

Report on an End of Pier Observation Deck

Pier Committee Report

By John Hiatt, Member

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In mid June, 2022, three businesses were selected by the Pier Committee to occupy the pier's three available lease spaces. The businesses were recommended to the Town Council, which subsequently approved them. One of the three potential businesses would like to place an observation deck on the footprint of the shade structure that had already been planned to be built at the ocean end of the pier.

The Pier Committee explored the feasibility of building such an observation deck. Subject matter experts within the Town of Surfside Beach were consulted. They stated that both Federal Emergency Management Administration (FEMA) and South Carolina Ocean and Coastal Resource Management (SCOCRM) would not allow an observation deck. However, those consulted did not explain where in the pertinent regulations such a prohibition could be found.

This writer was assigned to research the relevant regulations to see if the information the Committee had received was accurate, and if so, if any exceptions existed. Also, the Committee requested meetings with both FEMA and SCOCRM in anticipation of further exploring the issue with them. Among the regulations researched, the South Carolina Beachfront Management Act, which is the controlling authority of the state's Critical Areas (includes beaches), CHAPTER 39, entitled 'Coastal Tidelands and Wetlands,' revealed the following:

"SECTION 48-39-290. Restrictions on construction or reconstruction seaward of the baseline or between the baseline and the setback line; exceptions; special permits.

(A) No new construction or reconstruction is allowed seaward of the baseline except:

...(3) fishing piers and associated amenity structures which are open to the public. Those fishing piers with their associated amenity structures including, but not limited to, baitshops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public...

...A permit must be obtained from the department for items (2) through (8). However, no permit is required pursuant to this chapter for associated amenity structures constructed on fishing piers if local governmental bodies having responsibility for the planning and zoning authorize construction of those amenity structures. Associated amenity structures do not include those employed as overnight accommodations or those consisting of more than two stories above the pier decking. Associated amenity structures, excluding restrooms, handicapped access features, and observation

decks, may occupy no more than thirty-five percent of the total surface area of the fishing pier or be constructed at a location further seaward than one-half of the length of the fishing pier as measured from the baseline...”

This regulation appeared to suggest an observation deck could be built atop the footprint of the already planned shade structure without a permit. Doing so would add a few hundred square feet more usable space to the pier and could also provide a venue for portable refreshment and food service underneath it, and perhaps even music events could occur there. In addition, a raised observation deck might be able to provide space for private weddings, which the Pier Committee found in its visits to other piers are a popular (and potentially revenue producing) usage of the pier.

On September 26, 2022, a video conference was held between the Pier Committee and Matt Slagel of SCOCRM. During that video conference Mr. Slagel confirmed that SSB could locate a raised observation deck at the end of the pier atop the shade structure’s footprint, and also if it chose, erect the planned shade structure above that. In addition, Mr. Slagel stated that any stairway needed to access the observation deck was not considered an “amenity structure” as far as being counted toward the 35% limit of utilization of the total surface area of the fishing pier.

Mr. Slagel did caution that making such a change would require the public to be notified and have a chance to be heard before construction of the observation deck could commence. That requirement apparently stems from the fact that the original permitting process for the reconstruction of the fishing pier required public notice and a hearing as is found in:

“SECTION 48-39-150. Approval or denial of permits; appeal to council; exceptions.

...(B) After considering the views of interested agencies, local governments and persons, and after evaluation of biological and economic considerations, if the department finds that the application is not contrary to the policies specified in this chapter, it shall issue to the applicant a permit. The permit may be conditioned upon the applicant's amending the proposal to take whatever measures the department feels are necessary to protect the public interest. At the request of twenty citizens or residents of the county or counties affected, the department shall hold a public hearing on any application which has an effect on a critical area, prior to issuing a permit. Such public hearings shall be open to all citizens of the State. When applicable, joint public hearings will be held in conjunction with any such hearings required by the U. S. Army Corps of Engineers. On any permit application pertaining to a specific development which has been approved by the department, the department may support the applicant with respect to any federal permit applications pertaining to the same specific development...”

Presumably, Mr. Slagel believes that since the original planned pier reconstruction complied with the above regulation, then any change to the plan also must also comply, despite regulation 48-39-290 (A)(3) that states no permit for an observation deck is required.

It should be noted that although the shade structure planned for the pier is located more than halfway seaward from the baseline, thus seeming to contravene regulation 48-39-290 (A)(3), it was said to have been grandfathered-in by all the parties planning the new pier due to a shade structure having

previously existed at that location on the old pier. However, a careful reading of 48-39-290(A)(3) shows the regulation to indicate that even if a shade structure had not previously existed, an observation deck could still be built on the seaward end of the pier, or at any other location chosen, as observation decks are excluded from the 35% amenity structure limit as well as from being excluded on the seaward half of the pier.

Therefore, it appears an observation deck with a shade structure atop it can become a part of the SSB Fishing Pier, should the Pier Committee choose to recommend it to the Town Council, and should the Town Council then choose to authorize it. If that be the case, whatever requirements SCOCRM may choose to implement for its construction should be immediately pursued so that the proper alterations can be made at the time the shade structure is constructed; and that time is rapidly approaching.