

# Town of North Topsail Beach

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

Aldermen:  
Richard Grant  
Connie Pletl



Alice Derian, ICMA-CM  
Town Manager

Melinda Mier  
Town Clerk

*Nature's Tranquil Beauty*

## Planning Board

### Agenda

Thursday, September 8, 2022, at 5:00 PM  
2008 Loggerhead Court, North Topsail Beach NC 28460

- |       |  |                      |
|-------|--|----------------------|
| I.    | Call to Order  | 5:00 p.m.            |
| II.   | Adoption of Agenda   | 5:01 p.m.            |
| III.  | <del>Approval of Minutes, August 11, 2022</del>  | <del>5:02 p.m.</del> |
| IV.   | Public Comment   | 5:04 p.m.            |
| V.    | Old Business   |                      |
|       | A. Rules of Procedure  | 5:15 p.m.            |
| VI.   | New Business   |                      |
|       | Sea shells and sea turtles (Town Code Article 10 Sand Dune Protection § 10-47 EXEMPTIONS.)                     |                      |
| VII.  | Discussion   | 6:45 p.m.            |
|       | A. <b>Regional Planning Board Workshops May 2023 regional locations and online</b>                             |                      |
|       | B. 2022 North Carolina Legislation Related to Planning and Development Regulation                              |                      |
|       | C. <a href="#">2021 North Carolina Legislation Related to Planning and Development Regulation</a>              |                      |
|       | D. <a href="#">Short Term Rentals</a>  |                      |
|       | E. <a href="#">2021 North Carolina Land Use Litigation</a>   |                      |
|       | F. <a href="#">Remote Meetings, Appointed Boards</a> statewide state of emergency will end on August 15, 2022. |                      |
|       | G. <a href="#">Remote Meetings, QJ Board</a> avoid remote QJ meetings.   |                      |
| VIII. | Adjournment  | 7:00 p.m.            |

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

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

# Town of North Topsail Beach

## Planning Board

### Rules of Procedure

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#### Rule 1. Regular Meetings

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

#### Rule 2. Organizational Meeting

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

#### Rule 3. Agenda

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

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

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

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

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

#### **Rule 4. Public Address to the Board**

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

#### **Rule 5. Order of Business**

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

Discussion and revision of the proposed agenda; adoption of an agenda

Approval of the minutes

Public comment

Unfinished business

New business

Discussion

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

#### **Rule 6. Presiding Officer**

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

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

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

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

The presiding officer shall have the following powers:

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

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

#### **Rule 7. Action by the Board**

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

#### **Rule 8. Second Not Required**

Any motion requires a second.

#### **Rule 9. One Motion at a Time**

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

## Rule 10. Substantive Motions

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

## Rule 11. Adoption by Majority Vote

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

## Rule 12. Voting by Written Ballot

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

## Rule 13. Debate

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

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

## Rule 14. Ratification of Actions

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

## Rule 15. Procedural Motions

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

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

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

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

**Motion 3. To Take a Brief Recess.**

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

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

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

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

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

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

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

**Motion 11. To Amend.**

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

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

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

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

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

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

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

#### **Rule 16. Renewal of Motion**

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

#### **Rule 17. Withdrawal of Motion**

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

#### **Rule 18. Duty to Vote**

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

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

#### **Rule 19. Special Rules of Procedure**

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



## **Rule 20. Quorum**

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

## **Rule 21. Public Hearings**

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

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

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

## **Rule 22. Minutes**

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

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

### Rule 23. Appointments

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

### Rule 24. Committees and Boards

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

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

### Rule 25. Amendment of the Rules

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

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

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



*Town of North Topsail Beach*  
Board of Aldermen

Agenda  
Item:  
Date: 9/8/2022

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**Issue:** Dune Protection and Remediation: Proposed Text Amendments to UDO §10.07.02 Rebuilding of Damaged Dunes & Town Code Article 10 Sand Dune Protection

**Department:** Planning

**Prepared by:** Deborah J. Hill MPA AICP CFM CZO

**Presentation:** Yes

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**BACKGROUND** Pursuant to NCGS § 160D-301 (b) (4), the Planning Board is assigned the power and duty to advise the Board of Aldermen concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.

