

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2021-5

AN ORDINANCE AMENDING SECTIONS 450-12, 450-13, AND 450-26 OF CHAPTER 450: "ZONING" OF THE BOROUGH'S REVISED GENERAL ORDINANCES TO CLARIFY PERMITTED YARD ENCROACHMENTS, AND TO PROVIDE CERTAIN RELIEF TO NON-CONFORMING LOT OWNERS MAKING ONLY MINOR IMPROVEMENTS TO THEIR PROPERTIES WITHIN THE BOROUGH.

Mayor Fox offered the following Ordinance and moved its introduction:

WHEREAS, the Mayor & Council of the Borough of Bradley Beach (the "Borough") have become aware that the Borough's Zoning Ordinances do not adequately define or regulate the construction of certain yard encroachments like porches, decks, balconies, patios, sheds, or platforms on residential properties; and

WHEREAS, the Borough is further aware that there are hundreds of non-conforming lot owners within its limits, all of whom are subject to land use board review for each and every improvement to their properties, even if the proposed improvements do not exacerbate any existing non-conformity; and

WHEREAS, as a result of the ambiguities and strictures contained in the Borough's Zoning Ordinances, in recent years, the Borough has been increasingly involved in disputes and litigation with property owners, as well as their neighbors; and

WHEREAS, the Borough desires to cure the aforementioned ambiguities and strictures in its Zoning Ordinances to clarify permitted yard encroachments and to provide relief to non-conforming lot owners for minor improvements;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. Section 12 entitled "Nonconforming uses, Structures and Lots" of Chapter 450 entitled "Zoning" of the Revised General Ordinances of the Borough of Bradley Beach is hereby supplemented and amended to include new subsection (G) of Section 450-12 as follows:

- (G) In any residential zone, any existing lot on which a dwelling is located, and: (1) which lot does not meet the minimum lot size, width, or depth, or (2) on which lot there is a structure which violates any bulk requirements, may make improvements to said lot or structures thereon without any appeal for variance relief, provided that the proposed improvements do not create new or expand existing non-conformities or variances. This exception shall not be construed to apply to any lot on which there is any non-conforming use.

SECTION 2. Section 13 entitled “Permitted Yard Encroachments” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby replaced with the following:

No building or part thereof shall be erected within or project into any required yard area except in accordance with the following provisions:

A. *Porches.*

- (1) *Applicability.* This Subsection includes regulations for attached, accessory Porches located on properties within the R-1 and R-B Zones used for permitted residential purposes.
- (2) *Setbacks.* Porch setbacks. For permitted residential structures a Porch may extend eight (8) feet into the required front yard setback area, provided the principal structure conforms to the front yard setback requirement or by submission of the appropriate “Setback Averaging” plan as reflected in ordinance 450-26D (7). A “Wrap-Around” Porch may exceed the width of the existing or proposed structure, as long as it is in compliance with side setback requirements for the principal structure.
- (3) *Height.* No Porch floor is allowed above the lowest first floor walking surface elevation and shall comply with the principal building setback requirements.
- (4) *Enclosure.* A Porch shall not be enclosed, heated or air-conditioned and railings, if required, shall promote the flow of air and light. Lattice and moveable sunscreens are permitted on side yard elevations. Walls are prohibited.
- (5) *Location.* Porches are also permitted within the-buildable envelope at the front, rear and sides of the structure.
- (6) *Coverage.* Porches are included in the building coverage.
- (7) *Stairs.* Exterior stairs to the Porch from grade are allowed forward of the porch encroachment.

B. *Upper Porches.*

- (1) *Applicability.* This Subsection includes regulations for attached, accessory Upper Porches located on properties within the R-1 and R-B Zones used for permitted residential purposes.
- (2) *Setbacks.* Upper Porch, setbacks for permitted residential structures may extend eight (8) feet into the required front yard setback area, provided the principal structure conforms to the front yard setback requirement or by submission of the appropriate, "Setback Averaging" plan, as reflected in ordinance 450-26D (7). A "Wrap-Around" Upper Porches on corner lots only may exceed the width of the existing or proposed structure, as long as it is in compliance with front yard setback requirements for the principal structures.
- (3) *Height.* No Upper Porch floor is allowed above the lowest second floor walking surface elevation.
- (4) *Enclosure.* An Upper Porch shall not be covered, enclosed, heated or air-conditioned and shall have railings that promote the flow of air and light. The installation of awning systems is prohibited. Walls are prohibited.
- (5) *Location.* Upper Porches are permitted in the front yard of the dwelling only, above the footprint of the lower porch.
- (6) *Coverage.* Upper Porches are included in the building coverage.
- (7) *Stairs.* Prohibited on Upper Porches.

