

Old Riverport Harbor Management Plan

Background:

Old Riverport was first founded in 1706 as the farming village of Utopia. The residents soon turned their attention to maritime and mercantile pursuits, and Utopia became Old Riverport in 1802, achieving prominence in shipbuilding and the manufacturing and shipping of cricket bats to the West Indies. After its brief 19th-century heyday as a trading center, the town of Old Riverport became a sleepy village once more, changing little as the currents of industrialization and suburbanization passed it by. For generations, its placid riverscape of bluffs, wetlands, and tidal creeks have defined the image and character of the town.

But as the historic town of Old Riverport enters the twenty-first century, its scenic riverscape and quality of life have been rediscovered. The town and its charming setting have become a popular spot for recreation, tourism, and new homes; some longtime residents have been surprised to find themselves living in a fashionable area. This newfound popularity, reflected in increased pressures for waterfront development and boating opportunities, poses a number of challenges to Old Riverport's sense of itself as a community. According to many citizens, the pressures of growth and overuse threaten the very landscape and scenic qualities that make the town attractive. The most prominent example of this concern has been the controversy over large private residential docks, often referred to as "megadocks" by their detractors, and large new residences, often stigmatized as "McMansions," located on Blueberry Hill and other prominent sites. The docks and houses have been decried for their effects on the visual qualities of the landscape, but the docks have also been claimed to interfere with navigation, particularly by paddlecraft. The popularity of canoes and kayaks has boomed in Old Riverport, aided in part by the canoe and kayak trail sponsored by this Commission but primarily attracted by the town's unspoiled creeks, islands and wetlands. This popularity has in turn caused overcrowding and delays at the Town boat launch, and led to calls for additional paddlecraft access points. Powerboats also need access, and the increasing level of motorized traffic in Old River has led to increased demand for marina slips and moorings, to the point that the Harbormaster has suggested the need for the Town's first formally designated mooring fields. And of course, increased boating traffic of all types has given rise to numerous use conflict issues, ranging from complaints of jetskis zooming behind Fantasy and Temptation Islands to paddlers harassing wildlife. All of these issues reflect the challenges Old Riverport must face in managing its future in the face of rapid change.

In response to these challenges, the Town of Old Riverport and its citizens embarked on a number of planning initiatives. This Commission held several public forums specifically targeted at waterfront use and development issues, and conducted a boating traffic survey on Old River, which documented the increasing use of the river and creeks by both paddlecraft and small powerboats. On a broader scale, the community visioning process undertaken by the Regional Planning Agency in conjunction with the update of the Town Plan of Conservation and Development attempted to identify the elements of community character which distinguish Old Riverport. As a result of this process, it became apparent to the community that there is a significant visual and environmental aspect to Old Riverport's identity, and that the town's landscape and river views are particularly important to a sense of who we are. The visioning process was even able to specify the views from the east shore of Old River towards Fantasy Island and Blueberry Hill as particularly important to

community identity, and delineated viewsheds based on publicly accessible view points such as the Town boat launch, Utopia Road and the Blueberry Hill Road bridge.

To follow up on the results of these studies, the Old Riverport Harbor Management Commission, in cooperation with other town agencies and citizens groups, has undertaken the present modification of the Town Harbor Management Plan. Based on existing town plans and the community visioning project, we began by establishing a set of common townwide goals for Old Riverport's water area. Based on these goals, we developed a water use plan dividing the Town's water area into five use zones, designated by letters A through E and demarcated by easily identifiable landmarks, as shown on the attached map. Each zone has been assigned a set of objectives towards meeting the Town goals, and specific water use standards have been developed as a means of achieving each of the objectives. In addition, there are several objectives and standards which are common to all water use zones.

Once this document is approved by the Town, the Commission will submit it to the Department of Environmental Protection (DEP) for formal approval as an amendment to the Old Riverport Harbor Management Plan under CGS §22a-113m. Pursuant to §22a-113n(b)(1), we will also recommend to the DEP that this Plan be incorporated into water use and development boundaries under designated under CGS §22a-360, with the approved plan serving as the "general plan for the region" required under the latter statute.

Townwide Goals:

- To protect, restore, and enhance the historic and natural landscape of Old Riverport
- To provide a safe and attractive area and appropriate facilities for all types of recreational boating, including a commercial marina, moorings for local and transient vessels, and paddlecraft trails and launch sites
- To respect and accommodate the rights of riparian property owners to reasonable water access
- To preserve the visual quality and coastal resources of the Old Riverport riverfront
- To protect coastal resources and water quality.

