

ORDINANCE NO. 2020-04

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING ARTICLE II OF CHAPTER 75 OF THE BOROUGH CODE OF THE BOROUGH OF BAY HEAD, ENTITLED "PROTECTION OF BEACHES AND DUNES"

NOW, THEREFORE, BE IT ORDAINED, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

SECTION 1. The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to repeal in its entirety Article II of Chapter 75, entitled "Protection of Beaches and Dunes," and to replace with a new Article II of Chapter 75, which shall be entitled "Protection of Beaches and Dunes" and which shall read as follows:

Article II Protection of Beaches and Dunes

§ 75-5 Findings; declarations; purpose.

- A. The Borough has a vital interest in the continued maintenance and protection of the beach and dune areas and in the right to cause their restoration in the event of damage or destruction.
- B. Maintenance and protection of the ocean beach and dune areas are also a requirement of the Borough under a State Aid Agreement (SAA) between the Borough and the New Jersey Department of Environmental Protection (NJDEP) and consistent with the conditions of the United States Army Corp of Engineers (USACE) 50-year duration Beach and Dune System Federal Shore Protection Program initiated in December 2016 and extending to December 2066.
- C. The beach area and dune area are not capable of rigid definition or delineation or of completely firm stabilization. Persons owning, using or purchasing such property do so subject to the public interest therein and are also bound by the limitations and conditions of easements with the Borough and NJDEP.
- D. It is the purpose of this article to define the areas so affected and to establish regulations to assure their continued effectiveness and provide storm and flood protection.
- E. The Borough makes no representation that the regulations set forth in this chapter are compliant with NJDEP/CAFRA standards, and each property owner is required to ensure compliance with all applicable State and Federal Laws for construction, maintenance, or improvement of dunes and dune structures with all applicable authorities.
- F. This article is declared to be an exercise of the police power in the interest of safety and welfare for the protection of persons and property.

§ 75-6 Definitions.

For the purpose of this article, the following words shall have the meaning given herein.

BEACH 7:7-9.22(a)

As defined by N.J.A.C. 7:7-9.22(a)

CAFRA

Shall mean the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 et seq., and regulations issued there under at N.J.A.C. 7:7 et seq., as may be amended from time to time.

CZM REGULATIONS

Shall mean the present NJDEP Coastal Zone Management Rules adopted by the NJDEP under N.J.A.C. 7:7 or as may be amended.

DUNE

As defined by N.J.A.C. 7:7-9.16(a)

DUNE CONSULTANT

An expert on dunes and their care approved by the Mayor and Council of the Borough of Bay Head. The Dune Consultant shall be retained on a consulting basis and will not be a full-time employee.

DUNE CREST

The highest elevation of the sand dune.

EARTH ANCHOR

An auger type anchor utilized to protect against wind uplift of dune platforms typically constructed of galvanized or stainless steel with a minimum penetration below the dune surface of 30”.

MEAN HIGH WATER

Shall be as defined by the NJDEP at NJAC 7:7-1.5.

NATURAL VEGETATION

Includes the terms "native vegetation" or "indigenous vegetation" and shall be limited to the species permitted by the NJDEP at N.J.A.C. 7:7-10.4 as may be amended and supplemented.

PATHWAY

An at-grade passage over the dunes.

REVETMENT

The sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents.

SETBACK LINE

That line determined by the setback distances as may be specified in the Land Use Ordinance of the Borough to define the limits of development on a buildable lot.

WALKWAY

A constructed (improved) at-grade or elevated means of crossing the dune

US ARMY CORPS OF ENGINEERS (USACE) BEACHFILL AND DUNE PROJECT

The beach and dune project originally constructed by the US Army Corps of Engineers in 2019 and subject to all applicable construction and maintenance easements and agreements with the New Jersey Department of Environmental Protection.

§ 75-7 Regulations; lien; permits; notices; fees.

