

#314

ORDER Proposed Zoning Amendment  
Chapt. 38-22 replacing Waterfront  
Development with New Beverly Harbor  
District as amended

March 16, 2015

In City Council

Referred to standing Committee on

LEGAL AFFAIRS

First reading ..... MARCH 16, 2015

JOINT PUBLIC HEARING: APRIL 6, 2015

Second reading ..... MAY 18, 2015

Adopted ..... MAY 18, 2015

FINAL PASSAGE: JUNE 1, 2015

Presented to Mayor

..... JUNE 3, 2015 *Kathleen P. Connolly*, City Clerk

Approved

..... *June 9, 2015*  
DATE:  
*[Signature]*  
Mayor

**CITY OF BEVERLY**  
In the Year Two Thousand and Fifteen  
An Order amending the Zoning Ordinance entitled Chapter XXXVIII Section 38-22 replacing the Waterfront Development (WD) district in its entirety with the Beverly Harbor District (BHD).  
Ordered:  
That Chapter 38-22 of the Revised Zoning Ordinances of the City of Beverly, be, and the same is hereby amended as follows:  
Replace: Waterfront Development (WD) district, Section 38-22, in its entirety with the Beverly Harbor District (BHD). 1. Amendment to the Beverly Zoning Map to replace WD district with BHD; 2. Amendment to Section 38-22 by replacing WD district with proposed BHD; 3. Amendments to the following sections to correctly reference the proposed BHD by replacing all references to the WD district: Sections 38-2 (Definitions), 38-5.M (Design Review Board), 38-25.E (Parking and Loading Requirements), Section 38-26.B (Signs), and 38-29.C (Site Plan Review).  
Strike: Section 38-31.F Beverly Interim Overlay Planning District (BHI-POD) in its entirety as the proposed BHD will replace the temporary overlay district.  
Copies of the proposed amendment are on file in the Planning Department and Office of the City Clerk and are available for public review.  
This ordinance to take effect upon final passage according to

Entered Page ..... Vol. 120

*Kathleen P. Connolly* CMC  
Clerk

A TRUE COPY

ATTEST: *Kathleen P. Connolly*  
City Clerk



# City of Beverly

IN CITY COUNCIL

March 9, 2015

The Committee on

## Legal Affairs / Committee of the Whole

To whom was referred the matter of

Proposed Amendment to the Beverly Zoning Ordinance  
Chapter 38-22 Replacing the Waterfront Development (WD) District with the New Beverly Harbor  
District (BHD)

have considered said matter and beg leave to report as follows, to wit:

- Submit the accompanying amended ordinance and recommend its adoption
- Submit the accompanying order and recommend its adoption
- Receive and Place on File
- No Further Action
- Refer to City Solicitor
- Recommend the Council approve the request
- Recommend the Petition be Granted
- Recommend the Council Approve the Licenses
- Recommend the Council approve the reappointment /appointments

*Josm Silva*

*David Gray*

*John P. Fustes Jr.*



# City of Beverly

## IN CITY COUNCIL

Mar.16, 2015

### ORDERED:

Ordered: That notice is hereby given in accordance with M.G.L. Chapter 40A, Section 5 that the Beverly City Council and Beverly Planning Board will hold a Joint Public Hearing on Monday April 6, 2015 at 7:45 p.m. in the City Council Chambers, third floor, City Hall, 191 Cabot St. Beverly, MA. 01915 relative to: A PROPOSED AMENDMENT TO THE BEVERLY ZONING ORDINANCE CHAPTER 38-22 REPLACING THE WATERFRONT DEVELOPMENT (WD) DISTRICT WITH THE NEW BEVERLY HARBOR DISTRICT (BHD).

Copies of the proposed amendment are on file in the Planning Department and Office of the City Clerk and are available for public review.

#### Legals

#### CITY OF BEVERLY

Notice is hereby given in accordance with M.G.L. Chapter 40A, Section 5 that the Beverly City Council and Beverly Planning Board will hold a Joint Public Hearing on Monday April 6, 2015 at 7:45p.m. in the City Council Chambers, third floor, City Hall, 191 Cabot St. Beverly, MA. 01915 relative to: A PROPOSED AMENDMENT TO THE BEVERLY ZONING ORDINANCE CHAPTER 38-28 REPLACING THE WATERFRONT DEVELOPMENT (WD) DISTRICT WITH THE NEW BEVERLY HARBOR DISTRICT (BHD).

