



# Town of Oak Island Brunswick County, NC

*The Town of Oak Island will preserve, protect, and enhance the quality of the natural and cultural environment of the community. In order to achieve this goal, the Town will improve the quality of its waterways, natural environment, beaches, dunes, water access and residential areas. The Town will maintain a unique scale and character that fosters a sense of community to make the Town a desirable place to live, work and call home, and a family vacation destination. The Town will also develop efficient sidewalks, bikeways, and roadway systems to protect its attractiveness in the future. The Town will also expand its recreational opportunities for residents of all ages and abilities. The Town will balance social and commercial needs and objectives for economic vitality.*

## Planning Board Meeting Agenda November 16, 2017 • 10:30 AM Town Hall • Council Chambers

### I. START-UP

1. **Call to Order:**
2. **Additions or corrections to the agenda**
3. **Approval of the Minutes:** (10-19-17)
4. **Public Comment:** Please state your name and address for the record.

### II. OLD BUSINESS

### III. NEW BUSINESS

1. **Fences – Text Amendment**
2. **Secondary Dune - Text Amendment**

### IV. REPORTS/UPDATES

1. **Board Member Reports**
2. **Staff Reports – Signage**
3. **Updates from Council Meeting – Airport & Driveway Text Amendment**

### V. OTHER

**Future Meetings:** December 21, 2017 (Planning Board)  
**Adjournment**

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MINUTES  
PLANNING BOARD  
October 19, 2017 – 10:30 A.M.  
OAK ISLAND TOWN HALL – COUNCIL CHAMBERS

Present: Chairman Denise Pacula, Vice-chairman Bob Carpenter, members Cathy Bowes, Bob Germaine, Clay Jenkins, and Willie Williams, Planning and Zoning Coordinator Jake Vares and Assistant Manager/Town Clerk Lisa P. Stites. Member Mike Defeo was not present.

Chairman Pacula called the meeting to order at 10:30 a.m. and led the Pledge of Allegiance.

There were no adjustments to the agenda.

Approval of Minutes: **Mr. Jenkins made a motion to approve the September 21, 2017 Minutes. Ms. Bowes seconded and the motion passed unanimously.**

Old Business:

Mr. Vares explained that the proposed amendment was revised. The applicant could not be present, but had asked Dara Royal to represent him today.

Mr. Vares explained that, specifically, the amendment would apply to non-waterfront lots only and only to lots with a minimum of 60 feet or greater. The amendment would allow for a second drive to cap the impervious surface allowance.

Dara Royal, 216 NE 47<sup>th</sup> Street, here on behalf of the applicant: Ms. Royal said that following last month's meeting, she drafted some language based on what she thought the applicant was trying to achieve and the discussion heard at the Planning Board meeting. She would have presented that to Council had there been a Public Hearing for the original proposed amendment. The applicant instead withdrew the application. Ms. Royal said she asked Mr. Vares to forward her suggested amendment to the applicant.

Chairman Pacula said she did not see where two driveways would be allowed for any interior lots. Mr. Carpenter said it would be in the new UDO, and referenced the draft UDO section. Chairman Pacula questioned why someone would have to find it somewhere else, or if the intention was to eliminate the ability to have two driveways in the interior. Mr. Jenkins referred to Sec. 18-171 and said corner lots were handled elsewhere. Mr. Edwards conformed that it would allow two driveways, but said there were standards. There was further discussion about whether with this proposed amendment, two driveways would be allowed in the interior, or if allowed, they could be 48 feet wide. Consensus was to remove "on a corner lot" from the proposed amendment to 18-172 (a)(2).

Mr. Edwards said in 4, it is specific to the side lot line, and on a corner line, the narrowest lot line along a road is the front yard setback, so the longer line will always be the side.

Mr. Jenkins said he could support this amendment, but that he thought they should make some clarification regarding the 60 feet, possibly make it say 61 feet and greater so that 60.04 feet of frontage doesn't allow 40 feet of driveway.

Ms. Stites suggested splitting 4 into 2 sentences; consensus was to make that change. **Ms. Bowes made a motion to approve the proposed amendment with the changes made today, and the associated plan consistency statement. Mr. Carpenter seconded the motion. An additional amendment was made to**

**add “side” in between “where” and “lot” in the second line. The motion passed unanimously.** (The changes were to cross out “on a corner lot,” split 4 into two sentences and add “side” in the second line.

New Business 1:

Mr. Vares explained the issue, which was requested approval of 3 driveways for a property. Ms. Bowes asked if it was appropriate to hear it now or if it should be heard when it is known exactly where the house will be located. The Board discussed the length and location of the three proposed driveways and where the public parking and driveways of other properties are located.

**Mr. Carpenter made a motion to table this until the applicants make their changes. Mr. Williams seconded the motion.** Mr. Jenkins asked what they wanted to see, because he didn’t know what additional information would make a difference with how he wants to vote. **The motion was withdrawn. Ms. Bowes made a motion to table it until after the next agenda item. Mr. Carpenter seconded and the motion passed unanimously.**

New Business 2:

**Mr. Williams made a motion to recommend approval of the proposed amendment as submitted and that it is consistent with the Land Use Plan. The motion died for a lack of second.** Mr. Vares gave a staff report on the proposed amendment.

Howie Franklin, 39 Augusta Drive, here on behalf of the Cape Fear Regional Jetport. Mr. Franklin said the airport is a unique entity. One of the main purposes of the airport is to serve as an emergency services facility in the event of a large-scale emergency. Answering a question from Chairman Pacula, Mr. Franklin said that the airport had collected revenue for storage of RVs for decades. The Board discussed the proposed amendment, and whether that was the proper place in the ordinances to address the issue. Mr. Franklin clarified that the helicopter operator is not using an RV for an office.

