

**AMENDMENTS TO THE MUNICIPAL PLANNING STRATEGY
AND LAND USE BY-LAW TO REVAMP RESIDENTIAL
POLICIES IN THE DOWNTOWN COMMERCIAL (C-1) ZONE
AND THE WATERFRONT COMMERCIAL
INDUSTRIAL (WCI-5) ZONE.**

Respectfully Submitted to: Planning Advisory Committee

Submitted by: Arthur MacDonald

Dated: March 17, 2010

File # 66560-35- 08(2010-08)

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REQUEST FOR DECISION

SUBJECT: Amendments to the Municipal Planning Strategy and Land Use By-law to revamp residential policies in the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone.

RECOMMENDATION: Approval

KEY ISSUE(S) / CONCEPTS DEFINED: The Yarmouth Downtown Revitalization Plan – The Blueprint, recommends enabling higher density residential development in the downtown core area. These amendments are intended to be in keeping with the intent of the Downtown Revitalization Plan.

RELEVANT POLICY: Various policies of the Municipal Planning Strategy.

DESIRED OUTCOME(S): To enable residential uses within the Waterfront Commercial Industrial (WCI-5) zone and to increase the number of as-of-right residential units from four (4) dwelling units to eight (8) dwelling units in the Downtown Commercial (C-1) zone. Higher density developments (more than eight (8) dwelling units) will be enabled by development agreement in both zones.

RESPONSE OPTIONS: Approval.

IMPLICATIONS OF RECOMMENDATION:

GENERAL: The development of higher density residential uses in the area will have a positive effect on the revitalization of the downtown core. However, there may be issues with regards to the lack of parking facilities; conflict between commercial parking verses residential parking; and, impacts associated with the Town's ability to provide adequate fire protection services due mainly with insufficient fire flows.

FINANCIAL: As more and more residential uses become developed in the core area, it is recommended that the Town undertake a fire flow analysis and up-grade these services to provide adequate fire protection services. The Town may also anticipate costs associated with providing off-site parking services to these newly developed residential developments.

FOLLOW UP ACTION: Public participation meeting, first reading, public hearing and second reading.

Applicant: Town of Yarmouth
400 Main Street,
Yarmouth, N.S.,
B5A 1G2

Application: Amendments to the Municipal Planning Strategy and Land Use By-law to revamp residential policies in the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone.

Relevant Municipal Planning Strategy and Land Use By-law Provision:

The existing Municipal Planning Strategy and Land Use By-law provisions are outlined in Appendix “B” for your review.

General Review – Downtown Commercial (C-1) zone:

In the Downtown Commercial (C-1) zone up to a maximum of four (4) residential dwelling units per lot are permitted as-of-right. More than four (4) residential units can only be considered by development agreement, a three (3) month process. In order to encourage residential development in the downtown core it is recommended that we increase the as-of-right development to eight (8) residential units. More than eight (8) units will only be considered through a development agreement process.

It is recommended to delete the requirement for a loading space for new buildings in the Downtown Commercial (C-1) zone. This provision encourages a use of land that is not considered compatible with an aesthetically pleasing urban core. This does not prevent a developer from installing a loading area if the developer feels one is required for the development; it just removes the requirement of creating one in order to receive a municipal development permit.

It is recommended that parking be prohibited in the front yard or flanking yard for any lot directly abutting Main Street, Water Street and John Street. Parking should be encouraged at the rear with the structure addressing the street in conformity with the existing built environment.

It is recommended to incorporate a policy of support to encourage Council to consider the feasibility of offering residential developers in the Downtown Commercial (C-1) zone off-site parking in the form of either on-street residential parking along streets excluding Main Street, Water Street and John Street or designated residential parking in public parking lot areas.

It is recommended to prohibit drive-thrus in the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone in keeping with the recommendations of the Downtown Revitalization Plan. However, we tried this in the past and it was not approved. Therefore, it is not included in this package. Does the Planning Advisory Committee wish to revisit this issue?

It is recommended to enable residential uses at street level except for Main Street, Water Street and John Street. This has been discussed at the Planning Advisory Committee level on several occasions. It is not included in the package. Does the Planning Advisory Committee wish to revisit this issue?

General Review – Waterfront Commercial Industrial (WCI-5) zone:

The Waterfront Commercial Industrial (WCI-5) zone currently does not permit residential developments. In order to encourage residential development it is recommended that we enable up to a maximum of eight (8) residential units as-of-right. More than eight (8) units will only be considered through a development agreement process. Residential developments at street level will be permitted within the Waterfront Commercial Industrial (WCI-5) zone.

It is recommended that the minimum front yard set-back be waived in the Waterfront Commercial Industrial (WCI-5) zone to encourage buildings right up to the street to maintain consistency with the Downtown Commercial (C-1) zone.

Recommendation:

That the Planning Advisory Committee proceeds to a public participation meeting in order to consider amendments to the Municipal Planning Strategy and Land Use By-law to revamp residential policies in the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone and other amendments in keeping with the Downtown Revitalization Plan as outlined in Appendix “A”.

Sincerely,

Arthur MacDonald
Town Planner

APPENDIX “A”
Amendment to the Municipal Planning Strategy

1) An amendment to the Municipal Planning Strategy, in particular, Chapter 4 “Commercial Development” by deleting the second paragraph following the fourth “Goal” of the Central Business District and substituting therefore the following:

“It is recognized that a healthy downtown requires a significant residential component in order to maintain the downtown’s vitality. For this reason, the residential designation boundary adjacent to the CBD will be “soft” to allow for rezoning to Medium Density Residential (R-2). Residential developments up to a maximum of eight (8) dwelling units will be permitted as-of-right in the Downtown Commercial (C-1) zone. Developments consisting of more than eight (8) units per lot shall be considered through the development agreement process.”

2) An amendment to the Municipal Planning Strategy, in particular, Chapter 4 “Commercial Development” by deleting the last sentence of the third paragraph:

~~**“Medium and high density developments, however, may be spot zoned within the CBD to promote residential development provided they are not located at street level.”**~~

3) An amendment to the Municipal Planning Strategy, in particular, Policy 2.1.6 by deleting it and substituting therefore the following:

“2.1.6 It shall be the intention of Council to allow up to a maximum of eight (8) residential dwelling units per lot in the Downtown Commercial (C-1) zone provided the residential use does not locate at street level.”

