BOOTHBAY HARBOR PLANNING BOARD AUGUST 8, 2018 Page 1 of 31

**BOOTHBAY HARBOR PLANNING BOARD**

MINUTES OF PUBLIC HEARING

**August 8, 2018**

MEMBERS PRESENT: Thomas Churchill, Vice Chairman

 Lee Corbin, Second Alternate

 Jon Dunsford, First Alternate

 William Hamblen, Chairman

 John Hochstein

 Margaret Perritt

 Chris Swanson

 CEO, Geoff Smith

In addition to these typed minutes, audio recordings are available to be listened to at the Boothbay Harbor Town Office.

**OLD BUSINESS**

* Approval of July 11, 2018 Minutes

**NEW BUSINESS**

* Linekin Bay Holdings, LLC, represented by Knickerbocker Group, 92 Wall Point Road, Map 17/Lot 18; Applicant is applying to reconstruct a non-conforming structure in the Shoreland Zone, in another non-conforming location, requiring approval by the Planning Board under Chapter 170, Article VI, §170-83 (E)
* Footbridge Brewery LLC, 25 Granary Way, Map 20/Lot 91; Applicant is seeking approval to open a brewery, including on-site production, retail sales, and tastings, requiring approval by the Planning Board under Chapter 170, Article III, §170-27
* Jennie Jones, DBA Brady’s, 25 Union St., Map 20/Lot 69; Applicant is seeking approval to open a restaurant, requiring approval by the Planning Board under Chapter 170, Article III, §170-27

**OTHER BUSINESS**

* Continue discussion of possible amendments to the ordinance

8/8/18 Page 2 of 31

Chairman Hamblen called the August 8, 2018 Planning Board meeting to order, stating they had a full Board so the Alternates would be participating but not voting that evening.

Chairman Hamblen stated they'd sent the modified proposed ordinance changes to the DEP and did not get the response they expected concerning some of the items it contained. Therefore they would go through the applications on the agenda first then since they'd just gotten the DEP response, which hasn't given the Board enough time to respond, they'd plan another workshop to talk about it then.

**OLD BUSINESS**

Chairman Hamblen stated he would like to make two amendments to the minutes of the July 11, 2018 meeting. The second sentence on page 3 should say there are 19 **waterfront** parcels of land and in the first sentence there is a reference to an attachment that is missing which should be added.

Chris Swanson **motioned** to approve the amended minutes. Margaret Perritt **seconded**. **Unanimous approval**.

**NEW BUSINESS**

Chairman Hamblen stated the first application was from Linekin Bay and invited the representatives to explain what they were planning to do.

Zander Shaw, of Knickerbocker Group, representing Linekin Bay, stated they were planning to reconstruct the non-conforming lodging building known as Mahawie, moving it back 14' west and 1.5' north from the shore (which had been recommended at the pre-application hearing). The remodeled building will have less rooms requiring less parking space. There will also be controlled storm water drainage and structural support will be located outside of the flood plain. The area and volume expansions are within the 30% expansion allowed.

Thomas Churchill questioned the "controlled storm water drainage." Zander Shaw explained a controlled storm water drainage plan did not exist before; that they would divert the water from the high side of the building into a gravel culvert. Jon Dunsford stated they need an engineer's calculation to show it will not accelerate the runoff.

Zander Shaw confirmed the nearby buildings were in good condition so would not be renovated in the near future (when they might also be moved back from the shore).

Chairman Hamblen started the Findings of Fact process.

8/8/18 Page 3 of 31

**Findings of Fact:**

1. The owners are Linekin Bay Holdings LLC., represented by Knickerbocker Group, relating to the property located at 92 Wall Point Rd. Property taxes on account of the premises for which the approval is requested have been paid in full.
2. The property is in the General Residential zoning district, and the Shoreland Overlay District. The property is further identified as Assessor’s Tax Map/Lot: 17/18. The property can be reviewed at the Lincoln County Registry of Deeds under Book 3965, Page 171.
3. The applicant proposes to demolish, reconstruct, and expand a non-conforming structure in accordance with **Chapter 170, Article VIII, §170-101.7**. This application is subject to Site Plan Review Standards, under **Chapter 170, Article V, §170-69**.

# Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

**Right, Title or Interest in the Property**

The applicant \_\_X\_\_***has/***\_\_\_\_\_\_***has not*** demonstrated Right, Title or Interest on the property in question.

**Motion made by \_\_\_**Chris Swanson**\_\_\_, seconded by \_\_\_**Margaret Perritt**\_\_\_**

**Vote\_\_**Unanimous**\_\_ \_\_**All**\_\_In Favor \_\_\_\_\_\_Against**

**Chapter 170, §170-69,** [**Site plan review standards.**](http://ecode360.com/8628292#8628292)

[**A.**](http://ecode360.com/8628293#8628293)**Utilization of site**. The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

[**B.**](http://ecode360.com/8628294#8628294)**Traffic access.**

[**(1)**](http://ecode360.com/14420317#14420317)Adequacy of road system.

[**(a)**](http://ecode360.com/14420318#14420318)Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate 50 or more peak-hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one mile of any entrance road which are functioning at Level of Service D or better prior to the development must function, at a minimum, at Level of Service D after development. If any such intersection is functioning at Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area

8/8/18 Page 4 of 31

designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

[**(b)**](http://ecode360.com/14420319#14420319)A development not meeting this requirement may be approved if the applicant demonstrates that:

[**[1]**](http://ecode360.com/14420320#14420320)A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or

[**[2]**](http://ecode360.com/14420321#14420321)The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guaranty acceptable to the municipality.

[**(2)**](http://ecode360.com/14420322#14420322)Access into site. Vehicular access to and from the development must be safe and convenient.

[**(a)**](http://ecode360.com/14420323#14420323)Any driveway or proposed street must be designed to provide the minimum sight distance as required by § [**170-54C(8)**](http://ecode360.com/14419939#14419939).

[**(b)**](http://ecode360.com/14420324#14420324)Points of access and egress must be located to avoid hazardous conflict with existing turning movements and traffic flows.

[**(c)**](http://ecode360.com/14420325#14420325)The grade of any proposed drive or street must not be more than plus or minus 3% for a minimum of two car lengths, or 40 feet, from the intersection.

[**(d)**](http://ecode360.com/14420326#14420326)The intersection of any access/egress drive or proposed street must function at Level of Service D following development if the project will generate 100 or more peak-hour trips or at a level which will allow safe access into and out of the project if fewer than 100 peak-hour trips are generated.

[**(e)**](http://ecode360.com/14420327#14420327)Where a lot has frontage on two or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed by the Planning Board if it finds if it is safe and does not promote shortcutting through the site.

[**(f)**](http://ecode360.com/14420328#14420328)Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands and traffic controls within public streets.

[**(g)**](http://ecode360.com/14420329#14420329)Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

[**(h)**](http://ecode360.com/14420330#14420330)The following criteria must be used to limit the number of driveways serving a proposed project:

[**[1]**](http://ecode360.com/14420331#14420331)No use which generates fewer than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway must be no greater than 30 feet wide.

[**[2]**](http://ecode360.com/14420332#14420332)No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways must not exceed 60 feet.

