

# BOOTHBAY HARBOR SELECTMEN'S MEETING MINUTES

March 27, 2023

In addition to these typed minutes, video recordings of all Selectmen's meetings are available to be viewed at BRCTV and audio recordings are available to be listened to at the Boothbay Harbor Town Office.

ATTENDING: Michael Tomko - Chair  
Tricia Warren – Vice Chair  
Denise Griffin  
Kenneth Rayle  
  
Julia Latter, Town Manager  
John Cunningham – Town Attorney  
Geoff Smith – Code Enforcement Officer  
Members of the Planning Board

Chairman Tomko called the Public Hearing to order at 6:00 p.m.

Chairman Tomko presented the proposed ordinance changes to be voted upon at the Boothbay Harbor Annual Town Meeting. (See attached).

PUBLIC COMMENT: Chairman Tomko solicited public comment. The board will vote on each article during the regular selectmen's meeting at 7:00 p.m.

MOVE TO ADJOURN: The meeting was adjourned at 6:55 p.m. after unanimous approval.  
Approved 4-0.

# 2023-2024 Proposed Ordinance Amendments

Article 20 To see if the Town will vote to amend the current Land Use Code as follows:

**1. Section 170-26(C)(1) Downtown Business District, Section A, is amended to read as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:**

(1) Section A: Shall be as an overlay of Section B, beginning at a point at the intersection of McKown Street, Todd Avenue and Howard Street, then south along the Boothbay Harbor Tax Map No. 15, and continuing in a southerly direction along said lot line to the westerly property line of the rights-of-way known as Greenleaf Lane, continuing south along said property line and south along the westerly property line of Lot No. 63, crossing Commercial Street, continuing along the westerly property line of Lot No. 17 to the waters of Boothbay Harbor; thence in an easterly direction along the waters of the harbor to the intersection of the easterly property line of Lot No. 83 of Tax Map No. 20; thence in a northwesterly direction along the northern property lines of Lots No. 83 and No. 82, crossing Townsend Avenue, continuing along the northern property lines of lots described as Map No. 19, Lot Nos. 148, 147, 146 and 145 to the center line of Oak Street; then south along the center line of Oak Street to its intersection with ~~McKown~~ Howard Street, then in a westerly direction along the center line of ~~McKown Street, Todd Avenue~~ Howard Street back to its point of beginning.

**II. Section 170-50(I) Parking Standards, is amended to read as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:**

I. Number required. Off-street parking spaces shall be provided to conform to the number required in the following schedule except that in the Downtown Business District, Section A, there shall be no additional parking demands required for any expansions of use or change of use of ~~a~~an existing structure, provided that there is no increase in building footprint (including decks, etc.). Also in the Downtown Business District, Section A, even with an increase in the building footprint, there shall be no additional parking demands if there is a public parking lot of more than 20 spaces within 200 feet of the structure. Any change in use or expansions that add to the requirement for deliveries shall provide for off-street loading areas large enough to provide for the off-street parking of delivery vehicles.

*[Background – The current ordinance divides the Downtown Business District into 3 sub categories, (A, B, C). The difference in the sub-categories is the parking requirements where “A” has no parking requirements and “B” and “C” do. Bath Saving Institution and the Memorial Library are in an isolated zone of District DB “B”, surrounded by District DB “A”. The Library presented the PB with preliminary ideas for an expansion of the main building and renovations or new construction for the Hyde House (Book store). To comply with the current code they would have to pave an extensive amount of their limited lot to create additional parking; creating a sea of asphalt rather than a green oasis. This seems counter to the Code, particularly when the Library is surrounded by parking lots. The Planning Board felt that changing the zoning district from DB “B” to DB “A” and not*

requiring additional parking when a public lot is nearby better meets the goals of the Town. The proposed revision also includes the clause that any proposed commercial use in the “A” district must have public parking within 200’ of the site, which most commercial uses in the DB zone have including the Library.

