

42-D-4

390 Commercial St.

Zone change - Beckys diner

Rebecca Rand



GERTRUDE Z SALEM

Michael Zdanowicz sits on the stern of his lobster boat, Gertrude Z, in Beverly, Mass., whose grandfather started the family's lobster business in Salem, Mass., in 1918, was forced to move his operation because of the modernization of Salem's waterfront.

Associated Press

Last commercial fisherman leaves town

• The departure of Michael Zdanowicz closes the book on the proud fishing tradition of Salem, Mass.

Associated Press

SALEM, Mass. — Commercial fishing, a centuries-old way of life in this New England coastal town, has drifted away on a tide of tourism. Michael Zdanowicz, 39, whose grandfather set up a family lobstering base in Salem in 1918, shoved his wooden float on June 15 from the Central Wharf he had used for lobster pots.

"There were no compromises to be made," he said. "It was kind of disheartening." Zdanowicz was swept out on a wave of modernization that has transformed the town's coastline into private developments and national parkland.

Leaning heavily on its seafaring heritage for tourist dollars, Salem has restored fishermen's historic homes, built marinas, condominiums and pricey seafood restaurants, and attached nautical names to stores. There was no room for a real live lobsterman.

The eviction notice came from the National Park Service, which wants to repair the eroding wharf and build several historic warehouses and an old ship.

Zdanowicz had stood his ground for years, but a contentious public hearing, angry letters and confrontations and threatened fines eventually

"He didn't go. He wouldn't go. Until now we accommodated him," said Cynthia Pollack, a Park Service official in charge of the site. "But you can't conduct business in a national park unless you're a concession." Salem, a town of 38,000 residents north of Boston, has never been a large fishing port but commercial fishing has always had a place, as it has in most New England coastal towns.

While the number of commercial fishermen and lobstermen in Massachusetts has remained stable in recent years, the fishermen often have been forced out of traditional ports. They go in search of undeveloped ports or inlets. Zdanowicz moved to Beverly, 3 miles north. "All things change, everything has to change a little," said William Palombo, president of the Atlantic Offshore Fishermen's Association. George Nowak, a city councillor for 21 years who used to buy lobsters from Zdanowicz's uncle Joseph, said

he finds the Park Service's ironic. The planned historical sites are "a good idea, should leave the lobster there," he said. "That's that should be preserved." "There is supposed to be heritage in the area. It's too bad because enjoy talking to a lobster boat and fishing boats or Central Wharf. There was Tommy, my recalled "y in the cit out." Zdanowicz when his father's son, I thing don

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JUL 31 1992

GUILFORD TRANSPORTATION INDUSTRIES, INC.

Writer's New Number (603)429-1115
New Facsimile Number (603)429-1755

July 29, 1992

Chairperson Joseph R. DeCoursey
Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

Re: Waterfront Zoning

Dear Chairperson DeCoursey:

Guilford Transportation Industries, Inc. is the parent corporation of Portland Terminal Company. Portland Terminal Company owns a considerable amount of waterfront property in Portland. Its holdings begin on the Fore River in the vicinity of Congress Street and extend along the shoreline around the Veterans Bridge up to the so-called "Million Dollar Bridge". In the area between the Veterans and Million Dollar Bridges, Portland Terminal Company owns property on both sides of Commercial Street. On the easterly side of the Million Dollar Bridge, Portland Terminal Company also owns two parcels of land on the northerly side of Commercial Street. These are approximately located across Commercial Street from Deakes Wharf in the vicinity of Park Street. As the owner of such waterfront holdings, Portland Terminal Company is concerned about the current proposed zoning.

The current zoning proposal places most, if not all, of Portland Terminal's properties in the Waterfront Port Development Zone as opposed to the Waterfront Center Zone. Leaving aside for the moment my concerns regarding the specifics of each proposal, I am primarily concerned with the principal difference between the two zones.

Although Portland Terminal Company is not a member of the Waterfront Alliance, I have spoken with several property owners involved with the Alliance project. I understand that they are seeking relief from current zoning restrictions. The need for this relief has arisen from the fact that the current economics of waterfront related business do not support the costs associated with owning real estate in the area. I sympathize with the landowners' plight.


Chairperson Joseph R. DeCoursey
July 29, 1992
Page Two

However, it would be inconsistent and unfair for the City to recognize the plight of these individuals, situated in the Waterfront Central Zone, on one hand and on the other hand impose more severe restrictions on Portland Terminal Company's properties located in the Waterfront Port Development Zone. Simply put, Portland Terminal Company should not be made to suffer the economic hardship for which the City would be granting relief to the property owners located in the Waterfront Central Zone.

Although I am generally opposed to the establishment of the Waterfront Port Development Zone, in the event that it comes into being, I am also concerned with its geographic scope. It is my understanding that the City has an interest in preserving the deep water berthing located along the Portland Terminal Company property between the Million Dollar and Veterans Memorial Bridges. It seems to me that the City can preserve access to this area without encumbering all of the property between the two bridges. Further, with respect to property located east of the Million Dollar Bridge, I do not see any rationale for including property north of Commercial Street in said zone.

I hope that these concerns can be taken into account as the proposed zoning ordinance is worked and reworked during the coming weeks so that all landowners can be treated fairly and without discrimination. I will make myself available at planning board workshops to discuss this position further or at any time convenient to the board.

Sincerely,



Leonard A. Lucas
Vice President-Real Estate

LAL:img

cc: Joseph E. Gray, Jr. Director, Planning and Urban Development
Alexander Jaegerman, Chief Planner

July 9, 1992

TO: Joseph R. DeCoursey, Chair, Portland Planning Board and
Members of Planning Board. cc: J. Gray, A. Jagerman, R. Knowlan

FR: Keep The Port In Portland, K. Sanford, Chair.

RE: Proposed Changes to Waterfront Zoning- PRELIMINARY QUESTIONS.

NOTE: We apologize for the discrepancies between section numbers and titles as referred to here versus those which the Planning staff may use. We had to respond to the earlier draft written by Planning staff which was used in a July 7, meeting between Planning staff and the Waterfront Alliance.

As you consider the preliminary draft of possible zoning changes, we ask you to give thought to the following questions:

1) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (1)

a) MARINAS: Given the experience in 1986 with the loss of commercial berthing on Chandler's Wharf, and the subsequent Planning Board legislation (ultimately adopted by City Council in 1987), to protect commercial berthing in the W-2 zone, is the City of Portland still committed to preserving at least 12 piers on the central (W-2) waterfront for year-round commercial berthing which supports the public investment in the Portland Fish Pier?

Is there a real difference between a gradual (or sudden) conversion of an existing commercial-berthing pier to most or all recreational berthing versus new construction of a marina?

Would it make sense to allow the existing marina provisions in the W-1 and W-2 to remain? (The only pier which, in the Waterfront Alliance recommendations, is no longer within the existing W-1, W-2 boundaries is the International Ferry Terminal which, by Alliance definition, is now in the "Port Development Zone" which is not recommended for marina use - and is therefore protected from marina conversion, and is publically-owned)

NOTE: In our small, deep-water harbor, there are five major marinas: Breakwater, Spring Point, Marine East, DiMillo's and Channel Crossing. There is significant recreation berthing at Chandler's Wharf and at Merrill's. The City's 1988-1990 Waterfront Task Force recommended no more marinas within the inner harbor area. (Recommendation #1)

2) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (2)

a) PROFESSIONAL, BUSINESS AND GENERAL OFFICES:

Are all office uses equal? Should the city be concerned by the NATURE of the office use? Would a Pediatric doctor's office, or a Gerontologist's office create pedestrian-truck - conflicts, for example, that perhaps an engineering consultant's office would not? Will the parking and congestion problems already present on the central waterfront be exacerbated more by one type of office than another?

b) RESTAURANTS:

Are all restaurants equal? Again, should the city be concerned about the NATURE of the restaurant? With SIX restaurants on the waterfront (five adjacent to the Old Port and Becky's within walking distance of Old Port) does the city want to encourage the proliferation of waterfront restaurants with their parking requirements and potential congestion problems? (The CDC, under Pam Plumb's leadership in 1989, devised a set of criteria for waterfront restaurants; that work might be useful in your discussions.)

c) CRAFT AND SPECIALTY SHOPS:

Would this provision permit pottery shops, jewelry designers, art galleries, T-shirt silk-screening shops, for example? Do we want to encourage tourist shopping, and other casual shopping in the midst of semi-truck and forklift traffic on our narrow piers? What are the liability implications for property owners?

d) RETAIL AND SERVICE ESTABLISHMENTS:

Is it in the best interest of the City of Portland to encourage the development of a THIRD RETAIL DISTRICT (Congress St., Old Port, waterfront)? Are boutiques a desirable, compatible or wise use of the waterfront resource? When would the cumulative impact of such uses seriously interfere with the working waterfront's ability to function? Would Portland become another Newport?

Is tourist and other casual shopping compatible with the industrial nature of the working waterfront?

- e) BANKING,
 f) LAUNDRY AND DRY CLEANING SERVICES:

What is the rationale for including these as permitted uses? Would these uses want upper story locations? Or would they be considered for the first floor of buildings more than 100' from the water? If so, would the high customer turnover at the entrance to working piers congest these areas and restrict access to the water?

NOTE: THE ALLIANCE MADE NO SPECIFIC RECOMMENDATIONS FOR SPECIFIC "PERMITTED USES", PENDING DEVELOPMENT OF CRITERIA TO DETERMINE WHAT IS "MARINE-COMPATIBLE"

These questions beg the broader policy question of marine-compatibility on the working waterfront. While the Waterfront Alliance did not develop a full-blown definition of nor set of criteria for determining marine compatibility, it is important to recognize that the Alliance recommendations never refer to marine-compatible as "mixed use" which carries quite liberal connotations in terms of zoning.

On the contrary, the Alliance builds the concept of marine-compatibility in the following terms:

Pg. 2, #3 "ALLOW MARINE COMPATIBLE USE OF OTHER PROPERTY THAT DOES NOT INTERFERE IN ANY WAY WITH THE ACTIVITIES OF WATER-DEPENDENT USERS"

Pg. 4 "MARINE COMPATIBLE: THOSE USES THAT ARE NOT EITHER WATER DEPENDENT, MARINE RELATED SUPPORT AND DO NOT INTERFERE WITH OR ARE NOT INCOMPATIBLE WITH THE ABOVE - ARE ENCOURAGED"

Pgs. 6,8,10 "THE WATERFRONT ALLIANCE RECOMMENDS THE DEVELOPMENT OF PERFORMANCE STANDARDS OR CONTRACT ZONE CONCEPT TO BE APPLIED TO PROJECTS THAT MUST COMMIT TO AN UNDERSTANDING OF THE NEEDS OF THE MARINE DEPENDENT IN NOISE, TRAFFIC CONTROL, ODORS, PARKING, TRAFFIC, TDM, HOURS OF BUSINESS AND SO FORTH."

Pg. 8 "NON-MARINE ACTIVITIES IN SUPPORT OF PORT DEVELOPMENT GOALS MAY BE ALLOWED IN AREAS THAT ARE IN THE PDZ. WE RECOMMEND A MECHANISM BE DEVELOPED TO ALLOW SOME FLEXIBILITY IN THE 'NON-MARINE BUT SUPPORTS PORT DEVELOPMENT USES' TO ENSURE RETENTION OF THE WATER'S EDGE ON THE ONE HAND WHILE ALLOWING ENOUGH ECONOMIC ACTIVITY TO RETAIN THE AREA'S ECONOMIC VIABILITY."

Pg. 18 "A MARINE COMPATIBLE USE IS AN INDUSTRIAL OR COMMERCIAL USE THAT DOES NOT INFRINGE UPON ABUTTING OR NEARBY WATER DEPENDENT AND MARINE RELATED USES. MARINE COMPATIBLE USES SHALL NOT INTERFERE WITH THE DAILY ACTIVITIES OF WATER DEPENDENT AND MARINE RELATED USES"

WATERFRONT PLANNING FROM THE 1970's TO PRESENT

The City adopted the **Land Development Plan** in 1974, the first master plan for Portland in 40 years. One of the Land Development Plan's major recommendation was the creation of a W-1 waterfront zone (mixed use) from Fort Allen Park to the Veterans Memorial Bridge along the waterfront. The waterfront at this time was zoned I-3b Industrial, which allowed only industrial and heavy commercial uses. Concern was expressed that unless the City came up with a definitive land use and zoning plan for the area, future growth could be misdirected and the valuable resource base of the waterfront lost.

In 1975, the City formally completed and adopted the **City Edges Waterfront Improvement Program**. This report offered a comprehensive assessment of existing conditions along the waterfront including land use, building conditions, piers and wharfs, transportation, public improvements and historic buildings. The report also provided a wide range of recommendations for revitalizing the waterfront. The zoning recommendation suggested a Waterfront W-1 zone be established between the Million Dollar Bridge and Custom House Wharf.

A text amendment was developed for the W-1 zone (mixed use) in 1976 but only the International Ferry Terminal site was zoned for this designation. The following year the text was amended to correct deficiencies in the earlier ordinance and a W-1 zone was established from the Million Dollar Bridge to Custom House Wharf. In addition to a variety of marine uses, the W-1 allowed offices, retail, hotel and residential uses. The policy statement of this zone indicated that "the purpose of this zone is to permit and promote marine shipping and fishing-related uses while at the same time providing for traditional commercial and industrial uses and for customer-oriented commercial uses and residences." The remainder of the waterfront stayed I-3b.

In the early 1980's, the City commissioned a waterfront study by **American Cities Corporation**. The report generated an intense public debate on the recommendations and the future visions of the waterfront. The City then embarked on a process to develop its own plan. The product of this new effort was **Strategies for the Development and Revitalization of the Portland Waterfront**. The plan outlined a comprehensive strategy to reinvigorate the working waterfront while encouraging mixed uses in certain areas of the waterfront. (See Attachment A for zoning goals and policies.) The report also recommended a significant investment in public facilities, such as the City Fish Pier, Casco Bay Ferry Terminal and Commercial Street improvements.

The land use and zoning recommendations that were adopted by the Planning Board and City Council called for the establishment of two waterfront zones. The W-1 (mixed use zone) was limited to 4 piers (Central, Long, Portland and Custom House.) Like the earlier W-1 zone, the new version allowed maritime uses as well as retail, offices; hotels, residential uses. A new zone (W-2) was created to protect the working waterfront uses (fishing and maritime industries.) Uses were limited to marine uses. This zone runs from the Million Dollar Bridge to Widgery Wharf and from Maine Wharf to B.I.W.

The **Portland Waterfront Public Access Design Project** (1983) outlined a pedestrian walkway system along the Commercial Street waterfront. The report recommends open space along the waterfront and identifies major view corridors. Design guidelines for public access improvements and building construction are provided.

The report includes recommendations for a park on the Maine State Pier, a pedestrian walkway along the waterfront including improvements to Portland Pier. The plan also recommends that a walkway be planned from the Eastern Prom along the waterfront to the Western Prom following the Fore River to Stroudwater.

In early 1986, the Planning Board considered a request by several waterfront property owners to allow more flexibility in the W-2 zone by permitting nonmaritime office uses. The text amendment recommended by the Board allowed nonmaritime offices in the upper stories of buildings provided that such uses did not exceed more than twenty-five (25) percent of the total floor area above the first story. A sunset provision required that the nonmaritime offices be discontinued after December 31, 1992. The City Council did not enact the amendment.

On May 5, 1987, a citizen initiated referendum was passed by Portland voters enacting a new **Waterfront Overlay Zone**. The overlay zone runs along the waterfront from the Million Dollar Bridge east to Tukey's Bridge. The permitted uses of this zone are restricted to fishing activities, maritime activities and functionally water dependent uses. Hotels, residential and other nonmaritime uses are prohibited. (See Attachment B).

In April 1987, the Planning Board and City Council passed a series of zoning amendments strengthening regulation of marinas. These amendments were enacted to address the concern that recreation vessels and marinas would displace fishing vessel berthing such as what happened along Chandlers Wharf. Marinas in the W-1 zone were changed from permitted uses to conditional uses.

Performance standards were added to protect dockage space for commercial vessels. The W-2 zone was clarified to specifically exclude marinas. A conditional use standard for residential uses was changed to clarify the requirement for conserving commercial dockage space along piers.

Within a year of the referendum, the City completed a **Waterfront Action Plan for the Portland, Maine**. The purpose of this plan was to develop a comprehensive list of strategies to guide City policy along the waterfront, in light of the referendum. The focus of these policies included improvements to public facilities as well as other measures to help reinforce working waterfront businesses and commerce. A list of the 24 policies is shown as Attachment C. This document was adopted by the City Council.

The City Council appointed a **Waterfront Task Force** in 1988 to pursue in greater detail three of the most complex points of the Waterfront Action Plan. These three areas were berthing, marketing and the economic impact of land use controls. The 41 recommendations of the Task Force are shown as Attachment D. The vessel berthing recommendations suggests that fish vessel berthing should be increased and that new recreational berthing should be encouraged outside the harbor. The marketing recommendation suggests that the City should budget increase resources towards port marketing, attract more fish processors to the harbor and promote the Portland Fish Exchange.

Attachments:

- A. Waterfront Zoning Goals and Policies
- B. Waterfront Overlay Zone
- C. Waterfront Action Plan
- D. Waterfront Task Force Recommendations

Order 153-04/05

Passed: 2/7/05 7-0 (Leeman, Carr absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER APPROVING CHARGE OF
THE WATERFRONT TASK FORCE,
PHASE IV
RE: WATERFRONT CENTRAL ZONE**

ORDERED, that the charge of The Waterfront Task Force, Phase IV, a copy of which is attached hereto as Exhibit A, is hereby approved.

Waterfront Task Force, Phase IV, Waterfront Central Zone

I. CHARGE OF THE TASK FORCE:

The task force is charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms, and other means;
5. Retain quality access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structure away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers; and,

The product of the task force's work will be a report on the status of infrastructure investment in the WCZ with recommendations on any policy changes, including zoning text, for review by the Planning Board, Community Development Committee and the City Council.

II. WORK PLAN

A schedule of the task force's work plan might proceed as follows:

Meeting #1, February 2005

- Review previous waterfront planning reports and task force recommendations, specifically:
 - Waterfront Alliance Report to the Portland City Council, April 1992; and,
 - Waterfront II, *Investing in Our Working Waterfront: Final Report of the Mayor's Waterfront Task Force on Economic Development*, October 2000.
 - Update Economic Conditions Survey

(SITE TOURS WILL BE CONDUCTED FOR TASK FORCE MEMBERS, AS NEEDED, IN BETWEEN MEETINGS.)

Meeting #2, March 2005

- Evaluate the previous study and any current study of physical condition of marine infrastructure in the Waterfront Central Zone (WCZ) and work with the marine industry community to identify the core access and support needs for traditional water-dependent uses.

Meeting #3, April 2005

- Evaluate updated Economic Conditions Survey
- Evaluate pier/pier head ownership patterns analysis
- Evaluate the current language of the WCZ and identify successes and failures of the zone;

- Establish Drafting Subcommittee to work on WCZ text change language.

Meeting #4 and Public Forum #1, May 2005

Committee meeting if necessary and;

Public Forum to present data and generate input

Zone Text Subcommittee to work through June 2005

- Recommend changes to City policy (including but not limited to zoning language)

Meetings #5 and #6, July and August 2005

- Review, edit, and vote on Subcommittee's work.

Public Forum #2, September 2005

- Present Task Force Recommendations, collect public comment

III. TASK FORCE REPORT APPROVAL PROCESS

Planning Board Workshop, October 2005

Neighborhood Meeting, Required by ordinance, October 2005

Planning Board Public Hearing, November 2005

Community Development Committee, November/December 2005

City Council Workshop and Public Hearing, December 2005 and January 2006

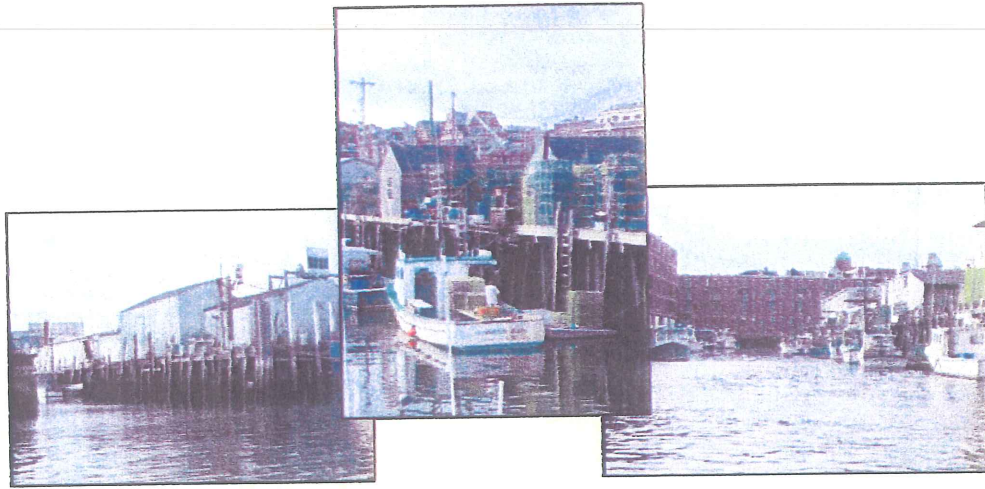
IV. MEMBERSHIP

The participants of the task force should represent multiple perspectives and include waterfront property owners and tenants, interested citizens, waterfront business owners, members of the fishing industry and other marine industries, a community development facilitator, and representatives of the State Department of Marine Resources, the State DEP/Shoreland Zoning, the Planning Board and the City Council.

**Central Waterfront Zone
November, 9, 2005 Public Forum**

Economic Conditions Survey

Conducted by Greater Portland Council of Governments

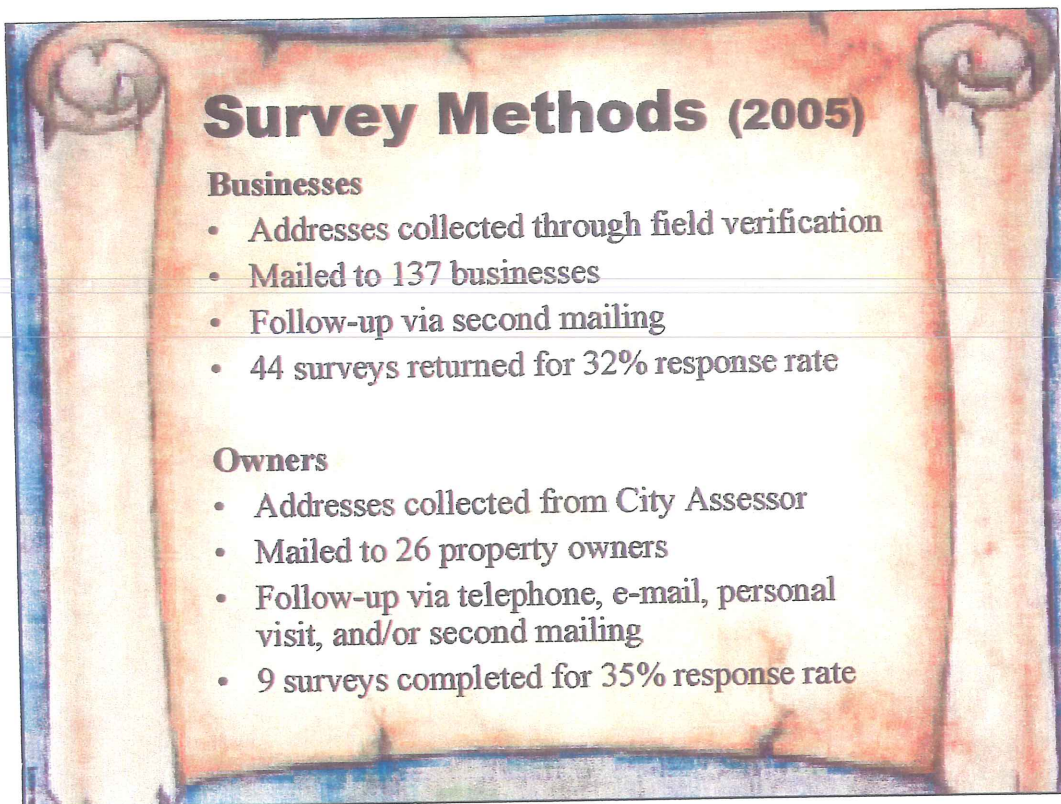


Port of Portland

- 4th largest port in the Northeast
- 1,000 jobs fishing-related jobs and services
- Over \$18 million pounds of fish landed at Portland Fish Exchange
- 175 vessels home ported
- Over 200,000 cruise ship passengers

Source: Port of Portland

The pulse of the working waterfront can be measured in a number of ways – by pounds of fish landed, by the value of new construction, by the number of cruise ship passengers, by the tons of petroleum imports. Over the last 15 years, the City of Portland has been measuring the health of the waterfront through a number of surveys designed to assess the business climate.



Survey Methods (2005)

Businesses

- Addresses collected through field verification
- Mailed to 137 businesses
- Follow-up via second mailing
- 44 surveys returned for 32% response rate

Owners

- Addresses collected from City Assessor
- Mailed to 26 property owners
- Follow-up via telephone, e-mail, personal visit, and/or second mailing
- 9 surveys completed for 35% response rate

This year, we worked with the City to survey both businesses and property owners on the Portland waterfront. Substantially the same questions were asked in 1989, 1990, 1991, 2000, and again this year to allow for comparison. Except for 1989, when businesses were called individually, the response rate has been about the same – about 30%. One big difference was that this year, only businesses in the Central Waterfront Zone were surveyed.

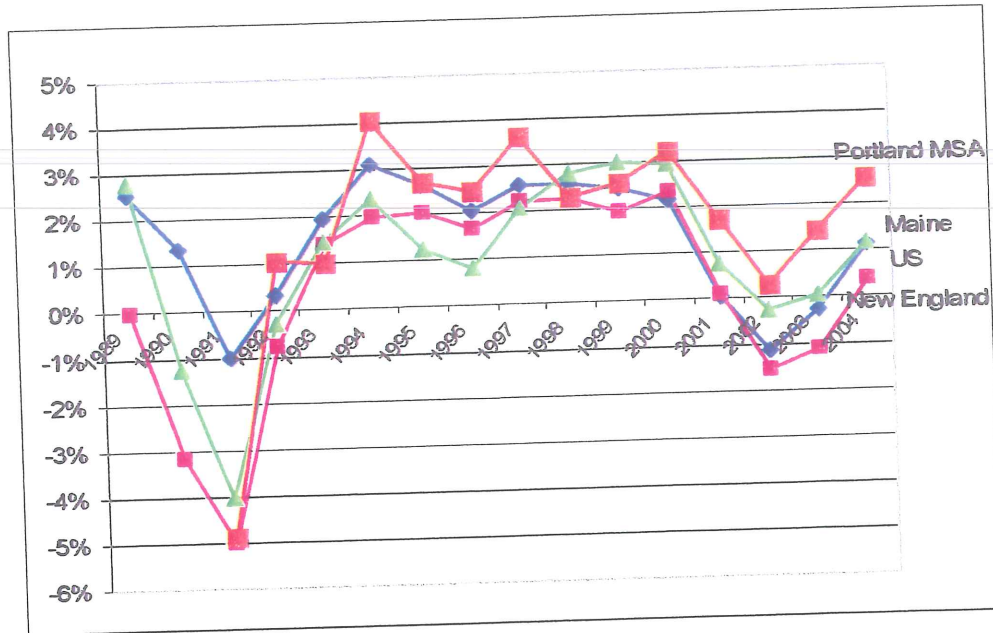
Business Profile



	1989	1991	2000	2005
Number surveyed	156	148	232	137
Response rate	71%	39%	30%	32%
Demand water access?	31%	36%	N/A	59%
Serve fishing or marine industry?	61%	64%	80%	77%
Dependent on marine for > 75% of business?	N/A	N/A	48%	64%
Over 10 years in same location?	19%	27%	32%	56%
Average full-time employees	20	30	13	11
Seasonal?	54%	N/A	25%	29%

Over half of this year's respondents said that their businesses were dependent on access to the water. More than three quarters said they served the fishing or marine industry. We might further classify waterfront businesses into four different categories: water dependent for those that require access to the water; water related for those that directly service the water dependent businesses; water related by client, for those who say the majority of their clients are involved in water dependent businesses; and "other" for those who are on the water because they find it appealing or convenient. Although average employment is down, businesses responding seem to be more stable – Over half have been on the waterfront for more than 10 years and only a third are now seasonal.

Job Growth, 1989-2004

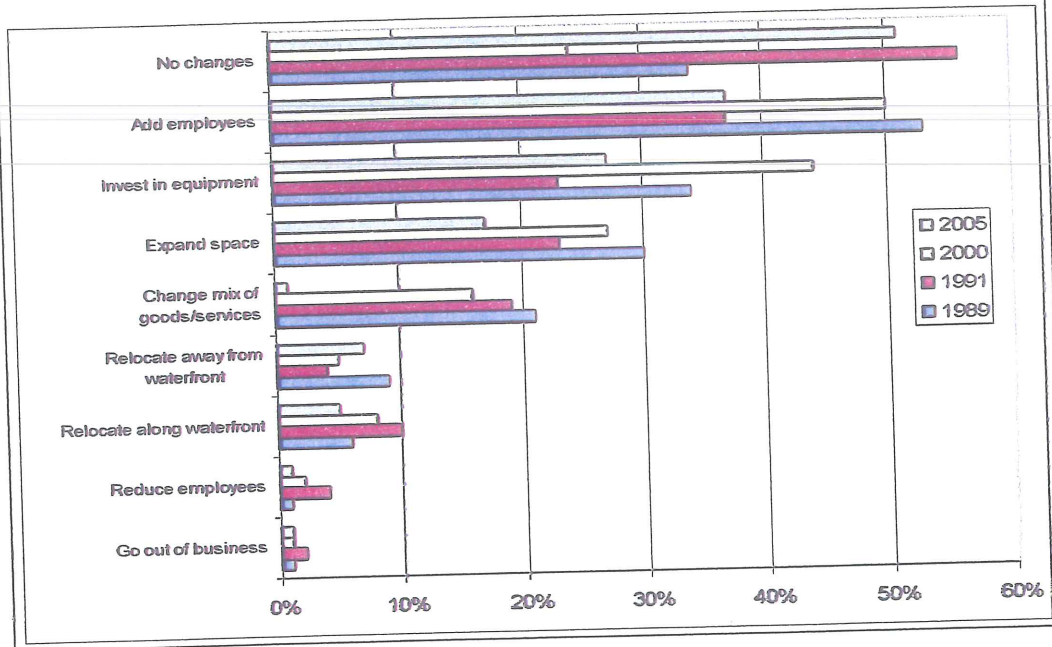


Source: U.S. Bureau of Labor Statistics

We asked businesses about their business plans as well as about their needs and problems. What's very clear, as it was from previous surveys, is that the health of the waterfront tracks closely with the rest of the economy. Job growth was peaking in 1989. The recession hit in 1991. We rebounded through the 1990's, but we took another hit in 2001. Since then, Greater Portland, although we've lost over 4,000 jobs, has done better in terms of job growth than Maine, New England, and the rest of the country. Even though fishermen, who are not "payroll" employees, are not reflected in these numbers, you'll see that the businesses that support them reflect this cycle.

Business Plans

% of businesses responding "yes" fluctuates with the economic cycle



During the boom of 1989, waterfront businesses were fairly "bullish" about adding new employees – more than half said they would. Same scenario in 2000, before the recession. But now, the mood is fairly stable. More than half report no changes are planned, much like in 1991. Still it is not all "doom and gloom." Even in the darkest of times, few, if any businesses said they would reduce employees or go out of business. This says, although the marine economy is just a small part of employment in the region, it is a stable core of the economy. One area of concern, however, is the latest response to whether businesses plan to "change their mix of goods and services." This is about innovation and flexibility in the marketplace. The response was negligible, which means that we're kind of in a holding pattern, maybe waiting to make investments until other facets of the economy become more predictable – taxes, interest rates, regulations, the war. And this was before Hurricane Katrina.

Growth

Is your current space adequate for the next three years?

% Reporting NO

1989	1991	2000	2005
28%	29%	54%	24%

Of 13 businesses that responded to the business survey in both 2000 and 2005:

- 4 lost employees
- 4 remained stable
- 5 grew, for a net growth of 13 employees



Studies show that as much as 80% of new jobs are created by existing businesses in a community rather than business moving into the community. We've already seen that over half of the businesses responding have been on the waterfront for more than 10 years. In every survey, businesses were asked an open ended question about their most important business decision in the next three years. Whether or not to expand consistently tops the list. The survey goes further to ask about space. This time around, about a quarter said their space was NOT adequate, compared to more than half in 2000. So we went back to look at what happened with the 54%, or at least the businesses that responded in both 2000 and 2005. 9 of the 13 remained stable or grew, which is probably better than in other industry sectors.

Property Owners

Occupancy

- Lease rates range from a low of \$10 per month for first floor marine to a high of \$25 per square for first floor retail.

Vacancy

- 6 reported no vacancies.
- 3 reported vacancies on the 1st floor as well as upper stories.



We heard from property owners who own entire pier or wharf as well as those who own just a portion. We did ask property owners for an inventory of tenants as well as lease rates charged. Range is \$10 for marine to \$25 for retail. Only three reported any vacancies at all, with one space in poor condition.

Investment

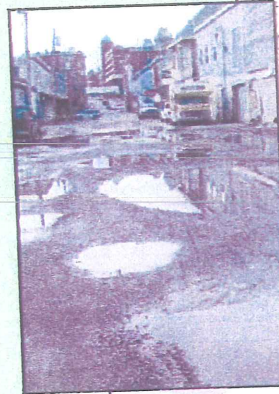
	Properties	Total Value
Buildings		
Renovation	9	\$670,870
Expansion	1	\$150,000
Replacement	1	\$150,000
New construction	4	\$12,284,400
Piers/Wharves		
Dredging	2	\$70,000
Pilings, Decking & Fendering	4	\$615,000
Floats	3	\$1,018,000
Extension	0	\$0
Total Improvements		\$14,958,270



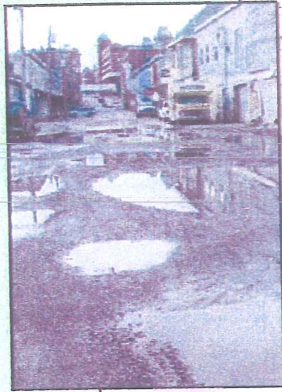
Renovation was the most popular improvement – primarily cosmetic, e.g., paint, carpet, but also systems. Some deferred the more expensive roof and masonry renovations. There was also a quite a bit of new construction – over \$12 million dollars. Less work was done to the actual piers and wharves than we hoped. Four owners reported work on pilings, decking and fendering. This and the dredging was all characterized as maintenance work. Three owners replaced floats. Repaving also occurred on a few properties.

Viability

- 5 Maintenance
- 4 Business attraction
- 2 Lack of parking
- 2 Meeting expansion needs
- 1 Dredging



While businesses were contemplating whether to expand, the number one issue for property owners was maintenance – generating enough revenue to pay for on-going expenses.



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ion needs

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Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses.

Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances 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

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higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.
(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on water-dependent uses.

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No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future water dependent development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

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- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwater-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (c) The proposed use will reduce existing commercial vessel berthing space;
- (d) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (e) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

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14-313.6 Mitigation of impacts required for non-marine uses

Even if there is a finding of "no adverse impact" under 14-313.5 for any single project, the cumulative impacts of multiple non-marine developments create an

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environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (a) direct investment in marine infrastructure, or (b) by contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a) or (b) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the Planning Board.

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(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. The next preference shall be for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. Mitigation by direct investment in marine infrastructure may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for

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permitted water dependent uses.,

(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, the applicant shall make a financial contribution to the City's waterfront loan and investment fund.

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water dependent uses), the following uses are permitted in the waterfront central zone:

(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;

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10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
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. Noncommercial berthing of less than fifty (50) linear feet per pier;
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. Parking accessory to an on-site water dependent use.

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Editor's note: all parking in the WCZ for non water dependent uses is subject to conditional use provisions found in section 14-315.

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25. Bait sales and processing

(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(i) below.

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1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) Industrial uses above the ground floor level of buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M zone.

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(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

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

(e) *Commercial uses in existing buildings located along Commercial Street.*

Buildings meeting the following criteria may house the uses listed below:

1. The subject building is located between the easterly property line of Maine Wharf and the easterly property line of the City fish pier; and
2. The subject building existed or had an unexpired site plan as of January 4, 1993; and
3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and
4. The ground floor non-marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and
5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

Subject to section 14-314(f)1 and 14-315(a) {accessory parking for non-water dependent uses}, the following uses shall be permitted:

1. Professional, business, government, and general offices;

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Deleted: 1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;¶

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Deleted: 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.¶

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2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not 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;
 5. Laundry and dry cleaning services;
 6. Cabinet and carpentry shops, studios for artists and crafts people (excluding group classes and performances), and accessory retail sales of products produced on the premises;
 7. Intermodal transportation facilities;
 8. Cold storage facilities;
 9. Museums and art galleries.
- (f) *Other:*
1. Accessory uses:

a. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a){for marine related, but not water dependent uses} or 14-315(b) {for non-marine uses.}.

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b. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the

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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 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual 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.

c. Interior meeting or classroom space accessory to uses permitted in section 14-314(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 2, but shall only be permitted as accessory uses if the total of all accessory retail and service 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 (15) percent of the total floor area per building, whichever is less.

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2. Street vendors licensed pursuant to Chapter 19.

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Sec. 14-315. Conditional uses.

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The uses listed below under section 14-315.2 shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

14-315.1 Conditional Use Standards:

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. Parking and Traffic Circulation:

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a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

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b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future

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development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

iv. Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board 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 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.

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v. Location of non-water dependent uses: For

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conditional uses listed below in section 14-315.2, non-water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

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Notwithstanding the paragraph above, marine uses listed below in section 14-315.2 (c), marine conditional uses may be located in any portion of an existing or new building, subject to a) a finding of "no adverse impact" under section 14-313.5, and b) any criteria imposed through conditional use review.

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Editor's Note: Non-water dependent marine uses listed in the permitted use section 14-314(a) are not subject to the above provision.

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vi. Expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide: Not withstanding provision v. above, the expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide shall be prohibited except as provided below:

a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume and/or floor area of that portion of the original structure located within 75 feet of the maximum spring high tide and existing as of the date of approval, but in no case closer than 25 feet thereto; and

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b. The expansion does not extend the non-water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)

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Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

14-315.2 Conditional Uses:

(a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.

(b) Parking for (i) conditional uses, (ii) non marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning: , v

Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

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Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

(c) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) 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

Deleted: , unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are permitted required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.¶

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odor limitation performance standards of the IM 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.

