

East Side Zoning Recommendations

Do you wish to implement the following changes to the BBH zoning ordinances?

Question 1 Summary:

A yes vote will implement the following zoning policies.

- *It will re-define the existing Maritime/Water Dependent District into two maritime districts: a Limited Commercial/Maritime District and a Working Waterfront District*

This provision sets aside our current working waterfront (about 23% of the existing district) to protect and promote traditional working waterfront activities. The remaining area will, in addition to the current marine uses, permit limited commercial activity, most notably hotels and inns, in order to foster increased economic development for the region.

- *All uses permitted in the current Maritime/Water Dependent District will continue in the Working Waterfront District with the following exception: micro breweries will not be permitted*

This will protect and encourage our traditional waterfront activities

- *All uses permitted in the current Maritime/Water Dependent District will continue in the Limited Commercial/Maritime District (including Functionally Water Dependent uses). Limited new commercial uses (e.g. motels, hotels, inns) consistent with a mixed use district will be added.*

In many ways this is the key new provision for the district. It allows new commercial uses in the district and will allow many of the existing business to re-invest, as they will become permitted uses.

- *In the Limited Commercial/Maritime District: significant new developments on lots with 100' or more of frontage on Atlantic Avenue must maintain a view corridor, at least 20' wide, from Atlantic Avenue to the water, for each 100' of frontage. This will not apply to water dependent uses.*

This will maintain the visual connection to the waterfront that exists today and prevent development that results in an impenetrable "wall" of buildings. It will be limited to those lots big enough to maintain a view corridor without an undue hardship on development. Significant developments are those over 3,000 square feet in floor area.

- *In the Limited Commercial/Maritime District new residential uses will be limited to upper floor locations above commercial uses. In the Working Waterfront District new residential uses will not be permitted. Existing residences in either district may continue and may be expanded.*

- *In both Maritime Districts:*

- *a high water setback of 75 feet will be required for all new construction except Functionally Water Dependent uses which will continue to have a 0 foot setback.*
- *the square footage per use, the maximum lot coverage for new development and all other setbacks are the same as our current codes. Existing (nonconforming) conditions may continue.*

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Question 2 Summary:

A yes vote will implement the following zoning policies.

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

Currently Boothbay Harbor permits 35 feet in the General Business District and 36 feet (30 feet plus a 6 foot façade) in the Downtown Business District and 30 feet elsewhere. This provision would make the height requirement consistent throughout the town, and consistent with State requirements. It would encourage economic development, and make affordable housing more attractive to developers. In the most sensitive area, the east side, the sloping topography from Atlantic Avenue to the water mitigates the impact of permitting the additional height. In addition, several existing structures are higher than this. Finally the 2- 1/2 story requirement is consistent with the remainder of the town and will promote sloped roofs and structures that visually match the region.

In Addition

The Planning Board recommends that the Selectboard implement increased permitting fees for the Town of Boothbay Harbor, said fees to be used for acquiring public spaces, public access to our shores and enhancing existing public access and public spaces. The planning board recommends that these fees not be applied to building permits for working waterfront uses.

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Detail:

Shall the town make the following changes to our zoning codes?

The proposed changes to our current code to implement Question 1 are **highlighted in green**.
The proposed changes to our current code to implement Question 2 are **highlighted in pink**.

§ 170-21 Districts established.

For the purpose of this Land Use Code, the Town of Boothbay Harbor is divided into the following districts:

General Residential District

Special Residential District

Downtown Business District

~~Maritime/Water Dependent District~~ **Limited Commercial/Maritime District**

Working Waterfront District

General Business District

Resource Protection District

§ 170-22 Zoning Map.

The location and boundaries of the above districts are hereby established as shown on the map entitled "~~Zoning Map of~~ **the** Town of Boothbay Harbor **Zoning Map**," dated ~~5-3-1999~~ **May 4, 2019**, filed with the Town Clerk, which map is hereby made part of this Land Use Code. [\[1\]](#) Where uncertainty exists with respect to district boundaries as shown upon such map the following rules shall apply:...

