

## Chapter 11.20

### WHARVES AND PIERS

#### Sections:

- 11.20.010 Policy.**
- 11.20.020 Definitions.**
- 11.20.030 Establishment of pierhead line.**
- 11.20.040 Procedure for construction.**
- 11.20.050 Registration and numbering requirements.**
- 11.20.060 Variances.**
- 11.20.070 Prohibition and exceptions.**
- 11.20.080 Violation--Penalty.**

#### **11.20.010 Policy.**

The town, pursuant to Chapter 30 of the Wisconsin Statutes, is empowered to regulate wharfs and piers and to establish a pierhead line. It is in the interest of the town to preserve and protect the property within the town at the same time as preserving and protecting public rights in navigable waters and nonuniformity with respect to wharfs and piers in Browns Lake can be detrimental to these interests. It is in the interest of the town and the public to establish uniform requirements for the establishment of piers and wharfs on Browns Lake, Racine County, Wisconsin. To that end a pierhead line should be established. (Ord. dated 9/88: prior code § 20.18(1))

#### **11.20.020 Definitions.**

The definitions contained in Wisconsin Statutes and, specifically, Wisconsin Statute Section 30.01 as the same may be amended from time to time, shall apply to all terms in this chapter unless otherwise set forth within this chapter. (Ord. dated 9/88: prior code § 20.18(2))

#### **11.20.030 Establishment of pierhead line.**

There is established, in the town on Browns Lake, a pierhead line. Such pierhead

line is established at a distance of forty-eight (48) feet channelward from the ordinary high water mark of the shore, except in areas where wetlands extend twenty-six (26) feet or more channelward from the ordinary high water mark, in which case, the pierhead line is established at a distance of five feet channelward into open water from the channelward edge of the wetland. "Wetland" is defined as an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, has soils indicative of wet conditions, but is not open water. No pier or wharf shall be so placed or so constructed such that it extends a distance greater than the established pierhead line channelward from the ordinary high water mark of the shore from which such pier or wharf is constructed, unless the permit required by Section 30.12 (2) of the Wisconsin Statutes has been obtained or unless the exception set forth in said Section 30.13 applies. No pier or wharf may exist more than forty-eight (48) feet from the ordinary high water mark of the shore, except as hereinafter set forth; provided, however, that in the event that any person desiring to construct a pier or wharf is unable to achieve **four foot of depth at the end of the pier** during periods that the water is at its ordinary high water mark, then, in such event, the town board may grant an exception to allow the pier or wharf to exist more than forty-eight (48) feet from the ordinary high water mark of the shore. "Ordinary high water mark" is defined as the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distant mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics. Where the bank or shore, at any particular place is of such a character that it is impossible or difficult to ascertain where the point of ordinary high water mark is, recourse may be had to other places on

the shore of the lake to determine whether a given stage of water is above or below the ordinary high water mark. (Editorially amended during 2001 codification: Ord. dated 9/88: prior code § 20.18(3))

#### **11.20.040 Procedure for construction.**

Any person desiring to construct any pier or wharf on Browns Lake shall follow the procedure hereinafter set forth.

##### **A. Permit.**

1. No person may hereafter construct, place or extend, enlarge or replace a wharf, pier or mooring facility in Browns Lake without first applying for and obtaining a permit from the town for the portion of the lake in the town.

2. Any person, firm or corporation desiring to erect, construct, place, extend, replace or maintain any wharf or pier on or about the bed of Browns Lake along or beyond the shoreline as it exists or as it may have been determined and established by proper ordinances shall make and file in the office of the clerk of the town a written application for permit. The application shall describe the real estate, wharf, pier or extension thereof in detail, together with its location in regard to the shoreline, pierhead line, and bulkhead line if established, and with the distances to all property lines of the abutting neighboring riparian lands giving the details of the dimensions and kinds of materials together with drawings together with any additional details and specifications that the town board might require. The application shall contain the name, residence, post office, and signature of the riparian proprietor of the shoreline of whose behalf the application is made, and shall also state the name, residence and post office of the applicant, if different.

