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Memorandum

Date: February 22, 2012
To: Town Council
From: Amanda L. Stearns, Community Development Director
Re: Community Development Committee – review of Section 8.3.e, significant adverse impact on water views

The Council referred the review of certain aspects of the Zoning Ordinance to the Community Development Committee on October 24, 2011 by request from the Board of Zoning Appeals. The CDC has met several times to discuss this issue and held a public input meeting on January 11, 2011. Based on the input heard from the public and members of the BZA, review of the current language, the research provided by staff and the discussion by the Committee members, the Committee has adopted a phased approach to resolving the issues raised by the BZA.

The CDC requests that the Council move forward with Amendment 1 as described below by scheduling the necessary public hearing. It is also requested that the CDC have approval to move forward for Amendments 2 and 3.

During their analysis of this issue the CDC made the following conclusions. Please note that Councilor Rodden recused herself from the committee for this issue as she is a waterfront property owner.

Conclusions Drawn:

- The CDC concluded that while zoning is not the only method available to protect water views, they believe that there is sufficient community support to warrant the town having a role in that protection. They also concluded that property owners should be encouraged to seek alternatives such as view easements and cooperative arrangements with neighbors. These private sector initiatives can be developed to exist in perpetuity, while the protection afforded through zoning may change in the future with amendments by future Councils.
- Even though the current zoning language is not specific to ocean front or estuary properties it was concluded that the potential water views on Highland Lake and the Presumpscot River have never been challenged through the BZA process and are unlikely to emerge. To that end, the CDC recommends the focus be placed on the Flats and Foreside neighborhoods.
- The 2006 amendment had unintended consequences as the result required all development of non-conforming lots to apply for a Conditional Use approval regardless of whether or not there might be water views affected. Previously if all current dimensional requirements were met, the Code Enforcement Officer could issue a permit. The CDC recommends correcting this issue.

- The 2006 amendment had unintended consequences as the result treats the development of conforming lots differently than non-conforming lots. Conforming lots are not subject to Conditional Use approval and therefore construction may occur that would adversely impact water views. The CDC recommends correcting this issue.
- Neighborhood character, especially the placement and size of structures as well as the size of lots has over time created a certain style and pattern of development in the Flats and Foreside neighborhoods that provides an opportunity for views from properties that are not waterfront. The CDC recommends that the Council support an effort to develop zoning changes that will mirror the current development pattern. The current dimensional requirements would not support the type of development that exists in these neighborhoods and they are two of the most sought after places to live in the town. This process would result in far fewer non-conforming lots and structures. While this does not speak directly to the protection of water views, it will reduce the effect redevelopment might have on them.

To implement these conclusions the CDC offers the following amendment process:

1. Zoning amendment to create the Waterview Overlay District and remove the remainder of town from the requirement to gain conditional use approval for the development and expansion of single family homes where all current dimensional requirements are met. The introduction will be made on February 27, 2012. This first step will preserve the water view protection in its current form and lighten the staff and BZA burden for development outside of the Overlay District. It is recognized that the district proposed includes lots that will not affect water views. It is intended as an intermediary step while staff works on the next two zoning amendments.
2. Zoning amendment to create an administrative process for property owners within the Waterview Overlay District. This will permit the Code Enforcement Officer to issue a permit with no BZA approval if it can be demonstrated that there are no abutters with a view that might be affected.
3. Zoning amendment to change dimensional requirements (lot size, lot width, lot coverage, setbacks and height restrictions) such that the zoning represents the historical development within the neighborhood. This will result in fewer lots being non-conforming and assure that new development is appropriate in scale and bulk with traditional development. It is not intended to regulate design.