

Judge calls Avalon pool denial 'capricious'

Landowner can reapply for permit

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CAPE MAY COURT HOUSE — A Superior Court judge ruled Friday that an Avalon homeowner can seek a permit to build a pool in Avalon's high dunes, a ritzy area of beachfront maritime forest.

The ruling overrides a Borough Council vote in June to deny a pool in the area, which is home to some of Avalon's most elaborate, multimillion-dollar homes.

Judge Steven Perskie ruled in favor of Seven Mile Island LLC's appeal, finding Avalon's denial of a pool arbitrary and capricious.

Attorney Stephen Hankin, who represents owner Coyle Connolly, challenged the rationale of a beach protection ordinance modeled after a state regulation since waived by the Department of Environmental Protection.

The purpose of that local beach protection ordinance, Hankin said, was to protect from storms and flooding; and experts on both sides had testified a pool would have no such negative impact because of the area's unique elevation and location.

"The result, essentially, was they had an ordinance with no reason because the ordinance was waived by the DEP," Hankin said. "...The result is social engineering."

Perskie ruled only on the local ordinances as they related to Connolly's situation.

"The whole thing gets down to a foundation of sand, not to make a pun," Perskie said.

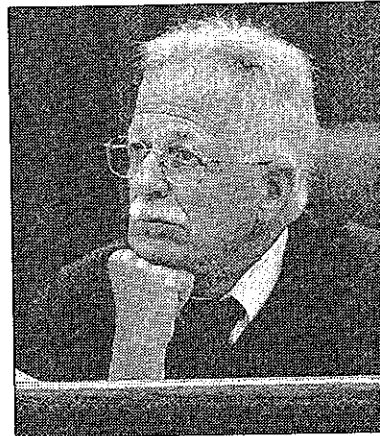
After court, Avalon Solicitor Stephen Barse said he would speak with borough officials before deciding whether to appeal.

At a June meeting, Borough Council allowed Seven Mile Island LLC to build a new home at 5109 Dune Drive to replace an existing one.

A pool at the Dune Drive property has been part of a three-year legal battle that has seen the inside of court rooms, Planning and Zoning board hearings and Borough Council meetings.

Perskie cited previous testimony, including the borough's own coastal expert, who said the pool would not adversely affect the dune area.

Experts for both sides testified a Planning and Zoning board hearings



Staff photo by Dale Gerhard

Judge Stephen Perskie listens Friday to arguments at the hearing on whether Coyle Connolly can build a pool with his house in the high dunes of Avalon.

in April that the area's elevation and distance from the water and waves make it unlikely to be threatened by a monumental, once-in-a-century storm.

While Seven Mile Island LLC was planning to construct a new home and a pool in the high dunes several years ago, Avalon enacted a beach protection ordinance that mirrored

provisions in a 1994 state-aid agreement with the DEP, prohibiting swimming pools in the high dunes.

The department subsequently settled with the homeowner and allowed a pool to be built.

In referencing its beach protection ordinance, Avalon has said it was enforcing that state aid agreement for fear of losing state funding for beach projects, although the DEP later sent the borough a letter saying it would not penalize the borough.

Because of years of ongoing litigation, there were multiple points of law that Hankin and Seven Mile Island argued, and there were several previous court decisions.

A state appellate court in June released a decision upholding Avalon's ordinances regulating development and restrictions on the borough's high dunes. But the appellate court's decision was argued before Avalon Borough Council voted on the 5109 Dune Drive property and addressed only a portion of the legal challenges.

Hankin, who appealed that decision to the state Supreme Court, said Friday he dismissed his appeal following Perskie's decision.

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