

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF DUCK, NORTH CAROLINA REGARDING EXEMPTIONS
GENERALLY AND LAND DISTURBING ACTIVITIES**

Ordinance 25-05

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, in response to a substantial number of special use applications, the Town Council reviewed the history and background regarding fill and retaining wall standards at its February 2025 retreat; and

WHEREAS, the Town Council of the Town of Duck directed the Duck Planning Board to review current fill and retaining walls standards with input from Town Engineer, Mike Robinson and considering best management practices; and

WHEREAS, the Duck Planning Board has considered these standards at multiple public meetings (5) and voted to recommend approval of this ordinance at its public meeting on August 6, 2025; and

WHEREAS, the Town Council has found these text amendments to be consistent with the Town's adopted Comprehensive & CAMA Land Use Plan and 2032 Vision; and

WHEREAS, the Town Council has determined that these amendments are in the public interest by offering property owners resilient strategies to develop and protect their properties and mitigate against floodwaters and sea level rise.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina that Sections 156.050 and 156.128 of the Zoning Ordinance shall be amended as follows:

PART I. § 156.050 WALLS AND FENCES be amended to read as follows:

Unless otherwise noted in Section 156.128, the setback requirements of this chapter shall not prohibit any necessary retaining wall or prohibit any wall or fence. Within any residential district no wall or fence, including a retaining wall or bulkhead, shall exceed 6 feet in height, and within any commercial district no wall or fence, including a retaining wall or bulkhead shall exceed 10 feet in height unless otherwise specifically provided under Section 156.128.

PART I. § 156.128 LAND DISTURBING ACTIVITIES be amended to read as follows:

(A) *Mandatory standards for land disturbance activities.*

- (1) The provisions of this section shall apply to any land disturbance activity regardless of the size of the disturbed area. A land disturbance permit is required as provided in division (B)(1) below.
- (2) Land disturbing activities shall not be permitted within 5 feet of any property line except in accordance with the following provisions:
 - a. Necessary clearing and grubbing may occur within 5 feet from the property line provided no grade change occurs.
 - b. Drainage, stormwater improvements and underground utilities may be located within 5 feet of the property line. These improvements shall be identified on a site plan submission for land disturbing activities.
 - c. Landscaping and fences may be located within 5 feet of the property line provided they do not impede the flow of stormwater.
 - d. Land disturbances on front (street) property lines for driveways may be located within 5 feet of the property line but shall be limited to culvert, drainage, and driveway improvements and shall comply with all provisions of this chapter
- (3) Fill is not allowed within 5 feet of any side or rear property line except to directly match a higher adjacent grade at the property line. Fill is not allowed within 5 feet of the front (street) property line except to directly match the grade at the street and to accommodate driveway improvements as approved by the Zoning Administrator during administrative review or Town Council during special use permit review.
- (4) Except as provided in § 156.128(A)(3) above, no fill of any kind shall be allowed within 5 feet of any property line except as associated with a driveway, bulkhead or other permitted setback encroachments. Driveways shall be designed to mitigate the direct flow of stormwater runoff to streets or adjacent properties.
- (5) Except as provided in § 156.128(A)(3) above, a lot shall not be filled/graded higher than the adjacent grades or nearer than 5 feet to any property line in any of the following circumstances:
 - (a) When the Dare County Health Department determines that fill is necessary for a septic system to function properly, the fill area shall be limited to the septic system and drainfield areas and the fill depth as required by the permit. Copies of the septic permit, once issued by the Health Department, shall be submitted to the Planning Department verifying the amount of fill material needed and the location of the septic improvements as authorized by the Health Department. Fill material used in conjunction with the installation of septic improvements shall be graded and sloped to avoid runoff on adjacent properties, rights-of-way, waterways and easements.

- (b) When an additional 12 inches of fill above the septic system and drainfield fill has been required by the Health Department for the house pad to ensure adequate flow from the building to the septic system.
- (c) When fill is required to raise the lot elevation to the regulatory flood protection elevation. If more than 36 inches of fill material is necessary to raise a lot to regulatory flood protection elevation, the applicant for a land disturbance permit shall submit a drainage plan prepared by a North Carolina licensed surveyor, North Carolina licensed engineer, North Carolina licensed landscape architect, or North Carolina licensed soil scientist depicting how stormwater on the site will be managed to avoid runoff on adjoining properties, rights-of-way, waterways and easements. The plan shall depict the existing and proposed elevations at all property lines around the perimeter of the site and internal to the site where improvements, including septic improvements, are proposed. The grading and shaping plan shall depict the areas on the site where fill material will be placed and the limits of the fill material in relation to the property lines. The grading and shaping of the fill material shall be completed so that no fill material is located within 5 feet of any property line. If drainage improvements and/or stormwater measures such as infiltration basins, swales or ditches are used to address stormwater runoff, these improvements may be placed within this 5-foot area. If utilized, design details on guttering and rooftop rainwater collection systems must be provided in the plan. Such improvements cannot flow directly onto driveways, impervious surfaces, or adjacent properties. An on-site visit may be requested as part of the review process. Verification of the completion of the drainage plans as proposed shall be submitted before the certificate of occupancy is released by the Duck Building Inspector and Zoning Administrator.
- (d) When stormwater retention areas proposed as part of a designed drainage plan are located up to property lines, provided no associated fill is located within 2 feet of the property lines.
- (6) All fill shall be established at a slope not to exceed 3 feet horizontal run for every 1-foot vertical rise. Except as provided in § 156.128(A)(3) above, the toe of the slope shall meet the 5-foot setback requirement from all property lines.
- (7) A permanent ground cover, sufficient to prevent erosion, must be established on all fill slopes as follows:
 - (a) Prior to issuance of the certificate of occupancy for construction projects; or
 - (b) For projects where land disturbance activity has ceased for more than 6 months, whichever occurs first.
- (8) Retaining walls may be utilized as a method to stabilize or contain fill provided they do not exceed 3 feet in height and are located no closer than five feet from a property line.

