

Minutes
Bar Harbor Town Council
March 20, 2018

- I. CALL TO ORDER** – 7:00 P.M. – In attendance were Councilors: Paul Paradis, Gary Friedmann, Stephen Coston, Erin Cough, Judie Noonan, Matthew Hochman; and Town Manager Cornell Knight and Town Attorney Joshua Randlett.

Chair Paradis made opening remarks and gave attendees the opportunity to welcome each other and gave notice to the posted Meeting Ground Rules.

- A. Excused Absence(s)** – *Councilor St. Germain requested to be excused.* Mr. Friedmann, with second by Ms. Noonan, moved to excuse Councilor St. Germain as provided by Town Charter section C-12.B(1)(d). Motion passed 6-0.

- II. PUBLIC COMMENT PERIOD** - *The Town Council allows at this time up to fifteen minutes of public comment on any subject not on the agenda and not in litigation with a maximum of three minutes per person.* – No comments this evening.

- III. APPROVAL OF MINUTES** – *March 6, 2018 Regular Meeting* – Mr. Friedmann, with second by Ms. Cough, moved to approve the minutes of March 6, 2018 as presented. Motion passed 6-0.

- IV. ADOPTION OF AGENDA** – Mr. Friedmann, with second by Mr. Hochman, moved to adopt the agenda as published. Motion passed 6-0.

- V. FINANCIAL REPORT** - *Review and possible adoption of a motion to accept the financial statements as presented.* – Following an overview by Finance Director Stan Harmon, Mr. Friedmann, with second by Mr. Hochman, moved to accept the financial report as presented. Motion passed 6-0.

- VI. CONSENT AGENDA** - *A single vote has been scheduled to approve the following routine items of business without discussion, unless individual agenda item action is requested by a Councilor:*

- A. Certification of Property Owners and Abutters Mailing Lists** – *Possible passage of a motion to sign the certification of the mailing list used for the notice of the Town Council’s March 20, 2018 public hearings on the Land Use Ordinance Amendments for June 12, 2018.*

- B. Statutory Officers** – *Possible passage of a motion to appoint Millard Billings as:*

- alternate Code Enforcement Officer,
- alternate Building Inspector,
- alternate Electrical Inspector, and
- alternate Local Plumbing Inspector.

Mr. Hochman, with second by Ms. Noonan, moved to approve the consent agenda as published. Motion passed 6-0.

VII. PUBLIC HEARINGS:

A. Land Use Ordinance Amendments for June 12, 2018 – *Public comment on the following proposed amendments for June Town Meeting Warrant and sign the Order(s):* Angela Chamberlain gave an overview of each proposal before the public hearing was opened on each article.

1. **LAND USE ORDINANCE AMENDMENT** – *Adoption of the Statewide timber harvesting standards and repeal of Forest Management and Timber Harvesting Provisions in the Land Use Ordinance* – The Interim Planning Director reported this was repealed in 2008 by the voters and placed in the State’s hands for regulation since they revised legislation at that time. It was voted overwhelming to repeal, the repeal was in one section of the LUO code and later, 2012, language was amended in a separate section, thus making today’s Town code conflicting and not to State standards. On the advice of Town Attorney, the proposed article is to correct the code, and propose the repeal as it was voted in 2008.

Michael Good’s commented his understanding is the Town code standard is greater than the State’s, and inquired why remove it.

Mr. Friedmann, with second by Mr. Coston, moved to sign the Order to place the Statewide Timber harvesting standards and repeal of the Forest Management and Timber Harvesting Provisions in the Land Use Ordinance, on the June 12, 2018 town meeting warrant. Motion passed 6-0.

Order

Of the Bar Harbor Town Council
For the June 12, 2018 Town Meeting

It is hereby ordered that the following article be placed on the annual town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

Article _ LAND USE ORDINANCE AMENDMENT – Adoption of the Statewide timber harvesting standards and repeal of Forest Management and Timber Harvesting Provisions in the Land Use Ordinance – Shall an Ordinance dated November 1, 2017 and entitled “An amendment to adopt the statewide timber harvesting standards and repeal the forest management and timber harvesting provisions in the Land Use Ordinance” be enacted?