- A. Construction east of the setback line is prohibited, except as provided in Subsection G and H herein, and except as specifically allowed herein or by Chapter 147, Land Use, and Chapter 126, Flood Damage Prevention, and in accordance with any NJDEP Coastal Zone Management Rules, CAFRA Regulations, and subject to permits as may be issued pursuant to these enactments. Notwithstanding this provision, construction east of the setback line that had been lawfully erected pursuant to a permit granted by the Borough prior to the enactment of this ordinance may be left in place and shall not be deemed to violate this ordinance. This exception shall not apply to construction within any easement area associated with the USACE Beachfill and Dune Project.
- B. No person shall be in the dune area unless:
 - (1) Upon an approved pathway, walkway or dune platform;
 - (2) In the performance of such activities as may be reasonably and necessarily required to construct or maintain the dune or allowed structures.
 - (3) For the purposes of inspection or enforcement of this chapter; or

- (4) As authorized by the USACE and/or the NJDEP and/or the Borough for the construction and maintenance of the initial or subsequent beach and dune construction projects.
- C. The removal, cutting, burning or destruction of natural vegetation, sand fence or such other types of dune protection devices in the dune area is prohibited, except as necessary for construction authorized pursuant to Subsections G and H. Any routine maintenance on the dune shall be in accordance with the New Jersey Coastal Zone Management Rules set forth at N.J.A.C. 7:7 et seq.
- D. The removal of sand from the beach or dune area is prohibited, except in accordance with validly issued NJDEP permits.
- E. Sand which is transported upon lands by action of winds, tides, storms or any combination thereof shall not be removed from the lot upon which it has been deposited. Clean sand deposited upon any improved street ends shall be restored into the beach and dune area.
- F. No dune shall be directly or indirectly lowered or reduced in height by the owner or his or her agent. Accordingly:
- (1) On any dune which was not created as part of the USACE project, each owner shall plant or cause to be planted in the dune area on his or her property suitable vegetation consistent with NJDEP Coastal Zone Management Rules at set forth at N.J.A.C. 7:1-1 et seq.
 - (2) On any dune, which was not created as part of the USACE project, each owner shall erect or cause to be erected on his or her property suitable sand fencing in accordance with NJDEP Coastal Zone Management Rules at set forth at N.J.A.C. 7:1-1 et seq. The use of metal as posts in construction of sand fences is not permitted. Fences containing metal posts in existence at the time of adoption of this section shall be permitted but shall conform to this definition upon replacement or reconstruction.
 - (3) If any dune, including but not limited to a dune created as part of the USACE project, is lowered or caused to be lowered by an action or omission of any owner, owner's agent or lessee (specifically not including natural causes), then the dune shall, upon due notice to the owner, owner's agent, guest or lessee, be restored as soon as reasonably possible to its preexisting elevation by the owner at his or her expense. The restored dune shall be planted and sand fenced in accordance with NJDEP Coastal Zone Management Rules at set forth at N.J.A.C. 7:1-1 et seq.
- G. Dune Pathways or Walkways.
- (1) One pathway or walkway across the dune area is permitted for each residence in accordance with N.J.A.C. 7:7-10.4(e). It shall run, generally, the shortest practical course between the residence and the seaward edge of the dune and shall not exceed four (4) feet in width. Dune pathways or walkway shall be at least ten (10) feet from each sideline of the property. Fencing is optional for pathways and walkways. Any fencing installed shall be consistent with NJDEP Coastal Zone Management Rules at set forth at N.J.A.C. 7:1-1 et seq.
- (a) Pathways
A singular natural path for each residence may be used to access the ocean, beach or any dune platform. The pathway may be protected by placing suitable wear resistant material on the sand surface with a maximum width of four (4) feet in accordance with NJDEP CZM Regulations. This surface shall be constructed on-grade and be composed of natural, aggregate or temporary removable walkways, geotextile access surface mats, or other modular components. Pathways may be placed directly on the dune surface and may remain in place as long as they are not found to be a detriment to maintaining the minimum dune crest elevation consistent with the USACE Beach and Dune project elevation by the Dune Consultant, in the exercise of reasonable professional judgment.

