



**City of Annapolis
Planning Commission
Department of Planning & Zoning
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September 2, 2021

To: Annapolis City Council
From: Planning Commission
Re: Findings for Ordinance 0-25-21 (ZTA2021-011): Waterfront Maritime Zoning Districts - Uses – For the purpose of requiring certain annual reporting on maritime and non-maritime uses, providing for certain waterfront access incentives for non-maritime uses, modifying the requirements for certain uses deemed conforming, modifying certain uses for Waterfront Maritime Zoning Districts, allowing uses in certain districts subject to standards, modifying off-street parking requirements for certain uses, adding definitions, and generally relating to uses in Waterfront Maritime Zoning Districts..

ANALYSIS

The purpose of this ordinance is detailed in the Maritime Task Force Strategy: Strengthening the Industry and its Executive Summary. The findings and proposals herein focus on the technical aspects of the proposed code changes.

RECOMMENDATIONS

The Planning Commission held public hearings on this legislation on July 15, 2021 and August 5, 2021. Deliberations were concluded on August 23, 2021. An estimated six hours were devoted to the strategy, testimony and deliberation in addition to the background work by Commissioners. There were many public comments submitted on the record in writing and in person on the legislation.

The Commission substantially endorsed the Maritime Task Force Strategy with a vote of 5 to 0.

The Commission voted 5-0 to support the legislation with the strong recommendation that the Council consider the following amendments. There are several. A brief outline of the Commission's thinking is included with each Recommendation.

- 1. PUBLIC ACCESS** should be mandatory when there are restaurants or other non-maritime retail open to the general public. There should not be public access for some but not for all.
 - a. Any property upon which there is a restaurant, deli or non-maritime retail to which the off-site public is invited must provide public access.**

- b. This includes the newly-permitted restaurants and other non-maritime retail allowed in the proposed legislation in addition to existing retail spaces.
- c. "Public access" must be defined.
 - i. The public must be allowed pedestrian access to the waterfront.
 - ii. The hours may be limited to daylight.
 - iii. Spatial limits to public access (e.g. slips, boat yards) may be imposed and must be clearly signed.
 - iv. Current waterfront accesses must be retained.
 - v. The owner may take advantage of the Maryland Recreational Use Statute to minimize the liabilities associated with public access.
 - vi. The Director of P&Z must approve the public access in conjunction with the permitting process.
- d. Where public access is not possible (per a decision by the Director of P&Z), then require a commitment to funding community waterfront facilities, such as street-end parks, paddle boat launches. The funding commitment should be a formula tying the percentage of non-maritime uses to the total square footage.

Recommendation: Any property which contains a non-maritime retail establishment (including but not limited to restaurants) which is open to the general, off-site public shall require "public access." "Public access" shall be defined to include access to the waterfront by the general public as defined by the Maryland Recreational Use statute and may be limited to daylight hours and to spaces determined by the landowner in consultation and with permission of the Department of Planning & Zoning.

- 2. ENFORCEMENT is a necessity. The amendments proposed by staff ably address some concerns but do not address public access as an enforceable matter.
 - a. The proposed amendments address reporting of non-maritime percentages so that the increases in taxes can be added to the Maritime Industry Fund.
 - b. What if an owner begins to deny, reduce, or inhibit public access?
 - 1. Can the benefits gained by virtue of the trigger/incentive system be taken away? Just as they can by violation of the reporting requirements.
 - 2. Who shall initiate that process?
 - c. What if an owner is not in compliance when applying for incentives?
 - 1. Who shall determine that noncompliance? (Please see item 9, below, for a proposed solution.)

Recommendation: Failure to provide the required public access shall be cause for mandatory revocation of occupancy permits issued since the date of this ordinance, just as exceeding non-maritime limits is mandatory cause for revocation of occupancy permits.

- 3. The INCENTIVES FOR MEANINGFUL PUBLIC ACCESS must be increased.
 - a. The potential incentives are too small to generate any meaningful new public access.

