

MRLD, LLC

DATE: 11 January 2019
TO: Thomas Woodin, Boothbay Harbor Town Manager
FROM: Mitchell Rasor, MRLD Principal
RE: East Side Waterfront Expert Zoning Peer Review

1. Introduction

The following memo is a peer review of the proposed zoning for the east side harbor, specifically the recommendation to rezone the Maritime/Water-Dependent District into two Districts: A Limited Commercial/Maritime District and a Working Waterfront District.

This peer review process, not a legal finding, involved a review of the:

- 2015 Boothbay Harbor Comprehensive Plan
- 2018 Economic Development Master Plan
- Boothbay Harbor Land Use Code
- Proposed revisions to the Land Use Code
- Proposed revisions to the Schedule of Uses
- Zoning and waterfront policies from other Maine communities
- Existing patterns of development and uses within and adjacent to the proposed districts

The Town provided the following questions as a basis for the scope of review:

1. Is the zoning proposal establishing two zones on the east side of the harbor consistent with appropriate planning practices? Are the specific use changes consistent and in keeping with our community character and history? Please elaborate.
2. Are the proposed zoning ordinances for the harbor's east side consistent with the goals and objectives outlined in the town's 2015 Comprehensive Plan? Please elaborate.
3. From a planning perspective and based on appropriate harbor front development in other coastal towns that have balanced marine/water-dependent uses with other business and residential use, do you foresee significant unintended outcomes that the new proposed zoning ordinances may prompt or any obvious loopholes in the proposed ordinances that have not been anticipated? Please identify any concerns you note including but not limited to:
 - a. Pedestrian and vehicular traffic
 - b. Parking
 - c. Complimentary uses of maritime related activities
 - d. Natural and cultural resources
 - e. Visual and public access to the waterfront
 - f. Economic development potential (year-round vs seasonal)
 - g. Affordable year-round housing
4. Please elaborate on any significant criteria we are missing

1. Introduction *continued*

The Planning Board, Board of Selectman, Town Staff, and the Advisory Working Group should be commended for a process recognizing that planning is not a zero-sum game. While Maine's traditional commercial fisheries require protections, the level of protection needs to align with a community's values as well as economic, environmental, and regulatory parameters and trends – not to mention common sense.

During the course of this peer review, it was helpful to return to Section 170-25 Purpose of Districts, to maintain perspective on the how the proposed changes to the zoning are fulfilling the intent of the two proposed districts. The purpose of the two proposed districts are:

Working Waterfront District:

The purpose of the Working Waterfront 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.

Limited Commercial/Maritime District:

The purpose of the Limited Commercial/Maritime 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, marinas and similar marine activities; to allow development of new, compatible non-maritime uses such as hotels, restaurants, and similar uses, and the creation of new opportunities for public waterfront access and conservation of existing public physical and visual access to coastal waters.

2. Peer Review Findings

This section includes findings for the scope of review questions. Additional recommendations for the Town to consider are consolidated in the final section of this peer review, Section 3 Zoning Observations and Recommendations.

2.1 Is the zoning proposal establishing two zones on the east side of the harbor consistent with appropriate planning practices? Are the specific use changes consistent and in keeping with our community character and history? Please elaborate.

Finding:

The zoning proposal establishing two zones on the east side of the harbor is, in general, consistent with appropriate planning practices. The specific use changes are in keeping with Boothbay Harbor's community character and history.

Finding Elaboration:

The "working waterfront" in Maine has evolved over the years to include education, research, and tourism in addition to traditional fisheries, emerging sectors such as aquaculture, and the supporting infrastructures. However, due to a range of environmental and economic reasons, striking the right balance of uses on the waterfront is not always easy. Water-dependent uses such as lobstering require direct access to harbors. Tourism/hospitality uses such as hotels benefit from the proximity to harbors, scenic vistas, and the authenticity of the traditional working waterfront. Ultimately, it is appropriate to plan and allow for a mix of uses on Maine's urbanized waterfronts, but not by displacing one use for another. The proposed zoning in theory expands the hotel use, but in theory does not limit water-dependent uses.