[**(3)**](http://ecode360.com/14420333#14420333)Accessway location and spacing. Accessways must meet the following standards:

[**(a)**](http://ecode360.com/14420334#14420334)Private entrances/exits must be located at least 50 feet from the closest unsignalized intersection and 150 feet from the closest signalized intersection, as measured from the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

[**(b)**](http://ecode360.com/14420335#14420335)Private accessways in or out of a development must be separated by a minimum of 75 feet where possible.

8/8/18 Page 5 of 31

[**(4)**](http://ecode360.com/14420336#14420336)Internal vehicular circulation. The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.

[**(a)**](http://ecode360.com/14420337#14420337)Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles.

[**(b)**](http://ecode360.com/14420338#14420338)Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

[**(c)**](http://ecode360.com/14420339#14420339)The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

[**(d)**](http://ecode360.com/14420340#14420340)All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.

[**C.**](http://ecode360.com/8628295#8628295)**Parking layout and design shall comply with §**[**170-50**](http://ecode360.com/8628074#8628074)**and the applicable performance standards of Article**[**IV**](http://ecode360.com/8627861#8627861)**.**

[Amended 5-2-2015 by ATM Art. 34]

[**D.**](http://ecode360.com/8628296#8628296)**Pedestrian access.**

[**(1)**](http://ecode360.com/14420341#14420341)The site plan must provide for a system of pedestrianways within the development appropriate to the type and scale of the development. This system must connect the major building entrances and exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in an open space or recreation areas. The system must be designed to connect the project to residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect to amenities, such as parks or open space on or adjacent to the site.

[**(2)**](http://ecode360.com/14420342#14420342)When an existing or planned sidewalk is interrupted by a proposed project entrance, the sidewalk must be constructed and marked to distinguish it as a sidewalk or cross walk in compliance with all applicable slopes and markings. Furthermore, if street vegetation or trees exist on an adjacent property, like or similar vegetation or trees must be planted on the new site. In urban situations, a widening of a sidewalk onto private property to encourage local commerce and improved streetscape should be encouraged. Benches, sculptures, planters and other street furniture should be encouraged.

[**E.**](http://ecode360.com/8628297#8628297)**Buildings.**

[**(1)**](http://ecode360.com/14420343#14420343)Building placement.

[**(a)**](http://ecode360.com/14420344#14420344)The site design should avoid creating a building surrounded by a parking lot.

[**(b)**](http://ecode360.com/14420345#14420345)In urban built-up areas, buildings should be placed close to the street, in conformance with existing adjacent setbacks. Parking should be to the side preferably in the back.

[**(c)**](http://ecode360.com/14420346#14420346)In rural uncongested areas, buildings should be set well back from the road to conform to the rural character of the area. If the parking is in front, a fifteen-foot or greater landscape buffer between the

8/8/18 Page 6 of 31

road and the parking lot shall be provided. Unused areas should be kept natural, as field, forest, wetland etc.

[**(d)**](http://ecode360.com/14420347#14420347)Where two or more buildings are proposed, the buildings should be grouped and connected with sidewalks. Tree plantings should be used to provide shade and break up the scale of the site. Parking should be separated from the building by a minimum of five to 10 feet. Planting should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

[**(2)**](http://ecode360.com/14420348#14420348)Setback and alignment of buildings. Where is a reasonably uniform relationship between the front walls of buildings and the street, new buildings must be placed on a lot in conformance with the established relationship. For buildings on corner lots, the setback relationship of both streets should be maintained. The creation of empty corners should be avoided through the placement of the building and other site features.

[**(3)**](http://ecode360.com/14420349#14420349)Building entrances.

[**(a)**](http://ecode360.com/14420350#14420350)The main entrance to the building should be oriented to the street, unless the parking layout or grouping of the buildings justifies another approach, and should be clearly identified as such through building and site design, landscaping, and signage.

[**(b)**](http://ecode360.com/14420351#14420351)At the building entrance areas and dropoff areas, site furnishings such as benches and sitting walls and, if appropriate, bicycle racks shall be encouraged.

[**(c)**](http://ecode360.com/14420352#14420352)Additional plantings may be desirable at these points to identify the building entrance and to complement the pedestrian activity at this point.

[**(4)**](http://ecode360.com/14420353#14420353)Building illumination.

[**(a)**](http://ecode360.com/14420354#14420354)Building facades may be illuminated with soft lighting of low intensity that does not draw inordinate attention to the building. The light source for the building façade illumination must be concealed.

[**(b)**](http://ecode360.com/14420355#14420355)Building entrances may be illuminated using recessed lighted in overages and soffits or by use of spotlighting focused on the building entrance with the light source concealed (e.g., in landscaped areas.) Direct lighting of limited exterior building areas is permitted when necessary for security purposes.

[**(5)**](http://ecode360.com/14420356#14420356)Drive-through facilities. Any use that provides drive-through service must be located and designed to minimize the impact on neighboring properties and traffic circulation. No drive-through facility shall be located in an area of the site adjacent to a residential use or residential zone. Communication systems must not be audible on adjacent property in a residential use. Vehicle access to the drive-through shall be through a separate lane that prevents vehicle queuing within normal parking areas. A minimum of 12 queuing spaces must be provided to prevent any vehicles from having to wait on a public way, within the entry from the street or within designated parking areas. The drive-through must not interfere with any pedestrianway or bicycle path.

[**F.**](http://ecode360.com/8628298#8628298)**Storage of materials.**

8/8/18 Page 7 of 31

[**(1)**](http://ecode360.com/8628299#8628299)Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse (cross reference § [**170-34**](http://ecode360.com/8627894#8627894)) must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential use and users of a public way.

[**(2)**](http://ecode360.com/8628300#8628300)All dumpsters or similar large collection receptacles for trash or other waste must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

[**(3)**](http://ecode360.com/8628301#8628301)Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter children from entering the premises must be provided and maintained in good condition.

[**G.**](http://ecode360.com/8628305#8628305)**Water supply:** must comply with § [**170-106B(6)**](http://ecode360.com/14420798#14420798), except that the development shall be served by public water if it is available within 500 feet of the project parcel.

[**H.**](http://ecode360.com/8628324#8628324)**Sewage disposal.**

[**(1)**](http://ecode360.com/8628325#8628325)Must comply with § [**170-106B(7)**](http://ecode360.com/14420804#14420804) except that the development shall be served by public sewer if it is available within 500 feet of the project parcel. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system must occur if and when the subsurface system needs to be replaced.

[**(2)**](http://ecode360.com/8628326#8628326)When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

[**(3)**](http://ecode360.com/8628327#8628327)Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction, and dilution.

[**I.**](http://ecode360.com/14420357#14420357)**Utilities.** The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be underground.

[**J.**](http://ecode360.com/14420358#14420358)**Natural features**. The landscape must be preserved in its natural state insofar as practical by limiting tree removal to access, parking areas, utility installation and areas within 25 feet of a building unless approved by the Planning Board as part of a landscaping plan. In addition, disturbance and compaction of soils shall be minimized and existing vegetation shall be retained insofar as practical during construction. No trees shall be removed prior to final approval. Extensive grading and filling must be avoided as far as possible.

[**K.**](http://ecode360.com/14420359#14420359)**Water quality protection.** All aspects of the project must be designed so that:

[**(1)**](http://ecode360.com/14420360#14420360)No person shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute or harm such

8/8/18 Page 8 of 31

waters. No person shall cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant or aquatic life.

[**(2)**](http://ecode360.com/14420361#14420361)All storage facilities for fuel, chemicals, chemical or industrial wastes and biodegradable raw materials must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.

