



M E M O R A N D U M

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To: Steve Moriarty, Chairman
Planning Board

From: William R. Shane, Town Manager

Date: April 11, 2018

Re: Shoreland Zoning § 226-25 – Bridge Review to Code Enforcement Officer

Shoreland Review under Section § 226-25 is typically administered by the Coastal Waters Commission. One element, *Bridges*, has fallen into mystery non-review category as no one currently can explain why the Coastal Waters Commission would be reviewing a bridge in the Rines Forest? Most small bridges typically impact a stream which requires a MDEP or NRPA permit by rule for minor disturbances. The Town Council's Ordinance Committee believes this section of the Ordinance is best handled by the Code Enforcement Officer who is trained in the Shoreland laws and is most familiar with MDEP permitting requirements.

Chapter 226

Shoreland Zoning

[HISTORY: Adopted by the Town of Cumberland 12-10-1991, as amended through 5-23-2011. Subsequent amendments noted where applicable.]

NOTE: If a municipality elects not to regulate structures and uses extending over or below a water body or wetland, § 226-25 should not be incorporated into the chapter.

§ 226-25 Piers, wharves, docks, bridges, floats and other structures.

- A. Purpose. The purpose of this section is to protect traditional public access to and use of the shore and to minimize adverse impacts on fisheries, on the environment and on public enjoyment of the shoreline, including visual and navigational impacts.
- B. Applicability.
- (1) This section pertains to construction of, or alteration and repairs to, piers, wharves, docks, bridges, floats and other structures and uses extending over or beyond the mean high-water line of a water body, submerged lands, or wetlands. These are referred to simply as "piers, wharves, docks, bridges, floats and other structures" in the subsections below.
 - (2) Piers are platforms built with pilings for support; wharves are solid structures built of granite blocks and/or other contiguously placed materials; the term "docks" refers to the docking space alongside or between piers and wharves as well as the piers and wharves themselves (the more common usage). "Other structures" includes, but is not limited to, items such as ramps, marine rails and cribbing.
 - (3) Functionally water-dependent uses are those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, and uses that primarily provide general public access to coastal or inland waters.
- C. Review and approval authority. The Coastal Waters Commission is authorized to review and act on applications **for structures in coastal waters or coastal wetlands, except for bridges. All bridges as well as all other structures outside of coastal waters or coastal wetlands, shall be reviewed by the Code Enforcement Officer.** Projects shall be reviewed for conformance with the provisions of this section. The Coastal Waters Commission **or the Code Enforcement Officer** may act to approve, disapprove, or approve the project with conditions as authorized by these provisions.
- (1) Prior to submission of any application, the applicant must obtain all required federal and state permits, including but not limited to a permit from the Department of Environmental Protection under the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as subsequently amended, and the Army Corps of Engineers.
 - (2) A completed application and information describing conformance with the provisions of this section shall be submitted to the **Code Enforcement Officer for all bridges and to the** Town Manager or **his/her** designee **for all wharves, docks, bridges, floats and other structures.**

(a) Applications shall include but shall not be limited to:

- [1] Structure elevations.
- [2] High and low water elevations.
- [3] Building materials to be used.
- [4] Soil erosion and sedimentation plan.
- [5] Habitat types.
- [6] Property boundary surveys.
- [7] Plan for annual or seasonal installation and removal (storage) of float, ramp, and pier accessories.
- [8] Proof of right title and interest in the property.

(b) The Coastal Waters Commission **or the Code Enforcement Officer** shall review the documents for completeness. The Coastal Waters Commission shall provide to the Town Council a written advisory recommendation regarding all applications **under its jurisdiction and** related to this section.

- (3) The Town shall notify all property owners within 1,500 feet of the proposed project. In addition, the Town shall place public notices to maximize notification to the affected citizenry. Notices may include the Internet, local papers, and local public places.
- (4) The Town Council shall hold a public hearing and issue a wharfing-out permit with or without conditions upon a positive recommendation from the Coastal Waters Commission that the following standards have been met. No Planning Board review is required.

D. Approval standards and criteria. The following standards shall apply to all piers, docks, wharves, floats, bridges, and other structures and uses extending over or beyond the normal high-water line of a water body, submerged lands, or wetland:

- (1) Access from the shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock, or wharf in nontidal waters shall not be wider than six feet for noncommercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks on nontidal waters shall not be permitted unless it is clearly demonstrated to the **Coastal Waters Commission Code Enforcement Officer** that a temporary pier or dock is not feasible and a permit has been obtained from the Department of Environmental Protection pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to

residential dwelling units in any district.

- (8) Except in the General Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (9) Structures shall not unduly interfere with passage along or within the intertidal zone in order to protect established colonial rights for fishing, fowling, and navigation. This may require accommodations such as steps or pier elevation to allow passage over or beneath a structure.
- (10) Where the applicant has applied for "group dock" and the waterfront structure proposed will serve more than one property, the property owners shall submit to the Town a proposed easement deed demonstrating that permanent access and maintenance rights shall be granted to the parties sharing the structure. The parties shall submit to the Code Enforcement Officer proof of recording of the easement after its review and approval by the Town.
- (11) Storage of floats, ramps, and pier accessories is prohibited within the intertidal zone.
- (12) Storage of floats, ramps, and pier accessories must comply with all federal, state, and local shoreland zoning rules and regulations.
- (13) Lighting on piers, wharves, docks, bridges, floats and other structures should be designed and installed to minimize negative impacts on other properties and to promote safe navigation at night. Negative impacts include excessive lighting and unnecessary glare that can be a hazard to navigation.