CITY OF PORTLAND, MAINE

PLANNING BOARD

Sean Dundon, Chair
Brandon Mazer, Vice Chair
Bob Dunfey
David Eaton
David Silk
Austin Smith
Maggie Stanley

AGENDA
PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on May 14, 2019, 7:00 p.m. Room 24, Basement, City Hall, 389 Congress Street. **Public comments will be taken for each item on the agenda during the estimated allotted time and written comments should be submitted to planningboard@portlandmaine.gov**.

NO WORKSHOP ITEMS

PUBLIC HEARING - 7:00 PM

1. ROLL CALL AND DECLARATION OF QUORUM

2. COMMUNICATION AND REPORTS

3. REPORT OF ATTENDANCE AT THE MEETING HELD ON APRIL 23, 2019

Workshop: All Present
Public Hearing: All present, Smith recused for second item.

4. REPORTS OF DECISIONS AT THE MEETING HELD ON APRIL 23, 2019

i. Level III Site Plan and Conditional Use Application; 175 Auburn Street; Portland Public Schools, Applicant. Mazer moved and Stanley seconded a motion to approve the conditional use application for the school expansion with two (2) conditions of approval. Vote: 7-0. Mazer moved and Stanley seconded a motion to approve the site plan application with five (5) conditions of approval. Vote: 7-0

ii. Level II Site and Conditional Use Application; 87 Spring Street, Portland Museum of Art, Applicant. Mazer moved and Stanley seconded a motion to waive the technical standard for parking lot and parking space design in the Section 1 of the Technical manual to allow a one-way circulation and 75 degree angles. Vote: 4-2-0, Silk and Stanley opposed, Smith recused. Mazer moved and Stanley seconded a motion that the plan is in conformance with the conditional use standards of Section 14-218 and 14-474 with one condition of approval. Vote: 4-2-0, Silk and Stanley opposed, Smith recused. Mazer moved and Stanley seconded a motion to approve the site plan. Vote: 4-2-0, Silk and Stanley opposed, Smith recused

5. NEW BUSINESS

i. Waterfront Central Zone (WCZ) Text Amendments, City of Portland, Applicant. (estimated time 7:00 -9:00 p.m.) The Planning Board will hold a public hearing on the proposed text amendments for the Waterfront Central Zone, Division 18 of the Land Use Code. The amendments include, but are not limited to, revisions to the definitions of the Non-Marine Use Overlay Zone; changes to permitted, conditional uses and prohibited uses; changes to the dimensional requirements; elimination of contract and conditional zoning within the zone; and updates to performance standards. Proposed amendments are based upon feedback received over the course of numerous meetings of the Waterfront Working Group.

ii. Amendment to Level III Subdivision/Site Plan and IZ Conditional Use Applications; 56 Hampshire Street; New Height Group LLC, Applicant. (9:00 p.m. estimated time). The Board will hold a public hearing to consider an amendment to the approved site plan, including revisions to the exterior materials and revisions to the Inclusionary Zoning Conditional Use. The site is in the India Street Form-based Code Zone (IS-FBC) and is subject to review under the subdivision, site plan, and affordable housing ordinances.

PLANNING BOARD REPORT
PORTLAND, MAINE

Division 18 Waterfront Central Zone Text Amendments
City of Portland, Applicant

Submitted to: Portland Planning Board Public Hearing Date: May 14, 2019	Prepared by: Matthew Grooms, Planner Date: May 10, 2019

I. INTRODUCTION

In December, 2018, the Portland City Council enacted a six-month moratorium on non-marine development within the Waterfront Central Zone (WCZ). The impetus for this moratorium was a proposed referendum on non-marine development within the zone, that if passed, would result in a five-year pause on such development. Since the moratorium went into effect, the City has engaged with stakeholders to better understand and address perceived issues. This process is being undertaken through a series of meetings (11 since January 3, 2019[t]) between City officials, representatives of Portland's working waterfront, and members of the public, who compose the Waterfront Working Group (WWG), (see the link for more information https://www.portlandmaine.gov/2411/Waterfront-Working-Group).

Figure 1: WCZ Zone Boundaries in Context

The proposed amendments are based upon an intensive, months-long discussion and analysis of the WCZ zoning standards, and translate as general recommendations from the WWG. Where complete consensus was not possible, amendments were based upon the group's majority position (discussed in greater detail under Section IV of this memo) and Planning staff's synthesis of the input received into zoning text. The goal of this process has been to identify and facilitate the appropriate balance between marine and non-marine uses, accounting for their respective operational needs so that they may successfully coexist and contribute to Portland's working waterfront.

Two Planning Board workshops have been held on this proposed text amendment, the first on January 22nd, to discuss elimination of contract and conditional rezoning, and the second, on April 23rd to discuss a comprehensive suite of changes to the zone. Notice of this workshop appeared in the Portland Press Herald on May 2nd and May 3rd 2019, and notices were distributed electronically to the interested citizen list. At the time of the writing of this memo, seven (7) written public comments have been provided for the Board's consideration.

II. BACKGROUND

The Waterfront Central Zone (WCZ), perhaps the most iconic area of Portland's working waterfront, was created to protect and nurture water-dependent and marine-related uses while leveraging certain compatible non-marine uses for necessary investment of marine infrastructure. This hierarchy, implemented through a variety of land-use control measures, translates into a unique mixture of complementary though disparate uses within a small geographic area, transitioning from predominantly commercial and marine-related uses along the northern edge (landward side) of the zone, to predominantly water-dependent uses along the southern edge (seaward side), with some exceptions. Extending from Deake's Wharf in the west to just past Maine Wharf in the east, the zone consists of 13 separate, mostly privately-owned wharves, with an extensive array of uses including; retail and restaurants, marine-related tourism, residential, marine and non-marine offices, institutional, berthing for both recreational and commercial fishing and lobstering vessels and seafood processing. While not an exhaustive list, these uses demonstrate the unique challenges faced by users of this zone, in that all such uses are competing for adequate water access (either direct or visual) and vying for limited real-estate. This challenge is exacerbated by the different market realities for these industries, especially so as tourism in Portland continues to grow and with it, demand for recreational waterfront access.

A. Description of Existing Zoning

As currently written, the WCZ establishes a regulatory balance between uses through an array of development standards including performance and more specific non-marine use standards. Performance standards, which apply to all uses, are intended to limit nuisance/negative externalities among uses, and range from general performance standards such as lighting, odor and noise, to more marine-specific standards, such as filling in of berthing areas and utility of piers. In all, the WCZ contains seventeen (17) performance standards, listed under Section 14-311(d).

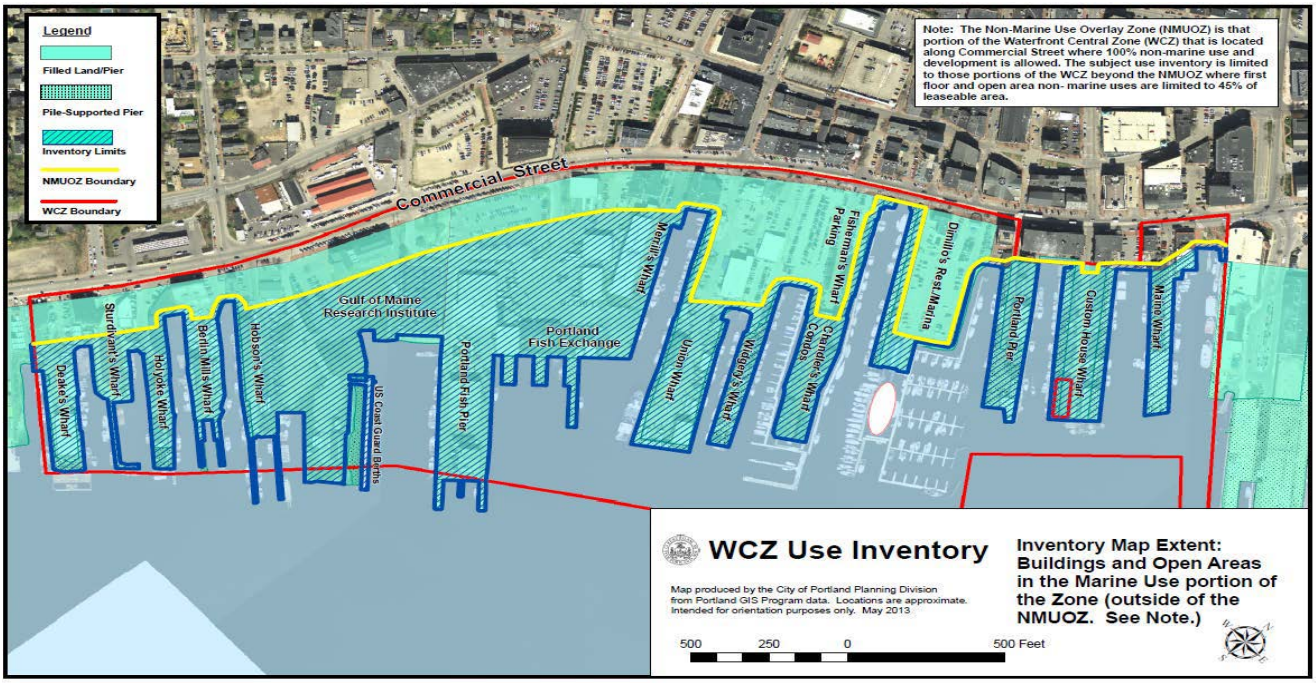


Figure 2: Zone boundaries, with NMUOZ shown on landward side of yellow line.

Non-Marine use standards, as their name would suggest, only apply to non-marine uses (identified as such in the permitted use section, 14-307(b)) and are dependent upon the location of that use within the zone. Regarding non-marine uses, the zone is geographically split into two parts, the first, being the Non-Marine Use Overlay Zone (NMUOZ), which spans the width of the zone and occupies the landward side of the zone along Commercial Street,

as well as some larger surface parking areas extending into Union Wharf, Widgery Wharf, Chandler's Wharf and Dimillo's Pier. Generally, the NMUOZ extends one hundred fifty (150) feet south of the Commercial Street right-of-way though no closer than twenty-five (25) feet from the average high tide line. Between Union Wharf and Dimillo's Pier, the zone extends five hundred (500) feet south of the Commercial Street right-of-way. When the zone was amended in 2010, it was well-understood that the Old Port district (which consists largely of retail and restaurants popular among tourists) extended across Commercial Street and occupied significant real-estate within the zone. To reconcile this fact, and leverage the investment potential of such users, the City adopted the NMUOZ as part of the 2010 zoning amendment, which includes three standards aimed at facilitating an effective transition from non-marine to marine use within the zone.

Development Standards: Non-Marine Use Overlay Zone (NMUOZ)		
Vessel Access	Development Disposition	Marine Infrastructure Investment
• Non-marine uses not to disrupt or block access to vessel berthing	• Lots with 75 feet of frontage or more along Commercial Street: Front façade of building must be no more than 35 feet from ROW, and front façade and pedestrian entrance oriented towards Commercial Street • Exemptions: 1. Frontage less than 75 feet 2. Change of use within existing building 3. Building addition of less than 5,000 square feet.	• Non-marine development valued at > $250,000 required to provide marine investment totaling no less than 5% of total project cost. • Improvement may be direct, meaning; dredging, pile replacement, replacement decking, etc… • Financial contribution to City's Waterfront Loan and Investment Fund

Non-marine uses proposed outside of the NMUOZ are subject to a separate set of standards, targeted towards maintaining a majority of the available ground-floor leasable space and undeveloped land area for marine uses, with a minimum requirement of 55% marine. This section of the ordinance also requires that property owners prioritize the leasing of vacant ground-floor space for marine users while reserving property immediate adjacent to piers and bulkheads for marine uses.

Unusual within the City of Portland's zoning code, the WCZ contains a list of standards related to contract or conditional rezoning. Across Portland, property owners are entitled to seek either a map amendment for their property (changing their property from one established zone to another), a text amendment to a particular zone (to alter regulations governing a zone) or a contract/conditional rezoning agreement, which is an individualized agreement between the City and property owner, subject to requirements listed under Sec. 14-62, wherein a new zone is created with its own list of regulations and geographic boundary. At present, more than 60 such zones are in existence.

Contract or conditional rezonings are not typically regulated via the base zoning district, meaning that were a property owner in the R-3 Residential zone for example to seek a conditional or contract rezoning for their property, they would not in any way be impeded by language found within the R-3 zone. In the WCZ however, a property owner seeking a contract or conditional rezoning must first demonstrate compliance with the contract or conditional rezoning standards.

This section contains nine (9) standards geared specifically towards proposals deviating from the dimensional standards for the zone, listed under Section 14-310, and/or permitted uses list, Section 14-307 and 14-308. These standards share many similarities with the non-marine and performance standards, and are largely concerned with maintaining water access for water-dependent users, ensuring that requisite marine investment by non-marine users is not avoided, and ensuring contextuality of a proposed project with permitted uses as it relates to traffic impacts and protection of water-dependent uses.

Difference Between Contract/Conditional Rezonings and Conditional Uses	
Contract/Conditional Rezoning	Conditional Use
• Time intensive negotiation process wherein a new 'site specific' zoning district is agreed to between Property Owner and City • WCZ is unique in that it provides an extra step in the process, a requirement that certain standards be met before a proposal is considered eligible • City Council must find the proposed contract/conditional rezoning to be consistent with the Comprehensive Plan	• A conditional use is a use that is permitted by-right so long as zone-specific and general conditional use standards are being met. • A conditional use is reviewed by either the Planning Board or ZBA and is not considered by City Council.

B. Waterfront Working Group

Just prior to imposition of the moratorium on non-marine development within the WCZ, the City Manager convened the Waterfront Working Group (WWG), a focus group consisting of ten (10) waterfront stakeholders was convened by the City Manager to discuss critical issues related to waterfront development and concerns of fishing interests in Portland Harbor. As of the May 14th Planning Board public hearing, the group has met eleven (11) times and has provided feedback on the following topic areas:

- WCZ Marine Use Inventory Update
- Effectiveness of the WCZ Zoning
- Recommendation on prioritization of short-term Waterfront TIF funding allocations.
- Accommodation for marine parking.
- Berthing and marine access conditions.

This process has been highly informative for City staff in understanding the needs of our working waterfront, and feedback from this group has served as the basis for the proposed text amendments now before the Planning Board. For more information on this process, please see the attached memo from the City's Economic Development Office (Attachment 1).

III. PLANNING BOARD WORKSHOPS

A. January 22, 2019

On January 22, 2019, the Planning Board held a workshop to consider a limited set of text amendments that would prohibit contract and conditional rezonings within the WCZ. The Waterfront Working Group had articulated a concern that this section of the ordinance effectively permitted uses to locate within the zone that were expressly prohibited. For example, the Fisherman's Wharf hotel project was proposed as a conditional rezoning. As a response

to this concern, the staff suggested prohibiting contract and conditional rezonings, and drafted language to that effect based upon the Comprehensive Plan.

At the workshop, members of the public were generally opposed to the elimination of contract and conditional rezonings, and instead recommended that the contract and conditional rezoning prohibited uses list be broadened to include other incompatible uses such as hotels. The Board recommended that staff continue to work with the Waterfront Working Group to resolve this issue, and further asked that staff complete the zoning discussion with the group and draft a comprehensive set of amendments based upon that discussion before holding a second workshop with the Planning Board.

B. April 23, 2019

The Planning Board held a second workshop on April 23, 2019 to consider a broader suite of suggested amendments to the Waterfront Central Zone.

At this workshop, the Board heard testimony from a range of waterfront stakeholders, including pier owners, business owners and members of the fishing community, along with other interested parties. The public comment provided was not universally supportive of the text amendments, with some raising concern that the reduced overlay zone would eliminate necessary investment by non-marine uses (a requirement of the overlay zone), or that the changes were not necessary given the relative effectiveness of the existing zoning in achieving an appropriate balance between marine and non-marine uses. Meanwhile, other public comment supported the proposed amendments and the Waterfront Working Group process, claiming that development pressures were once again impacting the zone and therefore, the zoning should be changed to reflect those conditions.

In response to the public comment, the Board questioned whether or not the zoning was responsible for any decline in marine activity along the waterfront, and asked what extent it should be revised. One Board member asked that information be compiled to describe the projected loss in tax revenue that would result from changes to the overlay zone. A general sentiment expressed was that the proposed changes should be better justified by the City as an appropriate response to perceived concerns. The Board also advised that staff continue to work with the Waterfront Working Group to address any outstanding zoning concerns, particularly the performance standards, before holding the public hearing.

C. Response to Planning Board Feedback

To follow-up on the feedback received at the April 23rd workshop, staff would first highlight the concerns that have come to light through the Waterfront Working Group process, which include; incompatibility of certain non-marine uses, maintenance and upkeep of marine infrastructure, enforcement of existing zoning, lack of available parking for marine uses, traffic congestion along Commercial Street, extent of the non-marine use overlay zone and both general and functional access to vessel berthing.

City staff have developed a series of approaches to address those concerns, many of which are not zoning focused. For example, two meetings of the group were dedicated to the discussion of Tax Increment Financing (TIF) allocations for the financing of private marine infrastructure improvements. A separate meeting was held to discuss potential parking accommodation for marine uses, through dedication of parking spaces or a hang-tag system to occupy certain on-street spaces. These efforts are on-going.

The City is also working with MaineDOT and the Portland Area Comprehensive Transportation System (PACTS) on the development of a Commercial Street Operations and Master Plan, aimed at improving the functionality of Commercial Street as a major multi-modal streetscape (for more information, please see

https://www.portlandmaine.gov/2081/15594/Transportation-Master-Plan). A primary goal of this plan is to improve access to the city's wharves and piers, which would directly benefit members of the working waterfront.

In response to the concern that changes to the overlay zone may impact tax revenue, staff have consulted with the City Assessor and multiple property owners to compile relevant information and provide a data-based recommendation. A full discussion of this response can be found in the attached memo from Economic Development (Attachment 1). As of the writing of this report, several pier owners have also submitted a letter (Attachment 3), with information on property valuation to further support this request by the Board. The Director of Planning and Urban Development has provided a response to that letter, which is attached (Attachment 4).

While zoning amendments are a critical component of the City's approach, they are by no means the only tool being utilized to respond to these concerns. The City continues to support and recommend the proposed amendments as shown below, as an effective and appropriate response to many of the issues identified by the Waterfront Working Group. We feel strongly that the amendments are consistent with and supportive of the Comprehensive Plan, which calls for a balanced approach to waterfront development policy, wherein water-dependent, marine-related and compatible non-marine uses may coexist and mutually support one another. The proposed zoning maintains the existing hierarchy of uses, more clearly defines appropriate locations for non-marine uses and strengthens provisions intended to ensure that water dependent uses shall have priority of functional access to the water's edge.

IV. PROPOSED TEXT AMENDMENTS

As seen in the table below, a broad range of amendments are being proposed, although many are very minor in nature. The most substantive changes include reducing the area of the Non-Marine Use Overlay Zone (now proposed as the Commercial Street Overlay Zone (CSOZ)), eliminating certain non-marine uses such as restaurants and retail establishments from areas outside the CSOZ, increasing the pier edge setback from five (5) feet to ten (10) feet, eliminating contract and conditional rezonings and both streamlining and strengthening the performance standards to ensure compatibility between marine and non-marine uses. The full text is attached to this report (Attachment 2).

Waterfront Central Zone – Summary of Proposed Text Amendments	
Zoning Ordinance Sec.	Changes drafted for May 14, 2019 Planning Board Public Hearing
Purpose (14-305)	• Purpose statement expanded so as to account for future functionality of working waterfront.
Definitions (14-306)	• Change 'Non-Marine Use Overlay Zone' to 'Commercial Street Overlay Zone'. • Reduce overlay dimensions from 150' to 125' feet, and 500' to 300' feet for Long Wharf only, with language to describe where line cuts through or around existing buildings (see map).
Permitted Uses (14-307)	• Create new sub-category of uses permitted only within Commercial Street Overlay District (restaurants, retail, museums, galleries, banking, street vendors, street vendors, medical offices and personal services) • Add new uses, "Commercial Parking for Water Dependent Uses" (defined under 14-47), commercial kitchen and seafood retailing (in conjunction with seafood processing) • Eliminate laundry as permitted use.

Conditional Uses (14-308)	• Eliminate residential use for Marine Business Owner
Prohibited Uses (14-309)	• Prohibit following uses; laundry and dry-cleaning, service stations, convenience stores, commercial parking for non-marine uses. • Expand hotel prohibition to include additional forms and short-term rentals • Expand drinking establishment prohibition to include private/social clubs and recreational facilities.
Dimensional Standards (14-310)	• Prohibit non-marine off-street parking within pier setback requirement and better define pier edge. • Permit structural posts and deck/building mounted equipment for vessel loading and unloading. • Increase pier setback requirement from 5 feet to 10 feet at first floor level
Standards for Non-Marine Uses Outside Commercial St. Overlay (14-311(a))	• Marketing Requirement – Change from 60 days to 180 days similar to PAD requirements and strengthen language for 'targeted media'. • Remove inventory requirement from zoning, with goal of having Council mandate through Council Order "State of the Marine Economy" Report and annual report of significant waterfront development.
Commercial Street Overlay Standards (14-311(b))	No changes proposed
Contract and Conditional Rezoning (14-311(c))	• Prohibit contract and conditional rezoning.
Performance Standards (14-311(d))	• Condense Parking, non-marine compatibility and functional utility of piers performance standards into new 'Operations and Access Management Plan' standard, with specific parameters for locating parking, structures, equipment, access-ways and sidewalks, so that access to berthed vessels and marine uses is accounted for. • Remove unnecessary standards: Shoreland Zone, Signs, State and Federal Environmental Regs.

A. Discussion of Draft Text

The broad aim of the proposed amendments is to reaffirm the WCZ's purpose statement, which is to protect and nurture marine development within the zone, and better define where and under what circumstances non-marine development is appropriate and harmonious. The WWG, with select representation from the fishing industry, pier proprietors, waterfront business owners and invested members of the waterfront community has provided insight on various concerns related to pier access and management, parking and traffic conditions, compatibility of uses and the effectiveness of existing marketing requirements. Based upon that feedback, staff developed a set of suggested approaches that were further refined through discussions with the WWG, with finalized approaches serving as the basis for the draft amendments now before the Board.

B. Commercial Street Overlay Zone (CSOZ)

a. Non-Marine Use Overlay to Commercial Street Overlay

Staff suggest changing the name of the 'Non-Marine Use Overlay Zone' to the 'Commercial Street Overlay Zone' as a way of better defining the purpose of this geography. The east side of Commercial Street has more limited value for water-dependent uses given its lack of direct waterfront access and traditionally, has been a mixed-use environment with not only restaurant and non-marine retail establishments (tied closely with the Old Port Commercial District), but also a variety of marine uses, for example the Gulf of Maine Research Institute, Maine Marine Supply Company, as well as several seafood markets and processing centers. The suggested name change deemphasizes non-marine uses and instead reflects the broader range of uses being promoted within the overlay zone.

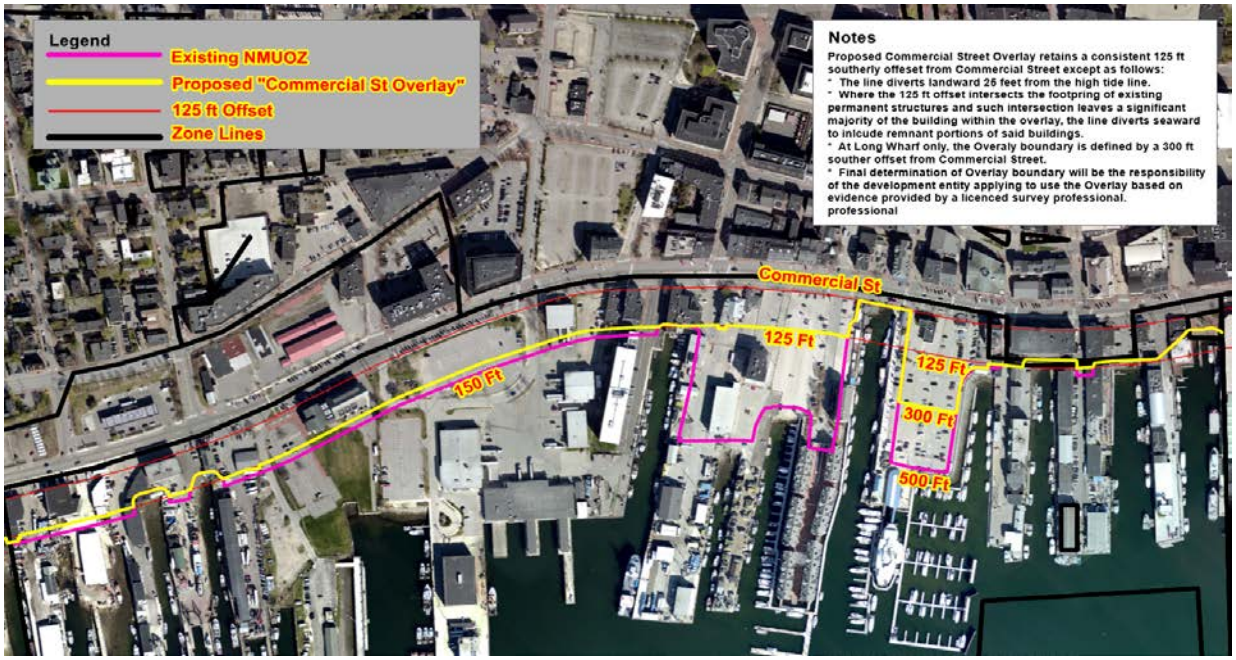


Figure 3: Proposed changes to zone extent

b. Change to Zone Extent

Under this proposal, the extent of the overlay zone would be reduced considerably, as can be seen in the map above. For context, the dimensions of the overlay zone were expanded in 2010 as a means of encouraging additional development (from 35 feet to 150 feet, and up to 500 feet in certain locations). Members of the fishing industry articulated that this increase was too significant, given that traditional commercial development along Commercial Street did not extend to that depth, and that at 150 feet from Commercial Street, there are opportunities for direct water access. The changes represent a dialing back of the 2010 changes, but still a significant expansion of the overlay extent as it existed prior to 2010.

