



**Planning Board
Agenda Packet**

April 9, 2019

Work Session

6:30 PM

Call to Order

- A) Pledge of Allegiance & Moment of Silence
- B) Ask for Disqualifications
- C) Announce Quorum Being Met
- D) Approval of Agenda

Approval of Minutes for March 12, 2019**Old Business**

- A) Rules of Procedure
 - 1) **Rules of Procedure - Vote on Meeting Time Change**

New Business

- A) **PB 19-07 Currituck County Text Amendment - Dune Protection:** Request to amend the Unified Development Ordinance, Chapters 7 and 10 to provide dune protection standards.

Announcements**Adjournment**



CURRITUCK COUNTY NORTH CAROLINA

March 12, 2019

Minutes – Regular Meeting of the Planning Board

WORK SESSION

The Currituck County Planning Board held a work session at 6:30 PM in the Historic Courthouse Conference Room. Introductions were made with the two newly appointed board members, Garry Owens and Bryan Bass. The Clerk to the Board, Cheri Elliott, gave Mr. Owens and Mr. Bass their Planning Board binders along with contact information for the Board of Commissioners, Planning Board members and Currituck County Planning Staff. Senior Planner, Tammy Glave briefed the board members on the item on the agenda and gave a general review of making motions with the staff suggested Statement of Consistency and Reasonableness. Cheri Elliott handed out revised Rules of Procedure reflecting a possible change in time for Planning Board Meetings from 7:00 PM to 6:00 PM. Ms. Elliott let the board members know any changes to the Rules of Procedure require written notice at the previous board meeting with voting occurring at the next meeting. The work session adjourned at 6:57 PM.

CALL TO ORDER

The Planning Board met in a regular session at 7:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
K. Bryan Bass	Board Member	Present	
Garry Owens	Board Member	Present	
C. Shay Ballance	Vice Chairman	Present	
Carol Bell	Board Member	Present	
Anamarie Hilgendorf	Board Member	Absent	
J. Timothy Thomas	Board Member	Present	

Vice Chairman Ballance called the meeting to order at 7:00 PM.

A. Pledge of Allegiance & Moment of Silence

Vice Chairman Ballance asked everyone to stand for the Pledge of Allegiance and a moment of silence.

B. Ask for Disqualifications

Vice Chairman Ballance asked if any board member had a conflict of interest with the matter coming before the board. No conflicts were noted.

Communication: PB Minutes March 12, 2019 (Approval of Minutes for March 12, 2019)

C. Announce Quorum Being Met

Vice Chairman Ballance announced a quorum being met with five board members present.

D. Election of Chairman & Vice Chairman

Vice Chairman Ballance asked for any nominations for the Planning Board Chairman. Mr. Thomas nominated Shay Ballance as Chairman. Ms. Bell seconded the motion and the motion carried unanimously.

Chairman Ballance asked for any nominations for Planning Board Vice-Chairman. Chairman Ballance nominated Garry Owens as Vice-Chairman. Ms. Bell seconded the motion and the motion carried unanimously.

E. Approval of Agenda

Chairman Ballance asked if there were any changes needed to the agenda for tonight's meeting. Ms. Bell motioned to approve as presented. Mr. Bass seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	K. Bryan Bass, Board Member, Garry Owens, Board Member, C. Shay Ballance, Vice Chairman, Carol Bell, Board Member, J. Timothy Thomas, Board Member
ABSENT:	Anamarie Hilgendorf, Board Member

APPROVAL OF MINUTES FOR FEBRUARY 12, 2019

Chairman Ballance asked if any changes were needed for the meeting minutes of February 12th, 2019. Ms. Bell motioned to approve as presented. Mr. Thomas seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	K. Bryan Bass, Board Member, Garry Owens, Board Member, C. Shay Ballance, Vice Chairman, Carol Bell, Board Member, J. Timothy Thomas, Board Member
ABSENT:	Anamarie Hilgendorf, Board Member

F. Planning Board Minutes - February 12, 2019**OLD BUSINESS**

There was no old business discussed.