[**L.**](http://ecode360.com/14420362#14420362)**Hazardous, special and radioactive materials.**

[**(1)**](http://ecode360.com/14420363#14420363)The handling, storage and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

[**(2)**](http://ecode360.com/14420364#14420364)No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials must be stored in a manner and location which complies with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state and local regulations.

[**M.**](http://ecode360.com/14420365#14420365)**Shoreland relationship.**

[**(1)**](http://ecode360.com/14420366#14420366)The development must not adversely affect the water quality or shoreline of any adjacent water body or wetland. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.

[**(2)**](http://ecode360.com/14420367#14420367)When a proposed development is immediately visible from a great pond, river or stream, the development must be designed so that it fits harmoniously into the visual environment when viewed from the water body. In predominantly natural environments, site clearing must be minimized, natural vegetation must be maintained adjacent to the shoreline to soften the appearance of the development and vegetation must be retained or provided to minimize the visual intrusion of the development. In developed shoreland environments, the appearance of the new developments when viewed from the water must be compatible with the existing visual character in terms of scale, massing and height to the maximum extent possible. Storage and service areas must be screened or landscaped to minimize their visual impact.

[**N.**](http://ecode360.com/14420368#14420368)**Capacity of the applicant.** The applicant must demonstrate that he/she has the financial and technical capacity to carry out the project in accordance with this chapter and the approved plan.

[**O.**](http://ecode360.com/14420369#14420369)**Solid waste management**. The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

[**P.**](http://ecode360.com/14420370#14420370)**Historic and archaeological resources**. If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation. All work shall be in accordance with the Secretary of Interior's Standards for the Treatment of Historic Properties.

8/8/18 Page 9 of 31

[**Q.**](http://ecode360.com/14420371#14420371)**Floodplain management.** If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's floodplain management provisions.[**[1]**](http://ecode360.com/8628292#ft14420371-1)

[[1]](http://ecode360.com/8628292#ref14420371-1)

*Editor's Note: See Art. VII, Floodplain Management.*

[**R.**](http://ecode360.com/14420372#14420372)**Additional Route 27 design standards.** Notwithstanding the general provisions of Chapter [**170**](http://ecode360.com/8627687#8627687), Land Use, and the technical standards of Article [**V**](http://ecode360.com/8628247#8628247), Site Plan Review, development and redevelopment within 500 feet of that portion of Route 27 extending from the Boothbay Town line to Route 96 shall be consistent with the following standards.

[**(1)**](http://ecode360.com/14420373#14420373)Nonresidential parking areas shall be located at or behind the facade of the principal building.

[**(2)**](http://ecode360.com/14420374#14420374)Direct access to Route 27 shall be limited to no more than one per property unless adjacent properties share an access, in which case a property may have one dedicated access and one shared access to Route 27.

[**(3)**](http://ecode360.com/14420375#14420375)Parking areas on adjacent properties shall be interconnected with internal vehicle and pedestrian accesses.

[**(4)**](http://ecode360.com/14420376#14420376)Parking spaces for seasonal uses may be developed on grass surfaces or other pervious surfaces designed for parking.

[**(5)**](http://ecode360.com/14420377#14420377)The minimum number of parking spaces required in § [**170-50I**](http://ecode360.com/14419555#14419555) may be reduced by the Planning Board if the parking lot is to be shared by two or more uses that require parking during different time periods.

[**S.**](http://ecode360.com/14420378#14420378)**Off-site improvement**s. All off-site improvements required by the Planning Board, including but not limited to roads, intersections, signalization, sidewalks and drainage, shall be installed by the applicant at his or her expense.

# Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

**Site Plan Review Standards**

The applicant \_ X\_\_***has/***\_\_\_\_\_\_***has not*** satisfied Site Plan Review Standards on the property in question.

**Motion made by \_\_** Margaret Perritt **\_\_, seconded by \_\_** Chris Swanson **\_\_\_**

**Vote\_\_\_** Unanimous **\_\_\_ \_\_** All **\_\_In Favor \_\_\_\_\_\_Against**

**Chapter 170, Article VIII, §170-101.7**

[**A.**](http://ecode360.com/8628900#8628900)Purpose. It is the intent of this article to promote land use conformities, except that nonconforming conditions that existed before the effective date of this article or amendments thereto shall be allowed to continue, subject to the requirements set forth in § [**170-101.7**](http://ecode360.com/8628899#8628899) except as otherwise provided in this article. A nonconforming condition shall not be permitted to become more nonconforming.

[**B.**](http://ecode360.com/8628901#8628901)General.

8/8/18 Page 10 of 31

[**(1)**](http://ecode360.com/8628902#8628902)Transfer of ownership. Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this article.

[**(2)**](http://ecode360.com/8628903#8628903)Repair and maintenance. This article allows the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

C. Nonconforming structures.

[**(1)**](http://ecode360.com/8628905#8628905)Expansions. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with Subsection [**C(1)(a)**](http://ecode360.com/8628906#8628906) and [**(b)**](http://ecode360.com/8628907#8628907) below:

[**(a)**](http://ecode360.com/8628906#8628906)After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, in, on or over the water, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection [**C(3)**](http://ecode360.com/8628916#8628916) and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989, had been expanded by 30% in floor area and volume since that date.

[Amended 5-5-2012 by ATM Art. 28]

[**(b)**](http://ecode360.com/8628907#8628907)Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure:

[**[1]**](http://ecode360.com/8628908#8628908)The structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Subsection [**C(2)**](http://ecode360.com/8628910#8628910), Relocation, below.

[**[2]**](http://ecode360.com/8628909#8628909)If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with Subsection [**C(1)(a)**](http://ecode360.com/8628906#8628906) above, and the foundation does not cause the structure to be elevated by more than three additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

[**(2)**](http://ecode360.com/8628910#8628910)Relocation.

[**(a)**](http://ecode360.com/8628911#8628911)A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with

8/8/18 Page 11 of 31

the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

[**(b)**](http://ecode360.com/8628912#8628912)In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

[**[1]**](http://ecode360.com/8628913#8628913)Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

[**[2]**](http://ecode360.com/8628914#8628914)Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed, or removed.

[**[3]**](http://ecode360.com/8628915#8628915)Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees, or a combination thereof.

[**(3)**](http://ecode360.com/8628916#8628916)Reconstruction or replacement.

[**(a)**](http://ecode360.com/8628917#8628917)Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the assessed value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this article. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Subsection [**C(1)**](http://ecode360.com/8628905#8628905) above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original

8/8/18 Page 12 of 31

structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Subsection [**C(2)**](http://ecode360.com/8628910#8628910) above.

[**(b)**](http://ecode360.com/8628918#8628918)Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the Town's assessed value, or damaged or destroyed by 50% or less of the Town's assessed value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained, from the Code Enforcement Officer within one year of such damage, destruction, or removal.

[**(c)**](http://ecode360.com/8628919#8628919)In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Planning Board or its designee shall consider, in addition to the criteria in Subsection [**C(2)**](http://ecode360.com/8628910#8628910) above, the physical condition and type of foundation present, if any.

[**(4)**](http://ecode360.com/8628920#8628920)Change of use of a nonconforming structure.

[**(a)**](http://ecode360.com/8628921#8628921)The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

[**(b)**](http://ecode360.com/8628922#8628922)In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

[**D.**](http://ecode360.com/8628923#8628923)Nonconforming uses.

