

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Code of Ordinances shall be amended as follows:

PART I. That **Section 48-7. Definitions of Specific Words and Terms**, be amended to add the following in the appropriate alphabetical position:

Public trust beach area means the area adjacent to the Atlantic Ocean 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, i.e. State owned property seaward of the mean high water mark, 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. Natural indicators of the landward extent of the public trust beach area include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line.

PART II. That **Section 48-87. Prohibitions**, be amended to add:

(c) Buildings or other structures are prohibited if they are located:

- (i) Wholly within the wet sand area of the public trust beach area, i.e. on the State owned property seaward of the mean high water mark; or
- (ii) Wholly or partially within any portion of the public trust beach area in such a manner that the building or structure impedes the flow of vehicular, pedestrian, or emergency services traffic at normal high tide.

No erection, construction, reconstruction, alteration, repair, maintenance or other work for which the General Statutes or the State Building Code would require a building permit be issued may be performed upon any oceanfront building or structure until a zoning permit has been issued in compliance with this section. Building permits for oceanfront buildings or structure shall not be issued unless a zoning permit has been issued pursuant to this section. Only work performed to prepare for or to actually demolish or remove a prohibited building or structure from the public trust beach area may be permitted for structures prohibited by this section. If the oceanfront building or structure upon which work is to be performed is not prohibited by this section, zoning permits for work upon the building or structure shall not be denied by use of this provision.

Declaration that a building or structure is a public nuisance via the issuance of a notice of violation or order of abatement by the town manager pursuant to sections 16-33 and 16-31(6)(c) shall establish that a building or structure is subject to this prohibition. The lack of an issuance of such a notice of violation or order of abatement shall not prevent the application of this section. The burden shall be on an applicant for a zoning permit to prove that any work to be performed will be in compliance with this section. If a notice of violation or order of abatement issued by the Town Manager directs that certain work be performed on a building or structure to which this section applies, a zoning permit may also be issued for the performance of that work.

Nothing in this section is meant to prevent a property owner from taking action necessary to immediately correct an existing and imminent danger and safety hazard to the public.

This prohibition shall not be applicable to fishing piers, public or private beach accesses or other such similar structures which are otherwise lawful.