(3) Boat rack storage facilities, provided that:

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a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed 10,000 square feet of build footprint.

(d) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing or having an unexpired site plan as of January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the City Fish Pier) into contiguous and newly created building space of no more than 3000 sq. ft., total for the life of the building, shall be allowed only as follows:

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(1) the use may occupy ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1500 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

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(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

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(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(e) Residential: The "primary" owner of a marine business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

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(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 seven hundred fifty (750) square feet, inclusive of all exterior porches and decks;

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(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;

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(4) the residential use shall be limited to one unit per wharf;

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(5) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

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(6) upon the vacancy in excess of three (3) months of the residential living space by the

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primary owner of the marine related business, the residential use 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 related business.

(f) Utility Sub Stations

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

- i. The facility is located more than 100 feet from the water's edge,
- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. 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 related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(g) Waterfront Diner:

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¶ .Food service establishment that through hours and

Food service establishment that through hours and type of operation supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license nor shall any alcohol be served on the

**FINAL TASKFORCE DRAFT EDITS TO THE WCZ, Att. 3.18,
3-10-06**

- premises.
- ii. The diner shall open no later than 4:00am.
 - iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
 - iv. The diner shall occupy no more than a total of 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
 - v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.
 - vi. The diner shall provide full service meals and table wait staff. No formula food shall be permitted.
 - vii. No greater than 10% of total restaurant sales shall be take out service.
 - viii. Notwithstanding sections 14-315.1.v and 14-315.1.vi (Location of non-water dependent uses,) the structure housing the diner may be located up to, but no closer than 25 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

(h) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

- (1) the use may occupy upper floor areas; and
- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where

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Inserted: g) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

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**FINAL TASKFORCE DRAFT EDITS TO THE WCZ, Att.3.19,
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such circulation areas occupy no more than 300 square feet; and

(3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314 (f) 1.a, and 14-315 (a), the uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

(1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,

(2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be occupied by commercial berthing supporting a marine use listed under 14-314(a); and,

(3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

(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)

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At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).
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Sec. 14-315.3. Contract or conditional rezoning.

14-315.3 (a) General

Except as otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development:

- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under either subsection I, General or subsection II, Commercial Street/Old Port Overlay, below.

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Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

14-315.3 (b) Direct Investment in marine infrastructure The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site, the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3(c), below, shall be required for all or part of the mitigation

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Mitigation by direct investment in marine infrastructure may include, dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses. Whether on-site or off-site, the value of mitigation shall be not less than the value of compensation described in 14-315.3 (c) below.

14-315.3 (c) Financial contribution in lieu of mitigation

If (when applying Option I, General,) the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be. (All proposals applying for approval under option II, the Commercial/Old Port Overlay Zone, shall make a financial contribution in lieu of direct investment. In determining the amount of the contribution, (under either option I or II) the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

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Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993,

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pursuant to section 14-314 (b), (c) or (d).

(b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;.

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(c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

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(d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.

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(e) 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.

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(f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).

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(g) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or

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circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a) (Conditional use, Parking).

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(h) The proposed development is consistent with Conditional use standard 14-315 iv. (Public View Protection and Public)

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(i) The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine uses as listed in 14-314(a).

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¶ The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

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The following standards are applicable to the Commercial Street/Old Port Overlay Zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf (see incorporated map). For a site within the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards (option I,) immediately above. The standards within this overlay zone are as follows:

- Deleted: NOTE: The following option is still under consideration by the Waterfront Central Zone Taskforce. The Taskforce seeks public comment on this provision prior to making a recommendation to the City Council.¶

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(a) All portions of the structure are set back at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the State Department of Environmental protection that the location and development context of the subject site adhere to the State's definition of a "general development district," the coastal wetland setback may be reduced to 25 feet.

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(b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of

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Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

(c) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.

(d) 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 (either on-site or of-site), and visual and physical access to the waterfront for the general public.

(e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).

(f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)

(g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably

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¶ Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.¶

¶ 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 (either on-site or of-site), and visual and physical access to the waterfront for the general public.¶

¶ The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as ... [4]

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conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as described above in 14-315.3(c)).

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(h) Maximum building setback from the southerly sideline of Commercial Street shall be no more than 10 feet.

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¶ (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).¶

¶ (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.¶

¶ (c) The proposed development is consistent with the comprehensive plan and, without the propos... [5]

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.

Deleted: f. Fish by-products processing as a principle use, or the processing of other material wastes of... [6]

f. Drive-up services for any use other than a permitted use listed under 14-314 (a).

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

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- (a) *Minimum lot size: None.*

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(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

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(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Forty-five (45) feet, except that within four hundred (400) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

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(f) *Minimum ground floor clearance:* Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance

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practicable up 15 feet.

(h) New Non-Marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-315.3 (conditional rezoning, option II) four 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)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *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.

- (b) *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 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

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a period of sixty (60) seconds (LEQ₁).

- (c) *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.
- (d) *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.
- (e) *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 parks and 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.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, 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 department of parks and 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

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material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.
- (k) *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.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314 (a). Siting of a use not set forth in section 14-314 (a) shall not

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substantially reduce or inhibit existing public access to marine or tidal waters.

(o) Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly property line of Maine Wharf and the easterly property line of the City Fish Pier: 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.

(p) Pier and wharf expansions: In addition to meeting Harbor Commissioner 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.

(q) 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 needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. 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. For example, any development that proposes to site a building within 10 feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through the building to allow the transfer of goods and materials to trucks and

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circulation routes within the interior of the pier.

(Ord. No. 168-93, § 2, 1-4-93)

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(m) *General site plan*
features: The Planning Board
or planning authority shall
approve a site plan located
within a shoreland zone if
it finds that the following
standards, in addition to
the standards set forth in
section 14-526, are met:¶
¶
. . .7. The proposal will not
adversely affect existing
commercial fishing or
maritime activities;¶
¶

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**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

I. Welcome and Introduction

Councilors Karen Geraghty and Will Gorham

II. Waterfront Central Zone Policy Framework Introduction

Priority of uses in the WCZ:

- {a} Water-dependent uses, with functional access and infrastructure,
- {b} Marine related uses, and
- {c} Other Compatible uses.

III. Economic Conditions Survey Results

Presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG

IV. Public Input

The Waterfront Central Zone Taskforce seeks public comment and input on development issues along Portland's Central Waterfront. In particular, the Taskforce looks to answer the following questions to aid in their analysis of the district:

{1} Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

{2} Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

{3} Mixed-use development.

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

{4} Parking.

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

V. Open Discussion between Public and Task Force

Time Permitting

VI. Adjourn, 9:00pm

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

MEETING NOTES:

1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

- Zone is too restrictive (Holyoke)
- Aqua diving – property line requirement is an issue, too restrictive
- Inappropriate non marine uses conflict with marine uses (Chandlery)
- 6 lobster boats being displaced by research vessels (Hobson’s Wharf)
- Inadequate berthing
- Function more important than appearances
- Fishing industry outlook better than generally believed
- Continue to protect water dependent, but allow mixed use above (2nd floor and above) (e.g. legal uses)
- Working waterfront berths are working
- Bill Doane, Lobsterman – things are going well. Worried about future berthing competition by recreational berthing. Need direct vehicle access to pier edges.
- Keith Lane – doing o.k. but worried about rent increases/prosperity pushing prices out of reach of fishermen.
- Preference of berthing for working vessels and access.
- Keith – Truck parking and berthing and access to pier edge building rental is only useful if very inexpensive.

2. Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for working waterfront uses?

- Concerns about traffic generated by eastern waterfront uses (Westin, etc.) interfering with water dependent uses.
- Open upper floors to additional non-marine uses, see what investment is stimulated.
- Extra floor from additional height to build on Pile Foundation Investment.
- Institutional investment in marine research is an expression of confidence in fishing industry.
- 60’s and 70’s piers with wharves were in awful condition. The last 20 years have seen substantial improvements.

- Even condo people get along with fishermen.
- 2nd floor non-marine uses subsidizes 1st floor marine uses.
- Owners need to make money from 2nd floor uses. Maybe through contract zones.
- People come to Portland to see the waterfront legacy of fishing and lobstering, not a bunch of pleasure boats.
- Port Hole – importance of fish and lobster boats existence to clientele of Port Hole Restaurant.
- Doane – keep 1st floor marine open upper floors.
- How can we keep commercial berthing affordable? Improve the wharf edges with income from upper floors. Wharf owners will invest in wharf upgrades.
- Buildings on 1st floor is almost useless. Used for trap storage. No marine uses that will pay. Trap storage deteriorates buildings. Most of wharf edge is lobster fishing.
- Fishing vessel berthing is tied to income from upper floors on union wharf.
- Custom House Wharf case – council put restrictions, esp. parking.

3. Mixed-use development

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the working waterfront?

- Harbor Fish owner – general support for current zoning. Do not over emphasize down turn in fish economy, high hopes – other species are growing. Supports comment that B-1 zone worked – supports water dependent uses but need to allow other uses on 2nd floor and above (critical). Harbor Fish invites public to pier – see #2 comment, #1 re: Traffic on Commercial. Take a common sense to zoning to everyone's benefit.
- Steve Dimillo – Can it be as simple as “no condos” – that is where it started.
- Zoning Board of Appeals letter requesting additional flexibility re: Custom House Wharf case.
- Institutional (GOMRI) role and presence on Portland waterfront, diversity is important.
- GOMRI – opening up 2nd floor uses makes sense – safety value also, building height. 35 is restrictive. An extra floor is important given the expense of pier construction.
- Enough condos – they are there but no more. We get along. Need non-marine use on 2nd floor – suggests berthing and fishing. 1st floor – marine only. New buildings – no comment.

- Lobster boats may need protection from recreational boats. Owners should make money, see (2) linkage – don't know if new construction is o.k.
- O. Keathly – Can have some change on first floor by % or on 2nd floor – must keep fishing berthing.

4. Parking

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the central waterfront.

- GOMRI – parking is the limiting factor down there. Needs city vision. Public/private like Oceangate is worth exploring.
- Big problem – fishing folk won't parking off Commercial Street.
- Fishing (lobster) needs parking on the wharf w/access for trucks.

5. Other issues

- Roger Hale - Zone is restrictive, leads to vacant space. B-1 zone was a good zone and worked. No services. "Ben Snow steals our tenant". Taxes are a problem.
- Former Zoning Board Chair – ZBA requested Council address waterfront zoning – i.e. Custom House Wharf. ZBA unable to grant variance – wrote letter to Council from ZBA – need copy of letter.
- Harbor Fish – Heritage of city is fishing. People come here to see the fishing and waterfront – now allows pleasure boats to displace lobster boats. To maintain character of the city – must preserve.

Question #1

Displacement of lobster boats for research vessels on Hobson's Wharf?

- Ben Snow to follow up.
- Need letter from ZBA

Kevin Beal:

- Various proposals for recreational berthing in other areas. Are concerns just for traffic or for boat traffic too? Mr. Doan concerns not really a problem on water, keep them out of Commercial area for berthing.

Anne Pringle:

- Gear storage – is there enough? No, not enough now, land is valuable.
- Linkage question – are rent controls needed?

Peter McAleney:

- We've been doing this for 15 years and wharves are getting pretty rough.

Anne Pringle:

- How do we guarantee money is going back to wharf?
- P.M. its my business, I needed.

K. McGowan:

- I give my lobster tenants 1st floor space because I can't rent the space.
- Square footage does not go with berth. If I want to rent space to other uses (marine) I need to displace lobster boats.

Susan Koen:

- Marine related uses – does 2nd floor help you?
- Boat owner – no use for 2nd floor. Need berth and a way to get t is with parking.
- Boat owner – Widgery wharf – have shops on wharf and storage – that may go.

Charlie Poole:

- Ability of having a fishing boat requires 2nd floor non-marine – agrees with fishing comment.

Jim Cloutier:

- Custom House Wharf contract requires commercial berthing/circulation plan. Parking restrictions are working.

Ken McGowen:

- Parking is a problem.

P. McAlleney:

- Reiterated.

Att 4.6

WATERFRONT CENTRAL ZONE TASKFORCE
January 25, 2006
Public Forum
Merrill Auditorium Rehearsal Hall, City Hall, 7:00pm

Forum Notes:

Following introductions by Chair Geraghty and a presentation of the draft text by Bill Needelman, the following comments were generated by the public participants at the forum.

Frank Riley: Concerned with the integrity of the port and stressed the opinion that new buildings shouldn't obstruct views of the harbor.

Ken McGowen: Noted that mitigation fees are not needed because the second floors are subsidizing the marine infrastructure now. He wanted to know how the 50% rule applied to properties with non-marine existing on the lower floors (given the 50% limitation on non-marine.) He stressed that the 75' setback was a problem and that offsite parking doesn't work.

Doug Mayo: prospective buyer of Sturd. Wharf for machine shop serving marine uses. He recommended that the 35 foot rule be extended to include the entire zone and that the upper floor provisions be simplified.

Paul Stevens: Representing both himself and GOMRI: Recommended at least 50 feet of building height.

Joe Malone: Representing Maine Wharf and Eric Ciancette. Please look at new construction. Supports the upper floor expansion for non-marine uses. Maine Wharf can expand over 300 feet. The 15 foot building setback is trouble for narrow piers, suggested that maybe only applied to one side on narrow piers.

Patrick ?: ZBA member (formerly?) 75 foot setback impractical for Portland. Please clean up the language.

Bill Doan: Lobsterman. 15 foot setback from pier edge a problem on narrow piers. needs a look. Question re: 50 noncommercial berthing. BN clarified.

John Cashman, Chair of the Board of Harbor Commissioners: The DEP 75 foot setback should not apply to urban waterfronts like Portland. Mr. Cashman noted that pier expansions are subject to the HC line and that other buffer provisions apply to allow navigation. These rules are presently under review by the HC. The chairs et al asked clarifying questions regarding this process and Planning staff should be made aware of these changes.

A# 4.7

Don Perkins, GOMRI: Distributed graphics to the Task force and requested consideration of extending the provision for research labs to be 50 tall up to 400 feet from Commercial Street.

Councilor Cloutier asked questions of Mr. Perkins re: commercial berthing opportunities. (DP: subject to Coast Guard, water depth, proximity to Hobson's wharf, and condition of the bulkhead.)

Peter McAllaney: Public View section needs review by a lawyer to address liability issues.

Nancy Acres: Stressed need for fencing for many reasons.

Bill Doan: Public access. People like to wander around and see the waterfront. Keep the pedestrian ways open, like between Portland Pier and Custom House Wharf. Still use it for trap hauling, but keep it open.

WATERFRONT CENTRAL ZONE TASKFORCE
March 7, 2006

Outline of proposed zone text edits

WCZ Text Outline:

- *Italicized text is a paraphrase of text edit language*

Sec. 14-313

Purpose Statement

Priority of uses

- (a) Water-dependent uses
- (b) Marine-related
- (c) Marine compatible uses

- *Clarifying language added stressing the policy of having non-marine uses support higher priority marine uses.*

Sec. 14-313.5

No adverse impact on marine uses

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
 - *Clarifying language added defining displacement.*
 - *New language added strengthening protection of property “physically suited” for water dependent use.*
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

New Section added

Sec. 14-313.6 Mitigation of impacts required for non-marine uses

- *The value of mitigation: at least 5% of total project costs or \$10.00 per square foot of non-marine space.*
 - (a) ***Direct investment in marine infrastructure***
 - (b) ***Financial contribution in lieu of mitigation***

Sec. 14-314 Permitted uses.

- (a) Marine Uses
- (b) **The “50% Rule”**
Commercial and industrial uses above the ground, limited to 50% of building.
- (d) Public Uses
 - *Utility substations moved to Conditional Use section*
- (e) **The “35-foot rule”**
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.
 - *Section Redrafted. Restrictions on first floor non-marine uses beyond 100 feet from Commercial Street*
- (f) Accessory uses:
 - *New use added for clarity: Parking for water-dependent uses. All other parking is a conditional use*

Sec. 14-315. Conditional uses.

Uses permitted subject to specific standards and requiring review by the Planning Board.

In addition to existing standards protecting marine utility of the zone, the following standards were added for conditional uses

- *Parking and Traffic Circulation Plan required for review and approval.*
- *Public View Protection standard added.*
- *75 foot setback from water for most first floor non-marine use (DEP Requirement. Up to 30% expansion allowed within 75 feet (similar to other*

Conditional Use List

- (a, b) Parking:
 - *Clarifying edit: Parking allowed for non-water dependent uses, provided that there is otherwise enough parking for marine uses.*

- (c) Marine:
 - *Minor edits provided*

- (d) ***The “Sapporo Amendment”***
Expansion of non-marine related use permitted under the “35-foot rule.”
subject to conditions.
 - *Expansion allowance expanded from 2000 sq. ft. to 3000 sq. ft. subject to conditions.*
 - *Allow upper floor expansions*

- (e) ***The “chicken farmer amendment”***
Residential: The “primary” owner of a marine related business may occupy space within the upper story of an existing building subject to conditions.
 - *Limit area to 750 sq. ft.*

- (f) *Utility Substation use*
 - *Added with conditions*

- (g) *Waterfront Diner use*
 - *Added with conditions*

- (h) *Expansion of upper floor non-marine use*
 - *Expansion allowance to 2000 sq. ft. added with conditions*

- (g) *Expansion of “50% Rule”*
 - *Non-marine use of upper floors in existing buildings expanded with conditions.*

Sec. 14-315.3. Contract or conditional rezoning.

Allowance for re-zoning to permit non-marine uses in new structures, providing the development meets the “no adverse impact clause” and additional standards.

Two options provided by Task Force. Each would be subject to mitigation investment or contribution as described in section 14-313.6 above.

- ***Option 1, “General”***

This recommendation is based on the SUZ current lack of actual water access. The included properties should constitute a special use zone that can have attributes of the Port Development, Central and current IM2 zones. Our recommendations are to allow for some of the non-allowed uses in the Central and Port Development Zones to be allowed in the SUZ. Uses that constitute potential infringements on the Central and Port Development Zone may not cause the same negative impact when located in the SUZ. Generally, all uses in IM2 and those outlined above are seen as appropriate uses after some performance standards are met.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

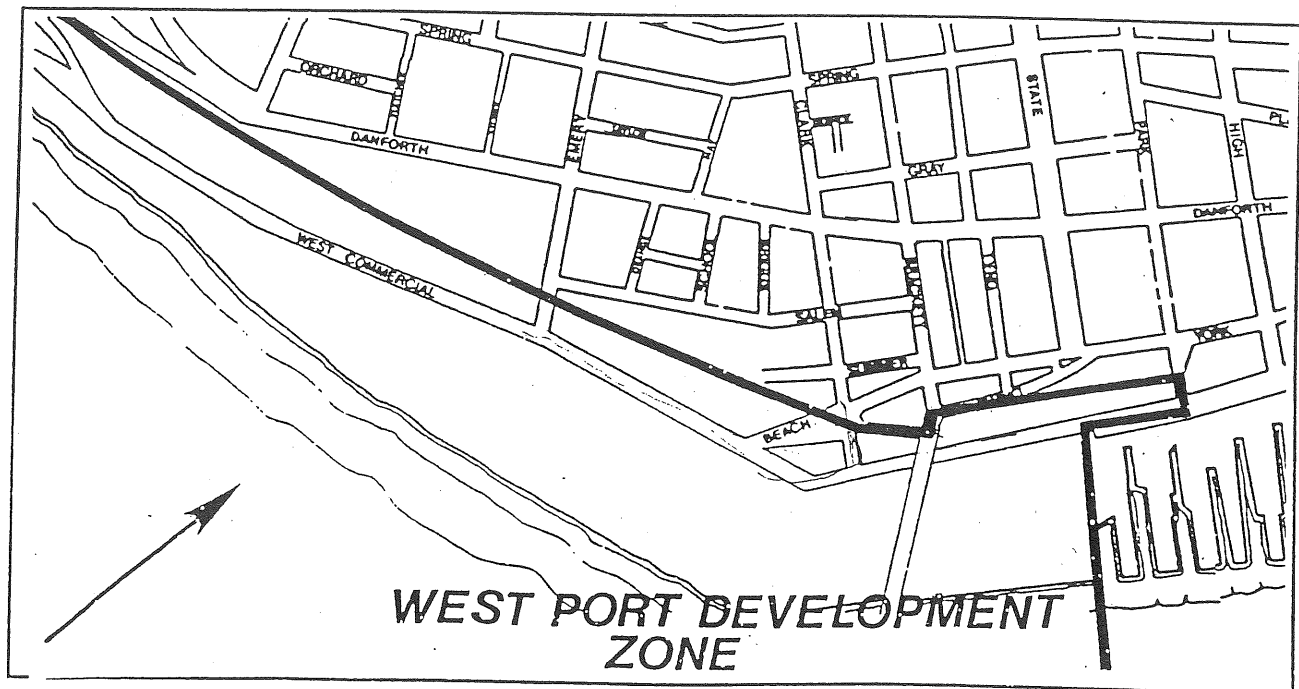
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

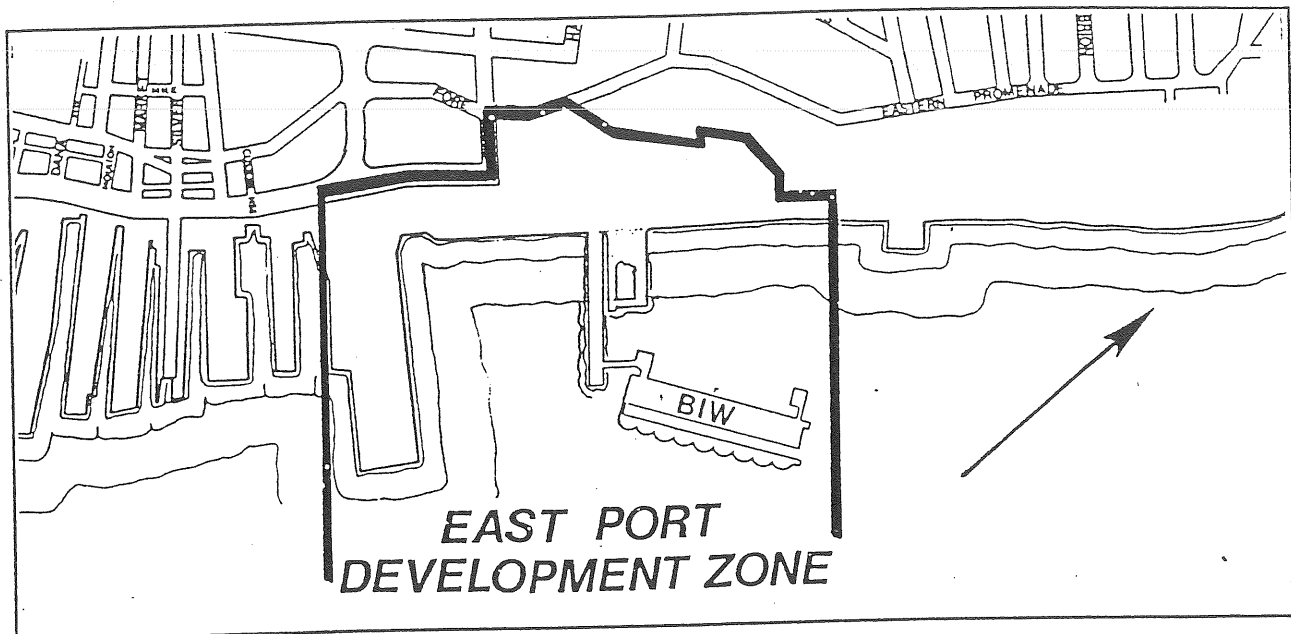
(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



PORT DEVELOPMENT EAST ZONE GEOGRAPHIC DESCRIPTION:

The area from the east side of the Maine Wharf to the easterly end of the current W-1, all areas south of the Grand Trunk Railroad r-o-w and including the r-o-w (part of old IM2).



USES NOT ALLOWED IN PORT DEVELOPMENT ZONE:

- New residential
- Hotels
- New Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Institutional
- Marine incompatible

Land Use Description: The purpose of the zone is to accommodate intermodal transportation of goods to and from Portland and the region. The description recognizes the importance of the zone to the regional economy. It recognizes that links with rail, turnpike and waterborne mechanisms are at the crux of this zone's protection of the marine dependent uses (marine only access).

The zone's existence is designed to ensure the continued viability of the port. Its uses, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water, and/or contribute to Port Development Activity.

NON-MARINE ACTIVITIES IN SUPPORT OF PORT DEVELOPMENT goals may be allowed in areas that are in the PDZ. We recommend a mechanism be developed to allow some flexibility in the "non-marine but supports port development uses" to ensure retention of the waters edge on the one hand while allowing enough economic activity to retain the area's economic viability.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

USES NOT ALLOWED IN CENTRAL ZONE:

- New residential
- Hotels
- New large Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Non-marine Institutional

Generally, no large projects that create unreasonable demands on the zone's infrastructure and that interfere now or in the future with marine only and marine compatible support.

CENTRAL ZONE USES RECOMMENDED:

Generally any use not excluded that does not interfere now or in the future with marine dependent and marine dependent support business.

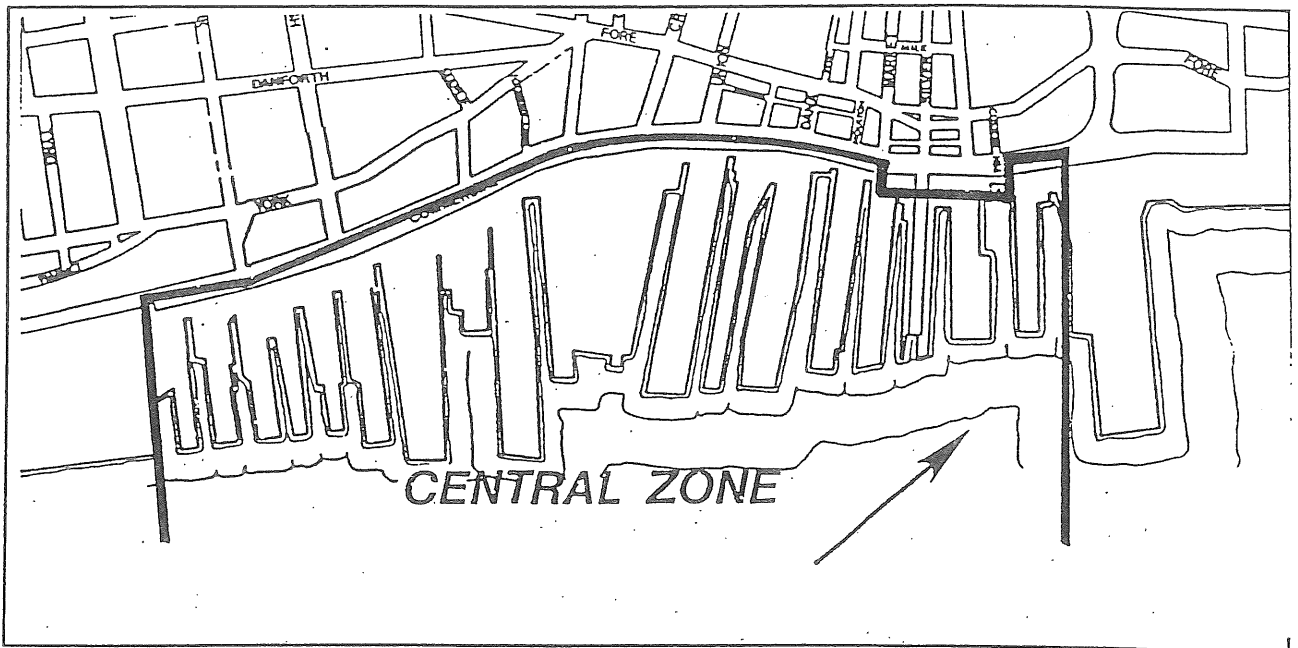
- Uses on the first floors of buildings with direct water access (berthing) and those within 100 feet of the direct water access must be marine only.
- Uses on floors other than the first floor may have water dependent, marine related, or marine compatible activities.
- After a mechanism for allowing such uses is developed, buildings beyond 100 feet of the direct water access may have water dependent, marine related or marine compatible uses on all floors (after a case by case review).
- Water Dependent - those uses requiring direct waterside or water access for berthing and space - are priority one.
- Marine Related Support Uses - those in support of but not interfering with water dependent - are priority two.
- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM hours of business and so forth.

It is our feeling that the balance of the work needed to reach written zoning ordinance will be best accomplished by the Planning Department and City Council. It is the intent of the Alliance to be available to serve as requested by the City to complete this task. We request that the new ordinances be developed and enacted as soon as possible upon completion.

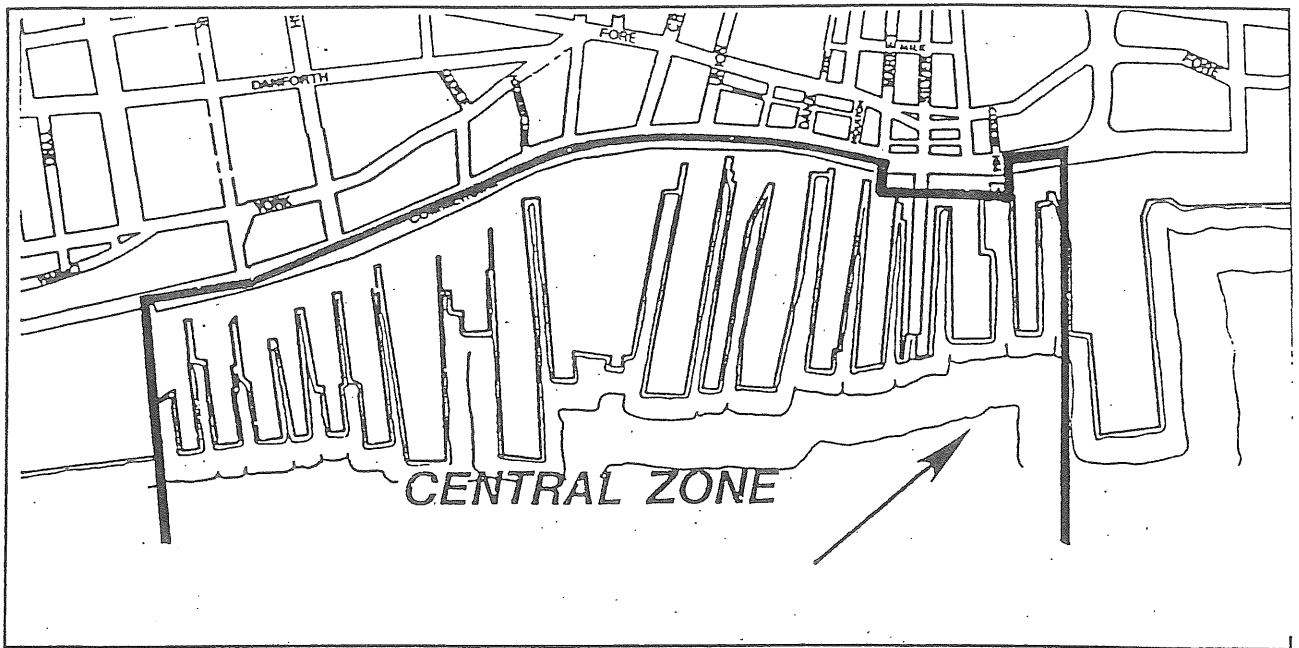
THE CENTRAL ZONE

THE CENTRAL ZONE GEOGRAPHIC DESCRIPTION: The geography of the central zone is generally described as the area from the east side of the State Street Wharf to the Centerline between the Maine Wharf and the Casco Bay Island Terminal. The zone also includes the areas to the north of Commercial Street currently zoned as W1-W2 on City zoning maps.



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SPECIAL USE ZONE

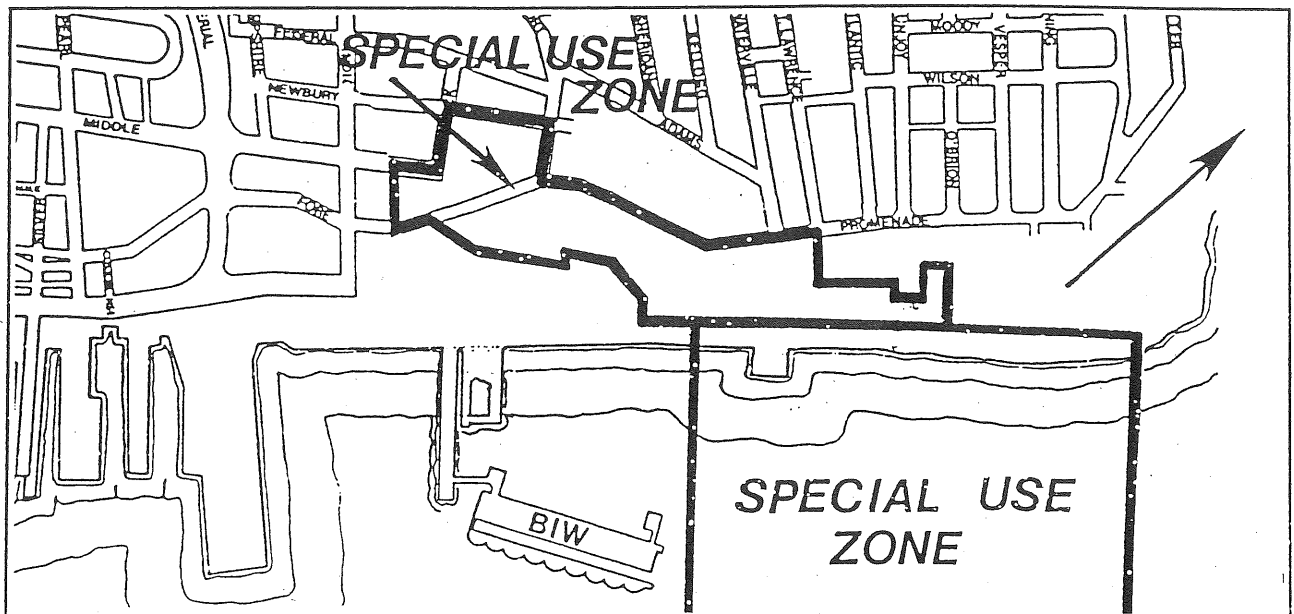
SPECIAL USE ZONE GEOGRAPHIC DESCRIPTION (SUZ):

This area is a mixture of the original sloping river bank and filled land along the water's edge. Major development of this area has included a rail head and terminal for Grand Trunk Railroad, a locomotive foundry as well as a steel foundry and other heavy industrial uses. Until the 1950's, this was Canada's winter port. The area now has a mix of 19th Century factory buildings that are largely vacant or underutilized, and more modern light industrial buildings with a mix of uses as tenants. There is little vacant land.

Recommendations are:

1. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
2. to allow Marine Compatible Uses to occupy existing vacant facilities that are not directly water related;
3. to provide a plan which directs new non-marine development (new construction/substantial rehabilitation) to contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use;
4. to promote the use of the land along the water's edge be used by water dependent uses;
5. to encourage public access to the waterfront;
6. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

The geography of this new zone is generally the eastern end of the Portland Engineering property north of the Grand Trunk Railroad r-o-w and moving along the r-o-w and on parcel lines Northwesterly crossing a point on Eastern Promenade at the Old Cosby Laughlin site and including that property, then Easterly back along Eastern Promenade and then south following the line of Portland Engineering property to the r-o-w. Further included is all land south of the r-o-w from a point just East of the BIW Dry Dock easterly to the current abutting ROS zone.



The Waterfront Alliance concept for this area is to develop viability while maintaining compatibility with the Port Development Zone (PDZ), ROS and residential zones that abut. The Waterfront Alliance sees this area as the potential gateway to the region.

This recommendation is based on the SUZ current lack of actual water access. The included properties should constitute a special use zone that can have attributes of the Port Development, Central and current IM2 zones. Our recommendations are to allow for some of the non-allowed uses in the Central and Port Development Zones to be allowed in the SUZ. Uses that constitute potential infringements on the Central and Port Development Zone may not cause the same negative impact when located in the SUZ. Generally, all uses in IM2 and those outlined above are seen as appropriate uses after some performance standards are met.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

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DEFINITIONS

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- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

WATERFRONT ALLIANCE

• PORT OF PORTLAND •

P.O. Box 587 • Portland • Maine • 04112 • 207/874-PORT (7678)

April 14, 1992

The Honorable Thomas H. Allen, Mayor
and the Portland City Council
389 Congress Street
Portland, ME 04101

RE: Report of the Waterfront Alliance
Review and recommendations in regard to current
waterfront zoning and economic issues.

Dear Mayor Allen and City Council:

On January 31, 1991, Esther Clenott, Chairwoman of the Community Development Committee, wrote to the Alliance accepting our offer to assist the City with a review of current waterfront zoning. Councilor Clenott requested that the report be submitted by mid-summer of 1991. Since receiving the letter, the process was lengthened by instructions to consider economic factors along with zoning recommendations.

The Alliance proceeded with the review. Work continued on a two meeting a month basis until January of this year when we started meeting weekly. The preparation of this report has included participation of people with interests and viewpoints of all levels of concern for our waterfront. The review included several tours of the waterfront and the assistance of the Planning Staff. The Alliance Board list is attached for your review.

While none of the following recommendations are in-depth or completed studies, we feel that they will provide you with the material needed to go forward with a zoning plan that will be acceptable to virtually every interested party.

