

**BOOTHBAY HARBOR PLANNING BOARD**

MINUTES OF PUBLIC HEARING

**September 12, 2018**

MEMBERS PRESENT: Thomas Churchill, Vice Chairman  
Lee Corbin, Second Alternate  
Jon Dunsford, First Alternate  
William Hamblen, Chairman  
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 August 8, 2018 Minutes

**NEW BUSINESS**

- Lafayette Boothbay Inc, represented by Marden Builders, 80 Commercial St. Map 15/Lot 17; Applicant is seeking to expand a non-conforming structure in the Shoreland Zone, requiring Planning Board review under Chapter 170, Article VII, of the Town of Boothbay Harbor Land Use Code
- Fritzy Enterprises LLC, 93 Townsend Ave, Map 20/Lot 72; Applicant is seeking approval to expand a non-residential structure by more than 500 square feet, requiring approval by the Planning Board under Chapter 170, Article V, §170-61

**OTHER BUSINESS**

- Continue discussion of possible amendments to the ordinance

Chairman Hamblen called the September 12, 2018 Planning Board meeting to order, stating they needed to elevate First Alternate, Jon Dunsford to a full voting member in order to have a quorum. Chris Swanson made the **motion**. Thomas Churchill **seconded** the motion. **Unanimous approval.**

## **OLD BUSINESS**

Margaret Perritt **motioned** to approve the August 8, 2018 minutes. Chris Swanson **seconded**. **Unanimous approval.**

## **NEW BUSINESS**

Chairman Hamblen stated the first application was from Lafayette Boothbay Inc. and invited Eric Marden, representing Lafayette Boothbay Inc. to explain what the applicant was planning to do.

Eric Marden stated the applicant was planning to put a roof top restaurant on top of the existing restaurant at the Tub Boat. Eric stated the Fire Marshal would be advising them on safety issues so they could get their permit. Eric confirmed that the area and volume of the expansion was less than the 30% allowed.

Jon Dunsford asked if an engineer had given them the maximum number of people who could be there at any one time.

Eric responded they had Bill Haney of Lincoln/Haney Engineering Associates, Inc is working on the structural support of the roof. Eric stated they would be running steel posts (I-beams) across the existing structure.

Jon Dunsford asked if they would be blocking off all the stairs in the winter when the building is not supervised.

Eric responded that should be easy enough.

Jon Dunsford requested they have an engineer do an updated storm water run-off management plan as a condition.

Thomas Churchill pointed out they would not be increasing the impervious surface and parking would not be an issue because of the zoning.

Bonnie Stover, stated there is capacity for more dumpsters in the existing location. Outdoor lighting has not been considered yet.

Chairman Hamblen started the Findings of Fact process.

**Findings of Fact:**

1. The owner is Lafayette Boothbay Inc., relating to the property located at 80 Commercial St. Property taxes on account of the premises for which the approval is requested have been paid in full.
2. The property is in the Downtown Business A zoning district, and the Shoreland Zone Overlay District. The property is further identified as Assessor’s Tax Map/Lot: 15/17. The property can be reviewed at the Lincoln County Registry of Deeds under Book 4112, Page 19.
3. The applicant proposes to expand a structure in accordance with **Chapter 170, Article VIII, §170-101.7 C.**

**Conclusions**

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

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

The applicant X *has/* \_\_\_\_\_ *has not* demonstrated Right, Title or Interest on the property in question.

**Motion made by** Chris Swanson, seconded by Jon Dunsford

Vote Unanimous All **In Favor** \_\_\_\_\_ **Against**

**Chapter 170, Article VIII, §170-101.7 C**

**C. Nonconforming structures.**

**(1) Expansions.** A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with Subsection **C(1)(a)** and **(b)** below:

**(a)** After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, in, on or over the water, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection **C(3)** and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989, had been expanded by 30% in floor area and volume since that date.

[Amended 5-5-2012 by ATM Art. 28]

**(b)** Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure:

**[1]** The structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Subsection **C(2)**, Relocation, below.

[2] If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with Subsection C(1)(a) above, and the foundation does not cause the structure to be elevated by more than three additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

## **(2) Relocation.**

(a) 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 or its designee, 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 law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

(b) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee 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. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

[1] Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

[2] Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed, or removed.

[3] Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees, or a combination thereof.

## **(3) Reconstruction or replacement.**

(a) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the assessed value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this article. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Subsection C(1) above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Subsection C(2) above.