Adoption of Statewide Timber Harvesting Provisions

An amendment adopt the statewide timber harvesting standards and repeal the forest management and timber harvesting provisions in the Land Use Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE I General Provisions

§ 125-8 When effective; filing; repealer.

A. The effective date of this chapter or any amendments thereto shall be 30 calendar days following its/their adoption at a regular or special Town Meeting; provided, however, that those portions of this chapter related to shoreland regulation shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of this chapter, attested and signed by the Town Clerk, shall be forwarded to the Commissioner of the Department of Environmental Protection for approval. If the Commissioner fails to act on this chapter within 45 days of his/her receipt of this chapter, it shall be deemed approved. Any application for a permit submitted to the Town within such forty-five-day period shall be governed by the terms of this chapter if the chapter is approved by the Commissioner of the Department of Environmental Protection.

B. A certified copy of this chapter shall also be filed with the Hancock County Registry of Deeds.

C. The adoption of this chapter hereby repeals and supersedes all conflicting land use provisions of all ordinances adopted prior to the effective date of this chapter.

~~D. Repeal of municipal timber harvesting regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. § 438-B, Subdivision 5, at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A. § 438-B, Subdivision 5, the following provisions of this chapter are repealed:~~

~~(1) Table of Uses: "Forest management activities except for timber harvesting" and "Forest management activities including timber harvesting...#2."~~

~~(2) Section 125-68B(2) in its entirety.~~

~~(3) Section 125-109 definitions for "forest management activities."~~

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE III Land Use Activities and Standards

§ 125-17 Bar Harbor Gateway.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-18 Village Historic.

E. Allowed activities.

(1) Activities allowed without a building permit: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation and essential services.

§ 125-19 Mount Desert Street Corridor District.

E. Allowed activities.

(1) Activities allowed without a permit, provided that the activity complies with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installations/essential services.

§ 125-20 Village Residential.

F. Allowed activities.

(1) Activities allowed without a permit, provided that it complies with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-21 Downtown Village I.

D. Allowed activities.

(1) Activities allowed without a permit, provided that they comply with all provisions of the Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-21.1 Downtown Village II.

D. Allowed activities:

(1) Activities allowed without a permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-21.2 Downtown Village Transitional.

D. Allowed activities.

(1) Activities allowed without a permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 10 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation.

§ 125-49.1 Shoreland General Development III.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

§ 125-49.2 Shoreland General Development IV.

E. Allowed activities.

(1) Activities allowed without a building permit, provided that they comply with all provisions of Chapter 125: activities necessary for managing/protecting land; filling/earthmoving activity of less than 16 cubic yards; ~~forest management activities, except timber harvesting~~; nonintensive recreation uses not requiring structures; public utility installation/essential services.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE XII Construction and Definitions

§ 125-109 Definitions.

The following terms shall have the following meanings:

~~DBH—The diameter of a standing tree measured 4.5 feet from ground level.~~

~~FOREST MANAGEMENT ACTIVITIES—Timber cruising and other forest resources evaluation activities, management planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting and other similar associated activities, but not the construction or creation of roads. See also "timber harvesting." [7]~~

~~LICENSED FORESTER—A forester licensed under 32 M.R.S.A. Chapter 76.~~

~~RESIDUAL BASAL AREA—The average of the basal area of trees remaining on a harvested site.~~

~~SKID ROAD or SKID TRAIL—A route repeatedly used by forwarding machinery or animals to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.~~

~~SLASH—The residue, e.g., treetops and branches, left on the ground after a timber harvest.~~

~~TIMBER HARVESTING—The selective cutting and removal of at least 50 cords, or equivalent, of timber from one lot or from abutting lots, irrespective of the ownership of such lots, within a one-year period for the primary purpose of selling or processing forest products, and the attendant operation of harvesting machinery. Timber harvesting does not include the construction of roads or the clearing of land for approved construction for which a lawful permit has been issued in accordance with state and local codes, ordinances, statutes, rules and regulations. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 125-68B(13).~~

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-68 Shoreland standards.