ZONING

On February 27, 1991, the Alliance submitted recommendations for the Industrial Zones. A copy of that report is attached. Continuing discussion since the submittal of that report has resulted in changes which are included in the following:

PREAMBLE

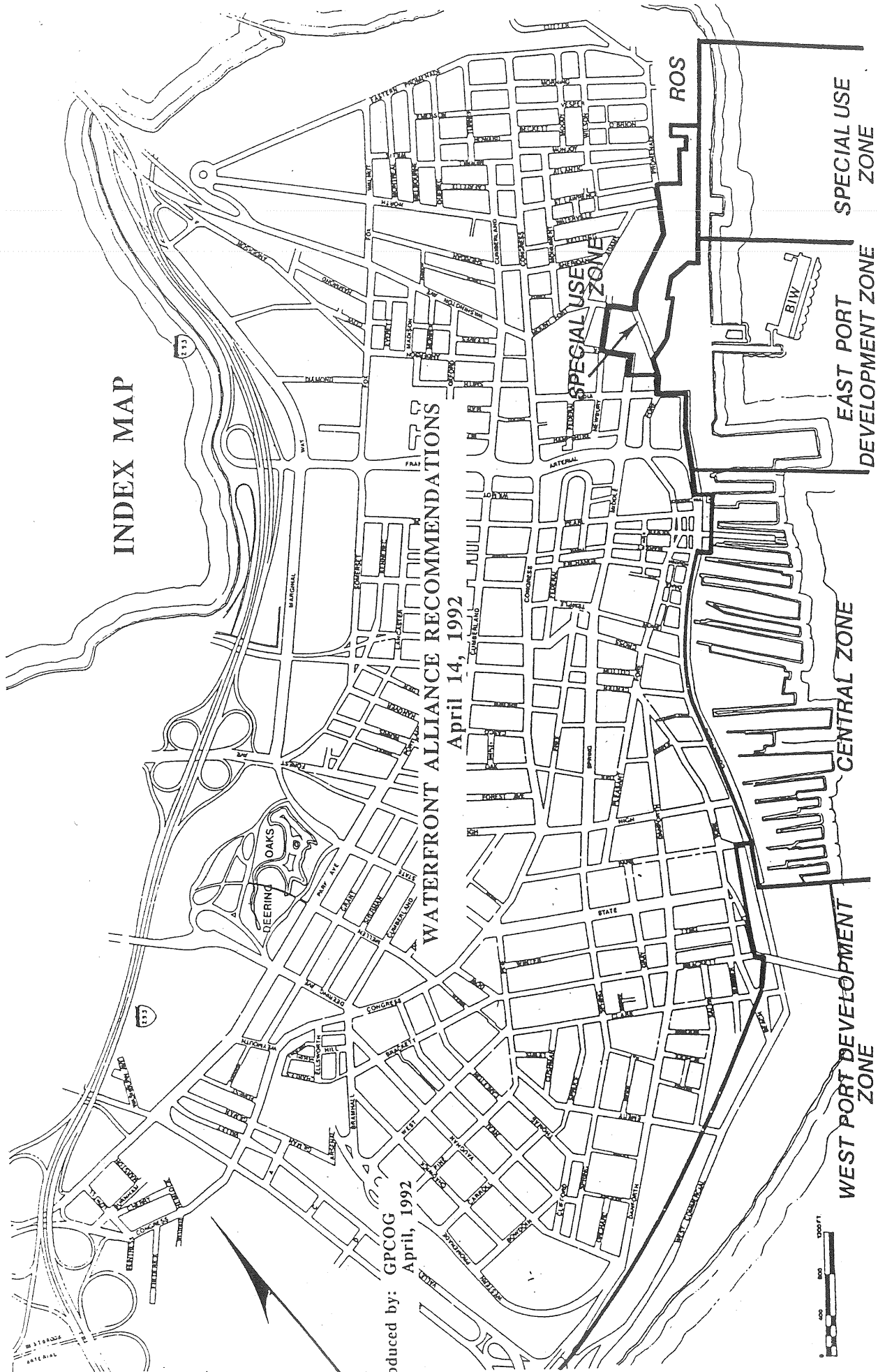
Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

INDEX MAP



WATERFRONT ALLIANCE RECOMMENDATIONS

April 14, 1992

Produced by: GPCOG
April, 1992





North Atlantic Seafood Building, 12A Portland Fish Pier
Not eligible as a new building



Gulf of Maine Research Lab, 350 Commercial Street
Not eligible as a new building

Memorandum
Department of Planning and Development
Planning Division



To: Chair Beal and Members of the Planning Board

From: Bill Needelman, Senior Planner

Date: March 10, 2006

Re: March 14, 2006 Workshop
Waterfront Central Zone Taskforce
Recommended Zone Text Changes

I. Introduction:

Beginning in February of 2005, then Mayor Jill Duson established a taskforce to evaluate the conditions and land-use policies of the Waterfront Central Zone (WCZ.) The Taskforce began its work in earnest in the spring and has recently provided a set of draft zone text changes as a result of their study. Planning Board members should note that the focus of the process was not to redraft the underlying policies regulating the Central Waterfront, but rather to adjust them to better meet the foundational assumptions of the existing Comprehensive Plan for the waterfront.

This is the second workshop held on this issue. A public hearing has been scheduled for March 28 to ensure opportunity for the Board to provide a recommendation prior to an anticipated Council Action on April 3.

II. New information:

Most of the information provided in this memo was previously included in the February 14 memo except as described below. The revised draft of the WCZ language edits is included in attachment 3. This draft reflects edits provided at the final meeting of the WCZ Taskforce where this language was unanimously endorsed by members in attendance. A summary outline, which had previously been incorporated in the body of the workshop memo, has been revised to reflect recent edits and included as attachment 5.

Directly following this section, a "waterfront zoning primer" is included in the body of this memo. This text has been worked on by members of the WCZ Taskforce as well as Planning Staff as a "plain language" summary of the Taskforce's work. Staff would like to thank Taskforce members, Anne Pringle and Barbara Vestal for their significant contribution to this effort.

Planning Board members should note that the latest draft language provided in attachment 3 is largely consistent with the language provided on February 14. The latest draft is has been “cleaned” of annotations in addition to a few changes noted below.

Setback for non-marine uses: As show in the previous draft, all first floor non-water dependent conditional uses needed to be setback at least 75 feet from the water’s edge. The current draft allows for non-water dependent marine uses to continue with their exception from this provision and to permit a 30% expansion of existing structures (for the first floors within 75 feet from the water) for non-marine use. Planning Board members should note that the State DEP is currently considering this edit and will provide an opinion in the near future.

Waterfront Diner: The water front diner section in the conditional use list has been edited to allow construction within 25 feet of the water (as opposed to 75 feet) as noted above. Other minor edits have been provided. One such edit includes a “formula food” restriction to prohibit a fast food franchise from meeting the waterfront diner definition. Corporation Counsel will provide a definition prior to public hearing.

III. Waterfront Zoning “Primer”

The language below is a guide to the background assumptions, current policies, and proposed amendments to the WCZ text.

Guiding Principles (as Adopted by Waterfront Alliance 5/14/96 and reflected in Portland zoning)

- 1) Portland’s waterfront is a limited natural resource (about 1.5 miles of the total 25 miles of working waterfront in the state) and water access should be reserved for both traditional and emerging water-dependent uses;
- 2) Portland’s traditional water-dependent uses have experienced cyclical and structural change over time and this evolution will continue (e.g. commercial fishing). Portland’s commitment, including zoning protections, should be long-term and should recognize the cyclical nature of these economies;
- 3) Stable pier infrastructure, easy access to land-based transportation, and stable channel and pier-side depths are key elements of successful water-dependent industries and should be maintained in an economic- and environmentally-sound manner;
- 4) The marine industries on the waterfront represent an array of inter-dependent uses and should be protected and encouraged;
- 5) While the waterfront serves a number of functions (job center, industry center, property tax base, transportation center, retail/visitor center, gateway, home, etc.), its primary role, recognizing its unique geometry, is as an economic center for water-dependent businesses that cannot exist elsewhere;
- 6) It is important to preserve a mix of public and private ownership of waterfront property;
- 7) Land use policy should respect the public’s interest in qualitative standards relating to view, architectural character, and human impacts (noise, light, etc.);
- 8) Public access to the waterfront should be provided in areas where it is safe and will not interfere with business activity;

- 9) It is important to protect the natural resources of the waterfront because a healthy harbor environment contributes to a stable ecosystem, public health, economic growth, and recreational enjoyment.

Policy Underlying Zoning – Waterfront Central Zone

- 1) First priority is to protect and nurture existing and potential water-dependent uses;
- 2) 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 or indirectly by placing incompatible demands on the zone's infrastructure;
- 3) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Existing Zoning Structure (as established in 1993, with post-1993 amendments)

- 1) Zoning encourages the use and rehabilitation of existing buildings, in order to maintain relatively low-cost ground-floor rents for water-dependent businesses;
- 2) Permitted uses include marine (including water-dependent uses) and compatible commercial, industrial, and public uses.
- 3) Ground floor use is limited to marine uses only except as provided in (7) below.
- 4) Upper floor use of existing buildings may include non-marine uses up to 50% of the total floor area of the building in order to generate additional revenue opportunities to support pier infrastructure.
- 5) Throughout the zone, a proposed new use is allowed only if it will not have an "impermissible adverse impact" on future marine development opportunities:
 - Proposed uses will not displace existing water-dependent uses;
 - Proposed use will not reduce existing commercial vessel berthing;
 - Proposed use, structure or activities will not unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
 - Proposed use will not substantially reduce or inhibit existing public access to marine or tidal waters.
- 6) Newly-constructed buildings for marine uses are allowed throughout the zone. Newly-constructed non-marine buildings are not expressly permitted, but may be approved through contract or conditional rezoning, subject to a finding of public benefit from the proposed project (Sec. 14.315.3):
 - Each proposed upper-story use is a permitted use;
 - The ground floor of the proposed structure consists entirely of marine uses;

- The proposed development is consistent with the Comprehensive Plan and, without the proposed development, the site could not otherwise support a water-dependent use;
 - Any physical or legal impediments which preclude further access to the water's edge are not the result of the applicant or prior owner;
 - The project's public benefits outweigh its potential negative impacts (protection of existing water-dependent uses, preservation of future water-dependent uses opportunities, contribution to marine infrastructure, and visual and/or physical access to the waterfront or the general public);
 - The proposed development responds to any unique physical conditions and development opportunities along the shoreline;
 - The proposed development does not have negative environmental impacts (specified);
 - The proposed development is consistent with the Waterfront Public Access Design Guidelines;
 - The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent uses are not abandoned after the project is developed.
- 7) In existing buildings (as of 1/93) within 35 feet of Commercial Street and between Maine Wharf and the City Fish Pier, a broad range of uses (office, retail, service, restaurant, bank, etc.) are allowed on all floors, in order to generate revenues for infrastructure maintenance (assumed such property in common ownership with pier ownership when zoning originally passed in 1993). The "35 foot rule" does not extend beyond the Fish Pier.
- 8) The broad range of permitted uses in existing buildings within 35 feet can expand by a modest amount (up to 2,000 sq. feet), with conditions.
- 9) Residential space, not exceeding 1,000 square feet and occupied by the primary owner of a marine-related business, may occupy an upper floor of an existing building, subject to conditions, limited to one residential unit per wharf..
- 10) Parking on piers is generally limited to marine uses, unless the applicant can demonstrate that on-site parking exceeds the number of spaces required for marine use.
- 11) Prohibited uses include all other residential, hotels, auditoriums, civic centers, convention centers, meeting facilities, and bars.

Summary of Changes Proposed by Waterfront Central Zone Task Force

- 1) "No adverse impact" standard more focused to protect water-dependent uses; to add a standard to prohibit non-water dependent uses from replacing a water-dependent use which existed within the previous two years; to add a standard to prohibit locating a new non-water dependent use on a portion of a site that is physically suited for a water-dependent use. (14-313.5)

2) Subject to no adverse impact on water-dependent uses, variety of provisions give more opportunity for non-marine uses to locate in WCZ in areas not likely to interfere with water-dependent uses:

a. Non-marine uses may occupy more than 50% of the total floor area of buildings in existence in 1993 as a conditional use, in upper floors, subject to standards for active ground floor marine use and occupied commercial berthing. (14-315(i))

b. Original contract or conditional rezoning provisions to allow non-marine uses in upper floors of new buildings, subject to standards, retained, subject to new mitigation provisions. (14-315.3 GENERAL)

c. A second option for contract or conditional rezoning is proposed through an "Old Port Overlay Zone" which allows construction of new buildings set back at least 75' from the water, between the easterly property line of Long Wharf and the westerly property line of Union Wharf, with up to 100% non-marine uses on all floors, subject to mitigation and specific standards. (14-315.3 Commercial St./Old Port Overlay Zone)

d. Studios for artists and crafts people added as permissible upper story use in buildings in existence in 1993. (14-314(b)(3))

e. Permissible expansion of certain "grandfathered" non-marine uses within 35' of Commercial Street increased from 2,000 to 3,000 square feet. (14-315(d))

f. Waterfront diner of no more than 4,000 square feet, no alcohol license or sales, entrance on Commercial Street, other standards, added as a conditional use throughout the zone. (14-315(g))

g. Upper floor non-marine use in buildings in existence in 1993 allowed to expand up to 2,000 square feet over life of building as conditional use, subject to standards. (14-315(h))

3) In exchange for more non-marine use opportunities, mitigation of the cumulative adverse impacts of new non-marine uses on marine uses is required. Mitigation can take the form of capital investment in the marine infrastructure within the same wharf or pier, or contribution to the City's Waterfront Loan and Investment Fund, according to a set formula. (14-313.6 and 14-315.3 (b) and (c))

4) Other Provisions:

a. Permitted marine uses modified to include bait sales and processing, and parking associated with on-site water-dependent uses. (14-314(a)(24) and (25))

- b. Broad uses for existing buildings within 35' of Commercial Street limited to not extending more than 100' from Commercial Street. (14-314(e)(4))
- c. Parking provisions clarified so that generally only parking for marine uses is allowed within the WCZ unless excess capacity. (14-314(a)(24) and 14-315(a) and (b))
- d. Conditional use standards clarified for parking and traffic circulation, pier access congestion and public view protection. (14-315)
- e. Performance standards added for fish by-products processing as a conditional use. (14-315(c)(2))
- f. Boat rack storage limited to footprint of 10,000 square feet. (14-315(c)(3))
- g. Residential unit for business owner, limited to one unit per pier, tightened to reduce size and add standard for compelling need. (14-315(e))
- h. Utility substations more restricted. (14-315(f))
- i. Ground-mounted telecommunication towers and drive-up services added to list of prohibited uses. (14-315.5)
- j. Maximum building height increased from 35' to 45' (except 50' for marine research facilities within 400 feet (changed from 200') of Commercial Street) but limited to no more than 3 habitable floors and minimum of 15' of floor to ceiling height in ground floor in most areas. (14-316(e) and (f))
- k. Performance standards expanded to include a provision requiring pier and wharf expansions to demonstrate compatibility with ferry and emergency vessel operations and a provision assuring protection of the functional accessibility of pier edges for marine use. (14-317(p) and (q))

IV. Previously Provided Policy Background:

As previously provided, the draft zone language is accompanied with the original 1992 Waterfront Alliance report that provides their policy basis. Additionally, the Board will find a copy of the recently completed economic conditions survey that informed the WCZ Taskforce recommendations.

In 1992 the Waterfront Alliance, a non-profit association of waterfront property owners, advocates, and parties with marine interests from both sides of Portland Harbor, submitted a policy document to the City Council that eventually became the basis for new zoning text language and inclusion in the City's Comprehensive Plan. The Waterfront Alliance report recommended segmenting the Portland waterfront into three zones:

1. *The Waterfront Port Development Zone (WPDZ)* - Located in the areas of deep water industrial berthing from State Pier to Ocean Gateway in the east, and from the International Marine Terminal to the Merrill freight terminal in the west, the WPDZ policies support the continued use of deep water piers for large vessel berthing and support.
2. *The Waterfront Special Use Zone (WSUZ)* – Located at the easterly extent of Portland’s developed waterfront at the head of Portland harbor, the WSUZ is predominated by older buildings with limited water access (the exception is the area of the Portland Yacht Services marina just west of the Eastern Promenade park.) The WSUZ text allows limited mixed use of existing buildings and promotes new marine use development.
3. *The Waterfront Central Zone (WCZ)* – Located between Maine Wharf (Flat Breads/Rira) to the east and Deake’s Wharf (just east of the IMT) to the west, the WCZ contains a broad mix of marine and non-marine uses and infrastructure.

The WCZ is developed with mostly privately held piers (in addition to the City Fish Pier and the Gulf of Maine Research Institute) and is the home of many traditional marine business. The City’s ground fishing, herring, and lobster fleets rely upon the piers of the WCZ to berth and conduct business. Other marine businesses, including dock and dredge construction, boat hauling and repair, chartered tour boats, water taxis, marinas, fueling, chandlery service, and environmental response also use the piers of the WCZ to interface with the harbor.

Existing buildings located both on and off the piers have traditionally housed supporting marine use businesses in addition to non-marine uses. Non-marine uses include the retail type uses associated with the Old Port, office uses, and three 1980’s residential condominium projects.

The upland sections of the WCZ are highly developed along the Commercial Street corridor, though there are also large expanses of surface parking supporting both marine and non-marine interests.

At the time of the 1993 zoning adoption, the City Council’s zoning report (containing the Waterfront Alliance report and recommendations) was adopted as an element of the Comprehensive Plan. As the policy basis for zoning on the waterfront, the 1992 report remains the current Comprehensive Plan document by which new zoning text will be evaluated. The policies of the WCZ are described below.

Comprehensive Plan: *Waterfront Alliance Recommendations and Current Zoning*

The Waterfront Alliance report, titled “Waterfront Alliance Recommendations to the City of Portland,” outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but other portions of the waterfront (upper stories, and properties without water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The *Purpose* and *No Adverse Impact* sections of the WCZ text, included below, express the intent of the zone and the underlying policy.

The following text is excerpted from the WCZ language. A copy of the full WCZ text (with track changes edits) is attached to this memo in attachment 3.

Waterfront Central Purpose (current language)

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;*
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.*

*Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances 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 do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.
(Ord. No. 168-93, § 2, 1-4-93)*

In implementing the goals stated in the purpose statement above, the WCZ establishes the following “no adverse impact on marine uses” standards. These standards establish thresholds for any non-marine use in the zone.

No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses), need to adhere to the provisions of the “no adverse impact” clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. The complete (current) text of the no-adverse-impact clause is included below.

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;*
- (b) The proposed use will reduce existing commercial vessel berthing space;*

- (c) *The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or*
- (d) *The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.*

Taskforce Charge

Over the last 13 years of implementation, the WCZ text has been incrementally amended several times. With each amendment, some members of the Planning Board, City Council, and members of the waterfront business community have expressed a need to broaden some elements of the zone language. At the same time, other community members have stressed the need to retain protections for waterfront access for traditional industries. The current process is intended to revisit the zone with the intention of finding the best balance between potentially completing goals.

The Waterfront Central Zone Taskforce was charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms and other means;
5. Retain access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structures away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers;

Draft Text Changes: Outline and Summary of Proposed Text Edits

The outline provided in attachment 5 sketches the structure of the zone language and provides a guide to the recommended changes. The complete text with a “track changes” notation of edits is provided in attachment 3. Given the amount of edits, the track changes version adds confusion to an already complicated text. Attachment 5, along with the “primer” above will hopefully help in the Board’s review of the changes. A “clean” version of the edits will be provided as a follow up document at a later workshop.

Public Process:

The Taskforce held two public forums during its work in addition to their regularly scheduled meetings. Notes from these meetings are provided in attachment 4.

Attachments:

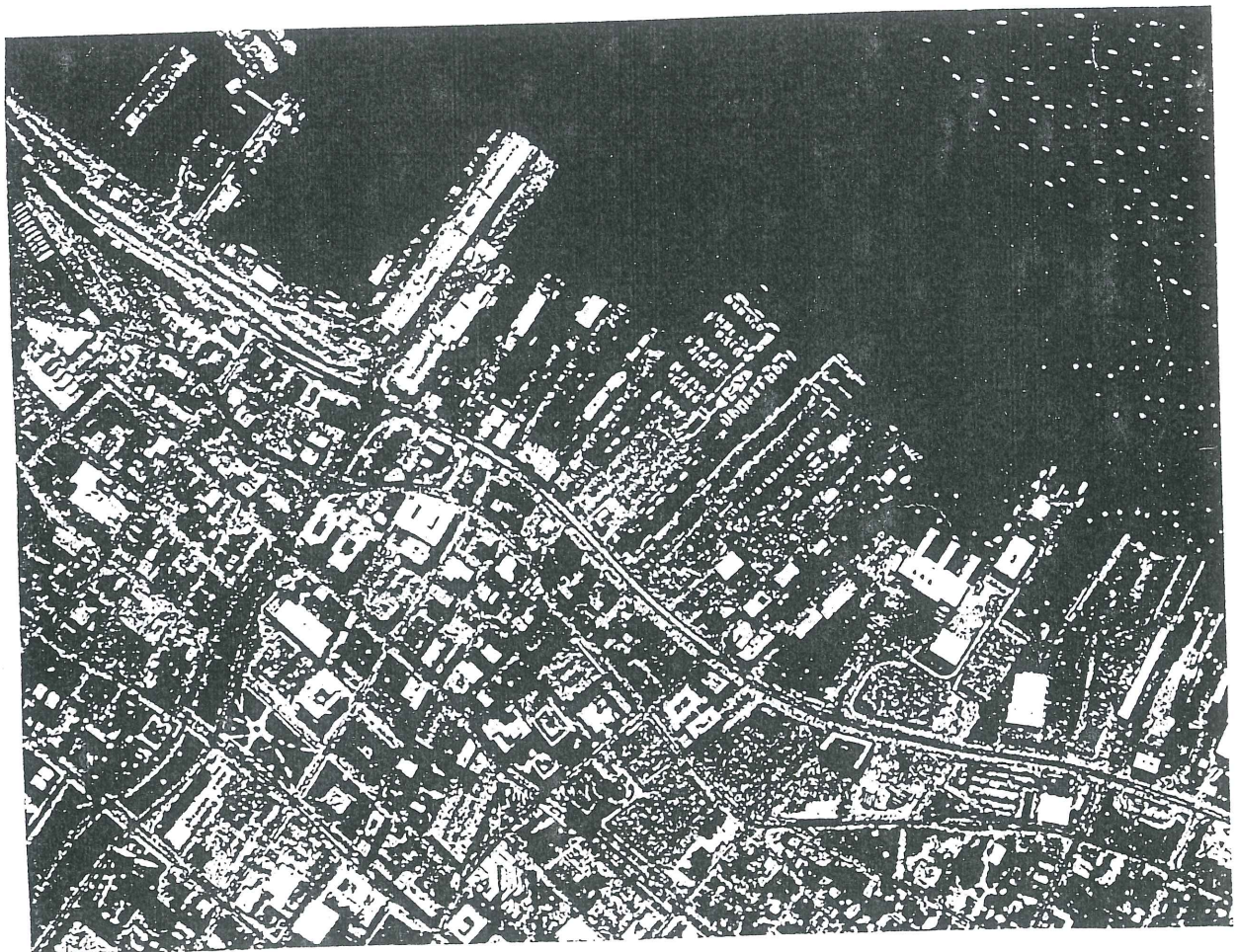
1. Waterfront Alliance Report, 1992
2. 2005 Economic Conditions Survey results presentation material
3. Draft WCZ edits
4. Public Forum Notes
5. WCZ Draft Edits Outline
- A. Zone Map
- B. Context Aerial Map

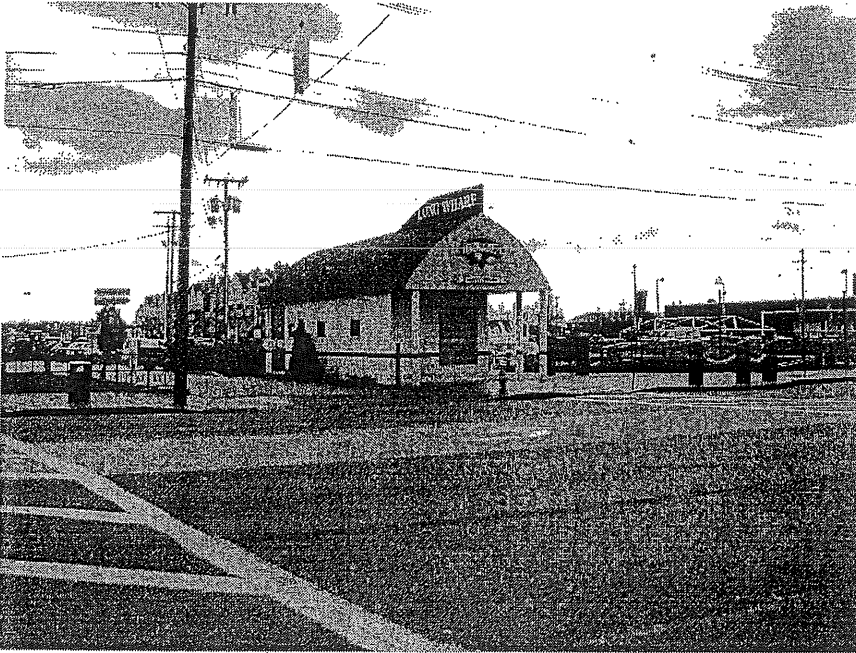
Att. 1

Waterfront Alliance Recommendations
to the City of Portland

Prepared by the
Greater Portland Council of Governments

April 14, 1992





Long Wharf Excursion Kiosk, 174 Commercial Street

- Not eligible due to small size (less than 500 sq ft)



Portland Lobster Company, 180 Commercial Street

- Previously expanded to include 1500 sq ft of exterior seating with maximum use of the 1250 sq ft allowed more than 35 feet from Commercial Street.
- 1900 sq ft non-marine expansion potential, mostly upper floor.



Sapporo Building, 230 Commercial Street

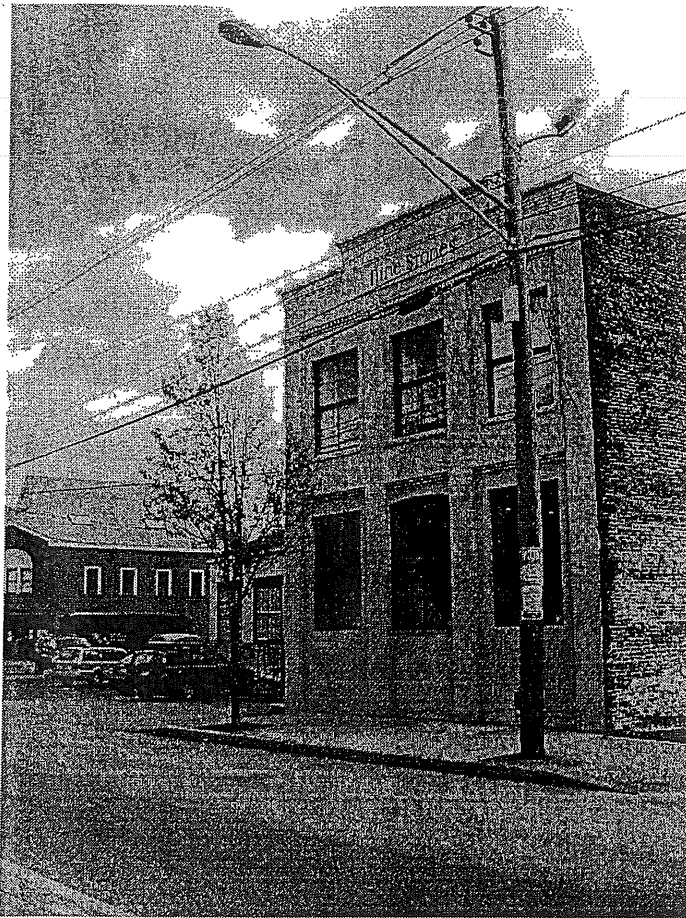
- Previously expanded with 1162 sq ft building addition and 616 sq ft outside seating area
- 1622 sq ft non-marine expansion potential.



Union Wharf Market, 1 Union Wharf

- Not previously expanded under the “Sapporo Amendment”
- 3400 sq ft non-marine potential expansion capacity

ATT 2 4
Impacted Structures in the WCZ



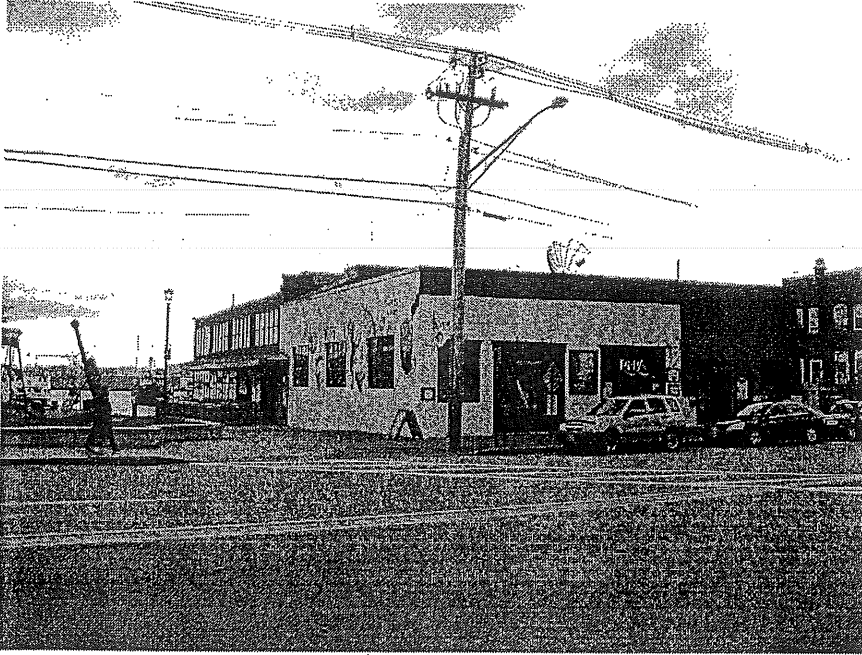
250 Commercial Street

- Not previously expanded
- 3400 sq ft non-marine expansion potential



Browne Trading Co.
260 Commercial St

- Currently mostly marine use with storefront retail.
- No previous expansion of non-marine use.
- 3400 sq ft non-marine expansion potential



RiRa, Flat Bread Building, 68-72 Commercial

- Previously expanded with +/-900 sq ft rear deck
- Potential for second story deck with amendment
- 2500 sq ft non-marine expansion potential (assuming 3400 sq ft allowance), mostly upper floor.



Gorham Savings Bank, 172 Commercial Street

- No previous expansions
- Potential for expansion is not limited by current use or property constraints
- 3400 sq ft non-marine expansion potential

- i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

- (a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses, non marine uses allowed in buildings located within 35 feet of Commercial Street and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier easterly edge of Berlin Mills Wharf) into contiguous and newly created building space of no more than ~~2000~~ 3400 sq. ft., total, shall be allowed only as follows:
 - (1) the use may occupy ~~ground floor area~~ of contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
 - (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

PROPOSED AMENDMENTS TO WATERFRONT CENTRAL ZONE
§§ 14-314, 14-315

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the City Fish Pier easterly edge of Berlin Mills Wharf:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
 1. Professional, business, and general offices;
 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;
 4. Banking services;
 5. Laundry and dry cleaning services;
 6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
 7. Intermodal transportation facilities;
 8. Cold storage facilities;
 9. Museums and art galleries.

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

Att. 4

11. **Application Fee:** A fee for must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) ~~of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.~~

- Zoning Map Amendment \$2,000.00
- Zoning Text Amendment \$2,000.00
- Contract/Conditional Rezoning
 - Under 5,000 sq. ft. \$1,000.00
 - 5,000 sq. ft. and over \$3,000.00
- Legal Advertisements percent of total bill
- Notices .55 cents each
(receipt of application, workshop and public hearing)

NOTE: Legal notices placed in the newspaper are required by State Statue and local ordinance. Applicants are billed directly by the newspaper for these notices.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

9-8-04
Date of Filing

Becky B. Grand
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

6. Existing Use:

Describe the existing use of the subject property:

Marine use/restaurant

7. Current Zoning Designation(s): WCZ Zone

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The restaurant will continue with its present use. The first floor addition will allow a more functional and code compliant and toilets with a seating increase. The second floor will provide office space, baking space and meeting room.

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100'.)

10. Proposed Zoning: Please check all that apply:

A. Zoning Map Amendment, from _____ to _____

B. _____ Zoning Text Amendment to Section 14-

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

AH 1.2



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Development
~~Portland Planning Board~~

1. Applicant Information:

Rebecca Rand
Name

Address
3 Pine Grove Way
Falmouth, ME 04105

207-781-4477 207-773-7070
Phone Fax

* Contact: David Lloyd – Archetype – 772-6022

3. Property Owner: Applicant Other

Name

Rebecca Rand
Address

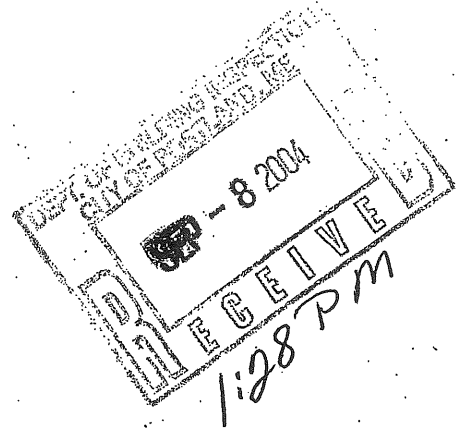
3 Pine Grove Way
Falmouth, ME 04105

207-781-4477 207-773-7070
Phone Fax

2. Subject Property:

Becky's Diner
Address
390 Commercial Street
Portland, ME 04101

42-D-4
Assessor's Reference (Chart-Block-Lot)



4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Owner

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street 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.

(Ord. No. 168-93, § 2, 1-4-93)

- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, 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 department of parks and 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.
- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.
- (k) *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.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *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.
- (b) *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 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).
- (c) *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.
- (d) *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.
- (e) *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 parks and 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.

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
 - b. Hotels, motels or boatels.
 - c. Auditoriums, civic centers, convention centers or other meeting facilities.
 - d. Drinking establishments.
- (Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* Thirty-five (35) feet, except that within two hundred (200) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility.

(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to 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.
- (e) 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 (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

WCZ Current Text ATT.1B. 8
sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

(1) the residential living space shall not exceed one thousand (1,000) square feet;

(2) 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;

(3) the residential use shall be limited to one unit per wharf;

(4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

(5) 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 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 related business.

(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)

Sec. 14-315.3. Contract or conditional rezoning.

that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

- (b) Marine:
- (1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 - a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.
 - (2) Fish by-products processing, provided that:
 - a. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
 - b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.
 - (3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:
- (1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly

3. Interior meeting or classroom space accessory to uses permitted in section 14-314(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 2, but shall only be permitted as accessory uses if the total of all accessory retail and service 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 (15) percent of the total floor area per building, whichever is less.

(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)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;
 - ii. The proposed use shall not impede access to the water by existing or potential marine uses; and
 - iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
- (a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate

pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Professional, business, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;
4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other*: Accessory uses:

1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
2. Except as provided in subsection a. above, 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 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual 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.

3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;
 4. Intermodal transportation facilities;
 5. Cold storage facilities.
- (c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:
1. Warehousing and wholesaling;
 2. Industrial uses which meet the performance standards of the I-2 zone.
- (d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
 2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.
 4. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.
- (e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish*

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;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
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. Noncommercial berthing of less than fifty (50) linear feet per pier;
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.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (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;

DIVISION 18. WATERFRONT CENTRAL ZONE*

*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.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances 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 do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

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- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;

ii. The proposed use shall not impede access to the water by existing or potential marine uses; and

iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

- (a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses, non marine uses allowed in buildings located within 35 feet of Commercial Street and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.
- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the ~~city fish pier~~ easterly edge of Berlin Mills Wharf) into contiguous and newly created building space of no more than ~~2000~~ 3400 sq. ft., total, shall be allowed only as follows:
- (1) the use may occupy ~~ground floor area~~ of contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

PROPOSED AMENDMENTS TO WATERFRONT CENTRAL ZONE
§§ 14-314, 14-315

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the ~~City Fish Pier~~ easterly edge of Berlin Mills Wharf:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Professional, business, and general offices;
 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;
 4. Banking services;
 5. Laundry and dry cleaning services;
 6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
 7. Intermodal transportation facilities;
 8. Cold storage facilities;
 9. Museums and art galleries.

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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),

Attachments:

- 1.A Proposed text change language
- 1.B. Current WCZ language
- 1. Application
- 2. Photo Inventory of Impacted Properties
- 3. Letter of Support
- 4. Subject Deed
- 5. Photos
- 6. Site Plan
- 7. Floor Plans, existing and proposed
- 8. Proposed elevations
- 9. Aerial photo with notes
- 10. Piers and Properties in the WCZ

- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or

The access to Hobsons Wharf is adjacent to the diner property and is not impacted by the existing diner or proposed expansion. Any future increase in parking for the diner would be subject to conditional use review and reviewed for adherence to this provision.

- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

There is no public access to the water in this area.

8. Recommendation

As stated in the introduction, given the ongoing evaluation of the Waterfront Central Zone, Staff will not be providing a specific recommendation on the rezoning.

9. Motions for the Board to consider

On the basis materials submitted to the Board and on the basis of information contained in Planning Report #64-05 and other findings, the Board finds as follows:

That the proposed amendments to the text of the Waterfront Central Zone are consistent with the policies of the Comprehensive Plan and therefore recommends their passage to the City Council.

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adokone absent
bowen abstained

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 do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

In implementing the goals stated in the purpose statement above, the WCZ establishes the following “no adverse impact on marine uses” standards. These standards establish thresholds for any non-marine use in the zone. If the Board finds that the application meets these standards and the Board finds that the proposed expansion otherwise contributes or supports marine use in the WCZ, it is reasonable to explore limited text change options to accomplish the expansion.

No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses), need to adhere to the provisions of the “no adverse impact” clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. Provision (c) below has the greatest application to the subject rezoning.

The complete text of the no-adverse-impact clause is included below. Staff comments are included in *italics*.

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;

No marine related uses are currently on-site.

- (b) The proposed use will reduce existing commercial vessel berthing space;

No commercial berthing currently exists, and without dredging, the potential is limited by water depth.

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

The following text is excerpted from the WCZ language. A copy of the full WCZ text is attached to this Report.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;*
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.*

Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances in

Please note that the applicant's total building expansion plans show 2700 square feet of new interior building space. If the amendment were to allow the exterior seating area as well as the interior space, the expansion limit would need to be increased to 3000 square feet.

- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the ~~the city fish pier~~ *easterly edge of Berlin Mills Wharf*.) into contiguous and newly created building space of no more than ~~2000~~ 3400 sq. ft., total, shall be allowed only as follows:
- (1) the use may occupy ~~ground floor area of~~ contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
 - (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

7. Waterfront Central Zone Policy:

The applicant is requesting to allow non-marine uses on new ground floor and second floor space in the WCZ. The Board will need to find that the proposal is compatible with the current Comprehensive Plan and provisions of the Waterfront Central Zone. When looking at the existing and potentially expanded diner, if the Board considers these uses compatible with existing and potential marine use of the area, the above described text changes are supportable.

Comprehensive Plan: *Waterfront Alliance Recommendations* and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled "Waterfront Alliance Recommendations to the City of Portland." This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and properties without water access) can and should accommodate "marine compatible" uses to help support the maintenance of pier infrastructure. As stated in the report's preamble,

6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

The first edit would extend the geographic area of the “35 foot rule” to include 390 Commercial Street. The Board should note that the list of uses above would all be available to the current or future owners of the structure, not just the restaurant use.

Please see attachment 2 for a photo inventory of all of the impacted properties along Commercial Street. The inventory includes an estimated “expansion potential” for each building based on 3400 sq ft of total expansion allowance (as drafted) with any previous expansion subtracted.

Conditional Use Parking 14-315 (a)

Within the WCZ, non-marine parking is considered a conditional use subject to certain restrictions. This provision is clearly stated in the accessory use section within the permitted use list, 14-314(f). However, within the conditional use list, non-marine uses using the “35 foot rule” are not listed with the uses required to apply for conditional use parking review. The following amendment clarifies this requirement and more clearly documents the City’s current practice. While applicable to the Becky’s review, the following amendment is more procedural housekeeping than a necessary requirement of the applicant.