NEW BUSINESS**A. PB 19-06 Currituck County Text Amendment:**

Senior Planner, Tammy Glave presented the staff report for the Currituck County requested amendment to the Unified Development Ordinance (UDO). Ms. Glave said the requested amendment has two different changes. The first item is to increase public notice mailing requirements for public hearing scheduling and public notifications from 200 feet to 500 feet from the subject property. Ms. Glave said the County has always had a notification

boundary beyond the state statute requirements. Ten years ago the County was at 150 feet and approximately 2 years ago it was 200 feet. Now the Board of Commissioners wishes to extend the notification boundary to 500 feet from the subject property. The second item is to modify expiration dates for use permits of planned developments and subdivisions to three years from the approval date with no opportunity to request extension. Ms. Glave said this change is required due to adequate public facilities being held up with the filings of extensions. The current use permits are two years with a possible two year extension. The compromise is the three year use permit without any extensions. Ms. Glave said staff recommends approval of these changes.

Chairman Ballance asked the board if there were any questions for staff. There were no questions.

Mr. Owens motioned to approve the Currituck County text amendment. Ms. Glave asked Mr. Owens if he would like to include the consistency statement with his motion since that would be appropriate. Mr. Owens included the consistency statement as written in the staff report. Mr. Thomas seconded the motion and the motion carried 4-1 with Chairman Ballance voting nay.

RESULT:	RECOMMENDED APPROVAL [4 TO 1]	Next: 4/1/2019 6:00 PM
AYES:	K. Bryan Bass, Board Member, Garry Owens, Board Member, Carol Bell, Board Member, J. Timothy Thomas, Board Member	
NAYS:	C. Shay Ballance, Vice Chairman	
ABSENT:	Anamarie Hilgendorf, Board Member	

ANNOUNCEMENTS

Chairman Ballance asked Ms. Glave to discuss moving the meeting time to 6:00 PM from the current time of 7:00 PM. Ms. Glave asked board members for their thoughts and Mr. Thomas said he would like to move it to 6:00 PM. With no board member in opposition, Chairman Ballance said the change will be voted on at the next Planning Board meeting.

ADJOURNMENT

Mr. Bass motioned to adjourn the meeting. Mr. Thomas seconded the motion and the meeting adjourned at 7:10 PM.

CURRITUCK COUNTY PLANNING BOARD RULES OF PROCEDURE

I. GENERAL RULES

- (A) The Planning Board shall be governed by the terms and provisions of Chapter 153A, Article 18 of the General Statutes of North Carolina, the Currituck County Code of Ordinances and the Currituck County Unified Development Ordinance (UDO). All members of the board shall familiarize themselves with these laws and ordinances. In cases where the Rules of Procedure conflict with any Federal or North Carolina State Statute, said statutes shall govern.
- (B) The Planning Board shall be held to the same standards found in the Currituck County Code of Ordinances, Article II. Board of Commissioners, Division 3. Code of Ethics.
- (C) To the extent not provided for in this division and to the extent that the reference does not conflict with the spirit of this division or North Carolina law, the board shall refer to Robert's Rules of Order Newly Revised to resolve procedural questions.

II. POWERS AND DUTIES OF THE PLANNING BOARD

- (A) The Planning Board may:
 - (1) Make studies and recommend to the Board of Commissioners plans, goals and objectives relating to the growth, development and redevelopment of the county;
 - (2) Develop and recommend to the Board of Commissioners policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
 - (3) Make recommendations to the Board of Commissioners concerning proposed Zoning Map amendments; and,
 - (4) Perform any other duties assigned by the Board of Commissioners.
- (B) The Planning Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of the UDO.

III. APPOINTMENT AND TERMS OF PLANNING BOARD MEMBERS

- (A) There shall be a Planning Board consisting of seven (7) members that shall reside within Currituck County and will be appointed by the Board of Commissioners.
- (B) Planning Board members shall be appointed for two (2) year staggered terms and members will continue to serve until their successors have been appointed. Terms

shall be on a calendar year basis (January 1 through December 31). Vacancies shall be filled by the Board of Commissioners for the unexpired terms only.

