



Town of North Topsail Beach Planning Board Agenda

Thursday, August 10, 2023, at 5:00 PM

Town Hall - 2008 Loggerhead Court, North Topsail Beach, NC 28460

(910) 328-1349 | www.northtopsailbeachnc.gov

Planning Board: HannaMcCloud– Chair, Paul Dorazio – Vice Chair, Lisa Brown, Gunnar Mathews, Susan Meyer, Scott Morse

Staff:DeborahJ. Hill MPA AICP CFM CZO – Planning Director, Kate Winzler CMC,NCCMC – Clerk

I. CALL TO ORDER

II. ADOPTION OF AGENDA

III. APPROVAL OF MINUTES

A. July 13, 2023 Regular Meeting Minutes

IV. PUBLIC COMMENT

V. OLD BUSINESS

A. Proposed Text Amendments to Wetland Regulations and Enforcement:

VI. NEW BUSINESS

A. Use Standards for Ocean Hazard Areas Exceptions

VII. DISCUSSION

VIII. ADJOURNMENT

Notice to citizens who wish to speak: As a courtesy to others, a citizen speaking on an agenda item or making a petition is normally limited to three minutes. Persons who are organizing a group presentation and who wish to speak beyond the three minute limit are requested to make prior arrangements through the Planning Director by calling 910-328-1349. If you wish to address the Board this evening, please go to the front right corner of the conference room and sign up with the Recording Secretary. The Board may also change the order in which agenda items are presented.

Attorneys: If you are representing a person with an interest in a quasi-judicial proceeding on this agenda and believe you may wish to cross examine a witness, please identify yourself as such to the Recording Secretary. For the sake of maintaining an accurate public record all speakers must be prepared to speak into an amplified microphone and must provide their name to the Recording Secretary.



Town of North Topsail Beach Planning Board Minutes

Thursday, July 13, 2023, at 5:00 PM

Town Hall - 2008 Loggerhead Court, North Topsail Beach, NC 28460

(910) 328-1349 | www.northtopsailbeachnc.gov

PRESENT: Chair Hanna McCloud, Vice Chair Paul Dorazio, Gunnar Matthews, Lisa Brown, Susan Meyer

ABSENT: Scott Morse

OTHERS PRESENT: Deborah J. Hill MPA AICP CFM CZO – Planning Director, Kate Winzler – Clerk to the Planning Board

I. CALL TO ORDER

Chair McCloud called the meeting to order at 5:05 p.m.

II. ADOPTION OF AGENDA

Ms. Brown made a motion to adopt the agenda with the addition of Density to New Business. Mr. Dorazio seconded the motion. The motion passed unanimously, 5-0.

III. APPROVAL OF MINUTES

There were no minutes to approve.

IV. PUBLIC COMMENT

None.

V. OLD BUSINESS

A. Estuarine Shoreline/Wetland Protection

Planning Director Hill presented: *"I had worked with professional engineer Jonathan Hinkle of Greenman-Pedersen and coastal scientist Dr. Tracy Skrabal of the North Carolina Coastal Federation on the Stump Sound Watershed Protection and Restoration Plan. Coastal Fed submitted this plan to North Carolina Division of Water Resources in late May.*

Jonathan is also working on a web-based plan to help the general public understand the plan better, it is currently in draft mode, but when it is finished, I'll send you a link.

This plan lays out cost effective methods to improve and protect water quality in Stump Sound. I am in the process of reviewing New Hanover's Overlay and Special Purpose Districts contained in their updated UDO adopted this past January and comparing our existing regulations.

At our Planning Board meeting on August 10, I will have prepared recommendations for your consideration to respond to the Board of Aldermen in their direction of increased protection of the wetlands."

The Planning Board discussed the definition of dune, the dune protection ordinance, ordinance revision recommendations to the Board of Aldermen, administrative authority of staff, survey accuracy within a fluid environment, the static line, the Beach Inlet and Sound Advisory Committee. No action was taken.