- (a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses, non-marine uses allowed in buildings located within 35 feet of Commercial Street and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

Sapporo Amendment, 14-315 (c)

Currently, non-marine uses in buildings located within 35 feet of Commercial Street may expand on the ground floor only. Expansions are also limited to 2000 square feet, 1250 of which may be located more than 35 feet away from Commercial Street. The attached amendments remove the ground floor restriction and increase the total amount of non-marine use expansion allowed to 2750 square feet.

3900

2nd floor meeting room 25 seats

Deck 30 seats

Total addition of 98 seats

Existing parking 12 plus 7 leased equal 19 existing

2,504 square feet dining area divided by 150 sq ft equals 17 cars required

6. WCZ Text changes

Please see the both the proposed text amendments (Attachment 1A) and the full WCZ text (Attachment 1B) attached to the end of this memo.

The revisions achieve the goals of the applicant by extending the geographic range of the "35 foot" rule and changing the conditional use restrictions of the so-called "Sapporo amendment."

The "35 foot rule", 14-314 (e)

Currently, existing buildings that are located between Maine Wharf (Ri Ra) and the City Fish Pier and located within 35 feet of Commercial Street may house certain non-marine uses (including restaurant) as a use by right. By expanding this allowance westerly as far as Hobson's Wharf, Becky's Diner would become a permitted use in the WCZ. The draft changes to 14-314 (e) are highlighted as follows:

(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the ~~City Fish Pier~~ easterly edge of Berlin Mills Wharf.* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Professional, business, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants provided that food service and consumption shall be the primary function of the restaurant;
4. Banking services;
5. Laundry and dry cleaning services;

There is a 35' maximum height. Again, I have no scaled plans. It appears the maximum height can be met, but only a scaled plan can finalize that.

The parking requirements are at 50% of the uses outlined in the parking section 14-317. Based on trying to figure out the scale that is given in the sketches, it appears that nine (9) off-street parking spaces are required. Again, the plans are deficient. The site plan shows no parking spaces to confirm what is available.

The new addition may also fall within an A2 flood zone as outlined on panel 13 of the FEMA maps. The applicant shall give this office a plan showing when the flood zone lines fall. If the building falls within the A2 flood zone the first floor elevation shall be 2 feet above the given elevation of 10 feet."

Ms. Schmuckal has additionally related to Staff that she does not interpret the proposed expansion described below as an expansion of a permitted use in the WCZ. At the previous workshop, the Board inquired as to whether the existing use was currently considered a permitted use given the diner's reduction of direct business in vessel supply. Ms. Schmuckal currently interprets the Becky's use as non-conforming in the zone.

The Board should note that the applicant has determined that the finished floor elevation of the diner is above the requirements of the Flood Plane ordinance.

5. Proposed Expansion:

As stated in the introduction, Ms. Rand requests permission to expand the diner use. There would be a 900 square foot first-floor expansion of the kitchen and seating area and an 1800 foot second floor added to the structure. The second floor would have eight tables for outside seating (over the first-floor addition) and a new second floor over the existing building. The new second floor would have a meeting room, a bakery and an office for the diner. Please see attachment 6 for a site sketch, attachment 7 for floor plans (existing and proposed) and attachment 8 for rendered elevation sketches. Project architect, David Lloyd, has provided the following breakdown of the expansion.

First Floor: Code compliant toilets, kitchen area, 43 more seats,
New second floor: Office, baking, toilets and meeting room for 25, and general upgrade to building exterior.

First Floor existing:	1,800sq. Ft.
Addition 1st floor:	900 sq ft
Total 1st floor:	2,700 sq. ft.

Addition 2nd floor:	2100 sq ft
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Total addition (with deck)	3,000 sq ft
Total bldg	4,800 sq. ft.

Existing restaurant 72 seats to become 115 seats [add of 43 seats]

drive to Hobson's Wharf. The site is currently improved with an 1800 square foot single-story concrete block building housing the diner. The diner provides +/- 12 parking spaces on-site with these spaces informally used as stacked spaces, resulting in somewhat expanded capacity. The diner also controls seven leased spaces on an adjoining property.

The diner site has direct water access at the rear of the existing building. This access is to very shallow water (mudding out at low tide) located between Hobson's and Berlin Mills Wharves and is currently unutilized for marine use. One should note that the subject deed of the property retains the right to construct and maintain a 15x15 foot float in this area, recognizing that while marine use may not currently be active, provisions for future land/water access have been retained for the property.

3. Development History:

In the early 1990's, Becky's Diner was established as a marine use facility. After considerable process, the diner was allowed as a permitted use because of its service to the fishing fleet. While the table service diner would not have been allowed on its own, the restaurant provided supplies to fishing boats for short and medium length trips. These same fishing employees and boat owners would use the diner as a meeting place, and the restaurant quickly established itself as an integral part of the working waterfront community.

Over the years, changes in the fishing economy and the make-up of the fishing fleet have reduced the volume of Becky's direct service to fishing boats. At the same time, the diner has seen its restaurant business grow, serving a wide range of area residents. According to the applicant, the fishing community still uses the diner in an informal capacity as a meeting place; and the diner does its best to accommodate this clientele through hours of operation and maintenance of a bulletin board.

4. Zoning Review:

Zoning Administrator, Marge Schmuckal, has provided the follow comments for the Board's consideration.

"Becky's Diner was approved by the previous zoning administrator, Bill Giroux, as a conforming use in the WCZ zone. Our microfiche has the correspondence from Becky explaining that she prepared packaged meals for fishermen who went out for several days/weeks and that sometimes there were leftovers that she wanted to serve to the public. This is a very generalized reduction of the correspondence. The bottom line is that the use was approved at that time as a permitted use in this zone.

This property is located within a WCZ, Waterfront Central Zone. There are no required setbacks except for a 5' setback requirement from the edge of a pier or wharf. I cannot determine exactly that there is 5' to the existing pier line because the submitted plans are not to scale. It appears to be ok, but only a scaled plan can finalize that.

1. Introduction:

Rebecca Rand, proprietor of Becky's Diner at 390 Commercial Street, requests a Public Hearing to discuss a potential rezoning to allow expansion of the restaurant. The subject structure is located at the southerly side of Commercial Street located at the head of Hobson's Wharf and adjacent to the easterly bulkhead of Berlin Mills Wharf. The property is in the Waterfront Central Zone (WCZ). Restaurant uses are not permitted in this portion of the WCZ, and an expansion of the existing facility requires an amendment to the current language of the zone.

The proposal includes the addition of 3400 square feet to the existing one-story diner, including an expanded first floor, a new second floor, and second-floor exterior dining.

During previous workshops, the Board was introduced to Ms. Rand's goals for the property and explored options for achieving those goals within the policies of the City's waterfront zoning. Staff and Ms. Rand's attorney, Natalie Burns, then provided a series of text changes to the Waterfront Central Zone (WCZ) to achieve these objectives. The Board had provided feedback on these changes, and the proposal was to be scheduled for Public Hearing with a number of edits.

Concurrently with the Board's review of the diner expansion, the City Council began discussions regarding the conditions and land use policies of the WCZ. In February of 2005, Mayor Duson officially established the Waterfront Central Zone Taskforce with the charge of evaluating the physical and economic conditions of the zone, and determining whether zone language changes would be needed.

In light of the Council's decision to comprehensively study the zone, Staff recommended to Ms. Rand that she hold her application until the results of the study were complete. Ms. Rand agreed to hold the application, but she now asks that the Board continue its review of the text change so that she can receive a decision from the Council.

Given the ongoing evaluation of the zone, Staff will not be providing a specific recommendation on the rezoning.

The Board should note that the text change submitted with this Report is the specific request of the applicant and is drafted by the Ms. Burns with the smallest edits needed to achieve Ms. Rand's goals for the diner

2. Property Description:

Becky's Diner occupies a +/- 10,000 square foot parcel of land located at the southerly edge of the Commercial Street right of way and along the westerly edge of the access

T, A, (S?)

Needelman
City Planner

PLANNING BOARD REPORT #64-05

Applicant's proposal

H. Brown - Brief
460 Ridge

J. Anton: WCZ takes some assumptions, but behind - concerned w/ commercial st
Timing (which will have a chilling effect of our development)

Disolk: somewhat troubling - WCZ is for waterfront, but proposal is
Quite limited - Town intent of zone to allow more
water related in part and we should

S. Teravener: Becky has **WATERFRONT CENTRAL ZONE**
support. **BUT** ~~Text amendment~~ would apply to other
TEXT AMENDMENT
will support

REBECCA RAND, PROPRIETOR BECKY'S DINER

M. Patterson: Battle it **APPLICANT** - w/ Becky's - to advance
interests - all those in zone would need to prove same
will support.

K. Beck (?) applicant owns BING

Submitted to:
Portland Planning Board
Portland, Maine
October 21, 2005

Submitted by:
Bill Needelman, Senior Planner

8. PARKING

Current – Parking linked to type of use (permitted or conditional) vs. to specified category of use.

As Recommended by the WCZ Task Force– Clarified link to category of use (water-dependent, other marine, and non-marine uses), noting hierarchy of uses, consistent with purpose statement. No substantive change, just description of standards currently applied and added “editor’s notes” to flag where to find applicable provisions.

Options:

- None identified, except simplification of language, separate section in text.

9. NO ADVERSE IMPACT

Current – Test applied to all permitted and conditional uses and contract zones -- to establish conformance with policy objective of the Purpose Statement, which is to “protect and nurture water-dependent uses” as a priority in the WCZ.

As Recommended by the WCZ Task Force – Clarifications to confirm that proposed uses will not displace or replace water-dependent uses, or occupy an area physically suitable for water-dependent uses.

Options:

- None identified

10. TEXT SIMPLIFICATION

Current – The current language was layered on top of older zoning (W-1, W-2), modified by 1993 text, and amended by some post-1993 amendments to address specific situations.

As Recommended by the WCZ Task Force– Not included in Charge to Task Force, so not addressed per se. Proposed text changes follow pattern established by existing text. Task Force willing to participate in recodification process.

Other Options Raised by One or More Participants:

- Review by Corporation Counsel’s office to determine ways to simplify language/reorganize text to make more accessible without changing substance.
- Look at possibility of moving some provisions out of zoning text and into site plan ordinance (e.g. conditional use standards).

- Extend 35 foot rule to west end of zone, but allow more limited uses (e.g. only office) consistent with marine industrial environment.
- Exempt City property from 35 foot rule – establish extension from westerly side of Fish Pier to easterly edge of IMT.

6. BUILDING EXPANSION

Current – Non-Marine: For existing buildings within 35 feet of Commercial Street, limited to 2,000 sq. feet on the ground floor only; expansion may not occupy more than 1,250 beyond 35 feet from Commercial Street. Expansion in excess of that by contract zone (with ground floor marine). **Marine:** Unlimited expansion of existing buildings on piers for marine use.

As Recommended by the WCZ Force As current, except 35' building expansion increased to 3,000 square feet and may include upper floor expansion – expansion may not occupy more than 1,500 sq. feet beyond 35' from Commercial Street; and allows existing building expansion (for non-35' buildings) of up to 2,000 square feet of upper story space (ground floor below, if newly created, marine) as conditional use.

Options:

- No limitation on square footage of increase in size of existing structures; just limited by building height, application of no adverse impact test, and requirement of ground floor marine.
- Expansion limited to a percentage of exiting building square footage.

7. VIEW CORRIDORS

Current – no specific mention in existing zoning but may be covered by Council-adopted 1983 Portland Waterfront Public Access Design Guidelines applied to other affected zones.

As Recommended by the WCZ Task Force– Recommend as conditional use standard for application to any new development or expansion, to extent practicable. To provide the public visual access to the water where physical access is not available or appropriate.

Other Options Raised by One or More Participants:

- Eliminate view corridor requirements.
- Modify language to place view corridor analysis on City, rather than proposed development.
- Retain but modify to provide that views corridors shall, in all cases, be “to extent practicable”.

- Apply to all buildings, new or existing (as proposed by Task Force).
- Negotiate mitigation fee as part of contract or conditional rezoning.
- Apply, but exempt projects that had already had some Council review.

option - exempt projects under 10,000 sq

4. DEP 75 FOOT RULE

Current – All ground floors (both existing and new buildings) reserved for marine use (except in certain buildings within 35’ of Commercial Street). Shoreline Zoning Act setback not included in WCZ because no setback required by Act for marine uses. Statewide, DEP 75 foot setback only applies to non-marine uses.

As Recommended by the WCZ Task Force– In light of proposed relaxed uses (non-marine ground floor uses in Old Port Overlay Zone, waterfront diner, expansion of buildings within 35’ of Commercial Street), comply with State requirement for 75 foot setback (except for waterfront diner, 25 foot).

Options:

DEP, OK

- ▪ If entire building within 100 feet of Commercial Street, zero setback (delete proposed 25’ setback for waterfront diner).
- Revise proposed Old Port Overlay Zone, seek General Development District designation from DEP, and seek zero setback, with authority for City to apply greater setback, in its discretion.
- Revise proposed Old Port Overlay Zone, seek General Development District designation from DEP, and seek 25’ setback.
- Refuse to comply with State Mandatory Shoreland Zoning Act and challenge DEP on jurisdiction to enforce any setback requirements.

5. 35 FOOT RULE

Current – Allows non-marine uses on all floors of existing buildings, in whole or in part, within 35 feet of Commercial Street (assumption was that these buildings were owned by pier owners and that enhanced rents would be used to maintain pier infrastructure – no longer the case in all instances). Rule applied only between the easterly edge of the Maine Wharf and the easterly edge of the Fish Pier.

As Recommended by the WCZ Task Force No change in geographic scope. In order to limit ground floor non-marine expansion onto piers, proposed amendment to provide ground floor non-marine uses cannot extend further than 100 feet from Commercial Street.

Options:

- Extend 35 foot rule to west end of zone, allow all uses currently allowed in east end of zone (office, service, retail, restaurant, etc.).

Options:

- Delete requirements for 20% second floor reserved marine and 80% active marine use, but maintain conditional use review above 50%; or
- Allow 100% of upper floors to be occupied by any use now permitted for “50% rule” buildings. *as permitted use (?)*

2. OLD PORT OVERLAY ZONE

Current – New buildings must have marine uses on the first floor, non-marine uses allowed by contract zone on upper floors. Because of this zoning limitation, DEP has not applied its statewide policy to Portland, which policy requires marine uses on all floors of new buildings within 75 feet of the water.

As Recommended by the WCZ Task Force – Recognizing that certain, limited areas of the central waterfront have limited or non-existent water access and are unlikely to revert to marine use, allow new buildings in a define overlay area (Long Wharf to Union Wharf) to have non-marine on 100% of all floors, subject to payment of a mitigation fee (discussed below).

Options:

- Review proposed Old Port Overlay Zone for existing development pattern and likely redefine proposed overlay zone, seek DEP designation for a General Development District (affects setback, see below).

3. MITIGATION FEE

Current – no provision.

As Recommended by the WCZ Task Force– Recognizing cumulative impact of new development on water-dependent and marine uses (traffic, circulation, competition for space, competition for parking, etc.), establish a linkage fee to provide a source of funds to assure investment in the marine infrastructure, either by direct investment in the affected site or by payment to the City Waterfront Loan and Investment Fund, to be used for: dredging, pile replacement, decking, etc. A mitigation fee appears in two contexts: in the Old Port Overlay Zone (contract zone) and in all other expansion/new construction/change of use for non-marine uses in the zone.

Options:

- Not applied.
- Apply only to Old Port Overlay Zone
- Apply to Old Port Overlay Zone and to new buildings outside Old Port Overlay Zone, but not existing buildings.

Issue. 1

WATERFRONT CENTRAL ZONE
Issues, Options, and Implications
April 10, 2006

Members of the Waterfront Task Force Drafting Subcommittee (Anne Pringle, Jack Humeniuk, Maggie Raymond, Charlie Poole and Barbara Vestal) met on April 6 to discuss issues raised at the Council meeting. Joining the members were Will Gorham, Task Force Co-Chair and Kevin Beal, Planning Board Chair (and Task Force member). Dick Ingalls was present as an observer.

Goals/Process

- **Discuss the issues raised at the Council Meeting – flesh out the various options and how they would be implemented in the ordinance.**
- **Identify issues and focus thoughts to avoid greater confusion and/or unintended consequences.**
- **This was not a "negotiation", as attendees were not empowered to represent the full Task Force, not all parties were at the table, and the Council specifically did not delegate decision-making to a conference committee.**
- **No positions were taken, no consensus was reached, except that it was generally agreed that it might be useful to offer the Council a framework for policy choices.**

1. 50% RULE

Current - upper floors of existing buildings allowed to be occupied by non-marine uses, but limited to 50% of total floor area of the building.

As Recommended by the Waterfront Central Zone Task Force – allow greater upper floor use by non-marine, reserving 20% of second floor for marine use (anticipate marine offices). Require that 80% of first floor space be occupied by active marine uses. Planning Board conditional use review required to exceed 50% of total floor area.

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

(Ord. No. 168-93, § 2, 1-4-93)

- (k) *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.
- (l) *Signs*: Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *Compatibility of nonmarine uses with marine uses*: Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314 (a). Siting of a use not set forth in section 14-314 (a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly property line of Maine Wharf and the easterly property line of the City Fish Pier*: 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.
- (p) *Pier and wharf expansions*: In addition to meeting Harbor Commissioner 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.
- (q) *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 needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. 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. For example, any

- (c) *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.
- (d) *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.
- (e) *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 parks and 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.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, 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 department of parks and 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.
- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.

building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

(f) Minimum ground floor clearance: Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable up 15 feet.

(gh) New Non-Marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-315.3 (conditional rezoning, option II) four 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)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *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.
- (b) *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 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).

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.
- f. Drive-up services for any use other than a permitted use listed under 14-314 (a).

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* ~~Thirty~~ Forty-five (3545) feet, except that within ~~four~~ two hundred (2400) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a

- (c) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.
- (d) 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 (either on-site or of-site), and visual and physical access to the waterfront for the general public.
- (e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).
- (f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection)
- (g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as described above in 14-315.3(c).
- (h) Maximum building setback from the southerly sideline of Commercial Street shall be no more than 10 feet.

amend
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Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

water views of other structures located in the vicinity, and does will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, or and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a)(Conditional use, Parking).

- amend
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- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development Conditional use standard 14-315 iv. (Public View Protection and Public)
 - (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine uses as listed in 14-314(a). use is not abandoned after the project is developed.

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

The following standards are applicable to the Commercial Street/Old Port Overlay Zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf (see incorporated map). For a site within the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards (option I,) immediately above. The standards within this overlay zone are as follows:

- (a) All portions of the structure are set back at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the State Department of Environmental Protection that the location and development context of the subject site adhere to the State's definition of a "general development district," the coastal wetland setback may be reduced to 25 feet.
- (b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

II) the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314 (b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.
- (e) 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.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).
- (g) The nonmarine portion of the proposed development ~~does~~ will not significantly restrict air, or light for marine uses located in the immediate ~~of~~

1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under *either* subsection I, General *or* subsection II, Commercial Street/Old Port Overlay, below.

Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

Sec. 14-315.3 (b) Direct Investment in marine infrastructure

The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site, the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3(c) below, shall be required for all or part of the mitigation

Mitigation by direct investment in marine infrastructure may include, dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses. Whether on-site or off-site, the value of mitigation shall be not less than the value of compensation described in 14-315.3 (c) below.

Sec. 14-315.3 (c) Financial contribution in lieu of mitigation

If (when applying Option I, General,) the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be required. (All proposals applying for approval under option II, the Commercial/Old Port Overlay Zone, shall make a financial contribution in lieu of direct investment. In determining the amount of the contribution,(under either option I or

- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet; and
- (3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314 (f) 1.a, and 14-315 (a), the uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

- (1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,
- (2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be occupied by commercial berthing supporting a marine use listed under 14-314(a); and,
- (3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

*as part of
amend #1*

(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)

Sec. 14-315.3. Contract or conditional rezoning.

Sec. 14-315.3 (a) General

Except as ~~authorized in section 14-314 (d),~~ otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4,

- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. 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 related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(g) Waterfront Diner:

Food service establishment that through hours and type of operation supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license nor shall any alcohol be served on the premises.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
- iv. The diner shall occupy no more than a total of 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.
- vi. The diner shall provide full service meals and table wait staff. No formula food shall be permitted.
- vii. No greater than 10% of total restaurant sales shall be take out service.
- viii. Notwithstanding sections 14-315.1.v and 14-315.1.vi (Location of non-water dependent uses,) the structure housing the diner may be located up to, but no closer than 25 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

(h) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

- (1) the use may occupy upper floor areas; and

Handwritten notes:
 Total / 5000 /
 1st floor / 3000

(de) Residential: The “primary” owner of a marine business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

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

(12) the residential living space shall not exceed seven hundred fifty (~~1,000~~750) square feet, inclusive of all exterior porches and decks;

(23) 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;

(34) the residential use shall be limited to one unit per wharf;

(45) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

(56) 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 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 related business.

(f) Utility Sub Stations

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

i. The facility is located more than 100 feet from the water’s edge,

- 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 IM zone; and
 - ~~b~~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.
- (3) Boat rack storage facilities, provided that:
- a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
 - b. Boat rack structures shall not exceed 10,000 square feet of build footprint.
- (ed) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing or having an unexpired site plan as of January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the City Fish Pier) into contiguous and newly created building space of no more than ~~2000~~ 3000 sq. ft., total for the life of the building, shall be allowed only as follows:
- (1) the use may occupy ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (2) the use may occupy a ground floor area of no more than ~~1250~~ 1500 square feet beyond 35 feet from the southerly sideline of Commercial Street; and *no more than 100 from Commercial St. and southerly sideline*
 - (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

Amend # 6

(Please see editor's note below). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.

(b) Parking for (i) conditional uses, (ii) non marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning:

~~(a) — Parking:~~ Notwithstanding sections 14-317(gh), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses ~~for conditional uses and uses permitted only above the ground floor level,~~ unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces ~~required~~ needed to accommodate the demand for marine and water dependent uses that are required permitted by section 14-314(a) which are or may be located on the subject property. *(Please see editor's note below).* The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

(bc) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

amend
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v. Location of non-water dependent uses: For conditional uses listed below in section 14-315.2, except as otherwise restricted in this ordinance, non-water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

Notwithstanding the paragraph above, marine uses listed below in section 14-315.2 (c), marine conditional uses may be located in any portion of an existing or new building, subject to a) a finding of "no adverse impact" under section 14-313.5, and b) any criteria imposed through conditional use review.

Editor's Note: Non-water dependent marine uses listed in the permitted use section 14-314(a) are not subject to the above provision.

vi. Expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide: Not withstanding provision v. above, the expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide shall be prohibited except as provided below:

a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume and/or floor area of that portion of the original structure located within 75 feet of the maximum spring high tide and existing as of the date of approval, but in no case closer than 25 feet thereto; and

b. The expansion does not extend the non-water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)

Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

Sec. 14-315.2 Conditional Uses:

(a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine conditional uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property.

a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1){traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

iv. Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall:(a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board 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 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.

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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 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual 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.

- c.3. Interior meeting or classroom space accessory to uses permitted in section 14-314(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 2, but shall only be permitted as accessory uses if the total of all accessory retail and service 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 (15) percent of the total floor area per building, whichever is less.

2. Street vendors licensed pursuant to Chapter 19.

Sec. 14-315. Conditional uses.

The following uses listed below under section 14-315.2 shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

Sec. 14-315.1. Conditional use standards:

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. Parking and Traffic Circulation:

Subject to section 14-314(f)1 and 14-315(a){accessory parking for non-water dependent uses}, the following uses shall be permitted:

1. Professional, business, government, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not 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;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people (excluding group classes and performances), and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other:*

1. Accessory uses:

a.1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a){for marine related, but not water dependent uses} or 14-315 (b) {for non-marine uses}.

b.2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and

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

3. ~~Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city owned property.~~

4. ~~Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.~~

(e) Commercial uses in existing buildings located along Commercial Street. In any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:.

Buildings meeting the following criteria may house the uses listed below:

1. ~~The subject building is located between the easterly property line of Maine Wharf and the easterly property line of the City fish pier; and~~
2. ~~The subject building existed or had an unexpired site place as of January 4, 1993; and~~
3. ~~The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and~~
4. ~~The ground floor non-marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and~~
5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

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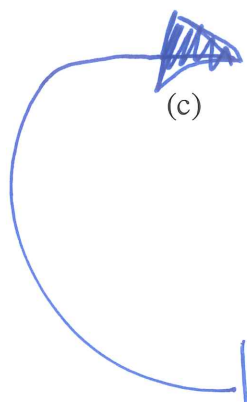
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amend #65

and industrial

~~(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:~~

~~Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(i) below.~~

1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.



(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:*

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M2 zone.

(d) *Public: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:*

- ~~1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;~~

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;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
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. Noncommercial berthing of less than fifty (50) linear feet per pier;
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. Parking accessory to an on-site water dependent use.

Editor's note: all parking in the WCZ for non water dependent uses is subject to conditional use provisions found in section 14-315.

25. Bait sales and processing

(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. The next preference shall be for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. Mitigation by direct investment in marine infrastructure may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses.

(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, the applicant shall make a financial contribution to the City's waterfront loan and investment fund.

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water dependent-uses), the following uses are permitted in the waterfront central zone:

(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;

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on ~~marine uses~~ water-dependent uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future ~~marine water dependent~~ development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwaer-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (bc) The proposed use will reduce existing commercial vessel berthing space;
- (ed) The proposed nonwater-dependent use , structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (ed) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Sec. 14-313.6. Mitigation of impacts required for non-marine uses.

Even if there is a finding of “no adverse impact” under 14-313.5 for any single project, the cumulative impacts of multiple non-marine developments create an environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (a) direct investment in marine infrastructure, or (b) by contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a) or (b) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the Planning Board.

Main Motion

DIVISION 18. WATERFRONT CENTRAL ZONE*

E-1, K. Regard

*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.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses.

Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances 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 do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

DEP. 4

Sincerely,

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality
Department of Environmental Protection

cc: Bill Needelman, Senior Planner, City of Portland
Planning Board
WCZ Task Force Members

Department has concluded that a reduction of the minimum setback to a zero setback for ground floor non-functionally water-dependent structures and uses within 100 feet of Commercial Street is substantiated. It is important to further mention that this does not imply that an entire structure that happens to have simply a portion of it within 100 feet of Commercial Street would have a zero setback for the entire structure. Rather, only the portion of the structure within 100 feet of Commercial Street would be subject to the zero setback allowance for ground floor non-functionally water-dependent uses.

The Department has also been provided a copy of a proposed amendment by Councilor Gorham calling for the wholesale elimination of the 75-foot rule within the WCZ. I have discussed the ramifications of such a proposal above. If the Council chooses to adopt this proposal, and additionally removes the upper floor allowance, the City must still have some means of controlling expansions of existing ground floor non-functionally water-dependent structures and uses at least within 75 feet of the water. The language proposed in Section 14-315.1(vi) accomplishes this consistently with State minimum requirements. As such, Councilor Gorham's proposed amendment to also remove this section should be disregarded.

Otherwise, the Department has coarsely evaluated the existing conditions of the WCZ several times during the period the task force was meeting. Our comprehension of the current conditions within the WCZ necessitated the institution of the 75-foot rule in your Code. Although we have heard many in opposition to this requirement, none have provided any evidence to substantiate a reduction to, or the elimination of, this requirement. Should the City desire a reduction to or elimination of this requirement it must first provide evidence to the Department that clearly demonstrates that the existing conditions warrant such action. Without such clear demonstration the Department is unable to waive this requirement for any municipality, including Portland. Adequate demonstration should be interpreted to mean a vast majority or predominance of the existing structures within the WCZ currently have ground floor non-functionally water-dependent use occupation. The City may also find it appropriate to consider evaluating smaller segments within the district that might better qualify for a 75-foot reduction, such as the filled land of Long Wharf and Chandler's Wharf. We recommend against an attempt to alter the minimum setback on a building by building basis, however.

Lastly, Mayor Cohen inquired whether the Department would require a minimum 25-foot setback within the area 100 feet from Commercial Street, if the City only extended the 35-foot rule, so called, the full length of the WCZ. With our willingness to eliminate the 25-foot setback altogether, I believe this question is sufficiently addressed.

The Department hopes the Council finds the above guidance beneficial. Should you have any questions about the Department's position, please do not hesitate to contact me. I may be reached at 822-6328, or by electronic mail at michael.j.morse@maine.gov.

space. The Department has already allowed an exception, for Portland only, which allows the 75-foot rule to apply only to ground floor uses; we have agreed that upper stories may be used for non-marine uses, without any required setback from the water. This is codified in proposed Section 14-315.1(v) of the draft ordinance. This provides relief to the pier and building owners from the current Code requirements in that it would allow any upper floor areas to house either functionally water-dependent or non-functionally water-dependent uses. Of course, existing non-functionally water-dependent uses already within this 75-foot area may remain, but they will be considered as being legally existing non-conforming uses. These uses may expand, but with certain limitations as proposed Section 14-315.1(vi), which is consistent with the statewide requirements.

As I understand it, the current Code does not allow any new ground floor non-functionally water-dependent use anywhere within the WCZ except within certain specific portions within 35 feet of Commercial Street. It is unclear to me why the proposed significant relaxation is considered to be more restrictive than the existing Code requirements. However, if the City ultimately wishes to eliminate the 75-foot setback requirement then the Department will expect the City to also eliminate the unrestricted usage of upper floors for non-functionally water-dependent uses (i.e. at least revert back to the current more restrictive Code requirements).

Further, the Department has allowed the area within 100 feet of Commercial Street to be exempted from the 75-foot rule provided that a minimum setback of 25 feet is required for non-functionally water-dependent structures/uses in that area. I feel it is very important for me to reiterate that there is not an intended overlap of the 75-foot requirement in the area within 100 feet of Commercial Street. There has been a significant amount of opposition to the 25-foot minimum setback in this area, largely due to speculative development by Rebecca Rand. However, until earlier this week no Councilor, Planning Board member, property owner, or other concerned individual had provided any substantive evidence to the Department to demonstrate that existing conditions within the 100-foot area from Commercial Street warrants the reduction of the 25-foot setback requirement. After reviewing the proposed language even closer than she had previously, one of the WCZ Task Force members contacted me with information suggesting that existing development in this area might already predominantly exist with a zero setback from the MSTL, except for Becky's Diner.

As a result of this evidence, I evaluated various sites along the WCZ and measured non-functionally water-dependent structure setbacks at locations within 100 feet of Commercial Street. Although most development within 100 feet of Commercial Street is greater than 25 feet from the MSTL, my evaluation confirmed the task force member's belief that existing development within this area is predominantly less than 25 feet from the MSTL in areas where the water encroaches within the 100-foot area adjacent to Commercial Street. The three specific areas and associated non-functionally water-dependent uses include the land area between Maine Wharf and Custom House Wharf (Ri Ra's/ Flatbread Pizza), the land area between Long Wharf and Chandler's Wharf (Portland Lobster Company), and the land area behind Becky's Diner. As such, the

DEP. 1

April 7, 2006

James Cohen, Mayor
And the Portland City Council
City of Portland
389 Congress Street
Portland, ME 04101-3503

RE: Proposed zoning amendments to the Waterfront Central Zone

Dear Mayor Cohen and City Council Members:

As there is a high likelihood at this time that I will be unable to attend the upcoming Council Workshop (scheduled 4/10/06) I am writing to clarify several issues pertaining to the above-referenced matter, and to update you on the Department's position related to required water setback restrictions.

As you are aware, there are specific minimum shoreland zoning requirements that all municipal ordinances, including the City of Portland Land Use Code (Code), must meet. Although it seems that we have discussed the requirements at great length to this point there evidently is still some confusion among some Councilors, Planning Board members, and the regulated community as to what is specifically being required of the City in order for the Code to be consistent with State minimum requirements.

The three primary shoreland zoning components that have generated the most interest are the use of entire upper floor space for non-functionally water-dependent uses (a deviation from State requirements), the "75-foot rule", so called, and the 25-foot minimum setback for ground floor non-functionally water-dependent structures/uses within 100 feet of Commercial Street.

Please note that your existing WCZ ordinance language does not address required shoreland zoning setbacks because it requires that all ground floor structures be exclusively used for marine uses. This has become an issue now because the proposed new zoning increases the possibility that structures may use ground floor space for non-marine uses.

The 75-foot rule which applies throughout the State, unless a specific deviation has been approved by the Department, requires that all new and existing structures within 75 feet of the Maximum Spring Tide Line (MSTL) be preserved for functionally water-dependent uses exclusively. It does not distinguish between ground floor and upper story

9

Amendment #9

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9. Amendment to Waterfront Diner Provision

Delete 25 foot setback requirement

14-315.2(g) Waterfront Diner:

Food service establishment that through hours and type of operation supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license nor shall any alcohol be served on the premises.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
- iv. The diner shall occupy no more than a total of 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.
- vi. The diner shall provide full service meals and table wait staff. No formula food shall be permitted.
- vii. No greater than 10% of total restaurant sales shall be take out service.

(AMENDMENT)

~~viii. Notwithstanding sections 14-315.1.v and 14-315.1.vi (Location of non-water dependent uses.) the structure housing the diner may be located up to, but no closer than 25 feet from the maximum spring tide line of a coastal wetland, measured horizontally.~~

(END AMENDMENT)

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Proposed Amendment #9 Amendment to Waterfront Diner Provision

Current Ordinance: No provision for Waterfront Diner.

Text Proposed by WCZ Task Force: Creation of Waterfront Diner as a use in the zone.

*Staff Amendment to Text Proposed By WCZ Task Force: Staff recommends an amendment to the Waterfront Diner Provision, namely the elimination of 14-315.2(g)(viii) IF 1) the Council adopts Amendment 6 as required by DEP and 2) does not extend the 35 foot rule to cover the whole zone.

Anticipated Impacts: **Note: This Amendment is not necessary if the 35 Foot Rule is expanded because Becky's would qualify as a permitted use "restaurant".

DEP Comment: The DEP is comfortable with this Amendment.

§14-315.2(g)(viii) Notwithstanding the restrictions on expansions provided in 14-315.2(e) (expansions of non water dependent non marine uses) to within 100 feet of Commercial Street, a Waterfront Diner shall permitted to expand no greater than 105 feet from the southerly sideline of Commercial Street.

~~IS not~~

IS not #4 - 35' Rule expansion
and #2 to

Side note: Ms. Bond said today she
needs 5000 SF total
3000 SF foot print

8

Amendment #8

8. Delete View Protection Provisions

(AMENDMENT)

~~14-315.1 (v) Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board 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 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.~~

(END AMENDMENT)

Sec. 14-315.3. Contract or conditional rezoning.
Option I.

(AMENDMENT)

~~(h) The proposed development is consistent with Conditional use standard 14-315 iv. (Public View Protection)~~

(END AMENDMENT)

Sec. 14-315.3. Contract or conditional rezoning.
Option II.

(AMENDMENT)

~~(f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection)~~

(END AMENDMENT)

Deleted: the Portland Waterfront Public

Deleted: Access Design Guidelines, a copy of which is on file in the department of planning and urban development

Deleted: and Public

m, cz, z BS

00

Proposed Amendment #8 Delete View Corridor Protection Provision

Current Ordinance: WCZ makes no provision for the protection of view corridors to the water other than what currently exists in the Site Plan Ordinance for all development within the City.

Text Proposed by WCZ Task Force: Includes a standard for all conditional uses (14-315.1(v)) and Conditional/Contract Rezoning (14-315.3) to protect and preserve view corridors.

City Council Amendment to Text Proposed By WCZ Task Force: Eliminate all requirements to view corridor protection within the zone.

Anticipated Impacts: Status quo

DEP Comment: The DEP has no comment.

0-9

Amendment #7

5. Delete Changes to the "No Adverse Impact" Provision

Return to Original Text

(AMENDMENT)

Sec. 14-313.5. No adverse impact on marine uses ~~water dependent uses.~~

Deleted: marine uses

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine, ~~water dependent~~ development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

Deleted: marine

(a) The proposed nonwater-dependent use will displace an existing water-dependent use, ~~or replace a water dependent use that previously existed within the last two years;~~

~~(b) The proposed nonwaer dependent use is proposed to be located on a portion of the site that is physically suited for a water dependent use;~~

adjacent to the water (sc)

(END AMENDMENT)

(c) The proposed use will reduce existing commercial vessel berthing space;

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(d) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or

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(e) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

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WDU

90

8-1 add in

by construction or proximity to the water's edge

Move Change: 7-2, Chapter, Gen

Proposed Amendment #7 Delete the Proposed Changes to the No Adverse Impact Provision

Current Ordinance: Every use in the zone must meet a "no adverse impact on future marine development opportunities" and sets forth the criteria (a)-(d) which must be satisfied.

Text Proposed by WCZ Task Force: Changes the word "marine development" to "water dependent development;" it modifies the criteria to be met by including the prohibition against displacing a water dependent use that previously existed within the last two years and it added a criteria that prohibits a NWDU to be located on a portion of the site physically suited for water dependent uses.

City Council Amendment to Text Proposed By WCZ Task Force: Delete the proposed changes to the text in 14-313.5.

Anticipated Impacts: Status quo

DEP Comment: The DEP is comfortable with this Amendment.

Return to Status Quo

Amend
eliminate striking (b) - add "suitable"
standard back in
passed 8-1 Council

Amend
add WDU back to paragraph #1

Passed 29
amended

Amendment #6

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6. Expansions of "35-foot rule" buildings limited to within 100' of Commercial Street – DEP requirement.

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14-315.2(d) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing or having an unexpired site plan as of January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the City Fish Pier) into contiguous and newly created building space of no more than ~~2000~~ 3000 sq. ft., total for the life of the building, shall be allowed only as follows:

- (1) the use may occupy ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than ~~1250~~ 1500 square feet beyond 35 feet from the southerly sideline of Commercial Street (AMENDMENT) and be located no more than 100 feet from the southerly sideline of Commercial Street; and (END AMENDMENT)
- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

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Passed

6

Proposed Amendment #6 Amendment to Expansion of "35 Foot Rule" Buildings (Sapporo Amendment)

Current Ordinance: The so-called "Sapporo amendment" deals strictly with the expansions of 35 foot rule buildings. Under the current ordinance such buildings could expand non marine uses into new and contiguous ground floor space of no more than 2000 s.f.

Text Proposed by WCZ Task Force: Increases the expansion area to 3000 s.f.; includes and allows the expansion within upper floors; and increases the ground floor area to be occupied to from 1250 to 1500 s.f. beyond 35 feet from Commercial Street.