- (C) Members may be appointed to a maximum of two (2) successive terms.
- (D) Planning Board members may be removed by the Board of Commissioners at any time for failure to attend three (3) consecutive meetings or for failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the Board of Commissioners shall hold a hearing on the removal before it becomes effective.
- (E) If a Planning Board member changes their residence to a location outside of Currituck County, this shall constitute a resignation from the Planning Board effective upon the date a replacement is appointed by the Board of Commissioners.

IV. MEETINGS OF THE PLANNING BOARD

- (A) The Planning Board shall establish a regular meeting schedule and shall meet frequently enough as to take action in conformity with the Unified Development Ordinance. The regular monthly meeting shall be held at the Historic Currituck Courthouse on the second Tuesday of each month at ~~7~~6:00 p.m. In the event of a conflict with a holiday, another event or no business to be conducted, the chairman may suspend or set a different day in which to hold the meeting.
- (B) The Planning Board need not conduct its meetings strictly in accordance with the quasi-judicial procedures. It shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
- (C) Minutes shall be kept of all board proceedings.
- (D) All board meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.
- (E) All board meetings shall adhere to the following speaker time limitations per case:
 - 20 minutes (Total time for applicant and persons in support of the request.)
 - 20 minutes (Total time for persons in opposition of the request.)
 - 05 minutes (Applicant rebuttal)
- (F) Special meetings may be called by the chairman upon 48 hour advance notice to members of the board. It shall be the duty of the chairman to call a special meeting when, in their judgement, such meeting is necessary.
- (G) No case shall be heard by the board unless either the applicant or his authorized representative is in attendance at the meeting. In the event an applicant or his

authorized representative does not appear at the meeting, after being duly notified, the case will be tabled to the next meeting.

- (H) The order of business for regular meetings of the board shall be as follows:
 - (1) Call to Order
 - (2) Pledge of Allegiance and moment of silence
 - (3) Ask for disqualifications
 - (4) Announce quorum being met
 - (5) Approval of Agenda
 - (6) Approval of Minutes
 - (7) Old business
 - (8) New business
 - (9) Announcements
 - (10) Adjournment
- (I) Planning Board meetings shall not extend past 10:00 p.m. If the Planning Board wishes to hear items past 10:00 p.m. then a majority vote is required to continue the meeting in 15 minute intervals.

V. QUORUM AND VOTING

- (A) A quorum for the Planning Board shall consist of four (4) members. A quorum is necessary for the board to take official action.
- (B) All actions of the Planning Board shall be taken by majority vote, a quorum being present.
- (C) A roll call vote shall be taken upon the request of any member.
- (D) No member shall take part in the hearing or in the consideration of or the determination of any case in which they are personally or financially involved and shall voluntarily excuse him or herself, vacate his/her seat and refrain from discussing and voting on said items as a Planning Board member.
- (E) Any member of the Planning Board who shall feel that he or she has a conflict of interest on any matter that is on the Planning Board agenda shall voluntarily excuse him or herself, vacate his/her seat and refrain from discussing and voting on said items as a Planning Board member.
- (F) No member, present and voting, shall abstain from voting. Should a member elect not to vote on a particular item, then that shall be recorded as an affirmative vote in the minutes.
- (G) If a motion to approve a request receives a tied vote, then the motion fails as it did not receive the majority of the votes and the request is denied. Likewise, if a motion to deny a request receives a tied vote, then the request is denied as it did not receive approval by a majority vote.

VI. PLANNING BOARD OFFICERS

- (A) At its first meeting in January of each year, the Planning Board shall elect one of its members to serve as chairman to preside over the board's meetings and one member to serve as vice-chairman. The persons so designated shall serve in these capacities for a term of one (1) year. Vacancies in these offices may be filled for the unexpired terms only.
 - (1) The chairman shall preside at all meetings, appoint standing and temporary committees and shall decide all points of order and procedure, unless otherwise directed by a majority of the board in session at the time.
 - (2) The vice-chairman shall perform the duties of the chairman in the absence of the chairman.
 - (3) A temporary chairman shall be elected by a majority of those present and voting in the absence of the chairman and vice chairman.
- (B) The chairman and vice-chairman may take part in all deliberations and vote on all issues.
- (C) Nominations shall be made from the floor and election of officers shall follow immediately. Officers shall immediately take office upon their election.
- (D) The nomination and election of a chairman shall precede the nomination and election of a vice-chairman.
- (E) A candidate receiving a majority vote of those present and voting shall be declared elected.
- (F) Vacancies in office shall be filled immediately by regular election procedures.

