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CRC-24-16

October 31, 2024

MEMORANDUM

TO: Coastal Resources Commission

FROM: Gregg Bodnar

SUBJECT: Urban Waterfront Rule Review and Proposed Updates

At the Commission's request, Staff have prepared this overview of the history of CRC rule 15A NCAC 07H .0209(g) for Urban Waterfront development as well as proposed amendments. Urban waterfronts are located within the Coastal Shorelines AEC, along waters not designated as Outstanding Resource Waters by the Environmental Management Commission (EMC). Urban waterfronts under the CRC's rules must lie wholly within corporate limits of a municipality and have a central business district or similar commercial zoning with mixed land uses and services such as water, sewer, streets, police/fire and waste management. Permit applications for development under the Urban Waterfronts rule are reviewed by the Division's Land Use Planning and field staff according to the criteria in 15A NCAC 7H .0209(a)(1). New non-water dependent structures are limited to pile-supported, single-story decks and boardwalks that may extend up to 20 feet from the Normal High Water/Normal Water Level (NHW/NWL) and may be roofed but not enclosed. Existing enclosed structures waterward of NHW/NWL must be used for restaurants, retail, or water-dependent purposes and may be replaced or expanded vertically by one story, not to exceed the existing footprint of the structure.

The initial discussion of urban waterfronts began in 1995. At that time, the CRC began exploring the idea of an Urban Waterfront AEC in recognition that these areas offer a unique opportunity for preserving historical and aesthetic values while enhancing the local economy and public access to coastal waters. This initial effort was sidelined due to a shift in priorities in the aftermath of Hurricanes Bertha and Fran. The original context of the rule remained intact when the CRC took the issue up again in 1997.



The CRC's interest in protecting public trust values is evident in the CRC meeting minutes from that time and were expressed in the original requirement that these structures be identified in a waterfront development plan that adequately provides for public access to and use of estuarine waters and public trust areas. The CRC further emphasized the stewardship of public trust areas by requiring that a municipality sponsor the development in whole or in part for the purposes of significantly increasing public access.

The discussions of allowing non-water dependent uses of structures built over Public Trust Waters in an Urban Waterfront was intended to allow in-fill development and revitalization of urban areas and still be consistent with the Commission's management objectives for Public Trust Areas. The Coastal Area Management Act requires that guidelines "shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission..." The Commission's objectives for the Estuarine and Ocean System AEC are "...to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources." The objective also includes a statement to protect present common-law and statutory public rights of access to the lands and waters of the coastal area (15A NCAC 07H .0203).

A previous CRC memo in 2007 on the issue of urban waterfronts (P&SI-07-05) provided a wealth of historical information. The memo noted the majority of references regarding non-water dependent uses of structures built over Public Trust Waters refer to restaurants and that it includes a 2000 legislative action (HB 1218/Session Law 2000-172) that extended the date for any structure extending over public trust waters to continue to operate as a restaurant that existed prior to July 1, 2000 to April 1, 2001 (now expired). Session Law 1997-337 amended § 113A-120.2 (now expired), to allow for the redevelopment of historically urban waterfront areas. This session law set forth the criteria for urban waterfronts, and CRC rule under 07H .0209(g) was adopted on April 1, 2001 to comply with the session law.

A review of past CRC meeting minutes notes that concerns with urban waterfront rules centered on acceptable non-water dependent uses and potential for vertical expansion (CRC-07-04). In the case of vertical expansion, the P&SI-07-05 memo noted that the Commission believed, and was reinforced during the public hearings held in 2000, that heights of existing structures would be controlled and limited by local ordinances. Vertical expansion was also discussed in the P&SI-07-05 memo and noted a focus on the height of new structures and the ability to protect the



public's rights and access. The Commission's current rule for urban waterfront limits new structures to single-story unenclosed decks while allowing existing enclosed structures to be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure. Vertical expansion is limited to one additional story over the life of the structure and must be consistent with local requirements or limitations.

At the last meeting, the CRC granted a Variance (CRC-VR-24-02) to enclose an existing covered deck and dining area located over public trust waters at 128 South Water St., in Wilmington with removeable plexiglass panels. The restaurant had previously enclosed the deck with vinyl sheeting but replaced it with removable plexiglass siding panels that were inconsistent with the CRC's rule. This resulted in a notice of violation and a major permit was requested to keep the removable plexiglass siding panels. The variance was granted on August 28, 2024 and the Commission instructed Division Staff to review the current rules within 07H .0209(g) for urban waterfronts and provide potential accommodations to allow for enclosures utilizing removable materials.

Division staff identified several questions to assist with potential new rule language.

1. What enclosure materials and removal techniques would be consistent with existing subsections of 07H .0209 and keep with preserving public trust and the management objectives of the Coastal Shorelines AEC?
2. What effects would enclosures have on the potential for structure expansion for private use over public trust?
3. What additional structures could result from an enclosed deck that would be inconsistent with existing subsections of 07H .0209 and keep with preserving public trust and the management objectives of the Coastal Shorelines AEC?
4. What would be the best way to catalog urban waterfront areas for reference and transparency?

In keeping with the management objectives of the Coastal Shorelines AEC, and in the spirit of past concerns of the Commission in adopting Urban Waterfront rules, staff developed draft rule language that continues to preserve limiting use of roofed decking to seating, access and other uses that did not significantly encroach onto the public trust. The proposed draft rule language attempts to address enclosure materials and the ability to remove the enclosures, does not restrict innovative designs, and limits the potential for additional development that could result from enclosing decks in Urban Waterfronts.



15A NCAC 07H .0209 COASTAL SHORELINES

(g) Urban Waterfronts.

- (1) **Definition.** Urban Waterfronts are waterfront areas, not adjacent to ORW, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met:
 - (A) the area lies wholly within the corporate limits of a municipality; and
 - (B) the area has a central business district or similar commercial zoning classification where there are mixed land uses, and urban level services, such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.
- (2) **Significance.** Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) **Management Objectives.** To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) **Use Standards:**
 - (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule shall not apply to development within Urban Waterfronts that meets the following standards:
 - (i) The development shall be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during



the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and

- (iii) The development shall meet all state stormwater management requirements as required by the EMC;
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands shall be allowed only within Urban Waterfronts as set out below.
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes. Commercial, non- water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
 - (ii) For the purposes of this Rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure, and is consistent with local requirements or limitations.
 - (iii) New structures built for non-water dependent purposes are limited to pile- supported, single-story, **permanently** unenclosed decks and boardwalks, and shall meet the following criteria:
 - (I) shall provide for enhanced public access to the shoreline;
 - (II) may be roofed, ~~but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;~~ **but solid walls and permanent windows are prohibited. Non-permanent enclosures shall be limited to materials that are consistent with all other subsections of this rule and shall be non-permanent and attached to the structure in a manner that allows removal.**
 - (III) **the deck shall not have permanent or attached heating or air conditioning.**
 - (IV) shall require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (V) shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (VI) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - (VII) shall have no more than six feet of any dimension extending over coastal wetlands;



- (VIII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (IX) shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (X) shall have no significant adverse impacts, **as defined in 07H .0208(a)(7) and 07H .0208(a)(8)**, on fishery resources, water quality or adjacent wetlands and there shall be no alternative that would avoid wetlands. Significant adverse impacts include the development that would impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (XI) shall not degrade waters classified as SA or High Quality Waters or ORW as defined by the EMC;
- (XII) shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XIII) shall not pose a threat to navigation.

*History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;
Eff. September 1, 1977;
Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1,
1991; May 1, 1990;
October 1, 1989;*



*Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);
Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);
Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002;
Readopted Eff. July 1, 2020.*

