BOOTHBAY HARBOR PLANNING BOARD JUNE 13, 2018 Page 1 of 11

**BOOTHBAY HARBOR PLANNING BOARD**

MINUTES OF PUBLIC HEARING

**June 13, 2018**

MEMBERS PRESENT: Thomas Churchill, Vice Chairman

 Lee Corbin, Second Alternate

 Jon Dunsford, First Alternate

 William Hamblen, Chairman

 John Hochstein

 Margaret Perritt

 Chris Swanson

 CEO, Geoff Smith

In addition to these typed minutes, audio recordings are available to be listened to at the Boothbay Harbor Town Office.

**OLD BUSINESS**

* Approval of May 9, 2018 Minutes

**NEW BUSINESS**

* P UBLIC HEARING

 Raymond and Terry Paetzold, represented by Matthew Doucette, dba Doucette Builders, 27 Massachusetts Road, Map/Lot 4/44. Applicant is proposing to rebuild structures in existing, non-conforming location requiring approval by the Planning Board under Chapter 170, Article VI, Non-Conformance, §170-83 Non-Conforming Structures.

**OTHER BUSINESS**

* Zander Shaw, representing Knickerbocker Group, to have a pre-application discussion regarding the reconstruction of a non-conforming structure in the shoreland zone.
* Discuss possible sections of the Land Use Code to review.
* Review current East Side Zoning proposal and formalize division into four separate proposals.
* Continue to formulate work statements for harbor consultant.
* Continue to identify and prioritize other Land Use Code issues to review.

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Chairman Hamblen called the June 13, 2018 Planning Board meeting to order, stating they had a full Board.

**OLD BUSINESS**

Jon Dunsford **motioned** to approve the minutes of the May 9, 2018 meeting. Margaret Perritt **seconded**. **Unanimous approval**.

**NEW BUSINESS**

Chairman Hamblen stated they had an application from Raymond and Terry Paetzold and invited Matthew Doucette, who was representing them to explain their proposal.

Matthew Doucette explained the Paetzolds wanted to take down an old cottage on Massachusetts Road and replace it with a new structure on the exact footprint with a new foundation. The height would be the same and it would continue to have town sewage. A small, attached shed (7'x6') would remain part of the new structure.

Chairman Hamblen began the Findings of Facts process.

**Findings of Fact:**

1. The owners are Raymond and Terry Paetzold, represented by Matthew Doucette relating to the property located at 27 Massachusetts Rd. Property taxes on account of the premises for which the approval is requested have been paid in full.
2. The property is in the Special Residential zoning district. The property is further identified as Assessor’s Tax Map/Lot: 4/44. The property can be reviewed at the Lincoln County Registry of Deeds under Book 5111, Page 262.
3. The applicants propose to reconstruct a legally non-conforming structure in its existing non-conforming location, and seeks approval from the Planning Board that the current location meets the setbacks to the greatest practical extent, requiring approval from the Planning Board under Chapter 170, Article VI, Nonconformance, §170-83 Non-Conforming Structures.

# Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

**Right, Title or Interest in the Property**

The applicants \_X\_***have/***\_\_\_\_\_\_***have not*** demonstrated Right, Title or Interest on the property in question.

**Motion made by \_\_**Thomas Churchill**\_\_, seconded by \_\_**Chris Swanson**\_\_\_**

**Vote\_\_**Unanimous**\_\_\_ \_\_** All**\_\_\_In Favor \_\_\_\_\_\_Against**

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[§ 170-83**Nonconforming structures.**](https://ecode360.com/8628542#8628542)

[**A.**](https://ecode360.com/8628543#8628543)

Repair and maintenance. This article allows, with or without a permit as required, the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations which do not involve expansion of the nonconforming use or structure and such other changes in a nonconforming use or structure as federal, state or local building and safety codes may require.