3. Upon the filing of such application, the clerk shall refer it immediately to the **Administrator** of the town, for investigation and report at the next regular

meeting of the town board or special meeting calling for that purpose, which board, after considering the application and all evidence presented and hearing all parties desiring to be heard, may grant or deny such application.

4. No permit shall be granted by the town board unless they are satisfied that such construction will promote the best interests of the public and the owners of the abutting riparian property. The fee for such permit shall be set by resolution of the town board. **Any permit so issued which is contrary to any law or ordinance, or rule or regulation of the Department of Natural Resources, or with which the applicant has not complied, shall be void and of no effect.**

5. In the event the wharf or pier, for which a permit has been granted, shall not be erected, constructed, placed, extended or maintained in accordance with the plans, specifications, details and drawings submitted or in the event such wharf or pier shall not be used or that it be used in a manner detrimental to the general public or interfere with the rights of the neighboring riparian owners, then in such event, the board may cancel and revoke the permit provided it shall first hold a meeting after fixing a time and place of hearing and shall cause a written notice thereof to be issued and delivered or mailed to the holder of such permit, and also to the owners of the neighboring abutting riparian lands not less than five days before the time fixed for hearing.

##### **B. General Requirements.**

1. Riparian proprietors may construct, place or extend, enlarge or replace wharfs, piers, or mooring facilities in the waters of Brown's Lake in aid of navigation provided such wharfs, piers or mooring facilities do not interfere with public rights in the waters or with the rights of neighboring riparian proprietors or occupants, and subject to any

established pierhead line and other requirements of this chapter.

2. Any wharf or pier extending beyond the natural shore or established bulkhead line shall be so constructed as to allow the free movement of water underneath and in such manner as will not cause the formation of land on the bed of Brown's Lake.

3. Such wharf or pier shall be subject to the pierhead line which may have been established under and pursuant to the provisions of Section 30.13(3) of Wisconsin Statutes as amended.

4. Any wharf or pier extending into Brown's Lake beyond the lawfully established pierhead line constitutes an unlawful obstruction of navigable water unless a permit for such wharf or pier has been obtained pursuant to this ordinance or granted pursuant to Wisconsin Statute Section 30.12(2).

5. Mooring buoys are mooring facilities within the meaning of this ordinance. In order that mooring buoys shall not be mistaken for aids to navigation or regulatory markers, they shall extend eighteen (18) inches above the waterline, be white in color with a blue band clearly visible above the waterline, and they should be spherical or ovate in shape. No permit for the placement of a mooring buoy beyond the established pierhead line shall be granted by the town board. The painter or line between the mooring buoy and any watercraft attached to it shall not exceed ten (10) feet in length.

6. In the interest of the preservation and protection of public rights in the navigable waters of Brown's Lake, no permit shall be granted for any pier, wharf, or mooring which will result in providing more than one berth for water craft or for loading or unloading cargo or passengers unto or from a water craft for each twenty-two (22) feet, or fraction thereof, of shoreline owned by any applicant. For purposes of this section, the lake shoreline at the Hoosier Creek

outlet shall be continuous in a straight line from either point of the outlet extending farthest into the lake, and this section shall be in no way deemed to grant authority for any pier, wharf or mooring in Hoosier Creek.

7. All wharfs, piers and mooring facilities extending beyond the natural shore or established bulkhead line shall be so maintained as to prevent any part of parts thereof from floating into and obstructing the waters of Brown's Lake or impeding their free navigation.

8. The respective rights of neighboring riparian proprietors shall be determined by drawing a chord between each pair of property lines at the point where each line meets the shoreline, extending perpendicular lines into the lake from each end of such chords, and bisecting the resulting angles. These bisecting lines shall be considered the coterminous riparian rights line extension.

9. Every pier, wharf or mooring facility constructed, placed or extended, enlarged or replaced in Brown's Lake in violation of this chapter is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the town.

