



Town of North Topsail Beach

Planning Board Special Meeting Agenda

Thursday, October 19, 2023, at 5:30 PM

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

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

Planning Board: HannaMcCloud– Chair, Scott Morse, Lisa Brown, Susan Meyer, Stuart Harness, Teri Ward

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

I. CALL TO ORDER

II. ADOPTION OF AGENDA

III. NEW BUSINESS: ORGANIZATIONAL MEETING

- A. Pursuant to the duly adopted Town of North Topsail Beach Planning Board Rules of Procedure Rule 2. the newly appointed members shall take and subscribe the oath of office as required by GS 160D-309 as the first order of new business.

Teri Ward appointed by the Board of Aldermen on 10/4/2023 and sworn in as Regular Member with the remaining of a 3 year term expiring 5/15/2026.

Susan Meyer appointed by the Board of Aldermen on 10/4/2023 and sworn in as Regular Member with the remaining of a 3 year term expiring 5/15/2026.

- B. As the second order of new business, the Planning Board shall elect a vice chair, using one of the nomination and voting procedures set out in Rule 24.

IV. APPROVAL OF MINUTES

- A. June 15, 2023 Special Meeting Minutes

- B. August 10, 2023 Regular Meeting Minutes

V. PUBLIC COMMENT

VI. OLD 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.*



Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem

Alice Derian, ICMA-CM
Town Manager

Aldermen:
Fred Fontana
Richard Grant
Tom Leonard
Connie Pletl

Nancy Avery
Interim Town Clerk

OATH OF OFFICE

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW
TOWN OF NORTH TOPSAIL BEACH

I, TERI WARD, do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith, and that I will faithfully discharge the duties of my office as Regular Member of the Planning Board of the Town of North Topsail Beach, so help me God.
(North Carolina Constitution, Article VI, Section 7)

Sworn this the 19th day of October 2023.

Hanna McCloud, Chair
North Topsail Beach Planning Board

SEAL

Keri Simpson, Notary
Evidence Custodian, Records Clerk
North Topsail Beach Police Department

*As appointed by the Board of Alderman on October 4, 2023, for the remainder of a three year term, expiring May 15, 2026.



Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem

Alice Derian, ICMA-CM
Town Manager

Aldermen:
Fred Fontana
Richard Grant
Tom Leonard
Connie Pletl

Nancy Avery
Interim Town Clerk

OATH OF OFFICE

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW
TOWN OF NORTH TOPSAIL BEACH

I, SUSAN MEYER, do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith, and that I will faithfully discharge the duties of my office as Regular Member of the Planning Board of the Town of North Topsail Beach, so help me God.
(North Carolina Constitution, Article VI, Section 7)

Sworn this the 19th day of October 2023.

Hanna McCloud, Chair
North Topsail Beach Planning Board

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Town of North Topsail Beach

Planning Board

Rules of Procedure

Rule 1. Regular Meetings

The Planning Board shall hold a regularly scheduled meeting on the second Thursday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on a day to be determined by the chair. The meeting shall be held in the first floor conference room at the North Topsail Beach Town Hall and shall begin at 5:00 p.m. A copy of the Planning Board's current meeting schedule shall be filed with the Town Clerk and posted on the Planning Board's webpage, <http://ntbnc.org/pb.aspx>.

Rule 2. Organizational Meeting

On the date and at the time of the first regular meeting in May, the newly appointed members shall take and subscribe the oath of office as required by GS 160D-309 as the first order of new business. As the second order of new business, the Planning Board shall elect a chair and vice chair, if he or she is not otherwise selected, using one of the nomination and voting procedures set out in Rule 24.

Rule 3. Agenda

(a) Proposed Agenda. The Planning Board's clerk or the Planning Director shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least five working days before the meeting. Any Planning Board member may, by a timely request, have an item placed on the proposed agenda. A copy of all proposed orders, policies, regulations, and resolutions shall be attached to the proposed agenda. An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each Planning Board member shall receive a copy of the proposed agenda and the agenda package and they shall be available for public inspection and/or distribution when they are distributed to the Planning Board members.

(b) Adoption of the Agenda. As its first order of business at each meeting, the Planning Board shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. The Planning Board may by majority vote add items to or subtract items from the proposed agenda, except that the board may not add items to the agenda of a special meeting unless (a) all members are present and (b) the board

determines in good faith at the meeting that it is essential to discuss or act on the item immediately. If items are proposed to be added to the agenda, the Planning Board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all board members.