§ 170-25 Purpose of districts.

~~D. . Maritime/Water Dependent District. Working Waterfront District~~ The purpose of the ~~Maritime/Water Dependent 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.

E. 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.

Re-letter current paragraphs E,F, and G. to new F, G, and H.

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§ 170-26 Description of districts.

D. ~~The Limited Commercial/ Maritime/Water Dependent~~ Districts

(1) ~~The Maritime/Water Dependent District~~ The Limited Commercial/Maritime District shall be described as all of the area included within the following perimeter: Beginning at the eastern end of the footbridge and continuing in an easterly direction along the footbridge rights-of-way until it intersects Atlantic Avenue; thence south along the center line of Atlantic Avenue to a point between Lot No. 30 and No. 32 of Tax Map No. 10; thence along said property line to the water; thence generally northerly direction along the water's edge to the point of beginning.

(2) Exemption: The lots 19,20,21,22,22A, and 23 on the Town's Tax Map 16.

Added 5-6-2002 by ATM Act 20

E. The Working Waterfront District

The Working Waterfront District shall be comprised of lots 19,20,21,22,22A and 23 on the Town's Tax Map 16.

Re-letter current paragraphs E, F, and G, to new F, G, and H.

§ 170-27 Schedule of uses.

A. Activity categories. Land uses permitted in the town's zoning districts, in conformance with the performance standards contained in Article IV, are shown in a matrix in § 170-27E. The various land uses contained in the matrix are organized into the following activity classifications:

- (1) Open Space.
- (2) Residential.
- (3) Commercial.
- (4) Industrial.
- (5) Institutional.
- (6) Miscellaneous.

B. Symbols used in Schedule of Uses. The following symbols contained in the Schedule of Uses have the following meanings:

(1) District symbols:

GR General Residential District
SR Special Residential District
DB Downtown Business District

MW Maritime/Water Dependent District
WW Working Waterfront District

LC/M Limited Commercial/Maritime District
GB General Business District
RP Resource Protection District

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(2) 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.
- Blank Not permitted

E. Schedule of Uses

Replace the existing Maritime/Water Dependant (MW) uses with the attached spreadsheet.

Notes to Schedule of Uses:

15 new residential uses are limited to upper floor locations above commercial uses and shall be considered a separate use.

17 first requires Selectboard approval under the Wharves and Weirs act.

§170-28 Schedule of Dimensional Requirements

Replace MW with WW & LC/M at all table headings

§ 170-41 Height of building.

B. Unless otherwise specified, the maximum height of a building shall be as follows: 35 feet or 2 1/2 stories, whichever is less.

~~(1) In the General Business District (commonly known as "the meadow)", the maximum building height shall be 35 feet or 2 1/2 stories, whichever is less.~~

~~(2) In all other districts, the maximum height of a building shall be 30 feet or 2 1/2 stories, whichever is less.~~

~~(3) (1)~~ Structures within the Shoreland Zoning District must cross reference the height standards specific to those structures within the district.

~~(4) (2)~~ Exceptions: television or radio towers, church spires, belfries, monuments, water and fire towers, water standpipes, cooling towers, cupolas, chimneys, elevator bulkheads, smokestacks, flagpoles, grain silos and windmills or other structures necessary for essential services.

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§ 170-69 Site Plan Review Standards

M. Shoreland Relationship

(3) For a proposed development on a lot in existence on January 1, 2018 within the Limited Commercial/Maritime District that will consist of reconstruction or redevelopment of an existing principal non-residential structure in excess of 3,000 square feet of floor area or construction of a new principal non-residential structure in excess of 3,000 square feet of floor area, and is not a functionally water dependent use, the following view corridor standards shall apply.