[**(1)**](http://ecode360.com/8628924#8628924)Expansions. Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Subsection [**C(1)(a)**](http://ecode360.com/8628906#8628906) above.

[**(2)**](http://ecode360.com/8628925#8628925)Resumption prohibited. A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure, provided that the structure has been used or maintained for residential purposes during the preceding five-year period.

[**(3)**](http://ecode360.com/8628926#8628926)Change of use. An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water-dependent uses in the CFMA District, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Subsection [**C(4)**](http://ecode360.com/8628920#8628920) above.

8/8/18 Page 13 of 31

[**E.**](http://ecode360.com/8628927#8628927)Nonconforming lots.

[**(1)**](http://ecode360.com/8628928#8628928)Nonconforming lots. A nonconforming lot of record as of January 1, 1989, may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this article except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

[**(2)**](http://ecode360.com/8628929#8628929)Contiguous built lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this article, if all or part of the lots do not meet the dimensional requirements of this article, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§ 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

[**(3)**](http://ecode360.com/8628930#8628930)Contiguous lots. Vacant or partially built. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this article, if any of these lots do not individually meet the dimensional requirements of this article or subsequent amendments, and if one or more of the lots is vacant or contains no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

The applicant \_ X\_\_***has/***\_\_\_\_\_\_***has not*** demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article VIII, §170-101.7** of the Town of Boothbay Harbor Zoning Ordinance.

**Motion made by \_\_\_** Chris Swanson **\_\_\_, seconded by \_\_** Margaret Perritt **\_\_\_**

**Vote\_\_** Unanimous **\_\_\_ \_\_** All **\_\_In Favor \_\_\_\_\_\_Against**

**If the criteria have not been met, the reasons are explained below;**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Conditions of Approval or Addendums**

\_\_The applicant provide an engineered storm water run-off plan suitable to the Code Enforcement Officer prior to construction.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8/8/18 Page 14 of 31

**Decision**

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on motion made by \_\_\_ \_\_ Chris Swanson\_and seconded by \_\_\_Margaret Perritt\_\_\_, the Planning Board

\_\_\_ X\_\_\_\_**Approves**  \_\_\_\_\_\_\_\_\_\_\_**Denies**

this application subject to the conditions of approval set forth above, all for the reasons set forth in the findings and conclusions.

**Vote\_\_** Unanimous **\_\_ \_\_** All**\_\_In Favor \_\_\_\_\_\_Against**

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

**Appeal**

Any appeal from this decision must be made to the Board of Appeals within 30 days after the date of the decision of the Planning Board, in accordance with the Article X of the Land Use Ordinance.

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

Chairman Hamblen stated the next application is the Footbridge Brewery from Nick Ullo and Dan Pangburn.

Nick Ullo explained that he and Dan Pangburn were seeking approval to open a brewery at 25 Granary Way (under the Whoopie Pie store, facing out toward the Footbridge). There would be on-site production, tasting and retail sales of growlers, pints and kegs. They are not planning to sell food but people could bring their own at first then maybe partner with restaurants to provide food in the future.

Nick stated they were working through the "second means of egress" with the fire marshal. There will be no open flames. Also, solid waste material will be hauled off to the dump on the same day it is created so no dumpster will be needed. They are in Downtown Business District A so are not required to provide parking space and microbreweries are permitted. They expect to produce double batches of three barrels (under 100 gallons) per week so 24 barrels per month and will be open year-round.

Chairman Hamblen started the Findings of Fact process.

8/8/18 Page 15 of 31

**Findings of Fact:**

1. The owner is Footbridge Brewery LLC, relating to the property located at 25 Granary Way. Property taxes on account of the premises for which the approval is requested have been paid in full.
2. The property is in the Downtown Business A zoning district, and the Shoreland Overlay District. The property is further identified as Assessor’s Tax Map/Lot: 20/91.
3. The applicants propose opening a brewery in accordance with Chapter 170, Article VIII, §170-53, and Article V, §170-69.

# Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

**Right, Title or Interest in the Property**

The applicants \_X\_***have/***\_\_\_\_\_\_***have not*** demonstrated Right, Title or Interest on the property in question.

**Motion made by \_\_\_**Chris Swanson**\_\_\_, seconded by \_\_\_**Thomas Churchill**\_\_\_**

**Vote\_\_**Unanimous**\_\_\_ \_\_** All**\_\_In Favor \_\_\_\_\_\_Against**

**Chapter 170, Article VIII, §170-53**

No retail/wholesale sales or services of food, beverages or other items intended for immediate human consumption shall be offered or solicited except on privately owned property, in which the retail sales or services are located, except for restaurants, which may offer on-premises consumption incidental to the operation of the restaurant on a deck, porch or equivalent structure or in a garden, patio or equivalent area. Before approval or use of a drive-up or take-out window, the applicant or operator shall submit to the Town a litter control plan suitable for the service provided. No drive-up or take-out window may interfere with the public’s use of a public way. This provision shall not apply to civic events or statewide or regional events of nonprofit organizations.

**Chapter 170, Article V, §170-69**

[A.](http://ecode360.com/8628293#8628293)Utilization of site. The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include

8/8/18 Page 16 of 31

appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

[B.](http://ecode360.com/8628294#8628294)Traffic access.

[(1)](http://ecode360.com/14420317#14420317)Adequacy of road system.

[(a)](http://ecode360.com/14420318#14420318)Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate 50 or more peak-hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one mile of any entrance road which are functioning at Level of Service D or better prior to the development must function, at a minimum, at Level of Service D after development. If any such intersection is functioning at Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

[(b)](http://ecode360.com/14420319#14420319)A development not meeting this requirement may be approved if the applicant demonstrates that:

[[1]](http://ecode360.com/14420320#14420320)A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or

[[2]](http://ecode360.com/14420321#14420321)The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guaranty acceptable to the municipality.

[(2)](http://ecode360.com/14420322#14420322)Access into site. Vehicular access to and from the development must be safe and convenient.

[(a)](http://ecode360.com/14420323#14420323)Any driveway or proposed street must be designed to provide the minimum sight distance as required by § [170-54C(8)](http://ecode360.com/14419939#14419939).

[(b)](http://ecode360.com/14420324#14420324)Points of access and egress must be located to avoid hazardous conflict with existing turning movements and traffic flows.

[(c)](http://ecode360.com/14420325#14420325)The grade of any proposed drive or street must not be more than plus or minus 3% for a minimum of two car lengths, or 40 feet, from the intersection.

[(d)](http://ecode360.com/14420326#14420326)The intersection of any access/egress drive or proposed street must function at Level of Service D following development if the project will generate 100 or more peak-hour trips or at a level which will allow safe access into and out of the project if fewer than 100 peak-hour trips are generated.

[(e)](http://ecode360.com/14420327#14420327)Where a lot has frontage on two or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed by the Planning Board if it finds if it is safe and does not promote shortcutting through the site.

[(f)](http://ecode360.com/14420328#14420328)Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands and traffic controls within public streets.

[(g)](http://ecode360.com/14420329#14420329)Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

[(h)](http://ecode360.com/14420330#14420330)The following criteria must be used to limit the number of driveways serving a proposed project:

[[1]](http://ecode360.com/14420331#14420331)No use which generates fewer than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway must be no greater than 30 feet wide.

[[2]](http://ecode360.com/14420332#14420332)No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways must not exceed 60 feet.