The east side already includes properties dedicated to water-dependent uses as well as hospitality and other uses. In general, the commercial and recreational marine-dependent uses are located on separate parcels. Allowing hotels as a permitted use in the proposed Limited Commercial/Maritime District does not appear to directly displace water-dependent uses or access points. However, by allowing hospitality uses to expand in the district, future incompatibilities may be exacerbated between the different users of the harbor. Recreational slips may crowd the mooring field. The sounds and smells of commercial fisheries may conflict with the expectations of those visiting hotels with expanded capacity and seasonality. Future traffic congestion may make access to commercial fisheries more difficult. Increased valuations of hospitality sites may create trends squeezing out commercial fisheries. These potential exacerbations or incompatibilities are part of the dynamic of a downtown/mixed-use waterfront and are central to rezoning considerations.

Additional Finding:

By maintaining hotels as a legally nonconforming use, investment in existing hotels is allowed under the current land use standards. The expansion of the use, spatially and temporally is not allowed, but properties can be improved and even rebuilt. This peer review does not include or reference an economic analysis or build-out analysis demonstrating that current standards are a burden on hotel operations or other uses.

2. Peer Review Findings *continued*

2.2 *Are the proposed zoning ordinances for the harbor's east side consistent with the goals and objectives outlined in the town's 2015 Comprehensive Plan? Please elaborate.*

Finding:

The proposed zoning ordinances for the harbor's east side are inconsistent with the goals and objectives outlined in the Town's 2015 Comprehensive Plan.

Finding Elaboration:

The Vision Statement, The Future Land Use Map, and Policy and Goals, and other sections of the 2015 Comprehensive Plan all note the importance of maintaining the working waterfront, while recognizing that there are other competing uses that need to be addressed in an informed manner in order for the harbor to evolve, improving environmental and economic conditions. As noted above, this does not mean displacing traditional working waterfront uses for other uses, but identifying and striking an appropriate balance between Boothbay Harbor's traditional marine and tourism sectors. Ultimately, the proposed zoning does not reinforce or expand protection of the potential extent of the working waterfront and no standards are established for "the creation of new opportunities for public waterfront access and conservation of existing public physical and visual access to coastal waters" as called for in the purpose of the Limited Commercial/Maritime District.

The Vision Statement for the 2015 Comprehensive Plan captures the complex nature of the harbor and the need to promote and preserve different sectors of the economy:

Boothbay Harbor cherishes the natural world, which surrounds us: the clean air, beautiful landscapes of woods, fields, water, and rock, and amazingly diverse habitats and fisheries. There is one "resource" that is dominant, that seems to pervade all aspects of our environment, and of our community's current and future development – water.

Fresh water, tidal flats, wetlands, and coastal and ocean waters – water is integral to most every aspect of life in Boothbay Harbor. From shellfish and fishery resources, wildlife habitats, scenic views and recreation, to shipbuilding, real estate and tourism, these assets are the foundation of this community, our sense of place and our economic future. The diverse ways we enjoy and use these assets are both complementary and competitive.

In addition, the community recognizes the continuing risks of flooding and sea-level rise. Boothbay Harbor's future requires a more holistic and responsible stewardship to protect water quality, improve and manage public access to the water, and encourage new, compatible maritime uses by linking together development standards, economic incentives, infrastructure improvements, public education, and resource monitoring.

Will we create our future or stand by and deal with what comes? Choosing to build on our strengths and create opportunities for our future generations, local businesses will adapt to changing trends and market demands within their industries and increasingly connect by technology and capital with state, federal, and global networks.

Summary:

The proposed two districts recognize the “complementary and competitive” nature of waterfront uses, but the proposed zoning recommendations in total reduce the potential for future growth of commercial fisheries by creating a higher degree of competition between commercial water-dependent uses and such uses as hotels.

The two proposed districts build on strengths, create opportunities for future generations, and allow businesses to adapt to changing trends and market demands. However, the benefits for making hotels a permitted use will most likely outweigh the benefits of focusing the working waterfront to approximately 23% of the existing of Maritime/Water Dependent District.