(b) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the Town's assessed value, or damaged or destroyed by 50% or less of the Town's assessed value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained, from the Code Enforcement Officer within one year of such damage, destruction, or removal.

(c) In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Planning Board or its designee shall consider, in addition to the criteria in Subsection C(2) above, the physical condition and type of foundation present, if any.

**(4) Change of use of a nonconforming structure.**

(a) 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 have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

(b) 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.

The applicant X has/ \_\_\_\_\_ has not demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article VIII, §170-101.7 C** of the Town of Boothbay Harbor Zoning Ordinance.

Motion made by Chris Swanson, seconded by Jon Dunsford

Vote Unanimous All In Favor \_\_\_\_\_ Against

If the criteria have not been met, the reasons are explained below;

\_\_\_\_\_

**Conditions of Approval or Addendums**

1. Updated storm water plan by engineer for this building.

2. Access stairs to roof top restaurant blocked off during off-season.

3. Lighting plan that will comply with dark skies impact on neighbors.

**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 \_\_\_\_\_, 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.

**Appeal**

Any appeal from this decision must be made to the Board of Appeals within 30 days after the date of the decision of the Planning Board, in accordance with the Article X of the Land Use Ordinance.

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Chairman Hamblen stated the next application is from Fritzy Enterprises LLC.

Alison Evans, owner of A E Ceramics, came forward to explain her plan to expand an existing structure more than 500 feet on the back of her building into something resembling a two-car garage to be used for production space. [Vehicles would not be able to drive in.] Alison stated they would get an architect involved if they could get approval. The floor of the new structure will be level with the interior of the building. The driveway entrance on Union Street, which they don't use, would be blocked. The height of the new structure would only be as high as the second story (of the three story building).

CEO, Geoff Smith acknowledged that the structure could not be higher than the existing building it was being built onto. The parking lot is gravel.

Chairman Hamblen questioned who owned the drive between Alison's building (Lot 72 on the Tax Map) and Baker's Way (Lot 73 on the Tax Map).

Alison Evans responded that it was jointly owned by her and the owners of Lot 71 which is south of her building on Union Street.

Chairman Hamblen recommended that Alison get a letter of agreement from the owners of Lot 71.

Alison Evans stated there was another plan for Lot 71. Alison also stated the new structure would not be any closer to the sidewalk on Union Street than the existing building. The existing stairways will remain the same. The entrance to the residence above will still exist. [She presently lives on the second and third floors of the existing building.]

Alison Evans stated FedEx might stop on Union Street instead of Townsend Avenue. [Alison confirmed that FedEx does not block traffic on Townsend Avenue when they stop.]

Jon Dunsford stated if there was an "apron" instead of a sidewalk for FedEx to stop it would be helpful. Chairman Hamblen pointed out the state would not have to get involved because there is already an "apron" where the existing Union Street access is located and is not a new curb cut.

Thomas Churchill **motioned** to table the application until Alison Evans can return with an actual site plan so she could answer the Board's questions.

Chairman Hamblen stated he did not see anything that would preclude approval but agreed with Thomas Churchill about supplying the additional information.

Chris Swanson **seconded**.

Julie Roberts, made a number of public comments in support of Alison Evan's year-round business with a young child in the local school system.

The motion **passed unanimously**.

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**OTHER BUSINESS**

Chairman Hamblen stated a lot had transpired since they last met. There has been a tremendous amount of work thus far.

