

July 24, 2019

A Work Session of the Borough Council of the Borough of Avalon was held on Wednesday, July 24, 2019 at 4:00 p.m. in the Meeting Room, 3100 Dune Drive, Avalon, New Jersey.

Attendance: Public ----- 6

Reporters ----- 1

The Meeting was called to order by Council President Hudanich.

Pledge of allegiance.

<u>Roll call:</u>	Council President Hudanich	Present
	Councilman Deever	Present
	Councilwoman Juzaitis	Present
	Council Vice President McCorristin	Present
	Councilman Wierman	Present

Also present:

Scott Wahl, Business Administrator  
James Waldron, Assistant Business Administrator  
Nicole Curio, Esquire, Borough Solicitor  
Paul Short, Code Enforcement Official  
William Macomber, Director of Public Works/Utilities  
Police Chief Jeffrey R. Christopher  
Thomas R. Thornton, P.E., Borough Engineer, Mott Macdonald  
William Macomber, Director of Public Works/Utilities  
Amanda Seltzer, Zoning Official  
Alexis Coan, Tax Collector  
El Cifaloglio, Tax Clerk

Council President Hudanich read the Open Public Meetings Act Announcement.

Notice of this Work Session was included in the Annual Schedule of Meetings dated June 26, 2019. It was given to the news media and posted on the Official Bulletin Board as required by law.

**Discussion regarding Resolution authorizing the extension of the grace period for 3<sup>rd</sup> Quarter Property Taxes.**

Council President Hudanich clarified for the benefit of the public the necessity to extend the tax grace period is no reflection of a lack of work in that department.

Alexis Coan agreed with Council President Hudanich and stated the Tax Collector's Office works tirelessly to ensure the tax bills are sent on-time, which includes contacting the County Board of Taxation, State of New Jersey, and both software companies involved, Vital Communications and Edmunds, on a daily basis. The Tax Collector's Office is routinely in communication with these various departments and companies so that the Borough of Avalon can fulfill all statutory obligations. When the State of New Jersey releases tax rates and information, each County within the State must certify their tax rate. For the Borough of Avalon, the certified County tax rate gets sent to the software vendor, Vital Communications, for the creation of tax books which contain tax information and other pertinent information for each property within the Borough of Avalon. Once Vital Communications receives the certified County tax rate, the information is input into a software format for Edmunds, which is the software company used for the tax collection software. When Edmunds receives the software information, that information must be processed and input into Avalon's systems. This year, Edmunds was able to process their portion of the data within two business days. While it would have been preferred to receive the information sooner, unfortunately it was unreasonable to expect the software company to provide the information in a more timely manner than what was provided.

Council agreed to proceed with a Resolution to be considered at today's Regular Meeting.

**Discussion regarding Resolution scheduling a public hearing concerning potential deed restriction release for the property known as Block 15.02, Lot 7, 35 W. 16<sup>th</sup> Street.**

James Waldron explained back in the 1950s, the Borough of Avalon conveyed an undetermined number of parcels containing vacant ground to various individuals and corporations. A condition of said conveyance was a deed restriction placed upon the parcel of land prohibiting the construction of residences at a height of greater than two stories.

Councilwoman Juzaitis asked for the reasoning behind such conditions.

James Waldron stated there were no zoning rules or regulations during that time. There was a concern with regard to fire fighting apparatus and its unavailability, therefore the restriction was two stories and none other. As the architects and the design of buildings became more sophisticated, there were disputes. In 1994, there was a case, *Wilcox v. Sorgenti*, in which the plaintiff in that case challenged a deed restriction that had been imposed in a 1950s deed to Diller and Fisher. Judge Callahan sitting in the Chancery Division ruled that the term “two stories” was entirely too vague. The court then struck down that restriction, and went further to require that the Judge’s order be reduced to a recorded document. The Borough has not been able to identify the number of properties that were conveyed subject to this restriction, therefore the Borough has been forced to deal with them on a case-by-case basis as they arise, which creates some complications.

Council President Hudanich noted there is also expenses associated with each of these releases.