[Amended 11-5-1991; 5-4-1992; 5-6-1996; 6-13-2006[1]]

A. Notwithstanding and in addition to any other provisions of this chapter, before granting site plan approval or a building permit for:

[Amended 11-3-2009]

- (1) Any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal shoreline of a water body or within a wetland;
- (2) Any land use activity situated entirely or partially within 250 feet, horizontal distance, of the normal shoreline of any great pond or river, within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, or within 75 feet, horizontal distance, of the normal high-water line of a stream, tributary stream, significant vernal pool as such terms are defined in 38 M.R.S.A. § 435 et seq. and § 125-109 of this chapter.

[Amended 6-8-2010]

B. The Planning Board, Code Enforcement Officer or Planning Department, as applicable, must find that the proposed plan will comply with such of the following standards, and all land use activities within the shoreland zone shall conform to the following standards as are applicable:

[Amended 11-7-2006; 11-4-2008; 11-3-2009; 6-8-2010]

~~(2) Timber harvesting. All site plans shall demonstrate that all timber harvesting proposed in a shoreland area shall comply with the following minimum requirements:~~

~~(a) Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high water line, except to remove safety hazards.~~

~~(b) Beyond the seventy five foot strip referred to in § 125-68(B)(2)(a) above, timber harvesting is permitted in accordance with § 125-68(B)(2)(c) below, except that in no case shall the average residual basal area of trees over 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.~~

~~(c) Except as provided in the preceding subsection and in Subsection B(2)(a) and (b), selective cutting of no more than 40% of the trees four inches or more in diameter, measured at 4 1/2 feet above ground level, shall be allowed in any ten year period. In addition:~~

~~[1] Within 100 feet, horizontal distance, of the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland, or within 25 feet from a significant vernal pool, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.~~

~~[2] At distances greater than 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA and greater than 75 feet, horizontal distance, of the normal high water line of other water bodies or the upland~~

~~edge of a wetland, harvesting operations shall not create single clear-cut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.~~

~~[3] Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed. No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, and between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than three inches in diameter must be disposed of in such a manner that no part thereof extends more than four feet above the ground.~~

~~[4] Timber harvesting equipment shall not use stream channels as travel routes except when:~~

~~[a] Surface waters are frozen; and~~

~~[b] The activity will not result in any ground disturbance.~~

~~[5] All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.~~

~~[6] Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.~~

~~[7] Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet in width in horizontal distance for slopes up to 10% shall be retained between the exposed mineral soil and the normal high-water line of a water body, significant vernal pool or upland edge of a wetland. For each ten-percent increase in slope, the unscarified strip shall be increased by 20 feet in horizontal distance. The provisions of this subsection apply only to a face sloping toward the water body, wetland or significant vernal pool; provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet in horizontal distance from the normal high-water line of a water body or upland edge of a wetland.~~

~~(d) Subject to all other limitations imposed in Subsection B(2)(c), the Planning Board shall approve timber harvesting in excess of the forty-percent limitation within a shoreland district upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such harvesting is necessary for good forest management and will be carried out in accordance with the purposes of this chapter and the mandatory shoreland zoning laws of the State of Maine. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each approval granted under this section within 14 days of the Planning Board approval.~~

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-69 Standards for particular uses, structures or activities.

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:...

~~I. Timber harvesting. The selective cutting and removal of trees from their growing sites in those districts indicated in Article III as allowing timber harvesting are permitted in accordance with the following conditions:~~

~~(1) Forest management and harvest plan required. A licensed professional forester shall prepare a forest management and harvest plan for the proposed harvest tract, pursuant to the Maine Forest Service Information Sheet "Guidelines for Forest Management and Harvest Plans," and a copy of said plan shall be filed with the permit application.~~

~~(2) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters.~~

~~(3) Harvesting operations shall be conducted in such a manner that a well distributed stand of trees is retained.~~

~~(4) Harvesting activities shall not create single openings greater than 7,500 square feet in the forest canopy.~~

~~(5) In any stand, harvesting shall remove not more than 40% of the volume of trees in any ten-year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions to be identifiable as a homogeneous and distinguishable unit.~~

~~(6) No accumulation of slash shall be left within 75 feet of the normal high water mark of any pond, lake, river, or saltwater body as defined. At distances greater than 75 feet from the normal high water mark of such waters, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.~~

