



**Town of Boothbay Harbor Planning Board
SUGGESTED AGENDA
Wednesday, September 26, 2018
7:00 PM
Boothbay Harbor Town Hall
11 Howard St.**

- Call to Order
- Roll Call of Members
- Approval of the September 12th Minutes
- Workshop to discuss East Side Zoning
 1. Review of the Current Plan
 2. Lawyers Thoughts on Spot Zoning and Comp Plan adherence
 3. A quick review of the Current Maritime District
 - Clarification of the distinction between non-conforming structures and non-conforming uses
 4. Identification of the key zoning policies
 5. Public Input on zoning policies
 6. Planning Board discussion and action
- Brief report from the Harbor Master Plan subcommittee
- Adjorn

East Side Zoning

9/26/18

Current Status – Sep. 2018

At the very top Level!

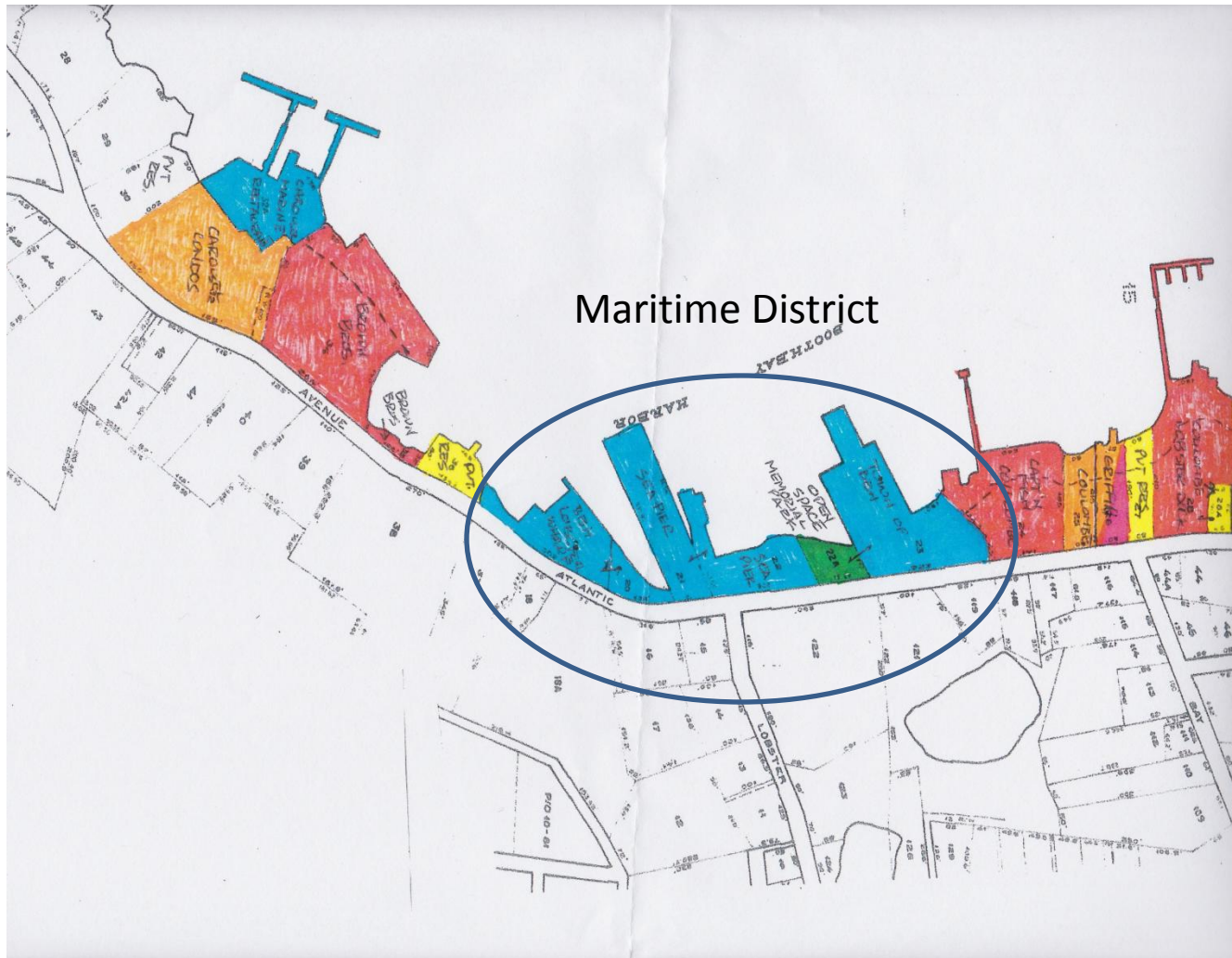
- Tremendous amount of work thus far
 - 10 months, 18 public meetings, countless hours of effort
 - input from advisors, residents, professional planners, lawyers, DEP, Selectmen, Planning Board, with many, many revisions , refinements, and changes
 - This has resulted in a well vetted, balanced plan for a limited commercial zone
- But
 - The current plan is not fully consistent with Comprehensive Plan
 - Specifically, for many, it does not adequately protect and promote our existing working water front.
- Thus
 - How can we both protect and encourage our working water front and promote responsible, balanced development?