VII. PLANNING ISSUE ADVISORY COMMITTEES

- (A) From time to time, the Board of Commissioners may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration the Board of Commissioners may appoint advisory committees to consider Thoroughfare Plans, Housing Plans, Economic Development Plans, etc.
- (B) Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Planning Board.

- (C) Nothing in this section shall prevent the Board of Commissioners from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the board.

VIII. COURTESY HEARINGS

- (A) Courtesy hearings may be called by the Planning Board on any matters of interest to the Planning Board.
- (B) A quorum shall not be required for conducting a courtesy meeting.

IX. AMENDMENTS

- (A) The rules of procedure may be amended by a majority vote of the board provided the proposed change was submitted in writing at the previous regular meeting of the Planning Board.

These Rules of Procedure were ~~unanimously~~ amended by the Currituck County Planning Board on ~~December-April, 2011~~th, 201~~9~~⁸ and shall be in effect from and after ~~this daye 1st-day of January,~~ 201~~9~~.

~~Fred Whiteman~~Shay Ballance, Planning Board Chairman

Date

Amended: 11/10/03, 10/14/08, 5/11/10, 1/13/15, 12/11/18



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 2435)

Agenda Item Title

PB 19-07 Currituck County Text Amendment - Dune Protection:

Brief Description of Agenda Item:

Request to amend the Unified Development Ordinance, Chapters 7 and 10 to provide dune protection standards.

Board Action Requested

Action

Person Submitting Agenda Item

Jennie Turner,

Presenter of Agenda Item

Jennie Turner



Currituck County

Planning and Community Development Department
 Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055 FAX 252-232-3026

To: Planning Board

From: Planning Staff

Date: April 2, 2019

Subject: PB 19-07 Currituck County – Dune Protection

Currituck County is submitting a text amendment to the Unified Development Ordinance, Chapter 7: Environmental Protection Standards and Chapter 10: Definitions and Measurement to strengthen protection of the ocean shoreline dune system and establish setbacks for oceanfront accessory structures and uses.

The County's Code of Ordinances Section 10-125 should also be amended to state that the most restrictive ordinance shall apply if there is a conflict with North Carolina regulations.

Background

Coastal development in Currituck County is regulated by the State of North Carolina through the Coastal Area Management Act (CAMA). CAMA regulates development along the oceanfront shoreline through specific development standards and setbacks.

Currituck County recognizes the importance of maintaining a healthy and continuous dune system along the ocean shoreline. A healthy dune system serves as a protective barrier between the ocean and physical development. This proposed ordinance amendment establishes greater protection for the ocean shoreline dune system and encourages responsible development which minimizes impacts to the dune system.

Text Amendment Review Standards

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
2. Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is consistent with the purpose and intent of the zoning districts in this Ordinance,

PB 19-07 Currituck County (Dune Protection)
 Text Amendment
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- or would improve compatibility among uses and ensure efficient development within the county;
6. Would result in a logical and orderly development pattern; and
 7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

Staff Recommendation

The 2006 Land Use Plan establishes Ten Land Use and Development Goals including the following:

Goal 1: To protect and conserve the area's natural beauty and coastal resources as the County's greatest asset for economic development and a high quality of life.

Goal 6: To preserve critical natural areas as the source of biological diversity and productivity of the County's ocean and estuarine environments.

Staff recommends approval of the request as submitted and suggests the following Reasonableness and Consistency Statement:

The requested zoning text amendment is consistent with the goals, objectives, and policies of the 2006 Land Use Plan including:

1. MARITIME FORESTS and SAND DUNES shall receive a high level of environmental protection and special consideration when reviewing public and private sector development proposals in Currituck County. (POLICY ES7)

The request is reasonable and in the public interest because:

1. It provides greater protection to the public health, safety and general welfare by increasing protection of the oceanfront dune system.
2. It improves conservation of the natural resources and environmental quality of the county through increased dune protection and additional setback requirements for accessory structures.
3. It improves protection of development and residents from flooding and other natural hazards through increased dune protection and additional setback requirements for accessory structures.

