

Question 1- Creating a Mixed Use District

Question 1 creates a Mixed Use District.

Summary:

A yes vote will implement the following zoning policies. It will:

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

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

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

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

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

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

- *set the square footage required for each non-residential use to 2,000 square feet per use.*

This will provide flexibility for commercial development of the lots in the district. This is identical to the zoning that has been implemented in the Downtown Business district (the west side).

- *require that significant developments on lots with 100' or more of frontage on Atlantic Avenue maintain a view corridor, at least 20' wide, from Atlantic Avenue to the water, for each 100' of frontage.*

This will maintain the visual connection to the waterfront that exists today and prevent development that results in an impenetrable "wall" of buildings. It will be limited to those lots big enough to maintain a view corridor without an undue hardship on development. Significant developments are those over 3,000 square feet or multifamily dwellings.

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Detail:

Question 1 - To see if the town will vote to create a Mixed Use District by amending the current Land Use Ordinances with the following highlighted changes.

§ 170-21 Districts established.

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

General Residential District

Special Residential District

Downtown Business District

Maritime/Water Dependent District Atlantic Avenue Mixed Use District

General Business District

Resource Protection District

§ 170-25 Purpose of districts.

D. Maritime/Water Dependent District. The purpose of the Maritime/Water Dependent District is to reserve a reasonable portion of the Boothbay Harbor waterfront for traditional water-dependent uses. The intention of this land use district is to protect traditional commercial water-dependent uses such as commercial fishing, boat building, marine service and repair, etc., from other competing but incompatible uses; to conserve points of public access to coastal waters; and to give preference in identified areas to commercial water-dependent uses over recreational and residential uses.

Atlantic Avenue Mixed Use District. The purpose of the Atlantic Avenue Mixed Use District is to reserve a reasonable portion of the Boothbay Harbor waterfront for the protection of traditional water-dependent uses such as bait suppliers, wholesale and retail lobster and fish markets, boat launching ramps, marine repair and marinas and similar marine activities while encouraging modernization of existing non-maritime properties, development of new, compatible non-maritime uses such as hotels, restaurants and residences (both single and limited multifamily dwellings) and similar uses, creation of new opportunities for public waterfront access and conservation of existing points of public physical and visual access to coastal waters.

§ 170-26 Description of districts.

D. The Maritime/Water Dependent District Atlantic Avenue Mixed Use District.

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

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

Added 5-6-2002 by ATM Art. 20

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§ 170-27 Schedule of uses.

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

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

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

(1) District symbols:

| | |
|----|------------------------------|
| GR | General Residential District |
| SR | Special Residential District |
| DB | Downtown Business District |

| | |
|---------------|--|
| MW | Maritime/Water Dependent District |
|---------------|--|

| | |
|----------------|---|
| AAM | Atlantic Avenue Mixed Use District |
|----------------|---|

| | |
|----|------------------------------|
| GB | General Business District |
| RP | Resource Protection District |

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E. Schedule of Uses (note – only uses in the AAM are listed)

| Atlantic Avenue Mixed Use District | | | |
|---|---|---|---|
| Open Space Uses | | | |
| Accessory uses or structures | C | Commercial farms, gardens, nurseries and greenhouses | |
| Earthmoving activities of less than 100 cubic yards but greater than 10 cubic yards | C | Commercial gymnasiums, fitness centers | P |
| Earthmoving activities of more than 100 cubic yards | P | Funeral homes | |
| Outdoor conservation and recreational uses not operated for profit | P | Gasoline service stations | |
| Forest management, except timber harvesting | Y | Laundromats, dry cleaning | |
| Roads, driveways and parking areas | Y | Micro-breweries | P |
| Nonresidential | P | Motels, hotels, inns | P |
| Fire prevention activities | Y | Neighborhood grocery stores | P |
| Water-Oriented Uses | | Outdoor recreational uses operated for profit | P |
| Accessory uses or structures | C | Parking areas/lots | C |
| Aquaculture uses. No processing or storage | P | Parking facilities | C |
| Aquaculture products, processing, warehousing, retail and wholesale sales | P | Professional uses | C |
| Boat building and repair, commercial operations | P | Recreation facilities (indoor) | P |
| Boathouses | C | Resort areas | |
| Breakwaters and causeways | P | Restaurants | P |
| Marinas | P | Retail establishments | P |
| Marina expansion | P | Service establishments | P |
| Piers, docks and wharves | C | Theaters | |
| Seafood products, processing, warehousing, retail and wholesale sales | P | Veterinary clinics | |
| Tour or charter boat operations | C | Wholesale establishments | |
| Residential Uses | | Wireless communications facilities | |
| Accessory structures | C | Industrial Uses | |
| Residential association uses or structures | P | Accessory uses and structures | C |
| Boardinghouses | C | Light industry | |
| Duplexes | C | Institutional and Public Uses | |
| Home occupations | C | Accessory structures | C |
| Manufactured Housing exclusive of mobile homes (modular) | C | Churches | C |
| Multifamily dwellings | P | Community service organizations | C |
| Single-family dwellings | C | Health clinics (do not include marijuana or methadone clinic) | P |
| Commercial Uses | | Hospice | |
| Accessory uses and structures | C | Hospital | |
| Auction barns | | Municipal, county, state and federal uses and structures no | C |
| Automobile sales | | Nursing homes | |
| Banks and financial institutions | P | Public recreation | C |
| Bed and breakfasts | P | Social and fraternal organizations | C |
| | | Yacht clubs (private and non-profit) | C |