The concern was that the overlay zone, as currently established, would permit large-scale, incompatible non-marine uses that would generate significant vehicle and pedestrian traffic along the wharves that would effectively impede access and operations of marine uses. To compensate, members of the fishing industry suggested eliminating the overlay zone altogether. This proposal was met with limited support from the pier owners, given that they rely upon investments required of non-marine users within the overlay zone to maintain their wharves. The proposed reduction represents a compromise between these

two groups, and while the majority of WWG members support this recommended change, there is not complete consensus on the final boundaries of the CSOZ.

C. Permitted Uses

a. Permitted Uses for Commercial Street Overlay Zone

Under the permitted uses section, staff recommend adding a new category of permitted uses, 'Uses permitted only within the Commercial Street Overlay Zone (CSOZ)', and eliminating high traffic generating uses such as restaurants and retail establishments from elsewhere within the zone. Members of the WWG have consistently raised the concern that such uses are incompatible with water-dependent uses and that there would be conflict related to traffic, noise and hours of operation. Many of the wharves in their existing condition cannot accommodate significantly more vehicle or pedestrian traffic. The idea behind this amendment is to shift all such high impact, non-marine uses towards Commercial Street, so that they are more easily accessed by patrons not as familiar with the wharves and their operations.

b. New Permitted Uses

Commercial parking for water-dependent uses, commercial kitchens and seafood retail are proposed as permitted uses.

Parking has repeatedly been raised as a concern, as many feel that sufficient parking is not available for water-dependent uses. Meanwhile, non-conforming parking lots within the zone provide significant parking supply for visitors to the area, which adds to the area-wide traffic impacts. By permitting commercial-use parking for water-dependent uses, the City would provide an avenue by which non-conforming uses could become conforming, and also alleviate parking constraints for marine uses.

Regarding commercial kitchens and seafood retail, members of the WWG raised these uses as either a compatible non-marine use (commercial kitchen), or a marine-related use (seafood retailing) currently not permitted. These uses have limited impacts that would benefit from proximity to seafood processors.

D. Conditional Uses

a. Eliminate Residential Uses – Marine Business Owner

At present, the zone permits marine business owners to live above their place of business, provided that the unit be of a certain size, that there is a compelling reason for living on-site, and that the unit be for year-round use. Given that no business owners are currently taking advantage of this allowance, and that there is a general interest in eliminating residential uses from the central waterfront, staff suggest eliminating this conditional use.

E. Prohibited Uses

Based upon feedback from the WWG, staff are recommending that laundry and dry-cleaning, service station and commercial parking for non-marine uses be eliminated, and that the prohibition on hotels and drinking establishment be expanded and strengthened to include other like categories; bed and breakfasts, hostels, short-term rentals, and then private clubs and non-profit social and recreational facilities respectively.

F. Dimensional Requirements

a. Pier Edge Setback Increase

Vessel operators have indicated that the existing setback requirement does not provide sufficient space for maneuvering and/or the loading and unloading of goods from vessels. In response, staff suggest increasing the pier edge setback from five (5) feet to ten (10) feet at the first-floor level. Due to the first-floor ceiling height requirement of fifteen (15) feet, this would provide operators with approximately fifteen (15) of clear overhead space. The setback would not apply to structural building supports such as posts or beams, and would similarly not apply to deck or building mounted equipment for the loading and unloading of vessels. These exceptions support the operational functionality of the pier for water dependent uses.

As part of this amendment, staff are also strengthening the definition of the pier edge, stating that floats, rafts and barges not structurally integral to the pier are not counted as part of that requirement.

G. Standards for Non-Marine Uses Outside of the Commercial Street Overlay Zone

a. Marketing Requirement

Initially staff had suggested removing the marketing requirement from the zone, having not identified an example where it was successful in securing a lease for a marine use. Members of the WWG universally supported the marketing requirement and asked that the noticing period be lengthened, and that the media requirement be strengthened. Based upon that feedback, staff are suggesting that the marketing period be increased from 60 days to 180 days (same as is required within the Pedestrian Activities District (PAD)) and have provided additional guidance on appropriate forms of media within which to advertise.

Language regarding the trigger for this requirement (14-311(a)(3)(c)) is also revised within the draft amendment. The current trigger is either a site plan application or change of use application, which conflicts with language found in 14-311(a)(3)(a), which indicates that the threshold is change of occupancy. A change of occupancy does not technically trigger either of the two aforementioned applications, and so, for consistency, the language now would read, "Prior to changes of occupancy and/or as part of applications for new development".

b. Waterfront Inventory Requirement

The WCZ requires that an inventory of all uses within the zone be carried out on an annual basis, and that that inventory identify whether or not the marine/non-marine land use requirements (where the maximum first-floor and exterior area permitted for use by non-marine uses is 45% per pier outside of the NMUOZ/CSOZ) are being met.

In discussions with the group, staff indicated that the report was not particularly useful for users of the zone and that it was time and energy intensive to produce. Instead, staff suggest that a less frequent 'state of the marine economy' report be drafted, that would highlight the competitiveness of the local marine economy and provide guidance on goals and objectives for improvement. Staff would also present to City Council an annual summary of major development within the zone.

H. Contract and Conditional Rezoning

Staff continue to support the elimination of the contract and conditional rezoning provisions for the WCZ, replacing it with a short excerpt from the Comprehensive Plan that identifies key goals related to Portland's working waterfront as justification for prohibition of this zoning tool within the zone. In initial discussions, staff

had considered adding a larger subset of uses, including hotels, to the list of uses not eligible for a conditional or contract rezoning. This approach was determined to be ineffective for two main reasons. First, given the open-ended nature of contract and conditional rezoning, it provides less certainty as to what can happen in the future in the zone.

The second reason is that the WCZ, as currently written, is the product of a robust, decades long dialogue between highly disparate stakeholders, informed by industry best practices and numerous studies. As evidenced by the most recent WCZ waterfront inventory, released in early January 2019, the zone operates largely as it was intended, with a vast majority of available space (81%), either being occupied by or available to marine uses. Remaining non-marine uses subsidize vitally necessary infrastructure that is key to the success of Portland's working waterfront. This framework may require minor amendments in the future to accommodate changing needs and conditions, but it is important to recognize the fine balance that has been struck through such a lengthy and well-informed public process. A contract or conditional rezoning would undermine that framework, remove many key stakeholders from the negotiation process and create a new set of rules for a particular property that would still need to function cohesively with other properties and uses found within the WCZ. As Portland grows and its waterfront continues to experience changes, it is likely that new uses (perhaps not yet identified), may serve as catalysts to reopen this conversation as to how best balance the needs between marine and non-marine uses within the WCZ, and they could be considered as part of a public process for potential amendments if ever needed.

For these reasons, the staff support prohibition of contract and conditional rezoning within the WCZ, relying instead on the myriad use and development standards that are consistent with the goals found within the Comprehensive Plan. The proposed prohibition is generally supported by the WWG, though there is not complete consensus on this approach.

I. Performance Standards

a. Operations and Access Management Plan

In a letter provided by members of the fishing industry, staff were asked to assess whether or not the performance standards as written, guaranteed adequate access for the loading and unloading of goods and materials between land-bound vehicles and vessels, and whether it ensured effective compatibility between marine and non-marine users. This assessment found that several of the standards, notably the 'parking', 'compatibility of non-marine uses with marine uses', and 'functional utility of the piers' standards were largely redundant and difficult to interpret. Staff's suggested approach is to maintain the intent of those standards, but streamline as one new standard that would be a requirement for a physical plan to be called an 'Operations and Access Management Plan'. For new development, including changes of use or expansion of existing uses, a plan and accompanying narrative would need to be provided for review by the Planning Authority, that would clearly indicate the location of structures, activities, parking, circulation and loading facilities. This plan could then be used to confirm that non-marine uses are sited appropriately, and that no use impedes waterfront access by water-dependent uses.

b. Elimination of Redundant Standards

Staff suggest elimination of the 'shoreland zone', 'signs' and 'state and federal regulations' standards as these standards are not substantive. For example, the 'signs' standard, requires compliance with the City's sign ordinance, which is a requirement regardless of whether or not it is listed as a performance standard. The same concept applies to the other two standards listed.

V. COMPREHENSIVE PLAN

The City's ordinance states that any rezoning must be consistent with the City's Comprehensive Plan. In forming its recommendation to the City Council, the Board will need to make a finding on whether the proposal is consistent with the Comprehensive Plan. As seen below, the staff have identified below a number of the specific Comprehensive Plan goals and policies which are suggested as being relevant to the proposed text amendments to the WCZ.

The central vision of Portland's Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for maintaining a working waterfront and transforming Portland through orderly growth and development be balanced with needs for connectivity of residents and visitors to the waterfront, sustainability of marine-dependent infrastructure and the ability to maintain that infrastructure, and authentic as a defining characteristic Portland's image and economy.

As currently written, the WCZ promotes a mixture of marine and non-marine uses in accordance with the Waterfront Use Hierarchy pyramid. This pyramid acknowledges that water-dependent uses (ex. fishery berthing) cannot successfully exist or sustain maintenance of necessary infrastructure (ex. dredging, pier maintenance, fendering etc..) without investment by both marine-related industries (ex. marine product retail) and compatible non-marine uses (ex. offices or restaurants). The zoning provides mechanisms that both limit the total percentage of available land and floor area that may be occupied by a non-marine use, and exacts actual investment from non-marine users. Meanwhile the permitted, conditional and prohibited use list precludes many non-marine uses out right, notably residential, hotel and drinking establishment uses, which are considered incompatible. Those non-marine uses that are permitted, are required to comply with numerous performance and specific non-marine development standards that ensure compatibility of non-marine uses with integral uses of the working waterfront.

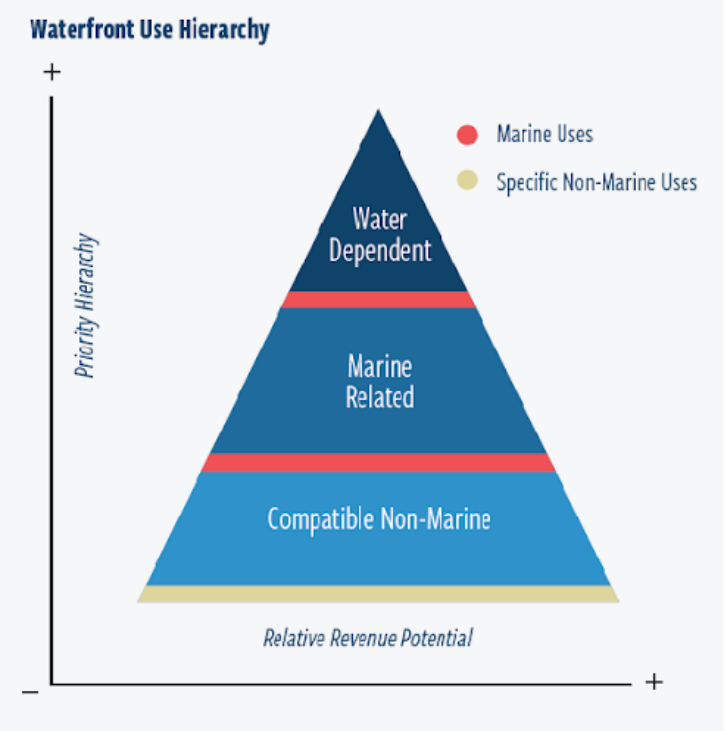
The City has engaged extensively with stakeholders of this zone in order to understand their concerns and operational needs. We are recommending a comprehensive suite of amendments that are in line with the goals of the City's Comprehensive Plan and that reprioritize the WCZ as a catalyst and incubator for a successful working waterfront

Development Goals:

- Prioritize and promote Portland's unique mix of water-dependent, marine-related and compatible non-marine uses.

- Recognize and reinforce the respective roles of the Eastern, Central, and Western Waterfronts.
- Celebrate, promote and protect Portland's lobster and fishing industry as a foundation of the region's economy and a feature of civic pride.
- Ensure the future of the marine economy through support for emerging marine industries and mitigation of market trends that could compromise the balance between marine industries and competing development.
- Recognize and reinforce waterborne transport of goods and people as foundational to our community.
- Develop effective public and private partnerships to promote the Port of Portland as an economic engine for the State of Maine.

The WCZ ordinance is the result of an iterative, decades long negotiation process that has been tested and revamped over the years to regulate and maintain the many nuances of this highly unique working waterfront, and has been shown, as seen in the Waterfront Inventory, to be largely effective in achieving that balance. The Comprehensive Plan identifies that policy shifts are critical to the success of Portland's working waterfront, and that we as a City need to be responsive to evolving and cyclical market conditions that place considerable development pressure on this zone.



The City of Portland values a strong working waterfront that prioritizes water-dependent and marine-related uses over compatible non-marine uses. That said, we understand that compatible non-marine uses are key to the success of our working waterfront, providing invaluable investment to marine infrastructure and in part, subsidizing other marine uses.

The proposed amendments represent the next step in that iterative process and are a direct response to today's market pressures, where non-marine businesses are competing for space deemed valuable to the marine economy. The City favors an incremental approach as opposed to sweeping changes, where the general structure of the ordinance would remain as is. Within that framework, we suggest further restricting non-marine uses though still maintaining adequate opportunity for them where appropriate. This restriction provides increased opportunity for marine uses, which are further supported by the greater predictability achieved through removal of contract and conditional rezoning, and streamlining of the performance standards so as to be easier to interpret and administer.

VI. PUBLIC COMMENT

A. Feedback from Fishing Community Representatives of the WWG (Attachment 3)

Two (2) public comments were provided by the attorney representing fishing interests within the Waterfront Working Group, which provide direct feedback on draft zoning language.

Where reasonable, staff have revised the zoning in response to this feedback. This includes significant changes to the draft performance standards, specifically the Operations and Access Management Plan, which now clearly identifies submission requirements and standards, requirements for the compatibility of non-marine uses, opportunities for shared parking and stronger provisions for the establishment and maintenance of vehicle/vessel loading areas. Aside from changes to the performance standards, a number of uses have been added to the permitted and prohibited use list, and the purpose statement has been revised to reflect the need to account for future needs of the zone and potential development.

Suggested language as presented in these letters has at times been directly incorporated into the draft text, or otherwise, rewritten so as to preserve the intent of their suggestion, while changing the exact language to streamline the text, increase clarity, or remove redundancy.

Staff are unable to recommend one suggested change, recommended by this group for 14-311(a), standards for non-marine uses outside of the overlay zone. This request would have changed the calculation of ground floor non-marine space from, which at present only includes leasable areas, to include common or non-leasable areas such as lobbies, stairwells and mechanical rooms. The difference between these two calculations is likely marginal, though would be significantly more difficult to administer. The Waterfront Working Group did not reach a consensus on changing the existing permissible split between marine and non-marine uses (55/45%), and the proposed change was not vetted by the entire group. For this reason, staff suggest maintaining the proposed requirement, which is based upon leasable area and can be consistently applied to all uses.

B. Other Public Comment (Attachment 3)

Aside from specific feedback from certain members of the Waterfront Working Group, staff received five (5) additional written comments, one from Bateman Partners, LLC, describing the proposed development scheme for Fisherman's Wharf and a concern that changes to the overlay zone would result in less direct marine investment by non-marine uses, and then three additional comments, which generally stressed the need to protect the working waterfront through restrictions to non-marine uses. One additional public comment, provided as of the writing of this report, was submitted by several of the pier owners, with information on property valuation, in response to feedback from one of the Planning Board members. The Director of Planning and Urban Development has provided a response to that letter for the Board's consideration (Attachment 4).

VII. STAFF RECOMMENDATION

The Staff recommends that the Planning Board find the proposed text amendments to be consistent with the Comprehensive Plan and recommend to the City Council adoption of the proposed text amendments.

VIII. PROPOSED MOTION

On the basis of the material provided in this report, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed text amendments to Division 18 Waterfront Central Zone [are/are not] consistent with the Comprehensive Plan and [recommends/does not recommend] adoption of the proposed amendment to the City Council.

IX. ATTACHMENTS

1. Needelman Memo on WWG Process, Economic Development Office
2. Division 18, Draft Amendments to WCZ
3. Public Comment
    a. Joel Richardson (4.17.19)
    b. Working Waterfront Group (4.23.19)

c. Bateman Partners, LLC (4.23.19)
d. Orlando Delogu (4.29.19)
e. Orlando Delogu (5.7.19)
f. Waterfront Working Group (5.7.19)
g. Pier Owner Tax/Financial Information (5.9.19)

4. Response to Financial Impact Letter – Jeff Levine, Planning and Urban Development Director

CITY OF PORTLAND
Economic Development
Gregory A. Mitchell, Director

MEMORANDUM

TO: **Chair Dundan and Members of the Planning Board**

FROM: **Bill Needelman, Waterfront Coordinator**

DATE: **April 11, 2019**
Updated, May 9, 2019

SUBJECT: **Review of Zoning Amendments to the Waterfront Central Zone and results of the City Manager's Waterfront Working Group**

CC: **Jon P. Jennings, City Manager**
Greg Mitchell, Economic Development Director
Jeff Levine, Planning and Urban Development Director
Christine Grimando, Planning Director
Matt Grooms, Planner
John Peverada, Parking Manager
Jennifer Thompson, Associate Corporation Counsel

Background

The following memo was originally prepared for the Planning Board's April 23 workshop. Economic Development staff has updated material as appropriate and provided additional information answering Board questions raised at the workshop. All new information is provided below in Italics.

Beginning in January of 2019, the City Manager convened a Waterfront Working Group (WWG) to discuss critical issues related to waterfront development and concerns of fishing interests in Portland Harbor. The process was prompted by recent activism by the fishing community responding to development pressures on the waterfront. Recognizing these concerns, the City Council has imposed a 180-day moratorium, Order 119-18/19, restricting non-marine development in the WCZ. The moratorium provided an alternative to a citizen referendum that would have potentially imposed highly restrictive zoning over the entire waterfront.

The WWG began their work just prior to the City Council's passage of the moratorium and

the group and has met nine times since January. *(The WWG has met an additional two times since the April 23, 2019 Planning Board Meeting with Zoning being a significant topic of discussion.)*

Membership of the working group includes:

Willis Spear, Lobsterman, F/V Providence
Keith Lane, Lobsterman, F/V Kestrel
Bill Coppersmith, Lobsterman, MLU Vice President,
Charlie Poole, Proprietors of Union Wharf, Custom Float
Steve DiMillo, Proprietors of Long Wharf, DiMillo's Restaurant and Marina
Mike Alfiero, Proprietors of Holyoke Wharf, Harbor Fish Market
Togue Brawn, Downeast Dayboat Scallops
Rebecca Rand, Becky's Diner
Cyrus Hagge, Community Member
Dory Waxman, Community Member

Invited directly by the City Manager, the WWG has acted as a focus group to inform staff on issues of concern and to provide feedback on approaches to address problems. The WWG has been supported by Economic Development and Planning staff and has been chaired by the City Manager. Additional support has been supplied by Corporation Counsel and the City Parking Manager.

Staff has relied heavily on the combined experience and expertise of the group in crafting zoning amendments provided for the Board's consideration. To date, the WWG has spent the majority of their efforts on zoning issues and made significant progress. Most significantly, the conversation and exchange generated between members has provided an invaluable insight into the function of the WCZ, the complexity of the working waterfront, and potential improvements to the zone. The group was not asked to draft language for the Board's consideration but Planning and Economic Development staffs have relied heavily on the conversations to date and the language developed is a good faith attempt to reflect the learning and feedback generated.

Most zoning issues addressed, and translated into amendments, reflect a general consensus of the WWG. Where consensus was not achieved, staff has used our best judgement to forward recommendations that will most effectively address the issues identified. Staff will inform the Board on issues of disagreement within the process and WWG members have been encouraged to contribute to the Board's public comments as individuals to promote specific ideas in support for or contrary to the staff recommendations herein.

In addition to land use regulations, the WWG held productive sessions discussing priorities for use of Waterfront TIF funds and waterfront parking issues. Some parking issues are reflected in the resulting zoning recommendations.

City Staff and the entire community owe a tremendous debt of gratitude to the WWG members for their contribution and commitment to the Portland waterfront.

The WWG process has been well documented on the City's website at https://www.portlandmaine.gov/2411/Waterfront-Working-Group

Planning Board members are encouraged to review the process to date to better understand the context of the recommended amendments.

Issues Under Discussion

The WWG agreed to limit their discussions geographically to the Waterfront Central Zone and to concentrate on the following issues:

- Evaluate the current physical, functional, and business conditions, including the 2018 WCZ Marine Use Inventory Update.
- Provide recommendations on Zoning.
- Make recommendations on prioritization of short-term Waterfront TIF funding allocations
- Provide formative contribution to the ongoing Commercial Street Operations and Master Plan process.
- Evaluate berthing and marine access conditions.

WWG Zoning Discussion

Waterfront zoning, the Waterfront Central Zone (WCZ) in particular, is notoriously complex. The WCZ prioritizes and protects water-dependent and marine uses, such as fishing, but allows limited non-marine development to provide needed revenues to pier owners. The longstanding goal, recently restated and adopted in the *Portland's Plan 2030* Comprehensive Plan, promotes *balance* between potentially competing uses. Marine uses are given space and protections, while the pier owner is given sufficient opportunity to generate revenues for maintenance and a return on investment.

Within the context of the moratorium and the potential citizen's initiative referendum, the WWG has spent considerable time rethinking the *balance* of uses. Looking toward an April submission to the Planning Board, the WWG has discussed the following:

- <u>Contract and Conditional Rezoning: Should this tool be available within the WCZ?</u>

  Staff is recommending eliminating the contract and conditional rezoning tool for the WCZ. The WWG did not achieve consensus on this issue, with some members voicing support for the flexibility offered. However, most members with Staff agreement believe that the zone is specifically and carefully crafted to address the complex policies of the Comprehensive Plan for the Central Waterfront. The potential for contract and conditional rezoning in the WCZ has generated uncertainty, speculative development pressure, and unpredictability within the zone.

  Eliminating site specific rezoning essentially shuts the door on applications for hotel use within the zone – a primary cause of concern leading to this process.

- <u>Non-Marine Use Overlay Zone</u>, the area where marine use is <u>not</u> required*:* <u>Should the overlay be eliminated, contracted, or left in its current location?</u>

  The recommended amendments suggest shrinking the extent of the overlay zone and renaming it the Commercial Street Overlay Zone. The recommended

amendment is marginally smaller (125 feet deep from 150 feet currently) in most areas and significantly smaller in the areas nearest the Old Port (from 500 feet deep to 125 feet except Long Wharf, which would shrink to 300 feet deep.)

As with contract and conditional rezoning, the WWG did not achieve complete consensus on reducing the size of the overlay. While most members saw the reduction as a reasonable compromise to limit the extent and impact of non-marine development, some members did not see a compelling case for the reduction.

A review of the map (see the Planning Staff submission) shows that there is only a marginal impact to the potential use of existing buildings with the reduction, but the fishing community expressed a desire to reduce the overall scale of non-marine development and to concentrate such development toward Commercial Street. Staff is in agreement that a smaller overlay is a reasonable compromise consistent with the Comprehensive Plan. *The largest impact of reducing the overlay are found in the areas between Union Wharf and Long Wharf. Please see the Response to Planning Board questions below.*

- Percentage of space required for marine use, outside of the Overlay: Should more space be allocated to marine use?

  After significant discussion, there was no strong support for changing the percentage of space allocated for marine use outside of the overlay – as amended. This apparent consensus relied on the reduction in the mapped extent of the overlay described above, and the *Marketing* and *Permitted Use* amendments described below.

- Marketing requirement for marine use*:* Should space be required to be marketed to marine use prior to seeking a non-marine tenant? (outside of the overlay)

  The marketing requirement for marine use is comparable to similar provisions for pedestrian oriented uses in the Pedestrian Activities Districts (PAD) of the Downtown B-3 zone. Currently the provision requires a 60 day marketing period for marine use prior to offering space to a non-marine use. The WWG provided strong support for extending the marketing period to 180 days, consistent with the B-3 PAD requirements. Other clarifying language has been added.