Townwide Objectives:

- Protect tidal wetlands, submerged aquatic vegetation, and intertidal flats from unreasonable disturbance due to waterfront development and boating activities
- Minimize the size, scope, and overall encroachments of docks and other waterfront structures into the River

Townwide Standards:

- Shared docks are encouraged in lieu of individual residential docks, and may be longer or larger to accommodate multiple users
- No more than one dock may be constructed on each riparian residential

property. The creation of easements or other mechanisms to provide water access to non-riparian properties shall not entitle the easement holder or owner to any additional docks.

- No dock may include any cabana, gazebo or other roofed structure or any fixture or appurtenance not necessary for boating access.

Zone A--North of Blueberry Hill Road Bridge

Objectives:

- Control nonpoint source pollution from golf course runoff or future waterfront development
- Enhance residential, commercial, and municipal recreational boating access in this area

Standards:

- Additional transient moorings and overflow moorings to accommodate the waiting list are appropriate for this zone, on both sides of the navigation channel.
- There are no zone-specific restrictions on docks or other boating access facilities. This zone is well suited for moorings, private docks or association docks.

Discussion:

Zone A extends from the Blueberry Hill Road bridge north to the Town boundary, across the entire width of Old River. Due to its generous water depths and its historic use for boating access, this zone is particularly suitable for moorings and boating facilities, especially on the eastern side of the channel where there are no tidal wetlands or other resource constraints. As a result, the shores of this zone have hosted several marinas, boat clubs and private docks in recent decades. The existing Mugwump Canoe Club maintains a system of seasonal floats for small boats in this location, and there is sufficient room for the Club to expand its facilities or for additional facilities to be added on adjacent properties. While such an expansion or addition to a water-dependent use is fully consistent with this Plan, the Commission is aware that some citizens have raised questions concerning zoning or traffic issues which may be implicated by the potential purchase of the Mugwump Canoe Club site and its conversion to a commercial marina. Further discussions with the Town Planning & Zoning Commission and input from citizens are necessary to ensure that the appropriate level of water-dependent development will be available to address the growing demand for small boat access without compromising the overall planning and development goals of the Town.

The western shore of the zone, surrounding the mouth of Babbling Brook, contains an extent of freshwater tidal wetlands bordering The Links at Babbling Brook golf course. The golf course should be encouraged to employ appropriate Best Management Practices to reduce the adverse impacts of stormwater discharges from its adjacent parking lot and from pesticide and fertilizer runoff from the course itself. In addition, Babbling Brook offers a good location for a new cartop boat launch facility, as well as a potential launching site for dinghies to access moorings located in this zone. The Commission will pursue these possibilities in discussions with the golf club, or in

the context of any redevelopment of the golf club site.

Zone B--Blueberry Hill

Objectives:

- Protect visual quality, especially the Town's characteristic views from designated view points
- Limit cumulative encroachment of private structures adjacent to the canoe/kayak trail and the navigational channel

Standards:

- No docks or moorings should be located over the intertidal flats and submerged aquatic vegetation immediately north of the railroad bridge
- The Harbormaster may authorize individual moorings located between the navigation channel and the canoe/kayak trail, sited where possible so as to block views of existing docks but not unreasonably impair views of the River shore and bluffs from the viewpoints across the River in Zone C.
- No new dock shall extend further waterward than the nearest adjacent existing dock, measured from the western edge of the navigational channel, or to a depth of -4 feet MLW, whichever is furthest landward.
- In order to minimize adverse visual impact, the following appearance standards shall apply to new and substantially modified docks:
 - No dock may include any boat lifts, davits or other accessory structures
 - Dock components such as pilings, handrails, or ladders shall not substantially raise the visual profile of the dock above the level of the decking when viewed from across the River
 - No more than two boats may be berthed for more than ten consecutive days at any dock.
- In order to preserve room for paddlecraft to travel close to shore and find inshore refuge from boating traffic in the channel, new docks shall be set back from the nearest adjacent dock to the maximum extent possible, with a minimum setback of 200 feet between docks.

Discussion:

This zone, the largest in the Harbor Management Plan area, extends along the western shore of Old River between the Blueberry Hill Road bridge and the railroad bridge. The area is characterized by high wooded bluffs with rock outcrops, fringed by tidal wetlands to the north and south. In fact, the Blueberry Hill viewshed from the downtown waterfront across Old River to Blueberry Hill bluffs are recognized as a characteristic element in the Town's identity, as reflected in the Old Riverport Visioning Survey. It is this area that is the focus of controversy over "megadocks" in location where docks have historically been rare. Large docks have been claimed to degrade the town's traditional riverscape, but based on the viewshed analysis undertaken as part of the community visioning process, the docks themselves seem to create a less significant effect on the visual qualities of Old Riverport than the large hilltop houses, many of them set within large cleared spaces, to which the docks are accessories.