Copies of the proposed amendment are on file in the Planning Department and Office of the City Clerk and are available for public review.

ATTEST:

Kathleen P. Connolly, CMC  
City Clerk

SN - 3/23, 3/30/15

*P.H. Closed on 4-6-15  
@ 10:10 PM  
Merrill Baskin  
Planning & Legal*



# City of Beverly

IN CITY COUNCIL

May 11, 2015 .....

The Committee on

## Legal Affairs / Committee of the Whole

To whom was referred the matter of

Proposed Zoning Amendment Cha. 38-22 replacing Waterfront Development with New Beverly Harbor District as amended

have considered said matter and beg leave to report as follows, to wit:

- Submit the accompanying amended ordinance and recommend its adoption
- Submit the accompanying order and recommend its adoption
- Receive and Place on File
- No Further Action
- Refer to City Solicitor
- Recommend the License be granted
- Recommend the Petition be Granted
- Recommend the Council Approve the License
- Recommend the Council approve the reappointment /appointments

**LEGAL NOTICE – CITY OF BEVERLY**

**In the Year Two Thousand and Fifteen**

**An Order amending the Zoning Ordinance entitled Chapter XXXVIII Section 38-22 replacing the Waterfront Development (WD) district in its entirety with the Beverly Harbor District (BHD).**

**Ordered:**

**That Chapter 38-22 of the Revised Zoning Ordinances of the City of Beverly, be, and the same is hereby amendment as follows:**

**Replace: Waterfront Development (WD) district, Section 38-22, in its entirety with the Beverly Harbor District (BHD). 1. Amendment to the Beverly Zoning Map to replace WD district with BHD; 2. Amendment to Section 38-22 by replacing WD district with proposed BHD; 3. Amendments to the following sections to correctly reference the proposed BHD by replacing all references to the WD district: Sections 38-2 (Definitions), 38-5.M (Design Review Board), 38-25.E (Parking and Loading Requirements), Section 38-26.B (Signs), and 38-29.C (Site Plan Review).**

**Strike: Section 38-31.F Beverly Interim Overlay Planning District (BHIPOD) in its entirety as the proposed BHD will replace the temporary overlay district.**

**Copies of the proposed amendment are on file in the Planning Department and Office of the City Clerk and are available for public review.**

**This ordinance to take effect upon final passage according to City Charter**

**First Reading: March 16, 2015**

**Joint PH held: April 6, 2015**

**Second Reading: May 18, 2015**

**Advertise and hold for Final Passage: per Order of the City Council**

**Final Passage: June 1, 2015**

**Attest:**

Kathleen P. Connolly, CMC

City Clerk

As per order of the City Council

**Please publish on Saturday – May 30, 2015**

## PROPOSED ZONING AMENDMENT

MAY 18, 2015

- Amend Beverly Land Use Schedule to strike WD and replace with BHD and update the uses by right and by special permit.
- Amend Section 38-2 (Definitions) by introducing the following definition for Hotel, and by updating the number system for defined terms:  
  
Hotel – An establishment providing transient lodging accommodations to the general public for compensation and which may include, but is not limited to, ancillary facilities and services such as restaurants, meeting rooms, and recreational facilities.
- Amend Section 38-2 (Definitions) by introducing an illustrative diagram to the definition for Floor Area Ratio (FAR) to clarify the meaning of the term. Proposed diagram is attached as exhibit B.
- Amend Section 38-2.B.62 by removing the word “Public” in the definition as follows:  
  