Do Both

An idea first advanced at our 1st or 2nd Advisory group meeting.

- Maintain (and enhance?) the current Maritime zone by applying it to six contiguous lots that encompass our working waterfront.
- Promote responsible development by applying the balanced, limited commercial zone to the remaining parcels.

Proposed Maritime District



Proposed Maritime District

M	L	Current Use	Lot Size (Tax Records)	43560 sq ft/acre		Setback of structure closest to water (in feet)	Water Dependant Use?			
				Current Uses	Square footage per Use			Lot Coverage Percentage	Lot Coverage Area	
Residential										
16	29	SFR + two cottages	13,939	1	13,939	75%	10,454	0	No	
16	28a	SFR	3,920	1	3,920	90%	3,528		not waterfront	
16	27	Cottage	10,890	1	10,890	15%	1,634	21	No	
16	26	Prof. Bldg. + 2 bunkhouses	11,326	2	5,663	70%	7,928	0	No	
16	25	SFR	11,326	1	11,326	50%	5,663	105	No	
10	36	SFR + Cottage	7,841	1	7,841	90%	7,057	5	No	
Non-Residential										
16	33A	Squirrel Is. Parking Lot	14,375	1	14,375	98%	14,088		No Structure-Parking lot to water's edge	
16	32	Oceanside	30,492	3	10,164	100%	30,492	0	No	
16	33	Oceanside	36,155	2	18,078	100%	36,155		not waterfront	
16	33B	BBH Inn	52,272	2	26,136	75%	39,204	28	No	
16	35	BBH Inn	7,405	1	7,405	100%	7,405		not waterfront	
16	30	Vacant	16,117	1	16,117	50%	8,059		not waterfront	
16	28	Lobster Dock	39,640	3	13,213	95%	37,658	40	No	
16	24	Cap'n Fish	37,026	4	9,257	98%	36,285	0	No	
16	23	Town Pier*	42,689	4	10,672	100%	42,689	0	Yes	
16	22A	Memorial	6,534	1	6,534	45%	2,940	60	No	
16	22	Sea Pier	22,216	2	11,108	100%	22,216	0	Yes	
16	21	Sea Pier*	25,700	2	12,850	100%	25,700	0	Yes	
16	19	BBH Lobster Wharf*	22,651	4	5,663	100%	22,651	0	Yes	
16	20	BBH Lobster Wharf	5,227	1	5,227	100%	5,227		No Structure-Parking lot to water's edge	
10	34	Brown Bros.*	50,530	3	16,843	100%	50,530	0	No	
10	35	Brown Bros.	3,049	1	3,049	50%	1,525		No Structure-Lot only about 25 feet deep	
10	32	Carousel Condos	47,916	27	1,775	90%	43,124		not waterfront	
10	32A	Mid-Coast Marine Services	23,958	3	7,986	100%	23,958	10	Yes	
Total sq feet in District			543,194	72			486,170			
Total acres in District			12.47							
Overall Average				7,544	sq ft per use		90%	Overall Percentage lot coverage		
Com Average				7,445			93%	Commercial Average lot coverage		
Res Average				8,463			61%	Residential Average lot coverage		
Overall Average WITHOUT Condos				11,006 sq ft per use						
However 11 of the 24 lots are non conforming w/r to uses per lot							90% age per acre			
Proposed Maritime District				125,017	23.0% of overall			38,987 age per acre		