From the Waterfront Areas section of the Future Land Use Map:

Boothbay Harbor retains its working waterfront in 2024. The plan recommends that the current Maritime-Water Dependent District continue. Given the importance of the working waterfront to the town’s economy, however, the standards for land uses that do not require waterfront access should be reviewed.

Continued capital investment in harbor facilities is important but, while the working waterfront is primarily focused on meeting the needs of maritime businesses, the waterfront itself is a significant attraction for both residents and visitors. The plan recommends that provisions be added to the land use ordinance to preserve physical and visual access to the harbor. Such provisions may include establishing a maximum height in the Maritime-Water Dependent District and maintaining sightlines from existing public streets and parks.

Summary:

While the heart of the existing Maritime/Water Dependent District is maintained (six parcels) and water-dependent uses are allowed in the proposed Limited Commercial/Maritime District, the Comprehensive Plan recommends that “the current Maritime-Water Dependent District continue.”

A maximum height of 35’ is proposed for the two proposed districts and standards are established for view corridors from Atlantic Avenue to the harbor in the proposed Limited Commercial/Maritime District. However, as called for in both the Comprehensive Plan and the purpose of the proposed Limited Commercial/Marine Dependent District, there are no provisions for securing and preserving “physical” access to the harbor.

From Goals, Policies, Strategies:

E. Amend the Maritime-Water Dependent District. The plan recommends the following revisions to this district:

Review changes in land uses in the Maritime-Water Dependent District and consider revisions that would increase the protection of water-dependent uses.

Summary:

The zoning for both proposed districts does not include “revisions that would increase the protection of water-dependent uses.” The proposed zoning, on paper, decreases protections.

From Chapter 5 – Marine Resources:

4. Are traditional water-dependent uses thriving or in decline? What are the factors affecting these uses? If current trends continue, what will the waterfront look like in 10 years?

According to the Code Enforcement Officer and Planning Board, within the past ten years few conversions of water-dependent uses (and structures) to non-water-dependent and residential (seasonal and year-round) uses have occurred. What conversions have taken place have had little effect on marine-based activities within the Town.

In 2005, about 19% of registered moorings were used for commercial fishing, 4% were for other commercial uses, 33% were rental, and 45% were for personal use. In 2012, there were 929 moorings, of which 44% were commercial, 52% were for personal use, and 4% for other uses. Of the total number of moorings, 31% were rental.

Recreational, charter and tourist boating activities have expanded during the last ten years, and are likely to continue to do so. In the summer of 2012, small cruise ships (100 to 200 passengers) stopped in Boothbay Harbor twice a week. Currently they are using private facilities and thus future growth may depend upon creating or enhancing public access for these ships. Cruise ships of varying size will likely increase their presence in the region and include Boothbay Harbor as a port of call more frequently. There is agreement that these activities should be balanced to maintain traditional water-dependent uses of the harbor. See the Economy Chapter for more information.

Over the past decade, the data from landings and licensing show that the commercial activity within Boothbay Harbor has generally declined. Landings data from the Maine Department of Marine Resources for 2001 and 2011 show decreased total landings by weight and value. The number of commercial licenses has also declined. Nonetheless, the total level of marine activity may or may not have decreased; tourism continues apace and no major facilities have changed use. See the Conditions and Trends section below for more information. There are two aquaculture lease applications (to study kelp-based treatment of wastewater effluent) in the Town.

There are no local records on the number of people employed in marine-related businesses in Town. State and federal regulations have often curtailed fishing and lobstering activities. The high value of waterfront property has resulted from increased demand for residential development in shoreland areas. However, this has been tempered somewhat by the downturn in the real estate market.

It is anticipated that within the next ten years employment in this sector will decline locally. The Town, of course, cannot control the national market for marine products, State and federal regulations, or the real estate market. However, current marine-related uses are protected in shoreland zoning ordinance provisions, described below.