- b. There are some incentives worth more than others.
 - i. These must grant greater non-maritime flexibility to owners.
 - 1. Increase the Category II incentives to 10%.
 - ii. Shared parking is one such incentive. If a generous amount of parking is made available to the public and to restaurant workers on nights and weekends, a significant pressure on street parking in Eastport can be reduced. Shared parking also benefits businesses running tours or renting to paddleboaters.
 - 1. The amount of parking must be generous. At least 150 spaces.
 - 2. A reasonable fee can be charged. What is "reasonable" must be defined.
 - a. A "reasonable fee" may be defined as "equal to that charged by the Knighton Garage."
 - b. The Knighton Garage and the Eastport shared parking are both peripheral to the central city parking, and thereby less expensive.
 - 3. If such shared parking is available, then restaurants in the maritime zones could be required to provide employee parking, either onsite or at the shared parking site.
 - iii. Each zone is somewhat different than the others.
 - 1. The Commission has been informed that WMM contains a higher percentage of office and commercial space than the other zones.
 - 2. The availability of a significant number of shared parking spaces (150 or more) could significantly affect night and weekend parking in WMM, lower Eastport.
 - 3. The availability of 150 shared parking spaces may become a component of a permit parking system in lower Eastport.
 - 4. The Council might then consider a higher percentage of non-maritime uses in WMM.

Recommendation: All Tier One Water Access incentives shall be increased to 10% non-maritime uses. Providing shared parking of at least 150 spaces at a reasonable fee in the WMM zone shall be added to the Tier One Water Access incentives and

- 4. The Council should not permit LARGE RESTAURANTS IN WME.
 - a. WME is surrounded by and in close contact with proximate residences.
 - b. There are properties in WME in which the noise from a restaurant would cross the waters, subjecting residents up and down Spa Creek to the noises of restaurants even though they are physically distant.
 - c. Rooftop dining should not be allowed in any restaurant in the three maritime zones. Patio dining may be allowed.
 - d. Restaurants in WME must remain a special exception. The Board of Appeals must be provided factors by which to decide. Suggested factors are:
 - i. Proximity to existing restaurants and businesses
 - ii. Proximity to existing residents
 - iii. Availability of on-site or shared parking

- iv. Hours of operation
- v. No rooftop dining (patio dining allowed)
- vi. Noise across water to residential areas

Recommendation: The WME zone shall be limited to restaurants of no more than 2000 square feet. No rooftop dining and no outdoor amplified music shall be permitted in any maritime zone other than WMC. The Board of Appeals shall apply the six standards/factors to all WME restaurant special exception applications. The existing Code noise sections should become a part of the special exception conditions of approval.

- 5. If EVENTS are permitted across the zones and in all zones – as they should be, certain practical limits must be imposed.
 - a. Parking either on or off site sufficient to serve the event must be available. That number may be a percentage of the total number of attendees.
 - b. The events must conclude all music and amplified sounds by a reasonable nighttime hour. We suggest 10:00.

Recommendation: Events (e.g. social, wedding, corporate) shall be permitted in all zones. Events must be no longer than three days and must obtain a permit from Planning & Zoning. While on- or off-site parking should be provided for 25-30% of the expected attendees, there are some events which cannot and should not be expected to provide parking and can be granted exemption by P&Z. All amplified sound shall cease by 10:00; the time limit, parking requirements and sound conditions shall be a condition of the temporary permit. The existing Code noise sections should become a part of the temporary permit conditions of approval.

- 6. FUNDING could be more creative, and more successful.
 - a. The legislation calls only for the increase in property tax caused by increased non-maritime use to be paid into a fund, whose purpose is to promote the maritime industry. Funding public access as well as the industry must be a goal for the City equally as much.
 - b. A potential source for funding public access lies in the maritime equivalent of a "hotel tax."
 - i. In this case, a "boatel tax." Apparently, the local government is permitted to impose fees on not only hotel rooms, but also on slips and boatel storage.
 - ii. A very modest annual fee – on the order of \$20 – per slip or boatel room could generate the funds needed to provide access to the water for the vast majority who cannot afford a boat and who rely on public lands or expanded public access across private lands to get to and enjoy the water.
 - c. This investigation must be a stated goal and component of the Public Water Access Plan.
 - i. Without funds there will be no meaningful public access.
 - d. An evaluation of the mooring fees charged by the Harbormaster and where those monies go should be conducted.
 - i. Are they competitive? Too low? Too high?

- ii. Where do those funds go? If there is an increase, can some go to the Maritime Industry Fund?