**Mr. Jenkins made a motion to add language to 18-113 (f) Storage of items such as RVs, travel trailers, boats, etc., when not used as a private dwelling, shall be allowed within the airport zoning district. Mr. Carpenter seconded the motion.** Chairman Pacula asked about the provisions in 18-113(c), regarding buffers between the airport and residential areas. The Board discussed whether federal law prohibited such buffers at airports, and whether the buffer would be necessary; Mr. Edwards said that the proposed location for storage was not adjacent to a residential area, so the buffer would not be necessary.

Mr. Williams said that this was in a different section in the UDO. Mr. Edwards said that any ordinance amendments made would be incorporated into the proper section in the draft UDO. **The motion passed 6-0 (Mr. Williams abstained, which is counts as an affirmative vote). Ms. Bowes made a motion to adopt the plan consistency statement. Mr. Jenkins seconded. The motion passed unanimously.**

Return to New Business 2: Mr. Edwards distributed a drawing showing the new location of the house. Mr. Jenkins said that he did not have a problem with three individual driveways allowing parking under the house. Mr. Carpenter said that three at 27 feet was less than 2 at 32 feet. Chairman Pacula said it would be more than 27 feet. Mr. Edwards said the minimum width was 10 feet per driveway. Chairman Pacula suggested allowing 3 driveways not to exceed 40 feet total with 5 feet between the driveways. **Mr. Williams made that in the form of a motion, Mr. Jenkins seconded it and it passed unanimously.**

The next Planning Board meeting is November 16<sup>th</sup>.

**Mr. Carpenter made a motion to adjourn at 12:05 p.m. Ms. Bowes seconded and the motion passed unanimously.**

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Denise Pacula, Chairman

Attested: \_\_\_\_\_  
Lisa P. Stites, CMC  
Assistant Manager/Town Clerk

**TOWN OF OAK ISLAND  
PLANNING BOARD  
AGENDA ITEM MEMO**

Agenda Item: New Business No. 1

Date: November 1, 2017



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**Issue:** Fences Text Amendment

**Department:** Planning & Zoning Administrator

**Presented by:** Jake Vares

**Presentation:** None

**Estimated Time for Discussion:** 35 Minutes

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**Subject Summary:**

The following text amendment is staff initiated which was instigated from a recent fence permit application that was received. Section. 18-82 - Specific regulations – h) Fences. (3) is the section where the text amendment is requested (see attached). As you can see from the wording in number three, fences cannot be greater than 4 feet in height if it is within 25 feet from the road right-of-way. The proposed amendment text specifies that the rule regarding fences not exceeding 4 feet in height apply to the lot front line.

This text amendment will permit a fence to be 6ft in height alongside property lines that abuts a street right of way. Oak Island zoning ordinance states that for corner lots the side with the shortest dimension is considered the front; which is where the front-yard setbacks and the 4ft height fencing regulations are enforced. If the front edge of the principal structure were to be further away than 25ft from the front property line then the fence will still have to reduce its height to 4 feet at that point. A diagram/map was prepared to provide a visual of the effects of the proposed ordinance change. The image shows a before and after display of how the fencing regulations would apply if adopted.

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**Attachments:** Ordinance Section, Fence diagrams

**Recommendation/Action Needed:** Recommend to approve to Town Council with the associated plan consistency statement

**Suggested Motion:** none

**Planning Board Recommendation:** NA

**Funds Needed:** \$0.00

**Follow Up Action Needed:** Forward recommendation along to Town Council

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# Attachments

## Section 18-82

### *h) Fences.*

(1) Except as provided in subsection (d) of this section, any fence built on residential property shall be a maximum of six feet high at the highest corner of the property, except oceanfront lots.

(2) Fences not exceeding six feet may be erected only in side or rear yards and may not be extended toward the street beyond the front corner of the principal building.

(3) No fence exceeding a height of four feet will be constructed within 25 feet of any street right-of-way **from the front property line**, excluding alleys.

(4) If the side yard of a lot adjoins the rear property line of a separate lot that is perpendicular to the lot, then a six-foot fence is allowed along the entire side yard of the property line.

(5) Fences not exceeding four feet may be constructed to the street right-of-way except corner lot situations when the corner visibility provisions in as indicated by subsection (6) below may be impose stricter limits.