Nonetheless, the Commission received many comments about the adverse visual impact of large docks, which were often characterized as "eyesores." At the present time, two docks of over 100 feet in length have been built. However, the Commission does recognize that additional Blueberry Hill Road residents may wish to exercise their riparian right of access, and that the precedent of existing docks may make it difficult for the DEP to deny such applications based solely on adverse visual (and navigational) impact. As a permanent solution, the Commission recommends that the Town and the Old Riverport Land Trust work with area residents to investigate the possibility of purchasing conservation easements which will preclude the construction of docks and other waterfront structures, especially as part of an overall program of protecting the Town's viewsheds of the Blueberry Hill bluffs. This program of landscape protection through acquisition of property interests will be supplemented by the Planning & Zoning Commission's development of bluff protection regulations to restrict building and clearing of vegetation on slopes and bluffs. In the meantime, we propose to establish design standards to minimize the visual profile of any docks that will be built in this zone, such that the overall length and size of docks will be restricted, and the number of boats or accessory structures will not create eye-catching mass or bulk.

Given the area of open water available, substantial boating traffic of all types passes through Zone B. In particular, the Vessel Traffic Survey reflected considerable canoe and kayak traffic using the popular paddlecraft trail, which runs on the west side of the river (within 50 feet of shore in some places). While the canoe and kayak trail, created by this Commission five years ago, admittedly has no specific regulatory status, the Commission is concerned that some new docks may encroach on and even span across the trail. There has been much controversy over effect of long docks on paddlecraft navigation in this area, with different views on whether the trail should be relocated to go around docks or whether canoes and kayaks can or should travel beneath docks. While it will still be possible for paddlecraft to navigate if additional docks are built, the potential for conflicts with the riparian right to "wharf out" increases incrementally with each additional dock.

In order to strike a more explicit balance between riparian rights and the public's right to navigate, this plan establishes setback as well as length requirements for new docks. The 200-foot side setback distance should provide sufficient space for canoes and kayaks to go around docks and seek shelter inshore if needed. The length restriction establishes that, even if the Commission ends up relocating the canoe and kayak trail to accommodate new docks, paddlecraft traffic will never be further waterward than in the vicinity of the existing docks. Also, assuming riparian property boundaries are roughly equivalent to a waterward extension of property lines, the setback requirement will have the effect of limiting the total number of docks in this zone to approximately eight, even without the application of this Zone's design standards or DEP statutory criteria for resource protection. The Commission sincerely hopes, after three public hearings and over one hundred written comments from property owners, paddlers, and other interested citizens, that the length and setback standards established herein will create a reasonable framework for balancing riparian and paddlecraft interests.¹

As mentioned above, zone B contains the largest area of open water within the Town, and thus appears to be a logical location for meeting the Town's pent-up demand for mooring space.

¹ *Note:* The specific setback and length restrictions discussed herein are examples only, based on the fictional characteristics of Old Riverport. They should not be taken as a recommended or baseline standard.

Several boaters have suggested that a Town mooring field be located adjacent to the navigational channel, but others have expressed concern that the river will become "a curtain of boats" blocking views, since the Town Harbormaster indicates that fore-and-aft moorings, which place boats in relatively stationary positions, would be the most efficient use of space. The standards for this Zone therefore direct the harbormaster to place moorings such that views of docks may be obscured, but the public viewpoints on the eastern shore of the River will not be obstructed.

Finally, one aspect of managing the waterfront in Zone B was noncontroversial--the protection of coastal resources. The southern part of this zone contains an extension of the freshwater tidal wetlands, intertidal flat and submerged aquatic vegetation complex around the mouth of Fantasy Creek. Because these resources serve as habitat for several endangered and threatened species, the intertidal flats and submerged aquatic vegetation in the southern part of zone immediately above the railroad bridge have been designated for conservation and preservation under both the Harbor Management Plan and the Town Plan of Conservation and Development. In addition, this shoreline segment's extensive shallows, and its proximity to the railroad bridge and the canoe and kayak trail make the area problematic for dock construction from a navigational as well as a resource protection standpoint. Accordingly, dock structures will be precluded from extending through or over the freshwater tidal wetlands, intertidal flats and submerged aquatic vegetation in the southern section of Zone B.

