



Fact Sheet

Regulating Oceanfront Accessory Structures

Updated June 10, 2013

What is being considered?

The Town of Duck is considering an ordinance that would limit how close pools, decks, and other accessory structures can be constructed to the edge of the dune or “first line of stable natural vegetation.” Also being considered are construction standards for dune walkovers. The **Town Council discussed this item at their June 5, 2013 meeting.** In order to provide additional opportunities for input, the Town Council has scheduled a **second public hearing** on **Wednesday, July 17, 2013 at 1 pm** at the Town of Duck Meeting Hall, 1200 Duck Road.

Why?

The Town wishes to promote a healthy dune system which protects oceanfront property. Principal structures such as houses are required to be setback a certain distance from the dunes. However, there is no specific setback requirement for accessory structures such as pools, decks, and gazebos.

Construction of these structures creates disturbances within the dune and limits vegetation growth, which is the primary means of dune stabilization. The Town is considering options to nourish the Town’s beaches/dune system and these structures create impediments to establishment of a continuous dune system. Creating construction standards and setbacks helps limit the encroachment of these structures on the beach and reduces the potential for damage and debris.

The specifics of what is being considered...

- **The Planning Board is recommending an option which establishes a setback from the “first line of stable natural vegetation.” The first line of stable natural vegetation is generally the most seaward edge of vegetation on the dune. The Planning Board’s recommendation would require pools, decks, dune decks, and gazebos to be located a minimum of 30 feet from this vegetation line.**
- **Pools could not be constructed on piling foundations on the oceanfront.**
- **Dune walkovers cannot exceed four feet in width and must use pilings embedded no deeper than five feet below grade.**
- **Existing structures which do not meet the setback would be allowed to remain as long as they are not substantially damaged or removed. They also cannot encroach on the publicly used portion of the beach.**

How can I find out more or provide input on this issue?

A staff report including background information and a copy of the draft ordinance can be found online at www.townofduck.com/towncouncil/. The public hearing will be held on **Wednesday, July 17, 2013 at 1 pm at the Town of Duck Meeting Hall.** You may email comments to the Town Clerk, Lori Kopec, at lkopec@townofduck.com. Questions or comments can also be directed to the Town’s Director of Community Development, Andy Garman, at 252-255-1234 or at agarman@townofduck.com.

**Draft Ordinance Regulating Structures within the Primary and Frontal Dunes
Town Council Public Hearing – July 17, 2013**

AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF DUCK, NORTH CAROLINA REGULATING STRUCTURES
WITHIN THE PRIMARY AND FRONTAL DUNES

Ordinance No. 13-04

WHEREAS, the Town Council of the Town of Duck may enact ordinances to protect the health, safety, and welfare of its citizens under the North Carolina General Statutes § 160A-174; and

WHEREAS, the Town Council of the Town of Duck may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; and

WHEREAS, the Town recognizes the importance of maintaining a healthy and continuous dune system along its ocean shoreline, which serves as a protective barrier between the ocean and physical development; and

WHEREAS, the Town encourages responsible development which minimizes impacts to the dune system and allows for the buildup of sand and the growth of mature and compatible dune vegetation; and

WHEREAS, the Town acknowledges the benefits of maintaining a setback along its ocean shoreline, as demonstrated through the regulations established by the Coastal Area Management Act, which serves to protect the dunes and dune vegetation as well as improved property; and

WHEREAS, the setback is not currently applied to certain structures including decks, pools, and gazebos and the Town finds that application of a setback to these structures is necessary to maintain the dune system in an undisturbed state; and

WHEREAS, the Town also finds that establishing a setback and construction standards for these structures will enable the Town to more effectively move development landward as erosion occurs; and

WHEREAS, the Town's CAMA Land Use Plan states that the Town's primary goal is to "Preserve, protect, and enhance the Atlantic Ocean Shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities;" and

WHEREAS, this goal is further supported by the following CAMA Land Use Plan goals, objectives and policies:

**Draft Ordinance Regulating Structures within the Primary and Frontal Dunes
Town Council Public Hearing – July 17, 2013**

POLICY #1a: Duck supports the continued management of oceanfront shoreline development to protect and preserve the natural and recreational resources along the oceanfront.

POLICY #1b: Duck will use its police powers to adopt and enforce ordinances and procedures to regulate land use, development, and redevelopment and supports applicable State and Federal laws and regulations regarding building, land uses, and development in areas of environmental concern. Duck reserves the right to review, comment, advocate, or oppose any proposed regulations or programs that may affect the regulation of ocean shoreline areas of environmental concern.