62. Recreational Boating Facility - A facility on and abutting tidal waters for berthing of recreational vessels at which all berths and accessory uses thereto are available for patronage by the general public on a seasonal or transient basis. Such facility may be either publicly or privately owned, and may include town piers, or community sailing centers or yacht clubs offering open membership to the public. Nothing in this provision shall be construed as allowing the storage of recreational vessels and/or recreational and marine equipment off the premises of the facility, nor as prohibiting the adoption of minimum eligibility criteria of broad, objective applicability, such as basic knowledge of boating safety or a willingness to make regular work commitments; nor as prohibiting the reservation of a berth for the operation of said facility. (Ord. No. 254, 11-23-94)
- Amend Section 38-3 (Zoning Districts) Section A by replacing WD Waterfront Development with BHD Beverly Harbor District.
- Amend the City of Beverly Zoning Map as established in Section 38-4 of the Beverly Zoning Ordinance to replace the Waterfront Development (WD) zoning district in its entirety with the Beverly Harbor District (BHD) as shown on the attached map (exhibit A) dated February 26, 2015.
- Amend Section 38-5.M (Design Review Board) by replacing all reference to Waterfront Development, Waterfront District, and WD with Beverly Harbor District or BHD.
- Strike Section 38-22 (Waterfront Development) zoning district of the Beverly Zoning Ordinance and replace it with the following language:

## 38-22 BHD – BEVERLY HARBOR DISTRICT

### A General Description and Purpose

The Beverly Harbor District seeks to protect and enhance Beverly's existing marine and waterfront uses and amenities and to expand public access to the water by creating continuous and inviting public spaces enlivened with new mixed use development and waterside recreational facilities that are well integrated with surrounding neighborhoods. The Beverly Harbor District is established in order to facilitate the following objectives:

1. Support and grow commercial maritime uses, including commercial fishing vessels, as they are an integral part of the long-term vision of the Harbor District.
2. Facilitate use of the Harbor District's shoreline by commercial maritime, fishing, and recreational vessels.
3. Accommodate mixed-use development that is pedestrian friendly and will include recreational amenities to engender an inviting and active place.
4. Make the District accessible and designed to accommodate all modes of transportation.
5. Provide publicly accessible open spaces along the length of the Harbor District and will seek to connect with existing open spaces located elsewhere on Beverly's waterfront.
6. Complement the historical context of the waterfront with construction to a scale in keeping with the character of the surrounding neighborhood.
7. Enhance the visual appeal of the street, pedestrian paths, and other public areas within the Harbor District by minimizing the visual impact of overhead utilities, service equipment and other infrastructure and by the use of underground utilities where feasible.

### B Uses by Right

1. Commercial fishing excluding the processing of fish, except as provided by Section 38-22.B8.
2. Commercial marina for the sale, mooring, and rental of boats, subject to the provisions of Section 38-22.G. (Rev. 6-26-87).

3. Public or private recreational boating facilities, including but not limited to ancillary office, kitchen facilities and meeting space.
4. Marine-related museums and/ or aquariums, and public service facilities including but not limited to harbormaster.
5. Boatyard for the construction, repair or maintenance of boats, including but not limited to ancillary office space.
6. Berthing and boat storage facility where a vessel is confined by wet slip, dry stack, float, mooring, jack stand, cradle or other type of docking facility.
7. Restaurants up to 5,000 square feet in gross floor area; provided however that fast food restaurant as defined in Section 38-2 of this zoning ordinance shall not be allowed.
8. Accessory buildings and uses required for and clearly incidental to the principle building or use are permitted.
9. Home occupation as defined herein, subject to the provisions of Section 38-22.G.

C Uses by Special Permit

1. Retail establishments subject to the provisions of Section 38-22.G.
2. Residential as part of a mixed-use commercial development where all residential units are located above the first (or ground) floor.
3. Business and professional offices as part of a mixed-use commercial development where all office related uses are located above the first (or ground) floor.
4. Hotel as part of a mixed-use commercial development where all lodging rooms are located above the first (or ground) floor and subject to provisions of section 38-22.G.
5. Restaurants with more than 5,000 square feet in gross floor area, provided however that fast food restaurants as defined in Section 38-2 of this zoning ordinance shall not be allowed.

D Building and Area Requirements

1. Minimum lot area: none required
2. Maximum Floor Area Ratio (FAR): 0.25, unless modified by Special Permit as provided in Section I below. FAR calculations do not include structured parking.
3. Minimum lot frontage: none

4. Minimum front yard setback: 20 feet, unless modified by Special Permit as provided in Section I below.
5. Minimum side yard setback: 5 feet
6. Minimum rear yard setback: 20 feet measured from the current mean high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles, whichever is further seaward.
7. Maximum building height: 35 feet measured as the vertical distance from the average existing street grade along the lot, to the top of the highest roof beams of a flat roof, or the top of the highest ridge of a sloped roof except that there may be uninhabited space under a sloped roof up to a total height of 40 feet.
8. Accessory Structures shall not be located in the front or rear yard of a lot.