4) An amendment to the Municipal Planning Strategy, in particular, Policy 2.1.10 by deleting it and substituting therefore the following:

“2.1.10 It shall be the intention of Council to enable the development of more than eight (8) residential units per lot in the Downtown Commercial (C-1) zone by development agreement pursuant to Section 225 of the Municipal Government Act and subject to the following:

- (1) That the residential units are not located at street level; or otherwise located directly abutting the soft line boundary of the Residential Designation in which case residential units may be permitted at street level;**
- (2) That the minimum on-site parking requirements can be met or cash-in-lieu of parking has been paid; and,**

(3) That the proposal conforms with criteria contained in Implementation Policy 7.8.”

5) An amendment to the Municipal Planning Strategy, in particular, Policy 2.1.13 by deleting it and substituting therefore the following:

“2.1.13 It shall be the intention of Council to include in the Land Use By-law minimum development standards in the Downtown Commercial (C-1) zone with respect to building height and visibility at street intersections (corner vision triangle).”

6) An amendment to the Municipal Planning Strategy, in particular, Policy 2.1.14 by inserting a new subsection, subsection (4) and subsection (5), as outlined below:

“(4) work with residential developers within the Downtown Commercial (C-1) zone by considering on a case by case nature the feasibility of offering residential developers off-site parking in the form of either on-street designated residential parking along side streets, excluding Main Street, Water Street and John Street, or by designating residential parking spaces in public parking lots for the residential dwelling use.

(5) prohibit the development of any parking space or loading space within any front yard or flanking yard of any lot abutting Main Street, Water Street or John Street in the Downtown Commercial (C-1) zone. This provision shall only apply when a new “main” building is being developed. The alteration of, addition to, renovation to or change in use to any existing “main” building; the construction of a new “accessory” building or the alteration of, addition to, or renovation to any existing “accessory” building; or, any change to the use of land shall be exempted from this requirement.”

7) An amendment to the Municipal Planning Strategy, in particular, Policy 3.3.2 by inserting “residential dwelling units up to a maximum of eight (8) units per lot;” following the words, “hotels, motels and hostels;”.

8) An amendment to the Municipal Planning Strategy, in particular, Policy 3.3.4 by capitalizing the letter “U” in the word “Use”.

9) An amendment to the Municipal Planning Strategy, in particular, Policy 3.3.7 by deleting the word “Waterfront” following the word “designated”.

10) An amendment to the Municipal Planning Strategy, in particular the Generalized Future Land Use Map, by deleting the reference to “Waterfront Commercial Industrial” and substituting therefore the reference to “Commercial Industrial”.

11) An amendment to the Municipal Planning Strategy by inserting the following paragraph as the second paragraph prior to Policy 3.3.1”

“Previously residential developments along Yarmouth’s harbour have not been permitted. In order to encourage residential development within the downtown core area, it shall be the intention of Council to enable up to a maximum of eight (8) residential dwelling units per lot as-of-right within the Waterfront Commercial Industrial (WCI-5) zone. More than eight (8) residential units per lot will only be considered through the development agreement process. When considering applications for residential developments, through the development agreement process, Council shall consider the feasibility of providing public access to the waterfront. Yarmouth’s waterfront is considered a public asset and accessibility is considered an important cultural and social attribute that should remain in the public realm. In this respect, Council will only accept residential developments greater than eight (8) units per lot provided public amenity space is provided through a public easement granted to the Town of Yarmouth.”

12) An amendment to the Municipal Planning Strategy by inserting a new policy, Policy 3.3.8 as outlined below:

“3.3.8 It shall be the intention of Council to enable residential developments containing more than eight (8) residential units per lot in the Waterfront Commercial Industrial (WCI-5) zone by development agreement pursuant to Section 225 of the Municipal Government Act and subject to the following:

(1) That a minimum of 15m² (161.46ft²) of public amenity space along Yarmouth’s harbour with a minimum width of 3m (9.84ft.) in any one direction is provided for each residential dwelling unit up to a maximum linear distance of Yarmouth’s harbour frontage available to the lot. The public amenity space shall be by way of a registered easement granted to the Town of Yarmouth complete with a 3m (9.84ft.) wide right-of-way easement to Water Street to provide public access to the public amenity space along Yarmouth’s Harbour. The 3m (9.84ft.) wide right-of-way easement to Water Street shall not form part of the required public amenity space along Yarmouth’s harbour;

(2) That the minimum on-site parking requirements can be met; and,

(3) That the proposal conforms with criteria contained in Implementation Policy 7.8.”

13) An amendment to the Municipal Planning Strategy by inserting a new “objective” as “objective (6)” under the “Recreational Programming and Facilities” section of Chapter 7 as outlined below:

“(6) To develop, encourage and promote the development of downtown pocket parks throughout the Central Business District.”

APPENDIX “A”
Amendment to the Land Use By-law

1) An amendment to the Land Use By-law, in particular Part 14.1, by deleting “Residential dwelling units up to a maximum of four (4) units per lot provided they are not located at street level” and substituting therefore the words “Residential dwelling units up to a maximum of eight (8) units per lot provided they are not located at street level”.

2) An amendment to the Land Use By-law, in particular Part 14.3 subsection (1), by deleting it and substituting therefore the following:

“(1) New residential developments containing more than eight (8) units provided they are not located at street level or otherwise located directly abutting the soft line boundary of the Residential Designation in which case residential units may be permitted at street level;”

3) An amendment to the Land Use By-law, in particular Part 14.7, by deleting it and substituting therefore the following:

“14.7 Parking and Loading Spaces Prohibited

In the Downtown Commercial (C-1) zone, the development of parking spaces and loading spaces in the front yard and flanking yard of any lot abutting Main Street, Water Street or John Street shall be strictly prohibited. This provision shall only apply when a new “main” building is being developed. The alteration of, addition to, renovation to or change in use to any existing “main” building; the construction of a new “accessory” building or the alteration of, addition to, or renovation to any existing “accessory” building; or, any change to the use of land shall be exempted from this requirement.”