§170-28 Schedule of Dimensional Requirements

| | GR | SR | DB | MW AAM | GB | RP |
|--|--------|--------|---------------------------------------|---------------------------------------|--|---------|
| Minimum land Area per Dwelling Unit or Use (square feet) | | | | | | |
| | | | Residential 10,000 All other 2,000 | Residential 10,000 All other 2,000 | Residential 10,000 All other 40,000 | |
| With Town water and Sewer H, K | 10,000 | 10,000 | 2,000 | 2,000 | 40,000 | 4 acres |

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§ 170-69 Site Plan Review Standards

M. Shoreland Relationship

(3) For a proposed development on a lot in existence on January 1, 2018 within the Atlantic Avenue Mixed Use District that will consist of reconstruction or redevelopment of an existing principal non-residential structure in excess of 3,000 square feet of floor area, construction of a new principal non-residential structure in excess of 3,000 square feet of floor area or the construction of multifamily dwelling unit or units, the following view corridor standards shall apply.

(a) Unobstructed view corridors from Atlantic Avenue to the harbor shall be created or maintained

(b) The view corridors shall be exclusive of any required side setbacks and shall be a minimum of 20 feet in width plus.

(c) Surface parking and shrubs that do not exceed three feet at maturity may be located within these designated view corridors.

(d) One view corridor shall be required for every 100 feet of frontage on Atlantic Avenue.

§ 170-101.4 Official Shoreland Zoning Map; districts.

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

Resource Protection District

Special Residential District/Limited Residential

General Residential District/Limited Commercial

Downtown Business District

General Business District/General Development

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

Stream Protection District

§ 170-101.8 Establishment of districts.

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

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

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

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

§ 170-101.10 Land use standards.

A. Minimum Lot Standards

| | Minimum Lot Area (sq. ft.) | Minimum Shore Frontage (ft.) |
|--|-------------------------------|------------------------------------|
| (1) | | |
| (a) Residential per dwelling unit | | |
| (i) Within the Shoreland Zone Adjacent to Tidal Areas | 30,000 | 150 |
| (ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas | 40,000 | 200 |
| (b) Governmental, Institutional, Commercial or Industrial per principal structure | | |
| (i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities | 40,000 | 200 |
| (ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and | | |

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| | | |
|---|--------|------|
| Maritime Activities | NONE | NONE |
| (iii) Within the Shoreland Zone Adjacent to Non-tidal Areas | 60,000 | 300 |
| (c) Public and Private Recreational Facilities | | |
| (i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas | 40,000 | 200 |
| (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area. | | |
| (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971. | | |
| (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use. | | |
| (5) Except as provided for in Note 1, if more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use. | | |

B. Principal and accessory structures.

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

(2) Principal or accessory structures and expansions of existing structures, which are permitted in the Resource Protection, Special Residential District, General Residential District, and Stream Protection District, shall not exceed 30 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

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

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

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

(G) Parking areas.

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

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

(4) Cleared openings.

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

§ 170-101.11 Administration

D. Procedure for Administering Permits

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

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

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§170.82.C(3) is amended to read as follows:

Atlantic Avenue Mixed Use District ~~Maritime/Water Dependent District~~ conversion. The conversion of a dwelling to nonpermitted commercial uses shall be prohibited. The conversion of an existing commercial structure to a motel or hotel of any size or to multifamily dwellings shall be prohibited. The conversion of an existing permitted use to a nonpermitted use shall be prohibited.