Note*: Tax Lot Size appears to include pier area (over water) so actual land area is much less.

A very rough correction for this would bring the commercial average down to about 7,100 square feet per use.

currently non compliant

Less than 25' setback

Setbacks

Average setback of existing waterfront structures is 17 feet

19 waterfront lots in the district
 12 of 19 -have setbacks less than 25'
 3 of 19 -have no structure (2 are paved)
 3 of 19 -are between 25' and 75'
 1 of 19 -is greater than 75'

Average setback of Non Water Dependant Structures is 23.5 feet

11 of 19 - are NOT Water Dependant
 5 of 19 - ARE water dependant
 3 of 19 - have no structure

Top level District Summaries

- **New Maritime District**

- Six lots; 23% of the current MD zone
- Maintain current Maritime Zoning - no added uses
- Possible Enhancements
 - Remove residential uses
 - Remove micro breweries
 - Easier approvals for working waterfront uses
 - Reduced permitting fees

- **Limited Commercial/Maritime District – Everything else**

- Maintain Maritime uses
- Limited added uses – most notably hotels, motels & inns
- View corridors (not for working waterfront uses?)
- 25 foot setbacks for new construction
- No multifamily dwellings

Advantages of this approach

- Consistent with both the wording and spirit of the comprehensive plan – no amendments needed.
- Initial legal review is positive
 - Zone boundaries based on 30 years of history.
 - Incentives and protections for working waterfront match comp plan intent.

Comp Plan, Page 207 “The Town needs to determine if any of these permitted uses are still appropriate for the given zone. This should be done concurrently with a review of the boundaries of the current zoning districts.”

A quick review of the current Maritime zone

- There are 37 permitted uses in the zone including:
 - All of the water oriented uses
 - Single Family dwellings, Duplexes, Micro-Breweries
 - For profit Outdoor Recreational uses, Parking area/lots
 - Professional Uses, Restaurants
- Four hotels; pre-existing non-conforming uses
- Many, many pre-existing non-conforming structures
 - Located within the setback
 - Not water dependent and located over the water
 - Higher than currently permitted

Non-Conforming Uses

Non-Conforming Structures

Pre-Existing Non-Conforming Uses

- Expansions of nonconforming uses are prohibited.
- If a nonconforming use is discontinued for one year, it cannot be resumed.
- An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use has no greater adverse impact.

Pre-Existing Non-Conforming Structures

- May be expanded if such addition or expansion does not increase the nonconformity.
- Within the shoreland setback, a lifetime expansion 30% in area or volume is permitted.
- May be relocated within the boundaries of the parcel, provided the relocation conforms to setback requirements to the greatest practical extent.
- Within the shoreland setback, structures which are removed, damaged, or destroyed, by more than 50% of the assessed value, may be reconstructed within 18 months provided that such reconstruction is in compliance with the setback requirement to the greatest practical extent.