Article 21 To see if the Town will vote to amend the current Land Use Code as follows:

**Section 170-27(E) Table of Uses, is amended as follows:**

1. In the section labeled “Residential Uses,” under the column labeled “DB,” for the uses labeled “Residential association uses or structures,” “Duplexes,” “Manufactured housing exclusive of mobile homes (modular),” and “Single-family dwelling” the letter “C” is deleted and left blank for each said use, indicating that the said uses are not permitted in said district.
2. In the section labeled “Residential Uses,” under the column labeled “DB,” for the use labeled “Multifamily dwellings” the letter “P” is inserted into the blank area for said use, indicating that the said use is a conditional use in said district requiring approval from the Planning Board.

*[Background – The Future Land Use Plan section of the Comprehensive Plan (pg. 9) states that “The upper floors are reserved for professional offices and residential uses”. It further states that new residential uses not be permitted on the ground floor of key commercial streets”. Section 170- 27 (Schedule of Uses) of the Code specifies the allowed uses in each of the zones. Currently, the table permits single family dwellings (except mobile homes) in the Downtown Business Zone. The result of this was the conversion of at least one commercial building into a single family residence. Furthermore the Table does not permit multifamily uses, but the reality is that many of the upper floors have residential occupancy which constitutes multi-family dwellings. These are “legally non-conforming” uses. Therefore, to prevent the conversion or construction of new single family residences and to allow multi-family dwellings on the upper floors in the DB District, the following changes are proposed to the Table in 170-27.]*

Article 22 To see if the Town will vote to amend the current Land Use Code as follows:

**1. Section 170-28 Schedule of Dimensional Requirements, Note E, is amended to read as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:**

E In ~~Subsection A(1)~~ the Downtown Business District only, the side ~~or~~ and rear yard setback requirement may be ~~relaxed through a site plan review permit, provided that this relaxation is accompanied by the~~ adjusted to allow building to the lot line with a Site Plan review permit, provided that the subject structure includes a complete (throughout the entire structure) installation of a state-approved sprinkler system and state-approved minimum one-hour complete firewall on the affected setbacks.

**II. Section 170-28 Schedule of Dimensional Requirements, is amended to add Note E to the “Residential” and “All other” categories in the DB District.**

**III. Section 170-28 Schedule of Dimensional Requirements, is amended to add a new Note L as follows:**

- L Structures to be allowed within side or rear yard setback will be limited to include items similar in nature to masonry stoops, masonry equipment pads, AC condenser, etc., but excluding propane or other flammable storage or refuse. These items shall fit in the following range, nominally 4 feet wide and up to 7.5 feet from the building. If an existing stoop or pad is found in the abutter's side of the lot line, the location of the new stoop or pad must be 15 feet from the abutting existing stoop or pad. No more than 2 such items shall be allowed on any side of the lot.

*[Background – The Comprehensive plan (Pg.9) states that all areas in Boothbay Harbor except the proposed Rural District and General Residential/Rural District are considered growth areas. This concept of encouraging growth is limited in the downtown business district by setting strict setbacks for rear and side yards. A common concern relating to a need for the setbacks is fire prevention. The mitigating solution is to require a fire rating on exterior walls inside these setbacks and for buildings that extend to the lot lines to upgrade to include sprinkler type fire protections. The new Maine Law LD2003 will promote more add on construction of residential units. It will apply in the beginning to all areas, but the first impact will surely include both General Residential and Downtown Business districts.]*

Article 23 To see if the Town will vote to amend the current Land Use Code as follows:

**1. Section 170-101.11(H)(3)(b) Administrative Appeals, is amended as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:**

- (b) When the Board of Appeals hears an appeal of a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the article or contrary to the facts presented in the record to the Planning Board. The Board of Appeals may only review the record ~~and~~ of the proceedings before the Planning Board at the time it reached the decision under appeal. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board. The Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings ~~are~~ is inadequate, the Board of Appeals may remand the matter to the Planning Board for clarification.