The Planning Board may designate certain agenda items “for discussion and possible action.” Such designation means that the Planning Board intends to discuss the general subject area of that agenda item before making any motion concerning that item.

(c) Open Meetings Requirements. The Planning Board shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the Planning Board to understand what is being deliberated, voted, or acted on. However, the Planning Board may deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda—sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on—are available for public inspection at the meeting.

Rule 4. Public Address to the Board

Any individual or group who wishes to address the Planning Board shall make a request to be on the agenda to the Planning Board’s clerk or the Planning Director. However, the Planning Board shall determine at the meeting whether it will hear the individual or group.

Rule 5. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

- Discussion and revision of the proposed agenda; adoption of an agenda
- Approval of the minutes
- Public comment
- Unfinished business
- New business
- Discussion

By general consent of the board, items may be considered out of order.

Rule 6. Presiding Officer

The chair of the Planning Board shall preside at Planning Board meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter.

The chair may vote in all cases. In order to address the Planning Board, a member must be recognized by the chair.

If the chair is absent, the vice-chair shall preside. If both the chair and vice-chair are absent, another member designated by vote of the Planning Board shall preside. The vice-chair or another member who is temporarily presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair becomes actively involved in debate on a particular matter, he or she may designate another Planning Board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

1. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
3. To entertain and answer questions of parliamentary law or procedure;
4. To call a brief recess at any time;
5. To adjourn in an emergency.

A decision by the presiding officer under any of the first three powers listed may be appealed to the Planning Board upon motion of any member, pursuant to Rule 16, Motion 1. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Rule 7. Action by the Board

The Planning Board shall proceed by motion, except as otherwise provided for in Rules 3, 4, and 24. Any member, including the chair, may make a motion.

Rule 8. Second Not Required

Any motion requires a second.

Rule 9. One Motion at a Time

A member may make only one motion at a time. There can be only one motion before the Planning Board at a time.

Rule 10. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Rule 11. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 21 being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

Rule 12. Voting by Written Ballot

The Planning Board may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the board shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the Planning Board's clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 13. Debate

The chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

1. The maker of the motion is entitled to speak first;
2. A member who has not spoken on the issue shall be recognized before someone who has already spoken;
3. To the extent possible, the debate shall alternate between proponents and opponents of the measure.
4. The Chair may poll members for comments.

Rule 14. Ratification of Actions

To the extent permitted by law, the board may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Rule 15. Procedural Motions

(a) Certain Motions Allowed. In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

(b) Order of Priority of Motions. In order of priority (if applicable), the procedural motions are

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the board, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn. This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess or adjourn to a time and place certain shall also comply with the requirements of Rule 2(c).

Motion 3. To Take a Brief Recess.

Motion 4. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The Planning Board may not suspend provisions of the rules that state requirements imposed by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the Planning Board. A majority is more than half.

Motion 6. To Divide a Complex Motion and Consider It by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 7. To Defer Consideration. The board may defer a substantive motion for later consideration at an unspecified time. A substantive motion, the consideration of which has been deferred, expires 100 days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending (has not expired). A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 16(b), Motion 14], or else move to suspend the rules [Rule 16(b), Motion 5].

Motion 8. Motion for the Previous Question. The motion is not in order until every member has had an opportunity to speak once.

Motion 9. To Postpone to a Certain Time or Day. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [Rule 16(b), Motion 5].

Motion 10. To Refer a Motion to a Committee. The board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the board.

Motion 11. To Amend.

(a) An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend.

(b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

(c) Any amendment to a proposed order, policy, regulation, or resolution shall be reduced to writing before the vote on the amendment.

Motion 12. To Revive Consideration. The board may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 16(b). The motion is in order at any time within [100] days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires [100] days after the deferral unless a motion to revive consideration is adopted.

Motion 13. To Reconsider. The board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the “no’s” prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess or adjournment to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Motion 14. To Rescind or Repeal. The board may vote to rescind actions it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

Motion 15. To Prevent Reintroduction for Three (3) Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to a majority of the entire membership of the board. If adopted, the restriction imposed by the motion remains in effect for three (3) months or until the next organizational meeting of the board (i.e., new members), whichever occurs first.

Rule 16. Renewal of Motion

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Rule 17. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first.

