

// PRELIMINARY OUTLINE //
LITTLE TRAVERSE YACHT CLUB
APPEAL TO THE ZONING BOARD OF APPEALS

Note: The following comprises a brief overview of the “specific grounds” for the Little Traverse Yacht Club’s presentation to the Zoning Board of Appeals, scheduled for December 12, 2018. However, these pages do not comprise the materials the LTYC will provide to the ZBA in preparation for the December 12 meeting; as stated in the City Manager’s email to LTYC representatives on Friday November 23rd at 2:19pm, additional materials will be accepted by the ZBA until the close of business on Friday, November 30th. Accordingly, the LTYC reserves the right to supplement this filing.

INTRODUCTION

On October 18, 2018, the City of Harbor Springs Planning Commission voted to approve a site plan proposal submitted by Irish Boat Shop, Inc. (‘IBS’) relating to the property at 400 E. Bay Street in Harbor Springs. The Little Traverse Yacht and other property owners adjacent to the IBS property were not notified until October 25, 2018 or later. Although this lack of notice appears to be within the letter of the rules established by the City, the information provided to the Planning Commission was incomplete, necessitating this Appeal. Because the proposed IBS site plan appears to violate specific provisions of the City of Harbor Springs Zoning Code, is inconsistent with the particular Waterfront District regulations of the Zoning Code and contains unresolved questions about the status of the State of Michigan bottomlands upon which IBS proposes to build, we respectfully ask that the October 18 IBS site plan be denied in its current state.

The Little Traverse Yacht Club (LTYC) is the owner of property at 343 E. Bay Street, including waterfront property contiguous to the IBS property at issue. The LTYC has been a partner with IBS for more than fifty years, and wholeheartedly supports IBS’s goal of modernizing its facilities at 400 E. Bay Street. Nor does the LTYC object in principle to the goal of the project to expand IBS’s commercial activities on the Harbor Springs waterfront. Our concern is that IBS is proposing to build a 30 or more-foot-tall, modernist commercial structure in a different location from where its predecessor has been located for decades—and this new location will create substantial adverse effects on the LTYC and other adjacent property owners, fundamentally alter the uses and character of the Harbor Springs waterfront and change the way the public connects to the Harbor. Imagine if another property owner along East Bay Street proposed to in-fill approximately 110ft from the current shoreline and construct a two-story modern commercial building (a large portion of which contains offices) on the reclaimed land. At minimum, such a dramatic and impactful change to the Harbor Springs waterfront should involve extensive analysis of whether the relevant Zoning Code and Michigan state law provisions have been met, whether the status of the reclaimed land is clear, and whether the project comports with the community interest.

OUTLINE OF SPECIFIC GROUNDS

1. The LTYC has standing to request clarification and review of the Planning Commission's decision to approve the IBS site plan.

- *Note: this point was requested by the City to be addressed as a preliminary matter, and we do so briefly here.*
- The LTYC clearly qualifies as a “person aggrieved” under MCL §125.3604(1) and § 50.2401 of the Harbor Springs Zoning Code. First, the relevant definition of “person” includes “[a]n individual, partnership, corporation, association, governmental entity, or other legal entity.” *See* MCL §125.3102(q) (2006). Second, the LTYC is uniquely-situated and particularly harmed by the proposed location of the IBS building. As described in more detail below, LTYC’s special harms include particular economic losses that will be borne uniquely by the LTYC, specific harms to the use and enjoyment of the LTYC’s property as a result of the proposed location of the building, specific harms to the use and enjoyment of the LTYC’s waterfront and sailing center, and potential safety concerns related to the youth community sailing program. Because of the unique and specific harms to the LTYC following from the proposed building location, the LTYC clearly meets the “aggrieved party” standard as contemplated by the Michigan Zoning Enabling Act.

2. The IBS site plan has adverse effects on the LTYC—and there is no evidence that IBS or the Planning Commission analyzed whether or not the proposed site plan "minimizes adverse effects" as required by § 50.2001(1)(b) of the Harbor Springs Zoning Code.

- LTYC-specific adverse effects include:
 - economic losses related to diminishment of property value;
 - economic losses related to reduced ability to attract and retain members;
 - loss of enjoyment and use related to diminishment of views;
 - loss of enjoyment and use related to effects on the LTYC sailing center;
 - potential safety concerns related to our youth sailing program (especially the loss of ability to monitor the harbor from the clubhouse and sailing center);

- the stated height of the building in the IBS filing appears to be miscalculated; the proposed structure is too tall under the Zoning Code. *See Harbor Springs Zoning Code* § 50.201(24) (describing how building height is to be calculated); § 50.1504(7) (limiting building height to an average of 30 feet). This extra height exacerbates the adverse harms to LTYC.
- Locating the proposed new building in the same location as the existing IBS showroom building would “minimize[] adverse affects” on adjacent properties as required by § 50.2001(1)(b) of the Zoning Code. Indeed, the language of that section of the Zoning Code appears to preclude moving the location of an existing building where the move would create (as it clearly does here) adverse effects on adjacent property.
- There is nothing in the Harbor Springs Zoning Code or any other relevant legal authority that authorizes or supports a “trade-off” of adverse effects on some adjacent properties against possible benefits to other properties. In any event, IBS filed no information with the City Planning Commission about the “minimizes adverse effects” analysis required by § 50.2001(1)(b).