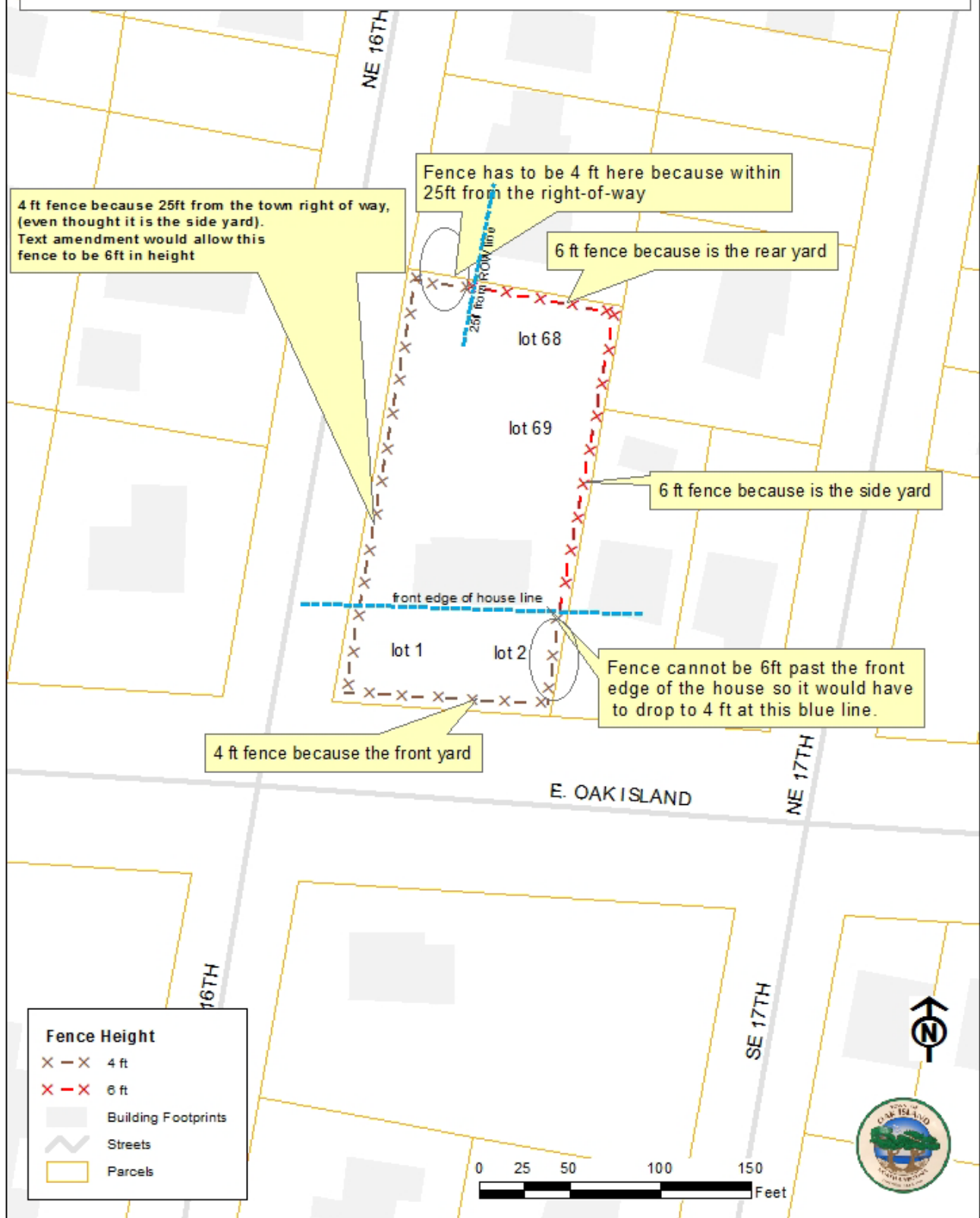
(6) On a corner lot in all districts, nothing shall be erected, planted, or allowed to grow in such a manner as to impede vision over a height of three feet above the centerline grades of the intersecting streets within the triangular area bounded on two sides by the two street centerlines and on the third side by a straight line connecting points on the street centerlines located one-half the street right-of-way width plus 40 feet measured from the intersection of the centerlines.

(7) In commercial districts, except oceanfront lots, solid wood fences shall be a maximum of six feet or ten feet for a metal chainlink fence.

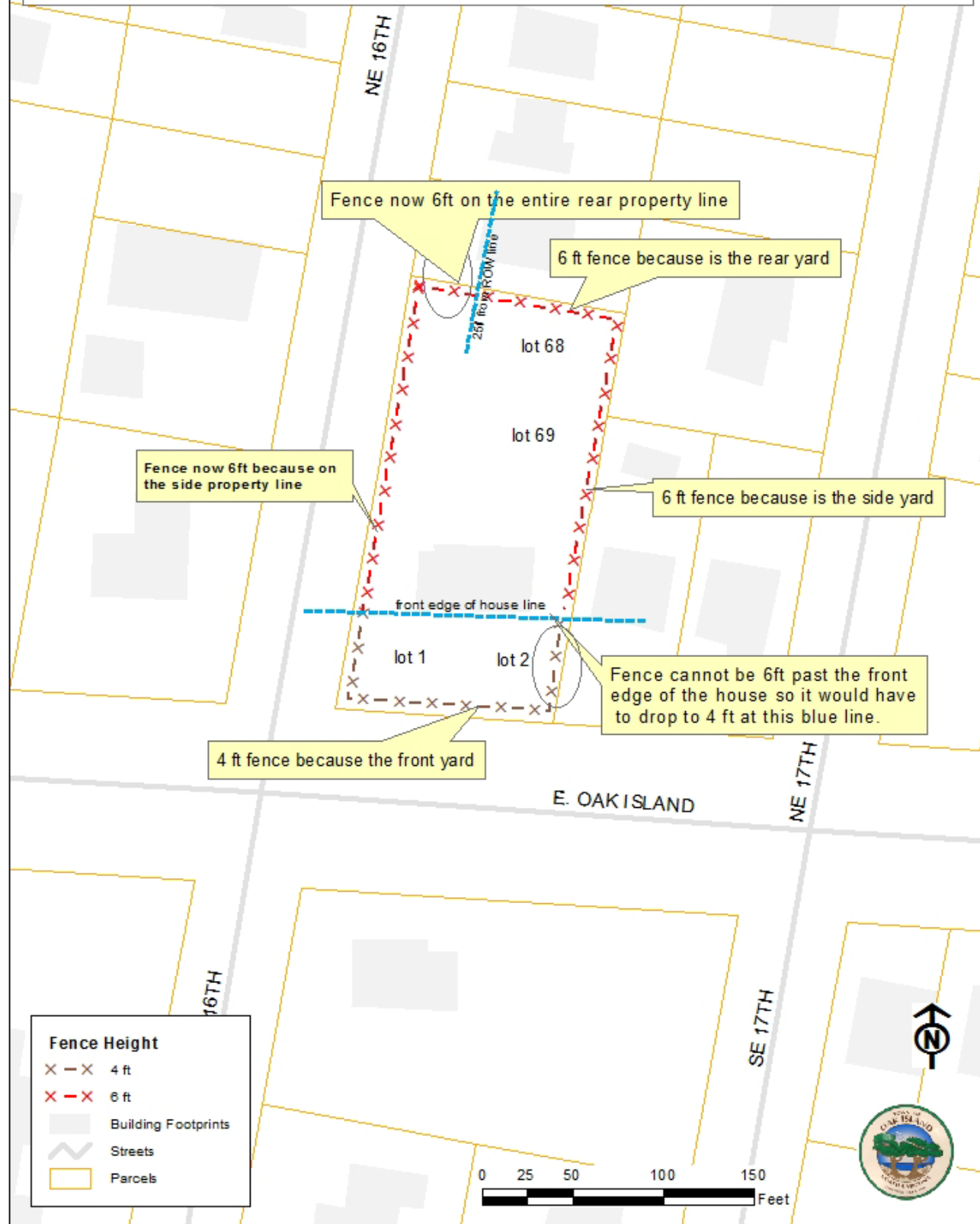
(8) On oceanfront lots, fences shall be a maximum of four feet in height. Fences shall be designed in a manner so that views of the ocean are preserved.