DEP REQUIREMENT: Amendment to Text Proposed By WCZ Task Force:

Limits any such expansions to wholly within 100 feet from the sideline of Commercial Street to be consistent with the requirements of the DEP (i.e. zero setback within 100 feet of Commercial Street, with non marine uses allowed in any or all parts of the building).

Anticipated Impacts: This Amendment would restrict first floor additions or expansions of the few existing buildings which extend further than 100 feet of Commercial Street (i.e. Flatbreads, Portland Lobster Company) If the 35 foot rule is expanded the length of the zone, this amendment would potentially effect other buildings west of the City Fish Pier.

DEP Comment: The DEP **requires** this Amendment to be consistent with the 100 foot limitation on first floor non marine uses in the zone.

100' limit for Expansions

Becky's ? expansion

if not

Amendment #5

5. Eliminate proposed restriction on "35-foot rule" uses to within 100' of Commercial Street

See also, Amendment #6 (Expansions of "35-foot rule" buildings)

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14-314(e) Commercial uses in existing buildings located along Commercial Street. In any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

Buildings meeting the following criteria may house the uses listed below:

1. The subject building is located between the easterly property line of Maine Wharf and the easterly property line of the City fish pier; and
2. The subject building existed or had an unexpired site plan as of January 4, 1993; and
3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and

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(AMENDMENT)

- ~~4. The ground floor non marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and~~ (END AMENDMENT)
5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

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No pass

Proposed Amendment #5 Eliminate Proposed Restriction on 35 Foot Rule uses to within 100 Feet of Commercial Street.

Current Ordinance: 35 Foot Rule allows non marine uses in existing buildings located in whole or in part within 35 feet of Commercial Street.

Text Proposed by WCZ Task Force: There is an amendment to limit first floor non marine uses in existing buildings located within 35 feet of Commercial Street. Such non marine uses can extend no further than 100 feet from Commercial Street.

City Council Amendment to Text Proposed By WCZ Task Force: Delete §14-314(e)(4), the 100 foot limit for non marine uses in existing buildings.

Anticipated Impacts: Status quo.

DEP Comment: DEP is comfortable with this Amendment. It recognizes there are less than a handful of existing buildings to which this may apply.

Existing Buildings only

4

Amendment #4

4. Extend "35-foot Rule" length of zone

14-314(e) Commercial uses in existing buildings located along Commercial Street. In any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

Buildings meeting the following criteria may house the uses listed below:

(AMENDMENT)

~~1. The subject building is located between the easterly property line of Maine Wharf and the easterly property line of the City fish pier; and (END AMENDMENT)~~

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2. The subject building existed or had an unexpired site plan as of January 4, 1993; and

3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and

4. The ground floor non-marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and

5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

WG, 2 Cav 6-3 G D, argument

4

Proposed Amendment #4 Extend 35 Foot Rule the Length of Zone

Current Ordinance: Maintains the 35 foot rule between the easterly property line of Maine Wharf and the easterly property line of the City Fish Pier. The so-called 35 foot rule applies to building existing as of 1/4/93 only and does not apply to new buildings. It allows buildings located in whole or in part within 35 feet of Commercial Street to have ground floor or upper floor non marine uses. Any expansions of buildings so situated would be a conditional use (2000 s.f. or less) or Conditional/Contract Rezoning (greater than 2000 s.f.)

Text Proposed by WCZ Task Force: No change to location of the 35 foot rule but the ordinance was redrafted for clarity and restricted to application within 100 feet of Commercial Street.

City Council Amendment to Text Proposed By WCZ Task Force: Extend this rule the entire length of the zone. (14-314(e) eliminate subsection (1)).

G
D

Anticipated Impacts: The result of this would be to allow non marine uses in six additional buildings located west of the City Fish Pier.

It may mean that we can delete the Waterfront Diner as a use since the extended zone would allow Becky's to operate as a restaurant and any expansion to Becky's would be a conditional use (See Proposed Amendment 6). **Query: If the 35 foot rule is extended and the Waterfront Diner provision eliminated, do we want to add a provision banning "formula food" (i.e. Chain Restaurants)?**

Note that the IMT terminal is not included in the extension. The IMT terminal is not located in the WCZ.

DEP Comment: DEP is not opposed to an extension of the 35 foot rule to cover the entire length of the zone subject to Amendment 6 (i.e. restrictions on expansions).

If not adopted -

need the Waterfront Diner provision for Becky's -

5000 total sq ft
3000 footprint

~~vi. Expansion of existing first floor non water dependent uses within 75 feet of maximum spring high tide: Notwithstanding provision v. above, the expansion of existing first floor non water dependent uses within 75 feet of maximum spring high tide shall be prohibited except as provided below:~~

~~a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume and/or floor area of that portion of the original structure located within 75 feet of the maximum spring high tide and existing as of the date of approval, but in no case closer than 25 feet thereto; and~~

~~b. The expansion does not extend the non water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)~~

(END AMENDMENT)

Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1){traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

- iv. Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall:(a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board 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 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.

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(AMENDMENT)

- ~~v. Location of non water dependent uses: For conditional uses listed below in section 14 315.2, except as otherwise restricted in this ordinance, non water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.~~

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Notwithstanding the paragraph above, marine uses listed below in section 14 315.2 (c), marine conditional uses may be located in any portion of an existing or new building, subject to a) a finding of "no adverse impact" under section 14 313.5, and b) any criteria imposed through conditional use review.

Editor's Note: Non water dependent marine uses listed in the permitted use section 14-314(a) are not subject to the above provision.

Amendment #3

3. Elimination of 75' Setback

Changes reflecting Zero setback within 100' of Commercial Street
(as agreed to by DEP.)

Sec. 14-315. Conditional uses.

The following uses listed below under section 14-315.2 shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

Sec. 14-315.1. Conditional use standards:

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. Parking and Traffic Circulation:
 - a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.
 - b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to

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move 5, 2G

Proposed Amendment #3 Elimination of the 75 Foot Setback

Current Ordinance: There has been no setback required by the DEP because of the existing restrictions on non marine uses and non water dependent uses within the zone.

Text Proposed by WCZ Task Force Requires a 75 foot setback for any non marine, first floor use in the WCZ.

City Council Amendment to Text Proposed By WCZ Task Force: Eliminate the 75 foot in its entirety (See DEP Comment below).

Anticipated Impacts: Status quo.

DEP Comment: The DEP is comfortable with eliminating the setback requirement for structures located within 100 feet of Commercial Street. The zone is otherwise restricted to satisfy DEP concerns (for example, there is a prohibition against non marine uses on the first floor of buildings located over the water thus preserving the same for water dependent uses).

need amendment #6

~~move to include amendment #6~~
8-0 include

main motion
8-0 passed

~~than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities. (END AMENDMENT)~~

~~(b) Financial contribution in lieu of mitigation~~

~~If the opportunity to make such investment in marine infrastructure is not available on site, or off site within the same lot, the applicant shall make a financial contribution to the City's waterfront loan and investment fund. (END AMENDMENT)~~

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ii. Remove mitigation requirement for conditional rezoning under "general" (non-marine on upper floors only)

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Sec. 14-315.3. Contract or conditional rezoning.

Sec. 14-315.3 (a) General

Except as authorized in section 14-314 (d), otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

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- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under either subsection I, General or subsection II, Commercial Street/Old Port Overlay, below.

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Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

(AMENDMENT)

Sec. 14 315.3 (b) Direct Investment in marine infrastructure

The preferred pattern of development under subsection I, General, is for water dependent and nonwater dependent uses to co exist on the site and for the non water dependent uses to make a critical contribution to the economic viability of the water dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water dependent uses off site, the next preference shall be for

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Amendment #2

2. a. Mitigation fee for Old Port Overlay only

i. Eliminate mitigation section for all other non-marine projects

(AMENDMENT)

Sec. 14 313.6. Mitigation of impacts required for non-marine uses.

~~Even if there is a finding of "no adverse impact" under 14 313.5 for any single project, the cumulative impacts of multiple non marine developments create an environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.~~

~~In order to mitigate the cumulative impacts of non marine uses in the zone, all new or expanded non marine uses listed under 14 314(b), 14 314(c), and 14 314(e), or that require conditional use review under section 14 315 shall contribute to the marine economy through either (a) direct investment in marine infrastructure, or (b) by contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a) or (b) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the Planning Board.~~

(a) — Direct investment in marine infrastructure

~~The preferred pattern of development for non marine uses is for water dependent and nonwater dependent uses to co exist on the same site and for the non water dependent uses to make a critical contribution to the economic viability of the water dependent use. The next preference shall be for mitigation off site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. Mitigation by direct investment in marine infrastructure may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water dependent uses listed within 14 314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses.~~

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2A

2

Proposed Amendment #2

#2A: Retain Mitigation Fee for Old Port Overlay Zone Only

OPAZ

move 0,5 m

9-0 passed

OR

#2B: Eliminate Mitigation Fee Throughout the Zone.

move Section, 2 m

#-5,

Current Ordinance: No mitigation fees exist.

9, 12, 19

Text Proposed by WCZ Task Force Adds the mitigation fee requirement throughout the zone to new or expanded non marine related uses either as a conditional use or through Conditional/Contract Rezoning. The fee is either 5% of the total project cost or \$10 per s.f. non marine related space. The fee is expended either to construct or upgrade on-site marine infrastructure or paid as a contribution to the City's waterfront loan fund.

City Council Amendment to Text Proposed By WCZ Task Force:

panel 14-315.3 a & footnote b

#2A: Eliminate 14-313.6, only, but leave the mitigation fee as a condition of any Conditional/Contract Rezoning within the Old Port Overlay Zone. (14-315.3(b))

OR (choose one)

#2B Eliminate the mitigation fee in its entirety, both 14-313.6 and 14-315.3(b).

Anticipated Impacts: #2A: By leaving it in the Old Port Overlay Zone, developers are put on notice that they are subject to this fee. *Note, because Becky's is not in the Overlay Zone, her proposal would not be subject to the mitigation fee.

#2B No fees for developing non marine related uses would be imposed.

DEP Comment: No comment.

Amendment #1

Elimination of 50% limitation for upper floor non-marine uses

Sec. 14-314. Permitted uses.

(b) ~~Commercial (AMENDMENT) and industrial (END AMENDMENT)~~ uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level. (AMENDMENT) ~~provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:~~

~~Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(i) below. (END AMENDMENT)~~

1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(e) ~~(AMENDMENT) Industrial uses above the ground floor level of buildings in existence on January 4, 1993. Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building: (END AMENDMENT)~~

6. Warehousing and wholesaling;
7. Industrial uses which meet the performance standards of the I-M zone.

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Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water dependent-uses), the following uses are permitted in the waterfront central zone:¶

¶ (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;¶

... [1]

Inserted: 24. Parking accessory to an on-site water dependent use.

Inserted: Editor's note: all parking in the WCZ for non water dependent uses is subject to conditional use provisions found in section 14-315.

Inserted: 25. Bait sales and processing

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also eliminate 14-315(z)(i)

Notion

m g, 2 s

8-0, clotier abstained /

Proposed Amendment #1: Eliminate the 50% Rule

Current Ordinance: Non marine commercial and industrial uses in the upper floors in building existing as of 1/4/93 are permitted IF the total floor area of such uses does not exceed 50% of the building's total floor area.

Text Proposed by WCZ Task Force: Added language that would allow studios for artists and crafts people to take advantage of this upper floor, non marine related use, provision. Added language intended to relax the 50% rule (14-315.2(i)) for commercial and industrial buildings in buildings in existence as of 1/4/93 as a conditional use.

- City Council Amendment to Text Proposed by WCZ Task Force
- 1) Eliminate the 50% limitation on floor area and allow 100% of the upper stories to house non marine uses. (14-314(b)(c))
 - 2) Eliminate 14-315(2)(i) in its entirety.

Anticipated Impacts: This Proposed amendment only effects building with more than 2 stories because the ordinance already allows for NWDU at 100% for second floors.

DEP Comment: No objection by DEP because the DEP already allows non marine uses above the first floor in existing buildings.

100% , UPPER FLOOR
Non-Marine

Permitted use

to those buildings located within 35 feet of Commercial Street. There is discussion about extending the "35 Foot Rule" the entire length of the Zone. (see attached).

- b. The DEP is willing to eliminate the 75 foot setback requirement if the following restrictions remains in the zone: 1. non marine are prohibited on the first floor of any building located beyond 100 feet of Commercial Street except where an existing building or non marine use already exists and is located in whole or in part within 35 feet of Commercial Street. 2. non marine uses on the first floor located beyond 100 feet of Commercial Street requires a Conditional/Contract Rezoning.

3. Should clarifying definitions be added?

Answer: Several definitions may be helpful to include in the text depending of the outcome of the discussion and a vote on the proposed amendments. They are as follows:

- a. If the Waterfront Diner stays in as a use, then we may want to define the referenced "**Formula Food**" as follows: Formula food is food prepared pursuant to a standardized menu, with standardized ingredients and food preparation in a setting required by contract or other arrangement to be conforming in architecture, interior and exterior color schemes and or decor, employee uniforms, or similar standardized features substantially identical to another restaurant regardless of ownership or location.
- b. If the mitigation fee stays in, either in the whole zone or in the Old Port Overlay, only, we may want to add these clarifying definitions: For purposes of the Waterfront Central Zone, only, the following terms shall have the following definitions:

Lot: Any abutting property under common ownership.

On-site: That portion of any lot included within or directly impacted by a proposed development.

moved to amend 4 about 9-0

To: Mayor Cohen and Members of the City Council
From: P. Littell, Asst. Corporation Counsel
Date: 4/13/06
Re: WCZ

At the 4/10/06 Council Workshop, Corporation Counsel's Office was asked to succinctly respond to a variety of questions regarding proposed amendments to the WCZ zone and to outline further potential changes to the originally proposed language. This memo hopefully will provide a clear explanation of the proposed amendments and their respective consequences.

The Proposed Amendments are structured as follows:

White Sheet

Current Text:

Text Proposed by WCZ Task Force:

City Council Amendment to Text Proposed by WCZ Task Force:

Anticipated Impacts:

DEP Comments:

Blue Sheet

Redlined language reflecting the proposed City Council Amendments to Proposed Text. If the Council wants to adopt an Amendment, they should move to adopt by referencing "Amendment 1, or 2a, or 2b, or 3 and so on..."

Clarifying Comments:

1. What is the 50% Rule?

Answer: The current WCZ ordinance limits non marine uses in upper floors to no greater than 50% of the total floor area of the building.

2. Where does the DEP stand on setbacks?

Answer: Based on recent discussions with the DEP, they would allow the following setbacks to apply:

- a. Zero setbacks for buildings located within 100 feet of Commercial Street. This is true whether or not the buildings house marine or non marine uses. Our ordinance currently limits non marine first floor uses

My Notes

DIVISION 18. WATERFRONT CENTRAL ZONE*

- Sec. 14-313. Purpose.
- Sec. 14-313.5. No adverse impact on water-dependent uses.
- Sec. 14-313.6. Mitigation of impacts required for non-marine uses.
 - (a) Direct investment in marine infrastructure
 - (b) Financial contribution in lieu of mitigation

Amendment

- Sec. 14-314. Permitted uses.
- Sec. 14-315. Conditional uses . Sec. 14-315.1. Conditional use standards:
- Sec. 14-315.2 Conditional Uses:
- Sec. 14-315.3. Contract or conditional rezoning.

- Sec. 14-315.3 (a) General
- Sec. 14-315.3 (b) Direct Investment in marine infrastructure
- Sec. 14-315.3 (c) Financial contribution in lieu of mitigation

OPTION I. GENERAL

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

- Sec. 14-315.5. Prohibited uses.
- Sec. 14-316. Dimensional requirements.
- Sec. 14-317. Performance standards.

10

addition amend
 Delete Waterfront Over
 9-0

amendment

~~more performance standard into siteplan standards~~

11

~~Table work~~
 pg #16, see amend #2
 9-0
 Value Mitigation credit

AN IMPORTANT NOTICE FROM THE CITY OF PORTLAND PLANNING DIVISION

WHAT: The City of Portland will hold a series of meetings to consider changes to the text of the Waterfront Central Zone (WCZ) as recommended by the Waterfront Central Zone Task Force.

Following an evaluation of the economic and physical conditions of the WCZ, the Task Force has produced a draft set of zone language changes. The Planning Board will consider the zone language changes and forward comments to the City Council. The City Council may take final action on this item on April 3, 2006.

The Study Area extends along the south side of Commercial Street from Maine Wharf (Buoy Park) to Deak's Wharf (east of the container yard at the International Marine Terminal.)

Public comments will be taken at these meetings.

WHEN: Planning Board Workshop: Tuesday, March 14, 2006, 3:30 p.m.,
Room 209, 2nd Floor, City Hall
City Council Workshop: Monday, March 27, 2006, 5:00 p.m.,
Council Chambers, 2nd Floor, City Hall
Planning Board Public Hearing: Tuesday, March 28, 2006, 7:30 p.m.,
Room 209, 2nd Floor, City Hall
City Council Public Hearing: Monday, April 3, 2006, 7:00 p.m.,
Council Chambers, 2nd Floor, City Hall

FOR MORE INFORMATION:

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you wish to submit written comments, address them to William Needelman, Senior Planner, Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101, contact by phone at 874-8722 or e-mail at wbn@portlandmaine.gov

Provides allowance for new structures to house non-marine uses, including retail, on upper and lower floors, subject to conditions – including 75 foot setback from water.

NOTE FROM THE WCZ TASKFORCE: Option 2 is still under consideration and the Taskforce seeks public comment on this provision prior to making recommendations to the City Council.

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either the permitted or conditional use section are prohibited.

- *Drive-thru services prohibited*
- *Ground mounted telecommunication towers/antennas prohibited*

Sec. 14-316. Dimensional requirements.

- *Minimum building setback from pier edge expanded from 5 to 15 feet.*
- *Maximum building height expanded from 35 to 45 feet (but limited to 3 floors.)*
- *Minimum ground floor clearance added at 15 feet (to encourage industrial use of first floor.)*

Sec. 14-317. Performance Standards.

- *Urban design guidelines applied only to Commercial Street buildings east of the Fish Pier.*
- *Pier expansions need to be compatible with ferry and emergency vessel operations.*

- (d) ***The “Sapporo Amendment”***
Expansion of non-marine related use permitted under the “35-foot rule.” subject to conditions.
 - *Expansion allowance expanded from 2000 sq. ft. to 3000 sq. ft. subject to conditions.*
 - *Allow upper floor expansions*
- (e) ***The “chicken farmer amendment”***
Residential: The “primary” owner of a marine related business may occupy space within the upper story of an existing building subject to conditions.
 - *Limit area to 750 sq. ft.*
- (f) ***Utility Substation use***
 - *Added with conditions*
- (g) ***Waterfront Diner use***
 - *Added with conditions*
- (h) ***Expansion of upper floor non-marine use***
 - *Expansion allowance to 2000 sq. ft. added with conditions*
- (g) ***Expansion of “50% Rule”***
 - *Non-marine use of upper floors in existing buildings expanded with conditions.*

Sec. 14-315.3. Contract or conditional rezoning.

Allowance for re-zoning to permit non-marine uses in new structures, providing the development meets the “no adverse impact clause” and additional standards.

Two options provided by Task Force. Each would be subject to mitigation investment or contribution as described in section 14-313.6 above.

- ***Option 1, “General”***
Provides standards for new structures to house upper floor non-marine uses.
- ***Option 2, “Old Port Overlay Zone” – Restricted to east of the Fish Pier.***

Sec. 14-314 Permitted uses.

- (a) Marine Uses
- (b) **The “50% Rule”**
Commercial and industrial uses above the ground, limited to 50% of building.
- (d) Public Uses
- (e) **The “35-foot rule”**
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.
 - *Section Redrafted. Restrictions on first floor non-marine uses beyond 100 feet from Commercial Street*
- (f) Accessory uses:
 - *New use added for clarity: Parking for water-dependent uses. All other parking is a conditional use*
 - *Utility substations moved to Conditional Use section*

Sec. 14-315. Conditional uses.

Uses permitted subject to specific standards and requiring review by the Planning Board.

In addition to existing standards protecting marine utility of the zone, the following standards were added for conditional uses

- *Parking and Traffic Circulation Plan required for review and approval.*
- *Public View Protection standard added.*
- *75 foot setback from water for first floor non-marine use (DEP Requirement)*

Conditional Use List

- (a, b) Parking:
 - *Clarifying edit: Parking allowed for non-water dependent uses, provided that there is otherwise enough parking for marine uses.*
- (c) Marine:
 - *Minor edits provided*

WATERFRONT CENTRAL ZONE TASKFORCE
January 25, 2006
Public Forum

Outline of proposed zone text edits

WCZ Text Outline:

- *Italicized text is a paraphrase of text edit language*

Sec. 14-313

Purpose Statement

Priority of uses

- (a) Water-dependent uses
- (b) Marine-related
- (c) Marine compatible uses

- *Clarifying language added stressing the policy of having non-marine uses support higher priority marine uses.*

Sec. 14-313.5

No adverse impact on marine uses

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
 - *Clarifying language added defining displacement.*
 - *New language added strengthening protection of property "physically suited" for water dependent use.*
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

New Section added

Sec. 14-313.6 Mitigation of impacts required for non-marine uses

- *The value of mitigation: at least 5% of total project costs or \$10.00 per square foot of non-marine space.*
 - (a) ***Direct investment in marine infrastructure***
 - (b) ***Financial contribution in lieu of mitigation***

Longfellow 3-28-06 ~~XXXX~~

need Structural Memo for
Feedback for 4H

gavg 250K SF + 50K parking
30K Detail

Zone Integ Be 1 story vestibules @ Corn
7. 35 feet tall on B-6
Need zone memo

Materials

Granite plinth - thin veneer

1st floor

- Precast block & Bricks - olive color
Precast "stone" - cornice / sill details

Stonefront - "Aluminum" 1/8" metal panel

Office House 1/2 story Detail

Office - Brick Base

Water / glass floor 2-4, detail office

Glass top floor

known as Ossipee House -- and he and another son, Charles C. Swett, became prominent hoteliers. Charles operated Swett's Hotel in Portland for many years and, later, a hotel in Rockland. The Ossipee Mountain operation served as a summer facility for both.

That was precisely what Josiah Swett did. Waterboro was then largely an unbroken forest, and Ossipee Mountain was a place of winding roads and fine pine and hardwoods. On 250 acres of fine timber and farmland, the Swetts undertook the two year task of hand-hewing the logs and timbers necessary to build the schooner. The ridicule of the neighbors bothered Josiah and his son not at all. The dream ship shaped into reality high on the mountain, not far from where today's fire tower is.

Well Stocked For The Trip

By February of 1820 the ship was ready for its 25 mile trek to the sea. Those neighbors who had scorned the venture were now all present to watch "the ark," as someone had dubbed the ship, go down the mountain. Josiah Swett had planned well. He had built the *Waterborough* on a cradle constructed on huge wooden sleds and all preparations were made ready for the trip. Fifty oxen were manned by 30 volunteers. The hold of the schooner was stocked with hay and grain for the oxen against the three-day to Kennebunk, and there was food and rum, against the winter's cold, for the men.

Perilous Trip Down

No part of the trip was more difficult than braking the sledded ship, behind the oxen, on its perilous trip down the side of the mountain. Cant-dogs were a necessity, if the ship was not to run over the oxen: and the hip deep snow made the traveling difficult, at best, as animals and man headed down the mountainside.

Shaker Pond Reached

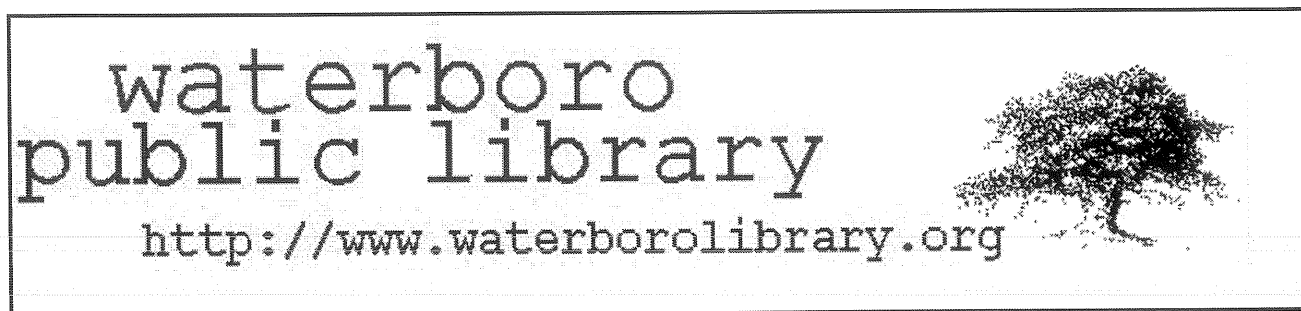
Once in Waterboro Old Corner, the oxen and *Waterborough* turned to the right along a road where, roughly, Routes 202 and 4 are now located. Their goal was the western edge of Shaker Pond, Alfred, the first night and they made it. A fire was built and food prepared on the shores of the pond. And at daybreak the strange procession continued, through Alfred and along the Plains Road (now approximating Route 35 and paralleling the Mousam River to Kennebunk). There the caravan halted to spend the second night, on the outskirts of town.

Mansions Passed

On the following morning, Feb. 20, 1820, the *Waterborough* made its way along the hill of Kennebunk's Summer Street. From the stately mansions, housewives in their morning aprons waved their good wishes; tradesmen on their way to business cried out their hellos; and children pause on their way to school to express wonderment at this odd assortment of men, oxen and ship. It was now only a few short miles to Kennebunk Landing.

Launched Sideways

There Josiah Swett's schooner *Waterborough* was put into the water for the first time -- sideways, most records say -- near Durrell's Bridge. The ship was rigged and 20-year old William Swett was made her captain. He sailed the *Waterborough* on her first voyage to the West Indies. The ship went off on her maiden journey to bring back rum, molasses and tobacco in exchange for various New England cargoes, mostly wood from Maine and New England ports. According to the book, *Waterboro History*, the schooner did well for years in the Indies and coasting trades. The vessel was eventually sold to Boston interests and scrapped in that port. Josiah Swett, having prospered both as a farmer and shipbuilder, abandoned his log cabin on Ossipee Mountain and built a two-story farmhouse where he lived until it burned in 1849. The following year he built a large 14-room house which he later turned into a hotel



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The Waterborough

Condensed from an article in *National Fisherman* by Steve Libby

Sledge Ride Brings Ossipee Mountain Ship To The Sea

There was a ship called *Waterborough*, of 43 tons, which was built on the top of Ossipee Mountain here. She was launched in 1820, and in order for that to be possible, a sledge ride by 50 oxen was required.

Great Expectations

They called him Capt. Josiah Swett when he came here from Wells 175 years ago. In 1818, he confided to incredulous Waterboro neighbors that he was building a two-masted schooner to be named *Waterborough*, that he would take her to Kennebunk Landing overland, and would launch her there. His son, William, he said, would be captain of the vessel and he would sail the ship to the Indies.

Waterfront Central Zone
Taskforce Meeting

January 3, 2006



Sign In Sheet

NAME **ADDRESS** **TELEPHONE** **EMAIL**

Bill Beddison

Alex Jaegerman

Kevin Reed

Barbara Vestal

Kevin Grayley

Angelo Ciocca

Mike Morse

Susan Keen

Charlie Poole

Margie Raymond

Jim Cloutier

Waterfront Central Zone
Public Forum

January 25, 2006



Sign In Sheet

<u>NAME</u>	<u>ADDRESS</u>	<u>TELEPHONE</u>	<u>EMAIL</u>
Ken Macgowan	16 Custom House Wharf		
Joe Harris	136 Commercial St	221-0750	
Pete McManey	60 Portland Pier	775-1612	
ERIC Cianchette	4th Market. Port.	774-1000	
Jeff Tarbox	229 Commercial	774-1733	
Anthony Gatti	251-258 Commercial	729-1970	
JOE MACONE	5 Moulton St	722422	joe@mainebus.com
Kyle Barnes	211 Marginal #714		durland@maine.rr.com
Brian Perkins	170 York St		
Paul Stevens	21 Thomas St	Portland	pstevens@smrinc.com
Bill Doane	38 Hall St	So. Portland	7755448
PATRIC SANTEREE	197 Prospect St.	Portland	791.2848
Frank & Sharon Reilly	108 York St	Portland	fsreilly@aol.com
Jon Kachmar			jkachmar@maine.rr.com
Doug Mayo	P.O. Box 526	Portland	dmayo@1863@aol.com
Joan Amory			danielamory@netscape.net 158 Pine St Portland 04102

put any new addresses on this parties list



CC. 4-19-06

WCZ

30 - Area of confusion - map

31. Discussion of moving to adverse impact to site plan standards.

315 i - end, added to site plan standards

35' Rule: No actual

view considered, No actual

- Old Book over by

-
- what is the total \$ available?
 - what is the total bond available,

By products - discuss w/ Drilling
subcommittee



ISSUES

①

15 Foot Rule, ^{OR} approved Plan ^{OR} circulation & management Plan

AP	6
12	41
12	29
2	17
15	

② Waiver from Planning Board

③ Return to 5'

add Performance Standard for Circulation
 Suction Utility
 Suit for WOOD
 w/ Park

②

White Pleading - no action

③ Building Dept

Re: 60 RM OR 1 request

50 for MR Labs providing joint mechanical and Rooftop - enclosures are enclosed

45 OR 50 w/ enclosed mechanical

35

400 lot for MR Labs

WCZ Committee?

ADOK: need opinions for
DEP ISSUE

W.G.: Need reconsideration for waterfront
Other allowance ruling
but expansion one not allowed

The Major Issues

① 75' foot Rule

② 15' foot Rule ✓

③ Offsite Parking ✓

④ 50' Buddy Height, Corner ✓

⑤ View Corridors - Pro: Con

⑥ 35' Rule to whole zone

Informal discussion

3. Color: Intros

AP. suggest

① 50% — more to 100% as permitted?

K.B. 20% preservation? result of public comment

B.V. Process? conditional use?

B.H. explained

K.B. memo re major site plan, planning authority shall find or "No adverse impact" standard

House in site plan standards?
for conditional use standards
Standard from zoning to site plan standards

50% Bul. 14-314(b) — combine (b)(c)

100% upper floors — no conditions

② Set backs

WCL - 4-6-05

Drafting Subcommittee, Re-convenes

35-foot Redraft impact - 17,000 (3000/ft)
Upper floor Expansion - 50-100,000 (2000/ft)

Other Issues:

- ① 100% upper floor ~~at~~ as permitted (?)
 ~~in~~
- ② 35 foot expansion (?)
- ③ 4/100' of Commercial St. 0' set back
- ④ Formatting changes
- ⑤ No adverse impact statement
 ~~edit~~ edit 5
- ⑥ Mitigation -

C.L. cont. / look @ Simple changes
Suggest send back to planning board

K.G.

U.G. - Hopes DEP will reconsider

E.S. Request - Grand future in crisis - Urgency
action from state =

W.G. hindering development on the waterfront.

J. Duser - Difficult - 75 rule under severe
assist w/ redraft of Beck's

J. Cloutier - Table to workshop, 2nd ES
next week

Table to April 17 (?)

C.L. Table to Planning Board?

J.C. Investigation full and office

C.L. Value

W.G. open covenant - Received 75' Rule
Request

J. Cloutier. Change of Enforcement - help property owners
need to stop back

Property owners - work w/ Planning staff

2 questions - Previous zone cannot
need to look at Beck's previous covenant

Planning staff to work w/ Property?

G-O table

Mike Morse : DEP, Trefone

Document acceptable - amendments - need approval

Steven Schauf: Support Planning Board - Don't fail
support business - give license license to beady's
75' rule doesn't work - urban zone

Joe Schenader: former Maine - hold Maine what
Portland losing Maine businesses - Time WFA
offer

More Passage 50,
Council

KL: Appointed Trefone - Board

integrated not to apply to "Beady's"

ES: Suggestion - "conference" committee, Planning Board, Trefone

Tom Clutter: Trefone Members, well developed body) Funding

on WF - Significant Problems - No new construction

- WF economy is pretty good stage
but under stress

Bill P: not declined to go back to opinion #1

There are Council decisions

Strategy - of avoidance

C. Keener: Dismissed at Discourse - Toughen up.

Disagree w/ much of report

upset by personal nature of Discourse

Patricia: Current ordinance

Attachment #5 hiring

need to understand the document

Binding requirements - problem - too complicated

WCZ - 4/3/06

10

2

15

Public

Steve Duille : Read letter from property owners

Revised 75' rule

Dick Ingles : WFA member, former co-chairman '92 group

→ 35' rule exist, No Mitigation, 140-75' Rule

→ 75' rule can be Δ - Not fair

Recommend letter to DEI, Ask how far can it go

King Adner : discourage change

John O'Cashman : Waterford colling, encourage

using WFA as forums - further deliberation

Traver Loren : who are : "free enterprise" property rights -

need opportunity, freedom in these areas -

"communitarian regulation"

Robert James : blk, blk, 75 foot rule

Anderson

? urge further discussion - back to Planning Board

Anne Bringle : "A history" -

Becky Pond : after 2 years, looking to give up -

25' setback doesn't help anything

Barbara Vestal : WCZ Trustforce - Reasonable balance

Susan Coen : WCZ, wisdom over, Trustforce

WCZ - "heart & soul" Portland

Don't delay

Ken McGowan : Building codes - restrictions

need legislation, the way they

mitigation fee (no needed) - studies give better

Karen G: Governor amendment, need clarification

Will Bowen: requesting remove 75'

Karen G: what is this amendment?

Mike Morse: Portland is unique -

- originally looked @ 75' across the board
- DEP OK w/ 25 w/ 100' commercial
- stay away from resource, need protection for traditional marine industry

mtg notes

Will Graham - Why 75' setback?

Mike Moran - state minimums

CL

Minutes of ~~the~~ PB workshops
Public hearing
+ Tapes

② Need Tabs on documents

Side by side comparison

Existing vs Proposed

Need differences between W Dvs -

Means use

Need table "Oldport overlay zone"
w/ impacts

Parking impacts

Play out scenarios for impact of ~~unfunded~~
fee

Need impact of properties - each bridge

Need parking description

③ Bill Dixon

Need Index

Graham amendment - when to insert?

④ Down Carr - clarity

⑤ Ed Svalovic

Analogy, Economic return to property owners
Meins

KG. if accidents occurred, need money from corp covered on impacts.
Scales/Cloutier - Transfer content zone to Blaring Board.

Scales: Prift

(1) 50% - award -
upper floor 100% non run

(2) Nit. Fee - only zone only
see

3L (3) Staff 0' tel bet w/in 100'
need to check

3L (4) 35' rule ~~all~~ all the way

WG (5) ~~write~~ write mitigation fee

WG (6) ~~100~~ 100 to 150 on 35' rule
or use with existing
Buildings - expansion
no more than 100

315 (2) d

~~need DEP approval~~

4-10-06 CC Workshop

5 color: intro

more info

application of 100' 0 set back

① need clarity on 75/25
since: Tree? upper/lower floor

② as long as 100% main use floor
0 set back use floor?

③ need gain interparties

3rd color question

is 25' or 0', loose upper
floor 0'?

Options Discussion

Anne Pringle: presents intro

50% Rule

Down car v
Goal: What is the goal? - wood w/

SC. Diff
Experienced

C.H. Details - some provisions are restrictive

D.C. Clarification

W.B. Process question

Request to get rid of 75' Rule entirely

K. Banl. : "Deepening dismay" from wreck
"I don't understand it"

Critical but libent upper floors. was
mixed feeling. 35 foot rule
should be extended -

Mitigation fees troubling. if city
values it, city should pay for it.
opposed to ~~mitigation~~
would like to liberalize those provisions
but libent upper floors.

Possible amendment motion to reconvene

- ① extend 35' rule be extended for
full lengths by district
- ② Reduce restrictions on upper floors
- ③ ~~not~~ ^{only} ~~in favor of~~ ^{Support} ~~mitigation~~ ^{Recommend} ~~the mitigation~~ ^{not adopting}
5-0 provision for non-main
uses.

To reconvene revision limited
to extension of 35-foot rule and
reduced limitation on upper floor
use.

Further reconvene against ~~mitigation~~
the mitigation provision

L.L. Nitrogen fee unwanted
parking rules - ?
35-rule should be extended -
- too complicated to make a
recommendation -
Useful to have discussion w/
Waterport Alliance.
no need to battle w/DEP

J.T. Stone concerns - appreciate
work -

Complexity problem
Restrictions are an impediment
to too many things
difficult to understand, but easy
to see that things are not
quite right

SO. Concern w/ 35' rule - all the way
could use Waterport alliance.
DEP OK
Don't want to penalize owners depending
on use

Big problem

D.S. 35 - rule - haven't heard a
good explanation as to why it
should stay
Maybe not too complex
should revisit in certain time (5 years)
continue to evaluate

Stoney Street: Support 35-foot rule to ILM
75 foot setback doesn't make sense -
let DEP sue vs to Court.

New Protection Band

liquor license restriction Band

Mitigation fee Band

LL rule MOVE more to street

u.m. 75 foot rule a violation to Maryland

Shoeland zoning act - Organic

Municipality to ~~adopt~~ adopt; administrator

Shoeland zoning. w/ state guidelines -

understand that they will not apply

currently. - local ordinance requires

75 foot setback.

w/ 100' of commercial st, reduced to 25

The changes proposed, allowing new construction

; upper floor to house ~~as~~ w/o users

- a relaxation. - time to bring

Setbacks into compliance

h.c. OK w/ this? OK w/ 35 rules
to whole zone?

Notes. Based on information on
19-06, 18-09, public comment
WCZ business proposal IS
consistent w/ comp plan and
recommended adoption.

Doug Mayo : Stonevent's wheel
w/ 17,000 SF, 400' from water
Went 35 - rule

Jon Kachamur : Execution comm. /
Waterfront alliance - worried about complexities
offer a forum for discussion - delay

Barbara Vestal : on Taskforce + Profiting
Sub committee.

35 rule is related to Old port

'83 zoning W1, W2 zoning

W1 part mixed use district - near Old Port

W2 - Working zone

92 w/ Waterfront Alliance room, included
by W1

35 rule follows W1 zone -

Keep it

Anne Pringle :

on council in 92-94 - ~~Part~~ Portland

has a long history of planning for
W# . 87 referendum - 5 yr moratorium

on new non-residential - then Waterfront
alliance -

Highlights : complicated - seeks balance
for very important ~~vertical~~.

look to Purpose Statement.

these are significant changes - not a "jumping
A scale"

WCZ, Planning Board

3-28

Public Comment

Dick Engale - Extend 35' Rule - Please
- 75' rule - Recommend Not
fighting w/DBP - but write

rationed to DBP for no need to have 75' rule
Steve Dimillo - spent life on waterfront
language restrictions 315(3) - mitigations
in law.

