

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE No. 873-2024

AN ORDINANCE AMENDING ORDINANCE 809-2020 ESTABLISHING A PROCEDURE FOR PROPERTY OWNERS TO OBTAIN A RELEASE AND DISCHARGE OF CERTAIN DEED RESTRICTIONS IMPOSED BY THE BOROUGH OF AVALON IN CERTAIN DEEDS OF CONVEYANCES EXECUTED AND DELIVERED BY THE BOROUGH OF AVALON PRIOR TO 1979

WHEREAS, the Borough of Avalon has previously enacted Ordinance No. 809-2020 which sets forth a procedure for the release and discharge of certain deed restrictions imposed by the Borough of Avalon in certain deeds of conveyances executed and delivered by the Borough of Avalon prior to 1979; and

WHEREAS, at a Council Meeting held on Wednesday, January 10, 2024, the Borough Council discussed and determined there was a need to amend Ordinance No. 809-2020 in order to make the administrative procedure for the release and discharge of said deed restrictions more efficient.

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL, THE GOVERNING BODY OF THE BOROUGH OF AVALON, in the County of Cape May and State of New Jersey as follows:

SECTION 1. Chapter 28 of the Avalon Borough Code ("Borough Code") (Property Restrictions) is amended and shall hereafter provide as follows:

§28-1. FACTUAL FINDINGS AND DETERMINATIONS; STATEMENT OF POLICY.

- a. No change to current Ordinance.
- b. In certain of these instances, an inspection of the parcel by appropriate Borough officer or official can confirm that the required site improvements have been made. The appropriate Borough officer or official shall provide said confirmation to the Clerk's Office affirming that all conditions have been complied with. The restriction shall be discharged or the reverter shall be released through a quit claim deed which shall be reviewed and approved by the Borough Solicitor which is then signed by the Mayor and Borough Clerk and provided to the Property Owner so that it may be duly recorded with the County.
- c. through n. No change to current Ordinance.

§28-2. DEED RESTRICTIONS SUBJECT TO RELEASE AND DISCHARGE.

- a. Any deed restriction, whether or not accompanied by a reverter clause provision, contained in any deed from the Borough of Avalon, as grantor, and delivered to any person(s), or entity, as grantee(s) for any real property located within the boundaries of the Borough of Avalon, Cape May County, New Jersey which purports to limit the height of any building to be constructed to "two stories" or other similar height restriction without any specification of feet or other quantitative measure is hereby declared to be void for vagueness and ambiguity in accordance with the ruling of the Superior Court of New Jersey, Cape May County, Chancery Division in the matter of J. Taney Willcox, Jr. and Catherine E. Willcox v. Harold A. Sorgenti and Ann R. Sorgenti, Docket No. C-119-91 and shall be subject to discharge and release in accordance with the procedures set forth herein. In addition, since the Borough has enacted various land use ordinances including a Municipal Zoning Ordinance which limits the heights of all buildings and determines how such height is to be determined, as previously stated, such prior height restriction imposed by deed restriction is hereby deemed to be superfluous and to have been superseded by such land use ordinances. Such deed restriction would further appear to violate the provisions of the Local Land and Buildings Law, N.J.S.A. 40A:12-1 et seq. Accordingly, any such restriction shall be deemed released by Resolution No. ###-2024 of Borough Council.

b. Any deed restriction, whether or not accompanied by a reverter clause provision, contained in any deed from the Borough of Avalon, as grantor, and delivered to any person(s), or entity, as grantee(s) for any real property located within the boundaries of the Borough of Avalon, Cape May County, New Jersey which requires the construction or installation of any site improvement(s) including the construction of any dwelling or structure of any certain size or dimension or other similar type condition may be released upon a site inspection by the appropriate Borough officers or official and such officer(s) or official confirm(s), in a written report to the Borough Clerk that all site improvements have been made or installed in a satisfactory manner or that any required structure has been constructed and completed. In addition to any site visit or inspection, the appropriate Borough officer(s) or official may rely upon records of the Borough, including construction permits, variance applications, certificates of occupancy or certificates of approval, and other documentation of the same or similar nature. Any such restriction shall be deemed released by resolution No. ###-2024 of Borough Council.

c. No change to current ordinance.

§28-3. PROCEDURE FOR RELEASE OF CERTAIN DEED RESTRICTIONS.

a. Procedure; Release without Additional, Individual Public Hearing

1. Those restrictions described in § 28-2a hereof shall be deemed to be released, by a global resolution of Borough Council, Resolution No. ###-2024 and without the necessity for an additional, individual public hearing as might otherwise be required by N.J.S.A. 40:60-51.2, upon the application of the owner or other party in interest, for the reasons set forth herein.

2. Those restrictions described in § 28-2b hereof shall be released, by a global resolution of Borough Council, Resolution No. ###-2024, upon the application of the owner or other party in interest, and upon the filing of one or more of the reports described herein and upon Borough Clerk and Solicitor being satisfied that all previously imposed conditions have been met and satisfied.

b. Application Process and Solicitor Review. The application for release shall be on forms provided by the Borough. The applicant shall provide any such additional information or documentation as the Borough Clerk may require or as the Borough Solicitor may recommend. The applicant shall also provide a proposed quit-claim deed releasing the restrictions which must be prepared by a State of New Jersey licensed attorney. Once a completed application is received by the Borough Clerk, and the requirements set forth in §28-3(a) and (b) have been satisfied, the proposed deed releasing said restrictions shall be forwarded to the Borough Solicitor for review.

After review by the Solicitor, the approved quit-claim deed shall then be signed by the Mayor and Borough Clerk and provided to the Property Owner so that it may be duly recorded with the County. It shall be the responsibility of the property owner to record the deed with the County. A copy of the recorded deed shall be provided to the Borough Clerk from the property owner.

c. Fees and Costs to Be Paid by Applicant; Amount Determined by Resolution. The applicant shall pay all costs incurred by the Borough in connection with such request including, but not limited to, the Borough's administrative costs, legal fees in reviewing the application and proposed deed. All fees to be charged shall be established pursuant to resolution of Borough Council and may be revised from time to time as Borough Council shall determine.

d. No change to current Ordinance.

§28-4. MISCELLANEOUS.

No change to current Ordinance.

§28-5 PUBLIC HEARING.

On a date concurrent with the public hearing on this chapter, the Borough shall conduct a public hearing pursuant to N.J.S.A. 40:60-51.2 on the release of the two-story deed restriction as well on the release of the site improvements referenced in §28-2 (a) and (b). Notice of the time, date, place and purpose of such hearing shall be published as required by said statute. The form of such notice shall be subject to approval by Borough Council and shall conform to such statute to the greatest extent possible and shall inform the general public of the nature of the restriction being considered for release when the existence of such deed restriction becomes known. The form of notice shall conform substantially to the form annexed hereto.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 3. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to this section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect immediately after final adoption and publication as required by law.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on January 24, 2024. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 28th day of February, 2024 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:00 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

C. DANIELLE NOLLETT
Borough Clerk