(9) Fences shall be constructed so that the finished (sheathed) side is oriented toward adjoining lots or the public right-of-way.

## Fence height requirements as the ordinance is currently written



## Revised fence height allowance if text amendment is approved





**TOWN OF OAK ISLAND**  
**PLANNING BOARD**  
**AGENDA ITEM MEMO**

Agenda Item: New Business No. 2

Date: November 8, 2017



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**Issue:** Secondary Dune Protection Ordinance

**Department:** Planning & Zoning Administrator

**Presented by:** Jake Vares

**Presentation:** None

**Estimated Time for Discussion:** 60 Minutes

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**Subject Summary:**

This text amendment is the result of a directive given by the Town Council. The portion of the ordinance that is to be amended is in Chapter 14, Article III of the Town of Oak Island Code of Ordinances. This ordinance describes the regulations for ocean-front property management and protection. Authority exists under the Flood Damage Prevention Ordinance to protect all sand dunes in the VE flood zone.

The attached newly proposed ordinance language is placed in Chapter 14 – Environment Article III portion of the towns Code of Ordinances. A definition of secondary dune is included with a statement that says the regulations that apply to the frontal dunes also apply to the secondary dunes. CAMA state regulations provide a definition for primary dunes and frontal dunes, but not primary-frontal dunes. There is no such thing as a primary frontal dune in CAMA regulations, hence the addition of the word “or” to the definition was inserted so both types of dunes are covered. A definition of primary-frontal dune does exist however in the towns flood hazard ordinance in Section 18.553- Definitions; which states *“Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.”*

The phrase "or berms and sand management project areas" is included in the general definition of dunes below because berms were planted with sea oats to build frontal dunes, and may not be appropriate in the definition of secondary dune. The language "meet the continuity of the existing surrounding primary frontal dune" is to mean that the secondary dune follows the alignment of a primary dune or a frontal dune. The word “surrounding” was removed as well in order to avoid any confusion. The frontal dune does not have to literally surround the secondary dune on all sides. Additionally, the word “meet” was and replaced with “match” to avoid the misinterpretation that the secondary dune actually has to connect with the frontal more seaward dune.

Some dunes that may now be classified as secondary, could potentially be dunes that were frontal dunes at one point prior to the 2001 beach renourishment projects depending upon the erosion patterns in those areas. It should be noted that secondary dunes can either be natural or man-made according to the definition. If a secondary dune is identified and it happens to be man-made, it is still classified as a secondary dune and is not exempt.

The ordinance revision also amends Sec. 14-129 (h) - Access provisions. That section provides an allowance for handicap accessible structures. The issue with the text that was removed is that it allowed staff to make a discretionary decision. Administrative decisions are those based on clear, objective standards. Quasi-judicial decisions are based on objective standards, as well as standards that require some level of judgment and discretion by the decision-making board. The procedural rules that applies depends on the type of decision—either administrative or quasi-judicial (i.e. the variance). If a decision applies objective standards from the ordinance (no discretion), it is an administrative decision regardless of whether city council or a single staff person makes the decision. The handicap facility standards codifies in Section 18-82, attached below, are discretionary in nature and need the approval a board.

Additionally, Section 14-147 was added into the ordinance as a new section when the secondary dune protection ordinance was originally adopted in 2016. This was done as a measure to address potential regulatory taking situations which the town has to be careful to avoid because regulatory takings are not permitted. However, due to the issue of administrative decision not being discretionary, it is a best practice to partially remove and reword the ordinance Section 14-147, attached below. Another benefit of removing the language that says the decision of whether or not the dune protection standards in Chapter 14, Article III unduly restricts the landowner's reasonable use of the land, from staff to a town board is that one cannot claim that town staff shows any favoritism. The proposed ordinance states that dunes that are within forty feet from the front property line may be altered. Such dunes shall keep the connectivity to the dune system. This will aid in meeting OKI's off-street parking regulations access from under the house, and afford the property owner use of their land. According to the newly proposed wording in Section 14-147; the secondary dune will need to maintain the same girth and keep its connectivity to the dune system as well.