James Waldron agreed, and noted there are also other complications not realized until processing a release of a deed restriction. For example, the applicant in this case is requesting a deed restriction release for one block and lot, however the lot referenced in the original deed contained four parcels. In the ensuing 65 years, there have been configurations, re-configurations and subdivisions of those lots. It is now necessary for the Borough to evaluate how best to move forth in reference to this parcel and removing the restriction properly between now and the public hearing, which is being recommended to take place on Wednesday, August 14, 2019 at 3:55 p.m.

Council President Hudanich inquired if it has been confirmed that this specific parcel is indeed one of the parcels the original deed referenced, and further asked if this will be used as an example when a similar request is received.

James Waldron replied yes.

Council President Hudanich questioned if it is possible to do a software search for outstanding deed restrictions if there is a field which includes such information.

James Waldron responded deed restrictions had not been notated in any Borough software, which makes it difficult to track these restrictions.

Council President Hudanich asked if it would be prudent to implement a program to gain searchability of these items.

James Waldron replied there was a mechanism presented to Council in the past which would establish a uniform policy for dealing with deed restriction releases so that they do not have to come before Council, and noted it is something that merits revisiting. Prior to the public hearing, other properties that may be impacted by this release will be identified, and it would be the recommendation to release this deed restriction as to all applicable properties.

Councilman Wierman noted the deed restrictions seem to have outdated themselves.

Council President Hudanich agreed and mentioned the quantitative height of all structures is now included in the zoning regulations.

James Waldron stated these restrictions predated zoning and the Borough has been advised on a number of occasions that these kinds of restrictions are in disfavor due to the fact that Zoning is supposed to be the guiding principle in terms of development within a municipality.

Council agreed to proceed with a Resolution to be considered at today’s Regular Meeting.



**Discussion regarding proposal from Mott MacDonald concerning 21<sup>st</sup> Street Bulkhead Bidding Services.**

Thomas Thornton reported this proposal is for the bid phase services for the 21<sup>st</sup> Street bulkhead. Typically, proposals submitted by Mott MacDonald include design and permitting, however it is being recommended to move forward with bid phase services only at this time regarding this project for purposes of efficiency. It is being proposed to put the project out to bid in advance of receiving the permit from the Department of Environmental Protection (DEP). This is a very straight forward project for a very simple bulkhead replacement. It is not expected to have any permit conditions implemented that would impact the bids received. The permit application for this project has been submitted, and it is anticipated that the permit would be received in advance of Council awarding the contract.

Council agreed to proceed with a Resolution to be considered at today's Regular Meeting.

**Discussion regarding proposal from Mott MacDonald concerning Reconstruction of 47<sup>th</sup> Street.**

Thomas Thornton explained Council recently agreed to proceed with the design for the next year of the road improvement program. When the budget for each of these projects was reviewed, it was found that the Sunset Drive and 7<sup>th</sup> Avenue project will be a larger expense due to roadwork, utilities, and drainage. Meanwhile, many problems are occurring on 47<sup>th</sup> Street between Ocean and Dune Drive, which happens to be on the Road Projects for next year. In this case, it is recommended to proceed with 47<sup>th</sup> Street in lieu of Sunset Drive and 7<sup>th</sup> Avenue at this time. He cautioned that the road improvement program as it currently exists is a very large project and there would be a risk of exceeding what the Borough has budgeted. While 47<sup>th</sup> Street improvement would include water, sewer, storm water and the reconstruction of the street, it is shorter in length, which amounts to less aggregate cost. Storm water improvements are proposed on this section of roadway as there is a fresh water pond directly across Dune Drive in the Dune area with very high ground water levels. The stream in this case is basically going under Dune Drive, bubbling up out of the Inlet on 47<sup>th</sup> Street and then flowing down the gutter. It is not a good situation when you have constant flows week after week. In sum, for public health purposes in addition to cost, it is recommended to include 47<sup>th</sup> Street on the next road project and deferring the Sunset Drive and 7<sup>th</sup> Avenue improvements until the following season.

Council President Hudanich expressed concerns about following the Borough Ordinance for notifying the residents.

Thomas Thornton recommended that a waiver be requested from the residents affected, and expressed the opinion that the homeowners would be very happy to see this project move forward.