[(3)](http://ecode360.com/14420333#14420333)Accessway location and spacing. Accessways must meet the following standards:

[(a)](http://ecode360.com/14420334#14420334)Private entrances/exits must be located at least 50 feet from the closest unsignalized intersection and 150 feet from the closest signalized intersection, as measured from the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

8/8/18 Page 17 of 31

[(b)](http://ecode360.com/14420335#14420335)Private accessways in or out of a development must be separated by a minimum of 75 feet where possible.

[(4)](http://ecode360.com/14420336#14420336)Internal vehicular circulation. The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.

[(a)](http://ecode360.com/14420337#14420337)Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles.

[(b)](http://ecode360.com/14420338#14420338)Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

[(c)](http://ecode360.com/14420339#14420339)The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

[(d)](http://ecode360.com/14420340#14420340)All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.

[C.](http://ecode360.com/8628295#8628295)Parking layout and design. See § [170-50](http://ecode360.com/8628074#8628074).

[D.](http://ecode360.com/8628296#8628296)Pedestrian access.

[(1)](http://ecode360.com/14420341#14420341)The site plan must provide for a system of pedestrianways within the development appropriate to the type and scale of the development. This system must connect the major building entrances and exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in an open space or recreation areas. The system must be designed to connect the project to residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect to amenities, such as parks or open space on or adjacent to the site.

[(2)](http://ecode360.com/14420342#14420342)When an existing or planned sidewalk is interrupted by a proposed project entrance, the sidewalk must be constructed and marked to distinguish it as a sidewalk or cross walk in compliance with all applicable slopes and markings. Furthermore, if street vegetation or trees exist on an adjacent property, like or similar vegetation or trees must be planted on the new site. In urban situations, a widening of a sidewalk onto private property to encourage local commerce and improved streetscape should be encouraged. Benches, sculptures, planters and other street furniture should be encouraged.

[E.](http://ecode360.com/8628297#8628297)Buildings.

[(1)](http://ecode360.com/14420343#14420343)Building placement.

[(a)](http://ecode360.com/14420344#14420344)The site design should avoid creating a building surrounded by a parking lot.

[(b)](http://ecode360.com/14420345#14420345)In urban built-up areas, buildings should be placed close to the street, in conformance with existing adjacent setbacks. Parking should be to the side preferably in the back.

[(c)](http://ecode360.com/14420346#14420346)In rural uncongested areas, buildings should be set well back from the road to conform to the rural character of the area. If the parking is in front, a fifteen-foot or greater landscape buffer between the road and the parking lot shall be provided. Unused areas should be kept natural, as field, forest, wetland etc.

[(d)](http://ecode360.com/14420347#14420347)Where two or more buildings are proposed, the buildings should be grouped and connected with sidewalks. Tree plantings should be used to provide shade and break up the scale of the site. Parking should be separated from the building by a minimum of five to 10 feet. Planting should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

[(2)](http://ecode360.com/14420348#14420348)Setback and alignment of buildings. Where is a reasonably uniform relationship between the front walls of buildings and the street, new buildings must be placed on a lot in conformance with the established relationship. For buildings on corner lots, the setback relationship of both streets should be maintained. The creation of empty corners should be avoided through the placement of the building and other site features.

8/8/18 Page 18 of 31

[(3)](http://ecode360.com/14420349#14420349)Building entrances.

[(a)](http://ecode360.com/14420350#14420350)The main entrance to the building should be oriented to the street, unless the parking layout or grouping of the buildings justifies another approach, and should be clearly identified as such through building and site design, landscaping, and signage.

[(b)](http://ecode360.com/14420351#14420351)At the building entrance areas and dropoff areas, site furnishings such as benches and sitting walls and, if appropriate, bicycle racks shall be encouraged.

[(c)](http://ecode360.com/14420352#14420352)Additional plantings may be desirable at these points to identify the building entrance and to complement the pedestrian activity at this point.

[(4)](http://ecode360.com/14420353#14420353)Building illumination.

[(a)](http://ecode360.com/14420354#14420354)Building facades may be illuminated with soft lighting of low intensity that does not draw inordinate attention to the building. The light source for the building façade illumination must be concealed.

[(b)](http://ecode360.com/14420355#14420355)Building entrances may be illuminated using recessed lighted in overages and soffits or by use of spotlighting focused on the building entrance with the light source concealed (e.g., in landscaped areas.) Direct lighting of limited exterior building areas is permitted when necessary for security purposes.

[(5)](http://ecode360.com/14420356#14420356)Drive-through facilities. Any use that provides drive-through service must be located and designed to minimize the impact on neighboring properties and traffic circulation. No drive-through facility shall be located in an area of the site adjacent to a residential use or residential zone. Communication systems must not be audible on adjacent property in a residential use. Vehicle access to the drive-through shall be through a separate lane that prevents vehicle queuing within normal parking areas. A minimum of 12 queuing spaces must be provided to prevent any vehicles from having to wait on a public way, within the entry from the street or within designated parking areas. The drive-through must not interfere with any pedestrianway or bicycle path.

[F.](http://ecode360.com/8628298#8628298)Storage of materials.

[(1)](http://ecode360.com/8628299#8628299)Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse (cross reference § [170-34](http://ecode360.com/8627894#8627894)) must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential use and users of a public way.

[(2)](http://ecode360.com/8628300#8628300)All dumpsters or similar large collection receptacles for trash or other waste must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

[(3)](http://ecode360.com/8628301#8628301)Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter children from entering the premises must be provided and maintained in good condition.

[G.](http://ecode360.com/8628305#8628305)Water supply: must comply with § [170-106B(6)](http://ecode360.com/14420798#14420798), except that the development shall be served by public water if it is available within 500 feet of the project parcel.

[H.](http://ecode360.com/8628324#8628324)Sewage disposal.

[(1)](http://ecode360.com/8628325#8628325)Must comply with § [170-106B(7)](http://ecode360.com/14420804#14420804) except that the development shall be served by public sewer if it is available within 500 feet of the project parcel. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system must occur if and when the subsurface system needs to be replaced.

[(2)](http://ecode360.com/8628326#8628326)When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

[(3)](http://ecode360.com/8628327#8628327)Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require

8/8/18 Page 19 of 31

pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction, and dilution.

[I.](http://ecode360.com/14420357#14420357)Utilities. The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be underground.

[J.](http://ecode360.com/14420358#14420358)Natural features. The landscape must be preserved in its natural state insofar as practical by limiting tree removal to access, parking areas, utility installation and areas within 25 feet of a building unless approved by the Planning Board as part of a landscaping plan. In addition, disturbance and compaction of soils shall be minimized and existing vegetation shall be retained insofar as practical during construction. No trees shall be removed prior to final approval. Extensive grading and filling must be avoided as far as possible.

[K.](http://ecode360.com/14420359#14420359)Water quality protection. All aspects of the project must be designed so that:

[(1)](http://ecode360.com/14420360#14420360)No person shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute or harm such waters. No person shall cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant or aquatic life.

[(2)](http://ecode360.com/14420361#14420361)All storage facilities for fuel, chemicals, chemical or industrial wastes and biodegradable raw materials must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.

[L.](http://ecode360.com/14420362#14420362)Hazardous, special and radioactive materials.