E Parking Requirements

1. Off-street parking may be provided under or on the first floor of commercial or mixed use buildings provided an active ground floor use screens parking facilities from the public way and waterfront walkway.
2. Off-street surface parking located in the front or rear yard of a property must provide a minimum 5 foot landscape buffer from Water Street and the waterfront walkway.
3. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the BHD shall conform to the regulations set forth in Section 38-26 below.

G Minimum Development Standards

1. All proposals, including new construction of any building(s) or shoreline structure(s) (pier, slips, wharves, etc.) or any substantial addition(s) to same, must secure the appropriate federal, state, and local permits and licenses. These permits and licenses may include but are not limited to: U.S. Army Corps of Engineers Permit(s); MassDEP Division of Wetlands and Waterways Chapter 91 Waterways License; and City of Beverly Conservation Commission Order of Conditions.

Conditions imposed by any state or federal permit or license may be more restrictive or require certain public benefits not stated or identified in this Ordinance.

For any new development or improvements to existing structures within the BHD requiring site plan review under Section 38-29 or a special permit under the zoning ordinance, the project proponent shall establish the location, if applicable, of the Commonwealth tidelands and private tidelands on any plan or site plan(s) required under this Ordinance.

2. All proposals shall conform with MassDEP Waterways regulations, 310 CMR 9.00, as they may be amended, and shall provide or preserve any rights of access as required therein.
3. Any project that includes the use of filled tidelands for public access shall provide for long-term management of such areas that achieves effective public use and enjoyment while minimizing conflicts with interests as the protection of private property and natural resources. Such proposals shall provide rights of public access as follows:

- a. The provision, including construction and maintenance, of a public pedestrian walkway adjacent to the project shoreline, a minimum of 10 feet in width and including, but not limited to, pedestrian improvements such as landscaping, benches, lighting, and trash receptacles. The location and landscape elements shall be subject to approval by the Planning Board, and designed to connect to existing or future harbor front walkways on adjoining properties.

Should a proposed or existing water dependent use, such as boat launch or boat washing system, inhibit the project proponent's ability to provide a continuous walkway as prescribed above, the project proponent shall provide a reasonable alternative on the parcel providing access to the project shoreline and connecting the subject parcel to abutting parcels and walkways, subject to approval by the Planning Board.

- b. Access from the public street to the project shoreline walkway shall be required if there is no existing public access to said walkway and may be required by the Planning Board even if there is existing public access to the walkway elsewhere within the Beverly Harbor District; and in all cases shall be provided without time restriction except as authorized by the Planning Board or Mass DEP. Public access and use of public rights and ways shall be encouraged by the use of appropriate signage at all entryways and other reasonable locations on the project site.

- c. No gates, fences, or other structures may be placed on any areas open to public access in a manner that will impede the free flow of pedestrians.
4. Buildings shall be designed to the scale and character of the surrounding neighborhood, and shall incorporate design elements that create an attractive pedestrian realm. Proposals shall include the following elements:
    - a. Buildings with architectural elevations facing both the public way and/or the waterfront shall be oriented and designed as though both are primary elevations.
    - b. Streets, driveways, parking lots, and principal facades shall include amenities that are conducive to an active pedestrian realm including sidewalks, landscaping, lights, and outdoor seating.
    - c. Development should be designed to facilitate and encourage use by alternative modes of transportation such as walking, biking, and public transit.
    - d. Building materials shall be of permanent and sturdy quality including brick, stone or wooden clapboard, or materials similar in appearance, texture, quality and scale to these materials.
    - e. Buildings facing the public way and/or the waterfront shall incorporate vertical design elements, operable doors, and/or entrances with public access and transparent windows at regular intervals in the principal façade(s).
    - f. Buildings within the Beverly Harbor District shall not have blank walls (without doors or windows) for a distance of greater than 10-feet in length.
    - g. Buildings shall be so designed and located to allow 50 feet wide views from the street to the harbor at intervals no greater than 150 feet. The longer side of each building should be sited approximately perpendicular to the street and the water's edge, or as the Planning Board may require, in order to preserve water views from the street.