Zone C--Temptation Island and Utopia Creek

Objectives:

- Preserve the historic character of the area, including traditional public vistas from the Town Boat Launch and viewpoints on Utopia Road
- Protect and enhance recreational boating access in this area, particularly paddlecraft access from the Town Boat Launch to the canoe/kayak trail
- Reserve the Temptation Island Channel for safe, sheltered paddlecraft navigation
- Protect tidal wetlands habitat by preserving large expanses of marsh and avoiding fragmentation by walkways

Standards:

- In order to minimize adverse visual impact, no dock or other waterfront structure may impair or infringe on the viewsheds looking across Temptation Island and Old River from the Town Boat Launch or the designated view points along Utopia Road
- No permanent structures of any kind should be placed on Temptation Island.
- Only the most minimal docks shall be allowed in the Temptation Island channel; ordinarily a small platform for canoe or kayak launching, without a fixed walkway over tidal wetlands, will be deemed sufficient. In any case, the following standards shall apply to new and substantially modified docks:
 - Docks may span no more than 100 feet of tidal wetlands,
 - Docks shall be set back from the nearest adjacent dock to the maximum extent possible,

and docks which include fixed piers or which occupy more than 100 square feet of area shall be set back a minimum of 300 feet from each other, unless a single dock is shared by adjacent property owners.

- Docks or other boating access structures may not extend further into the Temptation Island Channel than the length necessary to reach Mean Low Water, and may not in any case impede human-powered vessel traffic.
- Powered vessel traffic should be restricted from Temptation Island Channel.

Discussion:

Zone C extends north from the southern shore of Utopia Creek along the east side of Old River, through the Temptation Island area to the Blueberry Hill Road bridge. This area of Old Riverport incorporates the Town's waterfront historic district, located along Utopia Creek and reflecting Old Riverport's maritime and manufacturing traditions. Until the 1830's, several small shipyards were located along Utopia Creek; while lumber mills, factories and warehouses originally associated with the West Indian cricket bat trade persisted in this area until the 1910's. As described in the community visioning report, the visual backdrop to the historic district is formed by vistas looking across Temptation Island and Old River to Blueberry Hill. These viewsheds originate from the public viewpoints located along Utopia Road, at the Town Boat Launch, and at the eastern end of the Blueberry Hill Road bridge. The community visioning report was the catalyst for the realization on the part of the Old Riverport community that these public viewsheds are essential characteristics of Old Riverport's landscape, and integral to the recognition and expression of community identity. Accordingly, the waterfront development standards for this zone are designed to minimize or eliminate intrusions into the viewsheds, since any significant structure would almost necessarily create adverse impacts to public vistas as well as to the wetland resources discussed below. In addition, this Commission fully supports the complementary efforts of the Town Historical Commission to preserve Old Riverport's maritime legacy, including ongoing projects to preserve old marine railways and to construct a replica lumber trading brig, the type of vessel that once carried the name of Old Riverport across the waters of the globe.

The primary landscape feature of this zone's waterfront, Temptation Island, is predominantly salt marsh, with some hummocks, surrounded by shallow water. Historically, the island was used for grazing and salt haying, and is now owned mostly by Old Riverport Land Trust. Even though development of the island is highly unlikely, in light of its visual and environmental significance, the standards for this zone allow no structures to be built on Temptation Island. The Commission, however, encourages the Land Trust's ongoing stewardship activities, which may include traditional, non-mechanized agricultural practices such as salt haying.

Like the island, the mainland shore opposite Temptation Island is largely wetlands, and the narrow channel between them is rarely more than two feet deep at low tide. For these reasons, and because development was historically focused on Utopia Creek, this area was rarely used for boating activity. However, with the current popularity of shallow-draft canoes and kayaks, it is likely that riparian property owners on Utopia Road will seek to build docks or other boating access structures. After considerable research, analysis and discussion, the Commission concluded that access structures should be limited to protect wetland resources from direct impacts and habitat fragmentation, and that occasional foot traffic from residents walking across the marsh surface to the water's edge would create less of an adverse environmental and visual impact than

permanent structures. Accordingly, the standards for this zone, recognizing that paddlecraft launching and use is appropriate in this area, provide for a minimal staging platform with no pier or walkway across the wetlands.²