Recommendation: The City, by way of the Public Water Access Plan, shall investigate possible sources for funding public water access. One such source may be the imposition of a fee on all boats registered with the MD DNR or other state registry systems. The funds shall be dedicated to the construction, maintenance and operation of public water access sites. The fees collected and the report of the number of occupied slips and storage slots shall be included in the annual report required by the legislation. The Office of the Mayor shall be responsible for the expenditures of the fund and those expenditures should be reported annually to the Planning Commission.

7. The stated goal of RE-EVALUATION AT 5 YEARS must be enforced. A sunset to the new zoning rules might be such an enforcer. If, however, the legislation terminates without replacement, chaos might ensue. A mandatory and funded reevaluation might achieve the goal of keeping maritime zoning fresh and responsive to industry and public. Note: the proposed amendments may address this goal.

Recommendation: The new zoning system must be reevaluated at five years; funding for the reevaluation must be provided.

8. What do we want from the PUBLIC WATER ACCESS PLAN? The goal, presumably, is to maximize public access to the waterways.
 - a. An inventory
 - i. The National Park Service has already committed to engaging in an inventory covering the entire City waterfront.
 - ii. The inventory must include not only existing public water access sites but also potential sites.
 - iii. The inventory must include the needs each actual or potential access site requires to achieve meaningful public water access.
 - b. Options and potential costs for each actual and potential site to make them meaningful.
 - c. Funding options
 - i. Sustainable, long term
 - ii. Widely spread
 - iii. Dedicated to public water access
 - d. Work on a Public Water Access Plan should not be delayed. A decision and funding now will resonate well with the public and will ensure the matter does not get lost *sine die*.

Recommendation: The Council should begin thinking about what it wants from a useful Public Water Access Plan. An inventory should include not only existing but also potential sites. The Plan should include options and approximate costs. The Plan should propose potential sustainable sources devoted to funding public water access.

9. COMPLIANCE PRIOR TO APPROVAL for Non-maritime uses:

- a. Owners need to be in compliance prior to application for any non-maritime use.
- b. Compliance should be based on the approved site design and plat approvals including corresponding conditions on record.
- c. Compliance determinations made by the original approving authority (ies) and include record of past performance and prioritize scrutiny of projects built after effective date of previous Maritime Zoning ordinance, August 24, 1987.

Recommendation: The Department of Planning & Zoning shall review each application for additional non-maritime uses for the property's compliance with existing site plans and/or plats. Applications shall not be approved in cases of non-compliance. The applicant may appeal to the original approving authority for an over-ride of the Department decision.

10. Sustainability Sea level Rise – CONSTRUCTION WITHIN 100' OF WATER:

- a. Limit new construction within the waterway yard to working boatyard uses.

Recommendation: No new non-maritime construction shall be allowed within 100' of the waterline.

11. DEFINITIONS OF "WORKING BOATYARD" AND "MARINA":

- a. Revisit the definition of "working boatyard" to distinguish between boatyards, and marinas as MTF makes clear.

Recommendation: "Working boatyard" and "marina" must be differentiated and defined.

12. MARITIME ENTERPRISE FUND must be established before new non-maritime uses are permitted::

- a. The Fund must be established at the commencement of this ordinance or the horse shall be out the barn while the buggy is getting hooked up.
- b. Using models from Newport or other maritime hubs, require any approval for non-maritime use to demonstrate payment into the Maritime Enterprise Fund.
- c. This shall incentivize maritime landowners to work with the City to get the funding mechanism in place quickly.

Recommendation: It is imperative that the Annapolis Maritime Industry Fund be established and in operation before any non-maritime uses are permitted. January 1, 2022 is the recommended deadline for its establishment.

1. MISCELLANY

- a. Transient Boater Services is limited by 21.64.630.C. What is the purpose to that?

- b. Definition of "Public Access" should include that it be open to the general public during daylight hours.
- c. The Council might consider:
 - i. Adding "sail repair" to the working boatyard definition
 - ii. Adding "pumpout" as in incentive and/or to Marine Services
 - iii. Changing "Trigger" to "Retention Bonus"

Adopted this 2rd day of September, 2021



Ben Sale, Chair

Eric Leshinsky
signed for Ben Sale

- a. Definition of "Public Access" means access that is open to the general public.
- b. The Council may consider:
- i. Adding "and access to the public" to the definition of "Public Access".
- ii. Adding "public" to the definition of "Public Access".
- iii. Adding "public" to the definition of "Public Access".

Adopted by the Board on 10/10/11

[Signature]

Secretary

[Signature]
 Director for New York