Council President Hudanich noted unfamiliarity with the population density of that area of town and inquired if there are any vacant lots.

Thomas Thornton said he is unsure.

Council President Hudanich replied these are questions Council needs answered prior to proceeding because the Borough requirements for notification of residents specifically speaks to vacant lots that may want to be stubbed out prior to the moratorium being put in place after road reconstruction.

Scott Wahl explained he and James Waldron have been in discussion about an immediate notification to the neighborhood in an effort to get immediate answers for a more efficient turn around. He noted Administration has received numerous complaints about the water ponding on 47<sup>th</sup> Street.



Council President Hudanich inquired if this is an exigency legally if the Borough has a timeline in place for notification and then a moratorium. She expressed unwillingness to enter a practice of the rules applying to many others with the exception of the Borough's project timelines.

Nicole Curio explained she would have to look at the Ordinance language in terms of the timeline, if there is an exigency and if it is defined.

James Waldron noted when the Ordinance was initially enacted, there were a number of vacant lots throughout the community, and one of the purposes of the Ordinance was to give property owners notice so sewer and water laterals could be stubbed out to the vacant lots in advance of the moratorium becoming effective after road reconstruction. The Borough gave property owners a one-year notice for this purpose. It is possible that Council may want to consider that a one-year notice is too long and is not sufficient under the circumstances that prevail today. In most cases the laterals are already in place. Furthermore, when the one-year notice requirement was implemented, the Borough was permitting private contractors to open the street to install the laterals to the curb. That has not been the practice for many years, as the Borough's contracted water company has been installing the laterals and are working very closely with Mott MacDonald with coordinating the paving of the streets. The problems that existed that were the driving force behind that Ordinance have been substantially eliminated. This may be an opportunity to take a look at the Ordinance and see if this is a current need and if it is necessary for a one-year notification. It is possible that 90 days may be a sufficient notification.

Council President Hudanich agreed with a 90-day notification and noted it makes sense to address the whole picture. She further agreed that 47<sup>th</sup> Street needs to be done to address the ponding, however recommended that Council investigate the Ordinance and bring it into the 2020 realm of thinking.

After brief discussion, Council agreed to proceed with a Resolution to be considered at today's Regular Meeting.

**Discussion regarding Ordinance amending Chapter 27 (Zoning) concerning setback requirements.**

Scott Wahl gave the following report:

Summary: Council is in receipt of a letter from the Planning and Zoning Secretary dated July 11, 2019 and a memo from Scott Wahl explaining the ask for this afternoon regarding Chapter 27. I asked Amanda Seltzer the Zoning Official to be at the meeting today to fill in any of the blanks that we are talking about.

For discussion purposes only, Council is being asked to consider a clarifying amendment to Chapter 27 regarding the appropriate setbacks for garages attached to properties wherein the garage door does not face the street. A clarification of this is needed to reduce variances that come to the Planning/Zoning Board. This matter was discussed at the PZ Board meeting on July 9, 2019 with full support from the Board, Board Engineer, and Board Solicitor. A letter recommending the "ask" to Council is included in this packet.

Issue: Avalon currently requires a 15-foot front yard setback from the foundation of a home to the front property line; and there is a requirement of an 18-foot front yard setback to the foundation of a garage that faces the street. However, in some cases, a garage does not face the street (ie: drive in straight off the street, turn into the garage) and the setback is undefined. It has been the past practice of the Zoning Official to approve either setback as it remains undefined in the ordinance.

Proposed Resolution: The proposed 15-foot front yard setback as written in the attached letter from PZ Board Engineer Joseph Maffei is from the foundation of the garage. Clarifications are needed in seven sections of the ordinance and require three stipulations to the 15-foot setback for a garage not facing a street. 1) Only green space between the garage and the front property line 2) No parking is allowed on the green space between the garage and the front property line 3) Required number of parking spaces are provided for the use.



Suggested timeline for Ordinance Amendment:

- Avalon Planning/Zoning Board discussed and approved this issue at the July 9, 2019 meeting
- Avalon Borough Council to discuss only the potential ordinance amendment at the July 24, 2019 meeting
- Avalon Planning/Zoning Board to approve a resolution for this ordinance change at its August 14, 2019 meeting
- Avalon Borough Council to potentially introduce the ordinance amendment at its August 14, 2019 meeting

This matter includes no deviation from the Master Plan.