Rule 18. Duty to Vote

Each member shall be permitted to abstain from voting, by so indicating when the vote is taken. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the board or by law, or the member's official conduct, as defined by the board. In all other cases, a failure to vote by a member who is physically present in the board chamber, or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

Members shall not vote on any advisory or legislative decisions regarding a development regulation adopted pursuant to G.S. 160D-109 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. At the beginning of consideration of a matter before the Planning Board, any member who has a potential conflict of interest whether direct or indirect shall notify the Chair of this conflict. The Chair shall excuse the member from further participation in the matter, including voting.

Rule 19. Special Rules of Procedure

The Planning Board may adopt its own special rules of procedure, to be specified here.

Rule 20. Quorum

A majority of the actual membership of the board shall constitute a quorum. A majority is more than half. The chair shall be considered a member of the board in determining the number on which a majority is based and in counting the number of members actually present. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Rule 21. Public Hearings

Public hearings required by law or deemed advisable by the Planning Board shall be organized by a special order that sets forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters. The special order is adopted by a majority vote. Its specifications may include, but are not limited to, rules fixing the maximum time allotted to each speaker; providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to Planning Board meetings shall also apply to public hearings at which a majority of the Planning Board is present; such a hearing is considered to be part of a regular or special meeting of the board. These requirements also apply to hearings conducted by appointed or elected committees of board members, if a majority of the committee is present. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the board, or of a board committee, as applicable, is present.

At the time appointed for the hearing, the Planning Board shall vote to open the hearing and the chair or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

Rule 22. Minutes

Full and accurate minutes of the Planning Board proceedings shall be kept. The Planning Board shall keep a general account so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall

be open to inspection of the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the board, the entire board shall be polled by name on any vote. Members' and other persons' comments may be included in the minutes if the board approves.

Rule 23. Appointments

Members of the Planning Board shall be appointed by the Board of Aldermen. The Planning Board shall use the following procedure to select a chair and vice chair. The chair shall open the floor for nominations, whereupon the names of possible chair and vice chair may be put forward by individual members. The names submitted shall be debated. When the debate ends, the chair shall call the roll of the members and each member shall cast his or her vote. The nominees for chair and vice chair receiving the highest number of votes shall be appointed.

Rule 24. Committees and Boards

(a) **Establishment and Appointment.** Appointments of any non-Planning Board member to any subcommittee or advisory committee of the Planning Board must first be approved by the Board of Aldermen.

(b) **Open Meetings Law.** The requirements of the open meetings law shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of a local governmental unit that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among a unit's professional staff.

Rule 25. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting, unless a statute or a rule of the Board of Aldermen provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum.

Rule 26. Reference to *Robert's Rules of Order*

The Planning Board shall refer to the current edition of *Robert's Rules of Order Newly Revised*, to answer procedural questions not resolved in these rules, so long as *RONR* does not conflict with North Carolina law or with the spirit of these rules.



Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem

Alice Derian, ICMA-CM
Town Manager

Aldermen:
Fred Fontana
Richard Grant
Tom Leonard
Connie Pletl

Nancy Avery
Interim Town Clerk

Planning Board
Special Meeting Draft Minutes
Thursday, June 15, 2023, at 5:00 PM
2008 Loggerhead Court, North Topsail Beach NC 28460

Present: Hanna McCloud – Chair, Paul Dorazio - Vice Chair, Gunnar Matthews, Lisa Brown, Susan Meyer.

Absent: Scott Morse.

Present Other: Deborah Hill – Planning Director, Kate Winzler – Clerk to the Planning Board, IT Director Ricky Schwisow.

CALL TO ORDER Chair McCloud called the meeting to order at 5:02 p.m.

ADOPTION OF THE AGENDA Mr. Dorazio made a motion to adopt the agenda. Mr. Matthews seconded the motion. The motion passed unanimously, 5-0.

APPROVAL OF MINUTES Ms. Brown made a motion to approve the minutes for March 9, 2023. Mr. Dorazio seconded the motion. The motion passed unanimously, 5-0.

PUBLIC COMMENT none.

DISCUSSION

Planning Director Hill explained Stuart Harness’ resignation from the Planning Board and expressed her gratitude for his service. The Board echoed their gratitude.