[(1)](http://ecode360.com/14420363#14420363)The handling, storage and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

[(2)](http://ecode360.com/14420364#14420364)No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials must be stored in a manner and location which complies with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state and local regulations.

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[(2)](http://ecode360.com/14420367#14420367)When a proposed development is immediately visible from a great pond, river or stream, the development must be designed so that it fits harmoniously into the visual environment when viewed from the water body. In predominantly natural environments, site clearing must be minimized, natural vegetation must be maintained adjacent to the shoreline to soften the appearance of the development and vegetation must be retained or provided to minimize the visual intrusion of the development. In developed shoreland environments, the appearance of the new developments when viewed from the water must be compatible with the existing visual character in terms of scale, massing and height to the maximum extent possible. Storage and service areas must be screened or landscaped to minimize their visual impact.

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[O.](http://ecode360.com/14420369#14420369)Solid waste management. The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

8/8/18 Page 20 of 31

[P.](http://ecode360.com/14420370#14420370)Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation. All work shall be in accordance with the Secretary of Interior's Standards for the Treatment of Historic Properties.

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Editor's Note: See Art. VII, Floodplain Management.

[R.](http://ecode360.com/14420372#14420372)Additional Route 27 design standards. Notwithstanding the general provisions of Chapter [170](http://ecode360.com/8627687#8627687), Land Use, and the technical standards of Article [V](http://ecode360.com/8628247#8628247), Site Plan Review, development and redevelopment within 500 feet of that portion of Route 27 extending from the Boothbay Town line to Route 96 shall be consistent with the following standards.

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[(3)](http://ecode360.com/14420375#14420375)Parking areas on adjacent properties shall be interconnected with internal vehicle and pedestrian accesses.

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[(5)](http://ecode360.com/14420377#14420377)The minimum number of parking spaces required in § [170-50I](http://ecode360.com/14419555#14419555) may be reduced by the Planning Board if the parking lot is to be shared by two or more uses that require parking during different time periods.

[S.](http://ecode360.com/14420378#14420378)Off-site improvements. All off-site improvements required by the Planning Board, including but not limited to roads, intersections, signalization, sidewalks and drainage, shall be installed by the applicant at his or her expense.

**Review Criteria**

The applicants \_ X\_***have/***\_\_\_\_\_\_***have not*** demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article VIII, §170-53, and Article V, §170-61 and §170-69** of the Town of Boothbay Harbor Zoning Ordinance.

**Motion made by \_\_\_** Thomas Churchill**\_\_\_, seconded by \_\_\_**Margaret Perritt**\_\_\_**

**Vote\_\_\_** Unanimous**\_\_\_ \_\_** All**\_\_In Favor \_\_\_\_\_\_Against**

**If the criteria have not been met, the reasons are explained below (i.e. –not applicable);**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Conditions of Approval**

\_\_\_(None)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8/8/18 Page 21 of 31

**Decision**

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on motion made by \_\_ Chris Swanson\_\_and seconded by \_\_\_ Margaret Perritt\_\_\_, the Planning Board

\_\_\_\_ X\_\_\_\_**Approves**  \_\_\_\_\_\_\_\_\_\_\_**Denies**

 this application subject to the conditions of approval set forth below, all for the reasons set forth in the findings and conclusions.

**Vote\_\_\_** Unanimous**\_\_\_ \_\_** All**\_\_In Favor \_\_\_\_\_\_Against**

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

**Appeal**

Any appeal from this decision must be made to the Board of Appeals within 30 days after the date of the decision of the Planning Board, in accordance with the Article X of the Land Use Ordinance.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Chairman Hamblen stated the last application was from Jennie Jones, DBA Brady's at 25 Union Street.

Jennie Jones stated she was seeking approval to open a year-round restaurant in the location where the former Amore Bistro Italiano restaurant had been.

Chairman Hamblen stated the restaurant is a permitted use where parking is required.

Jennie stated there was enough parking across the street (one space for every three seats) since she was planning to have approximately 50 seats with the three in front of the restaurant reserved for handicapped. The tenants above the restaurant park beside the restaurant. Jennie felt if the restaurant across the street opened they could share spaces since that restaurant has only approximately 30 seats.

Chairman Hamblen stated they'd have to keep their eye on this situation but for this application she was in good shape.

Chairman Hamblen started the Findings of Fact process.

8/8/18 Page 22 of 31

**Findings of Fact:**

1. The owner is Shane Riley, relating to the property located at 23 Union St. Property taxes on account of the premises for which the approval is requested have been paid in full. The applicant is Jennie Jones.
2. The property is in the Downtown Business B zoning district, and the Shoreland Overlay District. The property is further identified as Assessor’s Tax Map/Lot: 20/69.
3. The applicants propose opening a restaurant in accordance with Chapter 170, Article VIII, §170-53, and Article V, §170-69.

# Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

**Right, Title or Interest in the Property**

The applicants \_X\_***have/***\_\_\_\_\_\_***have not*** demonstrated Right, Title or Interest on the property in question.

**Motion made by \_\_**Thomas Churchill**\_\_\_, seconded by \_\_**Margaret Perritt**\_\_\_**

**Vote\_\_**Unanimous**\_\_ \_\_**All**\_\_In Favor \_\_\_\_\_\_Against**

**Chapter 170, Article VIII, §170-53**

No retail/wholesale sales or services of food, beverages or other items intended for immediate human consumption shall be offered or solicited except on privately owned property, in which the retail sales or services are located, except for restaurants, which may offer on-premises consumption incidental to the operation of the restaurant on a deck, porch or equivalent structure or in a garden, patio or equivalent area. Before approval or use of a drive-up or take-out window, the applicant or operator shall submit to the Town a litter control plan suitable for the service provided. No drive-up or take-out window may interfere with the public’s use of a public way. This provision shall not apply to civic events or statewide or regional events of nonprofit organizations.

**Chapter 170, Article V, §170-69**

[A.](http://ecode360.com/8628293#8628293)Utilization of site. The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

8/8/18 Page 23 of 31

[B.](http://ecode360.com/8628294#8628294)Traffic access.

[(1)](http://ecode360.com/14420317#14420317)Adequacy of road system.

[(a)](http://ecode360.com/14420318#14420318)Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate 50 or more peak-hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one mile of any entrance road which are functioning at Level of Service D or better prior to the development must function, at a minimum, at Level of Service D after development. If any such intersection is functioning at Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

[(b)](http://ecode360.com/14420319#14420319)A development not meeting this requirement may be approved if the applicant demonstrates that:

[[1]](http://ecode360.com/14420320#14420320)A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or

[[2]](http://ecode360.com/14420321#14420321)The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guaranty acceptable to the municipality.

[(2)](http://ecode360.com/14420322#14420322)Access into site. Vehicular access to and from the development must be safe and convenient.

[(a)](http://ecode360.com/14420323#14420323)Any driveway or proposed street must be designed to provide the minimum sight distance as required by § [170-54C(8)](http://ecode360.com/14419939#14419939).

[(b)](http://ecode360.com/14420324#14420324)Points of access and egress must be located to avoid hazardous conflict with existing turning movements and traffic flows.

[(c)](http://ecode360.com/14420325#14420325)The grade of any proposed drive or street must not be more than plus or minus 3% for a minimum of two car lengths, or 40 feet, from the intersection.

[(d)](http://ecode360.com/14420326#14420326)The intersection of any access/egress drive or proposed street must function at Level of Service D following development if the project will generate 100 or more peak-hour trips or at a level which will allow safe access into and out of the project if fewer than 100 peak-hour trips are generated.