Amanda Seltzer noted since becoming Zoning Official, she has denied two applications for garages proposing the 15' front yard setback. This amendment will help moving forward with other applications.

Council Vice President McCorristin asked Ms. Seltzer to make note of the appropriate setback for a garage attached to a home for the benefit of the public.

Amanda Seltzer stated if a garage is attached to a residence and is facing the street, the garage must be setback 18 feet.

Councilman Wierman explained the residential structure must be 15 feet from the property line, with the garage door being an additional 3 feet back, because the distance between the garage door and the property line should be enough to provide for an additional parking space. The question recently brought up by builders was if the same rules apply to garages with doors facing the side of the residential structure. When the Zoning Ordinance was written, the 18-foot setback simply states "to the garage". Now it has come into question if that means the side of the garage when the garage faces the house or simply the garage door when facing the property line.

Council Vice President McCorristin questioned the reasoning for a 15-foot setback from the side of the garage, and the requirement that the setback be green space or grass.

Councilman Wierman explained the Planning/Zoning Board still wants the required number of parking spaces on the property to be met somewhere on the property that is not the front yard. The 15 feet from the structure to the property line is not enough for a parking space, therefore it was suggested the 15 feet be green space as a stipulation.

Further discussion took place regarding the placement of parking spaces within a lot if the garage door does not face the street.

Amanda Seltzer noted in her experience as Zoning Official, there has not been any trouble with maintaining the required number of parking spaces. The only dispute has been the setback for the foundation of the garage.

Councilman Wierman expressed the opinion of needing this clarification to allow for the side of the garage to be flush with the front of the house when the garage door faces the house.

Council Vice President McCorristin noted if a lot is configured a certain way, it could be possible to have a parking space on the property within the 15 feet between the side of the garage and the property line if the vehicle parks along the side of the garage, rather than facing the garage. He noted the requirement of green space would eliminate that possibility and could possibly create an issue of having inadequate parking. He further expressed the opinion that the proposed language is worded strangely, as it seems to imply green space required between the residential structure and the garage.

Council President Hudanich agreed that the proposed language does not read according to the mental picture because of the green space between the garage and the front of the property. The language needs to be clear that the green space is not required between the house and the garage, but the entire front yard should be green space. The language should specify the green space should be from the foundation to the curb.

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Council Vice President McCorristin further suggested that the language specify the property line, rather than the curb line.

Councilman Wierman noted property owners still must abide by the parking rules. The green space was proposed so that what was thought to be the front yard with the 15-foot setback would not become a concrete parking area. It is no one's intent to have parking within a front yard.

Council President Hudanich suggested the verbiage of this Ordinance be revisited prior to introduction so that it will clarify and give delineated, consistent rulings.

Councilman Deever asked the sizes of the properties associated with these applications.

Amanda Seltzer responded mostly oversized lots submit these types of applications.

Council Vice President McCorristin asked who is going to enforce the green space requirement.

Amanda Seltzer indicated she has issued notices of violation for properties that indicated green space on plans and have ended up placing stones or pavers within that area.

Council Vice President McCorristin inquired if there are any pending applications this amendment would affect.

Amanda Seltzer responded no.

After brief discussion, Council agreed to discuss this matter further at the August 14, 2019 Work Session.

**Public Comments:**

None.

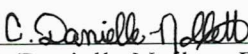
The Council Members proceeded to go over the Agenda for the Regular Meeting.

Motion made by Council Vice President McCorristin, seconded by Councilman Deever to adjourn the Work Session.

<u>ROLL CALL VOTE:</u>	Councilman Deever	Aye
	Councilwoman Juzaitis	Aye
	Council Vice President McCorristin	Aye
	Councilman Wierman	Aye
	Council President Hudanich	Aye

Work Session adjourned at 4:34 p.m.

Respectfully submitted,

  
C. Danielle Nollett, Borough Clerk

  
Nancy M. Hudanich, Council President