**II. Section 170-108(D)(2)(a) Board of Appeals, Powers and Duties, is amended as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:**

- (a) ~~Administrative appeals shall be an appellate hearing. If new facts or evidence are available, the matter shall be referred back to the Planning Board or Code Enforcement Officer for a new decision based on the additional information.~~ Administrative appeals: to hear and decide where it is alleged there is an error on any order, requirement, decision, or determination made by the Code Enforcement Officer or by the Planning Board. ~~The action or inaction~~ When the Board of Appeals hears an appeal of a decision of the Code Enforcement Officer or the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Code Enforcement Officer or the Planning Board

~~may be modified or reversed by majority vote of those present and voting. This only upon finding that the decision was contrary to specific provisions of the article or contrary to the facts presented in the record to the Code Enforcement Officer or the Planning Board. The Board of Appeals may include enforcement actions only review the record of the proceedings before the Code Enforcement Officer or the Planning Board at the time that it reached the decision under appeal. The Board of Appeals shall not receive or consider any evidence which was not presented to the Code Enforcement Officer or the Planning Board at that time. The Board of Appeals may receive and consider written or oral arguments.~~

*[Background – As set out in the shoreland zoning ordinance provisions of 170.11.H(3)(b), the Board of Appeals’ authority to review decisions of the Planning Board is limited to conducting an administrative appeal on an appellate basis . . . In conducting its administrative appeal, the Board of Appeals “may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the article or contrary to the facts presented in the record to the Planning Board. The Board of Appeals may only review the record and the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board. ... If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact-finding”.*

*Thus, the first part of Section (b) states that the Board of Appeals may only consider facts/evidence in the record of the Planning Board, but further on in Section (b) states that the Board of Appeals can remand the matter to the Planning Board for additional fact-finding.*

*Section 170-108(D)(2)(a) is rewritten to harmonize to corresponding provisions in the Shoreland Zoning ordinance.]*

Article 24 To see if the Town will vote to amend the current Land Use Code as follows:

**I. Section 170-113 Words and terms defined, is amended by adding new definitions, as follows:**

**AFFORDABLE HOUSING DEVELOPMENT**

“Affordable housing development” means:

A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

## ACCESSORY DWELLING UNIT

A dwelling unit for one family which may be within or attached to an existing primary dwelling. It may also be a separate structure on the same lot as the primary dwelling unit.

## DUPLEX

Two dwelling units in one structure. A residential structure with two independent and separate dwelling units of approximately equal size. The units may be side by side or have one above the other. Each must have a separate front and rear entrance, and separate utility services including water, sewer, and electric.

## II. Section 170-31 Affordable housing; density bonus, is amended to read as follows [text that is struck through indicates a deletion; text that is underscored indicates an addition]:

A. Notwithstanding other provisions of this Land Use Code, there shall be a density bonus for affordable housing developments, calculated as the greater of the following two options:

(1) ~~Notwithstanding other provisions of this Land Use Code, there~~ There shall be a density bonus for affordable housing subdivisions and/or senior citizen housing (excluding mobile home parks) of 25%, to be calculated by subtracting the respective percentage from the lot size normally required in the district from the lot size requirement, to arrive at the overall density requirement of the development. This density bonus shall be available only to proposed developments served by public water and sewer where the developer submits evidence and the Planning Board determines that at least 25% of the housing units can be afforded by households at or below 80% of Boothbay Harbor's median household income (per figures published by the State Planning Office).

(2) An affordable housing development where multifamily dwellings are allowed may have a dwelling unit density of up to 2 1/2 times the base density that is otherwise allowed in that location and shall not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area consistent with Title 30-A, section 4349-A, subsection 1, paragraph A or B, or the development must be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system. The development must comply with minimum lot size requirements in accordance with Title 12, chapter 423-A, as applicable.

B. Before an affordable housing development can be approved (for site plan approval, subdivision, building permit, or other approval), the owner of the affordable housing development must have executed a restrictive covenant, recorded in the Lincoln County Registry of Deeds, for the benefit of and enforceable by a party acceptable to the Town, to ensure that for at least 30 years after completion of construction:

(1) For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

(2) For owned housing, occupancy of all of the units designated affordable in 6

the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

C. The owner of an affordable housing development shall provide written verification to the Town that each unit of the housing development is connected to adequate water and wastewater services before the development may be certified for occupancy.