OBJECTIVE #1c: Adopt and apply development policies that balance protection of natural resources and fragile areas with residential and economic development.

OBJECTIVE #1d: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

GOAL #13: Conserve and maintain barrier dunes, beaches, wetlands, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina that the Zoning Ordinance shall be amended as follows:

PART I. Add Town Code Section 156.141 Structures within the Primary and Frontal Dunes, as follows

156.141 STRUCTURES WITHIN THE PRIMARY AND FRONTAL DUNES

(A) *Purpose.* It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the Town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach.

(B) *Definitions*

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

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

**Draft Ordinance Regulating Structures within the Primary and Frontal Dunes
Town Council Public Hearing – July 17, 2013**

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

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

FIRST LINE OF STABLE NATURAL VEGETATION. This line represents the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line, based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes, rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

(C) *Regulatory Standards.*

(1) Dune Walkover Structures. Dune Walkover Structures shall be constructed to entail negligible alteration of the dune. The following construction standards shall apply:

- (a) Dune walkover structures for residential use shall be no wider than four feet and shall be constructed on raised posts or pilings embedded no less than four feet and no greater than five feet below grade. Walkover structures for commercial or public use may be constructed up to six feet in width and shall utilize piling embedment criteria consistent with the North Carolina Building Code.
- (b) The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade.
- (c) Dune walkover structures shall be located such that the first step down to the beach is placed no farther seaward than the beginning of the downward slope of the dune.
- (d) Dune walkover structures shall be constructed so that the staircase turns parallel to the dune if there is more than a 12-foot-vertical rise in the staircase required to provide access to the surface of the beach. The requirement to turn the stairs

**Draft Ordinance Regulating Structures within the Primary and Frontal Dunes
Town Council Public Hearing – July 17, 2013**

shall not apply in instances where it would preclude the placement of the stairs entirely within the subject property.

(2) Setbacks Established for Dune Protection.

(a) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H .0306.

(b) Option 1: Except for dune walkover structures, no accessory structure that is exempt from the CAMA setback criteria shall be located within (**optional: 20 feet/30 feet*/40 feet/60 feet**) of the first line of stable natural vegetation. This shall include decks, gazebos, pools and any other structure which meets the exception criteria establish by the Coastal Area Management Act (CAMA) in 15A NCAC 07H.0309. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property.

Option 2: Except for dune walkover structures, an accessory structure which is located east of the principal structure (optional: within the CAMA building setback) on an oceanfront lot shall not be rebuilt if it is destroyed or damaged by any means to an extent of more than 50% of its replacement cost at the time of destruction. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.**

(c) Existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to non-conforming structures established in Town Code Section 156.073. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.

(d) Pools within the Ocean Erodible Area as defined by CAMA in 15A NCAC 07H.0304 shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation.

(3) Nothing in this section shall preclude the removal of any structure which violates Town Code Section 156.140 – Encroachment of Structures on the Ocean Beach.

**Draft Ordinance Regulating Structures within the Primary and Frontal Dunes
Town Council Public Hearing – July 17, 2013**

PART II. Amend Town Code Chapter 94: Beach and Dune Management, as follows:

CHAPTER 94: BEACH AND DUNE MANAGEMENT

§ 94.04 DEFINITIONS.

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than ~~6~~ four feet in width for single-family dwellings and six feet in width for commercial or publicly owned structures. ~~and~~ Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least ~~4-feet~~ 18 inches above the dune, and shall extend east of the seaward vegetation line.

DUNE WALKOVER ACCESS, UNIMPROVED. A sand walkway or path used for the purposes of providing pedestrian access to the beach which is no more than 6 feet in width and located in an area where there is no escarpment present between the dune structure and the beach.

PART III. Amend Town Code Section 156.140 Encroachment of Structures on the Ocean Beach, as follows:

§ ~~156.063~~ 156.140 ENCROACHMENT OF STRUCTURES ON THE OCEAN BEACH.

(D) (2) *Accessory buildings or structures.* ~~Non-pile supported structures~~ Pools shall not encroach onto the ocean beach beyond the first line of stable natural vegetation or dune escarpment, whichever is most seaward. Pile-supported accessory buildings or accessory structures shall not encroach onto the ocean beach more than 10 feet beyond the seaward toe of the frontal dune, or more than 20 feet beyond the first line of stable natural vegetation, whichever is less.

PART IV. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Kopec, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____AYES _____NAYS

* A 30-foot setback is recommended by the Planning Board.

** Option 2 is not recommended by the Planning Board