4) An amendment to the Land Use By-law, in particular Part 18.3, by adding the following at the end:

“Residential Dwelling Units

One (1) on-site parking space shall be provided and maintained for each dwelling unit”

5) An amendment to the Land Use By-law, in particular Part 20.1, by adding the words “Residential dwelling units up to a maximum of eight (8) units per lot;” following the words “Hotels, Motel and Hostels”.

6) An amendment to the Land Use By-law, in particular Part 20.2, by deleting the words “Minimum Front Yard 4.6m (15 ft.)” and substituting therefore the words “Minimum Front Yard Waived”.

7) An amendment to the Land Use By-law, in particular Part 20.4, by renumbering this part to “Part 20.4(A)” and incorporating a new part, Part 20.4(B) as outlined below:

“20.4(B) Waterfront Commercial Industrial Policy 3.3.8 of the Municipal Planning Strategy provides that residential uses containing more than eight (8) dwelling units per lot may be considered for development in the Waterfront Commercial Industrial (WCI-5) zone only by Development Agreement pursuant to Section 225 of the Municipal Government Act and subject to general conformity with criteria contained in Implementation Policy 7.8.”

8) An amendment to the Land Use By-law, in particular Part 20.7, by deleting “(W-CI)” and substituting therefore “(WCI-5)”.

9) An amendment to the Land Use By-law, in particular Part 20.9, by deleting “(W-CI)” and substituting therefore “(WCI-5)”.

Appendix “B”

Existing Municipal Planning Strategy Provisions

“Central Business District

The following goal has been identified with respect to development activity within the Central Business District designation and serves as the basis for the development of more detailed policy objectives and statements.

GOAL - Central Business District

The goal is to ensure that the Central Business District remains physically attractive and economically vibrant by:

- (1) limiting the establishment of new business and professional offices to the Downtown area, in particular, the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone;**

- (2) encouraging the expansion of the Central Business District in a rational and coherent fashion in a centralized direction to encourage the maximum utilization of centralized public facilities, recognizing the need to extend the district south to accommodate the needs of the new Justice Centre;**

- (3) promoting the efficient use of existing public parking facilities and the development of new parking facilities in order to support existing and new commercial activities; and,**

- (4) promoting medium and high density residential development in the Central Business District.**

The Central Business District (CBD) is that area commonly referred to as “downtown”. Downtown has historically experienced development on Main Street and along several blocks between Main and Water Streets. Additional commercial development has also located east of Main Street but not with the same intensity as developments fronting on Main Street. The CBD designation has had and should continue to have the broadest range of commercial activities. It is intended by limiting all new business and professional offices to the downtown area (C-1 and WCI-5 zones), except home based business offices, accessory business offices and call centers in excess of 464.8m² (5,000 ft.²), that this traditional area will remain the “heart” of Yarmouth. As one component in the larger commercial fabric of the Town, downtown has a significant role to play in the general well being of the entire Town.

It is recognized that a healthy downtown requires a significant residential component in order to maintain the downtown's vitality. For this reason, the residential designation boundary adjacent to the CBD will be "soft" to allow for rezoning to Medium Density Residential (R-2). Medium Density Residential (R-2) developments within the CBD will be permitted as-of-right,

provided they are not located at street level. High Density Residential (R-3) development will only be allowed in the CBD by development agreement.

The Generalized Future Land Use Map has identified the limits of the CBD designation by the placement of a "hard" line boundary which can only be amended by amendment to this Strategy. It is anticipated that the CBD will expand east of Main Street between Parade and Cliff Streets. However, it is the intention of Council to limit commercial development to the western side of Thurston Street by the eventual placement of a "hard" line CBD boundary along the western side of Thurston Street, down the southern side of Alma Street and down the northern side of Cliff Street. The eventual placement of the CBD "hard" line boundary, as described above, shall not be expanded in order to protect the residential areas to the east from further commercial encroachment. There is also a significant opportunity to expand the CBD in a southerly direction to Haskell Street between Main and Water Streets by amendment to this Strategy. The expansion of the Downtown Commercial (C-1) zone will only be considered on a lot by lot basis and such lots shall be adjacent to or across the street from the Downtown Commercial (C-1) zone. Leap frogging or spot zoning shall be strictly prohibited for commercial uses when considering the expansion of the CBD. Medium and high density developments, however, may be spot zoned within the CBD to promote residential development provided they are not located at street level.

The Central Business District merchants and property owners will be responsible for the continued provision of parking for existing development. The Land Use By-law will require on-site parking or a transfer to the Town of cash-in-lieu thereof, for major new commercial development in excess of 929.5m² (10,000 ft.²). Any cash-in-lieu of parking received by the Town will be directed towards development of new parking facilities as well as upgrading existing parking facilities within the downtown area.

Council will use development agreements for major new commercial development in excess of 1393.5m² (15,000 ft.²) to ensure that such developments do not place undue strain on existing road, sewer, water, parking and community facilities. This requirement shall apply to any new commercial development in excess of 1393.5m² (15,000 ft.²) of commercial floor area or where an addition to an existing building creates more than 1393.5m² (15,000 ft.²) of commercial floor area. The alteration of, renovation to or change of use within any existing building shall be exempt from this requirement. While the Town encourages and welcomes commercial development in the CBD, efforts must be made to ensure it is compatible with existing developments and that it addresses the difficulties posed by redevelopment.

In an effort to provide a fair advantage to all property owners within the Central Business District with respect to views of Yarmouth's harbour, it is the intent of this Strategy to limit the height of all buildings and structures to a maximum of 15.24m (50 ft.) This maximum height shall not be exceeded by variance, development agreement or any other means without an amendment to this Strategy.

The following are Council's policies with respect to development in the Central Business District:

2.1.1 It shall be the intention of Council to designate those lands generally recognized as the Town's traditional commercial core which are bounded on the north by the center of Store Street and its extension on the east side of Main Street; bounded on the south by the center of Haskell Street and lands north of Albert Street; bounded on the east by the west side of Thurston Street; and, bounded on the west by the center of Water Street as "CBD" on the generalized future land use map.

