

April 12, 2017

A Public Hearing of the Borough Council of the Borough of Avalon was held on Wednesday, April 12, 2017 at 3:55 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public ----- 8 Reporters ----- 1

The Meeting was called to order by Council President Hudanich.

Pledge of allegiance.

<u>Roll call:</u>	Council President Hudanich	Present
	Councilman Covington	Present
	Councilman Dean	Present
	Councilman Deever	Present
	Council Vice President McCorristin	Present

Also present:

Scott Wahl, Business Administrator
James Waldron, Assistant Business Administrator
Stephen D. Barse, Esquire, Borough Solicitor
William Macomber, Director of Public Works/Utilities
Police Chief William McCormick
Paul E. Short, Sr., Code Enforcement Officer
Thomas R. Thornton, P.E., Borough Engineer, Hatch Mott Macdonald, LLC
Jeff Hesley, Zoning Officer
Scott D. Taylor, Municipal Planner, Taylor Design Group
Edward Dean, Fire Chief
Dorothy Bolinsky, Esq., Drinker, Biddle & Reath, LLP
David Hain, Barley Dunes, LLC
Andrew Catanese, Esq., Monzo Catanese Hillegass, P.C.
Steven Narrigan, representative of previous property owner, 154 67th Street

Council President Hudanich read the Open Public Meetings Act Announcement.

Notice of this Public Hearing was included in the Annual Schedule of Meetings dated June 22, 2016. It was given to the news media and posted on the Official Bulletin Board as required by law.

Application for release of certain deed restrictions upon the premises known as Block 67.06, Lots 11, 13, 49 and 51 and Block 67.06, Lots 26, 28, 53, and 55 (154 67th Street) in the Borough of Avalon.

Steve Barse explained this matter involves an application by Barley Dunes, LLC seeking the removal of deed restrictions that were imposed by the Borough in 1954 and 1979 on a total of eight lots that the borough sold on those two different occasions. All lots were consolidated, and the previous owners of the property were the Narrigans, who have since sold the property to Barley Dunes, LLC. The deed imposed by the Borough in 1954 selling the original lots to the Narrigans has three restrictions. The first of which being that only one building can be constructed for living purposes on the lot providing the lot has a minimum of 5,000 square feet. The second restriction stated the first floor of any building that was constructed must have a minimum of 800 square feet. The final restriction placed on the property was that any building constructed on the property could not exceed two stories in height. The current Zoning Ordinance requires that a lot have a minimum 6,000 square feet of ground area before a house can be built and the first floor of the building must have a minimum 900 square feet. Additionally, the current Zoning Ordinance restricts the height of a home to 30 feet above base flood plus freeboard. There is currently a house on those lots as they've been consolidated and access to that property is gained through Lots 26, 28, 53 and 55, which were transferred to the Narrigans in 1979. The purpose of the 1979 transfer was to provide the property owner with sufficient square footage when combined with the existing property in order to develop the property. Restrictions contained in the 1979 deed prohibits anything from being built on the

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Steve Barse (continued) property, prohibits subdivision of the lots, and also states the Borough has the right to have access to those lots for beach and dune maintenance purposes. To that effect, the Borough obtained an easement covering the portion of the premises as necessary to effectuate the purpose of that restriction. In addition, the property owner is required to maintain the established grades of the premises as well as the contour and natural state of the property. The request filed by Barley Dunes, LLC is asking to lift all deed restrictions.

