

ORDINANCE 2023-15

ORDINANCE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 4.04 OF TITLE 4, WHICH PERTAINS TO BEACH PROTECTION/BULKHEADS, AND AMENDING CHAPTER 16.80 OF TITLE 16, WHICH PERTAINS TO THE LAND DEVELOPMENT CODE, AND ADDING CHAPTER 15.25 OF TITLE 15, WHICH PERTAINS TO BUILDINGS AND CONSTRUCTION

STATEMENT OF PURPOSE

The purpose of the ordinance is to amend Title 4, Chapter 4.04, to clarify, reformat, and amend the regulations relating to the protection of dunes and the construction of bulkheads, to adopt performance guarantee requirements relating to construction and dunes, as well as to amend the title of Chapter 16.80 and to add Chapter 15.25 which reformats and amends the bulkhead construction regulations.

SECTION I

Chapter 4.04 is repealed and replaced as follows.

Chapter 4.04 Beach Protection, Bulkhead Construction, Permits, and Guarantees

§4.04.010 Definitions

For purposes of this Chapter, unless the text indicates otherwise, the following words and terms shall have the following meanings.

BEACH

The zone of unconsolidated material that extends landward from the low water line to the place where there is marked change in material or physiographic form, i.e., dune or bulkhead.

BEACH DUNE AREA

The district set off by this Chapter to include all areas bounded on the southeasterly side by the Atlantic Ocean and on the northwesterly side by a line parallel width of 150 feet northwesterly from the oceanfront building line or by the nearest north-south street, whichever is the lesser distance.

BULKHEAD LINE

A line established by the Borough engineer as shown on maps of the Borough and on file as public record in the office of the Borough clerk; such line running parallel with and 20 feet eastwardly from the oceanfront building line.

DUNE

A hill of sand accumulated along the beachfront, usually by natural means. It shall extend from the crest of the hill to the line where the normal leeward slope interacts the established grade of the hinterland.

DUNE AREA

The area actually or normally occupied by dunes, whether natural dunes or manmade dunes. It shall be construed to include its actual dimensions, but not less than a

minimum of 14 feet elevation above mean sea level at the bulkhead line and a minimum of 16 feet elevation above mean sea level at the oceanfront building line.

OCEANFRONT BUILDING LINE

A line established by the Borough engineer and shown on the maps of the Borough on file as public records in the office of the Borough clerk, which shall mark the easterly limits of any permissible building construction.

SLOPE, LEEWARD

The face or surface of the dune going from its crest away from the ocean.

STRAND

That area which extends landward from the low water line to the dune line, being the same area defined above as Beach.

§4.04.020 Beach and Dune Regulations.

- A. Construction Prohibited. Construction of any type, southeastwardly of the oceanfront building line, except protective works approved and/or undertaken by the Borough, County, State, or Federal governments is prohibited.
- B. Construction Permitted. Construction is permitted in the remainder of the beach dune area subject to the provisions of this Chapter and subject to the following restrictions and regulations.
 - 1. No dwellings or any part of such dwellings shall be constructed eastwardly of the oceanfront building line. Every application for a building permit for construction within 100 feet of the oceanfront building line shall be accompanied by a plot plan prepared by a licensed engineer or surveyor showing the oceanfront building line, bulkhead line, placement and elevation of the proposed structure, and all existing grades.
 - 2. All construction in this area must maintain the minimum grades and elevations as set forth in the definition of dune. In addition, such construction shall be accompanied by minimum elevations which will maintain a straight decline westerly from the oceanfront building line to the existing elevation of the westerly adjacent graded lot or street as the case may be; where no street or graded lot exists within 150 feet of the building line, the decline shall be to a minimum of 12 feet elevation above mean sea level along a line 100 feet westerly from the oceanfront building line and parallel with such line.
 - 3. Excavation for purpose of placement of piling during construction is permitted, provided it is not greater than a depth of 10 feet above mean sea level, and provided further that such excavation shall not remain open longer than one week.
 - 4. All construction must secure all required State permits, including, but not limited to CAFRA permits and otherwise comply with all requirements of the Borough Code, including, but not limited to, flood hazard prevention regulations.
- C. The installation or placement of any device of any sort, kind, or description in the dune area as provided by this Chapter other than protective works approved or undertaken by the Borough, county, state or federal government or protective devices is prohibited, except dune walkovers approved by the NJDEP and installed pursuant to approval issued by the Building Department.
- D. To further protect the strand, beach, beach dune area, dune area, and dunes, the following additional regulations are established.