2.1.2 It shall be the intention of Council to establish all boundaries for the CBD generalized future land use map designation as “hard” pursuant to Implementation Policy 7.5.

2.1.3 It shall be the intention of Council to amend the boundaries of the CBD generalized future land use map designation only by amendment to the Municipal Planning Strategy.

2.1.4 It shall be the intention of Council to include in the Land Use By-law a Downtown Commercial (C-1) zone, which shall include the following types of uses permitted as-of-right: retail shops; convenience and grocery stores; wholesale shops; light service shops; personal service shops; business offices; professional offices; internet web site development; municipal, provincial and federal government offices; public parks; call centers; banks and financial institutions; hotels, motels and hostels; institutional uses; medical clinic; parking lots and parking structures; places of entertainment, recreation, fitness and assembly within wholly enclosed buildings; taxi and bus stations; taverns, lounges and cabaret; radio stations; restaurants (eat-in, drive-in or drive-thru); light service industries within wholly enclosed buildings; live-in art gallery studios; laundromats and residential uses which are not located at street level.

2.1.5 It shall be the intention of Council to zone all existing commercial uses within the CBD generalized future land use map designation as Downtown Commercial (C-1). All other lands within the designation shall be zoned according to their use.

2.1.6 It shall be the intention of Council to allow the development of Medium Density Residential (R-2) uses in the Downtown Commercial (C-1) zone provided the residential use does not locate at street level.

2.1.7 Notwithstanding Policy 2.1.6, it shall be the intention of Council to allow the development of Live-in Art Gallery Studios at street level within the Downtown Commercial (C-1) zone subject to the following:

- (1) That the commercial component of the Gallery shall be anterior in respect to the residential component of the Live-in Art Gallery Studio; and,**
- (2) That all other requirements of this plan are satisfied.**

2.1.8 It shall be the intention of Council to consider commercial development proposals which do not exceed 1394.3m² (15,000 ft.²) in floor area on lands designated CBD but not zoned Downtown Commercial (C-1) by amendment to the Land Use By-law subject to Implementation Policy 7.7.

2.1.9 It shall be the intention of Council to consider Medium Density Residential (R-2) developments within the CBD designation by amendment to the Land Use By-law pursuant to Residential Policy 1.2 and Implementation Policy 7.6 subject to the following:

- (1) That the lot directly abuts the residential designation;**

(2) That the minimum on-site parking requirements can be met or cash-in-lieu of parking has been paid;

(3) That the proposal conforms with criteria contained in Implementation Policy 7.7.

2.1.10 It shall be the intention of Council to consider High Density Residential (R-3) developments (more than four (4) units) in the Downtown Commercial (C-1) zone by development agreement pursuant to Section 225 of the Municipal Government Act and subject to the following:

(1) That the residential units are not located at street level; or otherwise located directly abutting the soft line boundary of the Residential Designation in which case residential units may be permitted at street level;

(2) That the minimum on-site parking requirements can be met or cash-in-lieu of parking has been paid; and,

(3) That the proposal conforms with criteria contained in Implementation Policy 7.8.

2.1.11 It shall be the intention of Council to consider the development of any new commercial activities within the (C-1) zone which exceed 1393.5m² (15,000 ft.²) of gross commercial floor area or where an addition to an existing building creates more than 1393.5m² (15,000 ft.²) in gross commercial floor area by development agreement pursuant to Section 225 of the Municipal Government Act and subject to general conformity with criteria contained in Implementation Policy 7.8. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

2.1.12 It shall be the intention of Council that any development agreement entered into pursuant to Commercial Policy 2.2.10 and 2.1.11 shall contain such terms and conditions necessary to implement the agreement pursuant to Implementation Policy 7.9.

2.1.13 It shall be the intention of Council to include in the Land Use By-law minimum development standards in the Downtown Commercial (C-1) zone with respect to building height, off-street loading facilities and visibility at street intersections (corner vision triangle).

2.1.14 It shall be the intention of Council with respect to the provision of parking facilities in the CBD to:

(1) Require that the Central Business District business community bear the responsibility of providing and maintaining adequate parking facilities for existing commercial uses;

(2) Require that where any additions to an existing structure or the erection of a new structure creates more than 929.5m² (10,000 ft.²) of gross commercial floor area, the developer provide adequate on-site parking for that portion of gross commercial floor area in excess of 929.5m² (10,000 ft.²) or otherwise pay the cash-in-lieu equivalent. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

(3) Require that where any addition to an existing structure or the erection of a new structure creates a dwelling unit, the developer provides and maintains one (1) parking space for each newly constructed dwelling unit or otherwise pay the cash-in-lieu equivalent. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

2.1.15 It shall be the intention of Council to include in the Land Use By-law a provision that enables developers the option of providing cash in lieu of required parking within the Central Business District. Further, it shall be the intention of Council to utilize such cash-in-lieu for the development and improvement of parking facilities in the downtown area.

2.1.16 It shall be the intention of Council to include in the Land Use By-law a formula for the calculation of cash-in-lieu of parking contributions.

2.1.17 It shall be the intention of Council to consider the development of Waterfront Commercial Industrial (WCI-5) uses (except fish and food processing) within the CBD designation by amendment to the Land Use By-law pursuant to Waterfront Commercial Industrial Policy 3.3.4 and Implementation Policy 7.6 and subject to the following:

(1) That the lot directly abuts Water Street; and,

(2) That the proposal conforms with criteria contained in Implementation Policy 7.7.

2.1.18 It shall be the intention of Council to limit the establishment of business and professional offices to the Downtown area, in particular, the Downtown Commercial (C-1) zone and the Waterfront Commercial Industrial (WCI-5) zone.

2.1.19 It shall be the intention of Council to limit the height of any building within the Downtown Commercial (C-1) zone to a maximum of 15.24m (50 ft.) to provide a fair advantage to all property owners within the zone with respect to views of Yarmouth's harbour.