Summary:

Based on conversations with Town Staff, the Department of Marine Resources, and analysis from the 2018 Economic Development Master Plan, the trends noted above have continued and water-dependent uses have not expanded. The proposed zoning, specifically the proposed Limited Commercial/Maritime District limits the potential for future water-dependent expansions by creating direct competition between uses such as hotels and commercial fisheries.

6. How does local zoning treat land around working harbors?

The Boothbay Harbor Land Use Code includes a Maritime/Water Dependent District to protect current working waterfront activities and it encompasses most of the east side of the harbor.

"The intention of this land use district is to protect traditional commercial water-dependent uses such as commercial fishing, boatbuilding, 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." It is believed that this district and its permitted uses, prohibited uses, and dimensional requirements have effectively served Boothbay Harbor.

The Boothbay Harbor Land Use Code regulates water-oriented uses by district to protect the traditional working waterfront. See the Conditions and Trends section below for more information.

Summary:

Basic market trends and common sense suggest that allowing hotels as a permitted use in the proposed Limited Commercial/Maritime District will no longer make the statement above that, "it is believed that this district and its permitted uses, prohibited uses, and dimensional requirements have effectively served Boothbay Harbor" a valid conclusion into the future.

9. Is there adequate access, including parking, for commercial fishermen and members of the public? Are there opportunities for improved access?

Access to the waterfront for both commercial fishermen and the public is provided by a combination of public and private facilities. The public facilities include Whale Park (with dockage), Barrett's Park (with winter gear storage), the footbridge (with dockage), the Fisherman's Memorial (scenic views only), the boat ramp at Townsend's Gut, and the Fish Pier (dockage, launching ramp and commercial facilities).

Summary:

Established legal access to the waterfront for commercial fisherman and the public is not directly impacted by the proposed zoning changes. The above noted facilities remain. However, "opportunities for improved access" are not integrated into the standards of the proposed Working Waterfront District and in the proposed Limited Commercial/Maritime District, which calls for "the creation of new opportunities for public waterfront access and conservation of existing public physical and visual access to coastal waters."

From Conditions and Trends:

Boothbay Harbor's shoreline and harbors are used by a diversity of marine and water-oriented activities. These activities include traditional commercial marine uses such as boatbuilding/repair/storage, fisheries (harvesting, retail, and wholesale), shellfish, and lobster pounds. The shoreline and harbors also accommodate many tourism related businesses such as inns, motels, restaurants, charter boats, recreational boats, marinas, and specialty retail shops. There is also a significant vacation and seasonal home use of Boothbay Harbor's shoreline. All of these uses compete for space along the shoreline and harbors for access to the ocean.

A 2006 report by Coastal Enterprises, Inc. titled, "Boothbay Harbor: Keeping the Balance, A Harbor Profile and Fish Pier Study," identified about 490 parcels along the harbor. Of these, 420 were residential parcels, 41 parcels were for hotels/restaurants, 9 parcels were for commercial fishing uses, 2 parcels were boatyards, 7 parcels were for private yacht club uses, and 11 parcels were for public use.

Summary:

The two proposed districts recognize the existing diversity of marine and tourism activities and that "all of these uses compete for space along the shoreline and harbors for access to the ocean." However, the proposed zoning, in practicality, is oriented to providing more potential access for recreational uses than commercial uses.

2. Peer Review Findings *continued*

2.3 From a planning perspective and based on appropriate harbor front development in other coastal towns that have balanced marine/water-dependent uses with other business and residential use, do you foresee significant unintended outcomes that the new proposed zoning ordinances may prompt or any obvious loopholes in the proposed ordinances that have not been anticipated? Please identify any concerns you note including but not limited to:

- a. Pedestrian and vehicular traffic*
- b. Parking*
- c. Complimentary uses of maritime related activities*
- d. Natural and cultural resources*
- e. Visual and public access to the waterfront*
- f. Economic development potential (year-round vs seasonal)*
- g. Affordable year-round housing*

Finding:

From a planning perspective, other coastal communities vary in the balance of water-dependent uses with other businesses and residential uses. This balance is based on policies, zoning, trends in the local economy (Friendship and Stonington are more oriented towards water-dependent uses, while Camden is more oriented towards the tourism sector), location, and other factors.