On August 11, 2022, the Planning Board reviewed UDO plat requirements for development permits; specifically, requirements for ocean front lots with respect to the dune. The Planning Board also discussed the both the Unified Development Ordinance §10.07.02 Rebuilding of Damaged Dunes and Town Code Article 10 Sand Dune Protection.

In their review of Town Code Article 10 *Sand Dune Protection*, the Planning Board recommends that the Town Manager (or designee) has the authority to enforce; that each day unrepaired is a separate offense; and that the exceptions pertaining to development in § 10-49 be deleted, as development is addressed in the UDO.

In their review of Unified Development Ordinance §10.07.02 *Rebuilding of Damaged Dunes*, the Planning Board discussed a dune buffer, non-conforming status for existing encroachments into the buffer, additions or improvements to existing structures, fines, as well as dune restoration.

By a vote of 2 to 1, the Board of Aldermen approved the Ordinance to Amend Unified Development Ordinance §10.07.02 Rebuilding of Damaged Dunes and Ordinance to Amend Town Code Article 10 Sand Dune Protection.

**Board of Aldermen Direction 9/8: for the Planning Board to consider proposing an amendment deleting § 10-47 (a); to consider proposing an amendment under § 10-47 EXEMPTIONS allowing for exemptions of activities for wild life care by recognized groups or individuals (see minutes or video for exact).**

**ATTACHMENT**

1. Ordinance to Amend Unified Development Ordinance §10.07.02 Rebuilding of Damaged Dunes
2. Ordinance to Amend Town Code Article 10 Sand Dune Protection
3. Public Notice

Ordinance 22-00\_\_

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NORTH TOPSAIL BEACH, NORTH CAROLINA TO PROVIDE DUNE PROTECTION MEASURES, MANDATORY REMEDIATION FOR DAMAGED DUNES AND SET FINES**

**WHEREAS**, N.C. General Statutes 160 D Article 6 created new standards for the procedure for adopting, amending, or repealing development regulations that apply throughout North Carolina; and

**WHEREAS**, pursuant to N.C. General Statutes § 160D-601 a notice of the hearing has been given once a week for two successive calendar weeks in the Jacksonville Daily News.

**WHEREAS**, pursuant to N.C. General Statutes § 160D-603 if any resident or property owner in the town submits a written statement regarding this proposed amendment that has been properly initiated as provided in G.S. 160D-601, to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Board of Aldermen.

**WHEREAS**, pursuant to N.C. General Statutes § 160D-604 the Planning Board has reviewed the proposed standards and recommended approval of this ordinance; and

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

**WHEREAS**, the Board of Aldermen has determined that is in public interest to update standards for dune protection measures, mandatory remediation for damaged dunes and set fines in the Unified Development Ordinance in compliance with the N.C. General Statutes.

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

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

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

**§ 10.07.02 REBUILDING OF DAMAGED DUNES.**

- (A) ~~Any~~ All dunes in the ~~required natural area~~ Ocean Hazard Area that ~~is~~ 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 ~~60~~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 is in conflict 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.

(Ord. passed 11-2-2011)

This ordinance is effective upon its adoption.  
Adopted this the 7<sup>th</sup> day of September, 2022.

APPROVED:

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Joann McDermon, Mayor

(Seal)

ATTEST:

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Melinda Mier, Town Clerk

## Ordinance 22-00\_

**ORDINANCE PROTECTING SAND DUNES**

**BE IT ORDAINED** by the Board of Aldermen of the Town of North Topsail Beach, North Carolina that the Code of Ordinances be amended by inserting a new Article IV of Chapter 10 and numbering the sections et seq. accordingly. New Article IV to read:

**ARTICLE IV. SAND DUNE PROTECTION**

## § 10-44 FINDINGS OF FACT AND PURPOSE.

(a) The sand dunes within the town are a topographical feature unique to coastal areas, and are a tourist attraction as well as a protective barrier against the dangers of wind, flood and erosion. The sand dunes make a vital contribution to the nature and character of the town as a coastal resort community. The town believes the sand dunes should be preserved, and development on the sand dunes within the town controlled in a manner compatible with their preservation.