[**B.**](https://ecode360.com/8628544#8628544)

(Reserved)[**[1]**](https://ecode360.com/8628542#ft8628544-1)

[[1]](https://ecode360.com/8628542#ref8628544-1)

*Editor's Note: Former Subsection B, Enlargements (permitted uses only), was repealed 5-3-2008 by ATM Art. 84. For current provisions, see §*[***170-101.7C***](https://ecode360.com/8628904#8628904)*.*

[**C.**](https://ecode360.com/8628545#8628545)

(Reserved)[**[2]**](https://ecode360.com/8628542#ft8628545-2)

[[2]](https://ecode360.com/8628542#ref8628545-2)

*Editor's Note: Former Subsection C, Further limitation, as amended 5-6-2002 by ATM Art. 20, was repealed 5-3-2008 by ATM Art. 84. For current provisions, see §*[***170-101.7C***](https://ecode360.com/8628904#8628904)*.*

[**D.**](https://ecode360.com/8628546#8628546)

Expansion. A nonconforming structure may be added to or expanded after obtaining a permit from the Code Enforcement Officer, if such addition or expansion does not increase the nonconformity of the structure. An increase in area shall not be considered to increase the nonconformity of the structure. Lateral extensions of preexisting, nonconforming structures within a setback are not considered an increase in nonconformity, unless the extension exceeds the greater of 20 feet or 50% of the existing lateral extent. The shoreland zoning standards in Chapter [**170**](https://ecode360.com/8627687#8627687), Article [**VIII**](https://ecode360.com/8628878#8628878), shall govern structures in the shoreland zoning setback. However, such increase shall not be permitted if it creates or increases a safety hazard.

[Amended 5-6-2002 by ATM Art. 20; 5-2-2009 by ATM Art. 96; 5-3-2013 by ATM Art. 37]

[**(1)**](https://ecode360.com/8628547#8628547)

Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure, provided that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection [**E**](https://ecode360.com/8628549#8628549), below, that the completed foundation does not extend beyond the existing dimensions of the structure and that the foundation does not cause the structure to be elevated by more than three additional feet within shoreland areas.

[**(2)**](https://ecode360.com/8628548#8628548)

No structure which is less than the required setback from the high-water line of a water body, tributary stream or upland edge of a wetland shall be expanded toward the water body, tributary stream or wetland.

[**E.**](https://ecode360.com/8628549#8628549)

Relocation.

[**(1)**](https://ecode360.com/8628550#8628550)

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A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent, as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (rules) or that a new system can be installed in compliance with the laws and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

[**(2)**](https://ecode360.com/8628551#8628551)

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation.

[**F.**](https://ecode360.com/8628552#8628552)

Reconstruction and replacement.

[**(1)**](https://ecode360.com/8628553#8628553)

Non-shoreland areas. Any structure which is damaged or destroyed shall be repaired or reconstructed in place within one year of such damage or destruction, provided that the floor area or volume after the repair or reconstruction is no greater than the floor area or volume before the damage or destruction.[**[3]**](https://ecode360.com/8628542#ft8628553-3)

[[3]](https://ecode360.com/8628542#ref8628553-3)

*Editor's Note: Former Subsection F(2), Shoreland areas, was repealed 5-3-2008 by ATM Art. 84. For current provisions, see §*[***170-101.7C***](https://ecode360.com/8628904#8628904)*.*

[**G.**](https://ecode360.com/8628558#8628558)

Transfer of ownership. Nonconforming structures, lots or uses may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot subject to the provisions of this article.

[**H.**](https://ecode360.com/8628559#8628559)

Change of use of a nonconforming structure. The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will not have a greater adverse impact on the water body or wetland or on the subject or adjacent properties and resources than the existing use.

[**(1)**](https://ecode360.com/8628560#8628560)

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources and commercial fishing and maritime activities and other functionally water-dependent uses.

[**(2)**](https://ecode360.com/8628561#8628561)

A structure which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street space is sufficiently provided to satisfy the requirements of this article for both the addition or enlargement of the original building or structure.

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**Review Criteria**

The applicants \_ X\_***have/***\_\_\_\_\_\_***have not*** demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article VI, Nonconformance, §170-83 Non-Conforming Structures,** of the Town of Boothbay Harbor Zoning Ordinance.