[(e)](http://ecode360.com/14420327#14420327)Where a lot has frontage on two or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed by the Planning Board if it finds if it is safe and does not promote shortcutting through the site.

[(f)](http://ecode360.com/14420328#14420328)Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands and traffic controls within public streets.

[(g)](http://ecode360.com/14420329#14420329)Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

[(h)](http://ecode360.com/14420330#14420330)The following criteria must be used to limit the number of driveways serving a proposed project:

[[1]](http://ecode360.com/14420331#14420331)No use which generates fewer than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway must be no greater than 30 feet wide.

[[2]](http://ecode360.com/14420332#14420332)No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways must not exceed 60 feet.

[(3)](http://ecode360.com/14420333#14420333)Accessway location and spacing. Accessways must meet the following standards:

[(a)](http://ecode360.com/14420334#14420334)Private entrances/exits must be located at least 50 feet from the closest unsignalized intersection and 150 feet from the closest signalized intersection, as measured from the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

[(b)](http://ecode360.com/14420335#14420335)Private accessways in or out of a development must be separated by a minimum of 75 feet where possible.

8/8/18 Page 24 of 31

[(4)](http://ecode360.com/14420336#14420336)Internal vehicular circulation. The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.

[(a)](http://ecode360.com/14420337#14420337)Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles.

[(b)](http://ecode360.com/14420338#14420338)Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

[(c)](http://ecode360.com/14420339#14420339)The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

[(d)](http://ecode360.com/14420340#14420340)All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.

[C.](http://ecode360.com/8628295#8628295)Parking layout and design. See § [170-50](http://ecode360.com/8628074#8628074).

[D.](http://ecode360.com/8628296#8628296)Pedestrian access.

[(1)](http://ecode360.com/14420341#14420341)The site plan must provide for a system of pedestrianways within the development appropriate to the type and scale of the development. This system must connect the major building entrances and exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in an open space or recreation areas. The system must be designed to connect the project to residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect to amenities, such as parks or open space on or adjacent to the site.

[(2)](http://ecode360.com/14420342#14420342)When an existing or planned sidewalk is interrupted by a proposed project entrance, the sidewalk must be constructed and marked to distinguish it as a sidewalk or cross walk in compliance with all applicable slopes and markings. Furthermore, if street vegetation or trees exist on an adjacent property, like or similar vegetation or trees must be planted on the new site. In urban situations, a widening of a sidewalk onto private property to encourage local commerce and improved streetscape should be encouraged. Benches, sculptures, planters and other street furniture should be encouraged.

[E.](http://ecode360.com/8628297#8628297)Buildings.

[(1)](http://ecode360.com/14420343#14420343)Building placement.

[(a)](http://ecode360.com/14420344#14420344)The site design should avoid creating a building surrounded by a parking lot.

[(b)](http://ecode360.com/14420345#14420345)In urban built-up areas, buildings should be placed close to the street, in conformance with existing adjacent setbacks. Parking should be to the side preferably in the back.

[(c)](http://ecode360.com/14420346#14420346)In rural uncongested areas, buildings should be set well back from the road to conform to the rural character of the area. If the parking is in front, a fifteen-foot or greater landscape buffer between the road and the parking lot shall be provided. Unused areas should be kept natural, as field, forest, wetland etc.

[(d)](http://ecode360.com/14420347#14420347)Where two or more buildings are proposed, the buildings should be grouped and connected with sidewalks. Tree plantings should be used to provide shade and break up the scale of the site. Parking should be separated from the building by a minimum of five to 10 feet. Planting should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

[(2)](http://ecode360.com/14420348#14420348)Setback and alignment of buildings. Where is a reasonably uniform relationship between the front walls of buildings and the street, new buildings must be placed on a lot in conformance with the established relationship. For buildings on corner lots, the setback relationship of both streets should be maintained. The creation of empty corners should be avoided through the placement of the building and other site features.

[(3)](http://ecode360.com/14420349#14420349)Building entrances.

8/8/18 Page 25 of 31

[(a)](http://ecode360.com/14420350#14420350)The main entrance to the building should be oriented to the street, unless the parking layout or grouping of the buildings justifies another approach, and should be clearly identified as such through building and site design, landscaping, and signage.

[(b)](http://ecode360.com/14420351#14420351)At the building entrance areas and dropoff areas, site furnishings such as benches and sitting walls and, if appropriate, bicycle racks shall be encouraged.

[(c)](http://ecode360.com/14420352#14420352)Additional plantings may be desirable at these points to identify the building entrance and to complement the pedestrian activity at this point.

[(4)](http://ecode360.com/14420353#14420353)Building illumination.

[(a)](http://ecode360.com/14420354#14420354)Building facades may be illuminated with soft lighting of low intensity that does not draw inordinate attention to the building. The light source for the building façade illumination must be concealed.

[(b)](http://ecode360.com/14420355#14420355)Building entrances may be illuminated using recessed lighted in overages and soffits or by use of spotlighting focused on the building entrance with the light source concealed (e.g., in landscaped areas.) Direct lighting of limited exterior building areas is permitted when necessary for security purposes.

[(5)](http://ecode360.com/14420356#14420356)Drive-through facilities. Any use that provides drive-through service must be located and designed to minimize the impact on neighboring properties and traffic circulation. No drive-through facility shall be located in an area of the site adjacent to a residential use or residential zone. Communication systems must not be audible on adjacent property in a residential use. Vehicle access to the drive-through shall be through a separate lane that prevents vehicle queuing within normal parking areas. A minimum of 12 queuing spaces must be provided to prevent any vehicles from having to wait on a public way, within the entry from the street or within designated parking areas. The drive-through must not interfere with any pedestrianway or bicycle path.

[F.](http://ecode360.com/8628298#8628298)Storage of materials.

[(1)](http://ecode360.com/8628299#8628299)Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse (cross reference § [170-34](http://ecode360.com/8627894#8627894)) must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential use and users of a public way.

[(2)](http://ecode360.com/8628300#8628300)All dumpsters or similar large collection receptacles for trash or other waste must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

[(3)](http://ecode360.com/8628301#8628301)Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter children from entering the premises must be provided and maintained in good condition.

[G.](http://ecode360.com/8628305#8628305)Water supply: must comply with § [170-106B(6)](http://ecode360.com/14420798#14420798), except that the development shall be served by public water if it is available within 500 feet of the project parcel.

[H.](http://ecode360.com/8628324#8628324)Sewage disposal.

[(1)](http://ecode360.com/8628325#8628325)Must comply with § [170-106B(7)](http://ecode360.com/14420804#14420804) except that the development shall be served by public sewer if it is available within 500 feet of the project parcel. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system must occur if and when the subsurface system needs to be replaced.

[(2)](http://ecode360.com/8628326#8628326)When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

[(3)](http://ecode360.com/8628327#8628327)Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment

8/8/18 Page 26 of 31

processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction, and dilution.

[I.](http://ecode360.com/14420357#14420357)Utilities. The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be underground.

[J.](http://ecode360.com/14420358#14420358)Natural features. The landscape must be preserved in its natural state insofar as practical by limiting tree removal to access, parking areas, utility installation and areas within 25 feet of a building unless approved by the Planning Board as part of a landscaping plan. In addition, disturbance and compaction of soils shall be minimized and existing vegetation shall be retained insofar as practical during construction. No trees shall be removed prior to final approval. Extensive grading and filling must be avoided as far as possible.