C. *Balconies.*

- (1) *Applicability.* This Subsection includes regulations for attached accessory Balconies located on properties used for residential purposes.
- (2) *Requirements.* For residential structures, no balcony, inclusive of gutters, shall extend out more than two (2) feet from the second or third story wall to which it is attached. Each single-family dwelling may have no more than two (2) balconies. Each balcony cannot exceed 80 square feet. Each duplex dwelling may have one (1) balcony per unit, not to exceed two (2) balconies for the dwelling. Each balcony cannot exceed 80 Square Feet, and such balcony area shall be counted toward the maximum area of any half story.
- (3) *Setbacks.* The edges of the balcony shall have a railing and the structure shall project no more than two (2) feet into the front setback area, inclusive of gutters.
- (4) *Height.* No Balcony floor is allowed above the lowest half-story walking surface elevation and shall comply with the principal building setback requirements.

- (5) *Enclosure.* A Balcony shall not be enclosed, heated or air-conditioned. Half-walls and/or railings are permitted. The installation of awning systems is prohibited.
- (6) *Location.* Balconies shall be permitted at the front(s) of the dwelling only.
- (7) *Coverage.* This area shall be included in the building coverage.
- (8) *Stairs.* Prohibited on Balconies.

D. *Deck, Elevated.*

- (1) *Applicability.* This Subsection includes regulations for attached accessory Decks located on properties within the R-1 and R-B Zones used for permitted residential purposes.
- (2) *Setbacks.* For residential dwellings, Decks are not allowed to encroach into any principal dwelling's setback requirements and shall never be closer than five (5) feet of any side-yard property line, nor closer than twenty-five (25) feet of any rear-yard property line. No deck shall extend beyond the side building line.
- (3) *Height.* An elevated deck is permitted at or below the first floor walking surface elevation, not to exceed a maximum floor height of 48" above grade.
- (4) *Enclosure:* Elevated Decks shall not be enclosed with sidewalls. Railings that promote the flow of air and light shall be installed.
- (5) *Location.* An elevated deck may be located in the rear yard area only.
- (6) *Coverage:* The Elevated Deck area shall be included in the impervious coverage.
- (7) *Access:* Access to the elevated deck can be from both the dwelling or external stairs that do not extend into any principal building setback.
- (8) *Stairs.* Will not be counted in impervious coverage and shall maintain a three (3') foot setback from all property lines.

E. *Deck, On Grade.*

- (1) *Applicability.* This Subsection includes regulations for attached accessory Decks located on properties within the R-1 and R-B Zones used for permitted residential purposes.
- (2) *Setbacks.* For residential dwellings, Decks are not allowed to encroach into any principal dwelling's setback requirements and shall never be closer than five (5) feet of any side-yard property line, nor closer than five (5) feet to any rear-yard property line. No deck shall extend beyond the side building line.

- (3) *Height.* A Deck on grade is permitted at or below the first floor walking surface elevation, not to exceed 12" above grade as measured at the perimeter of same.
- (4) *Enclosure.* Enclosures are prohibited.
- (5) *Location.* Decks may be located in the rear yard area only.
- (6) *Coverage.* The Deck on grade area up to 5% of lot size is excluded from impervious coverage. Deck on grade area beyond 5% of lot size is included in impervious coverage. The area underneath a deck on-grade must be pervious surface.
- (7) *Access:* Access to the deck on grade can be from both the dwelling or external stairs that do not extend into any principal building setback.
- (8) *Stairs.* Will not be counted in impervious coverage and shall maintain a three (3') foot setback from all property lines.