**Motion made by \_\_** Chris Swanson**\_\_, seconded by \_\_** Thomas Churchill**\_\_\_**

**Vote\_\_\_** Unanimous**\_\_\_ \_\_\_ \_\_** All**\_\_\_In Favor \_\_\_\_\_\_Against**

**If the criteria have not been met, the reasons are explained below (i.e. –not applicable);**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Conditions of Approval**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Decision**

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on motion made by \_\_ Chris Swanson\_\_and seconded by \_\_ Thomas Churchill\_\_, the Planning Board

\_\_\_\_ X\_\_\_\_**Approves**  \_\_\_\_\_\_\_\_\_\_\_**Denies**

 this application subject to the conditions of approval set forth below, all for the reasons set forth in the findings and conclusions.

**Vote\_\_\_** Unanimous**\_\_\_\_\_ \_\_**All**\_\_In Favor \_\_\_\_\_\_Against**

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

The application was approved.

**OTHER BUSINESS**

Chairman Hamblen stated the first item under Other Business was a **pre-application** **discussion** with Zander Shaw, representing the Knickerbocker Group, regarding the reconstruction of a non-conforming structure in the shoreland zone.

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Zander Shaw stated the Knickerbocker Group had a similar topic to the one just discussed and wanted to get an idea of what they were planning at Linekin Bay Resort which is to reconstruct the Mahawie Lodge on the property. It is currently a legally non-conforming building within the 75 foot shoreland setback. The new structure would be built in the same footprint with some support beams, which will be constructed in a way to get them out of the flood plain. (They will not become more non-conforming.) The eleven existing guest rooms would be reduced to seven larger guest rooms. There will be a new storm water run-off plan.

Chairman Hamblen did not see why the building could not be moved back five feet from the shore (as required in the ordinance) if there is fifteen feet from the road to work with, so there should be some justification for not doing so.

Chairman Hamblen stated he believed most of the people in attendance that evening were there for the next item under Other Business...**Review of the East Side Zoning proposal**.

To recap, Chairman Hamblen reminded everyone that they had been at this for eight months, had held twelve public meetings and counted 153 documents in his computer related to the East Side Zoning Proposal. They had guidance from the Lincoln County Regional Commission Planner. There had also been a brief initial DEP review as well as a brief initial legal review. More substantial reviews could change the picture but this is where they presently were.

At the last Planning Board meeting they had discussed the idea of dividing the process into three then later four questions to give the voters of the town a chance to respond to the various aspects separately.

The first question creates the mixed use district. If that were to pass it would implement the following zoning policies.

* *Re-define the existing Maritime/Water Dependant District as a Mixed Use District with every parcel in the district having the same set of permitted uses.*
* *Continue all current uses (including Water Dependant uses) in the new District, and add new commercial uses (e.g. motels, hotels, inns) consistent with a Mixed Use District.*
* *Have a high water setback of 25 feet for all new construction except Water Dependant uses which will continue to have a 0 foot setback.*
* *Set the square footage required for each non-residential use to 2,000 square feet per use.*
* *Require that significant developments on lots with 100' or more of frontage on Atlantic Avenue maintain a view corridor, at least 20' wide, from Atlantic Avenue to the water, for each 100' of frontage.*

There was discussion among the Board members about the best policy for view corridors which could be part of a site review decision.

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Chairman Hamblen stated if this question didn't pass the other questions might not make as much sense but could still stand alone.

Jon Dunsford felt it would be better to keep the four questions as a single package.

Chairman Hamblen read question two which allows for multifamily housing.

* *Permit multifamily dwellings in the district, subject to the same density requirements that currently exist for every other district in town (up to 6 units per acre).*
* *Set the minimum land area per multifamily dwelling unit or use to 2500 square feet.*

Chairman Hamblen stated the third question concerns building height restriction on new construction at 35 feet or 2 ½ stories which would pertain to the entire town.

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

Chairman Hamblen stated the fourth question concerns creating an Impact Fee for significant new development in the District by adopting a new article: Article XII. Impact Fees. [Can be viewed on the Town's website.]

Finally, one thing to keep in mind is that they are not changing the existing zoning standards in the district which is a key feature.