B. Lighting Ordinance (Dark Sky)

Planning Director Hill discussed the progress of the Dark Sky Lighting Ordinance. No action was taken.

VI. NEW BUSINESS

A. Official Zoning Map & CAMA Land Use Plan Future Land Use Map

Planning Director Hill discussed the history of the official zoning map updates and the present approach to update it. The CAMA Land Use Plan and Future and Use Map may require amendments.

The Planning Board discussed build-out, demand on utility resources, and revising the zoning map. No action was taken.

- B. Planning Director Hill reviewed increased density regarding dwellings with an increasing number of bedrooms and the correlation required number of parking spaces. The structures within one North Topsail Beach subdivision originally had four to five bedrooms and required three to four parking spaces. The most recent new construction within this development contains houses of the same footprint and comparable square footage, but now with up to ten bedrooms, requiring 9 parking spaces. It is uncertain if the additional concrete parking plans will comply with the approved subdivision stormwater plan.

There was discussion. No action was taken.

VII. DISCUSSION

The Planning Board discussed meeting recording, retention, and streaming. No action was taken.

VIII. ADJOURNMENT

Vice Chair Dorazio made a motion to adjourn. Ms. Meyer seconded the motion. The motion passed unanimously, 5-0.

The Planning Board meeting adjourned at 6:41 p.m.

APPROVED

This 10th day of August 2023

Hanna McCloud

Chair

CERTIFIED

This 10th day of August 2023

Kate Winzler

Clerk



Town of North Topsail Beach
Board of Aldermen

Agenda	
Item:	V. A.
Date:	8/10/2023

Issue: Proposed Text Amendments to Wetland Regulations and Enforcement: Uniform Development Ordinance §10.07.05 Install and maintain effective sedimentation and erosion control measures; §10.07.06 Wetland Protection; and §11.01.12 Definitions. Wetlands.

Department: Planning

Prepared by: Deborah J. Hill MPA AICP CFM CZO

Presentation: Yes

BACKGROUND The Planning Director works with NC Division of Coastal Management and the U.S. Army Corps of Engineers in processing subdivision, zoning and floodplain applications, as well as responding to violations of local, state and federal regulations. Most wetland disturbance has resulted from lot-clearing without a permit or excavation not consistent with a permit. Violations are referred to the the appropriate jurisdictional authority, with mandated remediation, typically without fines.

UNIFIED DEVELOPMENT ORDINANCE

Flood Damage Prevention

Coastal wetlands dampen the impact of storm surge and reduce flood risk. The Floodplain Administrator is responsible for reviewing all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

An application for a floodplain development permit requires a plot plan drawn to scale which shall include, but shall not be limited to, zoning district, setbacks, percentage impervious surface, building height, area of environmental concern, CAMA setbacks, wetland delineation and the following specific details of the proposed floodplain development:

The nature, location, dimensions and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities and other development; copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.).

The floodplain administrator advises the permittee if additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) are required, and assures that copies of such permits are provided and maintained on file with the floodplain development permit.

4. ZFP22-000165 - Indicate proposed percentage impervious surface on site plan, as measured from NORMAL HIGH WATER LINE, TO BE UPDATED AND VERIFIED BY DCM.
5. ZFP22-000165 - Indicate OUTSTANDING RESOURCE WATER (ORW) Area of Environmental Concern (AEC) on site plan.
6. ZFP22-000165 - Indicate CAMA setbacks on site plan.
7. ZFP22-000165 - Provide current wetland delineation by bearings and distance and date confirmed by USACE on site plan. Reference to wetland delineation on MB 43 P 235 is 20 years old and no longer valid. An AJD is only valid for 5 years from the date of issuance.
8. ZFP22-000165 - Indicate statement that the entire lot is within the SPECIAL FLOOD HAZARD AREA on site plan.