Parking requirements language unneeded
Public view protection - unneeded
Prohibited uses - don't need.

35-foot rule - extend it

Nataly Bonner - on behalf of Beverly's Assoc

The 25' setback will reduce expansion
more problematic - liquor license - should have
opportunity

Mitigation fee - 2000 SF = \$20,000 fee

"inputs" fee may be illegal -

Beverly's should be grandfathered

Charlie Boole - Owner of Union Wharf.

Expensive to own pier - for maintenance

Need huge revenue - every pier \$154

Maine uses won't support. Need Revenue

35' Rule was not tied to Old port,

but distance to water.

Public viewer don't pay rent

75' rule - Confusing, prefer not to do
something w/DBP

Discussion of "No Advance Payment"
Re

Vote

AC	Good process, hard work, Thank you
CB	" could use more pro-advocates
BV	good to revisit, wanting to see policy services, ^{was} was
Chin KG	UNANIMOUS approval:
DB	Not sure of role, copying, right thing to do
MN	Pleased to see commitment of City
SC	Thanks to D Sub Committee, KG for moving along
AP	KG, Thank you - this can be exhausting, Pres changes are not minor - Model small working committee

WGA

WCZ

Mtg Notes

2-28-06 / 1 of

WCZ (1)

BV.

Waterfront Diner

need "notwithstanding" language to allow

↳ in conditional use standards

AL.

Why not 25' rule everywhere

KB.

will ask that area (WCZ) be designated as a General Development District

- gives city options to reduce in the future

need implications of 25' setbacks as opposed to 75', zone wide

(2) Old port overlay zone

may need 25' allowance w/

General Development District

(3) 35' rule, no change

see edit to b,

A.S. Framework memo

BV other issues pg 3
in M 14-313.6

From: Alex Jaegerman
To: Alex Jaegerman ; Barbara Barhydt; Carrie Marsh; Deb Andrews ; Gina DiFazio; Jay Reynolds; Jean Fraser; Jennifer Dorr; Kandi Talbot; Rick Knowland ; Sarah Hopkins ; Scott Hanson; William Needelman
Date: 3/7/2006 8:38:15 AM
Subject: Staff Meeting Tuesday, March 7 at 9:30

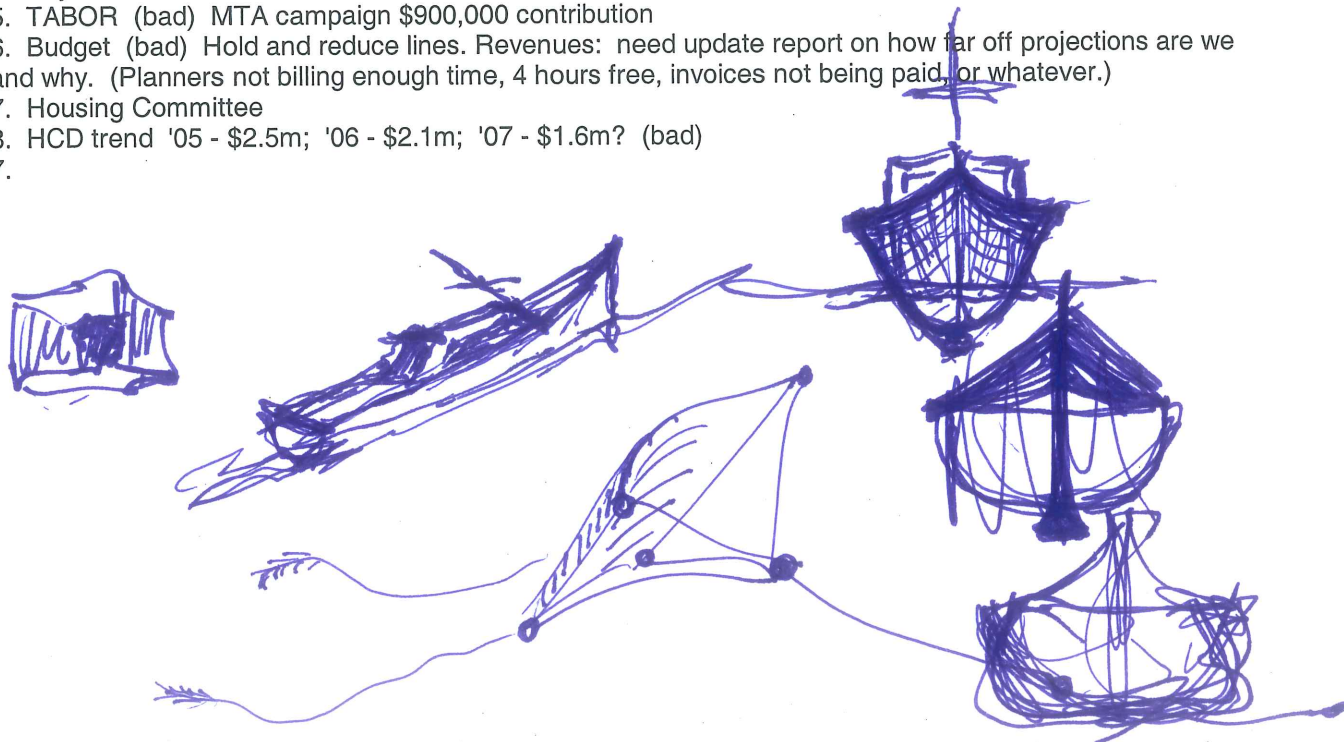
There will be a staff meeting at 9:30 on Tuesday, March 7.
 Alex.

Agenda:

1. Discussion Topic:
2. Division Head Meeting Report.
3. Office Procedures and Issues: Revenues.
4. Upcoming Council Items: Sheridan St. : - (, USM Overlay : - (,
5. Programs and Initiatives:
 - a. Development Review (Sarah)
 - b. Housing (Barbara)
 - c. Comp Plan/NBP (Barbara)
 - d. Historic Preservation (Deb)
 - e. Public Art/Urban Design (Carrie)
 - f. Waterfront Planning (Bill)
 - g. Peninsula Traffic Study (Bill)
 - h. MNGRR Study (Bill)
 - i. Bayside (Rick)
 - j. Odors (Sarah)
 - k. Site Plan Revisions (Ethan)
 - l. Chapter 500 Stormwater Regulation Revisions (Sarah)

Division Heads Report

1. Larry covering for Joe much of this week and next.
2. Employee parking on Myrtle and Chestnut complaints
3. Bureau of prisons DOJ, Zoning interpretation
4. City Council
5. TABOR (bad) MTA campaign \$900,000 contribution
6. Budget (bad) Hold and reduce lines. Revenues: need update report on how far off projections are we and why. (Planners not billing enough time, 4 hours free, invoices not being paid, or whatever.)
7. Housing Committee
8. HCD trend '05 - \$2.5m; '06 - \$2.1m; '07 - \$1.6m? (bad)
- 7.



WCZ

Task force

2-28-06

Sign-in sheet ;

~~WAZ~~

Name	Email	Cell
Bill H.		
JANNE PRINGUE	AP@DODGERS.MYDCL.COM	779-0437
SUSAN KOEN	skoehn1@maine.rr.com	761-1819
Mike Morse	Michael.J.Morse@Maine.gov	822-6328
DAVID ETNIER	david.etnier@maine.gov	623-6563
Karen Gershteyn		
Charise		
Angela		

DRAFT EDITS TO THE WCZ, 1-6-06

(o) ~~(o)~~—Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the city fish pier: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly edge 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.

(p) Pier and wharf expansions: In addition to meeting Harbor Commissioner 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.

(Ord. No. 168-93, § 2, 1-4-93)

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waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.
- (k) *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.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

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a period of sixty (60) seconds (LEQ₁).

- (c) *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.
- (d) *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.
- (e) *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 parks and 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.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, 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 department of parks and 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

DRAFT EDITS TO THE WCZ, 1-6-06

(f) Minimum ground floor clearance: Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable up 15 feet.

(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *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.
- (b) *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 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

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Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

~~§~~Setback from pier line: Notwithstanding the above requirements, a minimum setback of ~~five~~ ~~fifteen~~—(155) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* ~~Forty-five~~~~Thirty-five~~ (4535) feet, except that within two hundred (200) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

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~~(Ord. No. 168-93, § 2, 1-4-93)~~

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.
- f. ~~Fish by-products processing as a principle use, or the processing of other material wastes or by-products not deemed a lawful accessory use under any other provision of this article.~~
- fg. Drive-up services for any use other than a permitted use listed under 14-314 (a).

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

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- ~~(b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.~~
- ~~(c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.~~
- ~~(d) Any physical or legal impediments which preclude functional access from the site of the proposed development to 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.~~
- ~~(e) 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 (either on-site or off-site) and visual and physical access to the waterfront for the general public.~~
- ~~(f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.~~
- ~~(g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.~~
- ~~(h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.~~
- ~~(i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.~~

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(e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).

(f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)

(g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as described above in 14-315.3(c)).

~~Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:~~

~~(a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).~~

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recommendation to the City Council.

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

The following standards are applicable to the Commercial Street/Old Port overlay zone, which extends from the easterly edge of Maine Wharf to the easterly edge of the City fish pier. For a site within the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards, immediately above. The standards within this overlay zone are as follows:

- (a) All portions of the structure are set back at least 75 feet from any pier, wharf or water edge.

- (b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of Commercial Street), except that for restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

- (c) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.

- (d) 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 (either on-site or of-site), and visual and physical access to the waterfront for the general public.

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applicant for rezoning, or any prior owner after January 4, 1993.

- (e) 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 ~~(either on-site or of-site)~~, and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).
- (g) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing ~~less~~ efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a) (Conditional use, Parking).
- (h) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)
- (i) ~~(i)~~ The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains ~~committed to use occupied by any commercial marine uses as listed in 14-314(a), and/or marine use which is proposed for the site is not abandoned after the project is developed.~~

NOTE: The following option is still under consideration by the Waterfront Central Zone Taskforce. The Taskforce seeks public comment on this provision prior to making a

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to mitigate the adverse impacts on water-dependent uses, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be may be evaluated required as another potential means of mitigating adverse impacts. In determining the amount of the contribution, the type and amount of the investment in nonmarine uses shall be considered; the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314 (b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the

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- standards), and
(3) meets all of the standards under either subsection I, General or subsection II, Commercial Street/Old Port Overlay, below. (NOTE: Subsection II is still under evaluation by the Taskforce)

Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

14-315.3 (b) Direct Investment in marine infrastructure ~~On-site versus off-site mitigation~~

✓ The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site (or for development under subsection II), the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3 (c) below, shall be required for all or part of the mitigation ~~off-site mitigation~~ may be considered.

Mitigation by direct investment in marine infrastructure may include, but is not limited to, dredging, pier edge improvements, pier expansions, and/or permanent conversions of recreational berthing to commercial berthing. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to ~~utilize~~ maintain those improvements over time for permitted water dependent uses. Whether on-site or off-site, the value of mitigation shall be reasonably commensurate with the value of compensation described in 14-315.3 (c) below.

14-315.3 (c) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, ~~or is not deemed by the reviewing body to be adequate~~

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exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

- (1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,
- (2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be (dedicated to) commercial berthing supporting a marine use listed under 14-314(a); and,
- (3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

*(occupied?)
by*

(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)

Sec. 14-315.3. Contract or conditional rezoning.

Sec. 14-315.3 Contract or conditional rezoning.

14-315.3 (a) General

Except as otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development:

- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance

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feet of gross floor area and no more than 2500 square feet of ground floor area.

- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.

(hg) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

- (1) the use may occupy upper floor areas , and
- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet; and
- (3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and
- (4) ~~(4)~~—The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a, and 14-315(a), the uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to

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residential use 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 related business.

(ef) Utility Sub Stations

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

- i. The facility is located more than 100 feet from the water's edge,
- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. 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 related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(gf) Waterfront Diner:

Food service establishment that through hours of operation and delivery of reasonably priced fare supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
- iv. The diner shall occupy no more than 4000 square

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shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

~~(ed)~~ Residential: The "primary" owner of a marine ~~related~~ business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

(1) The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished. (Examples include, but are not limited to monitoring and care for live product such as lobster, and security for equipment and berthed vessels.)

~~(1)~~ the residential living space shall not exceed one thousand ~~(7501,000)~~ square feet, inclusive of all exterior porches and decks;

~~(2)~~ 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;

~~(3)~~ the residential use shall be limited to one unit per wharf;

~~(4)~~ the residential use shall be year round use only, and shall not be used on a seasonal basis; and

~~(5)~~ upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the

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(3) Boat rack storage facilities, provided that:

a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed 10,000 square feet of build footprint.

(de) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing ~~on or having an unexpired site plan as of January 4, 1993~~ January 4, 1993 ~~or having a valid, unexpired site plan on January 4, 1993~~ and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the eCity Fish Pier.) into contiguous and newly created building space of no more than 32000 sq. ft., total for the life of the building, shall be allowed only as follows:

NOTE: Staff suggested edit

(1) the use may occupy ground ground and/or floor upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1500+250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

—————(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and

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~~parking spaces on-site exceeds the number of parking spaces required for marine uses that are permitted required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.~~

(~~cb~~) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

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

b. Any fish by-products facility shall employ current and appropriate odor control technology to eliminate or minimize to the extent feasible detectable odors from such a process, and

b.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.

*increase
And shall exceed
odor limitation
performance standards
of the IM zone.*

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Conditional Uses:

(a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding ~~offsite~~ parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces ~~(required for water dependent uses that are permitted by section 14-314(a)).~~ The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

off Street

and provided

paste

(b) Parking for (i) conditional uses, (ii) non marine uses either allowed in -buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning: and uses permitted only above the ground floor level

off Street

copy/paste

Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding ~~offsite~~ parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below.) The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

~~, unless the applicant can demonstrate that the number of~~

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placement. Where existing public views are blocked for the reasonable development of the site, the view impacts may be mitigated through the establishment of newly created and publicly accessible pedestrian ways to provide alternative vantage points for public water views. The Planning Board 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 public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public access 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.

NOTE: The following text is provided to be consistent with State Mandatory Shoreland Zoning Act.

- v. Non-water dependent uses within 75 feet of maximum spring high tide: Excepting unoccupied pedestrian circulation areas as expressly permitted, the expansion or creation of non-water dependent uses on the ground floor of any existing or proposed structure must be located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally. Expansion or creation of upper floor non-water dependent uses within 75 feet of maximum spring tide may be allowed as provided for below.

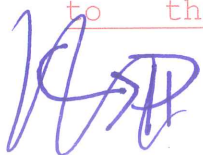
Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

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applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

iv. ~~Public iv.~~ ~~View Corridor~~ ~~Protection~~ ~~and Public Access:~~ Any new development permitted as a conditional use in the WCZ shall perform a public view impact and public access analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual and physical access to the water through sensitive building



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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 2, but shall only be permitted as accessory uses if the total of all accessory retail and service 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 (15) percent of the total floor area per building, whichever is less.

24. Street vendors licensed pursuant to Chapter 19.

(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)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

Conditional Use Standards:

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and

iii. ~~iii.~~ Parking and Traffic Circulation:

- a. Parking and Traffic Circulation Plan: All

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7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) Other:

1. Accessory uses:

a1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) {marine uses} shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a) {for marine related, but not water dependent uses} or 14-315(b) {for non-marine uses.}.

b2. Except as provided in subsection ^a1a. above, 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 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual 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.

c3. Interior meeting or classroom space accessory to uses permitted in section 14-314(a) (23) (marine research, education, and laboratory facilities) may be rented out for

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2 The subject building existed or had an unexpired site plan as of January 3, 1993; and. The subject building is located between the easterly edge of Maine Wharf and the easterly edge of the City fish pier; and

3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and

4. The ground floor non-marine uses allowed under this section shall may not extend further than 100 feet from the southerly sideline of Commercial Street; and

5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Professional, business, government, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants, Restaurants provided ~~that~~ that full course meal food service e and consumption shall be the primary function of the restaurant, and full meal service shall be continued up until the hours of closing;
4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people ~~—(excluding dance studios and performing arts spaces)~~ (excluding group classes and performances), and accessory retail sales of products produced on the premises;

{ accessory purposes for non-waterdependent uses }

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~~water;~~

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

~~3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.~~

~~4. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.~~

NOTE: Re-write of the "35-foot rule"

(e) ~~Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:~~

Commercial uses in existing buildings located along Commercial Street. between the easterly edge of Maine Wharf and the easterly edge of the City fish pier.

Buildings meeting the following criteria may house the uses listed below:

1. The subject building is located between the easterly edge of Maine Wharf and the easterly edge of the City fish pier; and

The subject building existed or had an unexpired site plan as of January 3, 1993; and

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~~area does not exceed fifty (50) percent of the total floor area of the building;~~

1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances dance studios and performing arts spaces) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building; ~~provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building;~~

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M2 zone.

(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

- ~~1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the~~

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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. Noncommercial berthing of less than fifty (50) linear feet per pier;
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. Parking accessory to an on-site water dependent marine use. ~~****NOTE TO TASKFORCE****~~
Needs discussion

Editor's note: all parking in the WCZ for non water dependent marine-related ~~****see above NOTE****~~ uses are subject to conditional use provisions found in section 14-315.

25. Bait sales and processing

(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315 (f) below.

~~, provided that the total floor area of the building used for all uses permitted only above the ground floor~~

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(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;
11. Seafood processing;
12. Seafood packing, ~~and~~ and packaging, ~~and~~ retailing;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;

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mitigation. To the extent not feasible and adequate, then off-site mitigation may be considered. Mitigation by direct investment in marine infrastructure may include, but is not limited to, dredging, pier edge improvements, pier expansions, and/or permanent conversions of recreational berthing to commercial berthing. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to maintain utilize those improvements over time for permitted water dependent uses.

(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site or off-site within the same lot, the applicant shall make or is not deemed by the Planning Board to be adequate to mitigate the adverse impacts on water-dependent uses, a condition of approval which stipulates a financial contribution to the City's waterfront loan and investment fund. may be evaluated as another potential means of mitigating adverse impacts.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water-marine usesdependent uses), the following uses are permitted in the waterfront central zone:

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or

(ed) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

14-313.6 Mitigation of impacts required for non-marine uses

In addition to ~~Regardless of~~ a finding of "no adverse impact" under 14-313.5 for any single project, the cumulative impacts of non-marine developments create an environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses ~~that are considered major development (as defined under section 14-522, site plan) listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (a~~i~~) direct investment in marine infrastructure, or by (b~~ii~~) contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a~~i~~) or (b~~ii~~) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the planning Board.~~

(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine ~~uses,~~ uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes to mitigate some or all of the adverse impacts on water-dependent uses off-site, ~~t~~The next preference shall be for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required

DRAFT EDITS TO THE WCZ, 1-6-06

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 under certain circumstances 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 do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on water-dependent~~marine~~ uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future water dependent ~~marine~~ development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwater-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (~~c~~) The proposed use will reduce existing commercial vessel berthing space;
- (~~d~~) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses;

DRAFT EDITS TO THE WCZ, 1-6-06

DIVISION 18. WATERFRONT CENTRAL ZONE*

*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.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses. s.

Other specified 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. However, water-dependent and marine-related support uses by their 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



PORTLAND MAINE

Planning Division
Alexander Jaegerman, Director

P 15 - suggested IM
order limit.

How does option 2 square
w/ DEP requirement?



PORTLAND MAINE

Planning Division
Alexander Jaegerman, Director

Bill - We should discuss the DEP hard line. This is a severe position to take with Portland, which has a comprehensive policy and program to protect the working waterfront. Joe asked what the implication was of the DEP letter. My read of this is that it further restricts Becky's 1st floor expansion. The WF diner already would have to be within 100' of Congress St, but this would restrict it to existing footprint on 1st floor. Also, what is the difference between option 1 and option 2 card rezoning. I can't decipher or recall it.

strictly functionally water-dependent uses. Note that this will likely benefit the pier owners with pile supported piers less than those with filled land due to the water flooding beneath the pile supported piers. You should further note that the minimum water setback of 75' is firm whereas the distance from Commercial Street is not and an actual distance may be established by the City as deemed appropriate. Used here, the 100-foot distance from Commercial Street is merely a distance to establish the concept that the Department is willing to support a relaxation of the current standards if the City is so inclined.

For structures not within a prescribed distance of Commercial Street and greater than 75 feet from the water, we would continue to support the use of upper floors of existing buildings for non-functionally water-dependent uses, but recommend that the Code be clarified that these uses are prohibited in both new structures and existing structures substantially reconstructed (e.g. reconstruction >50% market value). Ground floors of these structures should certainly be reserved as area for functionally water-dependent uses exclusively.

In an effort to simplify the Code as much as practical we are reluctant to suggest the following change is a strong recommendation, but will acknowledge the conditions regardless. As stated above, the three wharves that are extensively non-functionally water-dependent (Portland Pier, Long Wharf, Chandler's Wharf) are themselves unique. As such, it might be appropriate to either establish a new zoning district for those wharves, or specifically segregate those wharves within the WCZ Code provisions and allow much less restrictive provisions relating to functionally water-dependent usage requirements. Existing site conditions seem to warrant a relaxation of the current standards for these three wharves. Conversation with the Department of Marine Resources reveals a desire that a prioritization for commercial fishery berthing along these wharves be provided regardless of the uses on these wharves. Although the State Guidelines remain silent in this regard, the City may retain or establish berthing restrictions in the Code even if it changes the restrictions otherwise on these wharves.

Thank you in advance for considering our above comments. Please don't hesitate to contact me if you have any questions or comments. I may be reached by telephone at 822-6328.

Sincerely,



Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality
Department of Environmental Protection

cc: David Etnier, Deputy Commissioner, DMR
file

used only to a limited degree. The Department approved the current Code provisions many years ago and continues to be satisfied that these provisions are substantially consistent with the Guidelines. However, we also understand that it is valuable to review the Code occasionally and make amendments to account for the changing needs of the City, State, and the regulated community.

During a recent public forum held by the committee, the Department heard a clear message that among other desires, the public supports: non-functionally water-dependent uses in the upper floors of buildings, except on ground floors; residential uses continuing to be prohibited; and that parking is a problem. In addition, several commercial fishermen voiced concerns over rental or lease fees being increased if some mixed use is not allowed. The problem largely being that pier owners may begin to raise lease rates in order to generate adequate revenue needed to repair and maintain the wharves. We also heard from pier owners that the current fishing and marine industries are not strong enough or large enough to fill all vacant wharf space, but to the contrary, several others in the fishing industry suggested that the fishery stocks are reviving and anticipate a higher demand for wharf space dedicated to marine uses. Our recent communications with the Department of Marine Resources suggested that a number of fishery stocks are recovering or have recovered and that there is a strong potential that there will be a higher demand on working waterfront space to support the re-expansion in the industry in Portland in the foreseeable future.

The Department has evaluated the wharves located within the WCZ and it appears that there is presently a significant amount of marine related usage on most of the wharves. Three wharves tend to stray from this trend, including Portland Pier, Long Wharf, and Chandler's Wharf, where there is either a significant amount of residential development or parking areas present. Most of the wharves had non-functionally water-dependent uses along the portions of the wharves closest to Commercial Street, and many of these uses and structures on filled land are located quite some distance from the actual water itself. The wharves toward the southwesterly end of the WCZ beyond the Coast Guard Pier and Gulf of Maine Research Institute appeared to be more commercial/industrial oriented and if not directly water-dependent, appears to provide at least some level of support to the marine industry. We also observed that Sturdivant's Wharf is for sale and is currently vacant.

Based on our review of this area, including a significant amount of information gleaned from the committee meetings, the Department has several recommendations. The first recommendation is to leave the Code unchanged for the WCZ, but with the understanding that the Department may not continue to support future contract zones for new structures that include non-functionally water-dependent uses. One amendment that the Department would support is to allow, as permitted uses, non-functionally water-dependent uses and structures within, for instance, 100 feet of Commercial Street, and setback a minimum of 75 feet from the edge of the water. This would increase the area available for non-functionally water-dependent uses thereby partially satisfying pier owner's needs for increased revenue necessary for infrastructure maintenance and repairs, but also would reserve the most important working areas of the wharves for



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

DAWN R. GALLAGHER

GOVERNOR

COMMISSIONER

November 30, 2005

Bill Needelman, Senior Planner
Planning and Development Department
Planning Division
City of Portland
389 Congress Street
Portland, ME 04101-3503

RE: Waterfront Central Zone

Dear Mr. Needelman,

First, we must thank you for the opportunity to participate as a member of the Waterfront Task Force, Phase IV. Our participation has been extremely positive in helping us better understand the dynamics of the Waterfront Central Zone (WCZ). Further, the committee consists of a dedicated group of individuals genuinely interested in the existence of the WCZ, and it has been a pleasure working with these folks.

As you are aware, the Department has developed the Chapter 1000 *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines) for municipalities to utilize when developing their local ordinances with respect to the Mandatory Shoreland Zoning Act, 38 M.R.S.A. §435-449. When municipalities adopt new ordinances or amendments, we compare local ordinances to the Guidelines for a determination of consistency and can approve, conditionally approve, or deny an ordinance or amendment based on the level of consistency. A local ordinance may be more restrictive than the minimum Guidelines. The Department has considered the data gathered to date, along with valuable public input from the public forum held on November 9th, and offers the committee our recommendations and minimum expectations for the (re)zoning of the WCZ in advance of any potential amendments to the zoning requirements the committee might consider.

We recognize that the WCZ is a very unique area in our State and as such we anticipate zoning requirements to likely vary from the general statewide policies. It is clear that the current zoning for the WCZ, Division 18, §14-313- 14-317, of the Portland City Code (Code) presently varies from the Guidelines.

Currently, the Code primarily allows marine-related or functionally water-dependent uses as permitted uses, with a limited use of upper floors for non-functionally water-dependent uses as a percentage of the building's total floor area. The Code also allows other accessory and conditional uses if they meet fairly restrictive standards. Contract or conditional rezoning is also allowed within the WCZ, but is also fairly restrictive and is

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- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to 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.
- (e) 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 (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

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(m) *General site plan features:* The Planning Board or planning authority shall approve a site plan located within a shoreland zone if it finds that the following standards, in addition to the standards set forth in section 14-526, are met:

7. The proposal will not adversely affect existing commercial fishing or maritime activities;

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conform to the extent practicable to the Downtown Urban Design Guidelines.

(p) Pier and wharf expansions: In addition to meeting Harbor Commissioner 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.

(q) 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 needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. 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. For example, any development that proposes to site a building within 10 feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

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(Ord. No. 168-93, § 2, 1-4-93)

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shall be subject to the requirements of division 26 and/or division 26.5.

- (k) *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.
- (l) *Signs*: Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *Compatibility of nonmarine uses with marine uses*: Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly property line of Maine Wharf and the easterly property line of the City Fish Pier*: 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

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permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and 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.

- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, 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 department of parks and 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.
- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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

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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.

- (b) *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 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).
- (c) *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.
- (d) *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.
- (e) *Discharges into harbor areas*: No discharge into harbor water areas shall be permitted, unless

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14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Forty-five (45) feet, except that within four hundred (400) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

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(f) Minimum ground floor clearance: Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable up 15 feet.

(h) New Non-Marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-315.3 (conditional rezoning,), four usable floors are allowed and ground floor clearance minimums do not apply.

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(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal

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or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.
- f. Drive-up services for any use other than a permitted use listed under 14-314 (a).

Deleted: f. Fish by-products processing as a principle use, or the processing of other material wastes or by-products not deemed a lawful accessory use under any other provision of this article.¶

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)
Sec. 14-316. Dimensional requirements.

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In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

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- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five(5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and

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opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or of-site), and visual and physical access to the waterfront for the general public.

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(e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).

Deleted: Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:¶

(f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)

¶ (a) . Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).¶

(g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as described above in 14-315.3(c)).

¶ (b) .The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.¶

(h) Maximum building setback from the southerly sideline of Commercial Street shall be no more than 10 feet.

¶ (c) .The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.¶

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314

¶ (d) . Any physical or legal impediments which preclude functional access from the site of the proposed development to 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.¶

¶ (e) .The project's public benefits outweigh its potential negative impa ... [1]

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NOTE: The following option is still under consideration by the Waterfront Central Zone Taskforce. The Taskforce seeks public comment on this provision prior to making a recommendation to the City Council.

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

The following standards are applicable to the Commercial Street/Old Port Overlay Zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf (see incorporated map). For a site within the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards, immediately above. The standards within this overlay zone are as follows:

(a) All portions of the structure are set back at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

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(b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of Commercial Street), except that for restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

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(c) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.

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(d) 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

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(d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed 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.

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(e) 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.

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(f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).

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(g) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a) (Conditional use, Parking).

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(h) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)

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(i) The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine uses as listed in 14-314 (a).

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If (when applying option I, General,) the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be. (All proposals applying for approval under option II, the Commercial/Old Port Overlay Zone, shall make a financial contribution in lieu of direct investment. In determining the amount of the contribution, (under either option I or II) the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

(a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314 (b), (c) or (d).

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(b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;.

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(c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

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- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under either subsection I, General or subsection II, Commercial Street/Old Port Overlay, below.
(NOTE: Subsection II is still under evaluation by the Taskforce)

Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

14-315.3 (b) Direct Investment in marine infrastructure The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site, the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3(c), below, shall be required for all or part of the mitigation

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Mitigation by direct investment in marine infrastructure may include, dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses. Whether on-site or off-site, the value of mitigation shall be not less than the value of compensation described in 14-315.3 (c) below.

14-315.3 (c) Financial contribution in lieu of mitigation

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14-315(a), the uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

(1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,

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(2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be occupied by commercial berthing supporting a marine use listed under 14-314(a); and,

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(3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

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(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)

Sec. 14-315.3. Contract or conditional rezoning.

14-315.3 (a) General

Except as otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development:

(1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),

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sales shall be take out service.

viii. The structure housing the diner shall be located no closer than 25 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

Notwithstanding 14-315.1.v. and 14-314.1.vi.

(h) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

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- (1) the use may occupy upper floor areas; and
- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet; and
- (3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.
- (5) Notwithstanding section 14-314(v), the structure shall be located no closer than 25 feet from the maximum spring high tide of a coastal wetland, measured horizontally.

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(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a, and

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conditions:

- i. The facility is located more than 100 feet from the water's edge,
- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. 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 related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(g) Waterfront Diner:

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Food service establishment that through hours and type of operation supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license nor shall any alcohol be served on the premises.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
- iv. The diner shall occupy no more than a total of 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.
- vi. The diner shall provide full service meals and table wait staff. No formula food shall be permitted.
- vii. No greater than 10% of total restaurant

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not exceed one thousand (750) square feet, inclusive of all exterior porches and decks;

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(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;

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(4) the residential use shall be limited to one unit per wharf;

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(5) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

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

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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 related business.

(f) Utility Sub Stations

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Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following

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related use permitted under 14-314(e) (Commercial uses in buildings existing or having an unexpired site plan as of January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the City Fish Pier) into contiguous and newly created building space of no more than 3,000 sq. ft., total for the life of the building, shall be allowed only as follows:

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(1) the use may occupy ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

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(2) the use may occupy a ground floor area of no more than 1500 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

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(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(e) Residential: The "primary" owner of a marine business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

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

(2) the residential living space shall

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measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) 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 IM 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.

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(3) Boat rack storage facilities, provided that:

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a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed 10,000 square feet of build footprint.

(d) Expansion of a non-water dependent, non-marine

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required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.

- (b) Parking for (i) conditional uses, (ii) non marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning.

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Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

(c) Marine:

- (1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

- a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as

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proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

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vi. Expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide: Notwithstanding provision v. above, the expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide shall be prohibited except as provided below:

a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume and/or floor area of that portion of the original structure located within 75 feet of the maximum spring high tide and existing as of the date of approval, but in no case closer than 25 feet thereto; and

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b. The expansion does not extend the non-water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)

Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

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Conditional Uses:

- (a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking

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southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

iv. Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board 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 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.

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*Conditional Views
Per Views Listed
Below*

v. Location of non-water dependent uses: Non-water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or

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14-315(4)v.

uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), 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), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

14-315.5 Conditional Use Standards

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and

iii. Parking and Traffic Circulation:

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a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

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b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the

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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 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual 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.

c. Interior meeting or classroom space accessory to uses permitted in section 14-314(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 2, but shall only be permitted as accessory uses if the total of all accessory retail and service 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 (15) percent of the total floor area per building, whichever is less.

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2. Street vendors licensed pursuant to Chapter 19.

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Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional

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craft and specialty shops. Convenience stores with gas pumps shall not 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;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people (excluding group classes and performances), and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other:*

1. Accessory uses:

a. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a) {for marine related, but not water dependent uses} or 14-315(b) {for non-marine uses.}.

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b. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of

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14-315(a), the following uses shall be permitted:

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

Deleted: 1..Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;¶

NOTE: Re-write of the "35-foot rule"

(e) Commercial uses in existing buildings located along Commercial Street.

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Buildings meeting the following criteria may house the uses listed below:

- 1. The subject building is located between the easterly ~~edge~~ of Maine Wharf and the easterly edge of the City fish pier; and
- 2. The subject building existed or had an unexpired site plan as of January 4, 1993; and
- 3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and
- 4. The ground floor non-marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and
- 5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

Deleted: 3..Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.¶

4..Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.

Deleted: in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:

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Subject to section 14-314(f)1 and 14-315(a) {accessory parking for non-water dependent uses}, the following uses shall be permitted:

- 1. Professional, business, government, and general offices;
- 2. Retail and service establishments, including

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(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(i) below.

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1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) Industrial uses above the ground floor level of buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M zone.

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(d) Public: Subject to section 14-314(f)1 and

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10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
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. Noncommercial berthing of less than fifty (50) linear feet per pier;
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. Parking accessory to an on-site water dependent use.

Deleted: ,

Deleted: and retailing

Deleted: .

Editor's note: all parking in the WCZ for non water dependent uses are subject to conditional use provisions found in section 14-315.

25. Bait sales and processing

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(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, the applicant shall make a financial contribution to the City's waterfront loan and investment fund.

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water dependent-uses), the following uses are permitted in the waterfront central zone:

Deleted: marine

(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;

(✓)

detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (a) direct investment in marine infrastructure, or (b) by contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a) or (b) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars????), but may be more if necessary for adequate mitigation as determined by the Planning Board.

(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. The next preference shall be for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. Mitigation by direct investment in marine infrastructure may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include [commitments to utilize those improvements over time for permitted water dependent uses. ?????]

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higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on water-dependent uses.

Deleted: marine

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future water dependent development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

Deleted: marine

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwater-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (c) The proposed use will reduce existing commercial vessel berthing space;
- (d) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (e) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

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14-313.6 Mitigation of impacts required for non-marine uses

Evans Yoris

In addition to a finding of "no adverse impact" under 14-313.5 for any single project, the cumulative impacts of non-marine developments create an environment that is

multiple

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Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper 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;
- (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) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses.

Other specified 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. However, water-dependent and marine-related support uses by their 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 under certain circumstances 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

Vote Draft

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DIVISION 18. WATERFRONT CENTRAL ZONE*

Issues:

① House Keeping / Commas & Format
(Don't discuss)

② "Per edge" to "property line", Throughout
Changes made or to be made

③ Fish by products processing
- Best "available" technologies
for new. 315(c)2b. pg 15

④ Waterfront Diner "Formula Food"
315-9 (pg 19) see notes.

⑤ 315-11(5) - Remove? "25^{min} foot setback
(pg 19)

⑥ pg 2, 23 - Option II - Still going
forward?

⑦ Future ISSUES
Definitions for 14-47
"Formula Food" ✓
"Site, lot distinctions"

AH 4.7

Don Perkins, GOMRI: Distributed graphics to the Task force and requested consideration of extending the provision for research labs to be 50 tall up to 400 feet from Commercial Street.

Councilor Cloutier asked questions of Mr. Perkins re: commercial berthing opportunities. (DP: subject to Coast Guard, water depth, proximity to Hobson's wharf, and condition of the bulkhead.)

Peter McAllaney: Public View section needs review by a lawyer to address liability issues.

Nancy Acres: Stressed need for fencing for many reasons.

Bill Doan: Public access. People like to wander around and see the waterfront. Keep the pedestrian ways open, like between Portland Pier and Custom House Wharf. Still use it for trap hauling, but keep it open.

AH 4.6

WATERFRONT CENTRAL ZONE TASKFORCE
January 25, 2006
Public Forum
Merrill Auditorium Rehearsal Hall, City Hall, 7:00pm

Forum Notes:

Following introductions by Chair Geraghty and a presentation of the draft text by Bill Needelman, the following comments were generated by the public participants at the forum.

Frank Riley: Concerned with the integrity of the port and stressed the opinion that new buildings shouldn't obstruct views of the harbor.

Ken McGowen: Noted that mitigation fees are not needed because the second floors are subsidizing the marine infrastructure now. He wanted to know how the 50% rule applied to properties with non-marine existing on the lower floors (given the 50% limitation on non-marine.) He stressed that the 75' setback was a problem and that offsite parking doesn't work.

Doug Mayo: prospective buyer of Sturd. Wharf for machine shop serving marine uses. He recommended that the 35 foot rule be extended to include the entire zone and that the upper floor provisions be simplified.

Paul Stevens: Representing both himself and GOMRI: Recommended at least 50 feet of building height.

Joe Malone: Representing Maine Wharf and Eric Ciancette. Please look at new construction. Supports the upper floor expansion for non-marine uses. Maine Wharf can expand over 300 feet. The 15 foot building setback is trouble for narrow piers, suggested that maybe only applied to one side on narrow piers.

Patrick ?: ZBA member (formerly?) 75 foot setback impractical for Portland. Please clean up the language.

Bill Doan: Lobsterman. 15 foot setback from pier edge a problem on narrow piers. needs a look. Question re: 50 noncommercial berthing. BN clarified.

John Cashman, Chair of the Board of Harbor Commissioners: The DEP 75 foot setback should not apply to urban waterfronts like Portland. Mr. Cashman noted that pier expansions are subject to the HC line and that other buffer provisions apply to allow navigation. These rules are presently under review by the HC. The chairs et al asked clarifying questions regarding this process and Planning staff should be made aware of these changes.

Anne Pringle:

- How do we guarantee money is going back to wharf?
- P.M. its my business, I needed.

K. McGowan:

- I give my lobster tenants 1st floor space because I can't rent the space.
- Square footage does not go with berth. If I want to rent space to other uses (marine) I need to displace lobster boats.

Susan Koen:

- Marine related uses – does 2nd floor help you?
- Boat owner – no use for 2nd floor. Need berth and a way to get t is with parking.
- Boat owner – Widgery wharf – have shops on wharf and storage – that may go.

Charlie Poole:

- Ability of having a fishing boat requires 2nd floor non-marine – agrees with fishing comment.