§146-5.1.F is amended to read as follows:

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

§146-5.G is amended to read as follows:

Cluster signs. The use of cluster signs will be limited to the Meadow Business District, Downtown Business Districts and the Atlantic Avenue Mixed Use District ~~Maritime/Water Dependent District~~ and when there is more than one business on a lot or in a single building. These signs will be or are limited to one location sign per business and one business or identification sign per business, double-sided allowed. The total area of all business signs in the group may not exceed the total sign area for the district the sign is located in. The landlord will be responsible for allocating sign area or space among the tenants. The layout of the individual signs shall be neat and uniform in size, design and color.

§170 Attachment 7 Table 1 is amended to replace references to Marine/Water Dependent District with Atlantic Avenue Mixed Use District and references to MW with AAM

Question 2 - Allow Multifamily Units in the District

Question 2 allows multifamily dwelling units in the District

Summary:

A yes vote will implement the following zoning policies. It will:

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

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

- *set the minimum land area per multifamily dwelling unit or use to 2500 square feet.*

This will allow design flexibility in positioning these structures and result in better utilization of the district without increasing the overall density of multi-family units (the density remains at no more than 6 per acre). This will also encourage commercial development in the district (one of the primary goals of the effort).

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Question 2 - Allow Multifamily Units in the District

Detail:

Question 2 - To see if the town will vote to amend the current Land Use Ordinances with the following highlighted changes.

§ 170-49 Multifamily dwellings.

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

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

B. Density. In sewered areas where multifamily units are permitted, ~~the lot size requirement of 10,000 square feet may be reduced~~ the density of multifamily dwelling units may be increased to six dwelling units per acre as a density bonus with the approval of the Planning Board. Planning Board approval shall be based upon a determination that the development meets all other requirements of this chapter and that it will result in a benefit to the public, such as public waterfront access, a public boat ramp or additional public parking.

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

D. For multifamily dwellings in the Atlantic Avenue Mixed Use District, the minimum land areas per dwelling unit or use shall be 2,500 square feet. This does not permit densities of multifamily dwellings to be increased above that defined in B. above.

§170-28 Schedule of Dimensional Requirements

Amend Section 170-28 Schedule of Dimensional Requirements, Minimum Land Area per Dwelling Unit or Use in the Atlantic Avenue Mixed Use District (with Town water and sewer) by adding "Multifamily Units: 2,500"

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Question 3- Permit New Construction Heights of 35 Feet.

Question 3 permits New Construction Heights of 35 feet or 2 1/2 stories, whichever is less.

Summary:

A yes vote will implement the following zoning policies. It will:

- *permit new construction heights of 35 feet or 2 1/2 stories whichever is less everywhere in the town of Boothbay Harbor.*

Currently Boothbay Harbor permits 35 feet in the General Business District and 36 feet (30 feet plus a 6 foot façade) in the Downtown Business District and 30 feet elsewhere. This provision would make the height requirement consistent throughout the town, and consistent with State requirements. It would encourage economic development, and make affordable housing more attractive to developers. In the most sensitive area, the east side, the sloping topography from Atlantic Avenue to the water mitigates the impact of permitting the additional height. In addition, several existing structures are higher than this. Finally the 2- 1/2 story requirement is consistent with the remainder of the town and will promote sloped roofs and structures that visually match the region.

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Question 3- Permit New Construction Heights of 35 Feet.

Detail:

Question 3 - To see if the town will vote to amend the current Land Use Ordinances with the following highlighted changes.

§ 170-41 Height of building.

B. Unless otherwise specified, the maximum height of a building shall be ~~as follows:~~ 35 feet or 2 1/2 stories, whichever is less.

(1) In the General Business District (commonly known as "the meadow"), the maximum building height shall be 35 feet or 2 1/2 stories, whichever is less.

(2) In all other districts, the maximum height of a building shall be 30 feet or 2 1/2 stories, whichever is less.

~~(3)~~ (1) Structures within the Shoreland Zoning District must cross reference the height standards specific to those structures within the district.

(4) (2) Exceptions: television or radio towers, church spires, belfries, monuments, water and fire towers, water standpipes, cooling towers, cupolas, chimneys, elevator bulkheads, smokestacks, flagpoles, grain silos and windmills or other structures necessary for essential services.