The Planning Board may waive the above listed building placement and design requirements by special permit if it is found that such an alteration will better meet the objectives of this ordinance.

6. Surface level off-street parking shall be sited and screened so as to minimize the visual intrusion from public ways, waterfront walkways, and other public spaces that are provided for under this ordinance.
7. Rooftop and other mechanical equipment including HVAC systems, shall be screened, using materials similar in type, texture, and scale to the building, such as brick, slate, wood or other materials similar in appearance. No vinyl is permitted nor shall wood stockade or similar fencing be used on roofs. Solar panels are exempt from this requirement.
8. Mechanical equipment and other noise producing appurtenances shall comply with MassDEP noise control regulations (310 CMR 7.10) where a source sound shall not increase broadband sound level by more than 10 dB(A) above ambient levels or produce a pure tone condition. Measurements of sound levels shall be taken at the boundary of the subject property.

#### H Special Permit Criteria

When approving a special permit under the BHD the Planning Board shall make findings, in addition to any specific requirements or criteria set forth in Section 38-28.C of this Ordinance, that the project proposal meets the following special permit criteria:

1. The proposed development and associated uses are allowed and compatible with the purpose of the Beverly Harbor District.
2. The proposed development is consistent with the character, materials and scale of the surrounding neighborhood.
3. The proposed development is oriented to public ways and the project shoreline edge such that the project minimizes visual intrusion of parking, storage, and other outdoor service areas.
4. The proposed development shall provide direct access to public ways and the waterfront; buildings shall be oriented to complement public spaces.
5. Access is designed to provide an inviting pedestrian realm, and where necessary include signage to promote public access.
6. Buildings are oriented such that visual connection to the waterfront from streets and public ways is accommodated.

7. The proposed development will not prevent or materially interfere with the creation or preservation of adjacent water-related uses and public access and enjoyment on surrounding properties.
8. Project proponents of new residential uses allowed by special permit under this section shall certify that notice will be provided to residents, by deed or lease, that the Beverly Harbor District is intended for mixed uses including public access and enjoyment of the waterfront, commercial fishing, and other marine and water-related commercial uses. Notice shall at a minimum state that the residential building is in close proximity to water-related commercial uses which will continue to operate in accordance with normal business practices, which may include extended hours of operation, and use of public infrastructure. This provision shall be incorporated as a condition of special permit approvals under this ordinance that include a residential component.

In exercising its power under this section, the Planning Board may impose conditions to further the purposes and intent of the Beverly Harbor District.

#### I Special Requirements

For any use allowed in the BHD, the Planning Board through a Special Permit process may grant a bonus in Floor Area Ratio (FAR) increasing the existing maximum FAR of .25 up to 1.5, in return for the following public benefits (additional FAR of .25 may be granted by the Planning Board for one public benefit; .50 for a second public benefit; and .50 for a third public benefit):

1. For property which abuts Water Street, the provision, including construction (but not maintenance) of a public right-of-way along Water Street, so that there can be a minimum of a thirty (30) foot roadway and five (5) foot sidewalks on both sides in locations where the existing Water Street right-of-way is less than forty (40) feet.

The front yard setback requirement for projects providing additional public right-of-way is reduced from 20 ft. to 5ft.

2. The provision, including construction and maintenance, of a public pedestrian walkway along the project shoreline, a minimum of fifteen (15) feet in width, the exact location to be approved by the Planning Board, designed to connect to existing or future harbor front walkways on adjoining properties. Public access from the public street to the project shoreline walkway shall be required by the Planning Board if there is no existing public access. In addition, public access from the public street to the project shoreline walkway may be required by the Planning Board in its discretion.

3. 10% of the gross site area to be developed and maintained as public open space (as defined in section 38-2). This provision is in addition to any open space requirements which may otherwise be required by this ordinance.

Land set aside for the above public benefits shall remain included in the formula to determine FAR.