WETLAND PROTECTION (USE OF ARTIFICIAL TURF GRASS)

Planning Director Hill introduced the challenge of artificial turf use and wetland protection. She asked the Planning Board to consider what is acceptable, what is reasonable, and how to codify the results for staff enforcement. The City of Wilmington and New Hanover County have adopted higher standards in their Coastal overlay to protect their wetlands. The Coastal Resource Commission (CRC) and the Division of Coastal Management (DCM) consider artificial turf as impervious, installation is development, requires Coastal Area Management Act (CAMA) permitting, and artificial turf should not be allowed within the thirty-foot buffer.

The Planning Board discussed a recent unpermitted artificial turf installation.

Planning Director Hill asked the Planning Board to consider what they want the town to look like in five years, and then in ten years. Ms. Hill reviewed some building development trends.

The Planning Board discussed a second recent artificial turf installation.

Planning Director Hill stated she would like to review a data sheet of materials for artificial turf projects, as they may end up in the ocean or an oyster bed and may be harmful. Ms. Hill asked

the Planning Board what artificial turf qualities, conditions, or permits they wanted to recommend.

The Planning Board discussed specifications of artificial turf, including longevity, cost, the chemical fertilizer and water needed for natural grass, and the evolving artificial turf products available.

Ms. Hill asked the Planning Board to provide feedback on artificial turf at the next meeting.

DARK SKY ORDINANCE

Planning Director Hill asked the Planning Board to review the Dark Sky Ordinance information, and to bring input to the next meeting.

HMGP

Planning Director Hill reviewed the Hurricane Florence Hazard Mitigation Grant Program (HMGP) project that is in process. The project is managed by the State of North Carolina, the scope of the project is significantly more than was initially estimated, and it is awaiting Federal Emergency Management Agency (FEMA) guidance and approval.

UDO ARTICLE 2. §2.02 PLANNING BOARD & §2.03 BOARD OF ADJUSTMENT

Planning Director Hill addressed the vacancies in the Planning Board and the Zoning Board of Adjustment.

Ms. McCloud shared that she heard that the same people should not be on both Boards, however, there are not enough volunteers to fill both the Planning Board and the Zoning Board of Adjustment individually.

Mr. Dorazio recalled that the placement of dual members was due to a lack of volunteers. It was supposed to be temporary, but many members are still on both Boards.

Ms. Hill asked the members of the Planning Board to help find volunteers who live in town and are interested in working to plan for the next phase of North Topsail Beach.

JULY PLANNING BOARD

Planning Director Hill anticipated two applications for the July 13th Planning Board meeting.

ADJOURNMENT Mr. Dorazio made a motion to adjourn. Ms. Meyer seconded. The motion passed unanimously, 5-0.

The Planning Board meeting adjourned at 5:50 p.m.

APPROVED

This 12th day of October 2023

CERTIFIED

This 12th day of October 2023

Hanna McCloud
Chair

Kate Winzler
Clerk



Town of North Topsail Beach Planning Board Minutes

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

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

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

PRESENT: Hanna McCloud– Chair, Paul Dorazio – Vice Chair, Lisa Brown, Susan Meyer, Scott Morse

ABSENT: Gunnar Mathews

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

I. CALL TO ORDER

Vice Chair Dorazio called the meeting to order at 5:00 p.m.

II. ADOPTION OF AGENDA

Ms. Meyer made a motion to approve the agenda. Ms. Brown seconded the motion. The motion passed unanimously, 5-0.

III. APPROVAL OF MINUTES

Ms. Meyer made a motion to approve the July 13, 2023, Regular Meeting Minutes. Mr. Morse seconded the motion. The motion passed unanimously, 5-0.

IV. PUBLIC COMMENT

Alderman Rick Grant spoke about water infrastructure issues and current development trends. He distributed illustrative pictures to the Board and expressed concern over development in the sixty-foot oceanfront setback. Alderman Grant encouraged the Planning Board to consider the Board of Aldermen’s strong stance on dune protection when considering what should allowed to be built within the sixty-foot setback as it relates to dune protection, and without infringing on property rights. Mr. Grant touched on Onslow Water and Sewer Authority, Pluris, the high demand for water, and offered to share Chris Gibson’s Beach Inlet and Sound Advisory Committee report with the Planning Board.