(b) This article is adopted to preserve and promote the protection of the town by maintaining the existence of natural and constructed dunes that help protect it from the danger of flooding and erosion, and land against the actions of sand, wind and water. The practice of destroying sand dunes and removing vegetation therefrom within the town constitutes a serious threat to the safety of adjacent properties. This article is therefore adopted for the health, safety and welfare of persons living, visiting or sojourning to and in the town, and for the protection of public and private property.

(c) As used in this article, the phrase SAND DUNE shall mean any and all manmade or natural mound of sand, regardless of size. This includes, but is not limited to, natural dunes, man-made or constructed dunes, berms, sand formations created by a beach/dune push or scrape, individual sandbags, sandbag walls, and sandbag revetments.

(d) The term FRONTAL DUNE used in this article shall refer to the first manmade or natural mound of sand landward of the highwater mark of the Atlantic Ocean, regardless of height or width, considered to be the first line of defense against impending tides and/or storm surge.

(Ord. 2015-10, passed 10-1-2015; Ord. -, passed - -)

## § 10-45 CONFLICTS WITH STATE RULES.

If any provision of this article is in conflict 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.

(Ord. 2015-10, passed 10-1-2015; Ord. -, passed - -)

## § 10-46 TERRITORIAL APPLICABILITY.

This article shall apply to sand dunes within the corporate limits and boundaries of the town.  
(Ord. 2015-10, passed 10-1-2015)

#### § 10-47 EXEMPTIONS.

The provisions of this article do not apply to:

(a) The removal of sand, seashells or similar materials for souvenir value in such amounts as may be carried upon the person;

(b) Any activity authorized or allowed by G.S. § 113A-103(5)(b)5. for emergency maintenance and repair.

(c) Any activity conducted by a federal or state agency for beach renourishment and protection.

(Ord. 2015-10, passed 10-1-2015)

#### § 10-48 ENFORCEMENT.

This article shall be enforced by the local Coastal Area Management Act (CAMA) officer and law enforcement officers of the town. If no person is serving in the capacity of local CAMA officer, this article shall be enforced by the ~~Building Inspector~~Town Manager or such person ~~in the Inspections Department~~ as may be designated by the ~~Building Inspector~~Town Manager.

(Ord. 2015-10, passed 10-1-2015)

Statutory reference:

Coastal Area Management Act of 1974, see G.S. 113A-100 et seq.

#### § 10-49 DAMAGING SAND DUNES.

(a) (1) It shall be unlawful for any person to walk over, cross over, stand, sit, walk, run, or otherwise loiter upon any sand dune except to cross at an authorized, marked crossover or designated beach access.

(2) It shall be unlawful for any person to place any items, belongings, or beach equipment upon any dune at any time.

(b) It shall be unlawful for any person to damage, destroy or remove any sand dune or part thereof, or to kill, destroy or remove any trees, shrubbery or other vegetation growing on sand dunes, ~~except in the following locations:~~

~~—(1) The area within the foundation perimeter of any existing structure or any structure to be constructed, as shown on the survey or site plan submitted to the Building Inspector as part of the building permit application process, or to the Planning Board as part of the site plan review process.~~

~~—(2) An area around the perimeter of an existing building or proposed principal building not to exceed a width of 12 feet from the building foundation perimeter.~~

~~—(3) The area within the boundaries of existing driveways and parking areas, or driveways and parking areas to be constructed in accordance with a survey or site plan approved by the Planning Board or other appropriate reviewing town official.~~

~~—(4) On commercial, multifamily, group development, or planned unit development site plans that have been approved by the Planning Board (and Board of Aldermen if required), those areas delineated and designated on the site plan for land-disturbing activity, provided such land-disturbing activity is also undertaken pursuant to the Coastal Area Management Act.~~