- Amend Section 38-25.E (Parking, Loading Space, and Design Specifications) paragraph number 4 as follows:
  4. Any off-street parking area shall also be subject to the following:
    - a. There shall not be any motor vehicle parking within five (5) feet of any side or rear lot line, except that this requirement shall not apply in the BHD Zoning District. (Ord. No. 207, 11-6-08)
    - b. There shall not be any vehicle repair facilities or any repair made to any motor vehicles. For purposes of this subsection, the terms 'vehicle' and 'motor vehicle' do not include boats or travel lifts or other mechanical equipment as these activities are an accessory use customary in the operation of a boatyard or recreational boating facility located in the BHD.
    - c. There shall not be any storage of materials, or equipment, except as part of approved building or site operations.
    - d. Off-street parking spaces may be permitted within the required front yard in other than the "R" and "IR" Districts, but such space shall be set back from the street line by a minimum of ten (10) feet, except that this requirement shall not apply in the BHD Zoning District. (Ord. No. 207, 11-6-08)
- Amend Section 38-26.B(2) (Signs Permitted in CD, HD or WD District) by replacing all reference to Waterfront Development, Waterfront District, and WD with Beverly Harbor District or BHD.
- Amend Section 38-29.C (Site Plan Review Requirements for Certain Commercial, Industrial and Multi-Family Developments) by replacing all reference to WD with BHD.
- Amend Section 38-29.C (Site Plan Review Requirements) by inserting the following highlighted language:
  2. Procedure - Applicants shall submit to the Planning Board ten (10) copies of an application for site plan review and ten (10) sets of plans, size 24" x 36". The applicant shall also submit ten (10) sets of plans,

size 11" x 17". The applicant shall also file one (1) copy of the site plan review application with the City Clerk.  
(Ord. No. 49, 4-9-08)

An application for site plan review shall also be accompanied by the following:

- a. A list of the names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan review application and plan;
- b. A filing fee of \$35 per 1,000 s.f. gross floor area (min. of \$350, max of \$5,000) for site plan review; or \$350 for a modification of site plan review; and  
(Ord. No. 49, 4-9-08)
- c. Written permission from the owner of the property to apply for site plan review, if the applicant is not the owner.

At least seven (7) days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by mail to all abutters.

Final action on the site plan shall be taken by the Planning Board after a public hearing has been held and within sixty-five (65) days of the date of the public hearing.

All applications for site plan review shall be forwarded to both the Parking and Traffic Commission and the Design Review Board for their comments and recommendations. The recommendations of this Board and Commission shall be received by the Planning Board within thirty (30) days of submission to the Board/Commission. Failure to forward comments within thirty (30) days will be deemed conclusion of review by the Design Review Board or the Parking and Traffic Commission. All applications for site plan review will also be forwarded to the City Engineer for his review and approval.

The Beverly Harbor Management Authority (BMHA) shall be given notice and forwarded applications for projects seeking site plan review in the Beverly Harbor District and may comment on a project in accordance with Section 7.24 (b) of the City of Beverly Ordinances and the Acts of 1987, Chapter 221.