Waterfront Commercial Industrial (WCI-5) Zone

The 1988 Municipal Planning Strategy and Land Use By-law enabled the development of Downtown Commercial (C-1) uses on lands designated Industrial provided the lands were adjacent to a "soft" line boundary of the Central Business District (CBD). As a result, several properties located within the Industrial designation were rezoned to Downtown Commercial (C-1). The extension of commercial uses to the western side of Water Street created a commercial/industrial mix. Council intends to support the development of this area by designating the area Commercial Industrial pursuant to the generalized future land use map and zone the area Waterfront Commercial Industrial (WCI-5) pursuant to the zoning map.

The extension of Downtown Commercial (C-1) uses to the western side of Water Street provides the rationale for enabling Downtown Commercial (C-1) uses within the Waterfront Commercial Industrial (WCI-5) zone. As such, business and professional office uses will be deemed permitted uses within the Waterfront Commercial Industrial (WCI-5) zone. By limiting all new business and professional offices to the Downtown Commercial (C-1) and the

Waterfront Commercial Industrial (WCI-5) zone, the intent of the 1988 Municipal Planning Strategy to limit all new office development to the CBD remains intact.

Council recognizes the importance of maintaining a functional working waterfront for the benefit of the whole community. Therefore, the boundary of the Commercial Industrial designation adjacent to the CBD will remain "soft" to allow properties located in the CBD to be rezoned for commercial industrial purposes. All other boundaries surrounding the designation shall be "hard" to restrict the expansion of this designation in a south or north direction. As with the Central Business District, it shall be the intent to keep the Commercial Industrial designation along Water Street concentrated and centralized to prevent leap frogging or spot zonings.

The transition between the commercial activities of the Central Business District and the commercial industrial activities of the Commercial Industrial designation along Water Street can be visualized as one travels through their connecting streets. Brown Street, Central Street and Lovitt Street all serve as strong vehicular and visual connectors between the two. In order to preserve this connection it shall be the intent to preserve the view planes of these streets through to Yarmouth's harbour. Therefore, it shall be Council's intent to prohibit new developments within the western prolongation of both street lines of Brown, Central and Lovitt Streets. The alteration of, addition to or change in use of any existing structure shall be exempt from this requirement provided such development does not further protrude into the western prolongation of both street lines of said streets.

It is Council's intent that the Commercial Industrial designation along Water Street will enhance the area as a community focal point and provide a mixture of compatible commercial and industrial uses for a healthy and vigorous waterfront. For this reason, obnoxious industrial uses will no longer be deemed appropriate. New fish and food processing plants will no longer be permitted by development agreement within the Waterfront Commercial Industrial (WCI-5) zone, however, existing ones such as Scotia Garden Seafoods located at 112 Water Street may expand beyond the limits of their current boundaries provided such lands are consolidated with their existing lands.

In an effort to minimize potential impacts on retail trade, tourism development and the waterfront trail system, new open storage and/or outdoor displays of a temporary nature within the Waterfront Commercial Industrial (WCI-5) zone will be encouraged to continue so as to attract open air markets which create a tourism friendly environment. Open storage and outdoor displays traditionally associated with the fishing industry will also be encouraged to continue, though with some restrictions. Any other type of open storage or outdoor display shall be considered incompatible and strictly prohibited. The control of open storage and outdoor display within the Waterfront Commercial Industrial (WCI-5) zone is an attempt to enhance the commercial tourism flavour of this section of Water Street.

To ensure that new developments do not place undue strain on existing roads, sewer, water, parking or community facilities, any development in excess of 1393.5m² (15,000 ft.²) shall be considered by development agreement. This requirement shall apply to any new development in excess of 1393.5m² (15,000 ft.²) of gross commercial floor area or where an addition to an existing building creates more than 1393.5m² (15,000 ft.²) of gross commercial floor area. The alteration of, renovation to or change of use within any existing building shall be exempt from this requirement. The intent is to enable compatible developments to intermix within the Waterfront Commercial Industrial (WCI-5) zone without hindering each other's interests and without straining public infrastructure and amenities.

The following are Council's policies with respect to developments in the Waterfront Commercial Industrial (WCI-5) zone:

3.3.1 It shall be the intention of Council to zone those lands designated Commercial Industrial that are located on the west side of Water Street between Store Street and Horton Street as Waterfront Commercial Industrial (WCI-5).

3.3.2 It shall be the intention of Council to include in the Land Use By-law a Waterfront Commercial Industrial (WCI-5) zone. This zone shall include the following and other similar types of uses permitted as-of-right: retail shops; convenience stores and grocery stores; wholesale shops; light service shops; personal service shops; internet web site development; heavy service shops; business offices; professional offices; call centers; institutional uses; hotels, motel and hostels; restaurants (eat-in, drive-in or drive-thru); taverns, lounges and cabarets; places of entertainment, recreation, fitness and assembly (indoor and outdoor); parking lots excluding parking structures; public marinas and wharves excluding open storage or outdoor displays; private marinas and wharves excluding open storage or outdoor displays; marine fuelling facilities excluding bulk petroleum plants; ferry terminals; light industries; light service industries; fishing and marine-related industries excluding new fish or food processing; existing fish or food processing and any manufacturing or industrial assembly operations conducted and contained within wholly-enclosed buildings and which are not obnoxious by reason of sound, odor, dust, fumes or smoke or other obnoxious emissions or refuse matters or water-carried wastes or by reason of unsightly open storage.

3.3.3 It shall be the intention of Council to consider the development of any new commercial or industrial activity within the Waterfront Commercial Industrial (WCI-5) zone which exceeds 1393.5m² (15,000 ft.²) of gross commercial floor area or where an addition to an existing building creates more than 1393.5m² (15,000 ft.²) in gross commercial floor area by development agreement pursuant to Section 225 of the Municipal Government Act and subject to general conformity with criteria contained in Implementation Policies 7.8 and 7.9. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

3.3.4 It shall be the intention of Council to consider development proposals for Waterfront Commercial Industrial (WCI-5) developments on lands located within the CBD designation which abut Water Street and are adjacent to the “soft” line boundary of the Commercial Industrial designation by amendment to the Land use By-law pursuant to Commercial Industrial Policy 3.1.3 and Implementation Policy 7.6 and subject to criteria contained in Implementation Policy 7.7 in keeping with Commercial Policy 2.1.17.