Communities such as Belfast, Camden, Rockland, and Portland have mixed-use waterfront zones similar to the proposed Limited Commercial/Maritime District. Camden allows many similar uses in the Harbor Business District, but inns require a 236' setback from the shore. Belfast allows hotels in the Working Waterfront Mixed Use Zone, Rockland allows hotels in five of the six Waterfront Subzones, and Portland allows a limited range of uses in the Waterfront Central Zone, but not residences or hotels.

Portland currently has a building moratorium in the Central Waterfront Zone to reconsider the flexibility that was extended to non-water-dependent uses in order to allow for pier owners to attract higher rents. The City is now questioning if they allowed for too much non-marine use and that more restrictive standards are needed to sustain and promote commercial fisheries.

Finding Elaboration:

a. Pedestrian and vehicular traffic

- Atlantic Avue should be designed as a Complete Street to the greatest extent possible. The US Department of Transportation defines a Complete Street as a street "...designed and operated to enable safe use and support mobility for all users. Those include people of all ages and abilities, regardless of whether they are travelling as drivers, pedestrians, bicyclists, or public transportation riders."
- If hotels are able to expand in size, number, and seasonality, Atlantic Avenue will see increased traffic and congestion. Development should not occur without understanding traffic generation and necessary off-site mobility improvements as well as impacts to landside support for water-dependent uses.

b. Parking

- New parking lots should not be allowed as a land use, but as an accessory use supporting principal uses. Existing surface parking lots, such as the Squirrel Island parking, would be grandfathered as a legally nonconforming use.
- Parking for new non-water-dependent developments should be placed to the side of the building and not between Atlantic Avenue and the building. This will help maintain views of the harbor and create a more walkable edge to Atlantic Avenue. By placing parking to the side, the width of buildings will also be mitigated.

c. Complementary uses of maritime related activities

- Existing water-dependent uses and access points are protected in theory, however as currently drafted, a working waterfront use can be displaced by such uses as a private yacht club or a parking lot. It is not known at the time of this review what the nature of protective covenants, if any, are placed on working waterfront sites.

- Water-dependent uses are maintained in both new districts, but based on past trends, the tourism economy and hotels will most likely play a stronger role in shaping future land use patterns – and access to the harbor. The existing pattern of development on the east side demonstrates this trend with approximately four working waterfront uses and approximately twenty residential, restaurant, and hotel uses.

d. Natural and cultural resources

- State and local review and development standards will mitigate development impacts and stormwater runoff.
- The Memorial Park as well as views of the harbor and working waterfront uses are current “cultural” resources adding to the local character. Are there covenants in place protecting these uses in perpetuity?

e. Visual and public access to the waterfront

- 20’ wide view corridors are required in the Limited Commercial/Maritime District, but there are no provisions in the zoning for “the creation of new opportunities for public waterfront access and conservation of existing public physical access” as called for in the purpose of the district.

f. Economic development potential (year-round vs seasonal)

- By making hotels a permitted use, the use of the hotels and related commercial uses can expand by more than one month, increasing the use of shoulder seasons, and in some cases remain open year-round. However, most hotels and restaurants in Boothbay operate in a seasonal manner and this trend will most likely continue.
- Current economic trends on the Maine coast favor expanded tourism facilities such as hotels over expanded marine related facilities. However, as marine related uses adapt to environmental, regulatory, and market forces, the demand for waterfront access and landside support will remain and potentially expand. The working waterfront has economic development potential. A key question the community has been asking during this process is if the identified six parcels comprising the proposed Working Waterfront District is enough area reserved for future demand? The limited timeframe of this review has made it difficult to gauge fisheries and aquaculture trends for Boothbay Harbor. The Department of Marine Resources was contacted and they only have raw data that has not been analyzed for recent trends for specific locations on the coast.
- In general, dominant trending uses such as housing, restaurants, and hotels will displace marine related uses and potentially exacerbate incompatibilities. This is evident throughout Maine and New England. Furthermore, these economically dominant uses are often more seasonal and do not create year-round employment opportunities. From conversations with the Department of Marine Resources and the City of Portland Waterfront Coordinator, commercial fisheries are seeing an expansion in seasonality, particularly with increasing aquaculture leases.