- Marine Use Inventory: What is the best way to track and monitor the success of the Zone and state of marine economy?

  Staff has recommended, and the WWG agrees (though without apparent enthusiasm) to remove the inventory requirement from zoning. Staff recommends a standalone City Council order to replace the existing requirement with an annual report of significant waterfront development. The City should also commit to conduct a periodic assessment of the state of the Marine Economy for the entire waterfront as a better measure of the waterfront's health than provided by the extremely limited inventory currently described in the WCZ.

- Permitted Uses: Should uses allowed in the overlay, such as restaurants, be allowed outside of the overlay?

With strong support from the WWG, staff is recommending that non-marine retail, all restaurants (excepting accessory uses) and other retail-like uses should be limited to the Commercial Street Overlay Zone. The expansion of such uses was seen as an erosion of marine use potential, undue pressure on pier parking, and provided too much traffic and potential conflict with higher priority marine use. Staff agrees that the Comprehensive Plan is better implemented by concentrating high parking and traffic generating uses toward Commercial Street.

- Performance Standards: Are the current development standards adequately protecting marine use access and ability to function efficiently?

  Staff recommends, with the general agreement of the WWG, streamlining redundancies within the current WCZ performance standards. Existing protections are retained or strengthened; while language and submission requirements are clarified.

The above bullets are a summary of the most important recommended changes. Please refer to the Planning memo for the complete narrative, policy review, and the redline amendment for text.

Summary

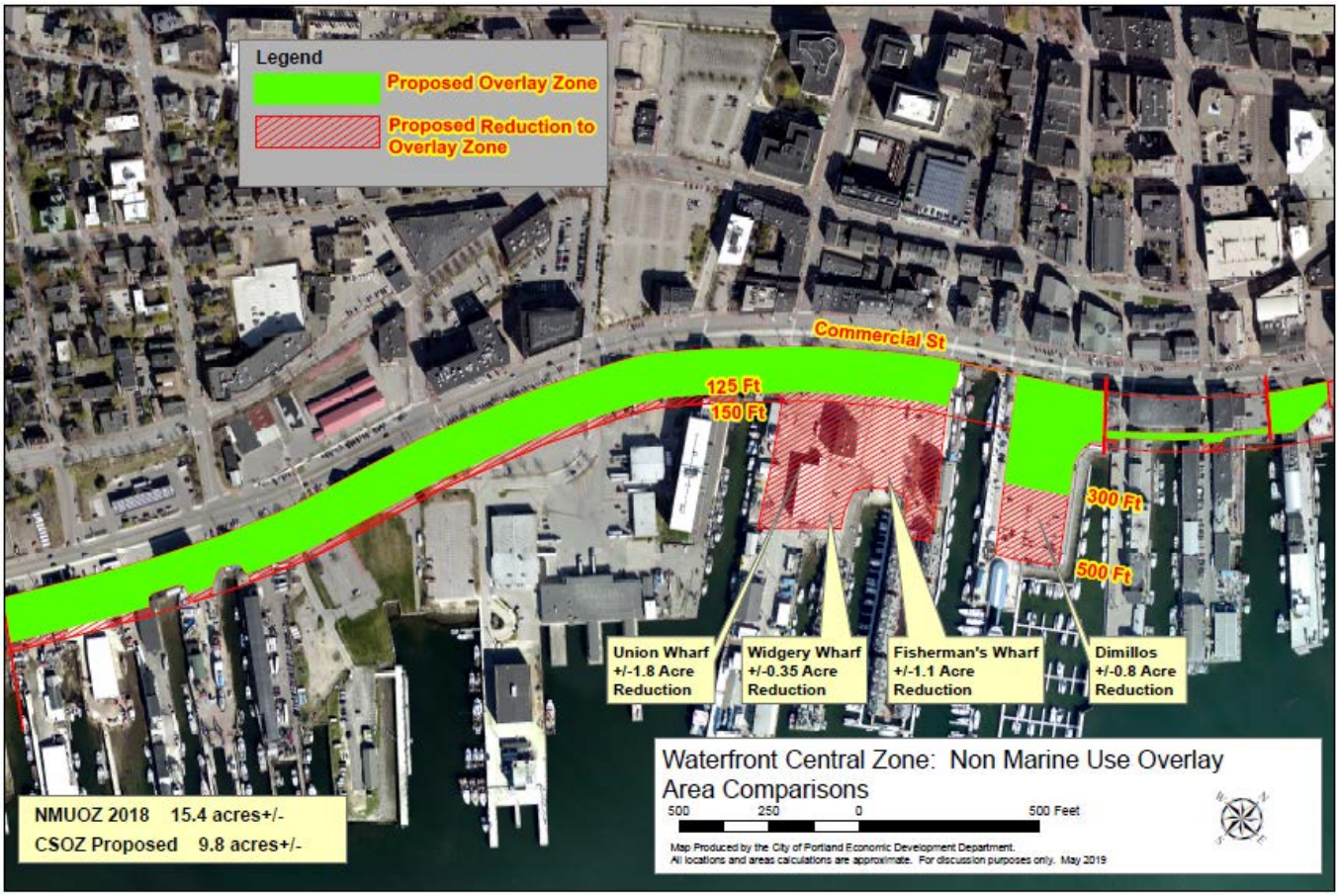
The Planning Board is requested to hold a *public hearing* on the above amendments. with the hope of moving directly to Public Hearing in May. City staff asks that the Board refer to the materials provided at the WWG website to understand the depth and extent of background work that has led to these recommendations. Rarely do zoning issues benefit from such an extensive discussion by such an informed and committed group. As stated in the introduction of this memo, the WWG has met nine times. Zoning has been a primary topic at eight of these meetings. The discussions have generated significant mutual learning between parties and fostered a far better understanding of tradeoffs by all parties. That learning is reflected in these recommended amendments to the WCZ. Based on the excellent and thorough input by the WWG, staff has sufficient feedback to provide the Planning Board and City Council with a set of recommended zoning amendments that are informed, reasonable, and consistent with the Comprehensive Plan.

In addition to the quality of the feedback provided, the Board is asked to recognize the time constraints created by the current non-marine development moratorium. By completing this important work within the limits of the moratorium, development interests for both marine and non-marine investments will have ability and certainty needed to move forward. It is our strong hope to conclude the current process within the timeframe described.

Response to Planning Board questions regarding reduction to the NMUOZ (CSOZ)

At the April 23 workshop, Board members asked questions regarding the potential impacts from reducing the Non-Marine Use Overlay Zone (NMUOZ, remamed Commercial Street Overlay Zone, herein referred to as the "Overlay.") Board members questioned impacts to taxable value, development potential, and investment in marine infrastructure.

To respond to the Board's questions, Economic Development staff measured the approximate area of the current NMUOZ, the area of the reduced CSOZ, with specific area calculations provided in the areas around Union Wharf, Widgery Wharf, Fisherman's Wharf, and Long Wharf.



The City's Assessor provided guidance to staff based on current and revalued tax assessment to assist with the response to the Board's inquiries.

<u>Taxable Value:</u> Taxable value is based on current use. Given the anticipated flux in zoning and land use regulation implicit in the ongoing Re-code process, simultaneous with the current revaluation, develop-able potential premised on zoning will not be considered in the revaluation results. The short-term taxation impact of changing the overlay will be zero.

<u>Potential Development:</u> Development potential will be impacted (which could have an effect on future taxation.) Currently, and under the proposed language, four habitable floors are allowed within the overlay and only three floors are allowed outside of the overlay. With the reduction in the overlay, +/-5.6 acres of land (including built area) would see this loss of one floor of potential space, with +/-4 of those acres sited between Union Wharf and Long Wharf. Within these +/-4 impacted acres, nearly half is located on Union Wharf. This portion of Union Wharf already houses the new Putnam Office Building and the MSRC warehouse, greatly limiting the future development potential of the site assuming that these buildings remain.

<u>Marine Investment:</u> Board members also questioned the potential reduction of reinvestment in marine infrastructure resulting in loss of land within the overlay. Fewer high value structures in the overlay (a speculative assumption) would result in fewer investment dollars required to satisfy the overlay standard for 5% of project costs dedicated to marine infrastructure. Board members should note that coincident with these zoning amendments, the City has been expanding the Waterfront TIF program, which captures new tax value from both sides of Commercial Street and the Eastern Waterfront. Waterfront TIF dollars may be used toward waterfront infrastructure, such as dredging."

******

<u>NOTE: As of the writing of this memo, proprietors of three wharfs within the WCZ provided specific analysis on the impacts of reducing the NMUOZ. Staff will review this material and may provide additional comments to the Board at the Public Hearing.</u>

******

Respectfully submitted, wbn

DRAFT AMENDMENTS TO DIV. 18, WATERFRONT CENTRAL ZONE

DIVISION 18. WATERFRONT CENTRAL ZONE – DRAFT AMENDMENTS*

---

*Editor's note—Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306—14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Order 184-14/15 repealed Division 18.7 on 6-1-2015.

Sec. 14-305. Purpose.

The Wwaterfront Central Zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in the present and into the future in an environment and area dedicated to this purpose. The following priority of uses is recognized:

(a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;

(b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;

(c) Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure.

Water-dependent and marine-related support uses by their

DRAFT

nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Commercial Street is recognized as an important economic center for the city and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 193-05/06, 4-19-06; Ord.No. 103-10/11, 12-20-10)

***Editor's Note—**Pursuant to Council Order 103-10/11 passed on 12/20/10 Section 14-306 *No adverse impact on marine uses* was repealed in it's entirety and remaining sections were re-numbered accordingly.

Sec. 14-306. Definitions.

For the purposes of the Ww~~w~~aterfront Cc~~c~~entral Zz~~z~~one only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot: any abutting property under common ownership.

DRAFT

Commercial Street ~~Non-Marine Use~~ O~~o~~verlay Z~~z~~one *(CSOZ ~~NMUOZ~~):* The Commercial Street ~~non-marine~~ O~~o~~verlay Z~~z~~one (CSOZ ~~NMUOZ~~) is a portion of the W~~w~~aterfront C~~c~~entral Z~~z~~one, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the CSOZ ~~NMUOZ~~ are defined by parcels of land and piers within the W~~w~~aterfront C~~c~~entral Z~~z~~one located on the landward side of a line established one hundred twenty-five ~~fifty~~ (125~~50~~) feet south~~erly~~ of the southerly sideline of Commercial Street and modified as follows: the seaward limit of the CSOZ ~~NMUOZ~~ extends to a line three hundred (3~~5~~00) feet south~~erly~~ of ~~from~~ the southerly sideline of Commercial Street in the area between the easterly and westerly sideline of Long Wharf ~~to the westerly sideline of Union Wharf~~. Additionally, all areas subject to this provision are set back landward at least twenty-five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. Where the one hundred twenty-five (125) foot offset intersects with the footprint of a building existing as of May 2019 and such intersection leaves 75% or more of the building within the CSOZ, the entire building shall be considered included in the CSOZ. All offset distances are measured horizontally.

All applicants for development within the CSOZ ~~NMUOZ~~ are responsible for demonstrating their location within the CSOZ ~~NMUOZ~~ according to the findings of a site-specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the CSOZ ~~NMUOZ~~ shall be shown on all site plans and subdivision plats for proposed development within the CSOZ ~~NMUOZ~~. ~~A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in determining whether a proposed development is located within the NMUOZ~~.

On-Site shall mean that portion of any lot included within or directly impacted by a proposed development.
(Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10)

DRAFT

Sec. 14-307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-311, as applicable, the following uses listed under 14-307 (a), (b), (C) and (d) are permitted anywhere in the Wwaterfront Ccentral Zzone. Uses listed under 14-307(e) are only permitted in the CSOZ.:

(a) Marine:

1. Marine products wholesaling, distribution and retailing;

2. Marine repair services and machine shops;

3. Tugboat, fireboat, pilot boat and similar services;

4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;

5. Marine industrial welding and fabricating;

6. Shipbuilding and facilities for construction, maintenance and repair of vessels;

7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;

8. Cargo handling facilities, including docking, loading and related storage;

9. Boat repair yards;

10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-308(b)(3) below);

11. Seafood processing and retailing;

12. Seafood packing and packaging;

13. Seafood loading and seafood distribution;

DRAFT

14. Fabrication, storage and repair of fishing equipment;

15. Ice-making services;

16. Facilities for marine construction and salvage;

17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;

18. Fabrication of marine-related goods;

19. Fishing and commercial vessel berthing;

20. Non-commercial berthing of a maximum of fifty (50) linear feet per pier. A non-commercial berth may not displace a commercial berth.

    Parking for any non-commercial berthing is subject to the provisions of section 14-311(d)8.

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;

22. Public landings;

23. Marine research, education, and laboratory facilities;

24. Bait sales and processing;

25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol and Coast Guard.

26. Commercial parking for water-dependent use business owners and employees.

(b) Non-marine commercial and industrial uses: Non-marine uses permitted by this section are subject to the standards listed in section 14-311.

1. Professional, business, government, and general offices, except for offices for health care practitioners or health clinics which are only permitted in the CSOZ;

DRAFT

~~2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall be permitted under this section;~~

~~3. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;~~

~~4. Banking services without drive up services~~

~~5. Laundry and dry cleaning services;~~

2. Cabinet and carpentry shops, studios for artists and crafts people;

3. Intermodal transportation facilities;

4. Cold storage facilities;

5. ~~Museums and art galleries; and~~ Commercial kitchens; and,

6. Outside accessory activities.

(c) Public:

1. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

(d) Other:

1. Accessory uses:

a. Interior accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-307(a)(1), (a)(7), (a)(11), or (a)(22); that

DRAFT

such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual accessory use does not exceed one-thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and

b. Interior meeting or classroom space accessory to uses permitted in section 14-307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b, but shall only be permitted as accessory uses if the total of all support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

2. ~~Street vendors licensed pursuant to Chapter 19~~.

3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(e) Uses permitted only within the Commercial Street Overlay Zone. Uses permitted by this section are subject to the standards listed in section 14-311(b).

1. Retail and service establishments, including craft and specialty shops;

2. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;

DRAFT

3. Banking services without drive-up services;

4. Museums and art galleries;

5. Street vendors licensed pursuant to chapter 19.

6. Offices of health care practitioners or health care clinics.

7. Personal service establishments.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 131-01/02, § 1, 1-23-02; Ord. No. 309-01/02, § 1, 7-15-02; Ord. No. 38-02/03, § 1, 9-4-02;Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-308. Conditional use.

The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471 and section 14-474(a), or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), they shall also meet the applicable Wwaterfront Ccentral Zzone development standards in section 14-311:

(a) Commercial marine conditional uses:

1. Fish by-products processing, provided that:

a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;

b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available odor control technology) to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the I-M zone; and

c. The processing of other material wastes or by-products shall not be deemed a lawful

accessory use under any other provision of this article.

2. Boat rack storage facilities, provided that:

a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-311(d)7, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.

~~(b) Residential: The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy upper floor space with a residential use, provided the following conditions are met:~~

~~1. The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished;~~

~~2. The residential living space shall not exceed one thousand (1,000) square feet, inclusive of all exterior porches and decks;~~

~~3. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;~~

~~4. The residential use shall be limited to one unit per wharf;~~

~~5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and~~

~~6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use~~

DRAFT

~~shall automatically terminate and shall not be continued without new conditional use approval under this subsection.~~

~~For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine business listed under section 14-307(a), permitted marine uses.~~

(b) Utility substations: Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:

1. The facility is located more than one-hundred (100) feet from the water's edge;

2. The facility occupies no more than fifty (50) square feet of structure above ground;

3. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available for marine uses, including but not limited to parking, travel ways, and/or storage; and

4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(c) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:

1. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

2. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and

DRAFT

3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and

4. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and

5. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and

6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and

7. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and

8. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(d) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02; Ord. No. 193-05/06, 4-19-06; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 103-10/11, 12-20-10; Ord. No. 33-11/12, 1-18-12)

DRAFT

Section 14-309. Prohibited uses.

Uses which are not enumerated in either section 14-307 or 14-308 as permitted or conditional uses are prohibited. Uses enumerated in section 14-307(e) shall be considered prohibited uses outside of the CSOZ. Those uses that are prohibited shall include, without limitation:

(a) Residential Uses ~~Except as provided in section 14-308, residential uses (not in existence on May 5, 1987);~~

(b) Hotels, motels, hostels, bed and breakfasts, inns, lodging houses, tourist homes, short-term rentals or boatels;

(c) Auditoriums, civic centers, convention centers, or other meeting facilities not accessory to an otherwise permitted use;

(d) Drinking establishments, private clubs, or non-profit social and recreational facilities;

(e) Ground mounted telecommunication towers, antennas, and/or disks; and

(f) Drive-up services for any use other than a permitted use listed under 14-307(a) or 14-308(a)(1).

(g) Major and minor auto service stations.

(h) Laundry and dry-cleaning services.

(i) Convenience stores with gas pumps.

(j) Commercial parking for non-marine uses.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02 § 2, 10-15-01; Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10)

Sec. 14-310. Dimensional requirements.

In addition to the provisions of division 25 of this article, lots in the Ww~~w~~aterfront Cc~~c~~entral Zz~~z~~one shall be subject to the following requirements:

(a) Minimum lot size: None.

DRAFT

(b) Minimum frontage along Commercial Street: Seventy-five (75) feet.

(c) Minimum lot width within the CSOZ ~~NMUOZ~~: Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the CSOZ ~~NUMUOZ~~.

(d) Minimum yard dimensions:

1. Front setback: None.

2. Side setback: None

3. Rear setback: None.

4. Setback from pier edge: Notwithstanding the above requirements, a minimum first-floor setback of ten ~~five~~(10~~5~~)feet from the edge of any pier, wharf or bulkhead shall be required for any structure, exclusive of structurally necessary posts supporting upper floors, and deck mounted equipment for loading and unloading vessels. The edge of any pier, wharf or bulkhead shall include any attached apron(s). Floats, rafts, and or barges not structurally integral to the pier, wharf or bulkhead may not be used to exempt portions of structures from the required first-floor setback. Parking for non-marine uses shall not occupy the 10-foot setback.

(e) Maximum lot coverage: One-hundred (100) percent.

(f) Maximum building height: Fifty (50) feet. Except as provided in (h) below, a structure in the W~~w~~aterfront C~~c~~entral Z~~z~~one shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

(g) Minimum ground floor clearance: Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential.

DRAFT

New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.

(h) New non-marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (f) and (g) above, for new non-marine use buildings permitted within the CSOZ ~~NMUOZ~~, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

(Ord. No. 168-93, §2, 1-4-93; Ord. No. 309-01/02, § 2, 7-15-02; Ord. No. 193-05/06, 4-19-06, Ord. No. 103-10/11, 12-20-10)

Sec. 14-311. Development standards.

(a) Standards for non-marine uses located outside of the CSOZ ~~NMUOZ~~: Non-marine uses listed above in Sec. 14-307(b) and 14-308(b) that are located outside of the CSOZ ~~NMUOZ~~ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. 55% marine use required on ground floors: At least 55% of the leasable ground floor area of all ~~of the~~ buildings on a ~~the~~ lot (defined in 14-306 above), ~~when calculated using the aggregate of all such ground floors~~, shall be occupied by marine uses, as listed under 14-307(a)or 14-308(a)(1).

2. 55% marine use required for all open areas: After subtracting areas used for common circulation drives(defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308 (a)1.

3. Ground floor vacancies and change of occupancy offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the CSOZ ~~NMUOZ~~ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.

   a. *Ground floor vacancy and change of occupant outside of the CSOZ ~~NMUOZ~~ advertised to marine*

DRAFT

users: In any lot or portion of lot outside of the CSOZ ~~NMUOZ~~, each time a ground floor occupant departs or gives notice to depart from the lot, the space, along with any associated parking spaces to be vacated, must be made available to new marine occupants.

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a one hundred eighty(180~~60~~) day period in targeted media and by other means reasonably calculated to reach marine users (e.g. local marine trade publications, marine trade websites, waterfront bulletins .) Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone(outside of the CSOZ ~~NMUOZ~~.)The property owner may stop advertising sooner than the end of the 180~~60~~ -day period if a lease is signed with a marine user. Should no marine user apply by the end of the 180~~60~~-day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use occupancy maximum of 45% of the ground floor area or open area.

b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

c. Prior to changes of occupancy and/or as part

DRAFT

of applications for new development ~~Applicants for site plan review or a change of use permit~~ outside of the CSOZ ~~NMUOZ,~~ the property owner or applicant shall provide ~~the planning authority with~~ proof of compliance with the requirements of this section as a condition of approval.

~~d. The city planning authority shall compile and report inventories of ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.~~

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding ~~anything contained in 14-311(c) Contract or conditional rezoning, or any other~~ any provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least ten~~five~~ (10) feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a)) or 14-308(a~~b~~). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) CSOZ ~~NMUOZ~~ standards: Non-marine uses listed under 14-307(b), 14-307(e) and 14-308 located within the CSOZ ~~NMUOZ~~, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. Vessel access: Non-marine uses allowed under this provision shall not disrupt or block access to

DRAFT

vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).

2. *Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage:* Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

   Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right-of-way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. *Investment in marine infrastructure:* All applicants for site plan review or a change of use permit for non-marine development in the CSOZ ~~NMUOZ~~ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed $250,000. The value of the investment shall be not less than five percent (5%) of total project costs over $250,000 for constructing non-marine space and associated site improvements in the CSOZ ~~NMUOZ~~.

   Required investment may occur by one or both the following methods:

   a. *Direct investment in marine infrastructure* located on the same lot: Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-

DRAFT

marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.

b. *Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.*

(c) No Contract or Conditional Rezoning Permitted

This section is intended to accomplish goals from Portland's Plan 2030. Specifically, these changes will:

Prioritize and promote Portland's unique mix of water-dependent, marine-related uses and compatible non-marine uses;

Recognize and reinforce the respective roles of the Eastern, Central and Western Waterfronts; and

Celebrate, promote and protect Portland's lobster and fishing industry as a foundation of the region's economy and a feature of civic pride.

1. In light of these goals and the significance of the central waterfront to the City's future, no contract or conditional rezoning applications may be approved in the Waterfront Central Zone.

DRAFT

~~(c) Contract or conditional rezoning standards: Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:~~

~~1. Conditional or contract rezoning located outside of the NMUOZ: The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of section 14-311(a) of this code.~~

~~2. *Conditional or contract rezoning located within the NMUOZ:* Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b)(3) (*Investment in marine infrastructure).*~~

~~3. Residential dwellings are prohibited.~~

~~4. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.~~

~~5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~

~~6. The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public.~~

DRAFT

~~7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).~~

~~8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d)(8).~~

~~9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.~~

(d) Performance standards: All uses in the waterfront central zone shall comply with the following standards. The Operations and Access Management Plan (standard 13) ~~Standards 8, 10, 13, 14, 15, 16, and 17 below~~ shall be reviewed by the planning authority:

1. Outdoor storage of materials: Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

2. Noise: The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound

DRAFT

from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ1).

3. Vibration: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.

~~4. Federal and state environmental regulations: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.~~

4. Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this code and federal and state environmental statutes and regulations regarding wastewater discharges.

5. Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.

6. Landfill of docking and berthing areas: Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. sections 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the

DRAFT

department of public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

7. Off-street parking and loading: Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.

~~The planning authority shall review applications for non-marine use parking against the following standards:~~

~~a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.~~

~~b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").~~

~~c. Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.~~

~~d. Water-dependent use parking spaces shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.~~

~~8. Shoreland and flood plain management regulations: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5 of this article.~~

DRAFT

8. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.