3.3.5 It shall be the intention of Council to include in the Land Use By-law a special provision protecting street views of Yarmouth’s harbour by prohibiting any new development within the western prolongation of both street lines of Brown, Central and Lovitt Streets. The alteration of, addition to or change in use of any existing structure shall be exempt from this requirement provided such development does not protrude further into the western prolongation of said streets.

3.3.6 It shall be the intention of Council to include in the Land Use By-law a provision enabling existing fish and food processing plants located within the Waterfront Commercial Industrial (WCI-5) zone the ability to expand beyond the limits of their current boundaries provided such lands are consolidated with their existing lands.

3.3.7 It shall be the intention of Council to consider proposals for Waterfront Commercial Industrial (WCI-5) developments on lands designated Waterfront Commercial Industrial which are not zoned Waterfront Commercial Industrial (WCI-5) by amendment to the Land Use By-law subject to the following:

- (1) That the lot meets the minimum lot area and frontage requirements of the WCI-5 zone or is otherwise an existing undersized WCI-5 zoned property which is increased in area or frontage or both as a result of subdivision but still remains undersized;**

(2) That the proposal conforms with criteria contained in Implementation Policy 7.7.

Appendix “B” Existing Land Use By-law Provisions

Part 14 - Downtown Commercial (C-1) Zone

14.1 C-1 Zone Permitted Uses

In the Downtown Commercial (C-1) zone, no development permit shall be issued except for one or more of the following uses:

- * Retail Shops;
- * Convenience Stores and Grocery Stores;
- * Wholesale Shops;
- * Light Service Shops;
- * Personal Service Shops;
- * Business Offices;
- * Professional Offices;
- * Internet Web Site Development;
- * Municipal, Provincial and Federal Government Offices;
- * Public Parks;
- * Call Centers;
- * Banks and Financial Institutions;
- * Hotels, Motels and Hostels;
- * Institutional Uses;
- * Medical Clinic;
- * Parking Lots and Parking Structures;
- * Places of Entertainment, Recreation, Fitness and Assembly within wholly enclosed buildings;
- * Taxi and Bus Stations;
- * Taverns, Lounges and Cabarets;
- * Radio Stations;
- * Restaurants (eat-in, drive-in or drive-thru);
- * Light Service Industries Within Wholly-enclosed Buildings;
- * Live-in Art Gallery Studios;
- * Laundromats; and,
- * Residential dwelling units up to a maximum of four (4) units per lot provided they are not located at street level.

14.2 Maximum Permitted Height

In the Downtown Commercial (C-1) zone, no development permit shall be issued for any building or structure greater than 15.24m (50 ft.) in height.

14.3 Uses Permitted by Development Agreement

In the Downtown Commercial (C-1) zone, Municipal Planning Strategy Commercial Policies 2.1.10 and 2.1.11 provide that the following uses may be considered for development only by Development Agreement:

(1) New High Density (R-3) residential developments containing more than four (4) units provided they are not located at street level or otherwise located directly abutting the soft line boundary of the Residential Designation in which case residential units may be permitted at street level;

(2) Any new building within the C-1 zone which exceeds 1,393.5m² (15,000 ft.²) of gross commercial floor area or where an addition to an existing building creates more than 1,393.5m² (15,000 ft.²) in gross commercial floor area, otherwise, the alteration of, renovation to or change in commercial use of any existing building shall be exempt from this requirement.

14.4 General Restriction - Live-in Art Gallery Studios

In the Downtown Commercial (C-1) zone, the following general restrictions shall apply to the operation of a Live-in Art Gallery Studio use :

(1) That the commercial component of the Live-in Art Gallery Studio shall be anterior in respect to the residential component of the Live-in Art Gallery Studio and shall not be considered a dwelling unit pursuant to this part; and,

(2) Provided all other requirements of this By-law are satisfied.

14.5 C-1 Zone Parking Requirements - Commercial Uses

Where any addition to an existing building with a gross commercial floor area of less than 929m² (10,000 ft.²) or the construction of a new building or buildings creates more than 929m² (10,000 ft.²) in gross commercial floor area per lot, one (1) off street parking space shall be provided and maintained having unobstructed access to a public street for each 27.87m² (300 ft.²) or fraction thereof, of gross floor commercial area in excess of 929m² (10,000 ft.²) or otherwise pay the cash-in-lieu cash equivalent. Where the addition is to an existing building exceeding 929m² (10,000 ft.²) in gross commercial floor area, one (1) off street parking space shall be provided and maintained having unobstructed access to a public street for each 27.87m² (300 ft.²) or fraction thereof of gross commercial floor area of the addition or otherwise pay the cash-in-lieu cash equivalent. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

14.6 C-1 Zone Parking Requirements - Residential Uses

Where any addition to an existing building or structure or the construction of a new building or structure creates a new dwelling unit or otherwise expands an existing dwelling, one (1) off-street parking space for each newly created or expanded dwelling unit shall be provided and maintained having unobstructed access to a public street or otherwise pay the cash-in-lieu cash equivalent. The

alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

14.7 Loading Spaces - New Buildings

Every new building to be erected in the Downtown Commercial (C-1) zone for any commercial use other than offices shall provide and maintain one (1) off street loading space for every 1858m² (20,000 ft.²) of gross commercial floor area, or fraction thereof. The provision of such space shall be optional for buildings with less than 464.5m² (5,000 ft.²) of gross commercial floor area. The alteration of, renovation to, or change in use of any existing building or structure shall be exempt from any on-site loading requirements.

14.8 Cash-In-Lieu Cash Equivalent for Parking Spaces

Notwithstanding any parking requirements of the Downtown Commercial (C-1) zone, the developer may provide cash-in-lieu of required off street parking or a combination of parking spaces and cash for the balance of the required parking. The cash-in-lieu contribution shall be calculated in accordance with the following formula:

Developer's Contribution = (a x 18.5 square meters x b) + (b x 50), where:

a = Assessed value of land per square metre;

18.5 = The number of square metres in a parking area;

b = The number of required parking spaces;

50 = Cost of construction of one (1) parking space.