~~(7) Log yards and other sites where logging activities result in the exposure of areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of any pond, lake, river, or saltwater body as defined. The width of this strip shall vary according to the average slope of the land as follows:~~

Average Slope of Land Between Mineral Soil Exposed Mineral Soil and Normal High Water Mark	Width of Strip Between Exposed and Normal High Water Mark (feet)
Up to 30%	85
40%	105
50%	125
60%	145
70%	165

~~(8) Inspection by licensed forester required. The timber harvesting operation shall be administered by a licensed professional forester consistent with the provisions of the forest management and harvest plan on file and shall be inspected by a licensed professional forester weekly throughout the operation. A final inspection shall be made by the licensed forester upon harvest completion.~~

~~(9) Best management practices required. Best management practices shall be implemented to help control and reduce nonpoint source pollution of water resources by adhering to provisions in the Maine Forest Service publication "Erosion and Sediment Control Handbook for Maine Timber Harvesting Operations."~~

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

APPENDIX C, Table of Permitted Uses

	Downtown Residential	Educational Institution	Emery	Hulls Cove Business	Hulls Cove Residential Corridor	Hulls Cove Rural	Indian Point Residential	Indian Point Rural	Industrial	Ireson Hill Corridor	Ireson Hill Residential	McFarland Hill Residential	McFarland Hill Rural	Marine Research	Otter Creek
Forest management activities except timber harvesting... ¹	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a
Forest management activities including timber harvesting...#2 ¹			e	e		e	e	e				e	e		e
	Resource Protection	Salisbury Cove Corridor	Salisbury Cove Residential	Salisbury Cove Rural	Salisbury Cove Village	Schooner Head	Scientific Research	Shoreland General Development I	Shoreland General Development II	Shoreland Limited Residential	Stream Protection	Town Hill Business	Town Hill Residential Corridor	Town Hill Residential	Town Hill Rural

Appendix C Table of Permitted Uses, Key to Appendix C – Permissibility of Use (Excerpt)

a = Activity or structure allowed without a permit, provided it complies with all provisions of this chapter.

c = Activity or structure requires permit issued by Code Enforcement Officer (CEO) before it may be commenced or built.

#2 = Forest management activities, including timber harvesting supervised by a licensed forester.

¹ = NOTE: An amendment adopted 11-4-2008 provided that these provisions are repealed on the date established under 38M.R.S.A. § 438-B, Subdivision 5.

EXPLANATION:

Title 38 M.R.S.A. section 438-A provides that, notwithstanding other provisions of the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Maine Bureau of Forestry pursuant to Title 12, section 8867-B. Section 438-B establishes three options from which each municipality may choose as the State implements a set of statewide timber harvesting standards in shoreland areas.

The Town of Bar Harbor elects to utilize Option 1.

Option 1: The first option available to a municipality is the complete repeal of timber harvesting provisions from the shoreland zoning ordinance. Under this option the Bureau of Forestry will administer the regulation of all forestry activities within the municipality.

Additionally the Town elects to remove the forest management and timber harvesting standards from the remaining (non-shoreland zoning) areas of the Land Use Ordinance as well.

- 2. **LAND USE ORDINANCE AMENDMENT – Shoreland Zoning Corrections Required by DEP** – Ms. Chamberlain reported only minor changes and nothing of substance. There were no comments from the public.

Mr. Hochman, with second by Ms. Noonan, moved to sign the Order to place the amendments to the Shoreland Zoning Ordinance, dated 3/19/18, on the June 12, 2018 town meeting warrant. Motion passed 6-0.

Order
Of the Bar Harbor Town Council
For the June 12, 2018 Town Meeting

It is hereby ordered that the following article be placed on the annual town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

Article _ LAND USE ORDINANCE AMENDMENT – Shoreland Zoning Corrections Required by DEP – Shall an Ordinance dated November 1, 2017 and entitled “An amendment to meet conditions imposed by the Department of Environmental Protection to various Articles of the Land Use Ordinance” be enacted?

Shoreland Zoning Corrections Required by DEP

An amendment to meet conditions imposed by the Department of Environmental Protection to various Articles of the Land Use Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE III Land Use Activities and Standards

§ 125-51. Marine Research.