~~9. Signs: Signs shall be permitted as set forth in division 22 of this article.~~

9. Storage of pollutants and oily wastes: On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.

10. Urban design: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.

11. Pier and wharf expansions: In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

~~12. Compatibility of non-marine uses with marine uses: Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.~~

DRAFT

~~13. Functional utility of piers and access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles, and shall demonstrate adherence to the following provisions:~~

~~a. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.~~

~~b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.~~

~~c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.~~

~~d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.~~

12. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to

DRAFT

the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002)to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

13. Operations and Access Management: Any new development, including changes of use or expansion of uses in the Waterfront Central Zone shall submit a scaled plan and accompanying narrative that demonstrates waterfront access and functional accommodation for water-dependent uses. In accordance with Portland's Plan 2030, the plan shall demonstrate consistency with the hierarchy of waterfront uses, as further detailed in Sec. 14-305 (Purpose), with non-marine and marine-related uses being subordinate in placement and disposition to water-dependent uses, and designed so as not to impede access to the pier edge and vessel berthing nor interfere with marine operations.

a. Submission Requirements. The plan shall, at a minimum, illustrate the following information:

i. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Sec. 14-306, access-ways, sidewalks, pier edges,

DRAFT

floats and docks, showing the entire lot in the context of its respective pier.

ii. Existing and proposed off-street parking, labeled with associated uses.

iii. Facilities for the loading and unloading of goods and materials.

iv. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.

v. Signage showing parking use, wayfinding, and posted operational restrictions.

vi. Plan narrative detailing how the standards listed below are achieved, tenant/landlord communication protocols, private enforcement actions to be employed to ensure plan compliance, and the responsible parties representing the property owner.

b. Review Standards. In addition to the information above, the plan shall demonstrate compliance with the following standards:

i. Off-street parking is subject to the limitations described in Sec. 14-311(a)("55% Rule"). Off-street parking spaces intended for use by water-dependent uses shall be sited as close as reasonably possible to associated vessels and/or ground-floor lease area.

ii. Proposals for new non-marine parking, accessory to an otherwise permitted use in the WCZ, shall submit a parking analysis for all uses on the subject lot, justifying the number of non-marine spaces based upon the proposed use and demonstrating sufficient parking supply for marine uses. If sufficient parking is

DRAFT

not available to marine uses, off-street parking for non-marine uses shall not be permitted.

iii. Off-street parking, loading facilities and access ways designated for water-dependent uses shall be exclusive to such uses, except that, if not being occupied by water-dependent tenants, such parking may be made available to non-marine uses between the hours of 5:00 p.m. and 2:00 a.m. Any such shared use parking arrangements shall be documented in the Operations and Access Management narrative described above, and clearly signed on-site.

iv. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.

v. Facilities for the loading and unloading of goods and materials shall account for the frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.

vi. Provisions for the storage and movement of goods and materials shall be designed into all pier edge development. Circulation routes must be maintained or otherwise provided as an element of all development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

vii. Non-marine uses shall provide a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.

Ord. No. 103-10/11, 12-20-10; Ord. 108-15/16, 11-16-2015)

DRAFT

Attachment 3

Portland Maine Yes. Google's good here.

Matthew Grooms <mgrooms@portlandmaine.gov>

Fwd: Waterfront

jmy <jmy@portlandmaine.gov> Wed, Apr 17, 2019 at 12:11 PM
To: Matthew Grooms <mgrooms@portlandmaine.gov>

Matt, I am going to ask you to save this to your WCZ folder as a public comment because I am unable to locate it. Can you let me know where you are keeping the pc for WCZ? Thanks.

On Tuesday, April 16, 2019 at 3:25:36 PM UTC-4, Joel Richardson wrote:

> Please do not allow non marine related business to encroach on our gem of a waterfront. You will be responsible for loosing our charm and tourism business only to increase the tax base a tiny bit. Not worth it.
> Joel Richardson

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

ATTORNEYS-AT-LAW

ROBERT B. WOODMAN
PETER L. EDMANDS
THOMAS DANYLIK
RALPH W. AUSTIN
JAMES B. SMITH
KEITH R. JACQUES
MICHAEL J. O'TOOLE
HARRY B. CENTER II
SANDRA L. GUAY

234 MAIN STREET
P.O. BOX 468
BIDDEFORD, ME 04005-0468
TELEPHONE: 207-284-4581
FAX: 207-284-2078
E-MAIL: SLG@woodedlaw.com
www.woodedlaw.com

April 23, 2017

Via Email

Portland Planning Board
Sean Dundan, Chair
City of Portland
Planning Division
389 Congress Street
Portland, ME 04101

Re: Waterfront Central Zone
Draft Ordinance Amendments/Workshop April 23, 2019

Dear Mr. Dundan and Planning Board Members:

The purpose of the recent referendum efforts of the Portland Working Waterfront Group ("PWWG") was to protect both the present and future of the Portland working waterfront. The PWWG agreed not to submit its referendum, even though far more than the required number of signatures had been gathered from Portland citizens, so as to work with the City and other stakeholders in an effort to achieve this goal. While the PWWG appreciates the participation by the City and other stakeholders in these efforts and believes that some positive amendments are being proposed as a result, the PWWG's end goal (and I believe the efforts of the task force committee that has been formed to review the ordinance) was not to eliminate what the planning department apparently perceives as mere redundancies in the ordinance, but rather to strengthen the standards that already exist to protect the Waterfront Central Zone. While perhaps not intended, this is however precisely what the draft ordinance amendments do with respect to Sec. 14-311(d) "Performance Standards", by removing key substantive protections.

The issues are broken down below by subsection. Also, a suggested revised draft of Sec. 14-311(d)(13), reincorporating the deleted performance standards is attached to this letter as reference and to assist in your review.

Existing Standard (d)(8) "Off-street parking and loading" (shown as (7) on the City's redline draft ("Draft")):

The Draft takes out existing Performance Standard 8 which says that "non-marine use parking shall only be located on a lot where . . . the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot." The substitute standard calls for a detailed plan, but doesn't carry over this requirement for no non-marine parking unless marine is adequate requirement. This draft keeps the idea that Water Dependent Uses ("WDU") parking spaces shall be located close to associated vessels and ground floor lease areas, *but weakens it* by switching from as close as "reasonably possible" to as close as "practicable".

Existing Standard (d)(15) "Compatibility of non-marine uses with marine uses" (shown as (12) on the Draft):

The Draft strikes existing Performance Standard (d)(15) "Compatibility of non-marine uses with marine uses" and rolls part of it into the new plan requirement ((d)(13)). But, the Draft (d)(13) omits the substantive standard that non-marine uses "shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or *potential* marine uses" (emphasis added). This needs to be put back in as a meaningful standard.

Existing Standard (d)(16) "Functional utility of piers and access to the water's edge" (shown as #13 on the Draft):

The Draft strikes existing Performance Standard (d)(16) and reduces it to a requirement that buildings located within 10 feet of the pier edge "shall account" for the transfer of goods. This is a shadow of the existing requirement that "all new development, whether for marine or non-marine uses, should anticipate current and *future* functional and operational needs of water-dependent pier tenants to access the water's edge . . ." (emphasis added). There are also subparagraphs in the existing standard for design for

storage and movement of goods and materials, retention of internal circulation routes, need of non-marine uses to adjust to accommodate marine uses, alternative circulation if buildings are within 10 feet of pier edge, and a key provision that accessways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses. Shadows of some of these issues come through in the City draft, but without the full protections of the existing language.

In summary, the new Standard (d) (13) "Operations and Access Management Plan" ("Plan") emphasizes form over substance -- it focuses on what is to be shown on a plan but not what needs to be accomplished if the plan is to be deemed sufficient. Instead of flagging the importance of marine uses, it features the plan as an end in itself. It deletes very specific operational language from the existing ordinance and substitutes only vague references requiring that it "demonstrates adequate waterfront access and logistical accommodation for water-dependent users" and that it "demonstrates consistency with the hierarchy of waterfront uses pyramid" in the City's Plan 2030.

The Waterfront Central Zone needs the existing *enforceable* standards language returned to the draft so it is clear how the Plan is to be judged rather than substituting that existing clarity with only vague goals. In addition, applicants must know when they read the ordinance what specific standards must be met in order to meet the ordinance's goals without arbitrary application or undue delay.

Further, the new Performance Standard (d) (13) seems to suggest it would apply only to new development and changes of use. The Plan should also be required for expansion of an *existing* non-marine use. Standard (d) (13) also limits the submission to showing a plan for a small area, "within one hundred feet of the project's limit of work boundary." **This is not sufficient**. Except in the CSOZ, the entire pier needs to be shown on the Plan and reviewed to fully analyze and make sure that there will not be adverse impacts on marine uses.

Once again, the PWWG appreciates and acknowledges the time and effort that has gone into working on draft amendments to date. The PWWG remains concerned however not only about the issues highlighted above, but also with regard to issues that have yet to be addressed by the task force and that are therefore not reflected in the Draft, including stronger enforcement standards.

In summary - it is imperative that as a result of the task force and City's efforts, the ordinance be amended so as to maintain the existing forward-focused standards that look not only at existing WDUs but cast an eye on preserving the functional utility for potential future WDUs. The importance of this frame of reference is *essential* in order to maintain the value of the harbor as an economic engine for future generations. The Draft performance standards as presented fail to accomplish this and instead only serves to weaken the performance standards that are already in place.

Thank you for your timely consideration of these important comments.

Very Truly Yours,

SANDRA L. GUAY

SLG/lb
Copy to: Willis Spear, PWWG
Bill Coppersmith, PWWG
Jon Jennings, City Manager
Bill Needelman, Waterfront Coordinator

shared with non-marine uses, except that, if strictly and effectively enforced and if not being occupied by marine uses, parking spaces for marine uses may be made available to non-marine uses between the hours of 5:00 pm and 2:00 am.

To successfully demonstrates that it meets each of these criteria, the P~~p~~lan shall, at a minimum, incorporate the following information and address any restrictions:

a. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Sec. 14-306, accessways, sidewalks, pier edges, floats and docks showing the entire pier if not located in the CSOZ, or within one hundred feet of the project's limit of work boundary if located within the CSOZ ;

b. If a ~~B~~building shown on the Plan is already or is proposed to be located within ten (10) feet of the pier edge the Plan shall ~~account for~~ demonstrate how the transfer of goods and materials between berthed vessels and land-bound vehicles will be accomplished, such as by providing openings and circulation routes through or around buildings as necessary to accommodate water-dependent uses.

c. Proposed off-street parking, labeled with associated uses and illustrating compliance with~~subject to~~ limitations as described in Sec. 14-311(a) ("55% Rule"), as applicable. Off-street parking spaces intended for use by water-dependent uses shall be sited as close as reasonably possible~~practicable~~ to associated vessels and/or ground-floor lease area. Proposals for new non-marine parking shall require submission of a parking analysis justifying the number of non-marine spaces based upon the proposed use and the sufficiency of the marine use parking supply on the lot.

d. Facilities for the loading and unloading of goods and materials. Facility design shall account for frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.

e. Non-marine uses outside of the CSOZ shall identify a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.

f. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.

g. Location of ~~O~~off-street parking, loading facilities and access ways intended for use by water-dependent users, with a designation of whether they are intended to ~~shall~~ be exclusive to water dependent uses only. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.

14-311(d) Performance standards: All uses in the waterfront central zone shall comply with the following standards. . . .

13. No adverse impact on marine uses; Operations and Access Management Plan: No use, including new development, a change of use, or expansion of a non-marine use, shall be permitted, approved, or established in this zone if it will have an impermissible adverse impact on existing or potential marine uses. Any applicant for a proposed new development, ~~including~~ change~~s~~ of use, or expansion of a non-marine use, in the waterfront central zone shall submit a scaled Operations and Access Management P~~p~~lan and accompanying narrative for review by the Planning Authority that demonstrates compliance with this performance standard. To be in compliance, the Plan shall clearly demonstrate that it meets each of the following criteria:

A. The proposal retains adequate waterfront access and makes necessary logistical accommodation for water-dependent use~~r~~s.

B. In accordance with Portland's Plan 2030, as further detailed in 14-305 (Purpose), the proposal is ~~lan shall demonstrate~~ consistent~~cy~~ with the hierarchy of waterfront uses, giving highest priority to existing and potential water-dependent uses and second priority to marine-related support uses, ~~pyramid~~, with non-marine ~~and marine-related~~ uses being allowed only if they do not interfere with and are not incompatible with water-dependent and marine-related ~~subordinate in placement and disposition to water-dependent~~ uses.

C. The parking and traffic circulation plan and analysis portion of the Operations and Access Management Plan demonstrates that any proposed non-marine use parking is only being located upon a lot where the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot and the parking spaces designated for water-dependent uses are located as close as reasonably possible to associated vessels and any water-dependent and/or marine use ground floor lease areas.

D. Any proposed non-marine use will be compatible with marine uses and will neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses.

E. The proposal, whether for marine or non-marine use, will adequately protect the functional utility of piers and access to the water's edge by appropriately anticipating current and future functional and operational needs of water-dependent uses to access the water's edge for the transfer of people, goods, and materials between vessels and land.

F. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

G. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be

April 23, 2019 (/news/2019/4/22/do-you-really-know-what-was-proposed-at-fishermens-wharf)

Do you REALLY know what was proposed at Fishermen's Wharf? (/news/2019/4/22/do-you-really-know-what-was-proposed-at-fishermens-wharf)

Real estate development (/news/category/Real+estate+development)

Actually nobody knew —- until today, April 23, 2019.

Well, one minor exception. About a dozen Portland residents knew. They participated in a focus group in December and we told them, to see what they thought. Before the publication of this post today, ***nobody else knew***. No fishermen, no lobstermen, nobody on the Planning Board, no City Councilors, no reporters. The reason for that? We felt strongly that we needed to extend the courtesy of running these ideas by the fishing community first, face to face, before taking the more formal step of going to the Planning Board. A meeting with representatives of the fishing community hasn't happened yet.

We voluntarily withdrew our proposal (https://bangordailynews.com/2019/01/11/news/portland/developer-withdraws-plan-for-waterfront-hotel-in-portland-citing-concerns-by-fishermen/) in January as the City formed a Waterfront Working Group, to allow that committee to do its work. Tonight, the Planning Board is considering more restrictive zoning (http://www.theforecaster.net/portland-waterfront-zoning-gets-planning-board-review/) along the waterfront. As the Board considers reducing the value of commercial properties, and thus reducing the tax revenue generated to help pay for the upkeep of the working waterfront's infrastructure, now seems like an appropriate time to outline what we had been thinking. If for no other reason than ideas like this --- in general --- should be part of the discussion as the community plans the future of the working waterfront.

COLLABORATION

We had hoped to help Maine fishermen capitalize upon Portland's worldwide reputation as a "foodie" destination. The project we wanted to build would have encouraged collaboration among all working waterfront organizations, particularly among fishermen and restaurants, to transform Portland's working waterfront into a "must-see" destination not only for Maine people, but also for children, tourists, chefs and journalists all over the world. Here are the benefits of the project we wanted to build, in more detail:

FOR FISHERMEN, HARD PHYSICAL BENEFITS

- Approximately $2 million for dedicated infrastructure upgrades to the working waterfront, including commercial floats, gangways, pilings, etc.
- 7-9 free parking spaces.
- Wider lane from Commercial Street to Widgery Wharf, so that fishermen, bait trucks, etc. could access the wharf more easily.
- Private waterfront land between Widgery Wharf & Chandler's Wharf upgraded for use by fishermen, a viewing spot at the working waterfront so visitors could see what Maine fishermen and lobstermen do.
- The extension of services like electricity and water down to Widgery Wharf for use by the fishermen, services that do not exist now.
- A substantial financial contribution to a comprehensive, solutions-focused traffic study to improve conditions on Commercial Street.

FOR FISHERMEN, COOPERATIVE MARKETING ASSISTANCE

- New "Maine Sustainable Seafood Center" that would have included:
- Some processing of seafood landed by local fishermen.
- Some sales of seafood landed by local fishermen.

- A “Coastal Culinary Academy” and “R&D Kitchen” for culinary research & development focused on fresh Maine seafood.
- Direct & personalized promotion of Maine fishermen, their boats and their products to customers around the world.
- Direct personal access for visitors --- including schoolchildren --- to fishermen, boats, traps, nets and all aspects of the working wharves.
- “Maine Sustainable Seafood Raw Bar,” a restaurant serving innovative and traditional Maine seafood dishes, tracing each bite to Maine farmers and fishermen.
- We had hoped to work with our neighbors to establish an open-air fresh seafood and working waterfront market, in kiosks or under tents along on a Portland wharf.
- “International Maine Seafood Chef of the Year” contest, among others.
- “Maine Fisherman Hall of Fame” featuring storytelling, curated photographs, artifacts, etc.
- In summary, encourage collaboration among all working waterfront organizations to transform the waterfront into “must-see” destination for children, tourists, chefs and journalists all over the world.

FOR TOURISTS & PUBLIC

- New Marine Dispatch Center, central location and waiting area protected from the elements for all waiting for marine transportation out onto Casco Bay.
- Indoor bathrooms for tour boat and water taxi customers, instead of the status quo: porta-potties sitting in the hot sun.
- Private land converted to upgraded “public access point,” a new and prime viewing spot at the working waterfront.
- New 12,400 sq. ft. boardwalk & park along Fisherman’s Wharf, getting pedestrians off Commercial Street, allowing visitors to get right to water’s edge.

FOR PORTLAND TAXPAYERS

- Increase in tax revenue from $28,000 annually that the Fisherman’s Wharf parking lot now generates, to an annual amount exponentially larger than that, after project competition.
- Another property generating robust funds for a TIF fund dedicated to current maintenance needs and future improvements to the infrastructure serving Portland’s working waterfront.

Just to be clear and avoid any confusion, the hotel proposal is withdrawn (https://bangordailynews.com/2019/01/11/news/portland/developer-withdraws-plan-for-waterfront-hotel-in-portland-citing-concerns-by-fishermen/). The Planning Board is meeting this afternoon, Tuesday April 23rd, in the City Council chambers at 4:30 p.m.

The zoning revisions are expected to face a Planning Board hearing and recommendation on May 14. A non-binding recommendation would be forwarded to the City Council, which needs to approve the zoning revisions. A first reading could be held May 20, with a public hearing and vote June 3. A 180-day moratorium on development within the Waterfront Central Zone expires June 15.

Tagged: commercial real estate developer (/news/tag/commercial+real+estate+developer), Portland (/news/tag/Portland), Maine (/news/tag/Maine), working waterfront (/news/tag/working+waterfront)

0 Likes Share

Older Post
Cambria Hotels' first Maine location will be Shipyard's 'brewtel' (/news/2019/4/1/cambria-hotels-first-maine-location-will-be-shipyards-brewtel)

BATEMAN PARTNERS LLC
DEVELOPERS & CONSULTANTS

BATEMAN PARTNERS, LLC, 470 FORE STREET, SUITE 400, PORTLAND, ME, 04101, UNITED STATES 207-772-2992 INFO@BATEMANPARTNERSLLC.COM (MAILTO:INFO@BATEMANPARTNERSLLC.COM)

Copyright 2017, Bateman Partners, LLC

MEMO

To: Portland Planning Board, Portland City Council
From: O. E. Delogu, Emeritus Professor of Law, Portland resident
Subject: Proposed Revisions to the Draft Amendments to City Code, Chapter 14, Land Use, Division 18, Waterfront Central Zone (WCZ)
Date: April 29, 2019

Introduction:
I was one of the primary draftsmen of the Portland Waterfront Zoning Amendments Initiative presented to the City (by 10 residents, mostly fishermen) on October 30, 2018; the Initiative was withdrawn in early January, 2019 after over 2300 signatures had been gathered, more than enough to bring the Initiative to a city-wide vote. The withdrawal was agreed to by the signatories to the Initiative to allow a mid-December, 2018 six month Moratorium and Task Force (appointed by the City Manager) to seek a compromise between existing waterfront zoning which was seen as squeezing out traditional water-dependent uses, and the Initiative provisions which sought to more fully protect these water-dependent uses. The withdrawal was an act of good faith by Portland fisherman to arguments made by city officials that more could be accomplished by working together.

That said, it must be noted at the outset that the Moratorium and consequently the work of the Task Force (unlike the Initiative) did not encompass all of Portland's waterfront zones; the Eastern Waterfront Port Zone (EWPZ) and the Waterfront Port Development Zone (WPDZ) were omitted. **I view this failure to see the relatively small Portland waterfront (barely 2.6 miles in length) in a comprehensive manner as a mistake;** Portland's waterfront is in fact a single highly integrated whole, with Commercial Street (and its extensions) as the landward boundary of all three zones.

Given this limitation, the Task Force commenced its work in early January; it has been diligent; the meetings have been civil; the City Manager and city staff personnel by their presence at all meetings and by their pulling together of data have facilitated the Task Force's examination of a wide range of issues: problems with present zoning provisions, increased traffic along Commercial Street, parking problems in the WCZ and in all of the adjacent waterfront and non-waterfront zones, the use of the city's TIF funds, the role of non-water dependent uses within all waterfront zones, but particularly the WCZ. But reducing frank discussions to tangible Draft Amendments for zoning changes in the WCZ has taken time—the 26 page (unnumbered) document being examined was made available to the Initiators and the public on late Friday afternoon April 19, 2019 (the start of Easter weekend), four days before a scheduled April 23rd Planning Board Workshop at which proposed revisions and comments on these Draft Amendments was to be received. **This time frame is unfair on its face.**

Having now fully read the 26 page Draft Amendments and compared them to both the existing zoning and the 2018 Initiative provisions I would make two observations and then offer my Proposed Revisions. First, the Draft Amendments accept a number of the Initiative proposals—a good step forward. But in my view **the Draft could go further than it does to effect a more reasonable compromise**. Second, I have numbered the 26 pages; all of my revisions (except the last revision) reference the page number on which the change I would make is found.

Proposed Revisions:
Page 1—In §14-305 (c) I would drop the fourth word " encouraged" and substitute the word "permitted"; I would also **delete the whole of the second sen**tence. Non-marine uses to a limited degree are tolerated in the WCZ; whether they are essential to the economic survival of the piers and marine infrastructure has been asserted, but not proved by pier owners; what is clear is that Portland's

waterfront has existed for over 300 years without the wide range of non-marine uses put in place over the last 20-25 years.

Page 3—The §14-306 definition of the Non-Marine Use Overlay Zone (NMUOZ) is renamed the Commercial Street Overlay Zone (CSOZ)—fine. In the original 1987 Initiative the NMUOZ did not exist. What came to be called the NMUOZ crept in gradually (in a series of post 1987 zoning amendments) to the WCZ—first along Commercial street extending seaward for 25', then 50', then 150' and up to 500' along three of the central piers. The 2018 Initiative would have eliminated this zone altogether—it invited far too many non-water dependent uses (squeezing out water-dependent uses) into the heart of the WCZ. Elimination of NMUOZ, now CSOZ, was unacceptable to pier owners and a majority of Task Force members. Leaving the overly generous 500' inroad onto 3 piers aside, the struggle for a compromise did not begin with some number between 0 and 150. The fisherman on the Task Force proposed a 75' uniform seaward reach within the CSOZ, extended to 300' for Long Wharf alone. The Draft Amendments accept the latter (still generous) provision, but establish the uniform seaward reach of the CSOZ at 125'. **This less than balanced compromise does not go far enough.** The obvious compromise between 0 and 150 feet was proposed by the fisherman; the fact that is was rejected by the Task Force does not prevent it from being accepted by the Planning Board and City Council as a true, a more realistic compromise aimed at avoiding a revived 2019 waterfront Initiative.

Page 6—§14-307 (b) deals with non-marine commercial and industrial uses: 2. dealing with cabinet and carpentry shops, studios for artists and crafts people **should be deleted**. There are an infinite number of locations in non-waterfront zones where these non-marine activities can be located.

Page 6—§14-307 (c) I would **put a period after the word spaces**. It seems inappropriate and unsafe to channel pedestrian and bicycle trails along commercial street which is already congested, and will become more congested with Eimskip 18-wheelers, fishing (and other) trucks, tourist buses and cars. Danforth Street and Fore Street offer safer options for these trails.

Pages 7-8—§14-307 (e) deals with uses permitted only within the CSOZ. **I would delete 4. Museums and art galleries, and 6. Offices for health care practitioners and clinics.** Both of these activities require user parking (already very scarce), are likely to attract higher volumes of people, and seem more suited to other Old Port, peninsula, and off-peninsula areas.

Page 8—§14-307 (e) 7. Personal service establishments **should be deleted**; it is too vague; or it should be defined more precisely—there are literally hundreds of possibilities.

Page 9— §14-308 dealing with Conditional uses: whether you add a sub-(b) or a part 3. Under sub (a) is a matter of indifference, but **I would add as a conditional use** "Structured parking facilities"; there are at least two areas in the CSOZ where this is possible, Long Wharf and the Fish Pier. This facilities are remunerative, and would help alleviate waterfront and island parking shortages.

Page 12—§14-309 dealing with Prohibited uses: retaining all of the Draft Amendment prohibited uses, **I would add the following** three contained in the withdrawn 2018 Initiative: (j) bulk freight or truck terminal facilities, (k) amusement theme parks or game rooms, and (l) gambling establishments/ facilities, except those permitted by law on inter-port vessels.

Page 12—§14-310 (c) two references to NMUOZ should be changed to CSOZ.

Page 13—§14-310 (h) reference to NMUOZ should be changed to CSOZ.

Page 15—§14-311 (a) 3. c reference to NMUOZ should be changed to CSOZ.

Pages 18-20—the Draft Amendments total elimination of contract or conditional rezoning is an important step in the right direction (closing an abused loophole); however, **the Planning Board/City Council may want to consider retaining** (as did the withdrawn 2018 initiative) some limited capacity (other than a variance, not usually available when proposed projects seek PB approval) to permit **minor** deviations from otherwise applicable dimensional requirements in the zoning ordinance; for example, an otherwise permitted or conditional use should not be denied when it only has 9.5 feet of dock setback when 10 feet is required.