Figure 1. Example Zoning/Floodplain application review, requiring updated wetland delineation by bearings and distance and confirmation by USACE.

Zoning

Open space management practices are consistent with the goals of reducing hazard losses, such as the preservation of wetlands or other flood-prone areas in their natural state in perpetuity. In addition to the Conservation District, the purpose of R-A (residential-agricultural) zoning district is to set aside and protect those lands which are primarily suited for agriculture, forestry, wetlands and agricultural-related uses. Ashe Island is an example.

Subdivision

All subdivision applications must indicate any wetlands on the sketch plan or site plan. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

CAMA LAND USE PLAN

The current CAMA Land Use Plan states, “North Topsail Beach accepts state and federal law regarding land uses and development in AEC’s (Areas of Environmental Concern), including all NCAC 7H standards. By reference, all applicable state and

federal regulations are incorporated into this document. No policies exceed the use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern.”

STATE LAW

Coastal Area Management Act (CAMA) regulations (attachment 1) do not permit development in 401 wetlands except water dependent structures. The effects of Session Law 2023-63 Senate Bill 582 - which was passed, vetoed by Governor Cooper and recently overridden June 27, 2023 - are uncertain at this time.

FEDERAL LAW

The U.S. Army Corps of Engineers (USACE or the Corps) regulates activities in waterways and wetlands under the authority of several Federal laws. Permits issued by the Corps authorize various types of development projects in wetlands and other waters of the United States. On September 1, 2023, the Corps is expected to respond to the ruling May 25, 2023, by the U.S. Supreme Court (SCOTUS) in Sackett v. Environmental Protection Agency (EPA).

ACTION REQUIRED The Board of Aldermen directed the Planning Board to review wetland regulations and submit a proposal for increased wetland protection and enforcement.

RECOMMENDATION that the Planning Board recommends that the Board of Aldermen conducts a public hearing on September 6, 2023, and adopts attachments 3 and 4.

ATTACHMENT

1. 15A NCAC 07H .0205 Coastal Wetlands
2. Session Law 2023-63 Senate Bill 582, Section 15 Clarify Definition Of Wetlands
3. An Ordinance Amending the Unified Development Ordinance of the Town Of North Topsail Beach, North Carolina by Updating Standards for Protecting Wetlands Pursuant to North Carolina Senate Bill 582 and Providing for Certain Enforcement Penalties for Unpermitted Disturbance. (draft)
4. Amendment to Town of North Topsail Beach FY 2023-2024 Fee Schedule Planning & Zoning Fees

Attachment 1 p. 1

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*Littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-230(a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. First priority of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate is not allowed;
 - (D) All cuttings or clippings shall remain in place as they fall;
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and

Attachment 1 p. 2

Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a significant adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-124;
Eff. September 9, 1977;
Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978;
Readopted Eff. July 1, 2020.

Attachment 2

CLARIFY DEFINITION OF WETLANDS

SECTION 15.(a) Definitions. – For purposes of this section and its implementation, "Wetlands Definition" means 15A NCAC 02B .0202 (Definitions).

SECTION 15.(b) Wetlands Definition Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission (Commission) is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Wetlands Definition Rule as provided in subsection (c) of this section.

SECTION 15.(c) Implementation. – Wetlands classified as waters of the State are restricted to waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, which is hereby incorporated by reference, not including subsequent amendments and editions.