- (9) Bulkheads may be established for shoreline protection as a means to stabilize or contain fill provided:
- a. They are no taller than and do not extend any further seaward than 2 feet from an existing shoreline protection bulkhead.
 - b. Where no shoreline protection exists, bulkheads may be established for shoreline protection as a means to stabilize or contain fill provided they do not extend any further seaward than 3 feet from adjacent grade or exceed 3 feet in height.
- (10) Any lot requiring a land disturbance permit shall install temporary erosion and sediment control measures to prevent sediment from leaving the site. The erosion and sediment control measures shall be implemented on the site prior to the commencement of land disturbing activities and be continuously maintained during the land disturbance phase of development.
- (11) A fill permit issued by the North Carolina Division of Water Quality shall be required to fill any 401 wetlands.
- (12) A fill permit issued by the United States Army Corp of Engineers shall be required to fill any 404 wetlands.
- (13) Fill materials shall be of substantially similar composition to the soils present on the lot being filled and not include debris or be finished with soils or materials that will adversely affect the absorption of storm water.
- (14) Residential lots may be graded, subject to the requirements of this section, to create a level area for a single-family detached dwelling and its accessory structures and driveway/parking areas. Fill material that is either brought to the lot or re-graded on the lot under the footprint of the principal dwelling unit is subject to the following limitations. For the purposes of this subchapter, the building footprint shall be considered the plan view of the heated area of the principal dwelling unit. Pre-disturbance elevations shall be taken at the four corners of building footprint. In cases where the building footprint is irregular and has more than four sides, pre-disturbance elevations shall be taken using the four building corners closest to the four corners of the smallest square or rectangle that could be drawn to encompass the footprint.
- a. Lot depressions that constitute less than 3% of the lot size and are located a minimum of 5 feet from all lot lines may be filled no higher than to the level of the directly adjacent grade completely surrounding the depression. The post-fill condition shall be considered as the pre-disturbance ground elevations of such depressions in permitting leveling and calculating building height.
 - b. Where fill/grading is not necessary to raise a house to the regulatory flood protection elevation, there shall be a maximum allowance of 3 feet of rise in ground elevation from the lowest pre-disturbance ground elevation beneath the footprint of the house.

(B) *Land disturbance permit required.*

- (1) A land disturbance permit shall be required for filling and/or grading a lot; any lot clearance, filling or grading activity prior to issuance of a building permit; any installation of gravel or pavers or accessory structures and similar site features whether or not subject to building permit requirements; and any removal or installation of site features such as septic systems, wells and drainage systems that disturb the land.
- (2) (a) The land disturbance permit application shall be filed with the Zoning Administrator or his/her designee. The following information shall be submitted as part of the permit application as deemed necessary by the Zoning Administrator:
 1. Where fill or grading is proposed within 5 feet of any property line, adjacent property elevations at the subject property lines shall be depicted on the site plan;
 2. Existing elevations sufficient to determine the drainage patterns on site and on adjoining sites;
 3. Locations and elevations of the adjoining street pavement, shoulder, ditches, drainage systems, upstream and downstream driveway culverts;
 4. Proposed elevations of the top of bank and toe of slope and limits for fill necessary to construct the dwelling, including driveway access;
 5. For all grading/filling activities, a survey depicting the existing and proposed ground elevations shall be submitted at the time building permits are requested. The survey shall also depict the areas on the site where fill material will be placed and the limits of the fill material in relation to the property lines. Fill material shall be graded to avoid runoff on adjoining properties, rights-of-way, waterways and easements. Fill material shall not be located within 5 feet of any property line except as provided in §156.128(A)(3);
 6. A topographic plan (shown in 1-foot intervals) may be required for all development where changes in the natural grade of the property greater than 36 inches in height are proposed or have taken place in the past year. The plan shall indicate the location and elevation changes above or below natural grade and contain the following certificate:

I, _____, owner/agent do hereby certify that I will develop the property in accordance with the approved plans which will be constructed or maintained so that surface waters from the development are not unreasonably collected and channeled onto adjacent properties at locations or at volumes as to cause substantial damage to adjacent properties. In addition, the property will be constructed or maintained so that it will not impede the natural flow of water across the development, thereby causing damage to adjacent properties. On the site plan entitled _____, stormwater drainage improvements shall be installed according to these plans and specifications and approved by the Town of Duck. The Town of Duck assumes no

responsibility for the design, maintenance or the guaranteed performance of the stormwater drainage improvements.