BBH Land Use Code

- Oct 02 Port committee meeting 7 PM
- Oct 03 Fightfighters meeting 6 PM
- Oct 08 Selectmen's meeting 7 PM
- Oct 10 Planning board meeting 7 PM
- Oct 22 Selectmen's meeting 7 PM
- Oct 22 Wharves & Weirs-Rubel

Announcements

- Apr 18 Waterfront Bricks
- Aug 30 Job Opening

Town of Boothbay Harbor

The earliest attempts at settling the Boothbay Harbor region were made by fishermen, but these settlements were ravaged by King Phillip's war in 1675 and Indian forays in 1690. The area remained uninhabited until 1729. At that time, the entire Boothbay Harbor region became the settlement of Townsend, which included present day Boothbay Harbor, Boothbay and Southport. In 1746, the settlement petitioned the general Court of Massachusetts for incorporation. Governor Bernard signed the act of incorporation, naming the area Boothbay. The first town meeting was 1765, and the first school established in 1767. The Town of Southport split from Boothbay in 1842, following the formation of Boothbay Harbor in 1889. On February 16, 1889 the Town of Boothbay Harbor was formed by act of the State Legislature.



FORMS



APPRAISALS



MAPS/GIS



CODES



The Land Use Code is Chapter 170

Town of Boothbay Harbor, ME Login
Lincoln County

Home Help Enter search term...

Code
Index

Print @ Download Share Search Chapters

Includes legislation adopted through 05-05-2018.

Part I: Administrative Legislation

- Chapter 1 **General Provisions** >
- Chapter 2 **Administration of Government** >
- Chapter 3 **(Reserved)** >
- Chapter 5 **Assessor** >
- Chapter 9 **Budget** >

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BBH Land Use Code

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 - § 170-5 Conflicts with other codes or ordinances.
 - § 170-6 Validity and severability.
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 - § 170-8 Repetitive petitions.
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 - Ch 170 Art II Administration and Enforcement
 - § 170-10 Administering bodies.
 - § 170-11 Permits required from Code Enforcement Officer.
 - § 170-12 Permit application procedure.
 - § 170-13 Processing of application.
 - § 170-14 Expiration of permits.
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 - § 170-16 Requirements for structures to be occupied as residences.

Attachment 9 - Zoning Map

Chapter 170 : Land Use

Article I General Provisions

- § 170-1 **Title.**
- § 170-2 **Legislative authority.**
- § 170-3 **Purpose**
- § 170-4 **Applicability.**
- § 170-5 **Conflicts with other codes or ordinances.**
- § 170-6 **Validity and severability.**
- § 170-7 **Changes and amendments.**
- § 170-8 **Repetitive petitions.**
- § 170-9 **Effective dates; repeal of prior provisions.**

Article II Administration and Enforcement

Lawyer's Thoughts on Spot Zoning

Illegal “spot zoning” means a zoning ordinance change that is made for the benefit of a single parcel or a limited area and that is inconsistent with the municipality’s comprehensive plan. The current proposal could be construed to benefit the parcels that would become part of the proposed Limited Commercial/Maritime District. However, these “benefited” lots cannot reasonably be viewed as a single lot or limited area when compared with the surrounding districts, especially the proposed Maritime District. Instead, the current proposal would change the zoning for a majority of the lots and land area now in the current maritime zone. Therefore, it doesn’t appear that the current proposal should be considered to be spot zoning.

Lawyer's Thoughts on Comp Plan Adherence

Both the Planning Board and the Board of Selectmen will need to be satisfied that the proposed amendments are consistent with the comprehensive plan. Ultimately, if there is a challenge, a court will consider that question, but will give some deference to the decisions of the Town's Boards and of the voters who adopt the amendments (of course, if the voters reject the proposals, then there will be no challenge). In my opinion, the outline you presented could form the basis of zoning amendments that could be held to comply with the current comprehensive plan.

Key Zoning Policies to Consider Tonight

- **Removal of residential uses from Maritime District? from Limited Commercial/Maritime District?**
- **Removal of micro breweries from MD?**
- **Recommend (to selectboard) increased permitting fees to be used for public access and enhancement?**
- **Recommend (to selectboard) reduced permitting fees for working waterfront?**
- **Recommend no view corridor requirement for working waterfront uses?**
- **Recommend no multifamily dwellings in either the MD or LC/MD zones?**
- **Recommend approvals consistent with DEP, and if possible, only CEO approvals for working waterfront?**