Section 14-145 - Non-Conformities; now specifies that access structures and beach walkovers that are for the public may be built back to their original design and layout. Some clerical and grammatical corrections were made to this dune ordinance revision text amendment as well.

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**Attachments:** Proposed Text Amendment

**Recommendation/Action Needed:** Approval of the text amendment with associated consistency statement

**Suggested Motion:** Approval or Denial of text amendment

**Funds Needed:** \$0.00

**Follow Up Action Needed:** Forward Recommendation to Town Council

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# Attachment

## CHAPTER 14 - ENVIRONMENT

### ARTICLE III. - PROTECTION OF SAND DUNES, SEA TURTLES AND OTHER WILDLIFE HABITAT; SAND MANAGEMENT PROJECTS

#### Sec. 14-121. - Definitions.

The following words, phrases, and terms, when used in this article, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Definitions of this article shall be interpreted to be the same as those recognized by the state department of environment and natural resources, the coastal resources commission, and/or the division of coastal management.

*Adverse impact* means anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.

*CAMA* means the Coastal Area Management Act of 1974.

*CRC* means the state coastal resources commission.

*Development* means any activity in a duly designated area of environmental concern involving, requiring, or consisting of the construction or enlargement of a structure; excavation, dredging, filling, dumping, or the removal of clay, silt, sand, gravel, or minerals; bulkheading, driving of pilings, clearing or installation of land as an adjunct of construction; alteration or removal of sand dunes, alteration of the shore, bank, or bottom of the Atlantic Ocean or any bay, sound, river, creek, stream, lake or canal.

*Development line* means the line established in accordance with 15A NCAC 07J.1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H.0306(a)(2).

*Division of coastal management* means a division of the state department of environment and natural resources charged by the state with the administration and enforcement of the Coastal Area Management Act of 1974.

*Dune system.*

*Frontal dune* means the first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

*Secondary dune* means, for the purposes of the administration and enforcement of this article, those dunes or berms and sand management project areas, either manmade or natural, that meet match the continuity of the existing surrounding primary or frontal dunes and are a minimum of 5 feet in height and a minimum of 100 feet in length. Regulations that apply to the frontal or primary dunes also apply to the secondary dunes.

*Dunes (natural or manmade)* means, for the purposes of the administration and enforcement of this article, those dunes or berms and sand management project areas, either manmade or natural, in existence as of December 10, 1999, and/or those restored by the town or other public entity. It shall also apply to any placement of materials from any other soil deposition project undertaken after the adoption of this article.

*Imminently threatened* means the foundation of the primary structure is less than 20 feet from the toe of the erosion scarp and/or the septic system is exposed.

*Invasive exotic species* means a non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a landscape comprised of a singular plant species.

*Ocean beach* means lands consisting of unconsolidated soil materials that extend from the mean low water mark landward to the mean high water mark as surveyed by the U.S. Army Corps of Engineers in January 2000; to a point where either the growth of vegetation occurs or a distinct change in slope ~~of~~ or elevation alters the configuration of landform, whichever is further landward.

*Oceanfront private property* means, for purposes of this article, oceanfront private property ends at the mean high water mark as surveyed by the U.S. Army Corps of Engineers in January 2000.

*PCA* means the project cooperation agreement entered into by the town and the U. S. Army Corps of Engineers prior to the commencement of the sea turtle habitat restoration project (sea turtle project), the Wilmington Harbor section 933 project (harbor project), or any other sand placement project entered into by the town and other government agency following the adoption of this article.

*Tents* means a portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have one supporting pole in the center of the shelter).

*USACE* means the United States Army Corps of Engineers.

*Vehicle* means a motor-driven or wind-powered vehicles, including fishing boats and amphibious vehicles, but excluding sailboats used for sport, surfboards and amphibious vehicles which are afloat and no portion of which is beached, aground, or operating on wheels or tracks.

#### Sec. 14-122. - Authority.

The Coastal Management Act of 1974 under G.S. 113A-117 enables local governments to participate in the CAMA land use planning and permit-letting process. The town, by filing an affirmative letter of intent, has adopted regulations with respect to the Coastal Area Management Act implementation and enforcement plans; the town has entered into a project cooperation agreement with the U.S. Army Corps of Engineers to provide vegetation and maintenance for the sea turtle habitat restoration project, the Wilmington Harbor section 933 project, and G.S. 160A-364, which gives the authority to adopt and amend ordinances related to the use of land.

#### Sec. 14-124. - Territorial coverage.

This article shall apply to dunes, berms, and any other landform or sand project placement or management areas, both natural and manmade, and the vegetation located thereon, from the "mean low water mark" extending landward to the "mean high water mark" as surveyed by the USACE in January 2000; to a distance equal to the Ocean Erodible Area and/or Inlet Hazard Area as shown on maps compiled by the Division of Coastal Management, whichever distance is further landward. The maps shall be available for public review at the Development Services Department.

#### Sec. 14-125. - Use and development coverage.

This article shall be applicable to all use of and development on ocean beaches in the town. Included, but not limited to the following, are types of uses and development activity to which this article applies. Specifically, this article is applicable to all oceanfront property owners intending to construct, repair or replace decks, walkways, and/or steps for the purpose of gaining access to the public ocean beach from private property along the oceanfront in the town. This article applies to all persons crossing ocean beaches for the purpose of gaining access to the beaches and Atlantic Ocean.

#### Sec. 14-126. - Compliance.

Regulations have been drafted to protect specific areas and landforms; and prohibit projects and development not specifically addressed by CAMA. Failure to comply with this article could result in conviction and be punishable by fine or imprisonment, as provided by the state general statutes and town

ordinances. The town reserves the right to prosecute offenders and may use all authorized remedies necessary, such as mandatory injunctions or abatement orders, to aid in the enforcement of this article.