~~—(5) In hard-surfaced designated recreation areas.~~

~~—(c) Subsection (b) of this section does not apply to any of the following:~~

~~—(1) Landscaping activities and garden plots, provided the original dune contour is not altered.~~

~~—(2) Water, sewage, or wastewater disposal systems and drainfields.~~

~~—(d) For the purposes of this article, a property owner, or his or her agent, shall be entitled to specify, either by means of their permit for crossover construction or by other written communication to the town, the location on their frontal dune of the private crossover they intend to use. If no crossover location on the frontal dune has been so designated by the property owner, or his or her agent, none shall be construed.~~

~~(Ord. 2015-10, passed 10-1-2015; Ord., passed )~~

~~Cross-reference:~~

~~—Vehicles on beaches, see §§ 10-30 et seq.~~

#### § 10-50 REPAIRING DAMAGE CAUSED BY VIOLATIONS.

It shall be unlawful to fail to repair or restore dunes or vegetation damaged by not complying with this article. Any dune-disturbing activity shall be immediately repaired in accordance with requirements of the Coastal Area Management Act. Failure to repair damage to dunes and vegetation shall constitute a separate violation for each ~~ten days~~ day that such failure continues after written notification by the ~~CAMA officer~~ Town Manager or designee.

(Ord. 2015-10, passed 10-1-2015)

#### § 10-51 CRIMINAL PENALTY.

Any person, ~~firm or corporation~~ who violates any section of this article shall be guilty of a misdemeanor and will be punished by a fine of up to a maximum of \$500, depending on the severity of the damage.

(Ord. 2015-10, passed 10-1-2015)

#### § 10-52 CIVIL PENALTY.

If any person, ~~firm or corporation~~ continues to violate or further violates any provision of this article, that person shall be liable to the town for a civil penalty of not less than \$500.

(Ord. 2015-10, passed 10-1-2015)



§ 10-53 SEVERABILITY.

If any section of this article be decided by a court of competent jurisdiction to be unconstitutional or invalid, it shall not affect the validity of this article as a whole, or any section thereof, other than the section so declared to be unconstitutional or invalid.

(Ord. 2015-10, passed 10-1-2015)

This ordinance is effective upon its adoption.  
Adopted this the 7<sup>th</sup> day of September, 2022.

APPROVED:

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Joann McDermon, Mayor

(Seal)

ATTEST:

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Melinda Mier, Town Clerk

## 4. Maximum Size for Parking Spaces

- G.S. 160D-702 amended to state local regs shall not
- “[s]et a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.”
- [S.L. 2022-11](#) (S.B. 372)

# 2022 North Carolina Legislation Related to Planning and Development Regulation

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NCAZO DRAFT

After a very long “Long Session” that spilled over from 2021 into 2022, the North Carolina General Assembly convened in May 2022 for the “Short Session.” The main purpose of the Short Session is to adjust the state budget passed in the prior year, but the legislature also takes up other matters. This year the Short Session included a variety of planning and development regulation-related topics. State leaders extended the deadline for small towns to adopt a land use plan; adopted notable, if technical, changes to a mix of zoning, building code, and environmental standards; and updated the rules and regulations for social districts, among other things. This bulletin summarizes the legislation related to planning and development regulation.

## I. Checklist for Local Government Actions

Due to the number and variety of bills reviewed and passed in the 2022 legislative session, local governments may want to use the following checklist to ensure local codes, policies, and practices are up to date:

- Small towns (population under 1,500) have until July 1, 2023, to adopt a land use plan or comprehensive plan if the town wants to enforce zoning. For other jurisdictions, the deadline was July 1, 2022.
- Amend development regulations to ensure maximum sizes for parking spaces adhere to G.S. 160D-702.
- Note the slightly revised procedures for designating local historic landmarks.
- Building inspectors should take note of the changes to the building code exclusion for farm uses and zoning officials should note the expanded scope of the bona fide farm use zoning exception.
- Note that the state building code will not require more than one fire access road for developments of one- or two-family dwellings where there are fewer than 100 dwelling units.
- Amend development regulations to align appeals of subdivision plat decisions with the clarified statutory rules.
- Ensure the local government has designated an official to oversee the local government’s statutory duties related to building code inspections (listed at G.S. 160D-1104).
- Prepare and publish an annual financial report on how permitting fees are used to support administration of building code enforcement as required at G.S. 160D-402(d)). Reporting is due by October 1 of 2023, 2024, and 2025.
- If you have received direct allocations from the State Fiscal Recovery Fund or the Local Assistance for Stormwater Infrastructure Investments Fund, submit a complete Request for Funding form and project budget no later than June 30, 2023.
- Update local notice requirements for CAMA land use plan amendments.