g. Affordable year-round housing

- Housing is allowed on the second floor with commercial uses on the first floor in the proposed Limited Commercial/Maritime District. This increases the diversity of housing in the area, attenuates the residential “privatization” of the waterfront, and is in keeping with traditional housing patterns found in Boothbay Harbor and other Maine downtowns.
- The potential for housing in the two proposed districts is limited. The east side is not central to cracking Boothbay Harbor’s housing affordability / diversity issue. However, workforce housing should be considered above water-dependent uses for owner(s) and employee(s) of the water-dependent use in the Working Waterfront District. Housing is currently allowed in Boothbay Harbor’s Maritime/Water Dependent Shoreland District. This use could remain as permitted.

2. Peer Review Findings *continued*

2.4 Please elaborate on any significant criteria we are missing.

Finding:

As with any rezoning effort, it is difficult to foresee all potential loopholes or significant missing criteria needed to realize the purpose of a proposed zoning district(s). Below in Section 3 are recommendations and observations on the zoning and the zoning process that can be taken into consideration now or at a later date in order to help align the vision, standards, infrastructures, and the market with the purpose of the districts.

3. Zoning Recommendations and Observations

In general, the following zoning recommendations and observations can be divided into the following categories.

3.1 The Rezoning Planning Process

3.2 Public Access

3.3 Visual Access

3.4 Scale of Development

3.5 The Working Waterfront and Workforce Dwellings

3.6 Proposed Schedule of Uses

3.1 The Rezoning Planning Process

The planning process for creating the two proposed districts and related standards appears to have been more reactionary than proactive. In terms of best planning practices, rezoning efforts should be the result of a master planning process (that is aligned with directives from the Comprehensive Plan) looking at the harbor as a sum of the parts guided by an informed community vision. A community vision reflects previous planning work, historic and projected economic trends, a transportation and infrastructure analysis, patterns of development, regulatory and environmental constraints, and community values. Economic development and community development are different sides of the same coin. The harbor is recognized as one of the Town's greatest assets. An area specific master plan for the harbor would have provided a specific roadmap for many of the issues the community has faced in the rezoning effort, including researched based determinations for changes to uses and district boundaries. A master plan results in specific actionable items, such as changes to uses, changes to district boundaries, changes to dimensional standards, height and view protection maps, and the identification of funding mechanisms for improvements to infrastructures and public access.

By not completing a master planning process, proposed zoning is often simply a refined map of existing conditions and edited standards allowing these existing conditions to redevelop and expand.

3.2 Public Access

The purpose of the Limited Commercial/Maritime District specifically calls for "the creation of new opportunities for public waterfront access and conservation of existing public physical and visual access to coastal waters." While visual access is accounted for in the requirement for 20' wide view corridors, no standards have been established to encourage or require public access.

Downtown waterfronts such as Belfast, Rockland, Camden, and Portland – and Boothbay Harbor – integrate public access into their waterfronts through harbor parks, harbor walks, overlooks, and fishing piers. Access is not seen as a burden or taking, but a benefit to businesses and the public. Each community has achieved access through different mechanisms including long-range planning, utilizing existing easements, negotiating easements, and integrating public access to the waterfront as a condition of site plan review (refer specifically to Rockland).

If (re)development occurs on the east side, working with the momentum of the market is a unique opportunity to improve livability by creating new public access.