1. No person shall remove, cart away, or redistribute sand, or cause the removal, carting away, or redistribution of sand by any mechanical or other means from the beach dune area.
 2. No person shall use, walk upon, sit on, stand on, or otherwise occupy the dune area, except as authorized by the Borough relating to the removal of trash, the planting of grasses, and the preservation and maintenance of the dune area.
 3. No person shall at any time remove, cut, burn, or destroy any snow fence or vegetation installed by the Borough upon the beach dune area. If, for any reason, the owner of the lot or parcel of land upon which the snow fence or vegetation and dune are located, removes, cuts, burns, or destroys the vegetation or snow fence on the beach dune area or causes the same to be removed, cut, burned, or destroyed, the Borough, at the owner's expense, shall replace the snow fence and/or replant the dune vegetation in order to preserve the integrity of the entire beach dune area.
 4. The removal or destruction of natural vegetation within the beach dune area is prohibited.
 5. The alteration of any dune area by removal of sand or reduction of height is prohibited. Any alteration to the dune area permitted by this Chapter shall preserve the existing dune grass and replace it on a new level.
 6. Nothing contained herein shall be construed to prevent or prohibit the use of the beach and strand for recreational and authorized purposes, subject to express regulations as provided in this Chapter and the Code.
 7. The Borough may locate, erect, and maintain snow fencing and/or plant vegetation in the beach dune area.
- E. Where, by act of high winds and/or tides, sand is blown or washed upon lands, including street ends lying westwardly from the dune area, such sand shall not be removed from such lands and such sand shall be returned to the beach dune area in accordance with the required permit.

§4.04.030 Permits and Guarantees.

- A. A permit from the Borough shall be required for any construction on a dune, the dune area, or the beach dune area and a permit shall be required for the removal and return of sand on property back to the dune, dune area, or beach dune area. When a permit is sought for removal and return of sand only and no construction is proposed, the cost for the permit shall be \$50. When a permit is sought for any construction of any type, the cost for the permit shall be \$150. The cost of any such permit shall be in addition to the applicable fee for a building permit issued.
- B. The permit applications shall be filed with the Building Department and include the name and address of the applicant, the contractor information, the location of sand to be moved or displaced, the nature and purpose of the proposed moving or displacement, the proposed method by which the applicant desires to move, return, or displace the sand, a description of the equipment, machinery or other apparatus to be used, an estimate in terms of cubic yards as to the quantity of sand to be moved or displaced, and such other information consistent with this Chapter as may be required by the Building Department.
- C. No permit shall be issued without a determination by the Borough Engineer based upon an inspection of the area involved and a report thereon, filed with the Construction Official, that the removal will not create or increase a danger or hazard to life or property. The Borough Engineer and the Construction Official shall be the two signatures required on the permit. No permit will be granted if the proposed moving or displacement will:

1. Adversely affect the littoral drift on the beach dune area;
 2. Result in a reduction of dune protection and the dune area;
 3. Interfere with the general configuration of the beach dune area of the subject property or neighboring properties; or
 4. Take place between during the period of May 16th and October 14th of each year, such date to be inclusive, except the removal and return of sands displaced by winds and/or tides.
- D. A deposit and guarantee shall be made by the applicant at the time of the issuance of the permit in an amount equal to \$5,000. Such deposit shall be refunded upon the Borough Engineer's approval of the work which has been done. If the work has not been done in compliance with the specifications contained in this subsection, the Borough shall have the right to have the work done as so required, charging the costs thereof against the deposit or guarantee. Any portion of the deposit remaining unused for such purpose shall be returned to the applicant.
1. The guarantee shall be made payable to and deposited by the Borough and shall be in the form of cash or a certified check. The Borough shall issue its receipt for such deposits, shall cause them to be deposited in the name of the Borough, shall be retained as security for completion of all requirements and returned to the owner on completion of all required work, or in the event of default on part of the applicant, shall be used by the Borough to pay the cost and expense for completion of all requirements.
 2. In the event the deposit shall be insufficient to pay for the required work to be performed for the required repairs, the property owner shall remain liable for the additional amounts necessary to complete the repairs. Neither the permit, nor any building permits or certificates of occupancy, shall be approved relating to the property until the work is paid for in full by the owner, and completed. In addition, a summons may issued for violation of this Chapter as set forth herein.
 3. All cash guarantees required herein shall be invested by the Borough in interest-bearing accounts in the name of the Borough, and the interest earned shall accrue to the benefit of the applicant. No interest shall accrue on funds deposited as a performance guaranty.

§4.04.040 Construction and Beach Dune Area Specifications.

- A. Specifications for moving or displacement of sand shall be in accordance with the requirements of the Borough Engineer and as follows.
1. The applicant or the applicant's contractor shall, in the process of performing work on the dune, maintain the elevation of the dune as established by the Borough Engineer.
 2. The applicant shall preserve the existing dune grass and replant dune grass after the final grading has been completed. In no case will the coverage of dune grass be less than 12 inches on center in any direction. All new plantings shall be fertilized with a suitable fertilizer.
 3. The applicant shall place a 1-inch mat of salt hay over the entire area of the dune which has been disturbed during construction.
 4. The applicant shall install and/or replace any snow fence with new sand fence along the center line of the dune and position the sand fence so that it conforms with the alignment of existing sand fence installations to the north and south.

5. The applicant shall notify the Borough Engineer and the Code Enforcement Officer 24 hours in advance of the time that construction work will start. The applicant's contractor shall work in a diligent manner and shall fully complete the restoration within 10 days from the start of work.

§4.04.050 Bulkhead Line, Building Line, and Administration.