inventory may be undertaken “at the earliest possible time and consistent with the resources available to [the commission].” The inventory, and any updates to it, must be submitted to the Office of Archives and History of the Department of Natural and Cultural Resources (DNCR).

As a reminder, prior to designating a local landmark or acquiring any property, a local government must take the following steps. These rules are essentially the same as before, with one minor procedural change noted.

- The preservation commission must prepare and adopt rules of procedure and principles and standards for landmarks.
- The preservation commission must prepare and forward to the DNCR an investigation and report on the proposed landmark designation or acquisition.
- DNCR has 30 days to provide written comments. Newly added language provides that after 30 days the local government may move forward without comment from the DNCR.
- The preservation commission and governing board must hold legislative hearings, separately or jointly, on the proposed designation. Notice is provided in accordance with G.S. 160D-601.
- The local government must provide written notice of designation to the owners and occupants of the designated landmark within a reasonable time.
- A copy of the designation must be filed with the register of deeds, the municipal clerk (if applicable), and the building inspector. Additionally, landmark designation shall be clearly indicated on the tax map.
- The preservation commission must provide notice to the county tax supervisor of any designation or amendment to a designation.

#### C. Charter School Land Use Approvals

When a charter school is first chartered, there may be deadline to begin operations or commence the term of its charter. Section 2 of S.L. 2022-75 (H.B. 911) amends G.S. 115C-218.5 to allow the charter school to extend such deadlines if the charter school is seeking land use or development approvals or challenging the denial of land use or development approvals.

#### D. Chapter 160D Technical Corrections,

In 2019 the General Assembly adopted a comprehensive rewrite of the enabling legislation for local planning and zoning in North Carolina, codified as Chapter 160D. As with any major legislative undertaking, it needed technical corrections and cleanup. During the 2022 legislative session, technical corrections for Chapter 160D were adopted as S.L. 2022-62 (S.B. 768). The changes are clerical in nature—correcting cross-reference citations and updating phrasing and word choice.

#### E. Zoning Consistency

G.S. 160D-706 addresses conflicts between Chapter 160D regulations and other development regulations. This section, which has long been in the zoning statutes provides that when zoning and any other state or local regulation both address yard size, height of structures, or maximum lot coverage, the stricter of the two regulations applies.

In 2021, S.L. 2021-168 amended that section to add the phrase, “Unless otherwise prohibited by G.S. 160A-174(b) with respect to cities.” That statute, G.S. 160A-174(b), provides that a local ordinance may not infringe on constitutional liberties nor contravene established state and federal law. The amended

documentation that G.S. 160D-903(a)(1) through (4) considers “sufficient evidence that the property is being used for bona fide farm purposes.”

Section 2 also clarifies that the four documents that can serve as sufficient evidence of bona fide farm use (sales tax exemption certificate, property tax listing showing present use valuation, federal Schedule F, or forest management plan) are not the only evidence that can be considered in determining whether property is in bona fide farm use.

## V. Land Subdivision

### A. Fire Apparatus Access

In 2021, the General Assembly modified the State Building Code to relax the requirements relating to fire access and sprinkler requirements for low density residential developments (S.L. 2021-121 (H.B. 489), Section 6). This year, S.L. 2022-11 (S.B. 372), further amends that language. Under the language: “The [North Carolina Building Code] Council shall not require two or more separate and approved fire apparatus access roads in developments of one- or two-family dwellings where there are fewer than 100 dwelling units.”

