

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



Alice Derian, ICMA-CM
Town Manager

Aldermen:
Richard Grant
Tom Leonard
Laura Olszewski
Connie Pletl

Nancy Avery
Interim Town Clerk

Issue: **PUBLIC HEARING:** A proposed Ordinance to Amend Article 7 (Flood Damage Prevention), Article 11 (Definitions), and Article 4 (Use Regulations) of the Unified Development Ordinance and CAMA Land Use Plan to Prohibit Pools, Sheds and Gazebos within the Ocean Hazard Setback.

Department: Planning

Prepared by: Deborah J. Hill MPA AICP CFM CZO

Presentation: Attorney James H. "Trey" Ferguson and Attorney Charles J. "Chip" Payson

BACKGROUND At the Planning Board regular meeting on December 12, 2024, Attorney Payson explained that the Board of Aldermen raised issues with construction in the Coastal Area Management Act (CAMA) setback and that they had received a lot of feedback from constituents regarding the matter. The Board wanted to act to protect the beaches, the dunes and the environment, and directed the Planning Board to propose changes to the Town's ordinances that govern construction within the CAMA setbacks to address the environmental concerns and public health and safety related beach erosion.

Attorney Payson presented two drafted documents for the Planning Board's consideration: a resolution of plan consistency required by statute, and several proposed amendments to the code of ordinances and the Town's comprehensive plan. Mr. Payson advised the Planning Board to consider if the proposed changes were: reasonable, appropriate, rational, achieve and support the goals intended, in the public interest, advance the public good, serve a legitimate public interest, and consistent with the Town's comprehensive plan. If so, he advised the Planning Board to make a motion and vote on the resolution for the matter to advance to the Board of Aldermen.

Attorney Payson explained the Board of Aldermen wanted feedback from the Planning Board immediately and advised that the Planning Board take action at this meeting.

Attorney Payson explained the four proposed amendment sections: Article 7 (Flood Damage Prevention Ordinance) of the Town's Unified Development Ordinance (UDO), Article 4 (Use Regulations) of the Town's UDO, Section 5 of the CAMA Land Use Plan, and Article 11 (Definitions) of the Town's UDO.

Attorney Payson read the list of ten activities allowed within the CAMA setbacks from the Town's CAMA Land Use Plan. He then explained the three proposed prohibited activities: unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less; 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; and swimming pools. Attorney Payson explained that once

the Planning Board made their recommendation, the Board of Aldermen may make any changes that they deem necessary.

There was discussion, including the construction and replacement of oceanfront decks and oceanfront swimming pools. There was discussion regarding the ability of property owners to repair or replace existing damaged swimming pools and decks located within the CAMA setbacks. The Planning Board requested revisions to the proposed text amendments. Attorney Payson revised the proposed amendments document.

The Planning Board unanimously adopted the resolution that the proposed amendment to the Town's Unified Development Ordinance as amended by the Attorney this evening is in accordance with all officially adopted plans, including the comprehensive plan.

RECOMMENDATION That the Board of Aldermen:

- 1) Conduct a legislative public hearing to solicit comments from the public (**attachment 1**);
- 2) Consider types of development that should be permitted or prohibited seaward of the oceanfront setback requirements (**attachment 2**);
- 3) Accept the Planning Board's Resolution stating that the proposed amendment to the Town's Unified Development Ordinance is in accordance with all officially adopted plans, including the Comprehensive Plan (**attachment 3**); and
- 4) Approve the proposed Ordinance to Amend Article 7 (Flood Damage Prevention), Article 11 (Definitions), and Article 4 (Use Regulations) of the Unified Development Ordinance and CAMA Land Use Plan, as presented or amended (**attachment 4**).

ATTACHMENTS

1. Notice of Public Hearing published 12-21, 28; "Sunshine List," Message Board and Town website.
2. 15A NCAC 07H .0309 (a) (1)-(6) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS.
3. Statement of Plan Consistency (Resolution by the Planning Board).
4. Ordinance Amendment (as proposed to the Planning Board, subject to change).

Town of North Topsail Beach
Board of Aldermen
Notice of Public Hearing

North Topsail Beach Board of Aldermen will conduct a legislative public hearing at Town Hall, 2008 Loggerhead Court on January 8, 2025, at 11:00 AM or soon thereafter to solicit comments from the public; consider types of development that should be permitted or prohibited seaward of the oceanfront setback requirements; and possibly act on a proposed Ordinance to Amend Article 7 (Flood Damage Prevention), Article 11 (Definitions), and Article 4 (Use Regulations) of the Unified Development Ordinance and CAMA Land Use Plan and the Planning Board's Resolution stating that the proposed amendment to the Town's Unified Development Ordinance is in accordance with all officially adopted plans, including the Comprehensive Plan. Substantial changes to these proposals may be made following the public hearing.