3.3 Visual Access

For certain redevelopments in the Limited Commercial/Maritime District, 20' wide view corridors are proposed for every 100' of frontage on Atlantic Avenue. Why 20'? Why not 50'? Does 20' provide enough width to create a visual connection to the harbor? Is this standard even needed given the existing pattern of development, the potential for redevelopment, and lot configurations? If visual access, like public physical access, is an issue for the community, this requirement should be grounded in a visual impact analysis and building height study to understand potential build-out scenarios and how sites can be redeveloped in a manner that is mutually beneficial to the developer and the community.

Visual access standards should be included in the site plan review for all commercial developments in the proposed district.

For reference see the [Rockland Waterfront Area Redevelopment Plan](#) and the [Portland Eastern Waterfront Building Height Study](#), both prepared by MRLD. These plans and studies lead to development standards maintaining and enhancing view sheds and view corridors.

3.4 Scale of Development

While the maximum height has been addressed in the proposed zoning (and called for in the 2015 Comprehensive Plan), consideration should be given to maximum building width along Atlantic Avenue. An analysis has not been completed (which would include, but not be limited to an inventory of existing building footprints and massing, lot widths, existing significant views, opportunities to "hide" massing beneath grade changes), but a 90' wide building could be built along Atlantic Avenue given a large enough site. It is assumed that a building this wide is out of scale with the area. For comparison sake, the Eastern Waterfront in Portland, an area seeing extensive redevelopment, buildings taller than four floors cannot exceed 70' in width parallel to the shore. A maximum building width should be considered for the proposed Limited Commercial/Maritime District. This width criteria could be incorporated into the site plan review process.

3.5 The Working Waterfront and Workforce Dwellings

MaineDEP's standards for new Commercial Fisheries/Maritime Activities Shoreland Zones do not allow residential dwelling units. However, Boothbay Harbor's current use table for the Maritime/Water Dependent District allows residential uses and as noted on the *East Side Zoning Recommendations* dated 12/12/18, "all uses permitted in the current Maritime/Water Dependent District will continue in the Working Waterfront District with the following exception: microbreweries will not be permitted." To address affordability, availability, and traditional live/work arrangements found in downtowns and waterfronts, dwelling units should be considered above water-dependent uses for owner(s) and employee(s) of the water-dependent uses. Freestanding single-family homes should not be allowed.

3.6 Proposed Schedule of Uses

Careful consideration has been given to the Schedule of Uses dated 12/12/18, however there are a few recommendations to the uses as noted in red on the following table. These recommendations are intended to better align the Schedule of Uses with the purpose of the districts.

Certain uses such as churches, are a low intensity use requiring large parking lots. There are better locations in the community than the proposed Limited Commercial/Maritime District for this use. Banks are a high intensity use, often with a drive-thru and large parking lots. There are more appropriate locations in Boothbay Harbor for this type of use than the proposed Limited Commercial/Maritime District. The same can be said for new parking lots as a principal use on the waterfront. There are probably not many members of the community that want to see a parcel in one of the two proposed districts redeveloped as a parking lot. As proposed, a single-family home or an existing water-dependent use can be demolished and the parcel can be redeveloped as a parking lot. New parking should only be allowed as an accessory use to the principal use of the property.

In terms of meeting the "maritime" intent of the proposed Limited Commercial/Maritime District, industrial uses should remain a permitted use otherwise the full potential of water-dependent uses are not really allowed in the district and the primary achievement of the proposed district is that hotels become a permitted use. Not only are industrial uses currently allowed, but the MaineDEP allows industrial uses in the Commercial Fisheries/Maritime Activities Shoreland Zone. However, the MaineDEP does not allow industrial uses in Limited Commercial Shoreland Zones. How is this resolved? One solution is that the Town could create a new use called "Water-Dependent Industrial Use" and allow it in both proposed districts.

Again, in keeping with the purpose of the proposed Working Waterfront District, which in part states the intent "to give preference in identified areas to commercial water-dependent uses over recreational and residential uses" (and it is duly noted that housing is not envisioned as part of the purpose), consideration should be given to making new yacht clubs a non-permitted use. It is not difficult to imagine a prime commercial working waterfront location being redeveloped as a private yacht club given trends in tourism and hospitality. The same should be considered for recreational marinas.