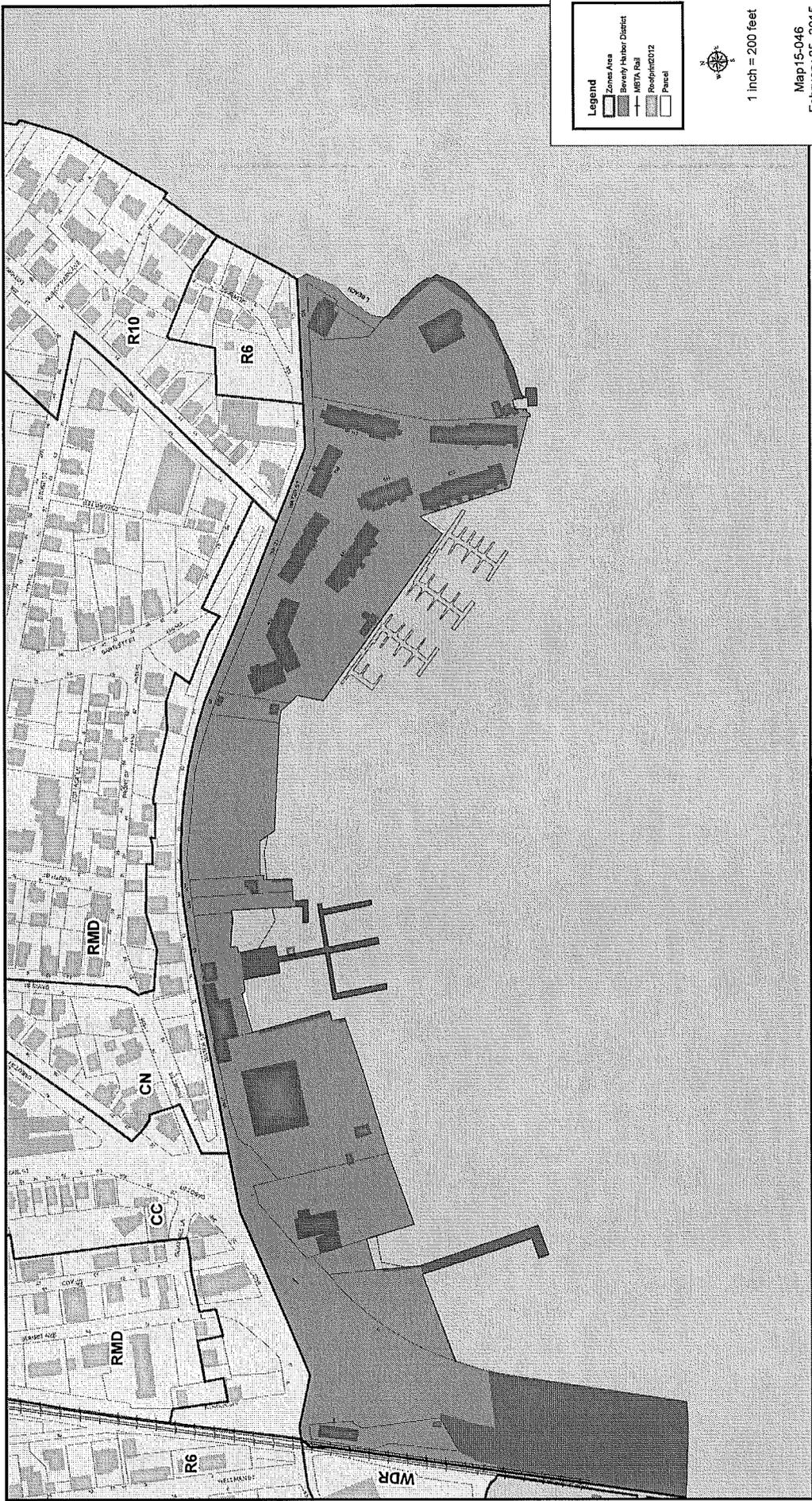
Failure of the Planning Board to act within sixty-five (65) days of the public hearing shall be deemed as conclusion of review and it shall

forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect. The Planning Board shall communicate to the appropriate municipal officials and to applicant the results of its review.

The Planning Board may waive any of the requirements of this Section if deemed in the best interest of the City to do so.

- Strike Section 38-31.F Beverly Harbor Interim Overlay Planning (BHIPOD) district to clearly establish that the BHIPOD be eliminated and replaced by the Beverly Harbor District.

Proposed Beverly Harbor District  
February 25, 2015



**Legend**

- Zones Area
- Beverly Harbor District
- MBTA Rail
- Roadpin0012
- Parcel



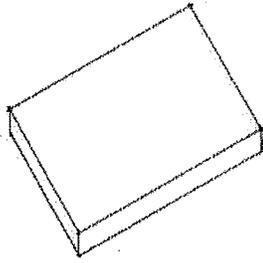
1 inch = 200 feet

Map15-046  
February 25, 2015  
Roland Adams

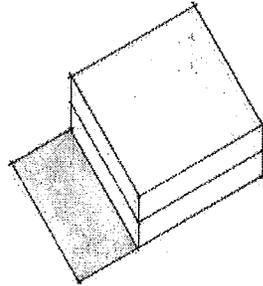
## Exhibit B

### Floor Area Ratio (FAR)

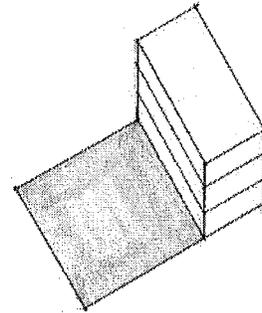
FAR = 1 (Gross Floor Area / Lot Area)



1 Story



2 Stories



3 Stories