[This is the last revision—there is no page number reference]
It revises and applies the last amendment in the withdrawn 2018 Initiative that applied to all three waterfront zones. Obviously, here it would apply only to the WCZ. It reads as follows:

"Notwithstanding automatic lease renewal provisions, and/or more permissive non-conforming use provisions in other portions of the City Land Use Code, upon passage of these WCZ Draft Zoning Amendments, the parking of vehicles on ground-level spaces or in any structured parking facilities in the WCZ to meet the parking needs of uses permitted in non-waterfront zones landward of Commercial Street is prohibited when current leases (whether held by Unified Parking Partners or any other property owner in the WCZ) expire, or three years from the date of passage of these Draft Amendments, whichever is shorter."

In the WCZ (including CSOZ) parking needs for fisherman, other marine uses, existing (and new) permitted and conditional non-marine uses, and year-round island residents are currently not being met. The Task Force has wrangled for hours over these issues in an effort to bring some degree of order to these legitimate parking needs. Permitted uses in non-waterfront zones throughout the peninsula must be made to meet their parking needs within the footprint of their own property and/or the zone in which they are located (or an adjacent non-waterfront zone). They cannot be allowed to exacerbate WCZ parking problems. The above provision is an important step; it will reduce the current WCZ parking space shortage, and allocate the current supply to those with the most legitimate claim/need for these spaces.

[Attached to this submission are two recent op-ed pieces written by the author.]

Maine LAWYERS REVIEW *October 4, 2018*

Portland's Working Waterfront — Under Siege Again

by Professor Emeritus of Law Orlando E. Delogu

In the early to mid-1980s Portland's waterfront was healthy and showed signs of getting healthier; BIW's dry dock facility was moving into the east end of the waterfront; P.D. Merrill's facility (now Sprague) was expanding its activities on the west end of the waterfront; the Fish Exchange and a growing ship-to-container business occupied centrally-located wharf areas, and nearly 200 working (mostly fishing) boats as well as ship chandlery / supply businesses occupied space along the 18 wharves that line the 2 1/2 -mile waterfront.

But Portland's development community and governmental leaders, with an eye to Boston's waterfront development, were caught up in the belief that upscale condominium development, high-end office space, and smart shops on Portland's piers and along our waterfront was the real key to economic growth. A small condominium project found its way onto Portland Pier; the massive Chandler's Wharf condominiums were built; still more condominium, office, restaurant, and shopping spaces were under discussion or in the early stages of planning board consideration. These projects were headed for fast-track city approval. The green light was on.

At this point, a diverse group of waterfront workers, fisherman, neighbors, and people with planning law background came together to head off this yuppie movement onto Portland's waterfront, and the loss of traditional marine commerce activities that would almost certainly follow. It would only be a matter of time before upscale condo and shop owners, office workers, and shoppers would tire of the smells, noise, long hours, and truck traffic that are the hallmark of a working waterfront. Seeing little chance that the city's power elite would put zoning provisions in place that would protect the working waterfront, these dissenters turned to the city's initiative process.

The initiated waterfront zone drew the line down the middle of Commercial Street; the water side and piers were included; it was roughly 2 1/2 miles in length; it left existing buildings and uses alone — they were treated as nonconforming uses; any and all forms of water dependent uses were permitted in the newly-created working waterfront zone.

The zone was rooted in two unassailable facts. First, marine commerce activity in Portland traced back over 350 years; the city was founded, and grew up, on the back of marine commerce; in the mid-1980s Portland was (and remains today) the leading marine commerce port in the state. These longstanding job-creating benefits should not be lost. The rallying cry of proponents of the initiative was "Don't take the Port out of Portland." This would shortly become the rallying cry of the whole city.

Second, marine commerce (unlike condos, offices, and shops) by its very nature, is water dependent. It can only be located on the waterside of Commercial Street. But Portland's waterfront (unlike waterfronts in Boston, New York and other east and gulf coast ports) is small — barely 2 1/2 miles from Sprague's facilities on one end to where the BIW dry dock was (and now Ocean Gateway is) located. These areas represent less then 3% of developable land in the city. Condos, office blocks, restaurants, shops, industrial facilities are not water dependent — they can be placed anywhere in the city. In the mid-1980s, a great deal of unbuilt upon land existed even on the peninsula — some of it exists today.

These two realities drove the initiative. The signatures needed were readily gathered; the vote was held on May 5, 1987. In spite of Chamber of Commerce, development community, and nearly unanimous governmental opposition, the initiative passed overwhelmingly — by a 2 to 1 margin; it carried every voting precinct in the city. A legal challenge to the ordinance brought by disappointed developers was also unsuccessful. In early 1988, a unanimous Law Court sustained the ordinance. One would think that Portland's working waterfront would be safe for a generation or more, but one would be wrong.

Barely five years after passage of the ordinance, a group of pier owners and disappointed developers calling themselves the Waterfront Alliance sought amendments that undercut the fundamental premise of the ordinance, i.e., that non-water dependent uses (non-marine uses) should be kept out of the defined waterfront zone.

The Alliance, pleading economic ruin, but not wishing to tangle with the Maine State pier and BIW on the East end, or P.D. Merrill on the West End, focused their proposed changes on the Waterfront Central Zone (WCZ). They wanted office and other non-marine uses to be allowed along the water side of Commercial street and on 2nd and 3rd floors of existing buildings. They downplayed the fact that this zone encompassed 14 of the city's 18 piers, almost all of the fishing boat tie-ups, the Fish Exchange, and most of the working waterfront's support facilities. These activities then, and now, are the most economically fragile elements of any working waterfront. Moreover, as noted above, the parking needs, noise, smell, and hours of operation of these activities would directly clash with the proclivities of upscale office workers and shoppers.

The battle lines were drawn — Alliance views were supported by the planning board; many councilors supported their views. The proponents of the 1987 initiative conceded that some fine-tuning amendments were needed, but they saw these as narrow in scope.

They argued that the will of the voters should be respected — that the two fundamental premises of the ordinance remained indisputable. They argued that the protections provided by the ordinance were working — the working waterfront was healthy and the full economic potential of the waterfront had not yet been reached. After months of debate, a compromise was passed by the city council in January 1993.

The Alliance was not happy with the outcome, but the erosion of the distinction between water dependent marine uses and non-marine uses that could be put elsewhere in the city had begun — it would not end with the

1993 amendments to the initiated ordinance. The Alliance saw it could not kill the initiated zoning ordinance outright. Instead, it embarked on a longer run strategy, one that would allow more non-marine uses into the CWZ gradually over time.

For example, language was added to CWZ provisions allowing individual, otherwise prohibited, non-marine uses to gain access to the waterfront pursuant to conditional or contract zoning amendments if the planning board / council found that it met a vaguely worded "no adverse impact" standard. The council failed to recognize the fact that the very presence of non-marine uses shrinks and clashes with (is "adverse" to) marine uses that can exist only in the 3% of city land / pier area suitable for marine commerce.

Further, CWZ language was added that bluntly stated: "Non-marine uses are encouraged ... [they] are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure." Rubbish — this is a make-weight economic argument aimed at circumventing the purpose and intent of the initiated ordinance.

What many pier owners wanted was upscale profits from upscale development located on the waterfront and where it will squeeze out marine uses that have nowhere else to go. This language ignores the fact that the marine infrastructure expanded and improved for 350 years without these non-marine uses / activities.

Finally, the most egregious non-marine intrusion into the Central Waterfront Zone was the Non-Marine Use Overlay Zone (NMUOZ). This overlay (limited to the CWZ) allows new non-marine uses to be built on open land on the water side of Commercial street well back (150 feet) from the southerly side of the Street, and 500 feet out on Long, Chandler's, Widgery's, and Union Wharfs. Large prime waterfront areas / piers are opened up to non-marine development.

This overlay zone is contrary to the letter and spirit of the initiated waterfront zoning ordinance. It ignores the indisputable facts that led to passage of the initiated ordinance. It invites a massive expansion of non-marine uses onto the waterfront.

In all, smaller or larger loophole amendments weakening the water dependent focus of the initiated ordinance were enacted in 2002, 2006, 2009, 2010, 2011, 2012, 2014, 2015, 2016, and 2017 — "death by a thousand cuts." It would only be a matter of time before a developer puts a proposal on the table that fully exploits the largest loophole, the NMUOZ.

As I write, that time is at hand. The Bateman Corporation has put a massive hotel, parking garage and retail shops project, straddling Chandler's and Widgery's wharfs, on the planning board's / city council table. This complex would extend non-marine Old Port-types of development directly onto Portland's waterfront / piers. Phase 2 office developments (also in the overlay zone) are briefly noted in the applicant's Phase 1 proposal.

If any version of the Bateman project is approved, the working waterfront in the CWZ will be hard put to survive. The Fish Exchange and the 90 or more fishing boats operating in the zone will be pariahs in the neighborhood they've been located in for decades; some water taxi and marina activities serving the very rich will be the last to go.

In sum, though aspects of the working waterfront have never been healthier, e.g., the cruise boat business, Eimskip, Sprague Inc.; we keep squeezing it, making its survival ever more difficult, narrowing its full potential by narrowing the space available for water dependent uses. Portland seems trapped in a penchant for short sightedness; it is more enamored with the immediate returns from non-marine uses on its waterfront — a hotel, parking garage, upscale shops, and offices than it is with the long run returns that a working waterfront committed to water dependent marine uses would provide. The city fails to grasp that with proper zoning it can have both.

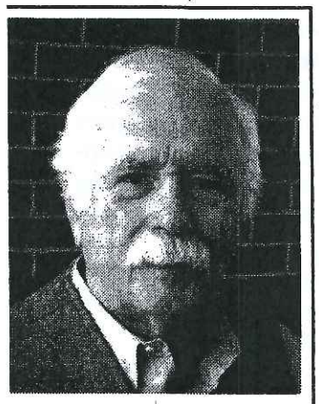
The city also fails to value the fact that Portland has one of the finest deep water harbors on the east coast. This won't change — we should build on it. This reality gave rise to the ship building, job creating, defense role the city played in World War II. It's a big factor in the cruise boat boom we're now enjoying.

Portland's prime location as the most northern and eastern major U.S. harbor also won't change. Again, we should build on it. Given the reality of global warming and the likely opening of a northern passage between the Atlantic and Pacific oceans, we should see what Eimskip saw, with its European roots, more vision, more experience; i.e., the economic advantage (boom) these locational factors portend. That's why they have expanded their waterfront land holdings in Portland and pressed for new rail and cold storage facility.

The long-term potential for Portland that a northern passage between oceans gives rise to boggles the mind. The last thing we need is waterfront zoning that kills this potential by putting massive non-marine uses where they do not belong. But that's exactly what we seem bent on doing. That's what the NMUOZ does. That's what the Bateman project is all about.

This zoning misallocation of scarce waterfront land / pier resources must surely give water-dependent developers pause: Will Portland be a reliable partner justifying future marine related capital investments? The degree to which the initiated 1987 waterfront zoning has been undercut over the years (especially by NMUOZ) suggests the answer to this question is "No."

This must change if Portland's working waterfront is to realize its full potential. The planning board and city council have the power to effectuate this change — to reaffirm the premises of the initiated 1987 waterfront zoning ordinance. If they cannot or will not act, a new citizen's initiative may well be in order.



Orlando Delogu

This overlay zone is contrary to the letter and spirit of the initiated waterfront zoning ordinance. It ignores the indisputable facts that led to passage of the initiated ordinance. It invites a massive expansion of non-marine uses onto the waterfront.

Orlando Delogu, one of the founders of the Maine Civil Liberties Union is professor emeritus at Maine Law, where he has taught for more than 50 years. He has been involved in policy issues, from local to the international level. In 2013, he was awarded the Justice Louis Scolnik Award by the ACLU of Maine.

Portland Press Herald / Wednesday, March 13, 2019

MAINE VOICES

City waterfront task force lacking public input, sense of urgency

Last November, 10 Portland residents, mostly fishermen, filed a petition seeking a referendum to restore the concept of water dependency to the zoning provisions that control development along the seaward side of Commercial Street, including the 18 existing piers.

A similar initiative was adopted by city voters in 1987 but has been eroded to the point of non-existence by City Council-approved amendments. Offices, shops, restaurants, parking (all non-water dependent uses) are widely permitted. Hotel development was proposed. These uses have squeezed, and now threaten the continued existence of, Portland's fishing fleet as well as other water-dependent activities (Eimskip, Sprague, Vessel Services, ship supply and repair services, cruise, tugboat and ferry services) that all need water access.

The city bureaucracy – the Planning Board, the Economic Development Department, the city manager's office, the mayor and the City Council – that for years has championed unbridled growth on the waterfront and in nearby areas sat up and took notice of the new initiative. Long-ignored calls to discuss growing development pressures in surrounding neighborhoods and on water-dependent users of the waterfront were heeded, and meetings hastily organized.

City Manager Jon Jennings took the lead. Planning Board data on non-water dependent uses within waterfront zones were brought up to date. Several councilors proclaimed that a hotel would never be approved – that other loopholes in the present zoning could and should be closed. The idea of a six-month moratorium surfaced. Would the initiators hold off on their signature-gathering effort in order to allow Portland to make zoning changes that would preclude the need for a new initiative?

By mid-December, the moratorium was passed as an emergency measure. Unfortunately it was limited to only the Waterfront Central Zone; it did, however, call for a task force (which the city manager quickly assembled) to begin putting some of the more obvious zoning changes in place.

A series of meetings beginning in January was scheduled. There was an abundance of hope. With over 2,300 signatures in hand – more than enough to put their proposed zoning changes to the voters – the initiators (mostly fishermen) accepted the city's olive branch. They withdrew their initiative days before the deadline for submitting the 1,500 required signatures.

They accepted the city's assertion that more could be accomplished by working cooperatively than by passing an initiative that many developers and pier owners saw as too blunt an instrument. Time will tell whether this cooperation will produce the zoning changes needed to preserve Portland's working waterfront. The early signs are not promising.

The Waterfront Working Group seems a fair-minded body, but it suffers from the absence of any critic of recent city zoning policies; from the absence of the initiators' lead counsel, Sandra Guay, who could clarify their position; from the absence of anyone with solid land use planning credentials. It suffers from the fact that all of its background information and the facilitation of the meetings are provided by the same city bureaucracy that gave rise to the present problems.

It suffers from the lack of opportunity for any public input into task force proceedings. Each week a large and patient audience can only listen. Questionable bureaucratic statements go unchallenged. People can mail their comments in, but that's hardly an effective or timely mechanism. I suggest devoting the last half-hour of task force sessions to public input.

Finally, having sat through all of the task force meetings to date, I believe that what seems missing is any sense of urgency. The same zeal that created the moratorium as an emergency measure seems to have waned. I see the council extending the task force for an additional six months, but if we're still talking about continuing to allow parked cars, office blocks and restaurants that have fish on the menu as water-related uses in a non-marine use overlay zone in the heart of the Waterfront Central Zone, the woes of fishermen and the working waterfront will not have been fixed.

— Special to the Press Herald

ABOUT THE AUTHOR

Orlando E. Delogu of Portland – an emeritus professor at the University of Maine School of Law – helped draft the recent working waterfront initiative.

MEMO

To: Bill Needelman, Matthew Grooms, Jon Jennings, Portland City Council, Portland Planning Board
From: Orlando E. Delogu, Emeritus Professor of Law, Portland Resident
Subject: Proposed Revisions to the second Draft Amendments to City Code, Chapter 14, Land Use, Division 18, Waterfront Central Zone (WCZ)
Date: May 7, 2019

Introduction:
On April 29, 2019 I hand delivered a memo laying out revisions I thought necessary to the first Draft Amendments provided by city staff to members of the Waterfront Task Force, interested parties and the general public. Proposed revisions were presumably examined, and if accepted by city staff, were incorporated into a second Draft Amendments that again were circulated for further comment and suggested revisions. These final suggested revisions (if accepted) will presumably lead to a final set of WCZ Amendments which will be presented to the Planning Board and City Council for action.

At this point I would note that none of the ten substantive revisions tendered in the April 29th memo were accepted by city staff. That is disappointing. And though §14-311 (d) performance standards are usefully retained in this second Draft, and refined to some extent, it leads me to reiterate with respect to these second Draft amendments that **they do not go far enough to effect a reasonable compromise between water-dependent uses/activities and pier owner interests.**

A last effort at substantive comment:
It serves no useful purpose to simply reiterate here the ten substantive points made in the April 29th memo. They are a matter of record and can be examined by members of the Planning Board and City Council as they see fit. I would, however, note three revisions that underscore the unacceptable degree of intrusion by non-water dependent activities into the water dependent working waterfront.

§14-306 renames the Non-Marine Use Overlay Zone (NMUOZ) to the Commercial Street Overlay Zone (CSOZ); this cosmetic change is intended to de-emphasize the non-marine use creep into the heart of the waterfront. But knowledgeable people will not be fooled. More importantly it must be noted that the 1987 waterfront initiative did not contain any non-marine use provision on the water side of Commercial Street. What came to be called NMUOZ extended non-marine uses seaward of Commercial Street by a series of amendments, first 25' then 50' then 150', with a provision for 500' encompassing three piers in the center of the WCZ. The fisherman on the Task Force proposed a CSOZ of 75' with a 300' seaward reach on Long Wharf. The Draft Amendments while accepting the Long Wharf proposal, hold out for a 125' seaward reach for non-marine uses across the full length of Commercial Street w/in the WCZ. A compromise between zero and 150 is not 125. The fishermen concede that a CSOZ is appropriate but a more reasonable balance must be struck.

§14-307 (e) 4, 6, and 7 allowing museums and art galleries, offices for health care practitioners or health care clinics, and personal service establishments (without defining the scope of the latter) seems to invite non-water dependent activities amply provided for in other non-waterfront zones, posing high foot, traffic, and parking problems into the heart of the working waterfront. Commercial Street traffic and parking are already a mess; we do not need to exacerbate the problem by inviting uses such as these into the CSOZ.

Finally, the unnumbered last provision in the April 29th memo dealing with the unmet parking needs of development taking place in nearby non-waterfront zones on the peninsula should not be ignored. These parking needs cannot continue to be met by cramming them into un-built areas w/in the WCZ. Language along the following lines should be adopted as part of the final Draft Amendments for the WCZ tendered to the Planning Board and Council.

"Notwithstanding automatic lease renewal provisions, and/or more permissive non-conforming use provisions in other portions of the City Land Use Code, upon passage of these WCZ Draft Zoning Amendments, the parking of vehicles on ground-level spaces or in any structured parking facilities in the WCZ to meet the parking needs of uses permitted in non-waterfront zones landward of Commercial Street is prohibited when current leases (whether held by Unified Parking Partners or any other property owner in the WCZ) expire, or three years from the date of passage of these Draft Amendments, whichever is shorter."

The Task Force has wrangled for hours in an effort to bring some degree of order to legitimate parking needs within the WCZ. Permitted uses in non-waterfront zones throughout the peninsula must be made to meet their parking needs within the footprint of their own property and/or the zone in which they are located (or an adjacent non-waterfront zone). They cannot be allowed to exacerbate WCZ parking problems.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

ATTORNEYS-AT-LAW

ROBERT B. WOODMAN
THOMAS DANYLIK
RALPH W. AUSTIN
JAMES B. SMITH
KEITH R. JACQUES
MICHAEL J. O'TOOLE
HARRY B. CENTER II
SANDRA L. GUAY
AMY McNALLY

234 MAIN STREET
P.O. BOX 468
BIDDEFORD, ME 04005-0468
TELEPHONE: 207-284-4581
FAX: 207-284-2078
E-MAIL: SLG@woodedlaw.com

PETER L. EDMANDS
(Retired)

May 7, 2019

Bill Needelman, Waterfront Coordinator
Matthew Grooms, Planner
City of Portland
389 Congress Street
Portland, ME 04101

Re: Waterfront Central Zone/Draft Ordinance Amendments

Dear Bill and Matt:

This letter provides comments on behalf of the Portland Working Waterfront Group (PWWG) to the revised draft amendments for the Waterfront Central Zone. While the PWWG appreciates the ongoing efforts by the City to complete the amendments within the moratorium timeframe, the group remains concerned about the removal of some of the existing standards which only serve to weaken the existing protections.

In addition to the critical need to remove the hastily added "leasable area" language in Section 14-311 (a)(1), the most significant comments are with respect to the performance standards which, despite prior comments from PWWG still leave out existing and substantive standards. This is so even with the attempts that have been made to combine and rework language into the new required Operations and Access Management Plan.

It is critical to maintain the existing zoning's forward-focused standards that look not only at existing WDUs but cast an eye on preserving the functional utility for potential future WDUs. This frame of reference is very important if the City is to maintain the value of the harbor as an economic engine for future generations.

Comments on revised ordinance amendments:

14-307(a)(26): Change to: Commercial parking for individuals who work in or are employed by water-dependent uses.

14-307(b)(1): Add: except for offices of health care practitioners or health care clinics which are limited to the CSOZ after the word "offices".

14-310(d)(4): Remove open parenthesis at start of fifth line.

14-311 (a)(1): The term "leaseable [sic – this should be leasable] area" must be **removed**. This term is too open for arbitrary decisions or misinterpretation and it has the potential of *significantly* reducing the 55% marine use are on the first floor.

Section 14-311(d)(13): First paragraph: (a) First line after Operations and Access Management Plan change to: No use, including new development, a change of use, or expansion of a non-marine use, shall be permitted, approved, or established in this zone unless the applicant meets all submission requirements and demonstrates that the proposed development, change of use or expansion of use meets each of the review standards and other requirements of the Performance Standards. (as now written, it sounds like this section applies only to new development); (b) Reinsert "for review by the Planning Authority" which has been deleted, so the next sentence reads: The applicant shall submit a scaled plan and accompanying narrative for review by the Planning Authority.

Section 14-311(d)(13): First paragraph, following sentence: The use of the word "pyramid" from the Comprehensive Plan is confusing in this section and should be deleted as it is sufficient and less confusing to simply refer to the hierarchy itself. Also confusing is the term "subordinate in placement and disposition" as the meaning of this term is unclear. It would be clearer to say as the third sentence in this paragraph:

In accordance with Portland's Plan 2030, the plan shall demonstrate the proposal is consistent with the hierarchy of waterfront uses, as further detailed in Sec. 14-305 (Purpose), giving highest priority to existing and potential water-dependent uses and second priority to marine-related support uses, with non-marine uses being allowed only if they do not interfere with and are not incompatible with water-dependent and marine-

related uses, and the proposal is designed so as not to impede access to the pier edge and vessel berthing nor interfere with marine operations.

14-311 (d)(13)(b)(ii): After the word "parking" in the first line add: for uses permitted in the WCZ and proposed to be located on the subject lot shall submit…….

Section 14-311(d)(13)(b)(iii): As written weakens the shared use concession and omits important qualifications. This could be corrected by adding the red, underlined language below:

Except for common circulation drives as defined in 14-306, off-street parking, loading facilities and access ways designated for water-dependent uses shall be exclusively for (not exclusive to) such uses and shall not be shared with non-marine uses, (current zoning, Performance Standard 16(d)) except that, if strictly and effectively enforced and if not being occupied by water-dependent tenants, such parking may be made available to non-marine uses between the hours of 5:00 p.m. and 2:00 a.m.

Section 14-311(d)(13)(b)(v): The current draft omits the concept that it is design of facilities that is the object, and "and materials" has been lost from the original phrase related to loading and unloading of "goods and materials." The term "and materials" should be returned.

Existing performance standard **Section 14-311(d)(15)** "Compatibility of non-marine uses with marine uses" (shown as **Section 14-311(d)(12)** on the redline) is rolled in part into **Section 14-311(d)(13)**, but still omits the substantive standard that non-marine uses "shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or *potential* marine uses" (emphasis added). This language needs to be put back in as a meaningful standard as without it there could well be misinterpretation as to whether these standards apply to potential future marine uses, as well as existing marine uses.

The proposed amendment strikes out existing performance standard **Section 14-311(d)(16)** "Functional utility of piers and access to the water's edge" (shown as **Section 14-311(d)(13)** on the redline). The earlier draft reduced it to a requirement that buildings located within 10 feet of the pier edge "shall account" for the transfer of goods. In the revised draft that is deleted as well. While the amendments do include some of the provisions, key language is missing from the existing requirement, specifically that "all

new development, whether for marine or non-marine uses, should anticipate current and *future* functional and operational needs of water-dependent pier tenants to access the water's edge . . ." (emphasis added). This language needs to be put back in as a meaningful standard.

The PWWG notes that the revised draft of performance standard 13 for the Operations and Access Management Plan does add review standards, which is an improvement from the first draft. But it still leaves out some of the very specific operational requirements from the existing ordinance.

In summary, the following language is improperly omitted and should be inserted into the current draft so that these standards are maintained as substantive and forward-looking planning review standards. They could be added as Review Standards viii, ix:

Any proposed non-marine use will be compatible with marine uses and will neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. (current zoning, Performance Standard #15)

The proposal, whether for marine or non-marine use, will adequately protect the functional utility of piers and access to the water's edge by appropriately anticipating current and future functional and operational needs of water-dependent uses to access the water's edge for the transfer of people, goods, and materials between vessels and land. (current zoning, Performance Standard #16)

Again, while appreciative of the effort that has gone into the redrafting of the proposed amendments, the PWWG sees these substantive standards as a crucial component of the current zoning, and cannot accept as sufficient an amended ordinance which omits them. I would be happy to meet with you and any other City representatives to discuss how this may be accomplished before the current draft is finalized for the Planning Board.