V. OLD BUSINESS

A. Proposed Text Amendments to Wetland Regulations and Enforcement

Planning Director Hill introduced Citizen Terry Ward, Mickey Suggs with the Army Corps of Engineers, and Robb Mairs with the Division of Coastal Management (DCM) to the Planning Board. Ms. Hill explained the Army Corps of Engineers has jurisdiction over 404 wetlands and DCM over 401 wetlands, and that the two entities work alongside the Town processing permits and addressing wetland violations. Wetlands serve the purpose of reducing flood risk and knocking down storm surge. Mayor McDermon requested that the Planning Board review wetland protection; a recent Supreme Court case may affect state and federal wetland regulation. The proposed wetland ordinance amendment would give the Town authority over erosion and sediment control, as well as make it the responsibility of the property owner. Ms.

Hill reviewed the current process for violations, as well as the proposed process that would result in a fine.

Planning Director Hill recommended that the Planning Board recommend that the Board of Aldermen conduct a public hearing on September the sixth and adopts attachments three and four.

Mr. Suggs spoke about 404 wetlands, including setbacks, allowable development, permitting, application processing times, and the Supreme Court wetland case decision local impact.

Mr. Mairs spoke about 401 wetlands, including setbacks, prohibited development, identifying species, allowable development, CAMA permit types, the Supreme Court wetland case local case, impervious surface restriction, and citations.

Planning Director Hill explained that Wilmington and New Hanover County have a higher wetland buffer standard, utilizing coastal forest overlay, zoning conservation district, and a limit of permitted water dependent uses. The Town of North Topsail Beach uses the same mechanisms.

The Planning Board discussed the proposed ordinance and the proposed \$1,000 fine.

Ms. Meyer made a motion to recommend that the Board of Aldermen conduct a public hearing to adopt attachments three and four. Mr. Morse seconded the motion. The motion passed unanimously, 5-0, as follows:

<u>Roll call</u>	<u>Vote:</u>
Ms. McCloud	Yes
Ms. Meyer	Yes
Mr. Dorazio	Yes
Ms. Brown	Yes
Mr. Morse	Yes

VI. NEW BUSINESS

A. Use Standards for Ocean Hazard Areas Exceptions

Planning Director Hill posed the following Board of Aldermen questions to the Planning Board in relation to the 15A NCAC 07H .0309 Use Standards for Ocean Hazard Areas: Exceptions:

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

Vice Chair Dorazio expressed concern over the short duration of time the Planning Board had the information, as well as a desire for time to review it and allow for discussion with others. Mr. Dorazio recommended placing the topic on the September Planning Board agenda for a recommendation to the Board of Aldermen for their October meeting.

There was discussion about current development, pool installation, the development trends in surrounding towns, and oceanfront decks.

It was the consensus of the Board to place this topic on the September Planning Board agenda.

VII. DISCUSSION

Planning Director Hill told the Board that she anticipates there will be an upcoming re-zoning case.

VIII. ADJOURNMENT

Mr. Morse made a motion to adjourn. Ms. Meyer seconded the motion. The motion passed unanimously, 5-0.

The Planning Board Meeting adjourned at 6:13 p.m.

APPROVED

This 12th day of October 2023

Hanna McCloud

Chair

CERTIFIED

This 12th day of October 2023

Kate Winzler

Clerk



Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem

Alice Derian, ICMA-CM
Town Manager

Aldermen:
Fred Fontana
Richard Grant
Tom Leonard
Connie Pletl

Nancy Avery
Interim Town Clerk

Issue: Use Standards for Ocean Hazard Areas Exceptions

Department: Planning

Prepared by: Deborah J. Hill MPA AICP CFM CZO

Presentation: Yes

BACKGROUND On August 2, 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
2. A. Derian, Town Manager email dated Wed 8/16/2023 11:07 AM
3. C. Moore, Executive Officer, Wilmington-Cape Fear Home Builders Association email dated Wed 9/6/2023 1:07 PM

✓ 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) | campsites; |
| (2) | driveways and parking areas with clay, packed sand, or gravel; |
| (3) | 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; |
| (4) | beach accessways consistent with Rule .0308(c) of this Section; |
| (5) | unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less; |
| (6) | 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; |
| (7) | temporary amusement stands consistent with Section .1900 of this Subchapter; |
| (8) | sand fences; |
| (9) | swimming pools; and |
| (10) | 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. |

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;

Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

From: [Alice Derian](#)
To: [Hannah McCloud \(hanna_cloud@yahoo.com\)](#); [Deb Hill](#)
Subject: BISAC Meeting Follow up
Date: Wednesday, August 16, 2023 11:07:17 AM
Attachments: [Management Arearg.docx](#)

Good morning,

I wanted to give you a heads up that the engineer was delayed in providing the beach plan that he intended to provide at BISAC yesterday. He presented via teams an overview and I wanted to provide these insights he spoke on in preparation for your September Planning Board meeting. In particular, as it impacts your mission regarding building within the 60ft. Please distribute to your members.