If any provision of this ~~chapter~~ **article** is in conflict with a rule adopted by the State Coastal Resources Commission dealing with oceanfront erosion control or regulation of development as contained in 15A NCAC 07H.300, then the rule or regulation shall control and apply in lieu of the provision of this chapter in conflict therewith. When CAMA rules and town rules both apply the more restrictive regulation must be followed.

#### Sec. 14-127. - Enforcement.

Violation of this article shall be punishable under section 1-7, up to \$500.00 fine or 20 days in jail. Anything placed in or on sand dunes or their designated access areas or attached to posts, ropes, sand fences or signs may also be designated as litter and removed and disposed of by the town. All persons are also notified that any person who shall be adjudged to have knowingly or willfully violated the provisions of this article may also be guilty of a class II misdemeanor as defined in G.S. 113A-126(c) and may also be subject to civil penalties as provided in G.S. 113A-126(d)(1)(2)(3) and (4).

- (a) The property owner, as well as his or her agents, contractors, subcontractors, or employees, may be held liable for the proper execution of any portion of work performed under the permit or permits issued for such work.
- (b) The Code Enforcement Official shall inspect every project approved under this section at least one time after completion of the work and completion of any restoration or protection of vegetation which he may prescribe.
- (c) Any person violating the provisions of this section shall immediately undertake restoration or replacement of such items in accordance with requirements of the Code Enforcement Official. In the event such restoration or replacement is not completed within 30 days of the initial violation, the town is authorized to undertake such restoration. All costs of such restoration or repair incurred by the Town shall be deemed an additional civil penalty to be collected from the violator.
- (d) In the event that an individual fails to comply with the requirements set forth in this subsection, the Town shall have the authority to revoke all issued permits and issue stop work orders on the real property on which the offense occurred until such time as the offender has come into compliance with the provisions of this section.
- (e) The provisions of this article may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction.
- (f) Failure to comply with this division or with the provisions of a permit or to perform the work as proposed by the permit application shall result in the immediate issuance of a stop work order by the building inspector.
- (g) Failure of any person to comply with a stop work or restoration order issued by the building inspector shall constitute a violation of this article subject to all the enforcement provisions of this section.

#### Sec. 14-129. - Access provisions.

- (h) ~~The Town Council or their designee~~ **Board of Adjustment via a variance** may grant an exception for private residential beach access structures regarding horizontal and vertical development for purposes of allowing a handicapped accessible structure to be built. These structures must meet the provisions of the NC Building Code **and the standards in Section 18-8(r) of the zoning ordinance.**
- (i) The town encourages adjoining property owners to construct centrally located shared beach access structures where appropriate in order to reduce the overall number of structures on the beach. In cases where shared structures are proposed, the property owners must submit a site plan and restrictive covenants that indicate the location of the proposed structure and the proper restrictions against construction of additional individual structures.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.8)

Sec. 14-130. - Decks, walkways and stairs; construction standards and development.

The following rules shall govern all development within the ocean erodible areas, the construction, repair, or replacement of all oceanside decks, walkways and steps. In all cases, whether new construction, repair, or replacement, the following standards and rules shall apply:

(1) No dune system shall be altered that will ~~inversely~~ **adversely** impact the integrity of the dunes.

(2) Construction of decks, walkways, and steps shall be in accordance with the state building code as the code may be amended from time to time.

(3) Where the height of the structure would cause steps to impede upon the public beach when built as prescribed in this article, a landing may be built to allow steps to land in an easterly or westerly direction, terminating on private property and meeting all required setbacks. A local permit officer shall determine, based on findings following a site visit and after analyzing specific site conditions, in which direction steps shall land. In no case shall the development exceed what is absolutely necessary and required by the state building code for landings and turnaround areas.

(4) If an additional set of steps that would terminate beneath the primary structure for access to storage, parking, or shower facilities is desired by a property owner, this may be allowed as long as the development would not increase damages to dunes or vegetation. In no case shall the development exceed what is absolutely necessary and required by the state building code for landing and turnaround areas.

(5) Cantilevered seating areas along walkways will be allowed, but in no case shall the entire width of the walkway, including the cantilevered area, exceed six feet.

(6) New construction (includes the construction of new residences, accessory structures, additions, or enlargements permitted by [section 8-121](#)) of decks, walkways, and steps will be in accordance with CAMA regulations. A CAMA minor development permit must be obtained for all new construction. New construction of walkways and steps for the purpose of gaining access to the public beach shall be constructed in accordance with applicable CAMA regulations for such structures. No part of the structure or any supporting member of any deck, walkway, or step will be allowed to rest on public property. For the purposes of this article, private property ends and public property begins at the mean high water mark as surveyed by the USACE in January 2000. Walkways and steps may in no way encroach into the side setbacks of the district in which the structure is located. In areas where the mean high water mark as surveyed and determined by the USACE in January 2000 is located within six feet or closer to the oceanward side of any home or other structure proposing to construct a deck, walkway, or steps, then, in that event, a deck or walkway up to six feet in width may be constructed, but the deck or walkway must be supported by cantilevering to the main structure or angle-bracing sufficient to meet all state building code standards as the code may be amended from time to time. It is the purpose and intent of this section to allow new construction of decks, walkways, and steps on existing structures where such construction might necessarily extend beyond the mean high water mark, but at the same time to prevent any part of the deck, walkway, or steps, or its supporting members from coming to rest on public property, except to the extent absolutely necessary to allow landing of steps within the area of six feet seaward of the existing structure. Angle-bracing and cantilevering shall not be required in those areas where construction would allow for all portions of the deck, walkway, or steps to remain on private property.