(b) Walkway

- (1) At-grade walkways are permitted for each residence in accordance with N.J.A.C. 7:7-10.4(e).
- a. At-grade walkways shall be constructed with the use of stringers of no greater than six (6) inches in vertical section placed directly on grade, handrails may be installed on a walkway or steps to facilitate stability when negotiating the walkway. Handrails shall be no more than two (2) inches in vertical cross section, all to limit debris if swept away in any storm surge and also to limit visual interference of the dune and ocean to the views of adjoining properties. Planking no more than 6 inches in width and with a maximum gap area between planks of ½ inch may be secured to the top of the stringers. Walkway components shall be constructed to facilitate optional removal for periods of non-use, anticipated storm impacts or future dune development or maintenance.
- b. Posts shall not be utilized to vertically support walkways, but only for lateral stabilization. Walkways may be secured with earth anchors strapped to the frame to resist wind uplift at the owner's discretion.
- c. Walkways lawfully in existence prior to the enactment of this ordinance may be left in place and shall not be deemed to violate this ordinance.

(2) Elevated walkways may be required to transverse the low-lying area of the dune shall meet the following conditions.

- [a] The elevated walkway shall, in all events, be maintained in the same fashion and subject to the same regulations as may govern use of pathways and walkways. Elevated walkways may not be constructed without an elevated walkway permit issued by the Dune Consultant.
- [b] For elevated walkways, the owner shall submit a plot plan showing the exact location of the walkway with respect to the property boundary lines and the crest of the dune and a detailed drawing or sketch of the proposed elevated walkway. The Dune Consultant shall have the authority to require any additional information or approvals to show compliance with any zoning or applicable construction code requirements.
- [c] The elevated walkway shall be constructed with the use of stringers and bridging of no greater than six (6) inches in vertical section, stringers may be sistered together horizontally for added strength. Handrails may be constructed as required by building code but shall be no more than two (2) inches in vertical cross section. Planking shall be no more than 6 inches in width with a maximum gap area between planks of ½ inch. The top of the planking shall be no higher than as is reasonably necessary to bridge any gap between the revetment and the dune constructed as part of the USACE Beachfill and Dune Project, but may exceed this height when crossing naturally higher dune elevations or connecting to decks, stairways or stairway landing attached to existing or approved primary residential structures. Elevated walkway structures shall be designed to facilitate removal for extended periods of non-use and accommodate future dune development and maintenance where possible. The vertical maximum 6" vertical section and maximum walkway height shall be maintained to minimize visual adverse impact to the views of the dune and ocean from adjoining properties. All necessary Borough and Regulatory permits shall be obtained prior to any construction of elevated walkways.
- [d] Walkways may only be elevated upon approval under a Borough elevated walkway permit and in accordance with the Borough's Chapter 126 Flood Damage Prevention Ordinance, Section 1.26-16, associated permitting procedures. Supports for elevated walkways shall be designed to address the impacts of, and to, the revetment installed within the dune system, where applicable.

(3) When, in the reasonable professional judgment of the Dune Consultant, the walkway or walkway supports are deemed to be jeopardizing the integrity of the dune system, by allowing the desired dune crest grade or dune slope surfaces to be lowered by more than one (1) foot below the improved USACE dune template surface, the area shall be restored with material of such grain size, shape, color and other characteristics as will, in the reasonable judgment of the Dune Consultant, be compatible with the existing on-site sand to its prescribed elevation by the owner at their own expense.

(a) A pathway or walkway is exempt from any provisions requiring a dune pathway or walkway permit, provided that it:

- i. Does not extend eastward of the seaward edge of the dune;
- ii. Is not wider than four feet;
- iii. Complies with all provisions contained in Section § 75-7G with the exception of Section § 75-7G(2).

(4) The fee for a dune walkway permit, if required shall be two hundred (\$200.00) dollars. The fee for an elevated walkway permit shall be three hundred fifty (\$350.00) dollars for the first submission. There shall be a fee of one hundred (\$100.00) dollars for any additional submission. These fees are intended to cover the actual cost of permit review by the Borough and any fee monies exceeding actual costs shall be returned to the applicant upon issuance of the permit.

H. Dune platforms; permit.

(1) Each oceanfront lot shall be allowed a dune platform not to exceed two hundred (200) square feet, with a maximum length of twenty (20) feet, situated within the dune area, with the following exception:

- (a) In the event that a legally existing dune platform exists in a location landward of the USACE Beachfill and Dune Project at the time of the adoption of this ordinance, a second dune platform not to exceed 200 square feet shall be allowed upon the crest of the dune created as part of the USACE Beachfill and Dune Project.
- (b) Legal, preexisting dune platforms may exceed a length or width of 20 feet; however, in the event that such a platform is more than partially destroyed, any replacement platform shall not exceed a length or width of 20 feet.
- (c) Flagpoles are permitted structures that are not subject to these provisions. No flagpoles are permitted within the limits of the USACE Beachfill and Dune Project.