Thank you,

Alice Derian, ICMA-CM

Town Manager

Town of North Topsail Beach

2008 Loggerhead Ct.

North Topsail Beach, NC 28460

910.328.1349



Pursuant to North Carolina General Statutes, Chapter 132, email correspondence to and from this address may be considered public record under the North Carolina Public Records Law and may possibly be disclosed to third parties.

Management Area

When looking at a long-term beach management project, the first thing that must be addressed is defining the management area both along the beach and the breadth of the area. As far as length is concerned the Town has chosen to manage the entire length of the Town, protecting all developed properties and platted lots. The breadth of the area is something then Town Alderman must make careful consideration as the diligent approach may have impact on property rights. It is our position that the entire Ocean Erodible Area should be included.

The actual Ocean Erodible Area (OEA) starts on the landward side of the tallest dune. However, by State regulation it begins 60 feet or 30 x The NCDEQ Determined Erosion Rate landward of the first line of stable vegetation, whichever is greater. From this setback line it extends seaward including the dune, beach, intertidal area, and subaqueous area out to the Depth of Closure (approximately -16 to -18 feet NAVD88). NCDEQ's minimal rules do not allow habitable structures within the OEA. However, non-habitable structures such as septic fields, swimming pools, detached porches, and gazebos are allowed. From a design and sustainability perspective allowing any structure that is not set on piles AND readily removable or whose loss would eliminate the habitability of the property (i.e. septic tanks or drain fields) should not be placed in the OEA.

The reasoning for this is relatively simple. During major hurricane events it is anticipated that the beach and dune in the OEA will erode. North Topsail Beach's beach is low and narrow. There is very little distance between the oceanfront high water mark and the toe of the dune. During dune erosion events, the high-water mark moves landward. Emergency dunes cannot be built so that the toe of the dune is seaward of the high-water mark. Thus, having structures, such as porches or swimming pools in the OEA will reduce or prevent the Town's ability to repair dune breaches.

Swimming pools can be exceptionally problematic in the OEA for 3 reasons.

During construction the digging out of the back slope of the dune weakens the integrity of the dune. Backfill does not fully re-establish the strength of the in-situ dune.

1. Assuming the house is at the 60' setback, the seaward edge of the pool and decking is less than 30' from first line of stable vegetation. On a healthy dune that would be seaward of the frontal dune crest. For a previously scarped dune with a shear front face, that would leave very little protection for the pool or home.
2. Fiberglass swimming pools FLOAT. If they are cut into the dune and erosion occurs back to the pool, they will float out of the ground. This not only creates a deep breach point in the dune, it also creates a large projectile that can damage the associated or nearby residences as well. (For reference there were numerous occurrences of this in Oak Island during Florence)

Again, it is our recommendation that building into the OEA would be detrimental to sustainability of the project. However, if the Town is able to build the project to include an additional frontal dune, similar to the one at Topsail Beach, then construction of non-habitable structures in the current OEA could be revisited.

From: cameron.wilmhba.org
To: [Kate Winzler](#)
Cc: [Deb Hill](#); [Tyler Newman](#); maebuilt@gmail.com; [Joann McDermon](#); [Mike Benson](#); [Richard Grant](#); [Fred Fontana](#); [Tom Leonard](#); [Connie Plett](#)
Subject: WCFHBA - Discussion Points - NTB Planning Board Item - Swimming Pools
Date: Wednesday, September 6, 2023 1:07:27 PM
Attachments: [WCFHBA - Discussion Points NTB Pools.pdf](#)



Dear Members of the North Topsail Beach Planning Board;

On behalf of the 1500+ members of the Wilmington-Cape Fear Home Builders Association, I am writing to express some feedback on the upcoming swimming pool discussion that will take place at the September 14th Planning Board meeting.

We appreciate the opportunity to submit this letter, and should you have any questions or concerns please feel free to reach out to me at (910) 540-1154.