Written verification under this subsection must include:

(1) If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

(2) If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under Title 30-A, section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

(3) If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

(4) If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

D. An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and the shoreland zoning provisions of this Land Use Code.

**III. Article IV Performance Standards, is amended by adding a new Section 170-31.1, as follows:**

**§ 170-31.1 Affordable housing; up to 4 dwelling units allowed.**

**A.** Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which housing is allowed, structures with up to 2 dwelling units per lot shall be allowed if that lot does not contain an existing dwelling unit, except that up to 4 dwelling units per lot shall be allowed if that lot does not contain an existing dwelling unit and the lot is located in a designated growth area consistent with Title 30-A, section 4349-A, subsection 1, paragraph A or B, or if the lot is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan. On a lot with one existing dwelling unit, the addition of up to 2 dwelling units shall be allowed: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

**B.** With respect to dwelling units allowed under this Section, if more than one dwelling unit has been constructed on a lot as a result of the allowance under this Section or Section 170-31.2, the lot is not eligible for any additional increases in

density.

- C. This Ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed under this section that are greater than dimensional requirements or setback requirements for single-family housing units, except that this Ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.
- D. The owner of a housing structure to be approved under this Section must provide written verification that the structure is connected to adequate water and wastewater services before the structure may be certified for occupancy. Written verification under this subsection must include:
  - (1) If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the structure and proof of payment for the connection to the sewer system;
  - (2) If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under Title 30-A, section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;
  - (3) If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the structure, proof of payment for the connection and the volume and supply of water required for the structure; and
  - (4) If a housing structure is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.
- E. A housing structure to be approved under this Section must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and the shoreland zoning provisions of this Land Use Code.

**IV. Article IV Performance Standards, is amended by adding a new Section 170-31.2, as follows:**

**§ 170-31.1 Affordable housing; accessory dwelling units.**

- A. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, an accessory dwelling unit shall be allowed to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.
- B. An accessory dwelling unit may be constructed only:
  - (1) Within an existing dwelling unit on the lot;



- (2) Attached to or sharing a wall with a single-family dwelling unit; or
  - (3) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.
- C. With respect to accessory dwelling units, the following conditions apply notwithstanding any other provision of the Land Use Code (other than shoreland zoning provisions):
- (1) At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and
  - (2) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this Section or section 170-31.1, the lot is not eligible for any additional increases in density.
- D. With respect to accessory dwelling units, the following conditions apply notwithstanding any other provision of the Town's Code (other than shoreland zoning provisions):
- (1) Accessory dwelling units are exempted from any density requirements or calculations related to the area in which the accessory dwelling unit is constructed.
  - (2) For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, in which case the requisite setback requirements for such a structure apply.
  - (3) An accessory dwelling unit is not subject to any additional parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located.
- E. In all cases, the accessory dwelling unit shall be no larger than 40% of the finished and heated portion of the single family house, or more than 750 square feet, whichever is smaller. An accessory dwelling unit must meet a minimum size of 190 square feet. If the Technical Building Codes and Standards Board under Title 10, section 9722, adopts a different minimum size, that standard applies.
- F. The owner of a housing accessory dwelling unit must provide written verification that the accessory dwelling unit is connected to adequate water and wastewater services before the accessory dwelling unit may be certified for occupancy. Written verification under this subsection must include:
- (1) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the accessory dwelling unit and proof of payment for the connection to the sewer system;
  - (2) If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be

verified as adequate by a local plumbing inspector under Title 30-A, section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

(3) If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the accessory dwelling unit, proof of payment for the connection and the volume and supply of water required for the structure; and

(4) If an accessory dwelling unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

G. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and the shoreland zoning provisions of this Land Use Code.

**V. The provisions of this Article shall take effect as of July 1, 2023, provided, however, that if the date by which municipalities are required to implement the requirements of Title 30-A, §§ 4364, 4364-A, and/or 4364-B is postponed or repealed, then the effective date of this Article shall be similarly postponed or repealed.**

*[Background – The Legislature has enacted legislation requiring towns to make provisions for affordable housing as set forth above.]*