A. Purpose.

B. Dimensional standards.

- (1) ~~A.~~ Minimum lot size: 20,000 square feet with sewers; 40,000 square feet without sewers.
- (2) ~~B.~~ Minimum road frontage and lot width: 100 [feet] with sewers; 200 [feet] without sewers.
- (3) ~~C.~~ Minimum shore frontage: 150 feet per dwelling unit adjacent to tidal areas; 200 feet for all other uses and structures, excluding functionally water-dependent structures.
- (4) ~~D.~~ Minimum front setback: 25 [feet].
- (5) ~~E.~~ Minimum side setback: 25 [feet].
- (6) ~~F.~~ Minimum rear setback: 25 [feet].
- (7) ~~G.~~ Minimum setback from shoreline: zero feet for functionally water-dependent uses; 75 feet for all other uses.
- (8) ~~H.~~ Maximum lot coverage: 25%.
- (9) ~~I.~~ Maximum building coverage: 12.5%.
- (10) ~~J.~~ Maximum height: 35 feet within 250 feet of the shoreline or upland edge of a wetland; 40 feet elsewhere.
- (11) ~~K.~~ Minimum area per family: ~~20,000~~ 30,000 square feet.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-68 Shoreland standards.

- A. Notwithstanding and in addition to any other provisions of this chapter, before granting site plan approval or a building permit for:
 - (1) Any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal shoreline of a water body or within a wetland;
 - (2) Any land use activity situated entirely or partially within 250 feet, horizontal distance, of the normal shoreline of any great pond or river, within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, or within 75 feet, horizontal distance, of the normal high-water line of a stream, tributary stream, significant vernal pool as such terms are defined in 38 M.R.S.A. § 435 et seq. and § 125-109 of this chapter.

- B. The Planning Board, Code Enforcement Officer or Planning Department, as applicable, must find that the proposed plan will comply with such of the following standards, and all land use activities within the shoreland zone shall conform to the following standards as are applicable:...
- (12) Principal and accessory structures. All site plans shall demonstrate that all principal and accessory structures in a shoreland district shall comply with the following:
- (a) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the shoreline of great ponds classified GPA and rivers that flow to great ponds classified GPA and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, significant vernal pools or the upland edge of a wetland, and for properties located in the Shoreland General Development ~~III and IV~~ District; except that in a the Shoreland General Development I, and II, and III Districts, the setback from the shoreline shall be at least 25 feet, horizontal distance. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply. In Stream Protection district any structure associated with a "municipal facility or grounds" or with "uses or small structures accessory to permitted uses or structures" be set back 75 feet, horizontal distance, from the shoreline, unless a variance is obtained from the Board of Appeals. In Resource Protection the setback requirement from the shoreline for wind turbines shall be 250 feet horizontal distance unless a variance is obtained from the Board of Appeals. In the Stream Protection District the setback requirement from shoreline for wind turbines or municipal facilities and grounds shall be 75 feet horizontal distance unless a variance is obtained from the Board of Appeals.

In addition:

- [1] The water body, tributary stream, or wetland setback provision shall not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- [2] Principal and accessory structures are exempt from setbacks from a forested wetland of any size on lots in existence prior to or on September 6, 2005, or from a freshwater wetland less than 10 acres in size on lots in existence prior to or on September 6, 2005.
- [3] For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff Map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a highly unstable or unstable bluff, or where the top of the bluff is located, the applicant may, at his or her expense, employ a Maine registered professional engineer, a Maine certified soil scientist, a Maine state geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.
- [4] On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body,

tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed 80 square feet in area nor eight feet in height and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation-clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

- (b) Notwithstanding the dimensional, setback and coverage requirements of the applicable district and the requirements of § 125-67H, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer for structures 400 square feet or less in area and from the Planning Board for structures greater than 400 square feet in area to provide shoreline access in areas of steep slopes or unstable soils provided that the structure is limited to a maximum of four feet in width; that the structure does not extend below or over the normal high water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

- (13) Clearing or removal of vegetation for activities other than timber harvesting. All site plans shall demonstrate that clearing of vegetation for purposes of development shall be accomplished in accordance with the following:...