[K.](http://ecode360.com/14420359#14420359)Water quality protection. All aspects of the project must be designed so that:

[(1)](http://ecode360.com/14420360#14420360)No person shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute or harm such waters. No person shall cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant or aquatic life.

[(2)](http://ecode360.com/14420361#14420361)All storage facilities for fuel, chemicals, chemical or industrial wastes and biodegradable raw materials must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.

[L.](http://ecode360.com/14420362#14420362)Hazardous, special and radioactive materials.

[(1)](http://ecode360.com/14420363#14420363)The handling, storage and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

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8/8/18 Page 27 of 31

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The applicants \_X\_***have/***\_\_\_\_\_\_***have not*** demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article VIII, §170-53, and Article V, §170-61 and §170-69** of the Town of Boothbay Harbor Zoning Ordinance.

**Motion made by \_\_**Chris Swanson**\_\_\_, seconded by \_\_**Margaret Perritt**\_\_\_**

**Vote\_\_** Unanimous **\_\_ \_\_** All **\_In Favor \_\_\_\_\_\_Against**

**If the criteria have not been met, the reasons are explained below (i.e. –not applicable);**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Conditions of Approval**

\_\_(None)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8/8/18 Page 28 of 31

**Decision**

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on motion made by \_\_Margaret Perritt\_\_and seconded by \_\_\_ Thomas Churchill \_\_\_, the Planning Board

\_\_\_\_X\_\_\_\_**Approves**  \_\_\_\_\_\_\_\_\_\_\_**Denies**

 this application subject to the conditions of approval set forth below, all for the reasons set forth in the findings and conclusions.

**Vote\_\_** Unanimous **\_\_\_ \_\_** All **\_In Favor \_\_\_\_\_\_Against**

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

**Appeal**

Any appeal from this decision must be made to the Board of Appeals within 30 days after the date of the decision of the Planning Board, in accordance with the Article X of the Land Use Ordinance.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**OTHER BUSINESS**

Chairman Hamblen reiterated they had been at the process of amending the ordinance for the east side for awhile now and they had gotten a response back from the DEP to discuss. But first Chairman Hamblen wanted to make sure the Board was in agreement with a number of minor changes to correct errors and clarify the text that had been made since their last meeting on 7/15/18.

The changes are as follows.

* Making all of the highlighted text green, rather than most green and some yellow.
* Adding the version date (8/1/18) to the bottom of each page.
* Removing “P” from the Multifamily Dwellings line in the Schedule of Uses in Question 1 -  Geoff caught this error: it would have permitted multifamily dwellings upon passage of Question 1!
* Adding the definitions of the Permit-required symbols (Y, P, C etc.) ahead of the use table in Question 1 so that readers can easily see the required permissions (no change to the code).
* Changing references from “water dependent” to “functionally water dependent” to be consistent with the existing definitions in our codes.

8/8/18 Page 29 of 31

* Taking the reference to multifamily dwellings out of section 170-25 “Purpose of districts” in Question 1.
* Adding the phrase “Question 2 shall be considered if, and only if, Question 1 passes” at the beginning of Question 2.  (Chairman Hamblen checked with the lawyer and Colin Clark is fine with this concept.)

Chairman Hamblen then went through the updated draft of three questions that displayed the modifications (which can be seen on the town's website).

John Hochstein **motioned** to accept the changes from the Board. Thomas Churchill **seconded**. **Motion passed 4 - 1 Abstention** (byMargaret Perritt).

Chairman Hamblen stated they would next go on to the DEP responses. Since they have just been received, they would not think about solving them that evening until they have more time to review them.

The responses from Colin Clark, DEP, are as follows.

* It appears that only the dimensional standards for uses is being proposed to be reduced but the Lot sizes will remain the same Correct? [BH: "yes"]
* Many of the uses that are on your chart are water dependent uses therefore they have no setback under the current rule but they have been included on the chart as being used to represent existing conditions.  I would encourage the town to look at the number again and reevaluate where the setback line should be.  If it sticks at 25 so be it, but the numbers look a little off when you include things that currently have no setback. [BH: This would not affect existing structures, just new construction.]
* Parking areas reducing the setback on parking to 25’ does not seem consistent currently even in you water dependent uses the parking needs to be setback to 50’ for new parking I would encourage the town to make this 50’.
* I have looked over the reduction in dimensional standards piece to get down to 7260.  In this review I noticed that the condo numbers are included which greatly reduce the size required given it has 27 dwellings on the property.  I took the liberty to run the numbers without the condos and it comes out to closer to 11K per use.  We have asked towns to look at it this way in the past when there is something like this in play since regardless of whatever size limit is placed in this area the condos will always be non-conforming.  I would recommend that the town go with the 10K/use or dwelling instead of the 7260.
* The 35’ height limit is consistent with the chapter 1000 guidelines.
* Lot coverage I see that many of the properties have high lot coverage numbers but there are a few that are low and in compliance with the state standards.  The town is essentially proposing a Limited Commercial district but is requesting the

8/8/18 Page 30 of 31

 lot coverage level that relates to General Development.  I would encourage the town to go with the standard set forth in Chapter 1000 of 20% and the ones that re already exceeding would be able to keep their non conforming level while the properties that are not at that level would not be built out to the 70% level.

* Schedule of uses
	+ Roads, driveways and parking areas Should be PB review - not a yes
	+ You list boathouses is that to repair them less that 50% if not this should be a No
	+ Piers Docks Wharves for permanent docks is PB review not CEO
	+ Multifamily dwellings should be PB
	+ Additionally there are a bunch of blanks spaces on the table that will need to be filled in

 Chairman Hamblen suggested they hold a workshop in two weeks. [The date was set for Thursday, 8/23 at 7:00 p.m.]

Jon Dunsford suggested they review the list prior to the workshop so they won't waste time doing it then. [CEO, Geoff Smith offered to ask Colin Clark some questions in advance.]

Chairman Hamblen opened the floor for public comment.

1. John O'Connell wondered if the town attorney had evaluated the recommendations to determine if they were supported by the comprehensive plan. [Chairman Hamblen responded the town attorney has been working on it and hopes they'll hear back soon. Chairman Hamblen also hopes to receive a written evaluation of the Board's recommendations from the town's attorney.]

2. Mary Lee Brown had concerns about changing the 75' setback to 25'. [Chairman Hamblen responded many of the structures there now are presently only 25' now.]

3. John Seitzer stated he found some of the words in the justifications communicated to the DEP confusing, in particular the use of the word "languished" in describing the non-conforming hotels on the east side as if they were failing. John wondered if Brown's Wharf feels they are failing. [Jon Dunsford reminded him that Tim Brown was a participant on the advisory committee and supports the concept for the need to invest in the east side.]

John Seitzer pointed out $10 million dollars had been invested in one property alone.

4. Bob McKay echoed John's last statement, saying "and with the existing code."

8/8/18 Page 31 of 31

5. Michael Fritz responded that Oceanside's development was possible because the developer is independently wealthy; if the other hotels on the east side wanted to develop their properties they would neither be able to get a bank loan or insurance because they are non-conforming.

ADJOURN

The meeting was adjourned at 8:03 pm.

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William Hamblen, Chairman Kellie Bigos, Recording Secretary