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4 **15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

5 (a) The following types of development shall be permitted seaward of the oceanfront setback requirements  
6 of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local  
7 regulations are met:

- 8 (1) campsites;  
9 (2) driveways and parking areas with clay, packed sand or gravel;  
10 (3) elevated decks not exceeding a footprint of 500 square feet;  
11 (4) beach accessways consistent with Rule .0308(c) of this Subchapter;  
12 (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;  
13 (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay,  
14 packed sand or gravel, and a footprint of 200 square feet or less;  
15 (7) temporary amusement stands;  
16 (8) sand fences; and  
17 (9) swimming pools.

18 In all cases, this development shall be permitted only if it is landward of the vegetation ~~line~~; line or static  
19 vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes  
20 which would compromise the integrity of the dune as a protective landform or the dune vegetation; has  
21 overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated  
22 principal development; is not required to satisfy minimum requirements of local zoning, subdivision or  
23 health regulations; and meets all other non-setback requirements of this Subchapter.

24 (b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would  
25 preclude placement of permanent substantial structures on lots existing as of June 1, 1979, ~~single family~~  
26 ~~residential structures~~ buildings shall be permitted seaward of the applicable setback line in ocean erodible  
27 areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- 28 (1) The development is set back from the ocean the maximum feasible distance possible on the  
29 existing lot and the development is designed to minimize encroachment into the setback area;  
30 (2) The development is at least 60 feet landward of the vegetation ~~line~~; line or static vegetation line,  
31 whichever is applicable;  
32 (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward  
33 toe of the frontal dune;  
34 (4) The development incorporates each of the following design standards, which are in addition to  
35 those required by Rule .0308(d) of this Subchapter.

- 36 (A) All pilings shall have a tip penetration that extends to at **least four feet below**  
37 mean sea level;

- 1 (B) The footprint of the structure shall be no more than 1,000 square feet, and the  
2 total floor area of the structure shall be no more than 2,000 square feet. For the  
3 purpose of this Section, roof-covered decks and porches that are structurally  
4 attached shall be included in the calculation of footprint; feet or 10 percent of  
5 the lot size, whichever is greater.
- 6 (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel  
7 except in those cases where the development does not abut the ocean and is  
8 located landward of a paved public street or highway currently in use. In those  
9 cases concrete, asphalt or turfstone may also be used.
- 10 (D) No portion of a building's total floor area, including elevated portions that are  
11 cantilevered, knee braced or otherwise extended beyond the support of pilings or  
12 footings, may extend oceanward of the total floor area of the landward-most  
13 adjacent building. When the geometry or orientation of a lot precludes the  
14 placement of a building in line with the landward most adjacent structure of  
15 similar use, an average line of construction shall be determined by the Division  
16 of Coastal Management on a case-by-case basis in order to determine an ocean  
17 hazard setback that is landward of the vegetation line, static vegetation line or  
18 measurement line, whichever is applicable, a distance no less than 30 times the  
19 shoreline erosion rate or 60 feet, whichever is greater; and
- 20 (E) Development setbacks shall be calculated from the shoreline erosion rate in  
21 place at the time of permit issuance.

22 (5) All other provisions of this Subchapter and other state and local regulations are met. If the  
23 development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a  
24 system shall be submitted as part of the CAMA permit application.

25 (c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule  
26 shall be allowed provided that the following conditions are met:

- 27 (1) Development is setback from the first line of stable natural vegetation a distance no less than that  
28 required by the applicable exception;
- 29 (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean  
30 Hazard AEC or have other adverse environmental consequences; and
- 31 (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule shall meet the  
32 requirements of Paragraphs (1) through (5) of that Paragraph.

33 For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is  
34 specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land  
35 with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the  
36 greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when  
37 extended to ground level.

1 (d) The following types of water dependent development shall be permitted seaward of the oceanfront  
2 setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other  
3 state and local regulations are met:

4 (1) piers providing public access; and access (excluding any pier house, office, or other enclosed  
5 areas); and

6 (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to  
7 such bridges.

8 (e) ~~Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would~~  
9 ~~preclude replacement of a pier house associated with an existing ocean pier, replacement of the~~  
10 Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the  
11 following conditions ~~are~~ is met:

12 (1) The ~~associated~~ ocean pier provides public access for fishing ~~or~~ and other recreational purposes  
13 whether on a commercial, public, or nonprofit basis;

14 (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be  
15 limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be  
16 prohibited; The pier house is set back from the ocean the maximum feasible distance while  
17 maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment  
18 into the setback area;

19 (3) The pier house shall be limited to a maximum of two stories; not be enlarged beyond its original  
20 dimensions as of January 1, 1996;

21 (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of  
22 mean high water;

23 (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of  
24 5,000 square feet, whichever is larger;

25 ~~(4)(6)~~ The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

26 ~~(5)(7)~~ If the ~~associated~~ pier has been destroyed or rendered unusable, replacement or expansion  
27 of the associated pier house shall be permitted only if the pier is ~~also~~ being replaced and returned to its  
28 original function.

29 (f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential  
30 development that does not induce further growth in the Ocean Hazard Area, such as the construction of  
31 single family piers and small scale erosion control measures that do not interfere with natural ~~ocean-front~~  
32 oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features  
33 characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and  
34 lower wave energy and ~~lower~~ erosion rates than in the adjoining Ocean Erodible Area. Such development  
35 shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this  
36 Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H  
37 .1100, .1200 and 07K .0203.

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*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981; Amended Eff. February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.*