Dorothy Bolinsky stated she is in attendance on behalf of Barley Dunes, LLC, which is the most recent buyer of the property in question. She noted there is an agreement with the seller, and the application being discussed this evening is a joint application between the buyer and the seller, the Narrigan family. During the sale process, a title search of the property found that in addition to the restrictions being discussed today, there are also restrictions imposed on the property by two neighboring property owners with the intent to protect their property values and their sightlines. She noted that the restrictions in the Borough deeds implemented in both 1954 and 1979 are vague and hard to interpret, and submitted that the restrictions from the 1979 deed actually had two purposes. The first purpose was to grant enough total square footage of the lot to permit the building of a house on the original parcel of land. The second purpose that addresses keeping the property in a natural state and having access for dune management, could have been an early precursor to Avalon's dune regulations that are also much more complete today. CAFRA now controls most of the regulations in connection with dune management, which, in her opinion, deems the restrictions implemented by the 1979 deed no longer necessary, as the Borough is protected under zoning. She clarified that this application is not a development application, which would be subject to review by the Zoning and Construction Offices. She explained the intent of this application is merely to clean up title, and there are no plans to build any additional structures on the lots or move the location of the home currently on the property. The applicants feel that the Borough is adequately protected by zoning and by flood regulations that are more comprehensive, complete, and easier to understand than the 1979 deed restrictions. She added that the buyer was unable to obtain a mortgage to purchase the property due to the restrictions being difficult to explain to a lender.

Councilman Covington referenced that the 1979 deed restrictions state the Borough retains the ability to manage the dunes and control the beach. He asked how the Borough would benefit from those restrictions.

Jeff Hesley explained in the case of dune erosion, those restrictions would allow the Borough access to that area. He referenced an ongoing issue in Margate where the municipality and the state were required to go to individual property owners for access easements over their land in order to maintain sand dunes in the event of a catastrophic event during which a dune is washed away. Those easements would allow the municipality to have access in the event it is necessary to build a bulkhead, a fence or maintain the dunes.

Steve Barse added the Borough of Avalon had a situation occur in the early 2000s at the north end that required the Borough to obtain easements from all waterfront property owners to help gain access to repair the seawall. Those easements were necessary because of swing patterns with cranes, boulders that had to be moved, and equipment that needed to be maneuvered to the project area. He noted if the easements or restrictions are already in place, it would be helpful to the Borough so that easements would not be rushed if a catastrophic event occurred.

Councilman Covington asked if there are similar restrictions or easements on the waterfront lots adjacent to those in question.

Jeff Hesley was unsure of the answer.

Council President Hudanich stressed the importance of examining and analyzing the spirit of the deed restrictions when considering their release. The Borough at one time had the foresight to put possible scenarios of dune erosion in a deed restriction knowing the needs of protecting the beaches and properties.

Councilman Covington questioned if the Borough should obtain similar easements across all beachfront properties.

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Council President Hudanich noted that may be something the Borough will need to address in the future.

Dorothy Bolinsky reported during the investigative process of the purchase of the property, the dunes were mapped out, and the Department of Environmental Protection ruled that the dunes are much further east than other areas of the Borough. The ruling indicated there is no restriction from CAFRA other than the ten foot zoning setback typically imposed on these lots. As of right now, there's no restriction from CAFRA to take that dune any further.

Council Vice President McCorristin referenced the personal deed restrictions referenced by Ms. Bolinsky and inquired if the applicants are asking the Borough to review those restrictions.

Dorothy Bolinsky replied that Council is not asked to voice an opinion on those restrictions, as they were referenced strictly for informational purposes. She reiterated that the intent of the application is not to build a house closer to the ocean. The intent behind this application is just to clear up title.

Steve Barse added there was an email received from an adjacent property owner objecting the release of the deed restrictions implemented by the 1979 deed.

Dorothy Bolinsky thanked Steve Barse, Marie Hood, Jim Waldron and the staff of the Borough for their help and guidance during this process.

Council agreed take the application and the statements made by Ms. Bolinsky under advisement and make a determination at a later date.

Motion made by Council Vice President McCorristin, seconded by Councilman Deever to adjourn the Public Hearing.

<u>ROLL CALL VOTE:</u>	Councilman Covington	Aye
	Councilman Dean	Aye
	Councilman Deever	Aye
	Council President Hudanich	Aye
	Council Vice President McCorristin	Aye

Public Hearing adjourned at 4:16 p.m.

Respectfully submitted,



Marie J. Hood, Borough Clerk



Nancy M. Hudanich, Council President