- Ten 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

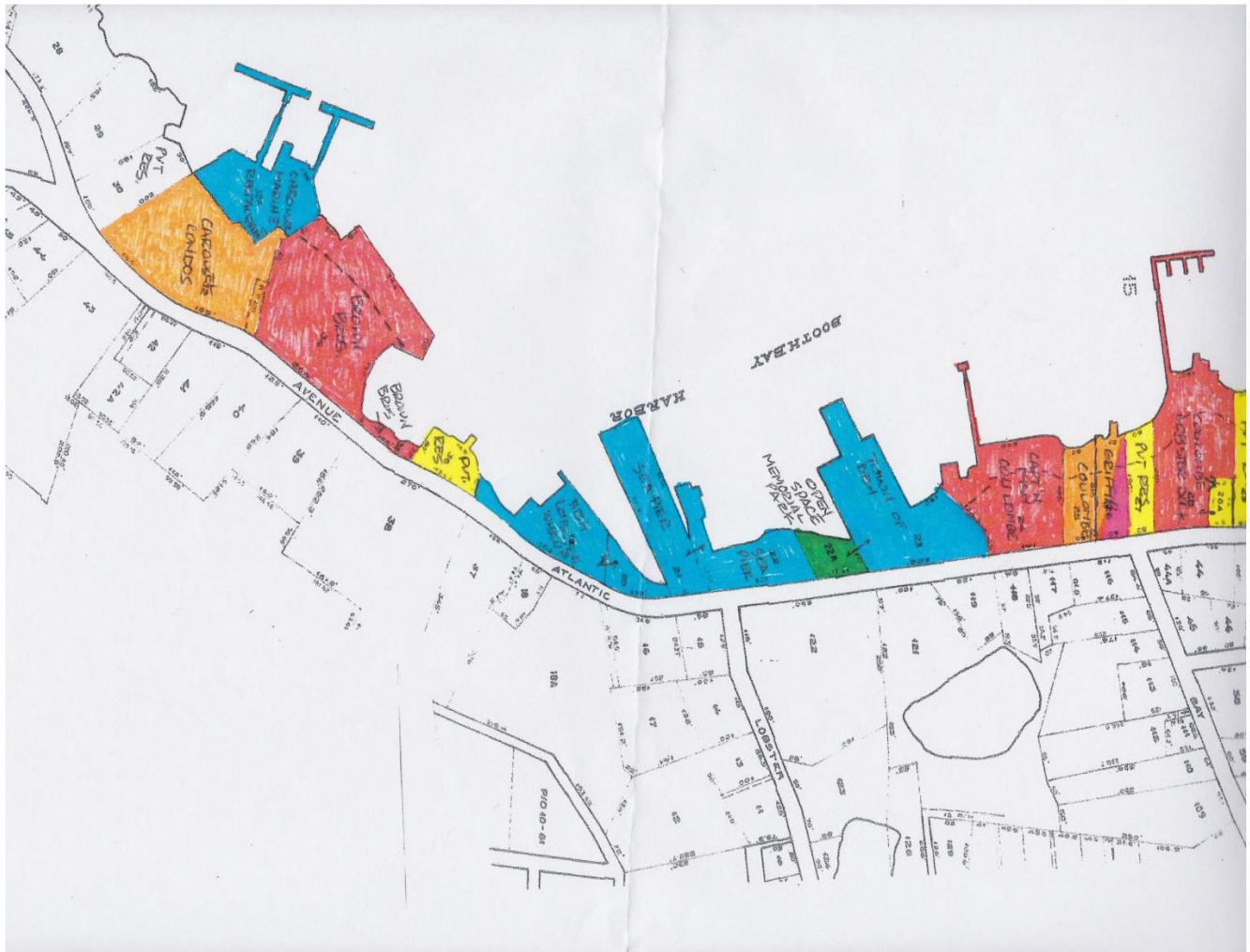
However, for many the current plan is not fully consistent with the Comprehensive Plan because it does not adequately protect and promote the existing working water front. Therefore, it poses the question of how the working water front can be protected while promoting responsible and balanced development.

An idea first advanced at the first and second Advisory group meeting was to do both.

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

Chairman Hamblen showed a slide of the Proposed Maritime District (in blue). This area comprises 23 % - 25% of the total zone.

[The Carousel Marina to the south is water dependent but not a working waterfront parcel.]



Chairman Hamblen stated there are currently six properties that comprise the Working Waterfront...the town Fish Pier on the right, the Fisherman's Memorial, the Sea Pier and the Lobster Wharf for the past thirty years. They would retain the Maritime/Water Dependent designation to these parcels and apply the Limited Commercial/Maritime District designation to the properties north and south of this zone.



To summarize...

Maritime District

- Maintain current Maritime Zoning (no changes)
- Make possible enhancements
- Remove residential uses
- Remove micro breweries
- Easier approvals for working waterfront uses
- Reduced permitting fees

Limited Commercial/ Maritime District

- Maintain Maritime uses
- Limited added uses
- View corridors (not for working waterfront uses?)
- 25 foot setbacks for new construction
- No multifamily dwellings

Chairman Hamblen stated the advantages of this approach, if done right, would be no need to amend the Comprehensive Plan and the initial legal review is positive.

Chairman Hamblen proposed that the Planning Board proceed to formulate the recommended zoning proposals in this manner and evaluate at their next meeting.

Chris Swanson requested something in writing from the town's attorney before they proceed after their experience with the DEP.

Chairman Hamblen responded he could ask but the lawyer would probably ask for something from them that he could evaluate instead. Chairman Hamblen stated he would try.