10. Any wharf, pier or mooring facility existing in place as of the date of adoption of the ordinance codified in this chapter and registered with the town clerk on or before July 5, 1992, shall be considered to meet the requirements of this chapter. The same may be repaired or replaced so long as any non-conformity with the requirements of this section is not expanded. (Ord. dated 8/14/03; editorially amended during 2001 codification; Ord. dated 4/8/91; Ord. dated 9/88: prior code § 20.18(4))

#### **11.20.050 Registration and numbering requirements.**

Any person, firm, or corporation who owns real estate abutting the shoreline of

Brown's Lake shall register the length, width, construction, and side-yard setbacks of any of their piers, wharfs or moorings with the town clerk on or before July 5, 1992. Any wharf, pier or mooring existing in place as of the date of the adoption of the ordinance codified in this chapter and registered before July 5, 1992, shall be considered to meet the requirements of this chapter. Any wharf, pier or mooring not registered by July 5, 1992, shall be required to comply with the terms of this chapter.

Any person, firm, or corporation owning a pier or wharf on Brown's Lake and Bohner's Lake shall post their house number on the end of the pier in two and one-half inch numbers in such a way that the numbers are clearly visible from lakeside. (Ord. dated 9/12/96; Ord. dated 4/8/91: Ord. dated 9/88: prior code § 20.18(5); Ord. dated 5/28/09).

#### **11.20.060 Variances.**

The town plan commission is authorized to hear appeals for variances where owing to special conditions a liberal enforcement with this chapter will result in practical difficulty or unnecessary hardship. Such variance shall not be contrary to the public interest and shall be so conditioned that the spirit and purposes of this chapter shall be observed and the public safety, welfare, and justice secured.

A. Appeals to the plan commission may be taken by any person aggrieved by any officer, department, board, or bureau of the town affected by any decisions rendered under this ordinance. Such appeal shall be filed with the clerk of the town within ninety (90) days after the date of any written notice of any decision or order of the town. Applications may be made by the owner or lessee of the structure, land or water to be affected at any time and shall be filed with the clerk of the town. Such appeals and application shall include the following:

1. Name and address of the appellant or applicant and all the abutting and opposite property owners of record;

2. A to-scale map prepared by a land surveyor registered in the state of Wisconsin or other map drawn to scale and approved by the plan commission, showing the exterior boundaries of applicants land, location of all piers, wharfs, moorings and the length, width, construction, and side-yard setbacks of the piers, wharfs or mooring;

3. Any additional information as may be required by the plan commission.

B. Hearings. The plan commission shall fix a reasonable time and place for the hearing, publish a Class 2 notice thereof and shall give due notice to the parties in interest including all abutting and opposite property owners of record, the town board, and the town clerk. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.

C. Findings. No variance to the provisions of this chapter shall be granted by the plan commission unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

1. Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the area involved.

2. Exceptional Circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses on Brown's Lake.

3. Economic Hardship and Self-Imposed Hardship Not Grounds for Variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

4. Preservation of Property Rights. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties on Brown's Lake.

5. Absence of Detriment. That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this chapter or the public interest. (Ord. dated 4/8/91: Ord. dated 9/88: prior code § 20.18(6))

**11.20.070 Prohibition and exceptions.**

A. Any wharf or pier extending into navigable water beyond the limit set forth herein, constitutes an unlawful obstruction of navigable water unless a permit for such wharf or pier has been obtained pursuant to Section 30.12(2) of the Wisconsin Statutes, or is otherwise excepted below.

B. Existing Piers. Any wharf or pier which exists as of the date of passage of the ordinance codified in this chapter and extends beyond the pierhead line established in this chapter, is a permissible pre-existing wharf or pier, provided such wharf or pier is registered as provided herein before July 5, 1992. Such a permissible pre-existing wharf or pier shall not constitute an unlawful obstruction of navigable waters, provided the same is registered as provided in this chapter. (Ord. dated 4/8/91: Ord. dated 9/88: prior code § 20.18(7) and (8))

**11.20.080 Violation--Penalty.**

Any person who violates this chapter shall be subject to a penalty as provided in Chapter 1.20 of this code. (Editorially amended during 2001 codification: Ord. dated 4/8/91: Ord. dated 9/88: prior code § 20.18(9))