Jim Cloutier:

- Custom House Wharf contract requires commercial berthing/circulation plan. Parking restrictions are working.

Ken McGowen:

- Parking is a problem.

P. McAlleney:

- Reiterated.

- Lobster boats may need protection from recreational boats. Owners should make money, see (2) linkage – don't know if new construction is o.k.
- O. Keathly – Can have some change on first floor by % or on 2nd floor – must keep fishing berthing.

4. **Parking**

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the central waterfront.

- GOMRI – parking is the limiting factor down there. Needs city vision. Public/private like Oceangate is worth exploring.
- Big problem – fishing folk won't parking off Commercial Street.
- Fishing (lobster) needs parking on the wharf w/access for trucks.

5. **Other issues**

- Roger Hale - Zone is restrictive, leads to vacant space. B-1 zone was a good zone and worked. No services. "Ben Snow steals our tenant". Taxes are a problem.
- Former Zoning Board Chair – ZBA requested Council address waterfront zoning – i.e. Custom House Wharf. ZBA unable t grant variance – wrote letter to Council from ZBA – need copy of letter.
- Harbor Fish – Heritage of city is fishing. People come here to see the fishing and waterfront – now allows pleasure boats to displace lobster boats. To maintain character of the city – must preserve.

Question #1

Displacement of lobster boats for research vessels on Hobson's Wharf?

- Ben Snow to follow up.
- Need letter from ZBA

Kevin Beal:

- Various proposals for recreational berthing in other areas. Are concerns just for traffic or for boat traffic too? Mr. Doan concerns not really a problem on water, keep then out of Commercial area for berthing.

Anne Pringle:

- Gear storage – is there enough? No, not enough now, land is valuable.
- Linkage question – are rent controls needed?

Peter McAleney:

- We've been doing this for 15 years and wharves are getting pretty rough.

- Even condo people get along with fishermen.
- 2nd floor non-marine uses subsidizes 1st floor marine uses.
- Owners need to make money from 2nd floor uses. Maybe through contract zones.
- People come to Portland to see the waterfront legacy of fishing and lobstering, not a bunch of pleasure boats.
- Port Hole – importance of fish and lobster boats existence to clientele of Port Hole Restaurant.
- Doane – keep 1st floor marine open upper floors.
- How can we keep commercial berthing affordable? Improve the wharf edges with income from upper floors. Wharf owners will invest in wharf upgrades.
- Buildings on 1st floor is almost useless. Used for trap storage. No marine uses that will pay. Trap storage deteriorates buildings. Most of wharf edge is lobster fishing.
- Fishing vessel berthing is tied to income from upper floors on union wharf.
- Custom House Wharf case – council put restrictions, esp. parking.

3. Mixed-use development

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the working waterfront?

- Harbor Fish owner – general support for current zoning. Do not over emphasize down turn in fish economy, high hopes – other species are growing. Supports comment that B-1 zone worked – supports water dependent uses but need to allow other uses on 2nd floor and above (critical). Harbor Fish invites public to pier – see #2 comment, #1 re: Traffic on Commercial. Take a common sense to zoning to everyone's benefit.
- Steve Dimillo – Can it be as simple as “no condos” – that is where it started.
- Zoning Board of Appeals letter requesting additional flexibility re: Custom House Wharf case.
- Institutional (GOMRI) role and presence on Portland waterfront, diversity is important.
- GOMRI – opening up 2nd floor uses makes sense – safety value also, building height. 35 is restrictive. An extra floor is important given the expense of pier construction.
- Enough condos – they are there but no more. We get along. Need non-marine use on 2nd floor – suggests berthing and fishing. 1st floor – marine only. New buildings – no comment.

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street

MEETING NOTES:

1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

- Zone is too restrictive (Holyoke)
- Aqua diving – property line requirement is an issue, too restrictive
- Inappropriate non marine uses conflict with marine uses (Chandlery)
- 6 lobster boats being displaced by research vessels (Hobson's Wharf)
- Inadequate berthing
- Function more important than appearances
- Fishing industry outlook better than generally believed
- Continue to protect water dependent, but allow mixed use above (2nd floor and above) (e.g. legal uses)
- Working waterfront brakes are working
- Bill Doane, Lobsterman – things are going well. Worried about future berthing competition by recreational berthing. Need direct vehicle access to pier edges.
- Keith Lane – doing o.k. but worried about rent increases/prosperity pushing prices out of reach of fishermen.
- Preference of berthing for working vessels and access.
- Keith – Truck parking and berthing and access to pier edge building rental is only useful if very inexpensive.

2. Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for working waterfront uses?

- Concerns about traffic generated by eastern waterfront uses (Westin, etc.) interfering with water dependent uses.
- Open upper floors to additional non-marine uses, see what investment is stimulated.
- Extra floor from additional height to build on Pile Foundation Investment.
- Institutional investment in marine research is an expression of confidence in fishing industry.
- 60's and 70's piers with wharves were in awful condition. The last 20 years have seen substantial improvements.

AH 4.1

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

- I. **Welcome and Introduction**
Councilors Karen Geraghty and Will Gorham

- II. **Waterfront Central Zone Policy Framework Introduction**
Priority of uses in the WCZ:
 - {a} Water-dependent uses, with functional access and infrastructure,
 - {b} Marine related uses, and
 - {c} Other Compatible uses.

- III. **Economic Conditions Survey Results**
Presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG

- IV. **Public Input**
The Waterfront Central Zone Taskforce seeks public comment and input on development issues along Portland's Central Waterfront. In particular, the Taskforce looks to answer the following questions to aid in their analysis of the district:
 - {1} Functional access for water-dependent uses.**
Is the zone protecting working waterfront access?

 - {2} Linkage between new, non-marine development and the marine economy.**
How can non-marine investment provide direct or indirect support for Working Waterfront uses?

 - {3} Mixed-use development.**
 - a. For both existing and new buildings, and
 - b. For both along Commercial Street and out on the piers.
 What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

 - {4} Parking.**
Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

- V. **Open Discussion between Public and Task Force**
Time Permitting

- VI. **Adjourn, 9:00pm**

Zoning Changes

3 No changes

"None. We're happy!"



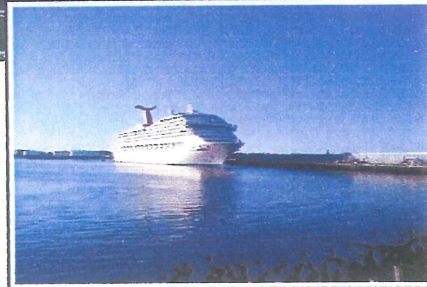
2 Some changes

"Don't need to throw the whole thing out and start over. Keep 1st floor, 100% marine, and 2nd floor, marine compatible uses."



4 Significant change

"Need to go back to the way it was. Love Oceangate. It's a start. Need mixed use 2nd floor and up. Marine businesses can not support themselves."



We asked owners what they thought about zoning. 3 said they desired no changes. Two were interested in some change – clarity, definition. Four owners called for significant change – mixed uses on all floors. Give us what they're getting in Oceangate. Although the term applies to the intermodal facility, lately it's been used to describe all types of development proposed on the Eastern waterfront – condos, hotel, retail, etc. And the perception is that that is being allowed on the waterside.

Viability

- 5 Maintenance
- 4 Business attraction
- 2 Lack of parking
- 2 Meeting expansion needs
- 1 Dredging



While businesses were contemplating whether to expand, the number one issue for property owners was maintenance – generating enough revenue to pay for on-going expenses.

Investment

	Properties	Total Value
Buildings		
Renovation	9	\$670,870
Expansion	1	\$150,000
Replacement	1	\$150,000
New construction	4	\$12,284,400
Piers/Wharves		
Dredging	2	\$70,000
Pilings, Decking & Fendering	4	\$615,000
Floats	3	\$1,018,000
Extension	0	\$0
Total Improvements		\$14,958,270



Renovation was the most popular improvement – primarily cosmetic, e.g., paint, carpet, but also systems. Some deferred the more expensive roof and masonry renovations. There was also a quite a bit of new construction – over \$12 million dollars. Less work was done to the actual piers and wharves than we hoped. Four owners reported work on pilings, decking and fendering. This and the dredging was all characterized as maintenance work. Three owners replaced floats. Repaving also occurred on a few properties.

Property Owners

Occupancy

- Lease rates range from a low of \$10 per month for first floor marine to a high of \$25 per square for first floor retail.

Vacancy

- 6 reported no vacancies.
- 3 reported vacancies on the 1st floor as well as upper stories.



We heard from property owners who own entire pier or wharf as well as those who own just a portion. We did ask property owners for an inventory of tenants as well as lease rates charged. Range is \$10 for marine to \$25 for retail. Only three reported any vacancies at all, with one space in poor condition.

Growth

Is your current space adequate for the next three years?

% Reporting NO

1989	1991	2000	2005
28%	29%	54%	24%

Of 13 businesses that responded to the business survey in both 2000 and 2005:

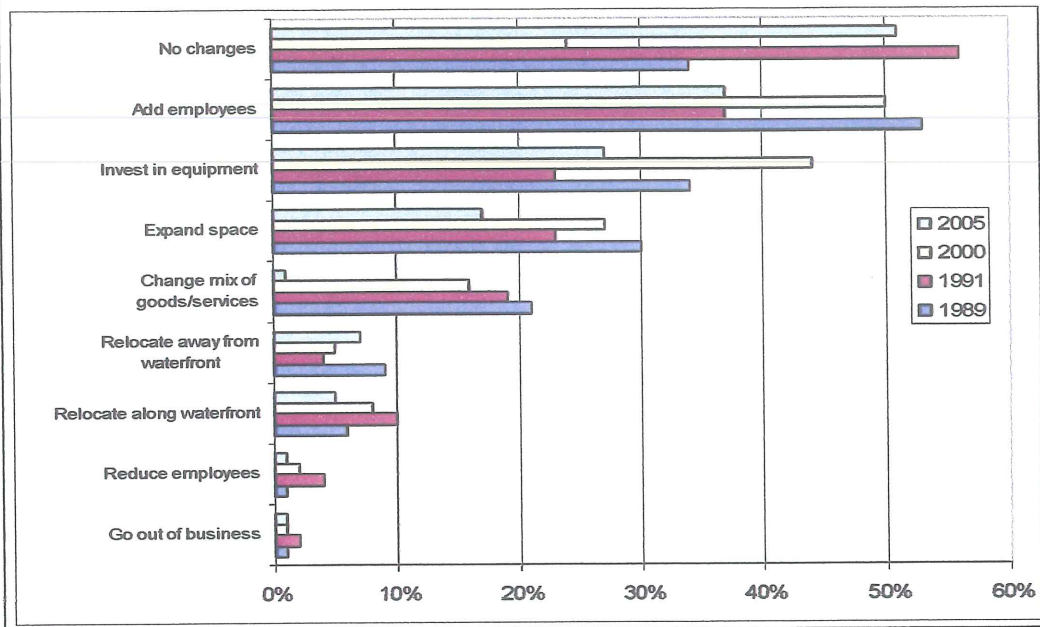
- 4 lost employees
- 4 remained stable
- 5 grew, for a net growth of 13 employees



Studies show that as much as 80% of new jobs are created by existing businesses in a community rather than business moving into the community. We've already seen that over half of the businesses responding have been on the waterfront for more than 10 years. In every survey, businesses were asked an open ended question about their most important business decision in the next three years. Whether or not to expand consistently tops the list. The survey goes further to ask about space. This time around, about a quarter said their space was NOT adequate, compared to more than half in 2000. So we went back to look at what happened with the 54%, or at least the businesses that responded in both 2000 and 2005. 9 of the 13 remained stable or grew, which is probably better than in other industry sectors.

Business Plans

% of businesses responding "yes" fluctuates with the economic cycle



During the boom of 1989, waterfront businesses were fairly “bullish” about adding new employees – more than half said they would. Same scenario in 2000, before the recession. But now, the mood is fairly stable. More than half report no changes are planned, much like in 1991. Still it is not all “doom and gloom.” Even in the darkest of times, few, if any businesses said they would reduce employees or go out of business. This says, although the marine economy is just a small part of employment in the region, it is a stable core of the economy. One area of concern, however, is the latest response to whether businesses plan to “change their mix of goods and services.” This is about innovation and flexibility in the marketplace. The response was negligible, which means that we’re kind of in a holding pattern, maybe waiting to make investments until other facets of the economy become more predictable – taxes, interest rates, regulations, the war. And this was before Hurricane Katrina.

Job Growth, 1989-2004



Source: U.S. Bureau of Labor Statistics

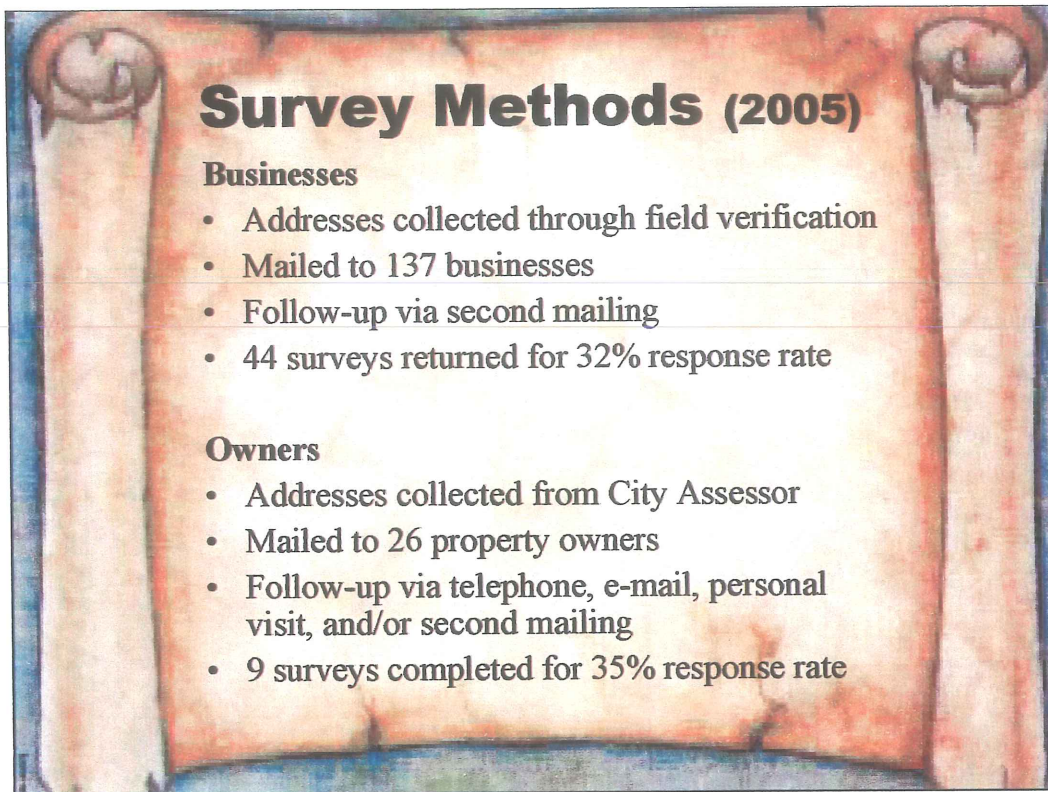
We asked businesses about their business plans as well as about their needs and problems. What's very clear, as it was from previous surveys, is that the health of the waterfront tracks closely with the rest of the economy. Job growth was peaking in 1989. The recession hit in 1991. We rebounded through the 1990's, but we took another hit in 2001. Since then, Greater Portland, although we've lost over 4,000 jobs, has done better in terms of job growth than Maine, New England, and the rest of the country. Even though fishermen, who are not "payroll" employees, are not reflected in these numbers, you'll see that the businesses that support them reflect this cycle.

Business Profile



	1989	1991	2000	2005
Number surveyed	156	148	232	137
Response rate	71%	39%	30%	32%
Demand water access?	31%	36%	N/A	59%
Serve fishing or marine industry?	61%	64%	80%	77%
Dependent on marine for > 75% of business?	N/A	N/A	48%	64%
Over 10 years in same location?	19%	27%	32%	56%
Average full-time employees	20	30	13	11
Seasonal?	54%	N/A	25%	29%

Over half of this year's respondents said that their businesses were dependent on access to the water. More than three quarters said they served the fishing or marine industry. We might further classify waterfront businesses into four different categories: water dependent for those that require access to the water; water related for those that directly service the water dependent businesses; water related by client, for those who say the majority of their clients are involved in water dependent businesses; and "other" for those who are on the water because they find it appealing or convenient. Although average employment is down, businesses responding seem to be more stable – Over half have been on the waterfront for more than 10 years and only a third are now seasonal.



Survey Methods (2005)

Businesses

- Addresses collected through field verification
- Mailed to 137 businesses
- Follow-up via second mailing
- 44 surveys returned for 32% response rate

Owners

- Addresses collected from City Assessor
- Mailed to 26 property owners
- Follow-up via telephone, e-mail, personal visit, and/or second mailing
- 9 surveys completed for 35% response rate

This year, we worked with the City to survey both businesses and property owners on the Portland waterfront. Substantially the same questions were asked in 1989, 1990, 1991, 2000, and again this year to allow for comparison. Except for 1989, when businesses were called individually, the response rate has been about the same – about 30%. One big difference was that this year, only businesses in the Central Waterfront Zone were surveyed.

Port of Portland

- 4th largest port in the Northeast
- 1,000 jobs fishing-related jobs and services
- Over \$18 million pounds of fish landed at Portland Fish Exchange
- 175 vessels home ported
- Over 200,000 cruise ship passengers

Source: Port of Portland

The pulse of the working waterfront can be measured in a number of ways – by pounds of fish landed, by the value of new construction, by the number of cruise ship passengers, by the tons of petroleum imports. Over the last 15 years, the City of Portland has been measuring the health of the waterfront through a number of surveys designed to assess the business climate.

**Central Waterfront Zone
November, 9, 2005 Public Forum**

Economic Conditions Survey

Conducted by Greater Portland Council of Governments



- Establish Drafting Subcommittee to work on WCZ text change language.

Meeting #4 and Public Forum #1, May 2005

Committee meeting if necessary and;

Public Forum to present data and generate input

Zone Text Subcommittee to work through June 2005

- Recommend changes to City policy (including but not limited to zoning language)

Meetings #5 and #6, July and August 2005

- Review, edit, and vote on Subcommittee's work.

Public Forum #2, September 2005

- Present Task Force Recommendations, collect public comment

III. TASK FORCE REPORT APPROVAL PROCESS

Planning Board Workshop, October 2005

Neighborhood Meeting, Required by ordinance, October 2005

Planning Board Public Hearing, November 2005

Community Development Committee, November/December 2005

City Council Workshop and Public Hearing, December 2005 and January 2006

IV. MEMBERSHIP

The participants of the task force should represent multiple perspectives and include waterfront property owners and tenants, interested citizens, waterfront business owners, members of the fishing industry and other marine industries, a community development facilitator, and representatives of the State Department of Marine Resources, the State DEP/Shoreland Zoning, the Planning Board and the City Council.

Waterfront Task Force, Phase IV, Waterfront Central Zone

I. CHARGE OF THE TASK FORCE:

The task force is charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms, and other means;
5. Retain quality access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structure away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers; and,

The product of the task force's work will be a report on the status of infrastructure investment in the WCZ with recommendations on any policy changes, including zoning text, for review by the Planning Board, Community Development Committee and the City Council.

II. WORK PLAN

A schedule of the task force's work plan might proceed as follows:

Meeting #1, February 2005

- Review previous waterfront planning reports and task force recommendations, specifically:
 - Waterfront Alliance Report to the Portland City Council, April 1992; and,
 - Waterfront II, *Investing in Our Working Waterfront: Final Report of the Mayor's Waterfront Task Force on Economic Development, October 2000.*
 - Update Economic Conditions Survey

(SITE TOURS WILL BE CONDUCTED FOR TASK FORCE MEMBERS, AS NEEDED, IN BETWEEN MEETINGS.)

Meeting #2, March 2005

- Evaluate the previous study and any current study of physical condition of marine infrastructure in the Waterfront Central Zone (WCZ) and work with the marine industry community to identify the core access and support needs for traditional water-dependent uses.

Meeting #3, April 2005

- Evaluate updated Economic Conditions Survey
- Evaluate pier/pier head ownership patterns analysis
- Evaluate the current language of the WCZ and identify successes and failures of the zone;

Order 153-04/05

Passed: 2/7/05 7-0 (Leeman, Carr absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER APPROVING CHARGE OF
THE WATERFRONT TASK FORCE,
PHASE IV
RE: WATERFRONT CENTRAL ZONE**

ORDERED, that the charge of The Waterfront Task Force, Phase IV, a copy of which is attached hereto as Exhibit A, is hereby approved.

The City Council appointed a **Waterfront Task Force** in 1988 to pursue in greater detail three of the most complex points of the Waterfront Action Plan. These three areas were berthing, marketing and the economic impact of land use controls. The 41 recommendations of the Task Force are shown as Attachment D. The vessel berthing recommendations suggests that fish vessel berthing should be increased and that new recreational berthing should be encouraged outside the harbor. The marketing recommendation suggests that the City should budget increase resources towards port marketing, attract more fish processors to the harbor and promote the Portland Fish Exchange.

Attachments:

- A. Waterfront Zoning Goals and Policies
- B. Waterfront Overlay Zone
- C. Waterfront Action Plan
- D. Waterfront Task Force Recommendations

WATERFRONT PLANNING FROM THE 1970's TO PRESENT

The City adopted the Land Development Plan in 1974, the first master plan for Portland in 40 years. One of the Land Development Plan's major recommendation was the creation of a W-1 waterfront zone (mixed use) from Fort Allen Park to the Veterans Memorial Bridge along the waterfront. The waterfront at this time was zoned I-3b Industrial, which allowed only industrial and heavy commercial uses. Concern was expressed that unless the City came up with a definitive land use and zoning plan for the area, future growth could be misdirected and the valuable resource base of the waterfront lost.

In 1975, the City formally completed and adopted the **City Edges Waterfront Improvement Program**. This report offered a comprehensive assessment of existing conditions along the waterfront including land use, building conditions, piers and wharfs, transportation, public improvements and historic buildings. The report also provided a wide range of recommendations for revitalizing the waterfront. The zoning recommendation suggested a Waterfront W-1 zone be established between the Million Dollar Bridge and Custom House Wharf.

A text amendment was developed for the W-1 zone (mixed use) in 1976 but only the International Ferry Terminal site was zoned for this designation. The following year the text was amended to correct deficiencies in the earlier ordinance and a W-1 zone was established from the Million Dollar Bridge to Custom House Wharf. In addition to a variety of marine uses, the W-1 allowed offices, retail, hotel and residential uses. The policy statement of this zone indicated that "the purpose of this zone is to permit and promote marine shipping and fishing-related uses while at the same time providing for traditional commercial and industrial uses and for customer-oriented commercial uses and residences." The remainder of the waterfront stayed I-3b.

In the early 1980's, the City commissioned a waterfront study by **American Cities Corporation**. The report generated an intense public debate on the recommendations and the future visions of the waterfront. The City then embarked on a process to develop its own plan. The product of this new effort was **Strategies for the Development and Revitalization of the Portland Waterfront**. The plan outlined a comprehensive strategy to reinvigorate the working waterfront while encouraging mixed uses in certain areas of the waterfront. (See Attachment A for zoning goals and policies.) The report also recommended a significant investment in public facilities, such as the City Fish Pier, Casco Bay Ferry Terminal and Commercial Street improvements.

The land use and zoning recommendations that were adopted by the Planning Board and City Council called for the establishment of two waterfront zones. The W-1 (mixed use zone) was limited to 4 piers (Central, Long, Portland and Custom House.) Like the earlier W-1 zone, the new version allowed maritime uses as well as retail, offices; hotels, residential uses. A new zone (W-2) was created to protect the working waterfront uses (fishing and maritime industries.) Uses were limited to marine uses. This zone runs from the Million Dollar Bridge to Widgery Wharf and from Maine Wharf to B.I.W.

2) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (2)

a) PROFESSIONAL, BUSINESS AND GENERAL OFFICES:

Are all office uses equal? Should the city be concerned by the NATURE of the office use? Would a Pediatric doctor's office, or a Gerontologist's office create pedestrian-truck - conflicts, for example, that perhaps an engineering consultant's office would not? Will the parking and congestion problems already present on the central waterfront be exacerbated more by one type of office than another?

b) RESTAURANTS:

Are all restaurants equal? Again, should the city be concerned about the NATURE of the restaurant? With SIX restaurants on the waterfront (five adjacent to the Old Port and Becky's within walking distance of Old Port) does the city want to encourage the proliferation of waterfront restaurants with their parking requirements and potential congestion problems? (The CDC, under Pam Plumb's leadership in 1989, devised a set of criteria for waterfront restaurants; that work might be useful in your discussions.)

c) CRAFT AND SPECIALTY SHOPS:

Would this provision permit pottery shops, jewelry designers, art galleries, T-shirt silk-screening shops, for example? Do we want to encourage tourist shopping, and other casual shopping in the midst of semi-truck and forklift traffic on our narrow piers? What are the liability implications for property owners?

d) RETAIL AND SERVICE ESTABLISHMENTS:

Is it in the best interest of the City of Portland to encourage the development of a THIRD RETAIL DISTRICT (Congress St., Old Port, waterfront)? Are boutiques a desirable, compatible or wise use of the waterfront resource? When would the cumulative impact of such uses seriously interfere with the working waterfront's ability to function? Would Portland become another Newport?

Is tourist and other casual shopping compatible with the industrial nature of the working waterfront?


Chairperson Joseph R. DeCoursey
July 29, 1992
Page Two

However, it would be inconsistent and unfair for the City to recognize the plight of these individuals, situated in the Waterfront Central Zone, on one hand and on the other hand impose more severe restrictions on Portland Terminal Company's properties located in the Waterfront Port Development Zone. Simply put, Portland Terminal Company should not be made to suffer the economic hardship for which the City would be granting relief to the property owners located in the Waterfront Central Zone.

Although I am generally opposed to the establishment of the Waterfront Port Development Zone, in the event that it comes into being, I am also concerned with its geographic scope. It is my understanding that the City has an interest in preserving the deep water berthing located along the Portland Terminal Company property between the Million Dollar and Veterans Memorial Bridges. It seems to me that the City can preserve access to this area without encumbering all of the property between the two bridges. Further, with respect to property located east of the Million Dollar Bridge, I do not see any rationale for including property north of Commercial Street in said zone.

I hope that these concerns can be taken into account as the proposed zoning ordinance is worked and reworked during the coming weeks so that all landowners can be treated fairly and without discrimination. I will make myself available at planning board workshops to discuss this position further or at any time convenient to the board.

Sincerely,



Leonard A. Lucas
Vice President-Real Estate

LAL:img

cc: Joseph E. Gray, Jr. Director, Planning and Urban Development
Alexander Jaegerman, Chief Planner



Associated Press

GERTRUDE Z SALEM

Michael Zdanowicz sits on the stern of his lobster boat, Gertrude Z. in Beverly, Mass., in 1918, was forced to move his operation because of the modernization of Salem's waterfront.

Last commercial fisherman leaves town

● The departure of Michael Zdanowicz closes the book on the proud fishing tradition of Salem, Mass.

Associated Press

SALEM, Mass. — Commercial fishing, a centuries-old way of life in this New England coastal town, has drifted away on a tide of tourism. Michael Zdanowicz, 39, whose grandfather set up a family lobstering base in Salem in 1918, shoved the Central Wharf on June 15 from its wooden float he had used for lobster pots. The old

“There were no compromises to be made,” he said. “It was kind of disheartening.” Zdanowicz was swept out on a wave of modernization that has transformed the town’s coastline into private developments and national parkland. Leaning heavily on its seafaring heritage for tourist dollars, Salem has restored fishermen’s historic homes, built marinas, condominiums and pricey seafood restaurants and attached nautical names to stores. There was no room for a real live lobsterman. The eviction notice came from the National Park Service, which wants to repair the eroding wharf and build several historic warehouses and an old ship. Zdanowicz had stood his ground for years, but a contentious public hearing, angry letters and confrontations and threatened fines eventually

“He didn’t go. He wouldn’t go. Until now we accommodated him,” said Cynthia Pollack, a Park Service official in charge of the site. “But you can’t conduct business in a national park unless you’re a concession.” Salem, a town of 38,000 residents north of Boston, has never been a large fishing port but commercial fishing has always had a place, as it has in most New England coastal towns. While the number of commercial fishermen and lobstermen in Massachusetts has remained stable in recent years, the fishermen often have been forced out of traditional ports. They go in search of undeveloped ports or inlets. Zdanowicz moved to Beverly, 3 miles north. “All things change, everything has to change a little,” said William Palombo, president of the Atlantic Offshore Fishermen’s Association. George Nowak, a city councilor for 21 years who used to buy lobsters from Zdanowicz’s uncle Joseph, said

he finds the Park Service’s ironic. The planned historical zones are “a good idea, should leave the lobster there,” he said. “That’s that should be preserved.” “There is supposed to be heritage in the area. It’s too bad because enjoy talking to a lobster boat in the early 1900s. In the early 1900s, fishing boats and Central Wharf Central Wharf. “There was Tommy, my father’s son, I recalled “y thing don

proposed that ALL FLOORS BE NON-MARINE IF MARINE-COMPATIBLE.
departed from the long-standing plea for upper story relief and
the property owners dropped a bomb into negotiations. They
On the final day of Alliance board discussions about zoning,
history:

Adding such property owners is the 100' provision. Here is its

that what he got.
retail/restaurant. That's what the property owner wants and
granted permission to convert all 98,000 square feet to office/
marine uses. The Cumberland Cold Storage could very well be
and 4,000 restaurant. No parking requirements at all for non-
office/retail/restaurant complexes - 20,000 office, 6,000 retail
uses, which usually means permitted, BRAND NEW, 30,000 square foot
been allowed to craft their own zoning, has given us, as conditional
The process of the last two months, when business people have
That's where we began.
The Waterfront Alliance recommended "NO NEW LARGE OFFICE BUILDINGS".

FRONT IN AN UNPARALLELED HISTORIC-SETTING.
their waterfronts. Portland can offer tourists a REAL WORKING WATER-
Massachusetts where the last fishermen are now being driven off
want us to become yet another Newport, Rhode Island or Salem,
to suggest. I don't think for a minute that the people of Portland
The people of Portland did more than vote NO CONDOS as some like

1987,

(Since then, a number of these trendy waterfronts have failed.)
firm with its working waterfront and bucked the trend to go trendy.
waterfront cities that, during the pressures of the 80's, stood
You know, Portland was heralded nationally as one of the few
waterside location is wise ?
a third retail district with the competitive advantage of a
12% vacancy rate in the Old Port, really think that creating
of how to fix the 41% vacancy rate on Congress Street and then
Does the City of Portland, after spending \$30,000 on a study
FORGET THE THREAT TO THE WORKING WATERFRONT :

AND ENCOURAGES.
THIS IS NOT RHETORIC; THIS IS WHAT THIS ZONING PROPOSAL PERMITS

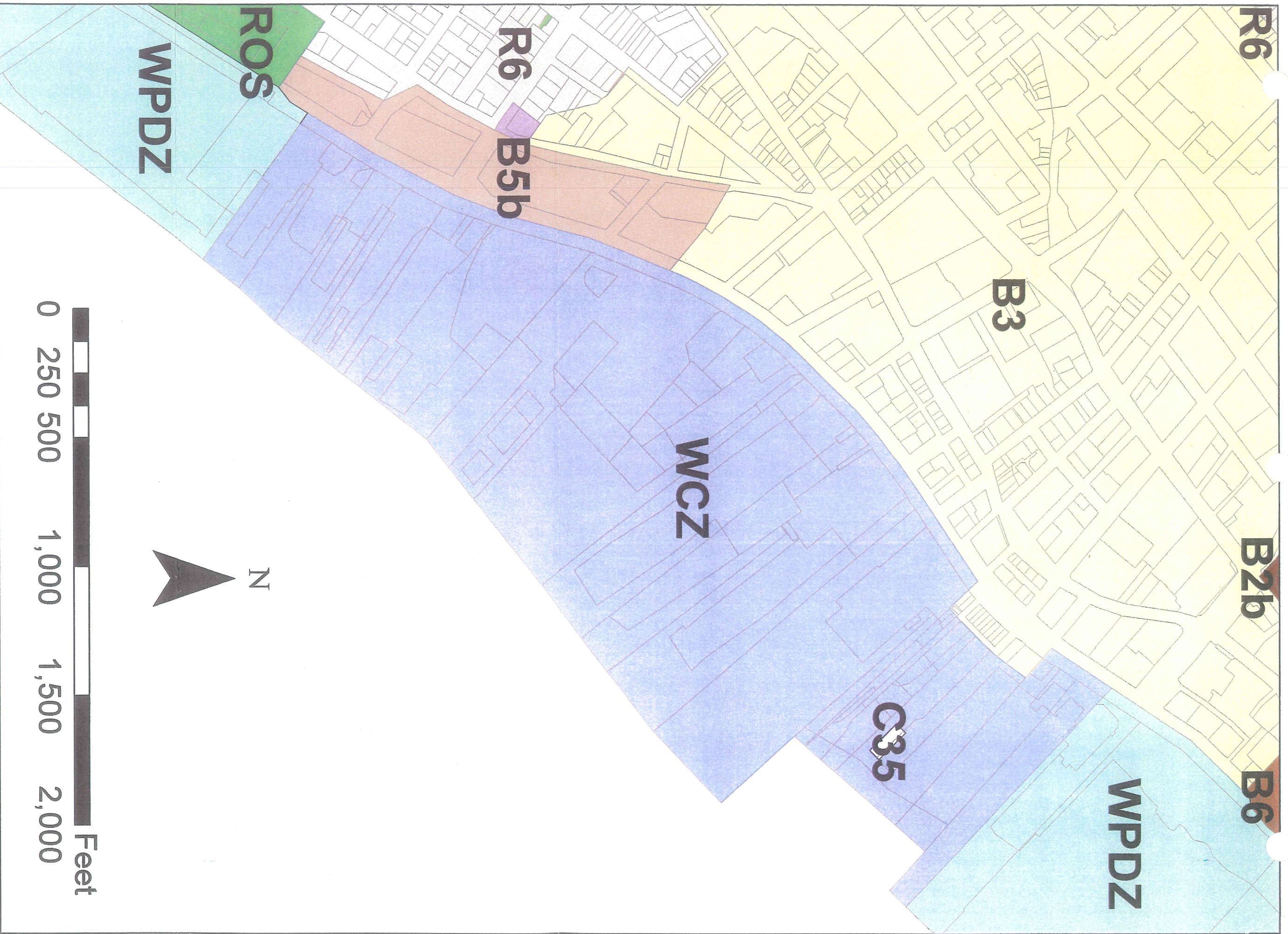


Central Waterfront Context Map

Prepared by the City of Portland Planning Division from data produced by the GIS Work Group
For study purposes only. April 2005



AH.B



Zoning Map of the Portland Waterfront

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.
April 2005



77.7

COMMERCIAL STREET

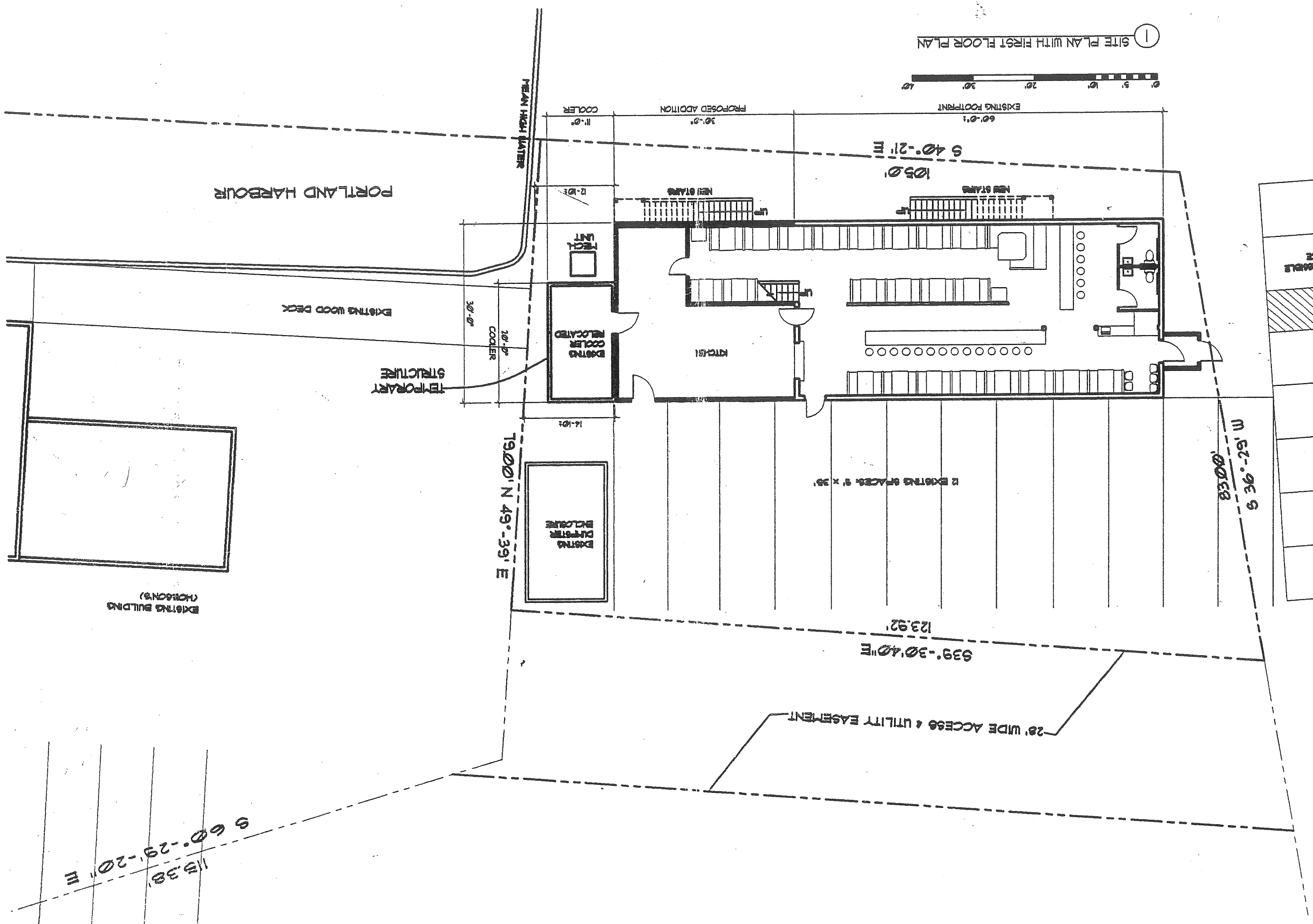
EXISTING COMMERCIAL STREET PARKING

EXISTING ACCESSIBLE PARKING SPACE

11' 52" x 9' 6" 10' 0" 8' 0" 6' 0"