The Statement of Plan Consistency and proposed text amendments to the Unified Development Ordinance and CAMA Land Use Plan are available for review at Town Hall, Mon. – Fri., 8:00 am – 5:00 p.m. and online at www.northtopsailbeach-nc.gov/meetings.

Deborah J. Hill MPA AICP
CFM CZO
Planning Director
12-21, 28, 2024

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.

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EXHIBIT 3

AS AMENDED THE RESOLUTION STATING THAT THE PROPOSED AMENDMENT TO THE TOWN'S UNIFIED DEVELOPMENT ORDINANCE IS IN ACCORDANCE WITH ALL OFFICIALLY ADOPTED PLANS, INCLUDING THE COMPREHENSIVE PLAN.

WHEREAS, the North Carolina General Assembly has given the Town of North Topsail Beach ("Town") the authority to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas that are consistent with the requirements of Part 6, Article 21, of Chapter 143 of the General Statutes, N.C. Gen. Stat. § 143-215.54; and,

WHEREAS, the North Carolian General Assembly has also given the Town the authority to adopt and amend zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of its citizens; and,

WHEREAS, prior to consideration by the Town Board of Alderman ("Board of Alderman") of proposed ordinances amendments and amendments to the Town's comprehensive plan attached hereto and incorporated herein, N.C. Gen. Stat. § 160D-604(d) requires the Town of North Topsail Beach Planning Board ("Planning Board") to advise and comment on whether the proposed text amendment is consistent with any comprehensive plan, and N.C. Gen. Stat. § 160D-604(d) further provides that the Planning Board shall provide a written recommendation to the Board of Alderman that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that the proposed text amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Alderman; and,

WHEREAS, N.C. Gen. Stat. § 160D-604(c) also allows any development regulation other than a zoning regulation be referred to the Planning Board for review and comment; and,

WHEREAS, at its December 4, 2024, meeting the Board of Alderman directed, referred, and requested potential amendments to the Town's ordinances and the Town's comprehensive plan to address construction activities within the ocean hazard setback for development for the purposes of addressing environmental and property damage resultant from said construction and to address the adverse impact of said development as it relates to the public health and safety and increased beach erosion and flood damage of the same; and,

WHEREAS, the Planning Board has in fact met to consider and evaluate the proposed amendments, attached hereto as Exhibit A and incorporated herein by reference; and,

WHEREAS, the Planning Board considers the Proposed Amendments to be consistent with the Town's officially adopted plans, including the Town's comprehensive land use plan, because the proposed amendments appropriately address increased risk of damage to the environment and property as well as protecting the public health and safety and natural resources related to increased beach erosion and flood damage related to development within the AEC setback; and,

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Planning Board finds that the proposed text amendments, are in accordance with all officially adopted Town plans, including any comprehensive plan, and that the proposed amendment is reasonable and in the public interest; therefore, the Planning Board finds this amendment to be reasonable and in the best interest of the public health, safety, morals, and general welfare.

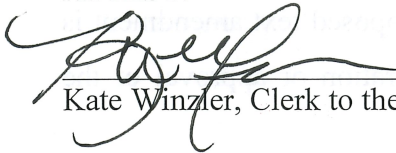
This Resolution is effective upon its adoption this 12th day of December, 2024.

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Fred Fontana, Vice Chair

ATTEST:



Kate Winzler, Clerk to the Planning Board

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EXHIBIT 4

An Ordinance to Amend
Article 7 (Flood Damage Prevention), Article 11 (Definitions), and Article 4 (Use Regulations)
Of the Unified Development Ordinance, and of the CAMA Land Use Plan

WHEREAS, the General Assembly has expressly stated that it is the express policy of the State to achieve and maintain for its citizens “a total environment of superior quality” and that it is the State’s responsibility to preserve and develop water and air resources in the best interest of all the State’s citizens and that such prudent utilization of these resources are essential to the general welfare, N.C. Gen. Stat. § 143-211, and,

WHEREAS, the General Assembly has authorized local governments to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas that are consistent with the requirements of Part 6, Article 21, of Chapter 143 of the General Statutes, N.C. Gen. Stat. § 143-215.54, and,

WHEREAS, the purpose of Part 6, Article 21, of Chapter 143 of the General Statutes is to:

- (1) Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage;
- (2) Prevent and minimize loss of life, injuries, property, damage, and other losses in flood hazard areas; and
- (3) Promote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas.