- A. The Borough Engineer shall plot the bulkhead line and the oceanfront building line, as defined in this Chapter, upon the tax maps of the Borough. The tax maps shall be on file in the office of the Borough Clerk and available for inspection.
- B. The bulkhead line and the oceanfront building line shall be included in all tax maps and zoning maps of this Borough published following the effective date of this amendment.
- C. The Code Enforcement Officer, Zoning Officer, and the Police Department are designated as the person(s) responsible for the enforcement of this Chapter.

§4.04.060 Violations and penalties.

- A. Any person violating or failing to comply with any of the provisions of this Chapter shall, upon conviction thereof, be punishable by a fine of not more than \$2,000, by imprisonment for a term not to exceed 90 days or by community service of not more than 90 days, or any combination of fine, imprisonment or community service as determined in the discretion of the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.
- B. The violation of any provision of this Chapter shall be subject to abatement, summary judgment, or a restraining order or injunction issued by a court of competent jurisdiction.

SECTION II

Chapter 16.80 is hereby renamed Subdivisions and Site Plans.

SECTION III

Chapter 15.25 is hereby adopted as follows.

Chapter 15.25 Bulkheads.

§15.25.010 General Regulations.

- A. All private marine bulkheads shall be maintained so that they shall not pose a danger to the health, safety, or welfare.
- B. All private marine bulkheads and waterfront lots shall be kept in a state of repair which will prevent erosion or damage to abutting, adjacent, or adjoining properties or the lagoon/waterway on which it fronts.
- C. Whenever a marine bulkhead and waterfront lot has deteriorated to such a degree that it poses a danger to the property, or to abutting, adjacent, or adjoining properties, or to the lagoon/waterway on which it fronts, the owner shall be required to make the necessary repairs to correct such conditions.
- D. The top of any marine bulkhead shall have an elevation of 5 feet above mean sea level, NAVD 1988 unless a greater elevation is required by Chapter 16.68.

§15.25.020 Application and Permits.

- A. No marine bulkhead shall be altered, constructed, reconstructed, repaired, or installed, and no fill shall be placed on any waterfront lot, unless and until a permit has been obtained from the Borough, the New Jersey Department of Environmental Protection, and from any other governmental agency with jurisdiction, if needed.
 - 1. A bulkhead permit shall not be required for repairs of less than 50% of the length of a bulkhead.
- B. No marine bulkhead shall be altered, repaired, constructed, reconstructed, or installed, including repairs of less than 50%, and no fill shall be placed on any waterfront lot, unless and until a zoning permit has been obtained from the Borough. The zoning permit fee is set forth in Chapter 16.84.
- C. Application for a bulkhead permit shall be submitted to the Construction and Zoning Department and shall be on the form provided by the Borough.
 - 1. Applications shall be accompanied by signed and sealed plans and specifications, showing the size, shape, configuration, materials, dimensions, and location of the bulkhead(s), including existing and proposed bulkheads.
 - 2. All plans shall be based upon an accurate, current survey of the premises prepared by a New Jersey licensed land surveyor.
 - 3. The fee for the bulkhead permit is set forth in Chapter 16.84.
 - 4. Applications shall be accompanied by copies of permits from the New Jersey Department of Environmental Protection regarding the proposed bulkhead, and/or other documentation verifying that the proposed bulkhead has been approved by the Department or is in conformance with the Department's rules and regulations governing bulkheads.
- D. All proposed new, altered, replacement, or reconstructed marine bulkheads shall be designed by a professional engineer licensed to practice in the State of New Jersey.
- E. The Construction Official shall review all residential and non-commercial applications and plans and grant or deny the application within 20 business days upon receipt of a complete application.
- F. The Construction Official and the Borough Engineer shall review all commercial applications and plans and grant or deny the application within 20 business days upon receipt of a complete application.

§15.25.030 Construction specifications.

- A. All materials shall be compliant with the applicable State and New Jersey Department of Environmental Protection regulations and requirements, which shall supersede these regulations in the event of a conflict.
- B. All sheathing shall be corrugated vinyl, or equivalent, and of sufficient width and length to provide the necessary protection to retain the upland area. All new and replacement sheathing shall comply with the minimum bulkhead top elevations as required by this Chapter.
- C. Whalers shall be not less than 6 x 6 inches, of which there shall be 2.
- D. All pilings shall have 8-inch minimum diameter butts and shall penetrate 10 feet below bay bottom and be 5 feet on center maximum.
- E. All tie-rods shall not be less than 3/4-inch diameter and 16 feet in length and shall be set through each piling 1 foot from the top. All anchor pilings shall not be less than 12 feet in length and shall have 8-inch minimum diameter butts.

§15.25.040 Violations and penalties.

A violation of this article shall be punishable as provided in Title 1, General Provisions, Chapter 1.08, General Penalty.

SECTION IV

All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION V

If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

Effective date.

This ordinance shall take effect after final adoption and publication as required by law.

NOTICE

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Mayor and Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on Tuesday, October 24, 2023, at 6:30 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Mayor and Council to be held on November 28, 2023, at 6:30 p.m. at the Municipal Building, 1621 Long Beach Boulevard, Ship Bottom, New Jersey 08008.

Kristy DeBoer, RMC
Municipal Clerk