14.9 Visibility at Street Intersections - Corner Vision Triangle

On a corner lot in the Downtown Commercial (C-1) zone, a fence, sign, hedge, shrub, bush, tree or any structure shall not be erected or permitted to grow to a height of greater than 1.2m (4 ft.) above the grade of the streets that abut the lot within the triangular area included within both street lines for a distance of 3.0m (10 ft.) from their point of intersection. This provision shall not apply above the height of 2.44m (8 ft.) above grade of the street at the point of intersection.

Part 18 - General Provisions for all Commercial Industrial Zones

18.1 Commercial Industrial Developments Abutting Residential Designation

Where a Commercial Industrial (CI-4) or Waterfront Commercial Industrial (WCI-5) zone abuts a Residential, Open Space or Institutional zone within the Residential Generalized Future Land Use Map designation, the following restrictions shall apply:

(1) The minimum required abutting yard set-back for any main or accessory building shall be 6.1m (20 ft.) or as otherwise required pursuant to the zone requirements, whichever is greater;

(2) No open storage, outdoor display, parking or loading area shall be permitted within the required abutting yard set-back except where a 1.8m (6 ft.) high opaque fence or a 3.0m (10 ft.) wide landscaped strip with a growth and/or landscaping not less than 1.8m (6 ft.) in height is erected along the entire length of any abutting lot line and provided, in the case of open storage or outdoor displays, that the height of such does not exceed the height elevation of the opaque fence or growth and/or landscaping.

(3) In the case of providing a landscaped strip, such strip shall be open and unobstructed by any building, parking, loading area, signage, open storage or outdoor display.

18.2 Visibility at Street Intersections - Corner Vision Triangle

On a corner lot in the Commercial Industrial (CI-4) zone or Waterfront Commercial Industrial (WCI-5) zone, a fence, sign, hedge, shrub, bush, tree, or any structure shall not be erected or permitted to grow to a height greater than 1.2m (4 ft.) above the grade of the streets that abut the lot within the triangular area included within both street lines for a distance of 7.6m (25 ft.) from their point of intersection.

18.3 CI-4 and WCI-5 Zone Parking Requirements

For every building or structure to be erected, occupied, or enlarged, or where there is a change in use to a building or structure in the Commercial Industrial (CI-4) or in the Waterfront Commercial Industrial (WCI-5) zone, on-site parking shall be provided and maintained on the same lot as the use having unobstructed access to a public street in conformity with the following schedule. For the sake of clarity, in a multiple-occupancy building, each type of occupancy shall satisfy the parking requirements for each type of use except those exceeding 4645 m.² (50,000 ft.²) of gross commercial floor area per lot.

USE	PARKING REQUIREMENTS
Auditoriums, Theaters, Arenas, Halls, Stadiums and other Places of Assembly	One (1) parking space for each 9.3m ² (100 ft. ²) or fraction thereof of gross floor area excluding vestibules, washrooms, closets and storage areas.
Hotels, Motels, Hostels and any Tourist Accommodation	One (1) parking space per suite or rental unit plus one (1) additional parking space for each 9.3m ² (100 ft. ²) or fraction thereof of floor area devoted to public use (including any associated taverns, restaurants or auditoriums) excluding public vestibules, public lobbies, public washrooms, public hallways and storage areas.
Restaurants, Taverns, Lounges, Cabarets	One (1) parking space for each 7.0m ² (75 ft. ²) or fraction thereof of gross commercial floor area excluding vestibules, washrooms, closets and storage areas.

Auditoriums, Theaters, Arenas, Halls, Stadiums and other Places of Assembly	One (1) parking space for each 9.3m ² (100 ft. ²) or fraction thereof of gross floor area excluding vestibules, washrooms, closets and storage areas.
Warehouse, Warehousing and Storage Uses	One (1) parking space for each 46.2m ² (500 ft. ²) or fraction thereof of gross floor area.
Retail Shops and other Commercial Uses	One (1) parking space for each 27.9m ² (300 ft. ²) or fraction thereof of gross commercial floor area, excluding vestibules, washrooms, closets and storage areas.
CI-4 or WCI-5 Uses With 4645m ² (50,000 ft. ²) or More of Gross Commercial Floor Area Per Lot.	Six (6.0) parking spaces for each 92.9 m ² (1,000 ft. ²) or fraction thereof of commercial floor area excluding common mall area between stores, vestibules, washrooms, closets and storage areas. Warehousing space shall provide one (1) parking space for each 46.2 m ² (500 ft. ²) or fraction thereof of gross floor area.

18.4 Loading Space Requirement

For every building or structure to be erected, occupied or enlarged, or where there is a change in use to a building or structure in the Waterfront Commercial Industrial (WCI-5) zone or Commercial Industrial (CI-4) zone, on-site loading space shall be located on the same lot as the use and have unobstructed access to a public street and shall be maintained at a ratio of one (1) loading space for each 1859m² (20,000 ft.²) of gross floor area, or fraction thereof, to a maximum of six (6) loading spaces excluding hallways, aisles, vestibules, washrooms and closets..

18.5 Multiple Buildings on a Lot

In either the Commercial Industrial (CI-4) zone or Waterfront Commercial Industrial (WCI-5) zone, nothing in this By-law shall prohibit the construction of more than one (1) main building on a lot provided:

- (1) That the minimum separation distance between main buildings shall be 6.1m (20 ft.);
- (2) That all parking and loading requirements for each main building and/or use(s) are satisfied; and,
- (3) That all other requirements of this By-law are satisfied.

18.6 Accessory Buildings

Nothing in this By-law shall prohibit the construction or erection of more than one (1) accessory building on a lot in the Commercial Industrial (CI-4) zone or Waterfront Commercial Industrial (WCI-5) zone provided that the accessory building(s):

- (1) Shall not be used for human habitation;

- (2) Shall not be located in the front yard;
- (3) Shall not be located in the required flanking yard as specified in the zone requirements for each zone;
- (4) Shall not be located closer than 3.0m (10 ft.) to any common lot boundary or closer than 6.0m (20 ft.) to any public right-of-way;
- (5) Shall not exceed 4.57m (15 ft.) in height;
- (6) Shall not be located closer than 1.8m (6 ft.) to any other main or accessory building;
- (7) The total square footage for all accessory buildings shall not exceed ten (10) percent of the total lot area to a maximum of 278.7 m.² (3,000 ft.²) in gross floor area per lot; and,
- (8) Shall satisfy all other requirements of this By-law.