(2) The dune platform shall, in all events, be maintained in the same fashion and subject to the same regulations as may govern use of pathways and walkways. Dune platforms may not be constructed without a dune platform permit, to be issued by the Dune Consultant, with additional approvals by the Zoning Officer and Construction Official and upon payment of all applicable permit fees. Prior to the issuance of a dune platform permit, the owner shall submit a plot plan showing the exact location of the platform with respect to the property boundary lines and the dune crest and a detailed drawing or sketch of the proposed platform. The Dune Consultant shall have the authority to require any additional information or approvals to show compliance with any zoning or applicable construction code requirements. A walkway or pathway, not to exceed four feet in width, shall be provided for access east and west of the platform to minimize damage to vegetation by pedestrian traffic, but must have a clear separation of a minimum of one-half inch (1/2 inch) for the walkway not to be included in the platform area calculations. Platforms shall be located such that the eastern edge is a minimum of five (5) feet westerly of the seaward dune crest and the northerly or southerly edge is a minimum of ten (10) feet from the property line.

(3) All platforms and platform components shall be constructed of wood. Platforms may not have walls, roofs, lattice, railings or built-in seating. Platforms may not be connected to utilities, including but not limited to electric, water or sewer. Notwithstanding this provision, platforms together with lawful appurtenances and connected utilities that had been lawfully erected pursuant to a permit granted by the Borough prior to the enactment of this ordinance may be left in place and shall not be deemed to violate this ordinance.

(4) The dune platform shall be constructed at-grade with neither length nor width greater than twenty (20) feet, stringers or ledger boards shall be no greater than six (6) inches in vertical section placed directly on grade. Planking shall be no more than 6 inches in width and the maximum gap area between planks shall not exceed ½ inch. Top of planking shall not exceed elevation 22.7 NAVD88 in USACE Beachfill and Dune Project constructed crest areas, however, may be a maximum of 8 inches above existing grade in natural dune areas of a higher grade or lower grade. Structure shall be constructed to facilitate removal for periods of extended non-use, dune development and dune maintenance.

(5) Notwithstanding any other provision of this Code, platforms shall be secured with earth anchors strapped to the frame.

(6) The fee for a dune platform permit shall be two hundred (\$200.00) dollars.

(7) Appeals

a. The Planning Board shall hear and decide requests for variances from the requirements of this Chapter, appeals from the decision of the Planning Board may be made to the Superior Court of New Jersey.

b. The Planning Board shall consider the following in passing upon applications for variance from the dune platform standards set forth in this chapter:

i. The danger that materials may be swept onto other lands to the injury of others.

ii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

iii. A showing of hardship or particularized need by the property owner..

c. Upon consideration of the factors listed above and the purposes of this chapter, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter

d. Application: A complete application for an appeal from the requirements of this chapter shall include the following:

(1) Completed applications for development.

(2) Receipted tax bills.

(3) Required fees.

(4) Seven sets of drawings (scale not less than one inch equals 100 feet) showing:

(a) The entire tract in question.

(b) Existing structures on the tract.

(c) Proposed structures on the tract.

(d) Street, roads, driveway and sidewalk within or immediately adjacent to said tract.

(e) All existing and proposed side, front and rear yard dimensions.

(f) Where necessary, architectural plans showing at least front elevations and dimensions of proposed structures.

(g) Such other information as may be required by the approving authority.

(5) Copies, classification; approval.

(a) Before the Clerk of the approving authority returns any approval sketch plat to the subdivider, he shall have sufficient copies made to furnish one copy to each of the following:

- (a) The Municipal Clerk.
 - (b) The Borough Engineer.
 - (c) The Construction Official.
- (b) The cost of the copies will be charged to the subdivider and shall be collected before the return of the original sketch plat to the subdivider.

(6) Application fee; escrow.