Schedule of Uses

	Limited Commercial	Working Waterfront
Open Space Uses		
Accessory uses or structures	C	C
Earthmoving activities of less than 100 cubic yards but greater than 10 cubic yards	C	P C
Earthmoving activities of more than 100 cubic yards	P	P
Outdoor conservation and recreational uses not operated for profit	P	P
Forest management, except timber harvesting	Y	Y
Roads, driveways and parking areas	Y	Y
Nonresidential	P	P
Fire prevention activities	Y	Y
Water-Oriented Uses		
Accessory uses or structures	C	C
Aquaculture uses. No processing or storage	P C	C
Aquaculture products, processing, warehousing, retail and wholesale sales	P	P
Boat building and repair, commercial operations	P C	C
Boathouses*	C	C
Breakwaters and causeways	P	P
Marinas	P	P ?
Marina expansion	P	P ?
Piers, docks and wharves	C ¹⁷ P	C ¹⁷
Seafood products, processing, warehousing, retail and wholesale sales	P	P
Tour or charter boat operations	C	C
Residential Uses		
Accessory structures	C	C
Residential association uses or structures	P	N/A C18
Boardinghouses	C	N/A
Duplexes	P15	N/A C18
Home occupations	C	P
Manufactured Housing exclusive of mobile homes (modular)	P15	N/A C18
Multifamily dwellings	N/A	N/A C18
Single-family dwellings	P15	N/A C18
Commercial Uses		
Accessory uses and structures	C	P C
Auction barns	N/A	N/A
Automobile sales	N/A	N/A
Banks and financial institutions	P N/A	N/A
Bed and breakfasts	P	N/A
Commercial farms, gardens, nurseries and greenhouses	N/A	N/A
Commercial gymnasiums, fitness centers	P N/A	N/A

	Limited Commercial	Working Waterfront
Funeral homes	N/A	N/A
Gasoline service stations	N/A	N/A
Laundromats, dry cleaning	N/A	N/A
Micro-breweries	P	N/A
Motels, hotels, inns	P	N/A
Neighborhood grocery stores	P N/A	N/A
Outdoor recreational uses operated for profit	P	P
Parking areas/lots	C N/A	P N/A
Parking facilities	C N/A	N/A
Professional uses	C	C
Recreation facilities (indoor)	P	N/A
Resort areas	N/A	N/A
Restaurants	P	P
Retail establishments	P	N/A
Service establishments	P	N/A
Theaters	N/A	N/A
Veterinary clinics	N/A	N/A
Wholesale establishments	N/A	N/A
Wireless communications facilities	N/A	N/A
Industrial Uses		
Accessory uses and structures	C P	N/A P
Light industry	N/A P	N/A P
Institutional and Public Uses		
Accessory structures	C	P
Churches	C N/A	C N/A
Community service organizations	C N/A	N/A
Health clinics (do not include marijuana or methadone clinics or dispensaries)	P N/A	N/A
Hospice	N/A	N/A
Hospital	N/A	N/A
Municipal, county, state and federal uses and structures not otherwise listed	C	C
Nursing homes	N/A	N/A
Public recreation	C	C
Social and fraternal organizations	C N/A	N/A
Yacht clubs (private and non-profit)	C	P N/A
Other Uses		
Public utilities, uses and buildings	P	P
Public utility lines and substations	C	C

Permit-required symbols:

[Amended 5-3-2008 by ATM Art. 80]

Y: Uses allowed without a permit

C: Uses requiring a building permit or other type of permit from the Code Enforcement Officer

P: Conditional uses and requiring site plan review approval from the Planning Board in accordance with the requirements of Article V of this Land Use Code

1,2, etc.: Numbers adjacent to letter symbols refer to notes at the end of the Schedule of Uses which contain additional requirements.

N/A: Not allowed

*: Boathouses that are having more than 50% of the structure repaired are not allowed

C18: Allowed above first floor water dependent uses for owner(s) and employee(s) of water dependent use(s)

Draft

1.11.19