Thank you for your attention to this matter.

Very Truly Yours,

SANDRA L. GUAY

SLG/lb

Copy to: PWWG
Jon Jennings, City Manager

Owners and Representatives of
Long Wharf, Fisherman's Wharf, and Union Wharf

Portland, Maine

May 9, 2019

Sean Dundon, Chair
Planning Board
City of Portland
389 Congress Street
4th Floor
Portland, ME 04101

Dear Chairman Dundon and Members of the Planning Board,

Re: Proposed Waterfront Central Zone (WCZ) Text Amendments / Financial Impact

During the workshop held April 23, 2019 to discuss proposed Waterfront Central Zone ("WCZ") text amendments, several Board members requested additional information regarding the financial impact of modifying the current Non-marine Use Overlay Zone ("NMUOZ") located within the WCZ boundary.

As proposed, the majority of properties in the NMUOZ would have the current depth of 150' from Commercial Street reduced to 125' or a net decrease of 25'.

The most significant proposed changes affect the three wharves which represent the greatest resource for future development that we believe will be necessary to maintain the working waterfront infrastructure for both public and private improvements. These are Long, Fisherman's, and Union, all lying next to each other in a central location directly adjacent the Old Port District.

As the owners and representatives of these three wharves, the following information has been compiled as a collaborative effort to provide the Planning Board with the financial impact analysis as requested.

As background, the NMUOZ boundary affecting these three wharves was delineated in terms of size (i.e. a depth of 500' from Commercial Street seawards) when the NMUOZ was originally created, specifically because they represented a significant resource for future, private development that could help the working waterfront. Both Long and Fisherman's consist mainly of open parking lots which provide access to Portland's tour boat fleet and commercial retail uses. The fishing community has not been located on either of these wharves in decades. This is not the case for the other wharves and piers in WCZ which were highly developed in terms of existing structures vs. open area and contained a mixture of marine and non-marine uses. Union Wharf has continued to develop since the

creation of the NMUOZ in a way which hosts a broad mixture of both marine and non-marine/marine compatible uses as a direct result of the ability to utilize the "zoning tools" provided by the current NMUOZ boundaries and text provisions. The attached financial analysis examines each wharf on an individual basis as follows:

- Current disposition (use).
- Future development potential based on current zoning and allowable uses.
- Future development potential based on the proposed zoning amendments.
- Presents the net difference in terms of lost revenue benefits to the City and working waterfront if the current NMUOZ is reduced as proposed by the current zoning amendment.

The underlying assumptions utilized for this analysis are as follows:

- Current property tax information as listed by the City of Portland for each affected parcel.
- Current use(s) and size of each parcel both currently in the NMUOZ and reduced as proposed.
- Development potential based on the highest and best use allowed under current zoning.
- Estimated development costs experienced by the owners based on similar projects both recently completed and/or currently under construction within the City.
- Estimated taxable project valuations based on guidance provided by the City's Tax Assessor.

Each wharf contains a separate analysis which is followed by a summary economic impact comparison chart reflecting individual wharf impacts and a schedule showing the three wharves combined.

The schedule of all three wharves combined illustrates the following financial impacts created if the proposed modification of the current NMUOZ is enacted:

- Total annual real estate tax revenue potential created by new development would be $1,178,733 (55.64%) less per year.
- Total annual revenue available to fund the Waterfront Capital Improvement Zone (T.I.F. District) would be $1,208,865 (65.2%) less per year.
- Total funds required for marine infrastructure investment would be $3,418,194 (63.53%) less in total.

Based on the economic impacts created by the proposed modifications to the current NMUOZ relating specifically to these three wharves, we urge the Planning Board NOT to recommend these zone changes to the City Council for approval.

We further encourage this Board to examine the information presented to date in support of radically modifying the current NMUOZ in light of the following facts:

- The current NMUOZ is and has been working effectively to preserve and enhance the working waterfront, as demonstrated by the ongoing development at Union Wharf and the very public process which has been a part of the proposed development at Fisherman's Wharf.

- The City of Portland's recent waterfront inventory shows little measurable change over the past ten years that the current NMUOZ has been in effect.

  To be clear, this inventory does not support the claim some have made that "fishermen are being pushed out" or that berthing and parking for fishermen have been and is decreasing as a result of commercial development on the waterfront.

  In fact, a recent poll of the thirteen wharf and pier owners which comprise Portland's working waterfront did not indicate any lack of berthing or parking for fishermen for those who have requested the same.

- Eliminating the provisions for contract zoning and condition use rezoning is unnecessary and short sighted. The working waterfront is an ever-changing part of the City, as the past 300+ years have shown. The current zoning provisions have worked as they were intended to. The recent City waterfront inventory and integrated commercial development to date reflects a balance between marine and non-marine uses, both of which are critical to maintaining the healthy and vibrant working waterfront we now enjoy.

It appears that the proposed amendments are being rushed to a decision before a thoughtful analysis and sorting fact from fiction on the issues have been fully vetted. In other words, these proposed amendments seem more like change simply for the sake of change and not reinforcement and support for the working waterfront's continued economic well-being.

The wharf and pier owners have supported and continue to support marine use and, particularly, the fishing community. The current NMUOZ allows us the financial ability to continue to support and subsidize berthing and parking for fishermen while creating additional commercial development in a responsible and balanced way, which in turn can fund much needed waterfront infrastructure improvements.

We hope the attached analyses will help with your deliberations. Thank you.

Sincerely,

Steve DiMillo
Long Wharf

David Bateman
Fisherman's Wharf

Charlie Poole
Union Wharf

cc: Jon Jennings, City Manager

Comparative Schedule Reflecting Combined Financial Impact to Three (3) Wharves

LONG WHARF, FISHERMAN'S WHARF & UNION WHARF

	Current NMUOZ Zoning	Proposed Revised NMUOZ Zoning	Net Difference
Total Annual Real Estate Tax Revenue Potential Created by New Development	$2,118,238	$939,505	**($1,178,733)** ***Less Available Annually or 55.64% Loss***
Total Annual Revenue Available to Fund Waterfront Capital Improvement Zone (T.I.F. District)	$1,853,038	$644,173	**($1,208,865)** ***Less Available Annually or 65.2% Loss***
Total Funds Required for Marine Infrastructure Improvement	$5,383,317	$1,962,123	**($3,421,194)** ***Less Required Marine Investment or 63.55% Loss***

SUMMARY for LONG WHARF, FISHERMAN'S WHARF & UNION WHARF

Economic Impact Comparison Chart --- Existing Non-Marine Use Overlay Zone vs. Proposed Zoning Amendment

Wharf	Current Disposition	Development Potential Based on Current Zoning and Allowable Uses	Development Potential Based on Proposed Zoning Amendment	Net Difference / Lost Tax Revenue if Current "NMUOZ" Zone is Reduced as Proposed by Zoning Amendment
LONG WHARF				
-Total SF in NMUOZ Zone	199,914 SF	199,914 SF	65,514 SF	**Reduction of 45.36% of NMUOZ Area**
-Real Estate Tax	$97,527	$1,149,591	$671,900	**($477,691)**
-Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District)	$0	$1,052,064	$574,373	**($477,691)**
-Required Marine Infrastructure Investment	$0	$3,144,586	$1,716,790	**($1,427,796)**
FISHERMAN'S WHARF				
-Total SF in NMUOZ Zone	79,792 SF	79,792 SF	28,250 SF	**Reduction of 64.5% of NMUOZ Area**
-Real Estate Tax	$30,132	$652,775	$30,132	**($622,643)**
-Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District)	$0	$652,775	$0	**($652,775)**
-Required Marine Infrastructure Investment	$0	$1,694,348	$0	**($1,694,348)**
UNION WHARF				
-Total SF in NMUOZ Zone	114,850 SF	114,850 SF	32,142.5 SF	**Reduction of 72% of NMUOZ Area**
-Real Estate Tax	$167,672	$315,872	$237,473	**($78,399)**
-Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District)	$0	$148,199	$69,800	**($78,399)**
-Required Marine Infrastructure Investment	$0	$544,383	$245,333	**($299,050)**

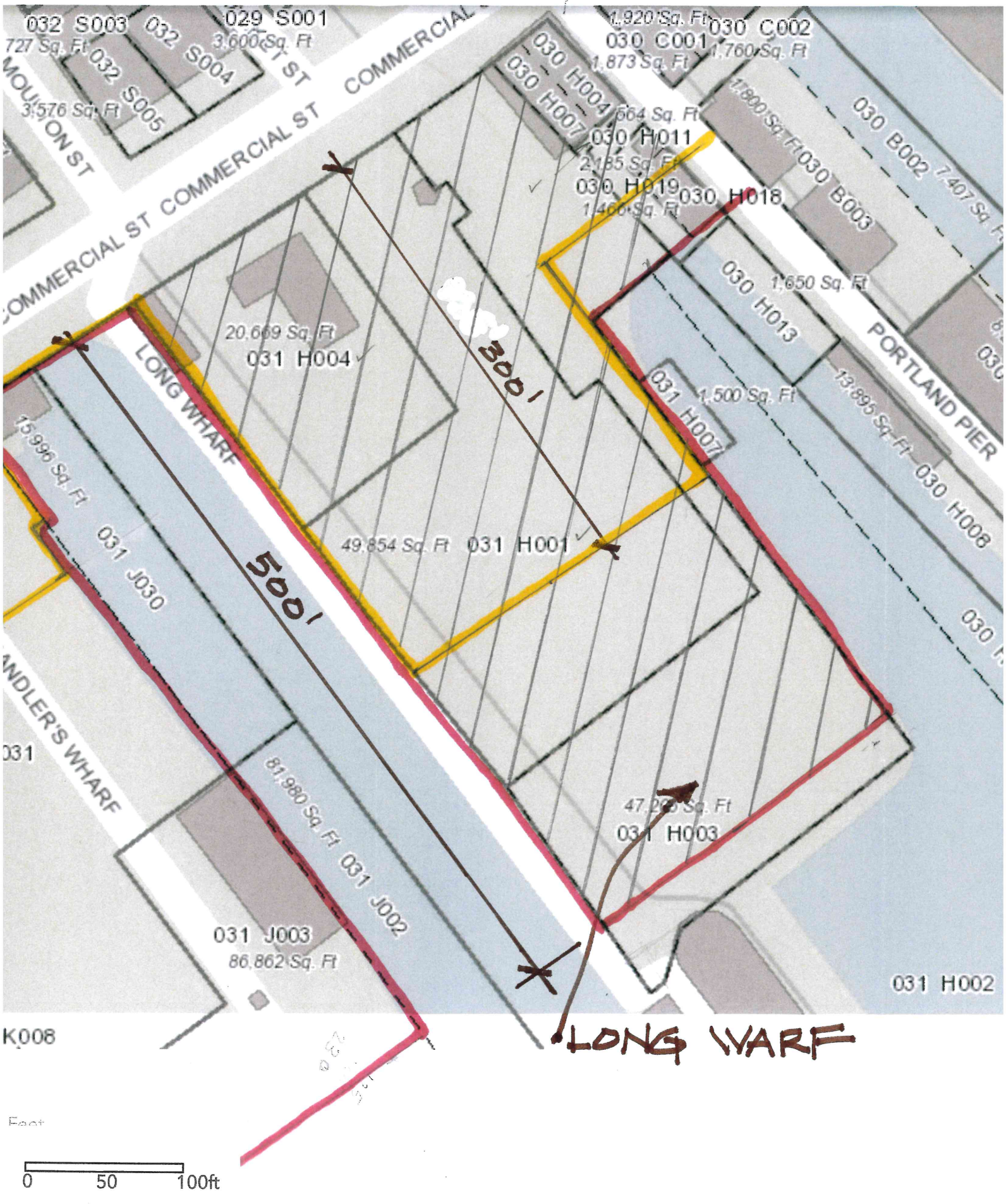
LONG WHARF

Current Disposition	*Development Potential Based on Current Zoning and Allowable Uses*	*Development Potential Based on Proposed Zoning Amendment*	*Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment*
Parcel(s) currently in "NMUOZ" zone: 031-H004 20,669 SF 031-H001 49,854 SF 031-H003 47,206 SF 030-H001 2,185 SF Total in NMUOZ = 119,914 SF	**Parcel(s) currently in "NMUOZ" zone:** 119,914 SF Lot Area	**Parcel(s) in proposed "NMUOZ" zone:** 031-H004 20,669 SF 031-H001 43,222.5 SF 031-H003 0 SF 030-H001 1,622.5 SF Total in NMUOZ = 65,514 SF	***Reduction of 45.36% of "NMUOZ" Zone Lot Area***
• Current Use(s) Retail, Restaurant, Marina, Parking Lot	• Project Description (Highest & Best Use) -Assume 65% first floor lot coverage for new structures. ***First Floor Level***: Parking 28,800 SF = 24% Retail 20,000 SF = 17% Office 29,200 SF = 24% 78,000 SF = 65% Coverage (78,000 ÷ 119,914) -Parking Structure / 564 Spaces – 4 Levels 115,200 SF -Retail/1st Floor Only 20,000 SF -Office / 4 Floors @ 29,200/FL 116,800 SF	• Project Description (Highest & Best Use) -Assume 65% first floor lot coverage for new structures. ***First Floor Level***: Parking 15,724 SF = 24% Retail 11,130 SF = 17% Office 15,730 SF = 24% 42,584 SF = 65% Coverage (42,584 ÷ 65,514) -Parking Structure / 308 Spaces – 4 Levels 62,896 SF -Retail/1st Floor Only 11,130 SF -Office / 4 Floors @ 15,730/FL 62,920 SF	

Current Disposition Continued:	***Development Potential Based on Current Zoning and Allowable Uses Continued:***	***Development Potential Based on Proposed Zoning Amendment Continued:***	***Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment Continued:***
	-Office above Retail / 20,000 SF x 3 60,000 SF Total Project SF = 312,000 SF ***Estimated Project Cost:*** Parking Structure = $16,130,400 Retail = 4,682,926 Office = 42,078,400 Total Project Cost $62,891,726	-Office above Retail / 3 Floors @ 11,130/FL 33,390 SF Total Project SF = 170,336 SF ***Estimated Project Cost:*** Parking Structure = $ 8,808,800 Retail = 2,606,000 Office = 22,921,000 Total Project Cost $34,335,800	
• Current Real Estate Tax 031-H004 $22,812.70 031-H001 13,382.34 031-H003 12,764.14 030-H001 48,568.04 Total = $97,527.22	• Estimated Real Estate Tax -Current Tax = $ 97,527.22 -Additional Tax Generated = 1,052,064.00 (312,000 New SF x $150/SF $46,800,000 Valuation @ $22.48 Mil Rate) Total $1,149,591.22	• Estimated Real Estate Tax -Current Tax = $ 97,527.22 -Additional Tax Generated = 574,373.00 (170,336 New SF x $150/SF $25,550,400 Valuation @ $22.48 Mil Rate) Total $ 671,900.22	• Real Estate Tax ***Reduction of $477,691 of Annual Tax Revenue or 45.4% Less/YR*** ***$1,052,064*** ***< 574,373>*** ***$ 477,691*** ***$477,691 ÷ $1,052,064 = 45.4%***
• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $0	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $1,052,064	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $574,373	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) ***$477,691 Less/YR***

Current Disposition Continued:	***Development Potential Based on Current Zoning and Allowable Uses Continued:***	***Development Potential Based on Proposed Zoning Amendment Continued:***	***Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment Continued:***
	• Required Marine Infrastructure Investment Project Cost = $62,891,726 x .05 = $3,144,586	• Required Marine Infrastructure Investment Project Cost @ $34,335,800 x .05 = $1,716,790	• Required Marine Infrastructure Investment ***$1,427,796 Less Available for Marine Infrastructure Improvements***

ver

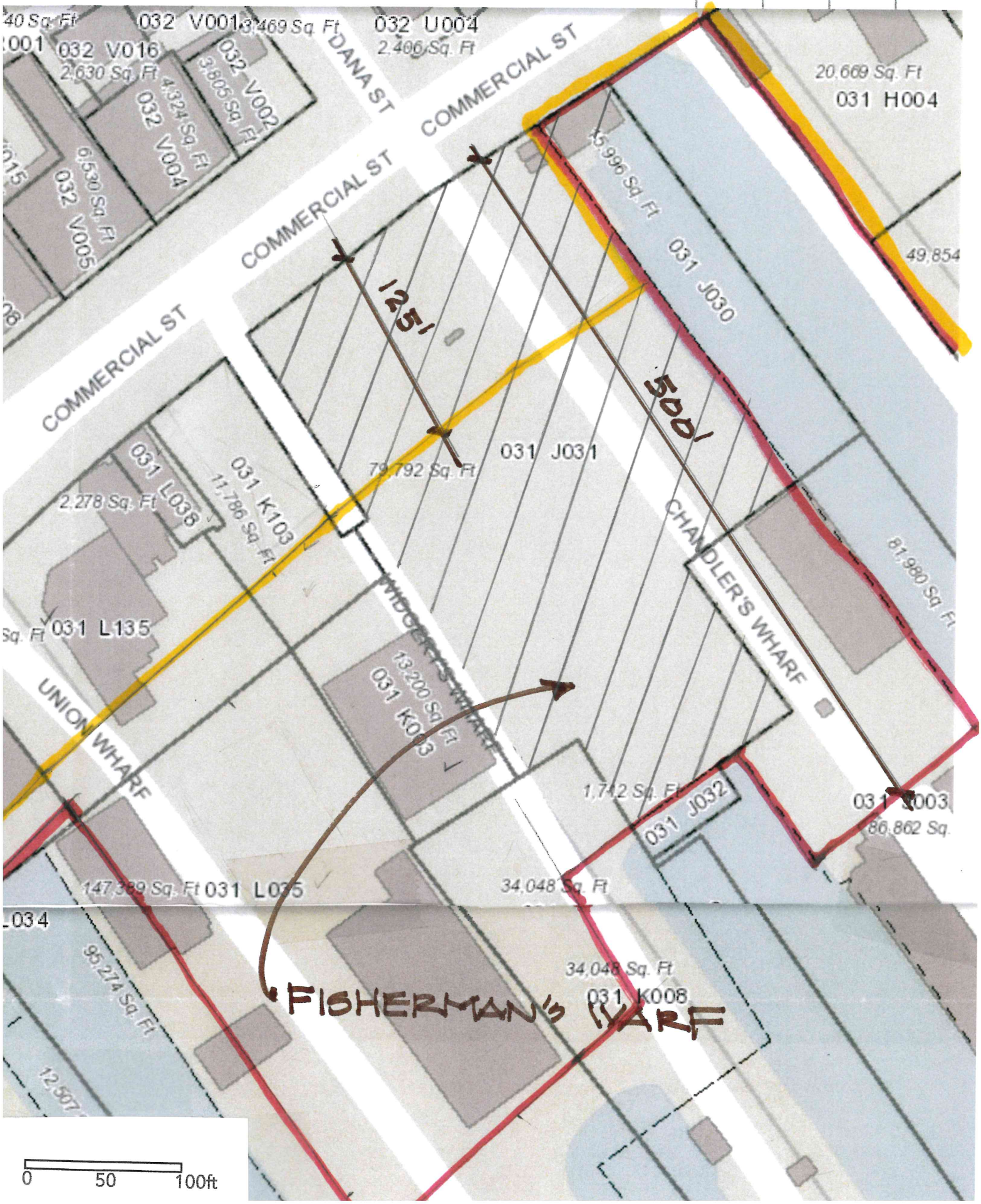

032 S003
727 Sq. Ft
032 S005
3,576 Sq. Ft
032 S004
029 S001
3,600 Sq. Ft
COMMERCIAL ST
COMMERCIAL ST COMMERCIAL ST
MOULTON ST
030 H004
030 H007
1,920 Sq. Ft
030 C001
1,873 Sq. Ft
030 C002
1,760 Sq. Ft
564 Sq. Ft
030 H011
2,185 Sq. Ft
030 H019
1,466 Sq. Ft
030 H018
1,800 Sq. Ft
030 B003
030 B002
7,407 Sq. Ft
1,650 Sq. Ft
030 H013
PORTLAND PIER
20,669 Sq. Ft
031 H004
300'
LONG WHARF
15,996 Sq. Ft
031 J030
1,500 Sq. Ft
031 H007
13,895 Sq. Ft
030 H008
49,854 Sq. Ft
031 H001
500'
ANDLER'S WHARF
031
81,980 Sq. Ft
031 J002
47,2[illegible] Sq. Ft
031 H003
031 J003
86,862 Sq. Ft
031 H002
K008
LONG WARF
Feet
0
50
100ft

FISHERMAN'S WHARF

Current Disposition	*Development Potential Based on Current Zoning and Allowable Uses*	*Development Potential Based on Proposed Zoning Amendment*	*Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment*
Parcel(s) currently in "NMUOZ" zone: 031-J03 79,792 SF	**Parcel(s) currently in "NMUOZ" zone:** 79,792 SF	**Parcel(s) in proposed "NMUOZ" zone:** 031-J03 79,792 SF Area Removed from NMUOZ <51,542> SF Revised NMUOZ Area = 28,250 SF	***Reduction of 64.5% of "NMUOZ" Zone Lot Area***
• Current Use(s) Restaurant, Parking Lot, Berthing for Commercial Tour Boats and Ticket Sales	• Project Description (Highest & Best Use) -Buildings and Parking Structure as currently designed and submitted to the Planning Board replacing the Hotel use with Commercial Office and Retail use. ***First Floor Level***: Parking 29,848 SF = 37% Retail 16,612 SF = 21% Office 4,000 SF = 5% 50,460 SF = 63% Coverage (50,460 ÷ 79,792) -Parking Structure / 501 Spaces – 4 Levels 102,204 SF -Retail/1st Floor Only 16,612 SF	• Project Description (Highest & Best Use) -Based on net operating income after expense the current use as parking yields the highest return and lowest risk, therefore the current use will remain as surface parking.	