SECTION 15.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Wetlands Definition Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 15.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NORTH TOPSAIL BEACH, NORTH CAROLINA BY
UPDATING STANDARDS FOR PROTECTING WETLANDS PURSUANT TO SENATE
BILL 582 AND PROVIDING FOR CERTAIN ENFORCEMENT PENALTIES FOR
UNPERMITTED DISTURBANCE**

Ordinance 23-__

WHEREAS, N.C. Session Law 2023-63 created new definitions for wetlands that apply throughout North Carolina; and

WHEREAS, the Planning Board has reviewed the proposed standards and recommended approval of this ordinance; and

WHEREAS, the Board of Aldermen has found this ordinance to be consistent with the Town's adopted CAMA Land Use Plan; and

WHEREAS, the Board of Aldermen acknowledges the importance of wetlands in reducing flood risk; and

WHEREAS, the Board of Aldermen affirms that open space management practices are consistent with the goals of reducing hazard losses, such as the preservation of wetlands or other flood-prone areas in their natural state in perpetuity; and

WHEREAS, the Board of Aldermen has determined that is in public interest to update standards for protecting wetlands in the Unified Development Ordinance consistent with North Carolina Senate Bill 582 and in compliance with the N.C. General Statutes 160D.

NOW THEREFORE BE IT ORDAINED by the Board of Aldermen for the Town of North Topsail Beach, North Carolina that the Unified Development Ordinance shall be amended as follows:

PART I. That Subsection of the Unified Development Ordinance be amended with the addition of the following:

§10.07.05 INSTALL AND MAINTAIN EFFECTIVE SEDIMENTATION AND EROSION CONTROL MEASURES

- (A) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures.
- (B) Disturbed areas shall be vegetated and stabilized (planted and mulched) within 14 days of construction completion.

- (C) It shall be the responsibility of the property owner to ensure the installation and maintenance of effective sedimentation and erosion control measures and to stabilize disturbed areas within 14 days of construction completion.
- (D) Failure to install and maintain effective sedimentation and erosion control measures during construction or stabilize disturbed areas after construction are in violation of this ordinance shall be subject to a fine in accordance with the Planning and Zoning Fee Schedule for Code Enforcement Civil Citations, as adopted by the Board of Aldermen.

§10.07.06 WETLAND PROTECTION.

- (A) Any wetlands, as defined in Chapter 11, damaged during construction, or damage occurring as a result of such construction, or excavated in violation of this ordinance shall be restored to its original state using similar materials and stabilizing vegetation.
- (B) It shall be the responsibility of the property owner to guarantee the protection of all identified wetlands and not allow the natural wetland hydrology of the lot to be altered beyond that which has been authorized in the permit.
- (C) Wetland grass planting or wetland reforestation shall be the ultimate responsibility of the property owner.
- (D) Any wetlands, as defined in Chapter 11, in the required natural area that has been damaged or excavated in violation of this ordinance shall be subject to a fine in accordance with the the Planning and Zoning Fee Schedule for Code Enforcement Civil Citations for this section, as adopted by the Board of Aldermen and restored within 7 days of notice.
- (E) Failure to repair damage to wetlands and vegetation after 7 days, shall constitute a separate violation for each day that such failure continues after written notification pursuant to §2.17.01.

§11.01.12 DEFINITIONS.

WETLANDS. "Waters" as defined by G.S. 143-212(6) that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, which is hereby incorporated by reference, not including subsequent amendments and editions, and is available free of charge at

<https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29340>.

PART II. This ordinance shall be effective upon its adoption.

**Town of North Topsail Beach
FY 2023-2024
Fee Schedule**

Section V, Item A.
Attachment 1

PLANNING & ZONING FEES

Fees effective 7-1-2022

Development

Re-inspection Fee	\$75.00 for 1st Re-Inspection; \$100 for 2nd Re-Inspection and \$100 for all other additional Re-Inspections (Applied if Inspection NOT READY or FAILS)
Floodplain Development Permit Fee	\$50.00
Zoning Permit Fee(unless otherwise listed)	\$75.00
Special Requirement Site Plans (includes CUP fee)	\$750.00
Commercial Site Plan Review (includes CUP fee)	\$750.00
NTB Driveway Permit (NCDOT separate fee)	\$50.00
Telecommunications Facility - Co-location	\$400.00
Telecommunications Facility - New	\$2,000.00
Accessory Structures	\$50.00