### B. Appeals of Subdivision Decision

The proper procedure for an appeal of a subdivision plat decision has long been unclear. This stemmed from a lack specificity in the statutes and a variety of approaches at the local level. Depending on the local standards and procedures, a subdivision plat decision could be any of the following: an administrative decision by a staff person or committee, an administrative decision by an appointed or elected board, or a quasi-judicial decision by an appointed or elected board. Appeals of those different decisions arguably should be treated differently, but the statutes were not clear.

S.L. 2022-62 (SB 768) amends applicable sections of Chapter 160D to clarify the proper appeal procedures for subdivision plat decisions. G.S. 160D-1403 now governs such appeals as follows: If the subdivision plat decision is quasi-judicial in nature, then the appeal goes to superior court in the nature of certiorari, the same as appeals of other quasi-judicial decisions. If the subdivision plat decision is administrative in nature and made by a staff person or a staff committee, then the appeal goes to the board of adjustment, the same as appeals of other staff decisions for development approvals. And, if the subdivision plat decision is administrative in nature and made by an elected or appointed board, the decision goes to superior court for declaratory or equitable relief.

## VI. Fees and Exactions

Section 9 of S.L. 2022-11 (S.B. 372) sets new expectations for the local administration of building inspections and reporting of fees. G.S. 160D-1102 is amended to require that “[e]very local government shall designate a person responsible for the daily oversight of the local government’s duties and responsibilities under G.S. 160D-1104.”

Additionally, the new law sets a new reporting requirement related to permitting fees:

#### D. Fast Track Permitting Study

Those communities where DEQ handles stormwater permitting may be interested to know that the General Assembly has directed DEQ to study approaches to expediting permits under its express permit and certification review program and under its fast-track program for stormwater management permitting. A report is due to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources by December 31, 2022.

#### E. Permitting Shot Clock for Onsite Wastewater

Separate from S.L. 2022-43, discussed above, there were other changes to local environmental regulation. Section 5 S.L. 2022-11 (S.B. 372) establishes a permitting shot clock for local health department review of onsite wastewater permitting. For improvement permits and construction authorizations from qualifying soil specialists, the local health department must act within 10 days of receiving the application and either (1) issue the permit, (2) deny the permit and cite the applicable rules, or (3) identify any additional information needed for an incomplete application. If the health department does not act within 10 days, the department must issue the permit or construction authorization. The new law also specifies the notice that the contractor must provide to the local health department for starting construction and completing construction. And the new law limits liability for the local health department related to these systems.

Additionally, Section 4 extends until January 1, 2023, the emergency authorization for licensed soil scientists to inspect and approve on-site wastewater systems.

#### F. Study Construction Stormwater Regulations

Section 7 of S.L. 2022-11 (S.B. 372) calls upon the Department of Environmental Quality to study the overlap and redundancy between state and federal requirements for stormwater discharges from construction activities. The Department must report its findings no later than September 1, 2022.

### VIII. Building and Housing Code Enforcement

In addition to other changes to building code administration and onsite wastewater permitting, discussed above, S.L. 2022-11 (S.B. 372) requires the NC Building Code Council to promulgate new rules for approval of alternative designs; modifies the classification of electrical contacting licenses; delays implementation of certain wastewater treatment and dispersal rules; updates standards for well grouting certification; amends home inspector licensure; and addresses inspections by Department of Insurance inspectors.

### IX. Relevant ABC Legislation

#### A. Social Districts and Common Area Permits

Over the last few years, the General Assembly has expanded the range of outdoor spaces where one can carry an open alcoholic beverage. In particular, legislation from 2019 and 2021 added two relatively new constructs for drinking outside – common area entertainment permits and social districts, respectively.

- allows a designee of the city or county (including a private entity) to establish management and maintenance plans for the social district, though the plans must ultimately be approved by the local governing body;
- provides for submission of an amended map to the ABC Commission if a social district's boundaries change;
- allows non-permittee businesses to opt to allow customers to enter their property with open containers (the local government is to develop or approve uniform signs for those businesses that choose to "participate" in the social district);
- and defines obligations for customers and for non-permittees who allow customers to bring alcoholic beverages onto their premises.