(a) Unobstructed view corridors from Atlantic Avenue to the harbor shall be created or maintained. As used in this subsection M(3), a view corridor means a strip of land leading from Atlantic Avenue in a straight line to the waterfront, or the line of the lot nearest to the waterfront, and having the specified minimum width for its entire length.

(b) Any view corridor shall be exclusive of any required side setbacks (meaning that areas within a required setback shall not be included as part of a view corridor) and shall be a minimum of 20 feet in width.

(c) Surface parking of vehicles no taller than 6 feet 6 inches may be located within these designated view corridors for a maximum of 30 days. Except for such vehicles, no vegetation, structure, equipment, or personal property of any kind greater than 4 feet in height, may be located in the view corridor.

(d) One view corridor shall be required for every 100 feet of frontage on Atlantic Avenue. Two or more view corridors may be located adjacent to one another or they may be in separate locations on the lot.

(e) No view corridor shall be created or maintained so as to cause a violation of § 170-101.10(P)(4), except that if § 170-101.10(P)(4) or any other applicable law, ordinance, or regulation would prevent the removal of trees or other vegetation from a view corridor, which such removal would be required from the view corridor, then the Planning Board may issue a special exception permit allowing such trees or other vegetation not to be removed from the view corridor, provided that the Planning Board determines that (i) the landowner has made reasonable efforts to obtain permission to remove such trees or other vegetation, but has been unsuccessful, (ii) the view corridor cannot practicably be relocated so as to render the removal of such trees or other vegetation unnecessary, and (iii) the failure to remove such trees or other vegetation does not substantially interfere with the intended purpose of the view corridor to provide views of the harbor.

§170.82. Nonconforming uses.

C. Change of use. An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in this article.

(1) Conversion from one business to another. A change from one type of nonconforming business to another shall be permitted, provided that the creation of any additional parking demands as required by the parking standards are met upon approval.

(2) Conversion from commercial to multifamily. The conversion of commercial structures to multifamily dwellings shall be prohibited.

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(3) Changes within 75 feet of the high-water mark and over the water. Within 75 feet of the high-water mark and over the water, the following shall be prohibited:

(a) The conversion of an existing structure to a motel or hotel of any size.

(b) The expansion of a nonconforming use.

(c) The projection of second floor overhangs into required setbacks.

~~(4) (d) Maritime/Water Dependent District Limited Commercial/Maritime and Working Waterfront District conversion. Within 75 feet of the high water mark and over the water, the following shall be prohibited:~~

~~(a) The conversion of a dwelling to nonpermitted commercial uses shall be prohibited.~~

~~(b) The conversion of an existing commercial structure to a motel or hotel of any size or to multifamily dwellings shall be prohibited.~~

~~(c) The conversion of an existing permitted use to a nonpermitted use shall be prohibited.”~~

§ 170-101.4 Official Shoreland Zoning Map; districts.

A. Official Shoreland Zoning Map. The areas to which this article is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this article.^[1]

Resource Protection District

Special Residential District/Limited Residential

General Residential District/Limited Commercial

Downtown Business District

General Business District/General Development

~~Limited Commercial/ Maritime District~~

~~Maritime Water Dependent District Working Waterfront District/
Commercial Fisheries/Maritime Activities~~

Stream Protection District

§ 170-101.8 Establishment of districts.

A. Resource Protection District. The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland Zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the ~~Limited Commercial/ Maritime, General Business, General Development, or Working Waterfront Commercial Fisheries/Maritime Activities~~ Districts need not be included within the Resource Protection District.

B. Special ~~Limited~~ Residential District. The ~~Limited Special~~ Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial/~~Maritime~~ District, ~~the General Development General Business~~ District, or the ~~Commercial Fisheries/Maritime Activities Working Waterfront District.~~

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The **Commercial Fisheries Limited Commercial/Maritime Activities District and Working Waterfront** District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, § 170-101.9, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

- (1) Shelter from prevailing winds and waves;
- (2) Slope of the land within 250 feet, horizontal distance, of the shoreline;
- (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- (4) Available support facilities, including utilities and transportation facilities; and
- (5) Compatibility with adjacent upland uses.