Quasi-Judicial Public Hearings*

Variance Request	\$350.00
Appeals	\$350.00
Conditional Use Permit/Special Use Permit	\$350.00

Legislative Hearings

Map Amendment (Rezone)	\$500.00
Text Amendment	\$500.00

Other Fees

Home Occupation Permit	\$50.00
Land Disturbance	\$50.00
Signs	\$50.00
Zoning Letter of Compliance	\$100.00
Mobile Food Vendor - ANNUAL	\$500.00
Mobile Food Vendor - Special Event	\$100.00
Pushcart - ANNUAL	\$75.00
Pushcart - Special Event	\$25.00

Re-Inspections	\$75.00 for 1st Re-Inspection; \$100 for 2nd Re-Inspection and \$100 for all other additional Re-Inspections (Applied if Inspection NOT READY or FAILS)
Work Done without Permit	Double permit fee + \$200 fine
Failure to get final inspection prior to expiration of permit	\$100.00

**Town of North Topsail Beach
FY 2023-2024
Fee Schedule**

Section V, ItemA.

Attachment 4 p. 2

Major Subdivision/Planned Unit Developments

Sketch, Preliminary and Final	\$300/\$300/\$150
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Minor Subdivision

Sketch & Final	\$200/\$200
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Exemptions (Review Required)	\$50.00
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Code Enforcement

Civil Citations	First Offense \$50.00 Second Offense \$100.00 Third & Subsequent Offenses \$200.00 each
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Civil Citations: § 10.07.02 REBUILDING OF DAMAGED DUNES.	First Offense & Subsequent Offenses \$10,000.00.00 each
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Civil Citations: §10.07.06 WETLAND PROTECTION.	First Offense & Subsequent Offenses \$1,000.00.00 each
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*** Applicant is responsible for all transcript expenses. In addition to the fee, a \$150 deposit for transcript is required. All cancellations must be received at least 48 hours before the start of the public hearing and refunds are subject to a \$150 cancellation fee.**



Town of North Topsail Beach
Planning Board

Agenda
Item: VI. A.
Date: 8/10/2023

Issue: Use Standards for Ocean Hazard Areas Exceptions

Department: Planning

Prepared by: Deborah J. Hill MPA AICP CFM CZO

Presentation: Yes

BACKGROUND On August 3, 2023, the Board of Aldermen reached consensus directing the Town Manager to work through the Planning Board and Director to address the following issues and come back to the Board of Aldermen with recommendations at its October meeting:

1. Should pools or any construction be allowed to be built in the sixty- foot setback?
2. What steps can be taken to eliminate construction within the sixty-foot setback?
3. What can we do to protect the dune structure we have?

RECOMMENDATION that the Planning Board reviews attachment 1. Alderman Grants wants a recommendation presented to the Board of Aldermen at the meeting on October 4, 2023.

ATTACHMENT

1. 15A NCAC 07H .0309 Use Standards for Ocean Hazard Areas: Exceptions

✓ yes or ~~X~~ do not allow or under conditions (UC)

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

(1)	<u>campsites;</u>
(2)	<u>driveways and parking areas with clay, packed sand, or gravel;</u>
(3)	<u>elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;</u>
(4)	<u>beach accessways consistent with Rule .0308(c) of this Section;</u>
(5)	<u>unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;</u>
(6)	<u>uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;</u>
(7)	<u>temporary amusement stands consistent with Section .1900 of this Subchapter;</u>
(8)	<u>sand fences;</u>
(9)	<u>swimming pools; and</u>
(10)	<u>fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.</u>

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of a structure on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach Areas if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;
- (3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section;
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and
 - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but

shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
- (1) piers providing public access; and
 - (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.
- (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:
- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
 - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
 - (3) The pier house shall be limited to a maximum of two stories;
 - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
 - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
 - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
 - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.
- (f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:
- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
 - (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.
- (g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981;

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