N.C. Gen. Stat. § 143-215.52, and,

WHEREAS, the General Assembly has expressly stated that it is the “continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony,” N.C. Gen. Stat. § 113A-3, and,

WHEREAS, N.C. Gen. Stat. § 113A-115.1(b) prohibits any person from constructing a permanent erosion control structure in an ocean shoreline, and,

WHEREAS, the General Assembly has authorized local governments to adopt zoning ordinances in accordance with a comprehensive plan designed to promote public health, safety, morals, and general welfare of the community, N.C. Gen. Stat. §160D-701, and,

WHEREAS, the Town finds that certain structures, decks, swimming pools, non-vegetated screenings or non-vegetated buffers constructed on the ocean shoreline create similar effects of a permanent erosion control structure; cause increased damage during flooding events; pose significant risk of property damage; threatens the public health, safety, and welfare of citizens; and jeopardizes the natural resources of the Town's ocean shoreline and beaches, and,

NOW, THEREFORE, AFTER RECEIVING COMMENTS AT A PUBLIC HEARING, CONSIDERING RECOMMENDATIONS OF THE TOWN PLANNING BOARD, AND ENGAGING IN ITS OWN DELIBERATIONS AND CONSIDERATIONS, BE IT ORDAINED BY THE BOARD OF ALDERMAN AS FOLLOWS:

SECTION I

1. That Article 7: Flood Damage Prevention, § 7.05: Provisions for Flood Hazard Reduction, subsection (G)(1) *Coastal high hazard area (Zones VE and AE)*, be amended as follows:

- (1) All new ~~construction and substantial improvements~~ development and accessories shall:
 - (a) Be located landward ~~of the reach of the mean high tide~~ ocean hazard setback for development as determined by the Division of Coastal Management in 15A NCAC 07H .0306, and any amendments thereto;
 - (b) Comply with all applicable ~~CAMA setback requirements~~ ocean hazard setbacks for development in 15A NCAC 07H .0309 except for 15A NCAC 07H .0309(a) (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), and (9) (swimming pools) which are hereby prohibited within the ocean hazard setback.

SECTION II

1. That within Article 4: Use Regulations, § 4.03.09: Outdoor Swimming Pools, Spas and Hot Tubs, be amended as follows:

(A) Setbacks. All swimming pools shall meet the following requirements, in addition to setbacks and other requirements specified elsewhere:

(1) Swimming pools may be permitted ~~consistent with CAMA's general use standards for Ocean Hazard Area of Environmental Concern (AEC) pursuant to G.S. 15A NCAC 07H.0309~~ landward of the ocean hazard setback for development as determined by the Division of Coastal Management in 15A NCAC 07H .0306, and any amendments thereto.

SECTION III

1. Section 5: Goals & Implementing Strategies, “Town of North Topsail Beach, NC 2019 CAMA Land Use Plan Update,” P. 14, be amended as follows:

P.14 The Town allows development within the defined ~~inlet hazard areas~~ areas of environmental concern (“AEC”) within the Town’s planning jurisdiction, assuming the development is consistent with ~~all local zoning and subdivision regulations;~~ the Unified Development Ordinance, Comprehensive Plan, and the 15A NCAC 7H use standards, and the following use standards:

- (1) The only new structures allowed in inlet hazard areas shall be single-family structures.
- (2) Established common-law and statutory public rights of access to the public trust lands and waters in inlet 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;

- (3) Shoreline stabilization structures shall be permitted in conjunction with NCDEQ permitting and policy standards;
- (4) All other rules in this subchapter pertaining to development in the ocean hazard areas shall be applied to development within the inlet hazard areas;
- (5) The following types of development shall be exempted from these inlet hazard area setback requirements:
- parking areas with clay, packed sand, or similar surfaces;
 - beach accessways consistent with 15A NCAC 7H use standards;
 - temporary amusement stands; and
 - reconstruction of existing duplex residential structures deemed substantially damaged.
- (6) The following types of development shall be prohibited:
- unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
 - 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; and
 - swimming pools.
- (67) In all cases, development shall only be permitted if it meets other applicable 15A NCAC 7H inlet hazard areas use standards; is landward of the ~~vegetation line~~ ocean hazard setback for development as determined by the Division of Coastal Management in 15A NCAC 07H .0306, and any amendments thereto; and involves no significant alteration or removal of primary or frontal dunes or the dune vegetation.
- NOTE: This policy exceeds the minimum use standards.

SECTION IV

1. **Severability.** Should any section or provision of this Ordinance be declared under any applicable law or by a court of competent jurisdiction to be unconstitutional or invalid, such

declaration or decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

2. **Effective Date.** This ordinance is effective upon adoption.

3. Any use that as a result of the adoption of this ordinance becomes nonconforming may continue provided that such use is not subsequently enlarged or extended in any way. If the nonconforming use is damaged or destroyed, it may be repaired and/or replaced within twelve (12) months from the date of damage or destruction, within the original footprint provided the application meets all 15A NCAC 07H requirements for the structure or accessory. The Planning Director is authorized to extend the application period an additional twelve (12) months.

Adopted and effective this ____ day of _____, 2024.

TOWN OF NORTH TOPSAIL BEACH

(Town Seal)

Joann McDermon, Mayor

Attest:

Town Clerk

Printed Name: _____

LSS 169894