development rights.
- (2) Engineering, surveying and environmental assessment services directly related to the acquisition, design, construction and continued upgrading of the improvement.
- (3) The actual construction of the improvement, including, without limitation, demolition costs, clearing and grading of land, and necessary capital equipment dedicated to the site.
- (4) Mitigation costs.
- (5) Legal and administrative costs associated with construction of the improvement, including any borrowing necessary to finance the project.
- (6) Debt service costs, including interest if the Town borrows for the acquisition or construction of the improvement.
- (7) Relocation costs.
- (8) Matching funds for grants awarded by regional, state or federal agencies or non-profit entities for activities described in §170-21.A.
- (9) Similar costs that are directly related to the improvement project.

§170-122 Refunds.

- A. If a building permit or other relevant permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance. A request for a refund shall be made in writing to the CEO and shall occur within 90 days of the expiration of the permit.
- B. If the funds collected annually are not expended or obligated by contract for their intended purpose by the end of the calendar quarter immediately following 10 years from the date the fee was paid, the prorated share of the funds shall be returned to the current owner of the property for which the fee was paid, provided that a request is made in writing to the CEO within 180 days of the expiration of the ten-year period.

§170-123 Waiver of impact fee.

The Board of Selectmen may, by formal vote following a public hearing, waive the payment of a required impact fee, in whole or in part, if it finds that:

- A. The developer or property owner who would otherwise be responsible for the payment of the impact fee voluntarily agrees to construct an improvement for which the impact fee would be collected or an equivalent improvement approved by the Board of Selectmen.
- B. The developer of a subdivision offers to dedicate and/or improve public lands or recreational amenities and the Board of Selectmen finds these public lands or recreational amenities to be of Town-wide benefit.

§170-124 Calculation of fee.

The recreational and pedestrian facilities and open space impact fee shall 5% of construction costs of the structures and associated facilities described in §170-117. The total amount of the impact fee due for each project shall be determined by the developer, subject to the approval of the CEO, using the impact fee calculation worksheet provided by the CEO. The Board of Selectmen may vote pursuant to a public hearing to incur one or more of the costs identified in §170-121, including construction of a

sidewalk on the westerly side of Atlantic Avenue, before sufficient impact fees have been paid into the impact fee account, in which case the town shall be reimbursed for such costs as impact fees are subsequently collected.

§170-125 Effect on other regulations.

Should any section, phrase, sentence or portion of this article be found to be in conflict with other local, state or federal ordinances or regulations, the more stringent section or provision shall prevail. Existing provisions for building permit fees are to be held separate from the impact fees described herein and are not affected by this article.

§170-126 Periodic review; amendments.

The Board of Selectmen shall periodically review each impact fee established under this article. If the Board finds that the anticipated cost of the improvement has changed or that the identification of development subject to the fee is no longer appropriate, the Board may adopt changes to the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not apply retroactively to projects that have already paid an impact fee. A public hearing shall be held prior to the adoption of any amendment. Notice of such public hearing shall be in accordance with state and local requirements.

§170-127 Appeals.

A developer may appeal the determination of the CEO as to either the applicability of the impact fee to a particular project or the amount of the fee to be paid. Appeals shall be made in writing to the CEO within 10 days of the CEO's initial determination of the amount of the impact fee due for a particular residential structure. The Board of Appeals shall consider such appeal at its next regularly scheduled meeting and shall issue a determination either upholding the CEO's decision or modifying the CEO's decision within seven days of the date of the hearing at which the appeal was heard.