(7) The following are intended to apply to replacement of decks, walkways, or steps which have been damaged more than 50 percent of their value, based on actual replacement costs, including labor and material:

a. Decks on existing structures may be replaced, provided that they are constructed in accordance with the state building code as the code may be amended from time to time. The deck may not exceed six feet in width, but may extend the full length of any previous deck that existed on the structure.

b. If the mean high water mark as surveyed and determined by the USACE in January 2000 is located six feet or closer to the oceanward side of the existing structure, then any deck to be constructed pursuant to this article may not exceed six feet in width and must be supported entirely by cantilevering or diagonal bracing attached to existing house pilings. The design and construction of this deck must be

accompanied by a professional engineer's certificate that the deck will meet all building code standards of the state as such standards may be amended from time to time.

c. Walkways and steps for access to the public beach shall be constructed in accordance with applicable CAMA regulations for such structures. Steps must land south and be completely within private property as described in this article. Steps may in no way encroach into the side setbacks of the district in which the structure is located. In cases where the mean high water mark as surveyed and determined by the USACE in January 2000 is located six feet or closer to the oceanward side of the structure to which the deck, walkway, and steps is to be attached, then in that event, the landing of the steps leading from the deck may come to rest within the area up to six feet oceanward of the house. It is the intent and purpose of this section to allow repair and replacement of decks, walkways, and steps, but at the same time to minimize the intrusion of repair and replacement on public property.

d. In any case where the general construction of the primary structure would prohibit the attachment of a cantilevered or diagonally-braced deck (i.e., preform house not elevated on pilings or with concrete or block pilings that cannot be drilled), a special exception may be made to allow the construction of a freestanding deck, not to exceed the regulations prescribed in this section. An engineer's report confirming these findings must accompany any request for this exception.

#### Sec. 14-131. - Repair and maintenance of the public beach, dunes, and sand management project areas.

- (a) In no case shall any person physically alter the dunes, ocean beach, or any part of sand management project areas without first having obtained a permit for such alteration from the town and any appropriate state agencies. An application for such permit must include a statement describing the proposed development or action, length of time for the project to be completed, and any other information deemed pertinent by the town. Any work permitted by the town shall not commence until such time as a CAMA permit has also been issued. No CAMA permit for the alteration of dunes, ocean beach, or sand management project areas shall be issued unless a copy of the permit issued by the town has been received and reviewed by the proper permitting office. Any damage caused to dunes, ocean beach, or sand management project areas or the vegetation located thereon shall be immediately corrected or restored as nearly as possible to the conditions that were present prior to the commencement of the activity. If vegetation cannot be restored immediately, the person responsible for causing such damage shall be responsible for replanting vegetation to the satisfaction of the town at the start of the next planting season.
- (b) The town may from time to time have need to repair and maintain dunes and project areas. Nothing in this article shall prohibit the town or other public entities from completing necessary actions to protect and maintain the health, safety, and general welfare of the public.
- (c) The normal, non-impacting maintenance of lawns, commercial, office, and institutional tracts which are already developed. Maintenance shall include lawn maintenance, the relocating and replacement of shrubs, the cutting and removal of poisonous or harmful plants, briars, and dead foliage. In accomplishing the foregoing, the use of equipment which limits damage to surrounding vegetation is encouraged; the use of heavy commercial equipment is discouraged. The removal or destruction of vegetation referenced in this section is prohibited.

#### Sec. 14-132. - Additional prohibited activities.

The following additional activities are prohibited:

- (a) Walking, running, playing, climbing or other pedestrian traffic of any kind or description across sand dunes except in designated access areas.
- (b) Allowing pets to traverse sand dunes except in designated access areas.
- (c) Placing anything in or on sand dunes or their designated access areas.
- (d) Attaching anything to sand dune access area posts, ropes, sand fences or signs.



- (e) Vehicular traffic of any kind or description across sand dunes except in designated access areas as authorized by the town.
- (f) Cutting, removing, trampling or in any manner damaging dune vegetation.
- (g) Throwing or depositing refuse onto sand dunes or their designated access areas.
- (h) Allowing refuse to be windblown onto sand dunes or their designated access areas.
- (i) Engaging in any other activities that reduce the stability of sand dunes and potentially decrease their storm protection value, wildlife habitat value and aesthetic value.
- (j) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as "salt-tolerant" dune varieties or that may be determined to be "invasive exotic species";
- (k) Digging, shelling, mining, or mechanical alteration of the dune topography;
- (l) Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.
- (m) Development activities without a valid building permit, Health Department approval, or CAMA authorization
- (n) When, due to beach width, tide levels, crowd conditions, or other factors, placement of tents or similar devices will obstruct the passage of emergency or ocean rescue vehicles or the line of sight from lifeguard stands or other surveillance areas.
- (o) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand whereby, in the opinion of code enforcement officers, such alteration presents a dangerous condition. Persons responsible for altering the contour or shape of the beach to any extent shall restore the beach to its original condition prior to leaving the area unattended for any period of time.
- (p) One shall not remove any vegetation growing on any sand dune except areas designated on site plans for commercial or multifamily development as approved for land disturbing activities under the provisions of the Coastal Area Management Act and as shown on site plans approved by appropriate officials of the town.

Secs. 14-133—14-140. - Reserved.