Date

Owner/Agent

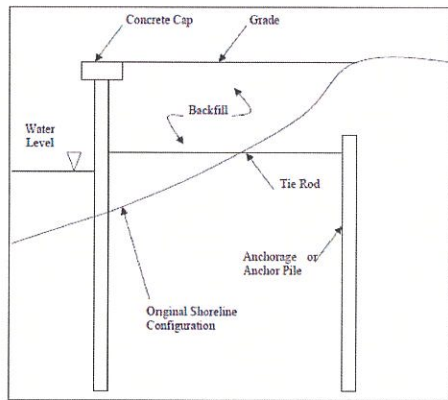
Date

Registered Land Surveyor/Civil Engineer

7. Location of existing and proposed improvements including features such as driveways parking areas, structures, patios, walkways and septic systems.
8. *Plan copies.* Two copies of the land disturbance permit plans shall be filed with the permit application for administrative review. Plan copies submitted as part of a special use request shall be determined by the Zoning Administrator.
- (3) Prior to issuance of the land disturbance permit, an on-site inspection of the project site may be scheduled by the Zoning Administrator or his/her designee to evaluate the pre-disturbed conditions of the site and review and discuss the proposed land disturbance activity.
- (4) For all grading/filling activities requiring a special use under the terms of this chapter, the use shall be approved prior to issuance of the land disturbance permit.
- (5) After issuance of the land disturbance permit, an on-site inspection shall be conducted by the Zoning Administrator or his/her designee to ensure adequate erosion control measures and project activities are in compliance with this chapter. When the Zoning Administrator or his/her designee determines that erosion and sedimentation will likely continue, despite installation and maintenance of protective practices, the person conducting the land disturbance activity will be required to undertake additional protective measures as are required to meet permit requirements.
- (6) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADJACENT GRADE. The elevation measured where the subject property lines abut the adjoining lots or rights-of-way. For filling activities to match the grade at the adjacent property line, the grade shall be shown on a recent survey as described herein at the lot corners and along the lot lines as necessary to determine the elevation of the directly **ADJACENT GRADE**.

BULKHEAD. A vertical structure erected and anchored typically with tie rods along and parallel to the shoreline intended to retain and prevent sliding of land, arrest wave action, control erosion, provide shoreline protection.



CUT SLOPE. A portion of land surface or area created when soil material is excavated forming a slope or embankment.

FILL. Any material placed or graded on a lot where the material has the effect of increasing the elevation of any portion of the lot.

FILL SLOPE. A portion of land surface or area created when adding fill material to form a slope or embankment.

RETAINING WALL. A structure designed to hold back soil or other fill material, preventing it from sliding or collapsing onto a lower level.

- (7) Any development that requires a CAMA major development permit or a sedimentation and erosion control plan shall be subject to the state stormwater runoff policies promulgated in 15 N.C.A.C. 2H § .1000, unless exempted by those regulations. The town may not issue a zoning or special use permit and may not grant final plat approval for subdivisions with respect to any development that would cause land disturbing activity requiring prior approval of an Erosion and Sedimentation Control Plan by the North Carolina Sedimentation Control Commission under G.S. § 113A-57(4) (Mandatory Standards for Land Disturbing Activity) unless the Commission has certified to the town, either that:
 - (a) An erosion and sedimentation control plan has been submitted to and approved by the Commission; or
 - (b) The Commission has examined the preliminary plans for the development and it reasonably appears that an erosion and sedimentation control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until the Commission approves the erosion and sedimentation control plan.


(C) *Special uses for fill/grading activities.*

- (1) All proposals to add fill on a lot in excess of 36 inches or otherwise inconsistent with the standards of this section will require approval of a special use application by the Town Council in accordance with the procedures established in [§ 156.155](#).
- (2) The Town Council may grant a special use permit only after determining that the application meets the following criteria:
 - (a) The site for the proposed fill is otherwise adequate in size, shape and other characteristics to accommodate the proposed project;
 - (b) The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location of mature vegetation, or location and characteristics of existing improvements on the lot;
 - (c) The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties;
 - (d) The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties;
 - (e) The special use will be consistent with any applicable goals, policies and objectives specified in the town's adopted CAMA Comprehensive & Land Use Plan and vision statement. This review includes the town's evaluation of the proposal's consistency with its adopted CAMA Comprehensive & Land Use Plan, which may be more flexible or more stringent than interpretations by others; and
 - (f) The applicant has submitted a drainage plan consistent with the requirements described in [§ 156.128\(A\)\(5\)\(c\)](#).

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


Don Kingston, Mayor

ATTEST:


Lori Ackerman, Town Clerk

Date adopted: October 1, 2025

Motion to adopt by: Donald Kingston

Vote: 5 AYES 0 NAYS