§ 170-101.10 Land use standards.

B. Principal and accessory structures.

(2) Principal or accessory structures and expansions of existing structures, which are permitted in the Resource Protection, Special Residential District, General Residential District, and Stream Protection District, shall not exceed 30 35 feet in height or 2 1/2 stories, whichever is less. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

§170-113 Definitions

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

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Question 4 creates an Impact Fee for significant development in the District

Question 4 would create Impact Fees for significant new construction in the District

Summary:

A yes vote will implement the following zoning policies. It will:

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

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

Question 4 creates an Impact Fee for significant development in the District

Detail:

Question 4 - To see if the town will vote to create an Impact Fee for significant new development in the District by adopting the following new article in its entirety.

Article XII. Impact Fees

§170-114 Authority.

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

§170-115 Short title.

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

§170-116 Purpose.

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

§170-117 Applicability.

A. New residential structures:

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

Question 4 creates an Impact Fee for significant development in the District

- B. Non-residential structures. This article shall apply to the issuance of a building permit for a new or substantially renovated nonresidential, non-maritime structure and associated facilities that exceed 3,000 square feet in gross floor area.
- C. No building permit shall be granted for any construction activity described herein that requires payment of an impact fee under this article until the impact fees hereby required have been paid.

§170-118 Definitions.

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

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

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

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

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

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

§170-119 Collection of fees.

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

§170-120 Impact fee account.

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

Question 4 creates an Impact Fee for significant development in the District

§170-121 Use of impact fees.

- A. Impact fees collected under the provisions of this article shall only be used to pay for site acquisition and capital improvements for the creation or expansion of recreational facilities, for the acquisition and related improvements of open space, and the creation of pedestrian facilities within the Atlantic Avenue Mixed Maritime/Water Dependent District, ~~or~~ to enhance harbor access for boaters and pedestrians from the Pedestrian Footbridge or to protect and enhance existing and future working waterfront facilities. No portion of the fee shall be used for routine maintenance or operation activities.
- B. The following costs are examples of, but are not intended to limit, capital improvements:
- (1) Acquisition of land or easements, including conservation easements and development rights.
 - (2) Engineering, surveying and environmental assessment services directly related to the acquisition, design, construction and continued upgrading of the improvement.
 - (3) The actual construction of the improvement, including, without limitation, demolition costs, clearing and grading of land, and necessary capital equipment dedicated to the site.
 - (4) Mitigation costs.
 - (5) Legal and administrative costs associated with construction of the improvement, including any borrowing necessary to finance the project.
 - (6) Debt service costs, including interest if the Town borrows for the acquisition or construction of the improvement.
 - (7) Relocation costs.
 - (8) Matching funds for grants awarded by regional, state or federal agencies or non-profit entities for activities described in §170-21.A.
 - (9) Similar costs that are directly related to the improvement project.

§170-122 Refunds.

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

§170-123 Waiver of impact fee.

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

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Question 4 creates an Impact Fee for significant development in the District

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

§170-124 Calculation of fee.

The recreational and pedestrian facilities and open space impact fee shall be as set forth in the town's fee schedule. The fee schedule shall provide the fee per square foot of the proposed construction. The total amount of the impact fee due for each project shall be determined by multiplying the fee per square foot, times the total square footage of the construction as shown on the plans submitted to the town. The Board of Selectmen may vote pursuant to a public hearing to incur one of more of the costs identified in §170-121, including construction of a sidewalk on the westerly side of Atlantic Avenue, before sufficient impact fees have been paid into the impact fee account, in which case the town shall be reimbursed for such costs as impact fees are subsequently collected.

§170-125 Effect on other regulations.

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

§170-126 Periodic review; amendments.

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

§170-127 Appeals.

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

Final Observations

We are proposing significant changes to the permitted uses on the east side, however it is important to realize what we are NOT changing. We are NOT proposing changes to a myriad of zoning regulations that exist to protect the town and its citizens from unchecked development.

Specifically we are not changing the requirements for Architectural Harmony, Buffering and Screening, Building Standards, Lighting and Glare, Parking Standards, Stormwater Runoff, Site Plan Standards (including pedestrian access), Front, Side and Backyard Setbacks, and most significantly, Lot Coverage Limitations.

The majority of Zoning Standards are NOT Changing

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

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

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