- (b) Except in areas as described in Subsection B(13)(a) above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, 75 feet, horizontal distance, from any other water body, tributary stream, stream, significant vernal pool or the upland edge of a freshwater wetland, and 25 feet from the upland edge of a forested wetland, a buffer strip of vegetation shall be preserved as follows:...

- [3] In order to protect water quality and wildlife habitats, ~~adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA,~~ existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed except to provide for a footpath or other permitted uses as described in Subsection B(13)(b)[1] and [2].

(17) Parking areas. All site plans shall demonstrate that any parking areas associated with proposed development in a shoreland district shall comply with the following requirements:

- (a) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in districts other than Shoreland General Development I and II districts shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-69. Standards for particular uses, structures or activities.

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:...

- V. Purpose of conditional use. The purpose of this section is to establish procedures and standards to enable the Planning Board to review applications for conditional uses. A "conditional use" is a structure or use that is generally not appropriate in a given district, but with restrictions and if controlled as to location, size and off-site impacts may have no adverse effects upon the public health, safety or welfare, surrounding properties, the natural environment, or on municipal services. The only structures or uses that shall be permitted as conditional uses are those approved as conditional uses by the Planning Board. Conditional use may not be applied to uses in the shoreland districts.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE XII Construction and Definitions

§ 125-109. Definitions.

The following terms shall have the following meanings:...

LOT COVERAGE

Except as otherwise provided in § 125-67B(8), the footprint area of all structures and improvements calculated as a percentage of the area of the lot shall be considered to be lot coverage, including but not limited to principal and accessory buildings; all improved vehicular and pedestrian surfaces, such as parking lots, roads, driveways, maneuvering spaces, and pedestrian walkways, regardless of the

construction material employed; ~~or~~ graveled areas and other nonvegetated surfaces. Unimproved natural surfaces of a site shall not constitute lot coverage, regardless of whether they are vegetated. Boats stored in cradles above an unimproved natural surface shall not constitute lot coverage. However, in the case of lumber yards, areas of stored lumber shall constitute lot coverage.

**Appendix C
Table of Permitted Uses**

	Downtown Residential	Educational Institution	Emery	Hulls Cove Business	Hulls Cove Residential	Hulls Cove Rural	Indian Point Residential	Indian Point Rural	Industrial	Ireson Hill Corridor	Ireson Hill Residential	McFarland Hill Residential	McFarland Hill Rural	Marine Research	Otter Creek	Resource Protection	Salisbury Cove Corridor
Accessory dwelling	c		c	c	c	c	c	c		c	c	c	c		c	e	c

EXPLANATION:

In 2012, the Department of Environmental Protection issued a Department Order (# 04-2012) that outlined specific areas in the Bar Harbor Land Use Ordinance which were not consistent with the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The amendments in this warrant article are necessary to be in compliance with the Mandatory Shoreland Zoning Act.

- 3. **LAND USE ORDINANCE AMENDMENT – Integration of Appendix C (Table of Permitted Uses) and individual Official Neighborhood District Maps into Article III (Land Use Activities and Standards) See Town website for full text [130 pages] – Planning Department –Copy on file in the Town Clerk’s office**
<http://www.barharbormaine.gov/DocumentCenter/View/2505>

Ms. Chamberlain explained the purpose of reformatting the permitted use of the remaining 30 districts from Appendix C to Article III, the same as the other 10 districts. Being consistent in locating all information pertaining to each district in one placing with the same layout of formatted text, a district map, and the dimensional standards. Mr. Good commented some people like to see Appendix C remain.

Mr. Coston, with second by Ms. Noonan, moved to sign the Order to place the amendments to Appendix C of the Land Use Ordinance on the June 12, 2018 town meeting warrant. Motion passed 6-0.