1 SITE PLAN WITH FIRST FLOOR PLAN



PORTLAND HARBOUR

EXISTING WOOD DECK

TEMPORARY STRUCTURE

EXISTING COOLER RELOCATED

KITCHEN

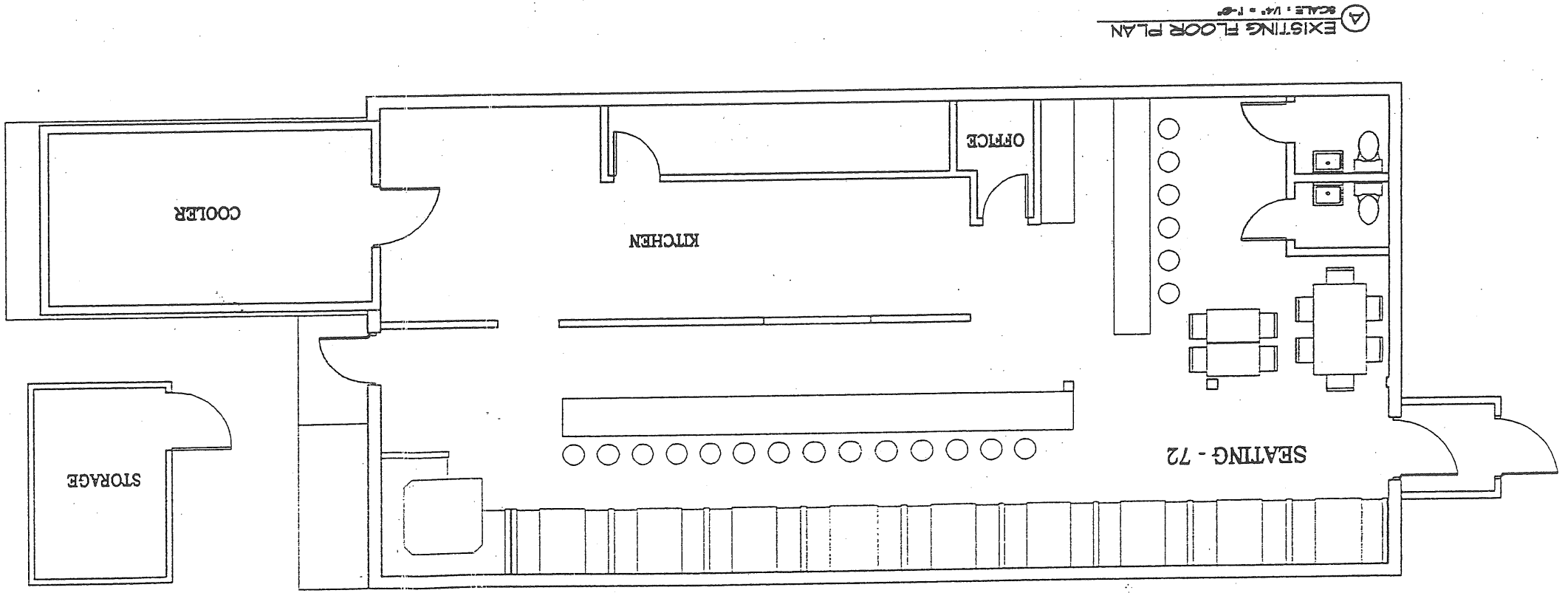
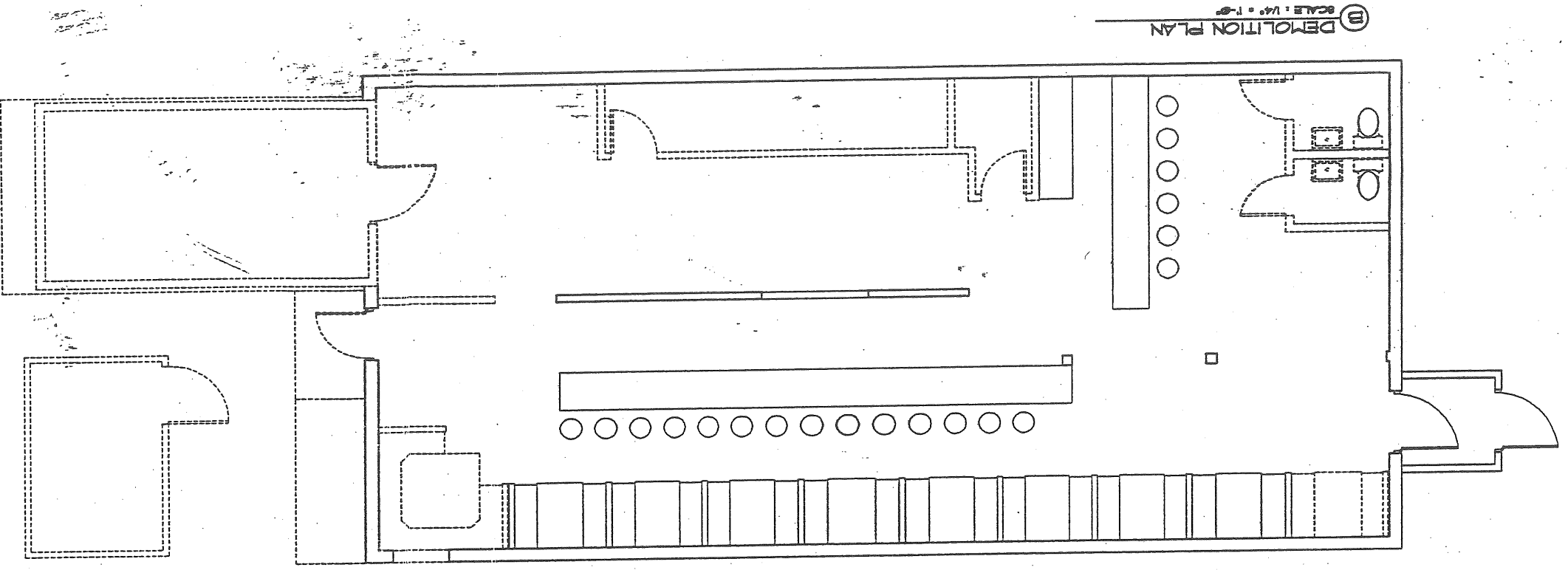
EXISTING DUMPSTER ENCLOSURE

EXISTING SPACES: 9' x 30'

20' WIDE ACCESS & UTILITY EASEMENT

EXISTING BUILDING (THORNS)

SD-1	SITE PLAN	Date: Nov. 3, 2004	Scale: as noted	ARCHETYPE, P.A. ARCHITECTS 48 Union Wharf, Portland, Maine 04101 (207) 772-6822 Fax: (207) 772-8056	Contractor:	Owner:	Sheet 6
	Project: BECKY'S DINER COMMERCIAL STREET PORTLAND, MAINE	Drawn By: [blank]	Checked By: [blank]				



LEGEND
 ——— NEW WALLS
 - - - - - DEMOLITION

A1	EXISTING & DEMO PLANS		Date: Drawn By: Checked By:	Scale: 1/4" = 1'-0"	ARCHETYPE, P.A. ARCHITECTS 48 Union Wharf Portland, Maine 04101 (207) 772-6022 Fax (207) 772-4056	Contractor:	Owner:	A# 7.1
	Project: BECKY'S DINER COMMERCIAL STREET PORTLAND, MAINE							

07/16/03 12:18:37 PM

Exhibit - C

A.2

PROPERTY LINE

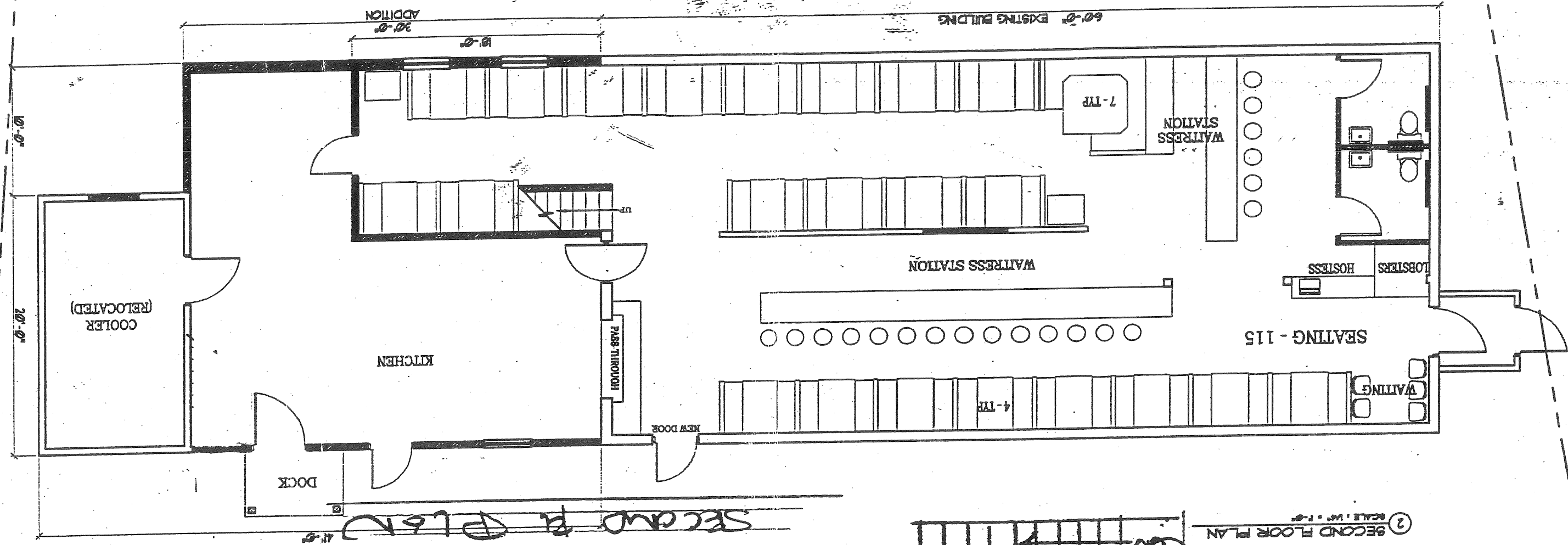
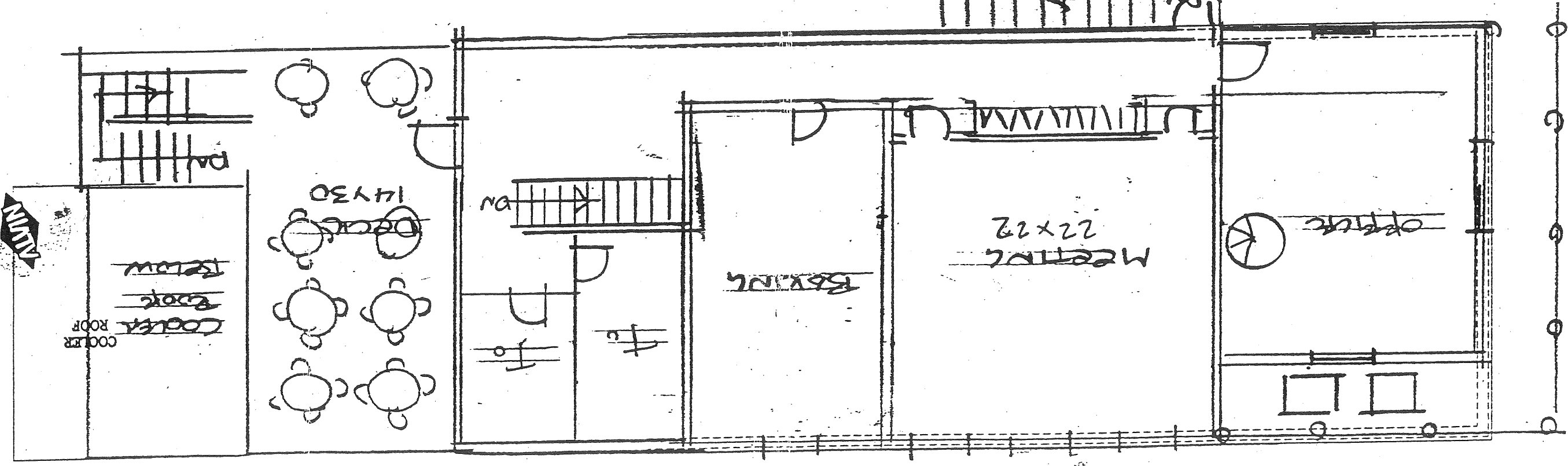


Exhibit-C

SECOND FLOOR PLAN

2 SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"



LEGEND

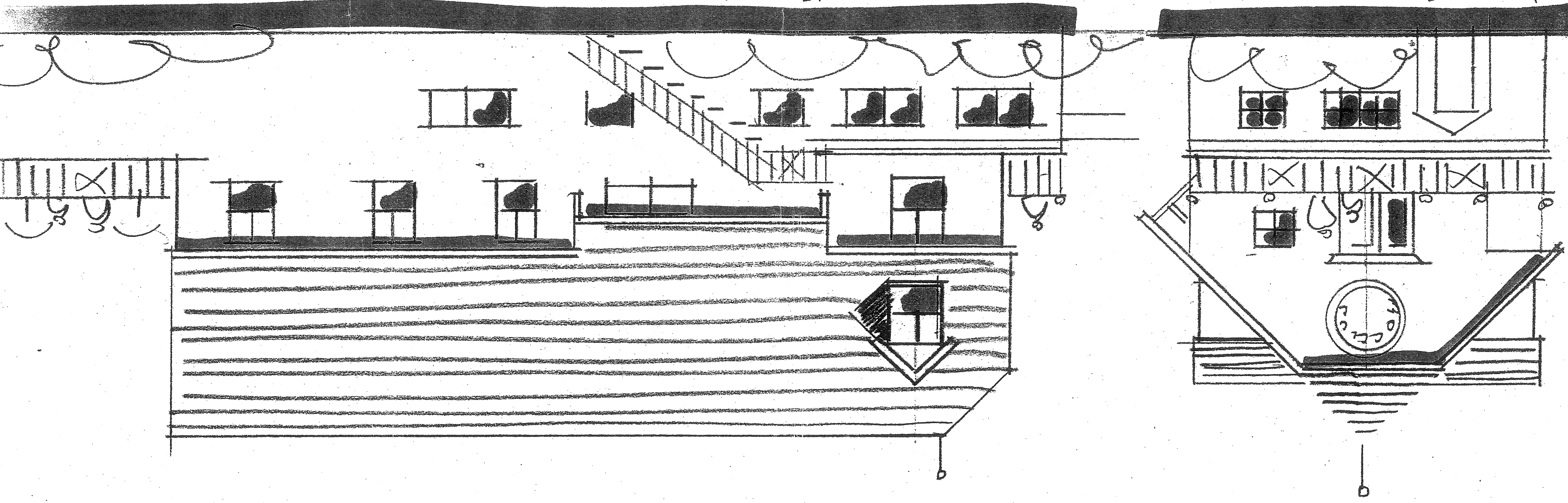
AH 7.2

Exhibit - C

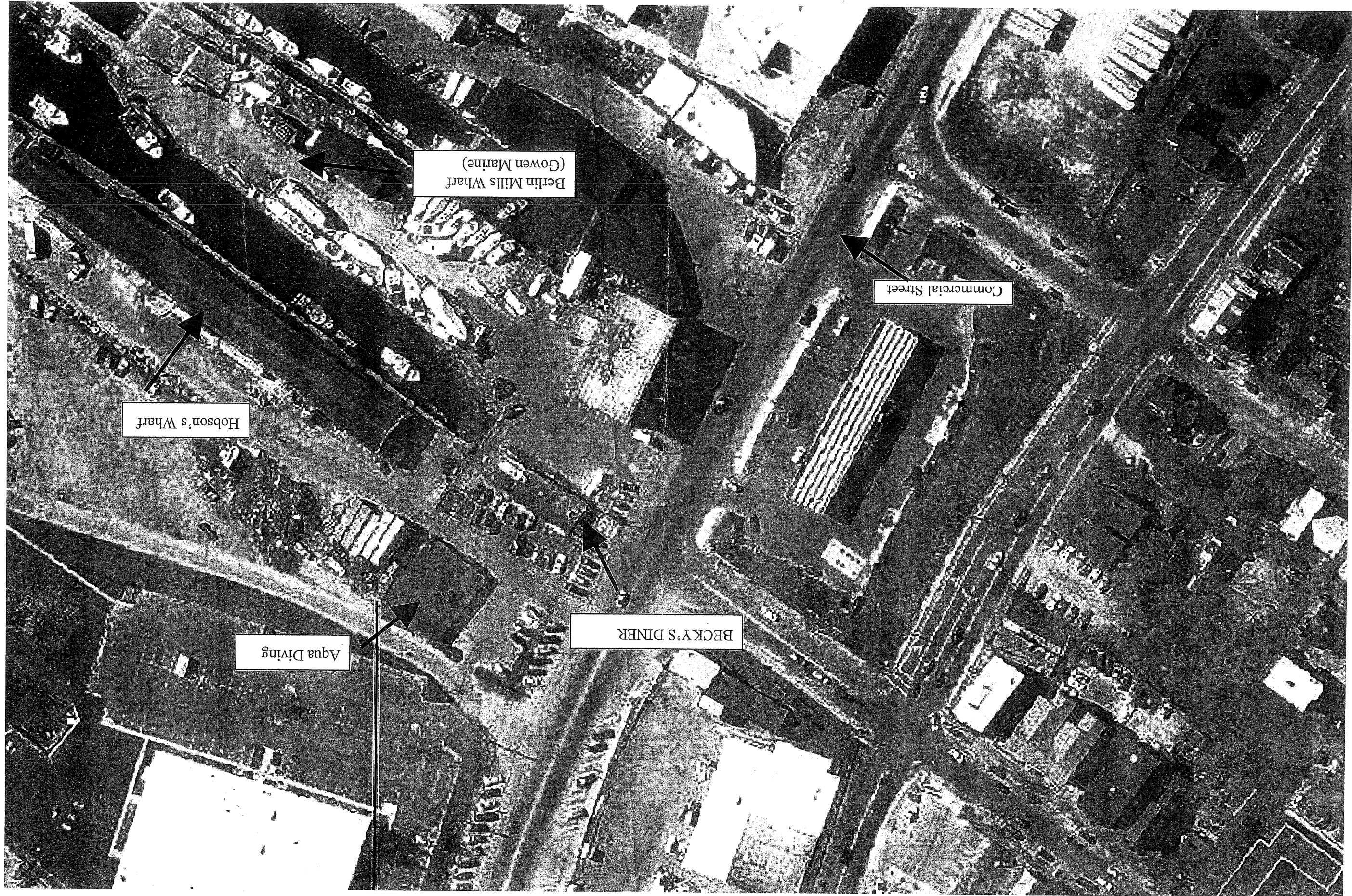
A.3

WEST WALL

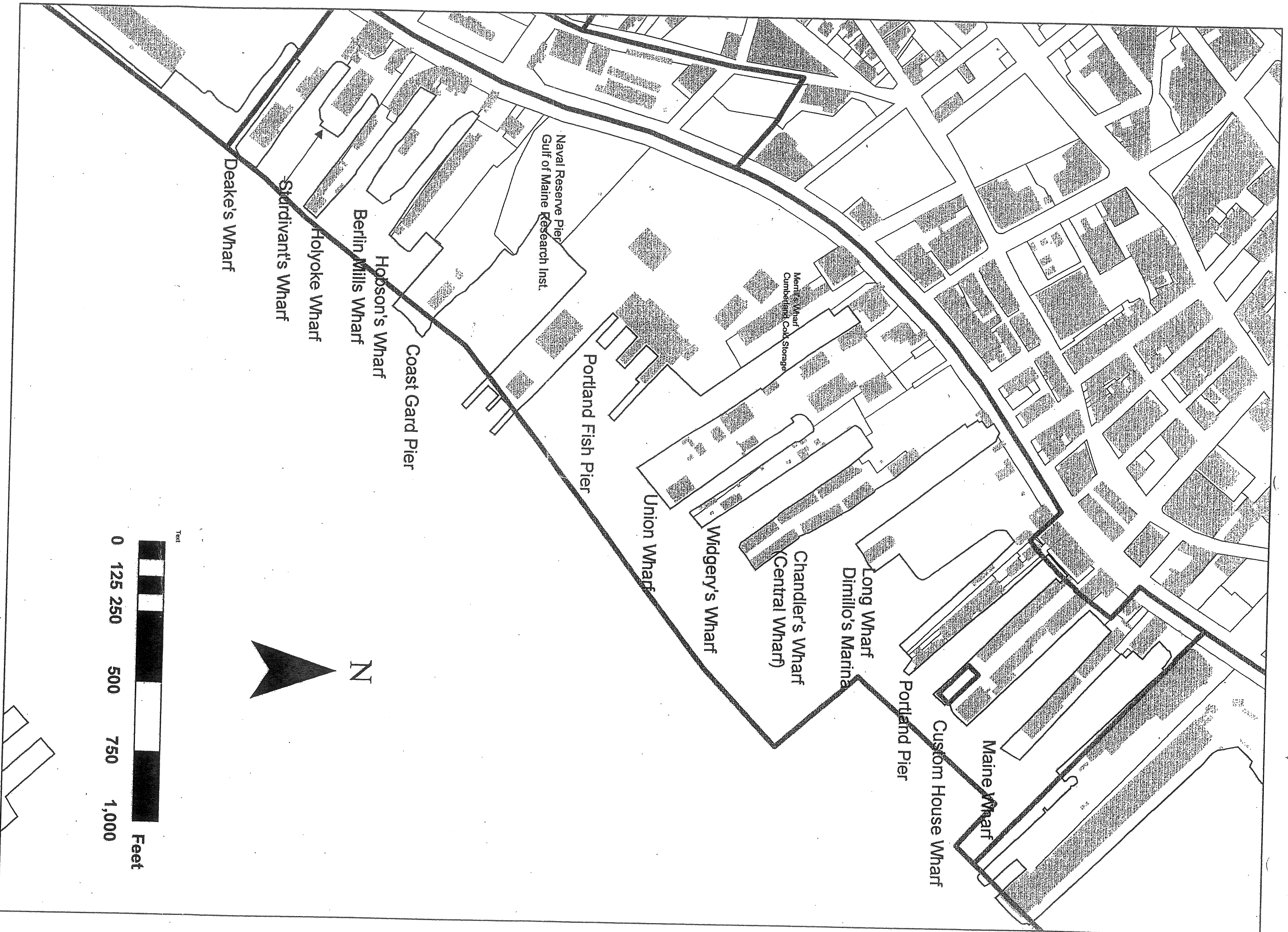
WEST WALL



AH 8



Att. 9
Aerial Photo



Piers and properties in the Waterfront Central Zone

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.
 May 2005



44.10

BUSINESS FRIDAY

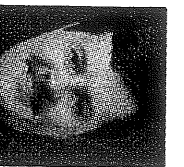
DOW POSTS 4 1/2-YEAR HIGH **C3** | WITNESS SAYS HE WAS TOLD TO MISLEAD ENRON BOARD **C3**

Comics

Friday, February 17, 2006

Portland Press Herald

5



ERIC BLOM

Chamber ready for leading role

The timing seems pretty good for the Portland Regional Chamber as it tries to position itself as an organization that, according to its chief executive officer, is "the voice of jobs more than businesses."

The chamber plans to step up its advocacy efforts in town halls and the State House, said Godfrey Wood, the CEO. "Every time we survey our members, they say advocacy is right up at the top of what we should be doing for them."

And working to create jobs clearly should be near the top of Faine's public-policy agenda right now.

Going into 2006, economists predicted that Maine would have the slowest rate of economic growth in New England and that the region as a whole would grow more slowly than the rest of the country.

Mainers learned this week that the state lost a couple hundred jobs overall last year. National economic growth rates — and the state projections upon which they are based — were revised downward.

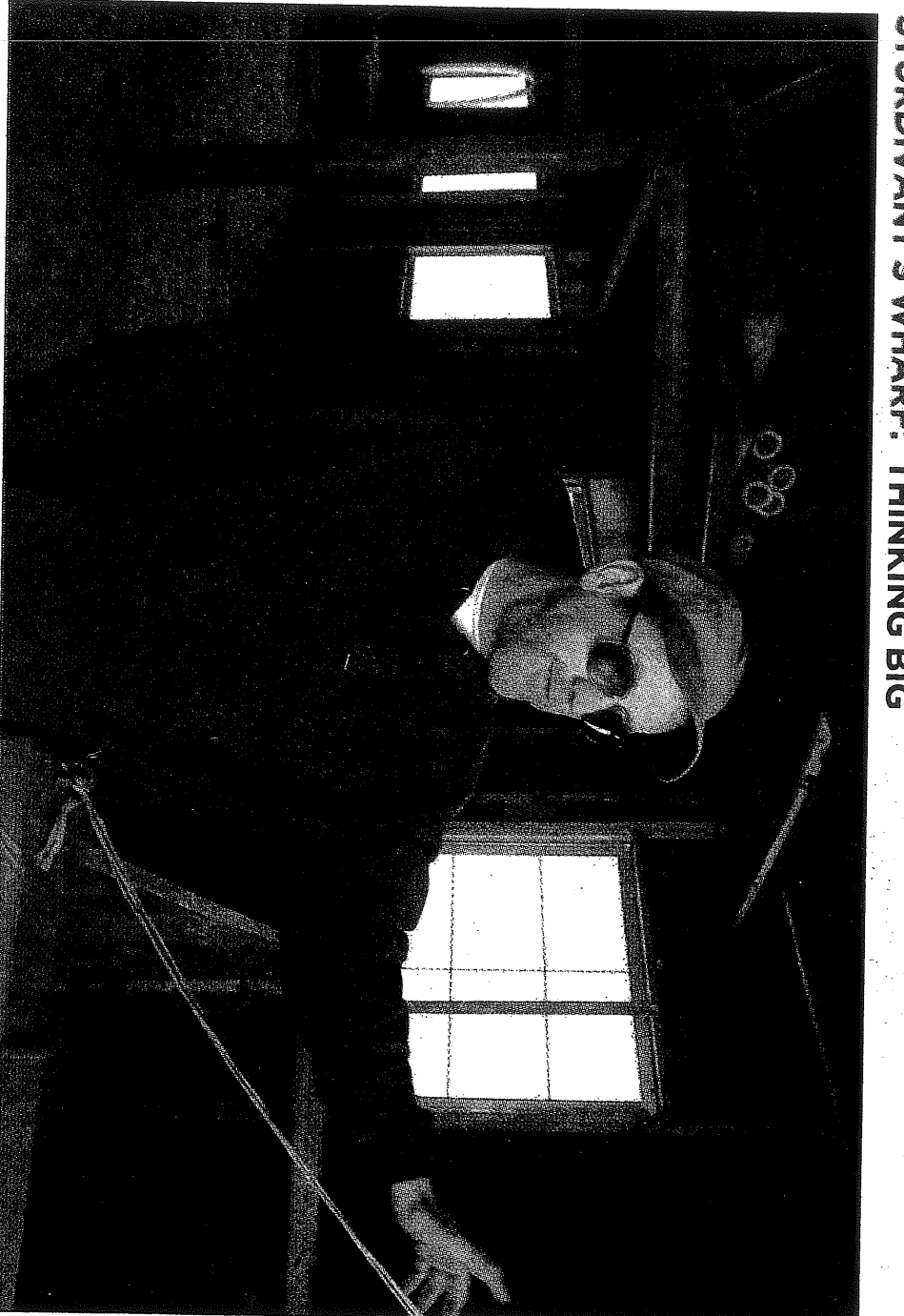
And Thursday, Bank of America announced it was closing four 11 centers that will cost Maine another 350 positions. It is viewing two other satellite locations, with several hundred more jobs in the balance. Many political leaders in Augusta and Congress have chosen to accentuate the positive: a link of America plans to keep at least 1,700 of its Maine jobs, the ones in Belfast. Not emphasized that MBNA employed 3,000 workers seven months ago, announced plans to acquire it, and that it had 4,500 workers in Maine not so long ago.

The Portland-area chamber is the state's largest regional business group. And it always has been involved in promoting its members' public-policy agenda. But too often Wood hears from government officials "that they don't hear from businesses very often." Wood said that may be an understatement, but he acknowledged that the commercial community isn't using its voice as actively as it might.

In this year, the chamber is trying to become more of a player's working to get better and more frequent updates on the issues coming before government bodies so it can react. The chamber has up plans to lobby Augusta in person more frequently. And it is trying to get more members to get more involved.

also is trying to get employers to involve their workers, Wood said. For example, the chamber is encouraging workers to complain about the business-employment tax that employers pay. A long said stifles industrial investment.

STURDIVANT'S WHARF: THINKING BIG



Staff photos by John Ewing

Doug Mayo, the new owner of Sturdivant's Wharf in Portland, has plans to redevelop the property, including the addition of a seafood restaurant. "I want to compete with Becky's," he said, referring to the popular waterfront diner.

Property's new owner envisions shops, diner

But before his plans can be realized, Doug Mayo must overcome some zoning hurdles.

By TUX TURKEL

Staff Writer

A local entrepreneur wants to create a mini-mall filled with marine-related businesses and topped by a seafood diner on a key piece of Portland's working waterfront.

The proposal comes from Doug Mayo of Portland, the new owner of Sturdivant's Wharf. Mayo paid \$2.25 million for the property earlier this month.

A metal fabricator and former fisherman, Mayo is putting together an ambitious 10-year plan to transform the dilapidated property at 440 Commercial St. Mayo also envisions a parking area, a metal fabrication shop and berthing for fishing boats.

The successful redevelopment of Sturdivant's Wharf would be a noteworthy indicator of private economic activity in the harbor.

The 2.4-acre wharf is one of the largest parcels of city waterfront to be sold in years. It's also located in a zone that limits non-marine uses.

Mayo's plans for a seafood eatery would put his venture within sight of a nearby waterfront institution that's also looking to expand: Becky's Diner.

"I want to compete with Becky's," Mayo said. "No offense to Becky. She's the first kind. I just feel there should be competition."

Mayo's plans don't bother Becky Rand, who owns the popular diner. She has patrons waiting on the sidewalk to get inside at busy times.

"I never worry about competition," she said. "There's plenty of business for everybody. I would say good luck to whomever tries."

Both Mayo and Rand say, however, that their plans hinge on the outcome of a protracted city review of marine zoning ordinances, which are designed to protect the working waterfront.

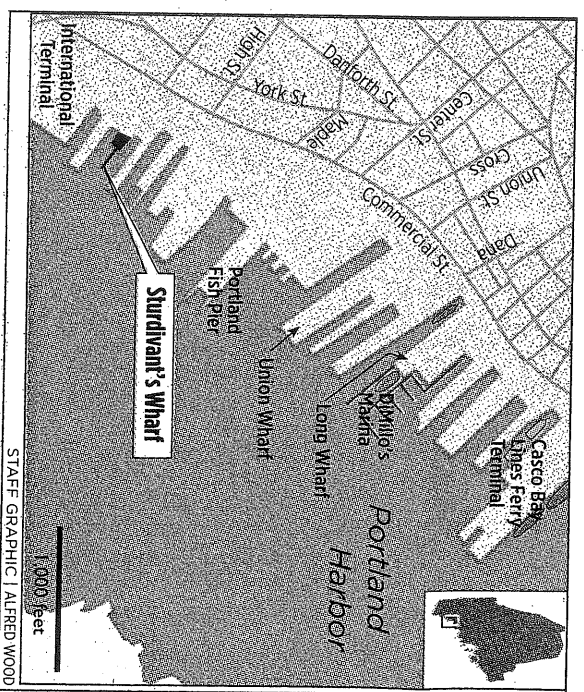
Sturdivant's Wharf drew a lot of interest from businesspeople when it went on the market last June. The property includes four buildings totaling 32,000 square feet. A deteriorating steel and

concrete finger pier extends 278 feet into the harbor.

Despite the downturn in the fishing industry, several investors saw potential in the property and made offers, according to Roxane Cole, the agent

at Ram Harnden Commercial Real Estate Services who listed the wharf.

"It's so rare for a piece of working waterfront to come along to Roxane Cole, the agent



STAFF GRAPHIC / ALBERT WOOD

Chilly receipt for LN development

"There's no place in Passamaquoddy Dean Giridis is told meeting in New E

The Associated ST. ANDREWS, swick — A New mayor stormed out organized by a Maine natural gas development Wednesday, saying enough about the project John Craig told times of Downeast L. Canadian government them bring tankers storage tanks near St. The developers were liquefied natural gas the Maine shore of quoddy Bay, and they of their strongest critic day in the tourist Andrews.

Dean Giridis, president of Downeast LNG, told about 300 people that hardly notice an LN operating about 40 across the bay.

"You have 3,000 (of Maine) coal choose from, if here."

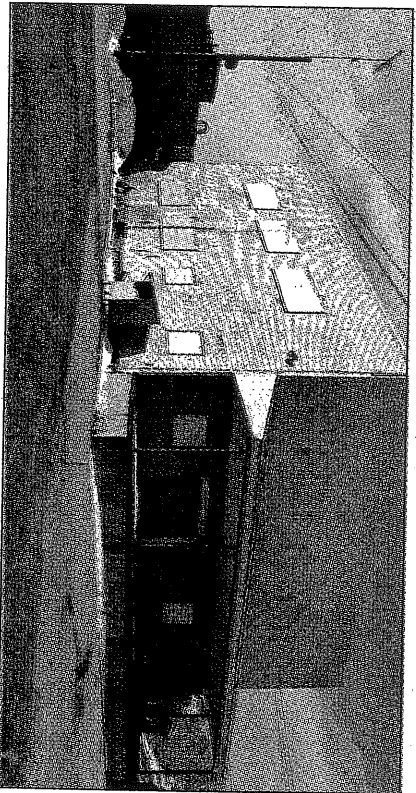
Nancy McIntosh, Former governor in New Brunswick

He said the \$400 million would bring a ship a year area and that the term have minimal impact environment.

But critics of Giridis' the developer to find place for his project. 3,000 miles (of Maine choose from, just not Nancy McIntosh, adviser to the former Liberal minister Andy Seo She said no one in Canada ports the passage of ers into Passamaquoddy David Thompson, man for the Conservative of New Brunswick's living around Passamaquoddy Bay thrive on its natural resources, not industrial development. "There's no place for Passamaquoddy Bay," the developers.

Downeast LNG's plan the construction of a long pier about 2 1/2 miles St. Andrews shore. It also call for the construction of gas storage tanks on the shore at Mill Cove, at times across the bay Andrews.

The LNG opposition Prime Minister Stephen to stop Downeast LNG other companies that opening LNG terminals in Harper has said he's to the projects, as has a member of Parliament Thompson.



The owner of the Sturdivant's Wharf property has proposed putting marine-related businesses on the first floor of this building and opening a seafood diner upstairs. The windows on the left face the water.



Waterfront Central Zone

0 250 500 1,000 1,500 2,000
Feet

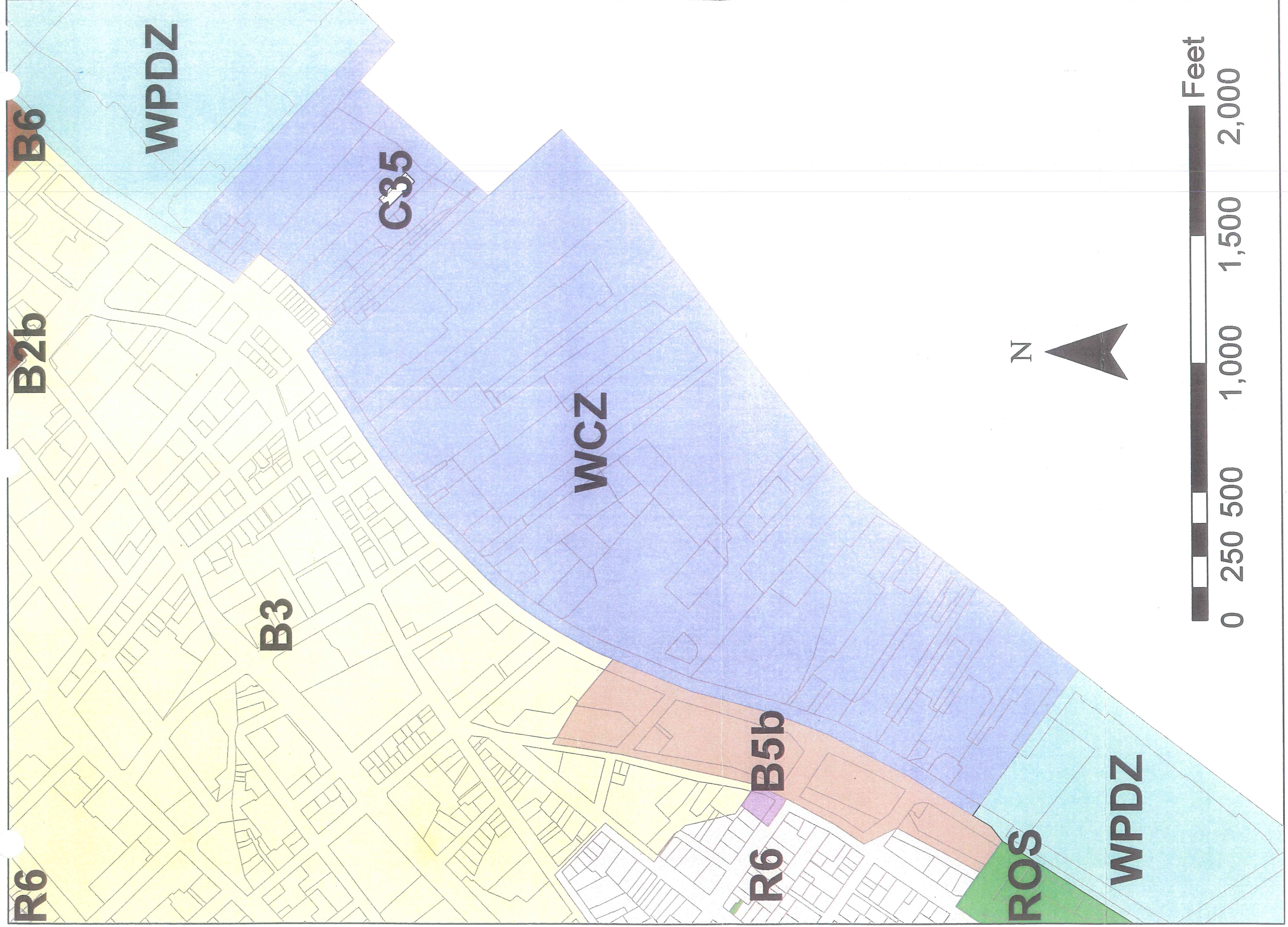


Central Waterfront Context Map

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For study purposes only. April 2005



AH.B



Zoning Map of the Portland Waterfront



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 April 2005

Att. A