Please note: North Carolina Administrative Code (NCAC) referenced below is included in the agenda packet.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Chapter 7. Environmental Protection Standards is amended by adding the following language:

7.8. PROTECTION OF DUNE SYSTEM

7.8.1 Purpose and Intent

The purpose of this section is to limit the impacts of development on or near frontal and primary dunes. These regulations limit structures and activities within the dune system to assist with dune system preservation and protective and aesthetic value.

7.8.2 Applicability

These standards are applied to development and excavation on or near frontal and primary dunes.

7.8.3 Standards

The following standards shall apply to development located on a lot or tract containing a frontal or primary dune.

A. Dune Protection

- (1) Excavating, degrading or disturbing a frontal or primary dune for any purpose other than those development types permitted by this ordinance is prohibited.
- (2) Areas of disturbed dune vegetation shall be immediately stabilized and replanted.

B. Minimum Setbacks

- (1) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H. 0306.
- (2) Accessory structures or uses that are exempt from the CAMA setback criteria shall not be located within 60' of the first line of stable natural vegetation and shall not be located on a frontal dune or a primary frontal dune. This shall include decks, gazebos, sheds, pools and any other structure which meets the exception criteria established by CAMA in 15A NCAC 07H .0309. This setback shall not apply to dune walkover accesses as defined by this ordinance. Additionally, one (1) dune deck or gazebo may be allowed no

closer than 15 feet to the first line of stable natural vegetation provided that the dune deck or gazebo does not exceed 200 square feet in area.

- (3) Existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to non-conforming structures established in Chapter 8. For the purposes of determining replacement cost, the assessed value of each accessory structure shall be considered individually and shall not be combined with the assessed value of any other structure.

Item 2: That Chapter 10. Definitions and Measurement is amended by adding the following language:

DUNE SYSTEM, FRONTAL DUNE

The first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE

The first mounds of sand located landward of the ocean beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER ACCESS, IMPROVED

A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system.

DUNE WALKOVER ACCESS, UNIMPROVED

A sand walkway or path used for the purposes of providing pedestrian access to the beach which is no more than six feet in width and located in an area where there is no escarpment present between the dune structure and the beach.

ESCARPMENT

The vertical drop or steep slope in the beach profile separating two comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion.

FIRST LINE OF STABLE NATURAL VEGETATION

This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are

naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between the nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property.

Item 3: Statement of Consistency and Reasonableness:

Item 4: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 5: This ordinance amendment shall be in effect from and after the _____ day of _____, 2019.

Board of Commissioners' Chairman
Attest:

Leeann Walton
Clerk to the Board

DATE ADOPTED: _____
MOTION TO ADOPT BY COMMISSIONER: _____
SECONDED BY COMMISSIONER: _____
VOTE: _____AYES _____NAYS
.....

PLANNING BOARD DATE: _____
PLANNING BOARD RECOMMENDATION: _____
VOTE: _____AYES _____NAYS
ADVERTISEMENT DATE OF PUBLIC HEARING: _____
BOARD OF COMMISSIONERS PUBLIC HEARING: _____
BOARD OF COMMISSIONERS ACTION: _____
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____
AMENDMENT NUMBER: _____

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources

Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
- (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.

(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened,

and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
 Eff. September 9, 1977;
 Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
 RRC Objection due to ambiguity Eff. January 24, 1992;
 Amended Eff. March 1, 1992;
 RRC Objection due to ambiguity Eff. May 21, 1992;
 Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
 RRC Objection due to ambiguity Eff. May 18, 1995;
 Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
 Temporary Amendment Eff. January 3, 2013;
 Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

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 the Subchapter 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;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (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;
- (8) sand fences; and
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static 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; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas or 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 or static vegetation line, whichever is applicable;
- (3) The development is not located on or in front 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 Subchapter.
 - (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 concrete, asphalt or turfstone may also be used;
 - (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 adjacent building. When the geometry or orientation of a lot 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 Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is 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) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;

- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) 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.

(e) 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.

(f) 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 on those non-oceanfront 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 07K .0203.

(g) 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 07H .0305, 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.

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. 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.

Amount Paid:

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