Cameron Moore, AICP
Executive Officer
Wilmington-Cape Fear Home Builders Association



September 6th, 2023

Attention: N. Topsail Beach Planning Board
North Topsail Beach
2008 Loggerhead Court
North Topsail Beach, NC 28460

Dear Members of the North Topsail Beach Planning Board;

On behalf of the 1500+ members of the Wilmington-Cape Fear Home Builders Association, I am writing to express some feedback on the upcoming swimming pool discussion that will take place at the September 14th Planning Board meeting.

It is our understanding that on August 2, 2023, the Board of Aldermen reached a consensus directing the Town Manager to work through the Planning Board and Director to address the following three issues and come back to the Board of Aldermen with recommendations at its October 4th 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?

We acknowledge the amount of time, energy, and money the Town of North Topsail Beach has invested in its dune system, and the maintenance of its beaches. We applaud the Town's tireless efforts and stand with them in those efforts as the dune system is very important to the vitality of the Town.

As the Town knows under CAMA's Rules under ***15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS*** swimming pools are noted as an allowable exception. This Administrative Code goes on to say that 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.

In 2022 the Town of Alderman updated its Code of Ordinances by amending the Unified Development Ordinance to provide stricter Dune protection measures, which included mandatory remediation and fines for violations. (See Below)

§ 10.07.02 REBUILDING OF DAMAGED DUNES.

(A) All dunes in the Ocean Hazard Area that are 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. It shall be the responsibility of the property owner to guarantee the protection of all identified dune systems and not allow the natural topography of the lot altered beyond that which has been authorized in the permit. The rebuilding of a dune shall be the ultimate responsibility of the property owner. Any dune in the required natural area that has been damaged or excavated in violation of this ordinance shall be subject to a fine of \$10,000 and restored within 7 days of notice.

(B) Failure to repair damage to dunes and vegetation after 7 days, shall constitute a separate violation for each day that such failure continues after written notification by the Planning Director.

(C) Any development proposed within the Ocean Hazard Area shall indicate on a plat submitted with the application, the dune contour/topography and dune profile by elevation, the landward toe of the dune by bearing and distance.

(D) No disturbance, no development, no structure shall be permitted within 5.0 feet of the landward toe of the dune, “dune buffer,” except beach access crossovers as permitted.

(E) Any additions or improvements to existing structures must comply with the standards for new construction and be relocated outside of the “dune buffer.”

(F) If any provision of this article conflicts with a rule or regulation adopted by the State Coastal Resources Commission dealing with oceanfront erosion control, then the most stringent rule or regulation shall control and apply.

We believe at the time of passing this ordinance the Town had a very thorough conversation regarding pools, and created the following additional safeguards “A through F” above. Of note these specific adopted protection measures placed higher standards on pool construction than what is required by the state. As an industry we found these additional measures to be practical and reasonable as they struck a balance between private property rights and what the Town was trying to accomplish.

However, it seems that yet again we are at a crossroads regarding swimming pools, and their associated construction techniques within the Ocean Hazard area. It is our understanding that there may be a situation that is the impetus behind this issue coming up again. We understand that a particular homeowner/pool contractor has created a situation that has sparked concerns and potentially a compliance issue that the Town has or still is in the process of investigating.

This is truly unfortunate and if such a violation does exist we would highly encourage the Town to exercise its rights to remedy this situation.

With all of this said we hope that during next week’s Planning Board meeting, we find a conversation that is centered on striking a balance between regulatory controls and private property rights.

To help spearhead some of this conversation along we would offer the following discussion points for the Board to consider in their evaluation.

- We would request the Planning Board to have the Planning staff showcase the permitting and inspection process that takes place throughout the construction of a pool. As you review this process we would ask the Board to identify any associated loopholes or abnormalities in the permitting and inspections process that could be tweaked.
- We would request the Planning Board hear from a pool specialist concerning the current engineering practices and protocols that are in place as it relates to the construction of pools. What types of data points and design information are being provided to the Town in the permitting & inspection processes? Do we feel that enough information is being provided? Should there be more siting parameters or field verifications in place?
- We would request the Board to review the different types of stabilization efforts that are currently in place. It seems that the entire argument is centered on the impact of the dune system. With that being said we would argue that there may be some opportunities to provide additional stabilization measures as a balancing act for some who want to construct a pool within the Ocean Hazard area.

We appreciate the opportunity to submit this letter, and should you have any questions or concerns please feel free to reach out to me at (910) 540-1154.

Sincerely,



Cameron Moore, AICP
Executive Officer
Wilmington-Cape Fear Home Builders Association