Current Disposition Continued:	***Development Potential Based on Current Zoning and Allowable Uses Continued:***	***Development Potential Based on Proposed Zoning Amendment Continued:***	***Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment Continued:***
	-Office / In 3 Buildings 65,835 SF Total Project SF = 184,651 SF ***Estimated Project Cost:*** Parking Structure = $14,328,600 Retail = 3,889,639 Office = 15,668,730 Total Project Cost $33,886,969		
• Current Real Estate Tax 031-J03 $30,131.52	• Estimated Real Estate Tax -Current Tax = $ 30,131.52 -Additional Tax Generated = 622,643.17 (184,651 New SF x $150/SF $27,697,650 Valuation @ $22.48 Mil Rate) Total $652,774.69	• Estimated Real Estate Tax -Current Tax = $30,131.52 -Additional Tax Generated = 0.00 Total $30,131.52	• Real Estate Tax ***Loss of $622,643.17 of Annual Tax Revenue or 95.38% Less/YR than if developed.*** ***$622,643.17 ÷ $652,774.69 = 95.38%***
• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $0	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $652,774.69	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $0	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) ***$652,774.69 Less/YR***

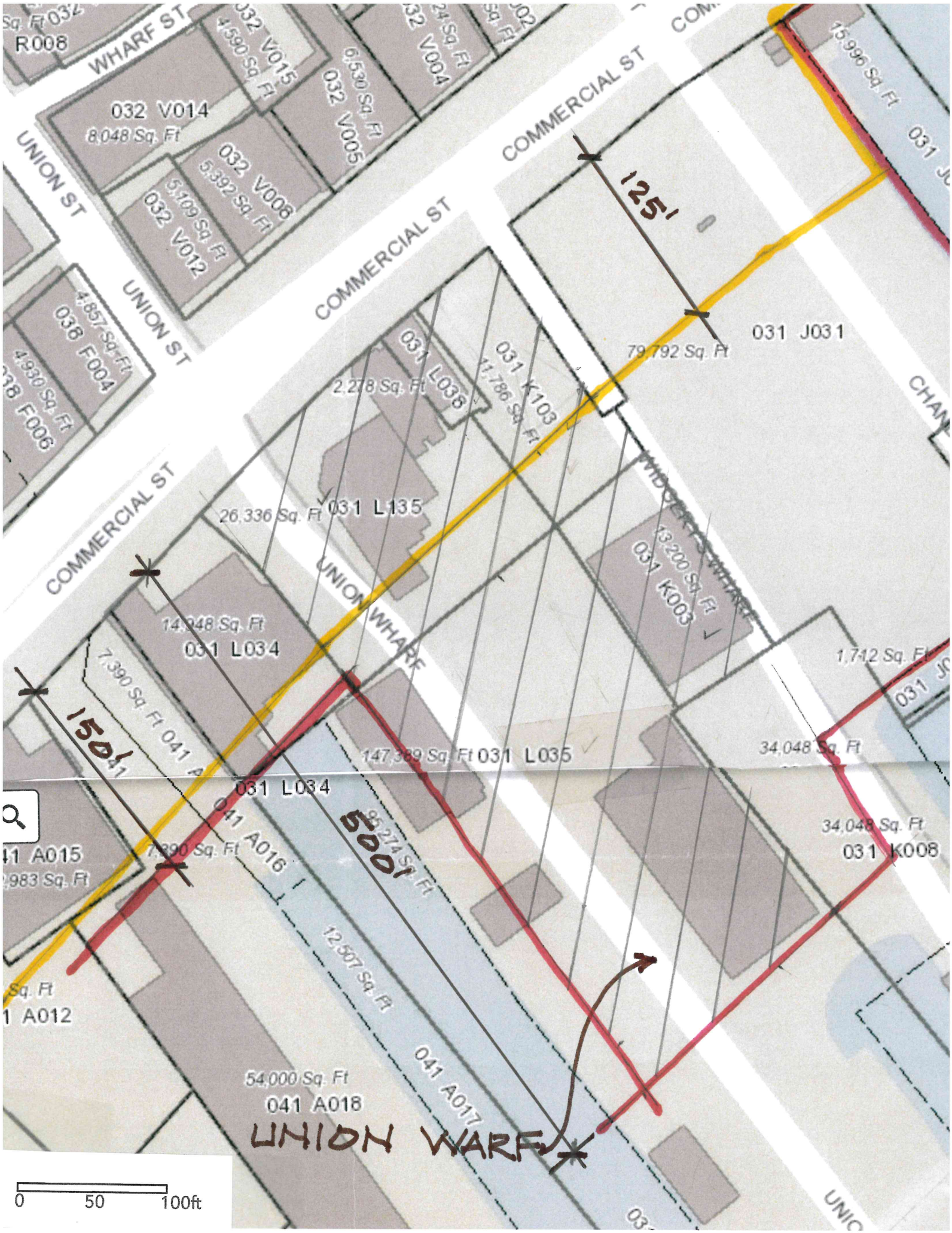
Current Disposition Continued:	***Development Potential Based on Current Zoning and Allowable Uses Continued:***	***Development Potential Based on Proposed Zoning Amendment Continued:***	***Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment Continued:***
	• Required Marine Infrastructure Investment Project Cost = $33,886,969 x .05 = $1,694,348	• Required Marine Infrastructure Investment $0	• Required Marine Infrastructure Investment ***$1,694,348 Less Available for Marine Infrastructure Improvements***


032 V001
3,469 Sq. Ft
032 U004
2,406 Sq. Ft
032 V016
2,630 Sq. Ft
032 V002
3,605 Sq. Ft
4,324 Sq. Ft
032 V004
6,530 Sq. Ft
032 V005
DANA ST
COMMERCIAL ST
COMMERCIAL ST
COMMERCIAL ST
20,669 Sq. Ft
031 H004
15,996 Sq. Ft
031 J030
49,854
125'
500'
031 J031
79,792 Sq. Ft
031 L038
2,278 Sq. Ft
031 K103
11,786 Sq. Ft
031 L135
CHANDLER'S WHARF
81,980 Sq. Ft
MIDDLE'S WHARF
13,200 Sq. Ft
031 K003
UNION WHARF
1,742 Sq. Ft
031 J032
031 J003
86,862 Sq.
147,389 Sq. Ft 031 L035
34,048 Sq. Ft
L034
95,274 Sq. Ft
34,048 Sq. Ft
031 K008
FISHERMAN'S YARF
0
50
100ft

UNION WHARF

Current Disposition	*Development Potential Based on Current Zoning and Allowable Uses*	*Development Potential Based on Proposed Zoning Amendment*	*Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment*
Parcel(s) currently in "NMUOZ" zone: 031-K103 11,786 SF 031-L038 2,278 SF 031-L135 26,336 SF 013-L035* 61,250 SF *Portion of Total Lot 031-K003 13,200 SF Total in NMUOZ = 114,850 SF	**Parcel(s) currently in "NMUOZ" zone:** 114,850 SF Lot Area	**Parcel(s) in proposed "NMUOZ" zone:** 031-K103 11,403.5 SF 031-L038 2,278 SF 031-L135 18,461 SF Total in NMUOZ = 32,142.5 SF	***Reduction of 72% of "NMUOZ" Zone Lot Area***
• Current Use(s) Retail, Restaurant, Office, Parking Lot, Marine Product Production and Storage Facilities, Commercial Fishing and General Marine Berthing	• Project Description (Highest & Best Use) -Retail at 1st Floor/ Office Above (5,175 SF x 4 Floors) 20,700 SF -Office Above 1st Floor Parking (7,750 SF x 3 Floors) 23,250 SF Total Project SF = 43,950 SF ***Estimated Project Cost:*** Retail & Office Building = $ 4,906,657 Office Building = 5,981,000 Total Project Cost $10,887,657	• Project Description (Highest & Best Use) -Retail at 1st Floor/ Office Above (5,175 SF x 4 Floors of New Building) 20,700 SF ***Estimated Project Cost:*** Retail & Office Building, Total Project Cost = $4,906,657	

Current Disposition Continued:	***Development Potential Based on Current Zoning and Allowable Uses Continued:***	***Development Potential Based on Proposed Zoning Amendment Continued:***	***Net Difference / Lost Tax Revenue if the Current "NMUOZ" Zone is Reduced as Proposed by the Current Zoning Amendment Continued:***
• Current Real Estate Tax 031-K103 $ 5,374.52 031-L038 45,130.00 031-L135 30,372.73 031-L035* 67,725.18 *Portion of Total Lot 031-K003 19,069.78 Total = $167,672.21	• Estimated Real Estate Tax -Current Tax = $167,672.21 -Additional Tax Generated = 148,199.40 (43,950 New SF x $150/SF $6,592,500 Valuation @ $22.48 Mil Rate) Total $315,871.61	• Estimated Real Estate Tax -Current Tax = $167,672.21 -Additional Tax Generated = 69,800.40 (20,700 SF x $150/SF $3,105,000 Valuation @ $22.48 Mil Rate) Total $237,472.61	• Real Estate Tax ***Reduction of $78,399 of Annual Tax Revenue or 52.9% Less/YR*** ***$148,199*** ***< 69,800>*** ***$ 78,399*** ***$78,399 ÷ $148,199 = 52.9%***
• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $0	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $148,199	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) $69,800	• Amount Available to Fund Waterfront Capital Improvement Zone (T.I.F. District) ***$78,399 Less/YR***
	• Required Marine Infrastructure Investment Project Cost = $10,887,657 x .05 = $544,383	• Required Marine Infrastructure Investment Project Cost @ $4,906,657 x .05 = $245,333	• Required Marine Infrastructure Investment ***$299,050 Less Available for Marine Infrastructure Improvements***


WHARF ST
R008
032 V015
4,590 Sq. Ft
6,530 Sq. Ft
032 V005
032 V004
032 V014
8,048 Sq. Ft
032 V008
5,392 Sq. Ft
5,109 Sq. Ft
032 V012
UNION ST
COMMERCIAL ST
15,996 Sq. Ft
125'
031 J031
79,792 Sq. Ft
4,857 Sq. Ft
038 F004
4,930 Sq. Ft
038 F006
2,278 Sq. Ft
031 L036
031 K103
11,786 Sq. Ft
26,336 Sq. Ft
031 L135
13,200 Sq. Ft
031 K003
14,048 Sq. Ft
031 L034
7,390 Sq. Ft
041 A
150'
147,389 Sq. Ft
031 L035
1,742 Sq. Ft
34,048 Sq. Ft
031 L034
041 A016
95,274 Sq. Ft
500'
34,048 Sq. Ft
031 K008
041 A015
7,390 Sq. Ft
12,507 Sq. Ft
041 A012
54,000 Sq. Ft
041 A018
041 A017
UNION WARF
0
50
100ft

Attachment 4

CITY OF PORTLAND
Planning & Urban Development
Jeff Levine, AICP, Director

To: Portland Planning Board

From: Jeff Levine, AICP, Planning & Urban Development Director

Date: May 9, 2019

RE: Financial Impact Memo from Owners and Representatives of Three Wharves

---

This morning we received a memorandum from the owners and representatives of three wharves in the Waterfront Central Zone (WCZ) regarding their analysis of the fiscal impact of the currently proposed amendments. Their analysis outlines what they see as the direct fiscal impact to the City if these amendments were to pass.

I appreciate their effort to quantify these impacts and have found some very interesting data in their memorandum. However, I have significant questions about how their analysis would relate to the true impacts of the proposed amendment:

1. Their analysis is based on a full buildout of the Non Marine Use Overlay Zone (NMUOZ) under current zoning[1]. There have been no massing or circulation studies submitted with their analysis to show that these developments would meet site plan standards or would even be buildable. In my experience here in Portland and in other cities, the full buildout allowed under zoning is often not feasible due to other standards, including site plan requirements, circulation needs, design standards, and other requirements coming out of the entitlement process;
2. Their analysis only examines the positive fiscal impacts of development in the NMUOZ. A net analysis that factored in the costs to the city of servicing new development would be more useful in determining these impacts;
3. Their analysis does not factor in any positive fiscal impact of development in the WCZ outside the NMUOZ. While it is fair to assume a lower positive fiscal impact for development outside the NMUOZ, there is no attempt to quantify that amount. Clearly taking property out of the NMUOZ does not eliminate all positive fiscal impacts to the City. In the recent past, we have seen non-marine uses proposed outside the NMUOZ and successfully built, providing positive fiscal impacts to the City. These include the office on Union Wharf (one of the three wharves in this analysis), the restaurant and building on Maine Wharf, and the Pierce Atwood adaptive reuse on Merrill's Wharf;

[1] See page 2 of the cover memo: "The underlying assumptions utilized for this analysis are as follows... Development potential based on the highest and best use allowed *under current zoning* [emphasis added]"

389 Congress Street • Portland, Maine 04101 • 207-874-8720
jlevine@portlandmaine.gov • www.portlandmaine.gov

4. This analysis assumes that all current uses on these sites will be removed and replaced with non-marine uses. In reality, developments would be constructed around those existing uses and only incrementally be redeveloped, if at all;
5. This analysis assumes that the only funding required for marine investment comes from the financial contributions required in the Waterfront Central Zone code. As shown by the proposal recently outlined for the hotel on Fisherman's Wharf, other investments in the marine economy are expected and provided in any feasible project in the WCZ;
6. In the past history of Portland's waterfront, it is exactly the sort of buildout proposed in this analysis that has caused concern over the future of the Portland waterfront and, therefore, such buildout has rarely been allowed to go forward. The Chandler's Wharf project was the last major buildout effort of non-marine uses on the waterfront, and it resulted in a major change to waterfront zoning via a referendum.

Again, I appreciate the wharf owners' efforts to quantify this impact. In reality, the fiscal impact of these changes is virtually impossible to quantify accurately. The future of the Portland waterfront should be guided by public policy goals, as outlined in Portland's Plan and the work of the Working Waterfront Group over the past several months. The ordinance amendments under discussion are thoughtful and balanced, and will help preserve the balance of uses on the City's waterfront. In the long run, that balance is essential to Portland's fiscal health and vibrancy.

PLANNING BOARD REPORT
PORTLAND, MAINE

Verdante: Amendment to previous approval
56 Hampshire Street
Amendments to Level III Site Plan; IOZ Conditional Use
#2017-294; Amendment PL000488-2019
NewHeight Group, LLC, Applicant

Submitted to: Portland Planning Board Public Hearing Date: May 14, 2019	Prepared by: Caitlin Cameron, Urban Designer Date: May 10, 2019

I. INTRODUCTION

NewHeight Group LLC received approval for the project at 56 Hampshire Street on September 11, 2018 subject to conditions of approval. The applicant has since been approved for amendments to Level III Site Plan and Subdivision, and Inclusionary Conditional Use on February 26, 2019. The proposal is for a three to six story single building of 31 market-rate condominiums (previously approved for 30 units), a retail space, and structured and surface parking. The parking is not proposed to change and includes spaces for 60 vehicles – 17 for the neighboring apartment building and the remaining 43 for the residential use. **The applicant proposes an alternative material for the bays from the previously approved copper.** The applicant has withdrawn the revisions to the IZ Conditional Use approval – the details and conditions remain as previously approved. The project is located in the IS-FBC zone (UN and UT subdistricts) and within 100 feet of the India Street Historic District.

This Hearing was noticed to 134 neighbors and interested parties and the public notice appeared in the *Portland Press-Herald* on May 2nd and May 3rd 2019.The Planning Division received no public comment regarding these amendments.

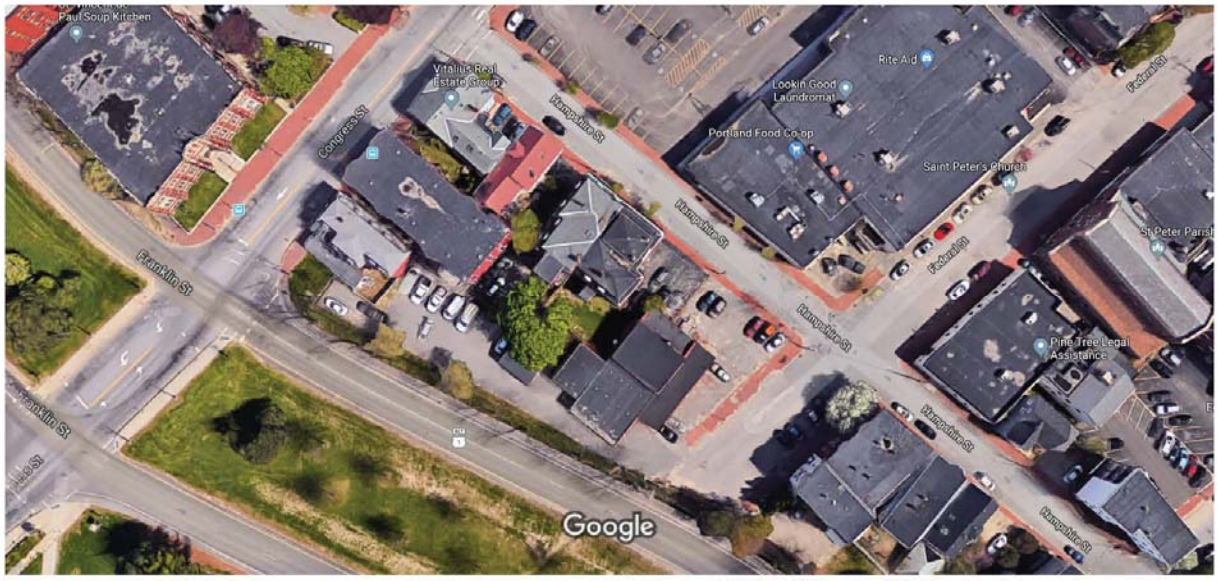
Applicant: NewHeight Group LLC (represented by Chip Newell, Erin Cooperider)
Agent and Engineer: Terradyn Consultants, LLC (Michael Tadema-Wielandt, P.E.)
Architect: Archetype, P.A. (David Lloyd)

Required reviews for the Amendments:

Applicant's Proposal	Applicable Standards
Change to the Elevations (material)	Level III Site Plan Review/IS-FBC Building Design Standards

II. PROJECT DATA

SUBJECT	*DATA*
Total area of the site	19,366 sq ft
Total Disturbed Area	19,366 sq ft
Existing Zoning	ISFBC (UT, UN)
Existing Use	Commercial building, surface parking
Proposed Use	**31 Residential units**, retail, parking
Impervious Surface Area --Existing --Proposed --Net Change	 16,555 sq ft 9,683 sq ft 6,872 sq ft
Building Footprint --Existing --Proposed --Net Change	 5,118 sq ft 13,817 sq ft 8,699 sq ft
Building Floor Area --Existing --Proposed -Net Change	 5,118 sq ft 64,377 sq ft 59,259 sq ft
Proposed Room Mix -One-bedroom -Two-bedroom -Three-bedroom	 11 (formerly 9) 9 11 (formerly 12)
Parking Spaces	60 (43 residential; 17 neighbor spaces)
Bicycle parking Spaces	12 (none existing)
Estimated Cost of the project:	$12,950,000



Imagery ©2018 Google, Map data ©2018 Google 50 ft

III. PROPOSED AMENDMENTS

The amendment application includes the following revisions to the approved project:

- Architectural changes to the bay materials from copper to a cementitious, faux wood panel

Applicable Conditions of Approval:

- If the **siding material on the bays** is not copper, then the Applicant shall come before the Planning Board for review and approval of an alternative material.

STAFF REVIEW

A. ZONING ASSESSMENT

The proposed amendments do not impact the dimensional requirements of the zoning – the building footprint, envelope, or height are not proposed to change.

There are design implications to the proposed exterior elevation revisions and the IS:FBC Building Design Standards – this is reviewed in Section D: Design Standards.

B. SITE PLAN STANDARDS

14-526 Site Plan Standards The proposed change does not affect the Site Plan Standards – all standards met.

C. IMPACT FEE ASSESSMENT

The Site Plan approval is dated September 11, 2018 – Site Plans approved prior to December 19, 2018 are exempt from the recently adopted Impact Fee Ordinance.

D. DESIGN STANDARDS

Figure 1 Previously approved Hampshire Street and Federal Street façade composition with two bays, copper material, vertical proportioned windows, regular window pattern

In the approval, Planning Board members discussed the importance of the Congress Street corner of the building conveying a gateway character without walling off the neighborhood; the character and façade composition on Hampshire Street. The board commented that the grey brick was acceptable as a material choice but found that the copper material on the bays was a critical element of the design in meeting the IS:FBC Building Standards to comply with standards around compatibility with context.

Revisions: The applicant is requesting the following amendments:

- Material selection for the bays – The bay material is proposed to change from the previously approved copper metal for cost reasons. The applicant submitted renderings, elevations, and material samples for Nichiha Vintage Wood series in Cedar finish. This will have a vertical application with seams at each floor. The previous amendment approved an alternative material for the rear stair tower – this material would apply only to bay projections throughout the project.

Figure 2 Approved Materials

Figure 3 Proposed Material Option

Figure 4 Proposed Bay Material

Staff Analysis: The surrounding built context could be divided into the low-rise historic residential structures of the narrow Hampshire Street and the newer, large-scale development on the wide Franklin Street. The design priorities for new construction in this neighborhood are buildings that **maintain the urban street wall, engage the public realm, and respect and fit into the established context.** Given the contemporary nature of this design, **façade composition, fenestration proportions, and materials become very important for getting this project to meet the design standards around context compatibility.**

Excerpted from the IS:FBC Building Design Standards:

1. *Neighborhood Context:*
    - *Promote thoughtful architectural relationships between new and existing buildings and between adjacent urban neighborhoods.*
    - *New construction should respect the surrounding context demonstrating recognition of patterns and characteristics that exist in the context sharing the same streetscape. Such patterns and characteristics include:*
        - *Proportion, directional expression, and composition of principal facades*
        - *Rhythm of solids to voids in facades*
        - *Rhythm and proportion of openings*
        - *Relationship of materials, texture, and color*
        - *Roof shapes*

Articulation & Composition:

- *Establish architectural scale patterns or features that relate to adjacent buildings*

Building Materials:

- *Building materials and techniques shall reflect or complement the existing materials and techniques within the India Street Form-based Code zone and shall be visually compatible with the predominant materials used in the structures to which they are visually related.*

Material Selection for the bays:

Compatibility with Context – Though the project sits at the edge of the neighborhood and Franklin Street lacks a strong context, the project interfaces with Congress, Federal, and Hampshire streets and is highly visible from within the neighborhood – the renderings provided by the applicant convey these visual connections. Given that the scale, massing, and brick material are contemporary and differ from the context, **the bay material is considered to be a critical element to bringing a relatable scale and a material relationship from this building to the surrounding neighborhood**. Staff design review finds that the bay material should have a **warm tone, fine-grain scale, and depth of color and texture** to relate to the clapboard and red brick found in context in order to meet the standards and follow the intent of the original approval.

Staff found the proposed material to have a color, texture, and level of depth and variation sufficient to be compatible with and visually relate to the surrounding context which includes red brick and clapboard. The color/shade of brick tone does vary throughout the neighborhood, some with a more red tone, some more orange. Therefore, staff found the cedar color to be a compromise that meets the design standards for compatibility given the project is visible from multiple streets and with different contexts.

Franklin Street - The Cedar finish is the same material used on the Luminato project. By using this material, the Verdante project will have a visual relationship with its neighbor as experienced from Franklin Street. Franklin Tower is also a more orange brick color.

Articulation & Composition – The material will be oriented vertically with seaming details at each floor (see P1 P2 P3). Staff support these details as providing articulation and thoughtful detail (floor delineation, texture, reveal) that corresponds to the design standards around articulation and closely resembles the intent of the originally approved copper. The material should not attempt to look like wood or brick, but rather, have the character and qualities that relate to the contextual materials.

Durability and Quality – The design guidelines seek authenticity, quality, and durability for materials in this zone. Though this product differs in copper/metal in some of its qualities, staff do consider the substitution to meet these requirements given the location of the material is above ground (viewed from further away, placed away from high traffic conditions).

Refer to the samples provided at the meeting.

IV. STAFF RECOMMENDATIONS

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed amendment to the Subdivision for the Verdante development.

Staff recommend bay materials that are warm in color that relate to the context of red brick. Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the material amendment.

V. PROPOSED MOTIONS

A. SITE PLAN

On the basis of the following:

- Level III subdivision and site plan application (#2017-294) approved with conditions by the Planning Board on September 11, 2018;
- Level III application amendment and amended IZ conditional use applications (PL000488-2019) as approved with conditions by the Planning Board on February 26, 2019;
- Pending applications, plans, reports, and other information submitted by the applicant for the amended application (PL000488-2019);
- Findings and recommendations contained in the Planning Board Report for the public hearing on May 14, 2019 for application amendment PL000488-2019; and
- Testimony presented at the Planning Board hearing,

The Planning Board finds that the amended material selection and placement **is/is not** in conformance with the site plan standards of the land use code and **approves/does not approve** the application, subject to the following condition of approval:

PRIOR TO RECEIVING A BUILDING PERMIT

1. The final architectural drawings shall be revised per Planning Board discussion regarding bay material selection, detail, and placement.

ATTACHMENTS:

Attachments to Report - none

Public Comments - none

Applicant's Submittal

A. Applicant Letter – Materials
B. Applicant Letter – IZ Conditional Use

Plans

P1 Elevations
P2 Elevations
P3 Elevations
P4 Detail
P5 Rendering

Attachment A

Portland Maine Yes. Google's good here.

Caitlin Cameron <ccameron@portlandmaine.gov>

FW: Verdante new bay siding submission

2 messages

David Lloyd <lloyd@archetypepa.com> Thu, May 2, 2019 at 11:26 AM
To: Caitlin Cameron <ccameron@portlandmaine.gov>
Cc: Erin Cooperrider <erin@newheightgroup.com>, "S. P. CHIP Newell" <chip@newheightgroup.com>, Ginny <virginie@archetypepa.com>

Subject: Verdante new bay siding

Caitlin

Attached are the drawings showing the new requested siding materials on the bays . These drawings include the full elevations , detail of horizontal joint and exterior rendering . Per our discussions we are applying the Nichiha with a vertical application and establishing horizontal joints at locations of floors , thus breaking down the massing and delineating floor levels .The bottom of the bays will also receive the same Nichiha finish . The Nichiha is vintage wood with the cedar color chosen to be a warm brown color to accent the warm grey brick color and be respectful of the warmer tones of the existing neighboring buildings

We wish to use this material as we feel the copper is prone to irregular color changes and the likely staining of the brick directly adjacent to this product . The Nichiha offers us a successful product on day one without the worry of future staining and uneven color patterns . Caitlin as you know thru our discussions my clients want a quality building that will be aesthetical pleasing on the day it is built and a decade down the road . We as architects cannot guarantee that the copper will achieve their high standards and that is why we have chosen this somewhat difficult route of repeatedly returning to the board . We hope that the board can come to an understanding of our goals for this building to be a reflection of quality and aesthetics and a successful design accomplished as a direct result of following the guidance of your input and the Formed based code and our clients goals of an exceptional building.

Respectfully

David

David Lloyd, Architect

Archetype PA | 48 Union Wharf |Portland, Maine 04101 | tel. 207.772.6022 | cell. 207.831.8627

lloyd@archetypepa.com

www.archetype-architects.com

Verdante - Elevations and Vertical Nichiha Compression Joint.pdf
3134K

Caitlin Cameron <ccameron@portlandmaine.gov> Thu, May 2, 2019 at 12:43 PM
To: David Lloyd <lloyd@archetypepa.com>
Cc: Erin Cooperrider <erin@newheightgroup.com>, "S. P. CHIP Newell" <chip@newheightgroup.com>, Ginny <virginie@archetypepa.com>

Thanks David,

this is on the Planning Board agenda for May 14th
[Quoted text hidden]
--
Caitlin Cameron, AICP, Associate AIA, LEED AP
Urban Designer
Planning & Urban Development Department
389 Congress Street
Portland, ME 04101

Attachment B

Portland Maine Yes. Google's good here.