The Temptation Island channel is very popular for paddlecraft, and indeed is not really suitable for other types of boating traffic. Nonetheless, the Commission has heard many complaints concerning the increasing presence of powerboats and personal watercraft (PWCs) in this location. Shallow-draft motorized vessels sometimes traverse the channel at excessive speed, creating safety hazards and irritating noise, as well as erosion of the banks due to wakes and turbulence. In order to curb the temptation for powered vessels to slip behind the island, the Commission will consult with the DEP to develop appropriate local ordinances under C.G.S §15-136 to reserve the Temptation Island Channel for non-motorized vessels (except in cases of emergency). Options include the outright prohibition of motorized traffic or additional posted speed limits and no-wake zones at either end of Temptation Island. In addition, the Commission encourages the Town to hire seasonal marine patrol officers to help enforce the speed limits, preferably on a cost-sharing basis with neighboring municipalities.

Zone D--Southeast Side and Utopia Cove Marina

Objectives:

- Enhance recreational boating access in this area, particularly traffic to/from Utopia Cove Marina
- Protect tidal wetlands habitat by preserving large expanses of marsh and avoiding fragmentation by walkways

Standards:

- The Harbormaster may locate moorings south of the railroad bridge in this Zone, although preference shall be given to riparian owners who do not own docks
- Any expansion of Utopia Cove Marina operations should be directed primarily within the existing dredged basin, and secondarily within the River, spanning the adjacent tidal wetlands. Any marina structures in the River should be configured generally parallel to the shore in order to minimize impacts to tidal wetlands and to paddlecraft navigation.
- Only the most minimal docks shall be allowed off Main Street riparian properties; ordinarily a small platform for canoe, kayak or dinghy launching, without a fixed walkway over tidal wetlands, will be deemed sufficient. In any case, the following standards shall apply to new

² *Note:* The specific setback and length restrictions discussed herein are examples only, based on the fictional characteristics of Old Riverport. They should not be taken as a recommended or baseline standard.

and substantially modified docks south of the railroad bridge in this zone:

- Docks may span no more than 100 feet of tidal wetlands,
- Docks shall be set back from the nearest adjacent dock to the maximum extent possible, and docks which include fixed piers or which occupy more than 100 square feet of area shall be set back a minimum of 300 feet from each other, unless a single dock is shared by adjacent property owners.
- Docks or other boating access structures may not extend further into the river than the length necessary to reach -2 feet Mean Low Water, and may not in any case impede human-powered vessel traffic.

Discussion:

Zone D runs along the east side of Old River from the mouth of Utopia Creek south to the town boundary. The shoreline of this area is generally tidal wetlands, and is roughly bisected by the railroad bridge. The upland and shore north of the railroad tracks is owned by the Town's major commercial boating facility, Utopia Cove Marina, located around an artificial basin dredged out of tidal wetlands in the 1960's.

Maintaining the viability of the marina is an important goal of this Plan, since water-dependent commercial boating facilities allow a large segment of the public water-side access to the scenic, historic and natural resources of Old River. While the town boat launch and the canoe/kayak trail serve to enhance access for the paddlecraft community, the marina is essential to meeting the needs of the powerboating public for access to Old River and its resources. Thus, the Plan provides for the marina's expansion primarily within the existing basin, although expansion is not precluded on the river side of the facility, provided that marina structures are oriented so as to minimize impacts to tidal wetlands and interference with canoe and kayak traffic. In addition, the Commission will work with marina management to promote safe boating practices and minimize conflicts with paddlecraft, particularly in discouraging speeding outside the main channel and encouraging motorboat traffic to stay away from sensitive areas such as Temptation Island, Fantasy Island, and the upper reaches of Utopia Creek. The Commission also commends and supports Utopia Cove Marina's efforts to obtain Clean Marina certification.

The land area south of the railroad tracks in this zone, while partially undeveloped at the present time, is zoned for residential development. Some of the future residents can be expected to propose docks across the wetlands to reach the River since, in contrast to Zone C, docks can reach deeper water with unobstructed access to the channel. If each property were allowed one dock extending all the way across the wetlands, the marsh would be effectively carved up into separate parcels which would not individually be large enough to support bird and wildlife nesting and foraging. The Commission believes it is important to limit potential proliferation of structures and to avoid habitat fragmentation in wetlands. Accordingly, the Zone D standards, as in Zone C, provide for a limitation on the extent of tidal wetlands which fixed piers and walkways can span, on the theory that a band of tidal wetlands more than 100 feet wide should not, strictly speaking, constitute "waterfront" for the purpose of riparian access to navigable water. In addition, new piers and walkways shall be set back from the nearest similar dock to the maximum extent possible, with a minimum setback of 300 feet between docks. Together with a prohibition on placing docks on easements, this standard will have the effect of limiting the total number of wetland-crossing docks in this zone. However, small waterfront platforms for paddlecraft or

dinghy access will not be specifically restricted, and the Harbormaster will also give preference to riparian owners in assigning moorings within Zone D. With these provisions, the Commission intends to strike a reasonable balance among resource protection, riparian rights, and public navigational considerations.³