John Hochstein stated the intent of the change is to help correct/resurrect the slow decline of the East Side over the past thirty years, while maintaining the working waterfront. The mixed use district will attract investment into the area and upgrade it. It would be nice to see a sidewalk on the other side of the street from the existing one (where people walk). [John used an example of the need to have all components of an automobile in order to have a machine that will work and hoped the public would keep that in mind when they vote on the four questions.]

Thomas Churchill expressed concern that what might happen in reality could turn out to be really different than their intent if more single family residences occurred, since there is nothing in their proposal to prevent it.

Chairman Hamblen responded for thirty years it has not yet happened in this district.

Thomas Churchill suggested instead of saying (up to) 6 units **per acre** for common wall dwellings it would be better to say **per 370 square feet**.

Thomas Churchill also had concern about lot density, currently at 70%.

Chairman Hamblen pointed out that was the state code.

Finally, Thomas Churchill felt they should eliminate parking in view corridors.

Chairman Hamblen responded there is little space to fit everything on these lots as it is.

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Lee Corbin expressed concern about less desirable flat roofs being built, leading to a barricade and 3 ½ story buildings on the water side (due to the pitch of the land on the East Side). Lee also believed they should try to achieve harmony.

Chairman Hamblen responded if there were flat roofs they would have to be tiered and if a building was 3 ½ stories on the water side it could only be 1 ½ stories on the street side because it has to average 2 ½ stories.

Jon Dunsford expressed concern about the Board coming up with a consensus on all parts of the proposal, believing it should be voted on as a whole. Jon also believed they should try to keep commercial properties commercial.

Margaret Perritt thought Lee Corbin had a good point about trying to achieve harmony. Margaret believed they should break it down and vote on the parts separately.

Chairman Hamblen opened the floor to comments.

1. Linc Sample asked for clarification on common wall housing and commercial use.

2. Harvey Oest asked if "commercial" was the same as "retail."

3. Wendy Wolf agreed with some of the concerns about common wall housing and blending with commercial use. Wendy wondered about the common wall housing setback being closer than that for the rest of the town.

4. Tim Finch felt view corridors would give people a view of the water but frustration about the lack of ability to get to it.

[Chairman Hamblen responded that the DEP cannot require property owners to give something.]

5. Tom Myette stated he thought the work done by the Planning Board was well done and a rounded plan.

6. Bob McKay asked if the common wall housing setback on the East Side could be 25 feet instead of 500 feet. [The answer was "yes."]

7. Bill Logan stated the Boothbay Region Land Trust was in the process of purchasing a large piece of property (40 acres) at Oak Point that will provide public access to the water. Bill wondered if they could specify the height restriction for the East Side Zone only.

8. Mark Osborn stated he felt the voters should look at the proposal as a whole package in case they don't understand the importance of all of the parts.

9. Doug Carter wondered if the view corridor would be tax exempt. [The answer was "no."]

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10. Darrell Gudroe stated it was logical for the height restriction to be a separate item otherwise the rest could be kept together.

11. John Seitzer wondered about the reduction of square feet for a lot size on the East Side. [Chairman Hamblen responded it was to attract businesses on the ground floor with residences above.]

12. Sarah Foulger stated she wanted to protect what little working waterfront they have left. [Chairman Hamblen responded that the town owns the fish pier. Plus the Sea Pier as well as the Boothbay Lobster Wharf have very little developable land so are not attractive to developers. Margaret Perritt added that there is working waterfront at Barrett's Park as well.]

13. Doug Carter stated his Sea Pier used to be a 160 seat movie theater and had nothing to do with fishing before he started his business sixteen years ago.

14. Harvey Oest felt a view corridor might be a hazard for drivers so was still in favor of a nice walkway along the harbor and thought the DEP should be persuaded to allow it.

15. Paul Coulombe offered to share a very preliminary plan for the Cap'n Fish property he'd purchased, if it was appropriate. [Chairman Hamblen stated once more that the East Side Zoning was not designed for any particular plan or developer. In the interest of the public, Chairman Hamblen stated he had no objection to seeing the plan. The consensus of the rest of the Board was to allow Paul Coulombe to give a presentation.] Planner for Paul Coulombe, Dan Bacon, showed a plan with a hotel unit and restaurant roughly in the same locations as the ones there, with a fish market on the other side of the restaurant. There would be dockage with public access as well as patrons plus a large view corridor.