3. *The IBS site plan appears to be inconsistent with the Harbor Springs Zoning Code's requirements for development in the Waterfront District, as specified in §§ 50.1500-1505.*

- The use of buildings for office space is specifically disallowed in the Waterfront District under the Zoning Code—and the second-floor office space is a primary part of the building which causes specific harms to LTYC. *See* §50.1500.
- The approval of a newly-located structure south of Bay Street is inconsistent with the Waterfront District zoning requirements, both in the Zoning Code and the Harbor Springs Master Plan. *See* § 50.1500. *See also* CITY OF HARBOR SPRINGS MASTER PLAN (2014), p. 57 (“Allowing new construction or even the expansion of existing buildings south of Bay Street would eliminate the two most prized resources available to the community – views to the water, and views from the water to downtown....”).
- The Harbor Springs Zoning Code requires special consideration of the public interest for all approvals along the waterfront, making components of the Master Plan and

Waterfront Plan especially relevant. *See* §50.1500 (“[I]t is the intent of the City to ... allow limited public, private and commercial uses ... which add to public enjoyment of the waterfront and public access to the water.”) *See also* CITY OF HARBOR SPRINGS MASTER PLAN (2014) at 57 (“The design and placement of new buildings at the water’s edge should be consistent with existing buildings downtown and the recommendations of the Harbor Plan.”); *see also id.* at 49 (“Goal 11. Any harbor development or redevelopment will maintain open views to and from the water for the public to enjoy and support a sustainable level of human use.”)

- Section 50.1501(h) of the Harbor Springs Zoning Code further requires that “All dredging, construction, bulkheading or development shall be subject to the requirements of all codes and ordinances of the City of Harbor Springs and applicable State and Federal laws and rules.” (emphasis supplied).
 - The proposed IBS site plan contemplates a building constructed on reclaimed bottomland; this 30-foot-plus structure will lie as much as 80 feet beyond the natural shoreline of the Harbor Springs Harbor. This land was held in public trust by the State of Michigan until it was deeded to IBS in January of 1969. Importantly, when bottomlands are conveyed, there is a determination by the State that the use of the bottomland would not impair the public trust and that it will not impact adjacent waterfront owners.
 - Therefore, under the text of § 50.1501(h), this particular site appears to be subject to an even higher standard of review. That is, under Michigan law, the proposed use of this land cannot impair the public trust or impact adjacent property owners. *See* MCL § 324.32505. We respectfully submit that IBS’s proposed use does both of these. First, building a 30-foot-tall modern commercial building approximately 80ft beyond the natural shoreline of the Harbor will block views and change the character of the waterfront from the western edge of the IBS property to at least the City Harbormaster’s Office, including the public parks along the waterfront. Second, as noted above, the proposed location of the building will cause specific and particular harms to the LTYC as an adjacent property owner.

4. *There are substantial unresolved questions about the status of the State of Michigan bottomlands upon which IBS is proposing to build.*

- Under Michigan state law, a fill-in project (such as occurred here) will not ordinarily "reset" the original waterfront line ('high water mark') to the new water's edge. *See* MCL 322.1001(j). This means that for setback purposes, IBS would by default have to use the original shoreline—which would preclude moving the building to this proposed location. No information was submitted to the City Planning Commission regarding the appropriate setback line.
- When IBS obtained the bottomlands deed and fill-in permits, they were required to specify the public interest associated with the project.¹ Current Michigan law requires bottomland to be used only in the public interest as specified and to have the approval of the legislative body of the local unit of government. *See* MCL § 324.32502, MCL 324.32504. There was no information filed with the City Planning Commission about the public interest that IBS originally associated with this parcel of land and how constructing a building on this reclaimed bottomland comports with that public interest.
- The Michigan Department of Environmental Quality may in some cases allow permanent improvements and structures on bottomlands after finding that "the public trust will not be impaired or substantially injured." *See* MCL 324.32505. There was no information filed with the City Planning Commission about whether the Department of Environmental Quality has made such a determination to allow structures on this property, or whether and how such a structure would serve the public interest.

¹ We note that the current Michigan DEQ application for a bottomland deed does not designate showroom, retail or office spaces as appropriate purposes for a conveyance of bottomlands. *See* Michigan DEQ Form EQP2713. Further, if IBS was currently applying for the use they propose for this land, they would need to obtain and submit:

[1] a specific approving resolution from the City;

[2] a survey including neighboring properties;

[3] a full engineering design and survey of the project, including hydrological studies.

See Michigan DEQ Form EQP2713.