Zone E--Fantasy Island and Fantasy Creek

Objectives:

- Preserve the natural characteristics of the landscape for scenic and environmental values
- Protect resources and habitat for endangered and threatened species
- Preserve and promote low-impact recreational use of the area, particularly wildlife observation and paddlecraft navigation

Standards:

- Docks and other waterfront structures should only be authorized if the applicant can demonstrate that such structures are absolutely necessary for riparian access, are not visible from the River, and do not interfere with the canoe and kayak trail.
- No moorings, docks or other structures should be placed over the intertidal flats and submerged aquatic vegetation bordering Fantasy Island.
- Powered vessel traffic should be restricted from Fantasy Creek, Fantasy Island Channel, and from the intertidal flats bordering the eastern shore of Fantasy Island.

Discussion:

This zone, comprising the western side of Old River south of the railroad bridge and including Fantasy Creek, contains the most valuable natural resources and wildlife habitat in Old Riverport. The Fantasy Creek area is home to three endangered species of plants, two threatened species of invertebrates, and wildlife such as ospreys, martens, herons and migratory waterfowl. As a result, the unspoiled marshes, wild rice beds, and submerged aquatic vegetation on and around Fantasy Island and Fantasy Island Creek have been designated for conservation and preservation under both the Harbor Management Plan and the Town Plan of Conservation and Development. Although much of the property in this area is already owned by The Natural Conservancy and the Old Riverport Land Trust, the Commission encourages the Town and conservation organizations to continue to seek additional conservation holdings, including development rights such as the riparian right to "wharf out," where appropriate. The Commission will also cooperate with these organizations in outreach efforts to the private property owners in this area to help promote good stewardship.

Simply promoting good stewardship by private owners, however, may not be sufficient. While the

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standards for this zone seek to minimize the adverse impacts of individual structures, the Commission is particularly concerned with the cumulative impact of a number of docks where, at present, none exist. A single dock, taken individually, may not demonstrate any specific adverse impacts, but several docks or other structures may create noticeable adverse effects to the resources and landscape of this area. However, if one dock is approved it will tend to create a precedent that may make it practically impossible for permitting agencies to disapprove additional similar docks, and once a structure is authorized it becomes effectively permanent. As a result, the Commission will work with area private property owners and the Department of Environmental Protection to prevent the first dock from being built in this zone.⁴

The Fantasy Creek area is also a very popular destination for canoe and kayak navigation, and for bird and wildlife viewing. In fact, some wildlife advocates have expressed concern that human intrusion, albeit low-intensity and human-powered traffic, may be disrupting bird and wildlife feeding and nesting behavior. Accordingly, the Commission will work with birdwatching, wildlife, and paddlecraft organizations to promote safe wildlife viewing practices through public education and outreach.

Powerboat navigation in this zone could also pose potential use conflict and environmental issues, given the sensitivity of the Fantasy Creek area, as with the Temptation Island area. While there have not been as many complaints associated with this zone as with Zone C (due primarily to tricky navigational conditions around Fantasy Island), the objectives and standards for this area also seek to reserve the waters around Fantasy Island and Fantasy Creek for non-motorized vessels. As with Zone C, therefore, the Commission will consult with the DEP to develop appropriate municipal ordinances to control motorized traffic in this zone.

Variance Procedure

When reviewing an application for a state or local permit to conduct activities affecting the riverfront or waters of Old Riverport, the Commission may consider recommending a variance from any of the above standards. Variances shall only be considered in cases where the variance is necessary to improve public access, protect public safety, avoid significant adverse environmental impact, or avoid significant and unusual hardship to a property owner. If the Commission finds that a variance request is justified, it will transmit such recommendation to the appropriate permitting authority.

⁴ *Note:* The designation of areas where docks or other structures are substantially disallowed must be appropriately justified by detailed environmental analysis tied to site characteristics, as we postulate was the case in Old Riverport. A prohibition supported by no more than an expressed preference for a no-build area will likely not withstand legal scrutiny.