Jon Dunsford pointed out the Board had all the information they needed to move ahead with this from the work they had already done in the past eight months. Jon could not see the need to wait a whole month before meeting again. By getting the new proposal done ahead of time, the general public would have a chance to see and digest it ahead of time.

CEO, Geoff Smith stated they could have a workshop in two weeks without making any decisions.

The Board agreed to have a workshop on Wed, 9/26 at 7:00 p.m. with public comments allowed.

Chairman Hamblen stated they still needed to run the changes by DEP.

CEO, Geoff Smith stated if they could have something ready by October 10th they could have a public hearing by November 1st.

Chairman Hamblen opened the floor for public comment.

1. Doug Carter asked for clarification that the area in blue (except for the Carousel Marina) would be kept the way it was and there would be no mixed uses. [Chairman Hamblen responded this was an idea they started with in February, partly based on your objection, so now they have come full circle back to this idea.]
2. Sue Toscher stated this would still be a major change and there should be public participation. Sue stated once this change happens there is no changing it back so she recommended getting a town planner.
3. Dorothy Ferrell asked what would happen to the houses on the east side. [Chairman Hamblen responded nothing would happen to them.]
4. Ken Fitch stated this plan would be "spot zoning" and an attempt to make it fit a particular project like taking a square peg and putting it in a round hole. They would be putting more restrictions on the Maritime District. [Chairman Hamblen stated that if they left the Maritime Zone the way it is now it would have less protection. When Chairman Hamblen had asked the town lawyer if this would be "spot zoning," he said he did not think it was so your premise in incorrect.]
5. Bill Logan stated he disagreed with Ken Fitch because you could apply the same analysis thirty years ago when the present Maritime District zone was created because it substantially restricted what they could do. Bill said he also disagreed with Sue Toscher because there has been substantial participation since last November.
6. Jean McKay stated the Comprehensive Plan says they should also consider public access, not just protecting the working waterfront and I don't want to give up our only chance to have a park on the east side other than the Fish Pier.
7. Steve Toscher wondered if they go ahead with this new plan will it absolutely be in compliance with the Comprehensive Plan. [Chairman Hamblen stated in his presentation he'd said, "If they do this right." And like Chris says, they still want to work with their lawyer and the DEP. Their goal is to be compliant but it remains to be seen.]
8. Doug Carter stated he'd sold the Sea Pier to group called Boothbay Region Maritime Foundation three weeks prior with funds donated anonymously by two people who are heroes. The people who wrote letters and said they care so much have done nothing! "You care with your pocketbook and not your piehole."
9. John Seitzer demonstrated what he predicted might happen on the east side if the building height is increased to 35 feet with a 12 foot by 5 foot canvas in the front of the room.
10. Kate Rice thanked Doug Carter for publicly thanking the donors who purchased the Fish Pier to try to save the fishing community.

11. Tom Minerich stated he wanted to thank Doug Carter also because he is the hero who said all along he would only sell the Sea Pier if it would remain a working waterfront.

12. Mark Skinner stated he'd been told there are approximately 100 families or more in the community who depend on the fishing industry.

13. Cory Tibbetts stated it seemed like the Board felt obligated to hurry the process along and he hoped they would continue to give it the same due diligence as they had previously to work something out that will work for everyone. [Chairman Hamblen responded they have had many special meetings so holding another special meeting is not because they are trying to rush. "What lies before us is not a tremendous amount of work so let's get it done and address it in a public hearing so we can carry on."]

14. Mark Skinner stated it seems that the real question is what is the best way to enhance the viability of the community. [Chairman Hamblen responded they were trying to do what is best for town, not just any individual or group. It is a big picture and they have to look at it all.]

15. Judy Stone felt their proposal did not address the issue of public access and there is a strong difference of opinion as to what will make the economy better. Another hotel is not the answer.

16. Tom Minerich stated he was excited about seeing the Sea Pier and the Coop being enhanced as well as the hotels that are already there beautified.

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Thomas Churchill **motioned** that the Planning Board create a subcommittee to draft a set of guidelines for the Selectmen to use for an RFP to get a consultant within their budget to create a Master Plan for the Harbor. Margaret Perritt **seconded**. **Unanimous approval.**

ADJOURN

The meeting was adjourned at 8:34 pm.

\_\_\_\_\_  
William Hamblen, Chairman

\_\_\_\_\_  
Kellie Bigos, Recording Secretary