16. Bob McKay was critical about the proposed restaurant appearing to extend further out over the water. [Chairman Hamblen pointed out the plan to rebuild the restaurant would have to be presented to the Planning Board for a permit to be reconstructed. It can only be moved further **back** from the water. This has nothing to do with the new zoning laws being proposed.]

17. Jean McKay asked for clarification of public access on the property. Dan Bacon responded that the general public could eat at the restaurant, purchase fish at the market, boat in to the site and use any of the businesses there. [Someone on the floor stated that wasn't public access.]

18. Scott Larson responded that was more public access than was presently offered.

19. Linc Sample stated if the building was marine related, it could stay right there. [Chairman Hamblen confirmed this.]

20. Jay Edwards agreed with the safety issue of 30 foot view corridors as well as the pedestrians who walk across the road.

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21. Jim Yardley complimented the East Side Development work done by the committee and felt the proposal shouldn't be presented in separate pieces which could result in getting nothing.

22. Tom Philbrick, owner of the Boothbay Lobster Wharf, admitted the new Cap'n Fish property could be more competition for him but it gives more options for people coming to town. To stand in the way is not in the best interest of the town.

23. Joe Doyle also agreed that the proposal should be presented together with one vote and real change.

24. Lynne Seitzer felt separation was a better method to present the ordinance questions as it was a lot to digest. [Chairman Hamblen repeated that the Planning Board makes a recommendation to the Select Board, who then set the warrants. The final decision on whether it should be one single vote or a multiple questions vote is decided by the Select Board.]

25. Bill Gruener stated he'd like a chance to gain more education.

26. Sarah Foulger wondered if they could find a way to circumvent the DEPs resistance to having a waterfront walkway. [Chairman Hamblen explained the DEP had told them there has never been such an approval that didn't have a pre-existing right-of-way such as a railroad easement. However, they would not give up on it.]

27. Tom Myette couldn't understand why this meeting was not being recorded so people who could not attend would be able to watch it later to become educated. [Apparently the community TV station had other commitments.]

28. Bob Foster stated his friend in Bar Harbor said they would have given anything to have Paul Coulombe there. "Why don't we just do this d\_\_\_\_ thing?"

29. Patty Minerich agreed with Bob Foster because there are towns up and down the coast of Maine who are dying for this type of thing. It is not about the people in this room but the younger generation who will want to come here if there is an updated economic engine that could potentially support them. We have to invest in the future and move the ball down the court.

30. Charlie Bagley believed that Boothbay Harbor was becoming more beautiful each year and attributed much of it to Paul Coulombe.

31. John Seitzer, a neighbor of Paul Coulombe's business on Atlantic Avenue, wanted people to watch the meeting when he'd read some emails he'd received from Paul Coulombe.

32. Julie Roberts reminded everyone there are three sides to every story told...your side, my side and the truth and everyone should remember that.

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33. Dave Racicot wondered if it would be beneficial for the town to hire a planner to show them some alternates based on the Comprehensive Plan for the future of Boothbay Harbor. [Chairman Hamblen responded that Bob Faunce, Lincoln County Regional Commission Planner, hired by the town, has been part of this process all along and provided 98% of the proposed amendments to their ordinances, so have had someone in that capacity.]

34. Anya Reid felt there was public fear of a wall of condos.

35. Tom Myette stated there was going to be an informative breakfast on June 21st at the Ocean Side if anyone wanted to attend.

36. Scott Larson stated, as another developer in Boothbay Harbor besides Paul Coulombe, he and many other developers were waiting with baited breath to see how this turns out to determine if they want to do additional development in the town.

37. Laura Honey felt it was time to take the personalities out of the picture and do what is best for the whole community.

38. Cory Tibbetts stated Scott Larson's point was a good one because there are a lot of investors in this town who could move the town ahead if people would be more open minded.

ADJOURN

The meeting was adjourned at 9:13 pm.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William Hamblen, Chairman Kellie Bigos, Recording Secretary