§ 170-101.10 Land use standards.

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure		
(i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
(ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
(iii) Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300

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(c) Public and Private Recreational Facilities

(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas

200

40,000

- (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (5) Except as provided for in Note 1, if more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

B. Principal and accessory structures.

(1) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Downtown Business I District ~~and in the Commercial Fisheries/Maritime Activities District~~ there shall be no minimum setback. ~~In the Limited Commercial/Maritime and Working Waterfront Districts there shall be no minimum setback for functionally water-dependent uses and a 75 foot setback for residential and other non-residential structures.~~ In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply. In addition:

(2) Principal or accessory structures and expansions of existing structures, which are permitted in the Resource Protection, Special Residential District, General Residential District, and Stream Protection District, shall not exceed ~~30~~ ~~35~~ feet in height ~~or 2 1/2 stories, whichever is less.~~ This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

(4) The total footprint area of all structures, parking lots and other nonvegetated surfaces, within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Downtown Business District adjacent to tidal waters and rivers that do not flow to great ponds classified GPA, and in the ~~Working Waterfront District Maritime Water Dependent District~~, where lot coverage shall not exceed 70%.

C. Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland.

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(8) Except in the **General Business District districts** and **Limited Commercial/Maritime and Working Waterfront District Commercial Fisheries/Maritime Activities District**, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

(G) Parking areas.

(1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the **Working Waterfront District Maritime Water Dependent District**, parking areas shall be set back at least 25 feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat-launching facilities, in districts other than the **General Business District** and **Working Waterfront District Maritime Water Dependent District**, shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

P. Clearing or removal of vegetation for activities other than timber harvesting.

(4) Cleared openings.

(a) In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Business **District, or the Limited Commercial/Maritime District, or the Working Waterfront District, Maritime Water Dependent District.**

§ 170-101.11 Administration

D. Procedure for Administering Permits

(3) After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

(g) Will not adversely affect existing commercial fishing or maritime activities in **the Limited Commercial/Maritime District or Working Waterfront District Maritime Water Dependent District;**

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§ 170-101.12 Definitions.

As used in this article, the following terms shall have the meanings indicated:

HEIGHT OF A STRUCTURE

The vertical distance between the mean finish grade or the mean original grade, whichever is lowest in elevation, at the structure, and the highest point of the roof. Excluded are, chimneys, steeples, antennas (not antenna dishes or Antenna towers) and similar appurtenances which have no floor area. Cross-reference Chapter 170, § 170-113, for additional standards. The height of a building shall be measured from the mean original grade or the mean finish grade, whichever is lower in height. As used herein, the mean original grade is the average elevation of the ground at the downhill side of the structure where it is to be constructed before any grading or other alteration. The mean finish grade shall be the average of the finish ground at the downhill side of the structure after the construction and grading is complete.

§170-113 Definitions

HALF STORY - The space under a sloping roof which has the line of intersection of the roof decking and wall face not more than three feet above the top floor level, and in which space not more than 1/2 of the floor area is finished off for use. A half story containing independent apartments or living quarters shall be counted as a full story.

§146-5.G is amended to read as follows:

Cluster signs. The use of cluster signs will be limited to the Meadow Business District, Downtown Business Districts, and the Limited Commercial/Maritime and Working Waterfront Districts Maritime/Water Dependent District and when there is more than one business on a lot or in a single building. These signs will be or are limited to one location sign per business and one business or identification sign per business, double-sided allowed. The total area of all business signs in the group may not exceed the total sign area for the district the sign is located in. The landlord will be responsible for allocating sign area or space among the tenants. The layout of the individual signs shall be neat and uniform in size, design and color.

§170 Attachment 7 Table 1 is amended to replace references to Marine/Water Dependent District with Limited Commercial/Maritime and Working Waterfront Districts and references to MW with LC/M and WW

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