#### ARTICLE IV. - BEACH HAZARDS

##### Sec. 14-141. - Definitions.

The following words, phrases, and terms, when used in this article, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Beach equipment means any personal items that are designed or manufactured for use, or actually used, on the beach or in the adjacent tidal waters. Examples include, without limitations: chairs, lounges, umbrellas, cabanas, canopies, tents, horseshoes and stakes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and any other personal property items. Beach equipment shall not include municipal trash containers, signage or structures, or any items placed or permitted by a governmental agency (such as signs or protection devices for turtle nests). Non-motorized sailboats and catamarans shall be permitted to remain on the strand overnight and shall conform to the requirements in subsections 14-143(b)—(d).

Ocean beaches means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. The landward extent of the ocean beaches is established by the common law as interpreted and applied by the courts of this state. Natural indicators of the landward extent of the



ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. (1979, c. 618, s. 2; 1998-225, s. 5.1.)

Nighttime hours means 8:30 p.m. until 6 a.m.

Sec. 14-142. - [Digging holes on beach].

Holes dug on the beach are required to be attended at all times and filled prior to leaving the beach.

(Ord. of 7-13-2010)

Sec. 14-143. - Beach equipment, personal property, obstructions and glass containers.

- (a) Except as provided by a specific provision of this Code, all beach equipment must be removed from the beach by its owner or permitted user on a daily basis. All personal items and beach equipment unattended and remaining on the public beach during "nighttime hours" as set forth in section 14-141 shall be classified as abandoned property and will be removed and disposed of by the town.
- (b) A business that rents beach equipment may not place or erect said equipment strictly for advertising purposes only. Such business shall abide by all rules and regulations pertaining to their particular license that has been issued and must adhere to the installation and removal regulations as outlined in this article.
- (c) All beach equipment shall be set at least ten feet from any sea turtle nest and the town or the Oak Island Sea Turtle Protection Program shall provide a visual marker or sign to designate this area.
- (d) No beach equipment, personal property, or obstructions may be placed in an area within a 15 feet of any duly marked and designated emergency beach access points on the seaward side of the access.
- (e) It shall be unlawful for any person to have glass containers of any kind on the beach or beach access areas.

Sec. 14-144 - [Penalty.]

Any person who shall violate this article shall be subject to a civil penalty in an amount of \$50.00 for the first offense, \$100.00 for the second offense, and escalates to a criminal offense after second violation. Each day that a person is in violation of this article shall constitute a new and separate offense. Civil penalties shall be payable to the town within 15 days of a civil citation.

Sec. 14-145 - Non-Conformities

**Nonconforming structures.** Access structures and beach walkovers that are damaged or destroyed greater than 50 percent of their replacement value may only be built back in conformance with current requirements as set forth in this article. **Public access structures and beach walkovers that are damaged or destroyed greater than 50% of their replacement value may be built back.** Access structures and beach walkovers for single-family and duplex lots that are damaged or destroyed greater than 50% of their replacement value may not be built back. All determinations of replacement value under this section shall be made by the building inspector.

Sec. 14-146 – Designation of Enforcement Officials

- (a) ~~The building inspector, planning and zoning administrator, and code enforcement officer~~ **Development Services Director or his/her designee is** designated as the town official to perform

the duties relating to the issuance of and/or revocation of permits described under the terms of this article and enforcing the terms and conditions of this article.

#### Sec. 14-147 – Undue Restriction

If ~~the planning director concludes that application of~~ the dune protection standards in Chapter 14, Article III; unduly restricts the landowner's reasonable use of the land **due to the secondary dune being within 40 feet from the front property line**, less restrictive means of preserving the significant dune(s) may be authorized **via a Variance from the Board of Adjustment**, subject to one or more of the following mitigation:

- (a) Stabilization of the portions of the dune impacted by development through revegetation with native vegetation;
- (b) Use of sand fencing with a minimum height of four feet to inhibit sand migration due to disturbance;
- (c) Mechanical excavation of replacement sand, where appropriate;
- (d) Use of piles and elevation of crossovers or other development at least two feet above the sand dune;
- (e) Avoidance of storage of equipment, materials, vehicles, or other debris on dune faces; and
- ~~(f) Any other mitigation technique considered appropriate by the Planning Director.~~ **Modified dune must maintain the original girth, height, and be reconnected with the dune on either side of each property line.**

#### Sec. 18-82 – Specific Regulations

##### (r) *Handicap facilities within required setbacks.*

(1) *Recognition of need.* The need is recognized to allow provisions for handicap facilities, where deviation from the terms of this division will not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of this division will result in unnecessary hardship, provided that the spirit and intent of this division shall be observed and substantial justice done. Before any building permit may be authorized, the development services staff shall find that the criteria set forth within this article are met and the spirit and intent of this division are not purposely contradicted.

(2) *Definitions.* The following words, terms and phrases, when used in subsection (r) of this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Handicap disability* means a person with a mobility impairment who, as determined by a licensed physician as defined within G.S. 20-37.62 that:

- i. Cannot walk without the assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair, or other device;
- ii. Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume of one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- iii. Uses portable oxygen;
- iv. Has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to the standards set by the American Heart Association;

v. Is severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition;

vi. Is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential, as certified by a licensed ophthalmologist, optometrist, or the division of services for the blind.

*Handicap facility* means any ramp, elevator, lift, or other architectural or mechanical component of a building or facility, constructed in accordance with the standards and provisions of the North Carolina State Building Code, Volume 1-C, that allows such structure to be reasonably entered, accessed and used by an individual with a handicap disability. For the purposes of this subsection (r), the terms "entered," "accessed," and "used" shall refer to the primary ingress/egress of the structure.

*Physically handicapped person* means an individual who has a physical disability as determined by a licensed physician that results in a functional limitation in gaining access to and ability to reasonably use a building or facility.

*Structure* means any principal building or facility, whether privately or publicly owned.