Caitlin Cameron <ccameron@portlandmaine.gov>

56 Hampshire- Inclusionary Zoning Conditional Use

2 messages

Victoria Volent <vvolent@portlandmaine.gov> Thu, May 9, 2019 at 3:58 PM
To: Erin Cooperrider <erin@newheightgroup.com>
Cc: Caitlin Cameron <ccameron@portlandmaine.gov>

Hi Erin,

This is to follow-up to your recent conversation with Jeff Levine. I understand you will not be amending the approved Inclusionary Zoning Conditional Use for Verdante Condominiums (56 Hampshire).

As you know, I did not file the Workforce Rental Housing Agreement between Verdante, CHOM, and the City (based on the original Planning Board approval). I will continue to await your directions as to the filing (along with a check for $54.00 made payable to CCRD).

Please correct any information I may have misunderstood.

Thank you for your assistance,

Victoria

Victoria Volent
Housing Program Manager
Housing and Community Development
Phone: 207-482-5028
Fax: 207-874-8949
www.portlandmaine.gov

Erin Cooperrider <erin@newheightgroup.com> Thu, May 9, 2019 at 4:23 PM
To: Victoria Volent <vvolent@portlandmaine.gov>
Cc: Caitlin Cameron <ccameron@portlandmaine.gov>

Hi Victoria:

Confirming your understanding from Jeff.

With respect to the Workforce Rental Housing Agreement you are holding for recording, it is my understanding that it will not be recorded until Verdante is completed. At that time, and prior to issuing the CofO for Verdante, it will be recorded and the fee in lieu will be paid to the City. All the requirements associated with that agreement will also have been met by the CofO date.

Best Regards,

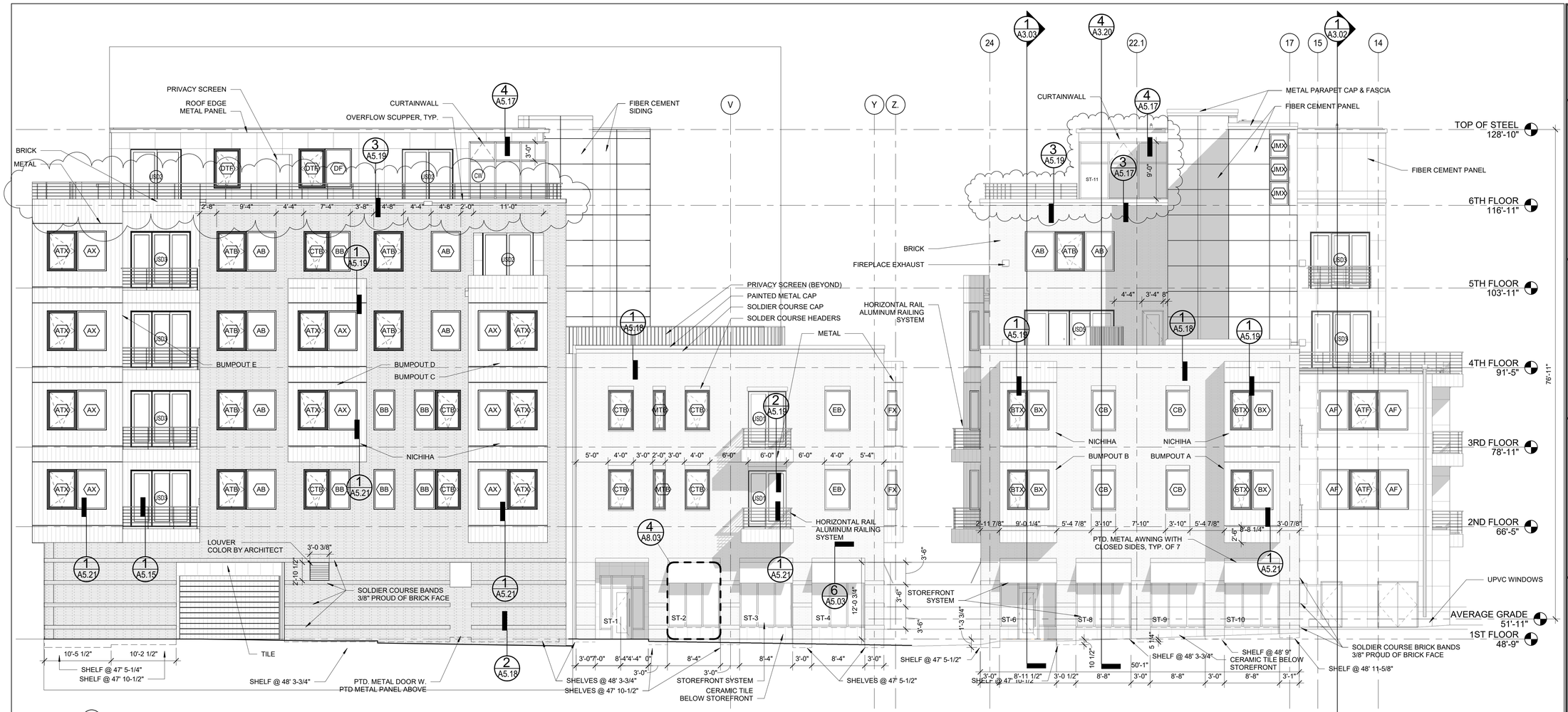
Erin Cooperrider
NewHeight Group
erin@newheightgroup.com
207.720.0181

Verdante at Lincoln Park. 31 homes. 22 plans. Endless Possibilities. verdantecondos.com

NewHeight Group. Development for Today's Lifestyles. newheightgroup.com

[Quoted text hidden]
[Quoted text hidden]

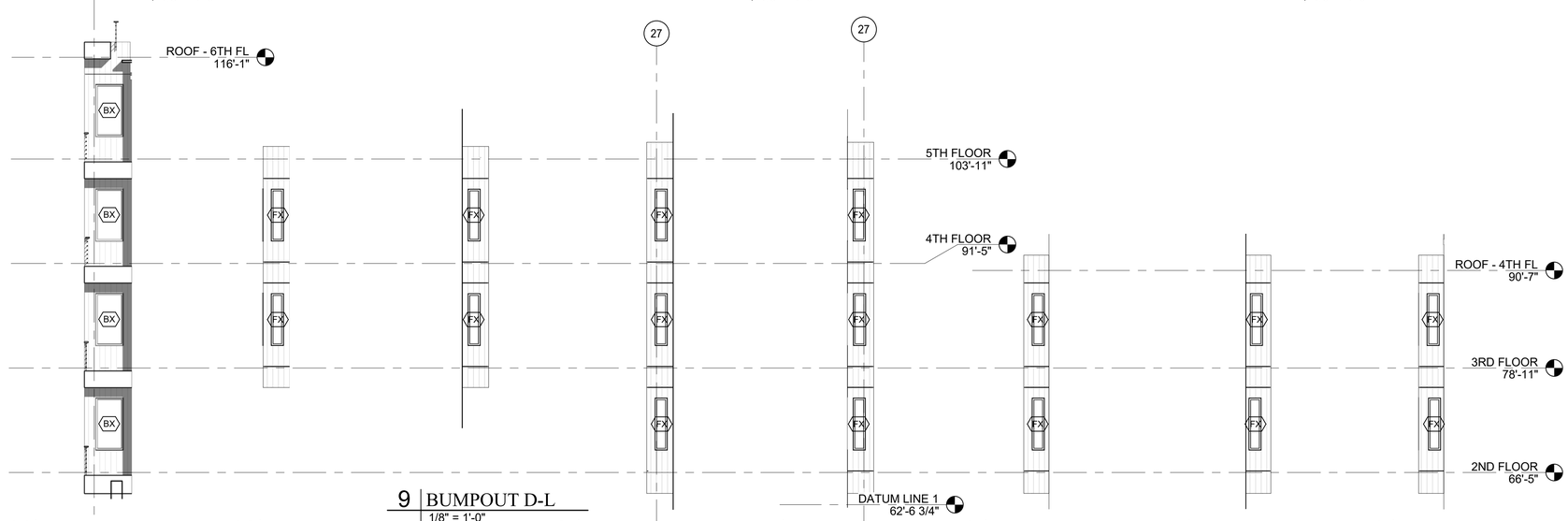
Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



12 FEDERAL ST. ELEVATION.
1/8" = 1'-0"

2 FEDERAL ST. 3-STORY ELEVATION
1/8" = 1'-0"

1 HAMPSHIRE ST. ELEVATION
1/8" = 1'-0"



11 BUMPOUT E-R
1/8" = 1'-0"

10 BUMPOUT D-R
1/8" = 1'-0"

9 BUMPOUT D-L
1/8" = 1'-0"

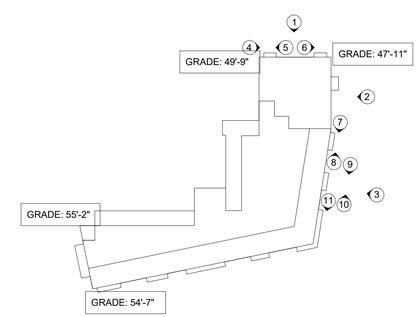
8 BUMPOUT C-R
1/8" = 1'-0"

7 BUMPOUT C-L
1/8" = 1'-0"

6 BUMPOUT B-R
1/8" = 1'-0"

5 BUMPOUT A-L
1/8" = 1'-0"

4 BUMPOUT A-R
1/8" = 1'-0"



GENERAL NOTES:

1. AVERAGE GRADE BY DEFINITION: GRADE TAKEN AT THE FOUR (4) BUILDING CORNERS DIVIDED BY FOUR (4) -
55'-2" + 49'-9" + 47'-11" + 54'-7"= 207'-5" /4 = 51'- 10 1/4"

2. BUILDING HEIGHT: THE VERTICAL MEASUREMENT FROM AVERAGE GRADE TO HIGHEST POINT OF THE ROOF BEAMS = 77' - 0"

GENERAL NOTE:

* WINDOW PANS AND JAMB FLASHING AT ALL WINDOWS AND EXTERIOR DOORS
* SOUND ISOLATION FOR ALL BUILDING MOUNTED HEAT PUMPS
* ANY THROUGH WALL STEEL TO BE SQUARE TUBE AND THERMAL ISOLATION CONNECTIONS

Prepared For:
NewHeight Group

Consultant:

Architect:
ARCHETYPE ARCHITECTS
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:
VERDANTE
99 Federal Street Portland, Maine

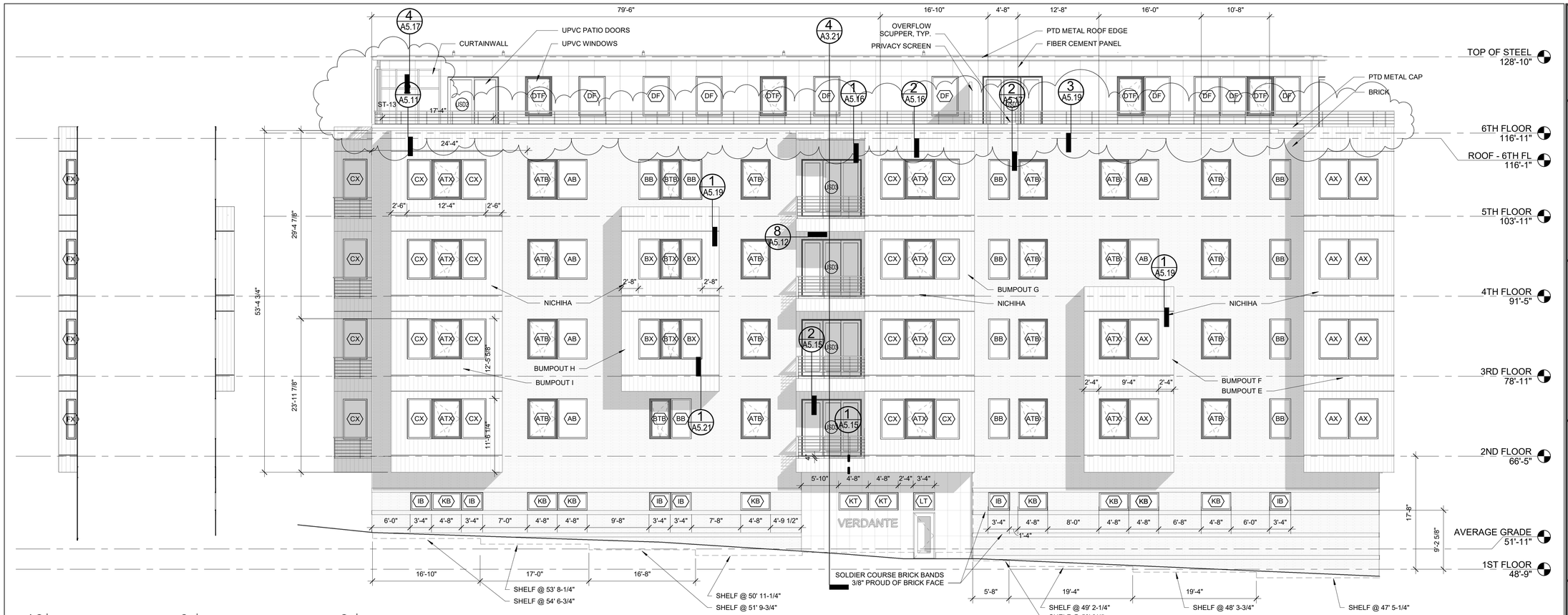
Revisions:
3 4-05-19 PRICING EXERCISE

Scale: As indicated

Date: APR. 5, 2019

ELEVATIONS

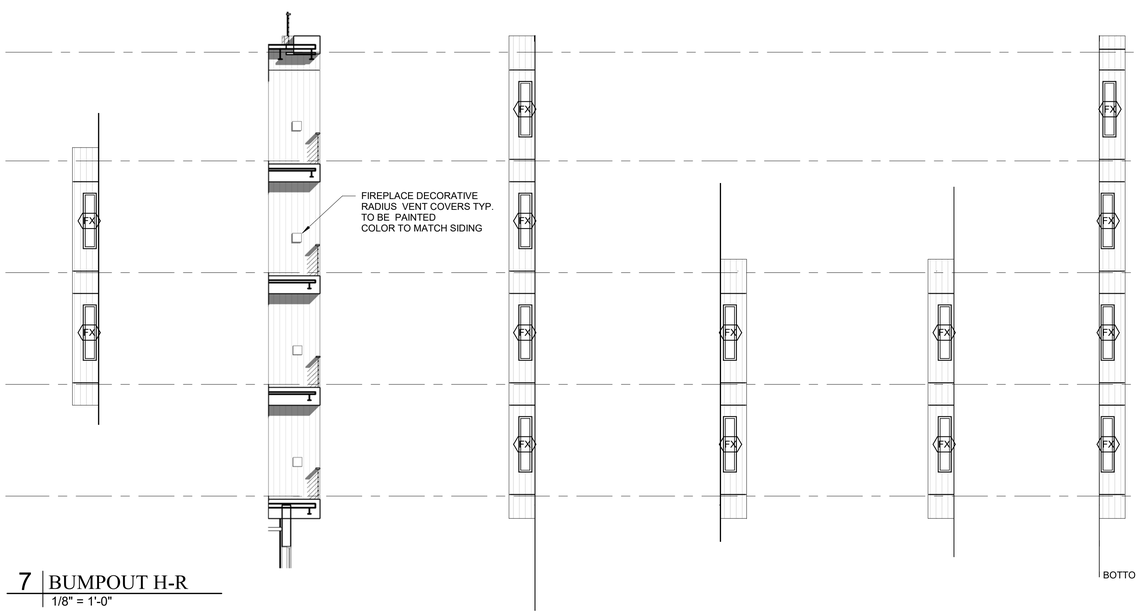
A2.01



10 BUMPOUT I-R
1/8" = 1'-0"

9 BUMPOUT H-L
1/8" = 1'-0"

8 FRANKLIN ST. ELEVATION
1/8" = 1'-0"



7 BUMPOUT H-R
1/8" = 1'-0"

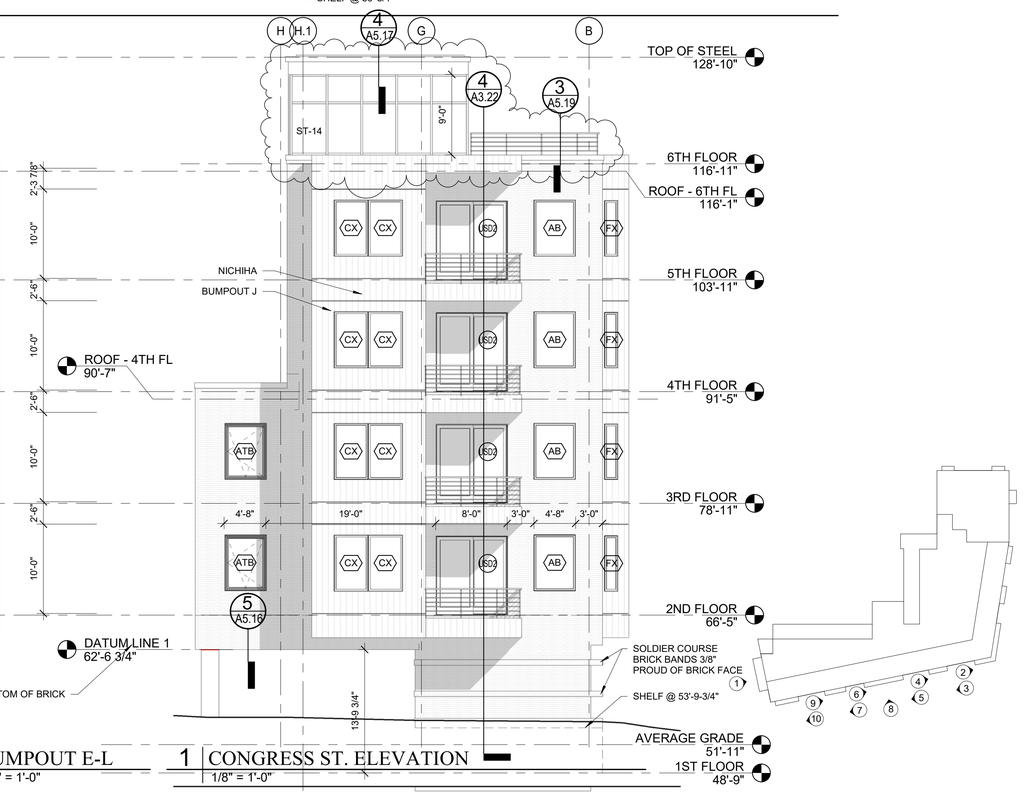
6 BUMPOUT G-L
1/8" = 1'-0"

5 BUMPOUT G-R
1/8" = 1'-0"

4 BUMPOUT F-L
1/8" = 1'-0"

3 BUMPOUT F-R
1/8" = 1'-0"

2 BUMPOUT E-L
1/8" = 1'-0"



1 CONGRESS ST. ELEVATION
1/8" = 1'-0"

Prepared For:
NewHeight Group

Consultant:

Architect:
ARCHETYPE ARCHITECTS
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:
VERDANTE
99 Federal Street Portland, Maine

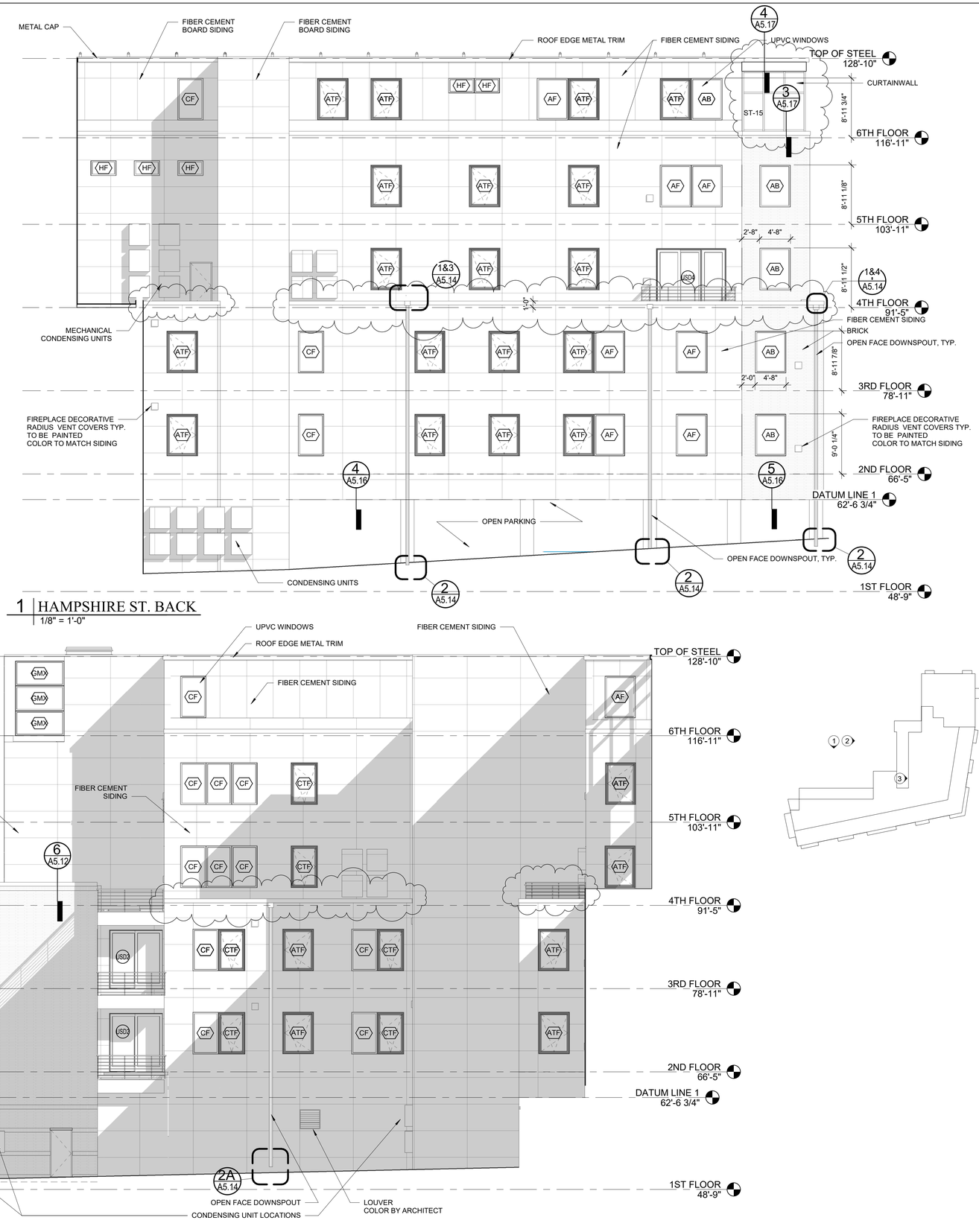
Revisions:
3 14-05-19 PRICING EXERCISE

Scale: As indicated

Date: APR. 5, 2019

ELEVATIONS

A2.02



Prepared For:
NewHeight Group

Consultant:

Architect:
ARCHETYPE ARCHITECTS
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:
VERDANTE
99 Federal Street Portland, Maine

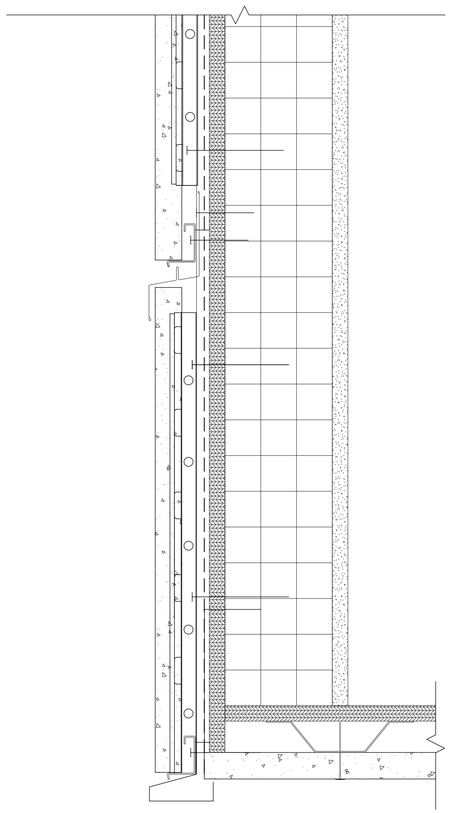
Revisions:
3 4-05-19 PRICING EXERCISE

Scale: As indicated

Date: APR. 5, 2019

ELEVATIONS

A2.03



1 BASE OF BUMP OUT ADJACENT TO DECKS AND STAND ALONE
6" = 1'-0"

Prepared For:
NewHeight Group

Consultant:

Architect:
ARCHETYPE ARCHITECTS
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:
VERDANTE
99 Federal Street Portland, Maine

Revisions:

Date: APR. 5, 2019
Scale: 6" = 1'-0"

DETAILS

A5.21

ONLY