- (a) Application Fee: \$250
- (b) Escrow Deposit: \$750

1. Review fee escrow deposits. In addition to the nonrefundable application fee set forth above, the applicant shall also pay an amount equal to the legal, engineering and other professional costs incurred by the Borough in reviewing the application.
2. Additionally, applicants shall execute an escrow agreement, in a form provided by the Borough Council, consenting to pay these review costs and specifically stating that in the event that the fees imposed are not paid, any development approvals granted shall be considered null and void. The review fee escrow deposit shall be held in an escrow account to the credit of the applicant. The Borough shall be responsible to keep a record to determine the actual review costs attributed to each application.
3. In the event that the initial deposit is not sufficient to cover the professional charges incurred in reviewing an application, the applicant shall be required to deposit additional funds as determined by the Borough. The approving authority shall not be required to process the application to take further action upon an application until such additional deposits are made by the applicant. If these additional deposits remain unpaid for a period of 60 days, the application shall be deemed to be withdrawn and shall be dismissed without prejudice.
4. In the event the review fee escrow deposit shall be in excess of the amounts necessary to cover the professional charges incurred in reviewing an application, the excess funds shall be returned to the applicant within 45 days of the final decision on the application or adoption of a resolution memorializing the decision, whichever occurs later.
- (c) The development application, together with all required attachments and the required fee, must be submitted to the Planning Board Clerk before the filing deadline. The deadline for filing an application is the close of business 21 days prior to scheduled meetings.
- (d) Upon submission of the application, the Planning Board Clerk will review the application for completeness and calculation of the required fee. Upon determination that the application is complete, the Planning Board Clerk will assign an application number, schedule a hearing on the application and notify the applicant of the scheduled hearing date. Hearings will be scheduled in the order in which development applications are certified as complete. The applicant may request a scheduled hearing be continued to a future meeting date upon written request to the Planning Board Clerk which includes the applicant's consent to extend applicable time limits.
- (e) Hearing notice requirements. The applicant shall be required to notify property owners within 200 feet in all directions of the property that is the subject of the hearing.

I. Dune mechanical replenishment; permit.

No person shall engage in mechanical replenishment on ocean beach dunes within the Borough without first obtaining any and all required permits for such activity. Mechanical replenishment shall be broadly defined to include the transport of sand from the berm, above mean high water, by any mechanical means (bulldozing or like activity) to or into the dune area.

J. The Borough Dune Consultant or the Chief of Police shall enforce the affirmative duty of each oceanfront owner, as set forth in this article, by service of a written notice, certified mail, return receipt requested, upon the record owner of the dune at his or her last known address requiring specific compliance with obligations concerning dune protection and/or restoration. The notice shall also advise that, unless the owner shall take appropriate corrective action and complete the same within 45 days from the date of mailing said notice, the Borough may perform such acts of protection and/or restoration at the expense of the owner. In the event that any such owner shall fail to pay, then the sum together with interest at the highest legal rate thereon shall become a lien upon the property and be collected in the same manner as delinquent real property taxes. In addition to the action described above, the owner may, at the election of the enforcement officials, be prosecuted for violation of this article in accordance with § 75-8.

K. No person shall operate a motorized vehicle across or upon any beach and dune area except as may be necessitated for police and beach operations, or for allowed construction or inspection and beach and dune maintenance.

§ 75-8 Violations and Penalties.


Except as otherwise provided, for any and every violation of this article, the owner of lands where such violation has been committed or the trespasser if the violation is of § 75-7B, or any violator shall, for each and every violation, be subject to a fine of not more than \$1,000 or imprisonment for a term not to exceed 90 days or a period of community service not exceeding 90 days, or any combination thereof, at the discretion of the court having jurisdiction in this matter. Each and every day that a violation continues shall be deemed a separate offense.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

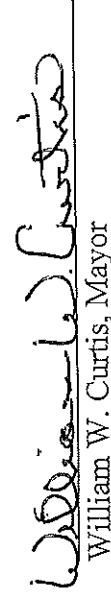
SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

ATTEST:



Patricia M. Applegate, Municipal Clerk

APPROVED:


William W. Curtis, Mayor

Introduced on First Reading: February 3, 2020
Introduced on Second Reading: April 6, 2020
Approved on Second Reading: April 6, 2020

ATTEST:


Patricia M. Applegate, Municipal Clerk

APPROVED:


William W. Curtis, Mayor