VIII. REGULAR BUSINESS:

- A. Parade: Maine Mothers' March** – *Request of Indivisible MDI to close march route from the Village Green along Mt. Desert Street to High to Cottage, down Main Street to Town Pier returning to Village Green on May 12, 2018 from 1:15 pm to 2:00 pm.* – On behalf of the organization, Gail Leiser commented they would be paying for two additional police officers during the march. Mr. Friedmann, with second by Ms. Cough, moved to approve Indivisible MDI's request to close parade route on May 12th as presented in the March 5, 2018 letter. Motion passed 6-0.
- B. Charter Commission** – *Possible motion to sign Order to establish a Charter Commission and elect six commissioners for November 2018 special town meeting warrant.* – Mr. Friedmann opposed forming a Charter Commission at this contentious time, people see it as an attack on Warrant Committee. Comments made from remaining Councilors that this is not an attack on Warrant Committee and that there are a number of items that need revisiting and amended to change with the times and regulations. Warrant Committee will be looked at to make it more efficient, and more openness for the nomination process. Ms. Cough, with second by Mr. Hochman, moved to sign the Order as presented for a November special town meeting vote to establish a Charter Commission and elect 6 commissioners. Motion passed 5-1(Nay: Mr. Freidmann).
- C. Warrant Committee** – *FOAA document request update.* – Town Manager Cornell Knight listed the options from the town attorney's letter for Council to consider as the next step: 1. go to court, 2. Conduct ethics investigation, or 3. nothing. Town Manager stated he recommended option 3. Mr. Knight agreed with Gary Friedmann the situation would ratchet up, he received 3 FOAA requests today, and it would be at least a year before court. The public can form their own opinion, the need is to move on. Someone can always file an ethics complaint.
- Following much discussion, Mr. Friedmann, with second by Mr. Coston, moved that Council send the letter drafted by the Town Attorney to A J Greif in response to his letter to us, and that concludes Council actions regarding emails from Warrant Committee members. Motion passed 6-0.
- D. Cottage Street Streetscape** – *Review of cost estimates.* – Town Manager Cornell Knight summarized the memo from Public Works Director Chip Reeves estimate. Removing the sewer and water work from the equation, the total town costs are approximately \$11,800,000. Chip's estimate does not include a utility coordinator, underground connection to private buildings and possible below grade conflicts with storm drainage and utility vaults which could add additional storm drainage work on side streets. Further, Mr. Knight reminded Council that they previously

discussed last fall a funding source to consider is the federal TIGER funding program. A 50% match would get the debt payment down to where it could be paid for from other sources such as cruise ship fees, parking fees, taxes and a Capital Improvement District (special assessments to the abutting property owners). Much discussion followed, no action taken.

E. Ferry Terminal Process Task Force – *Request to form a ferry terminal process task force to formalize a plan and timeline for the process to include public feedback and maintain open communication.* – Val Peacock presented a draft set of Bylaws to form the Ferry Terminal Process Task Force that would consist of 7 or 8 members. The purpose is to create a timeline and communicate the steps being taken keeping the public informed, receive comments from the citizens, and dispel false statements. Following much discussion, Mr. Coston, with second by Mr. Hochman moved to table the proposal until the B&A report and June vote taken. Suggest Ms. Peacock continue to work on proposal and suggest she work with staff. Motion failed 2-4(Nay: Ms. Noonan, Mr. Hochman, Mr. Friedmann, Ms. Cough). Mr. Friedmann, with second by Ms. Cough, moved to approve the creation of Ferry Terminal Process Task Force and direct staff to work on the Bylaws for next meeting. Motion passed 4-2(Nay: Mr. Paradis, Mr. Coston).

F. Treasurer’s Warrant - *Request of Treasurer to authorize paid bills.* – Mr. Friedmann, with second by Mr. Hochman, moved to sign the Treasurer’s warrants for paid bills. Motion passed 6-0.

IX. TOWN MANAGER’S COMMENTS – Mr. Knight reported the House did not override the Governor’s veto for LD1400, Bar Harbor Port Authority. The bill is dead.

X. COUNCIL COMMENTS AND REQUESTS FOR FUTURE AGENDAS

Ms. Noonan wished everyone Happy Spring, envision flowers not snow.

Mr. Hochman congratulated MDI Drama for this past week’s win and wished them ‘break a leg’ to this weekend’s Class A Drama festival.

Mr. Friedmann expressed he was looking forward to working with everyone in town on the ferry terminal and other issues. He hopes we move a path forward and leave the past behind.

XI. EXECUTIVE SESSION: (None)

XII. ADJOURNMENT – Mr. Friedmann, with second by Mr. Hochman, moved to adjourn at 9:03 p.m. Motion passed 6-0.

Patricia A. Gray, Town Clerk