

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,

A handwritten signature in black ink, appearing to read 'C. Moore', is centered on the page. The signature is fluid and cursive, with a large initial 'C' and a long horizontal stroke at the end.

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