This legislation also answered a couple of sticky questions that have arisen in the process of creating these areas. One of the questions was what might happen to someone carrying a closed container through a designated outdoor consumption area. For example, what if I live in an apartment in a mixed-use development, I buy a nice Belgian tripel ale from the bottle shop on the other side of a designated common area, and now I have to walk through the designated area to bring it home? The old rules arguably could create a situation where bringing such a closed container into the designated area could be seen as a violation. The new law makes clear that it limits only the carrying of open containers, so that one can carry a closed container in the designated area of a common area entertainment space and in a social district.

Another tricky situation was the question of what happens if a social district and common area entertainment space overlap? A couple of provisions of S.L. 2022-49 address these situations. Section 4 adds a new G.S. 18B-300.2 that allows a local government with a social district and a property owner or owners' association with a common area entertainment permit to enter into a memorandum of understanding that allows open containers to be possessed and consumed across the boundaries of the social district and of the common area entertainment permit area. A new G.S. 18B-300.1(i) also clarifies that businesses located within a social district can participate in the social district even if they are also in a multi-tenant use that has a common area entertainment permit.

#### B. Increased Scope of Alcohol Sales

S.L. 2022-44 (HB 768) makes a number of other changes to alcoholic beverage laws that may be of interest to land use law observers. The most pertinent provision is Section 6, which lifts the requirement that bars operate as "private bars" and serve alcohol only to their members. Until the passage of this law, in order to operate as a bar only, an establishment had to be private, and open only to its members. In practice, this meant that many bars and nightclubs offered "memberships" at the door or with a nominal cover charge to any patrons who entered. As of July 7, 2022, this formality is no longer required.

One other provision may be of note to a few communities: Section 8 of S.L. 2022-44 allows a distillery to obtain a mixed beverages permit in an area where the sale of mixed beverages has not been approved by a local election. In other words, even if the community does not otherwise allow the sale of mixed beverages, the distillery can nonetheless obtain a license and sell mixed beverages containing its own product.

*Airport.* S.L. 2022-36 (S.B. 908) removed the Davidson County Airport from the municipal corporate limits of the City of Lexington. Additionally, the bill required the Airport Authority to purchase a fire station building and equipment from the City for \$2 million.

*Jail Exempt from Zoning.* S.L. 2022-25 (S.B. 909) exempts a certain property from the City of Lexington's Unified Development Ordinances. That property, in Uptown Lexington, is the site where the county intends to build a county jail. The local act also allows that one city council member and one city staff-person will serve on the Davidson County Jail Committee specifically for matters related to the façade, exterior, sidewalks, streetscapes, and plantings. They may not participate nor vote on building programming.

*Annexation.* Finally, annexation in Davidson County may have just got a bit more complicated. S.L. 2022-24 (SB 907) gives Davidson County additional authority over annexations and rezoning of annexed property by municipalities within its borders.

Now, any municipality in Davidson County that intends to adopt an annexation ordinance (unless the annexation is for property to be put to single-family or multi-family residential use) must notify the County Board of Commissioners 10 days in advance of adopting the ordinance. In turn, the Board must hold its own public hearing and can approve or disapprove the annexation.<sup>3</sup>

If the Board disapproves of the annexation, the municipality may not move forward with annexing the subject area for 36 months. While NC counties generally have veto authority over extensions of extraterritorial development jurisdiction in areas where they exercise zoning and subdivision authority,<sup>4</sup> this application to the annexation context is unique.

If the Board does approve the annexation, any rezoning that includes the annexed area must also be approved by the County Board of Commissioners. Presumably, this is intended to apply only to the initial zoning of the property, but the language of the bill is not time-specific.

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<sup>3</sup> Similar legislation requiring cities primarily within Davidson County from adopting an annexation ordinance unless the Board of Commissioners approves the annexation in advance was passed in 2012. That legislation remains in effect and is unchanged by this bill.

<sup>4</sup> See G.S. G.S. 160D-202(c).