18.7 Larger Accessory Buildings in the CI-4 Zone

Notwithstanding Part 18.6, nothing in this By-law shall prohibit the construction or erection of more than one (1) accessory building on a lot in the Commercial Industrial (CI-4) zone provided the accessory building(s) satisfies the following:

- (1) shall not be used for human habitation;
- (2) shall not be located in the front yard;
- (3) shall not be located in the required flanking yard;
- (4) shall not be located closer than twenty (20) feet to any common lot boundary or street right-of-way;
- (5) shall not be located closer than ten (10) feet to any other main or accessory building;
- (6) shall not exceed twenty five (25) feet in height;
- (7) the total square footage for all accessory buildings shall not exceed ten (10) percent of the total lot area to a maximum of 8,000 square feet in gross floor area;
- (8) the total gross floor area of all accessory buildings shall not exceed fifty (50) percent of the total gross floor area of the main building; and,
- (9) shall satisfy all other requirements of this By-law.

18.8 Special Requirement - Commercial Drive-Thru Restaurants

In the Commercial Industrial (CI-4) or the Waterfront Commercial Industrial (WCI-5) zone, nothing in this By-law shall prohibit the development of a drive-thru restaurant on a lot provided that:

- (1) All special requirements pertaining to Part 5.46 are satisfied; and,

(2) All other requirements of this By-law are satisfied.

Part 20 - Waterfront Commercial Industrial (WCI-5) Zone

20.1 WCI-5 Uses Permitted

In the Waterfront Commercial Industrial (WCI-5) zone, no development permit shall be issued except for one or more of the following uses:

- * Retail Shops;
- * Convenience Stores and Grocery Stores;
- * Wholesale Shops;
- * Light Service Shops;
- * Personal Service Shops;
- * Heavy Service Shops;
- * Business Offices;
- * Professional Offices;
- * Internet Web Site Development;
- * Call Centers;
- * Institutional uses;
- * Hotels, Motel and Hostels;
- * Restaurants (eat-in, drive-in or drive-thru);
- * Taverns, Lounges and Cabarets;
- * Places of Entertainment, Recreation, Fitness and Assembly (indoor or outdoor);
- * Parking Lots Excluding Parking Structures;
- * Public Marinas and Wharves (excluding open storage or outdoor displays);
- * Private Marinas and Wharves (excluding open storage or outdoor displays);
- * Marine Fuelling Facilities (excluding bulk petroleum plants);
- * Ferry Terminals;
- * Light Industries;
- * Light Service Industries;
- * Fishing and Marine-Related Industries excluding new Fish or Food Processing;
- * Existing Fish or Food Processing;
- * Any Manufacturing or Industrial Assembly operations conducted and contained within wholly-enclosed buildings and which are not obnoxious by reason of sound, odor, dust, fumes or smoke or other obnoxious emissions or refuse matters or water-carried wastes or by reason of unsightly open storage.

20.2 WCI-5 Zone Requirements

In the Waterfront Commercial Industrial (WCI-5) zone, no Development Permit shall be issued except in conformity with the following:

Minimum Lot Area	929.5 m ² (10,000 ft. ²)
Minimum Lot Frontage	24.4m (80 ft.)
Minimum Front Yard	4.6m (15 ft.)
Minimum Rear Yard	4.6m (15 ft.)
Minimum Side Yards	4.6m (15 ft.)

Minimum Flanking Yard	4.6m (15 ft.)
Maximum Height of Main Building	10.7m (35 ft.)

20.3 Yards Abutting Harbour

In a Waterfront Commercial Industrial (WCI-5) zone, the minimum rear yard setback may be waived where it directly abuts the Yarmouth Harbour.

20.4 WCI-5 Uses Permitted by Development Agreement

Waterfront Commercial Industrial Policy 3.3.3 of the Municipal Planning Strategy provides that any new commercial or industrial activities which exceeds fifteen thousand (15,000) square feet of gross commercial floor area or where an addition to an existing building creates more than 15,000 square feet in gross commercial floor area may be considered only by development agreement pursuant to Section 225 of the Municipal Government Act and subject to general conformity with criteria contained in Implementation Policy 7.8 and 7.9. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement.

20.5 Protected Street Views of Yarmouth's Harbour

No development shall be located within the western prolongation of both street lines of the following streets. The alteration of, addition to or change in use of any existing structure shall be exempt from this requirement provided such development does not protrude further into the western prolongation of said streets.

- Brown Street- 13.72m (45 ft.) right-of-way
- Central Street - 15.24m (50 ft.) right-of-way
- Lovitt Street - 13.72m (45 ft.) right-of-way

20.6 Street Displays

Notwithstanding anything else in this By-law, outdoor displays within street right-of-ways located within the Waterfront Commercial Industrial (WCI-5) zone may be permitted without a municipal development permit provided all other requirements of the Town's by-laws are satisfied.

20.7 Restriction on New Open Storage and Outdoor Display

No new open storage or outdoor displays shall be permitted within the Waterfront Commercial Industrial (W-CI) zone except for commercial retail outdoor displays which are temporary in nature and open storage and/or outdoor displays strictly accessory to a traditional fishing and marine-related industry.

20.8 Restriction on Existing Open Storage and Outdoor Display

The following restrictions shall apply to existing open storage and outdoor display and those permitted by Part 20.7:

- (1) Open storage or outdoor displays shall not be permitted closer than twenty (20) feet to any public right-of-way;
- (2) The area devoted to open storage or outdoor displays shall not exceed fifty (50) percent of the lot area.

(3) The open storage or outdoor display shall be accessory to the main use located on the same lot.

20.9 Existing Fish and Food Processing Plants - Special Provision

Notwithstanding anything in this Part, Municipal Planning Strategy Industrial Policy 3.3.6 provides that existing fish and food processing plants located within the Waterfront Commercial Industrial (W-CI) zone may expand beyond the limits of their current boundaries provided such lands are consolidated with their existing lands.