F. *Patio.*

- (1) *Applicability.* This Subsection includes regulations for Patios located on properties within the R-1 and R-B Zones used for permitted residential purposes.
- (2) *Setbacks.* For residential dwellings, Patios are not allowed to encroach into any principal dwelling's setback requirements and shall never be closer than five (5) feet of any side-yard property line, nor closer than five (5) feet to any rear-yard property line. No Patio shall extend beyond the side building line.
- (3) *Height.* No Patio is allowed above existing grade.
- (4) *Enclosure.* Patios shall not be covered or enclosed with sidewalls.
- (5) *Location.* Patios may be located in the rear yard area only.
- (6) *Coverage.* The Patio area shall be included in the impervious coverage.

G. *Deck, Rooftop.*

- (1) *Applicability.* This Subsection includes regulations for attached accessory Rooftop Decks located on properties used for residential purposes.
- (2) *Prohibited.* Rooftop Decks are specifically prohibited.

H. *Entry Platform.*

- (1) *Applicability.* This subsection includes regulations for attached accessory Entry Platforms located on properties used for residential and nonresidential purposes.

- (2) *Setbacks.* A side or rear-entry platform, including steps, may extend into the rear and side yard setbacks as long as a three (3) foot setback is maintained. No Entry Platform associated with a multi-family residential use may extend into any required setback area.
- (3) *Enclosure.* Entry platforms shall not be enclosed, heated, or air-conditioned. Railings that promote the flow of air and light shall be installed.
- (4) *Coverage.* An entry platform, will not be greater than 4' in depth. Entry Platforms, excluding stairs, shall be included in the building coverage.
- (5) *Location.* Entry Platforms shall be permitted in the front, rear and side of the dwelling.
- (6) *Height.* No Entry Platform floor is permitted above the lowest floor walking surface elevation.
- (7) *Stairs.* Side and rear Entry Platform stairs may extend into the rear and side yard setbacks as long as a three (3) foot setback is maintained.

I. *Storage Shed.*

- (1) *Applicability.* This subsection includes regulations for detached accessory Storage Sheds located on properties used for residential and nonresidential purposes.
- (2) *Requirements.* There will be a limit of one (1) Storage Shed per building lot that cannot exceed a maximum area of one hundred (100) square feet. A Storage Shed must have a pitched roof of at least 3 inches rise per 12 inches run.
- (3) *Setbacks.* Any storage shed shall be erected no closer than three (3) feet from a side or rear property line.
- (4) *Location.* In no event shall any Storage Shed be erected or placed in the front of any other building. Storage sheds are prohibited in front and side yards.
- (5) *Height.* No shed shall exceed ten (10) feet in height. No shed shall exceed one story.
- (6) *Coverage.* Storage Sheds shall not be counted in building or lot coverages, provided such Storage Shed is built upon a foundation of lumber, wood or timber. If such Storage Shed is built upon a foundation of compacted gravel or cement, it shall be considered impervious coverage and the Storage Shed will be counted in lot coverage accordingly.
- (7) *Stairs.* Stairs are not permitted for Storage Sheds.
- (8) *Heating or Air Conditioning.* Heating and air-conditioning are prohibited.

- (9) *Review Required.* The Zoning Officer of the Borough of Bradley Beach shall approve the permit for any of the foregoing construction, erection, or placement before the same shall be performed.

J. *Other Permitted Yard Encroachments.* No building or part thereof shall be erected within or project into any required yard area except in accordance with the following provisions:

- (1) *ORDINARY PROJECTIONS.* Ordinary projections of balconies, entry platform coverings, fireplaces, cornices, fly rafters, eaves, gutters, sills, bay windows, belt courses, chimneys, flues, buttresses and ornamental features may project not more than 24 inches from an exterior building wall into any required yard area; provided the projection does not violate the covenants of any deed or deeds to the property upon which the projection is made. Such projections shall not, however, be permitted along the Main Street frontage of any structure or for any permitted living quarters above an accessory garage.
- (2) *FIREPLACES.* Existing fireplaces may be replaced in their location as long as they do not encroach on neighboring property and are equal to or smaller in size compared to the original.
- (3) *WEATHER PROTECTION.* Weather protecting and energy efficiency enhancing front door enclosures and wind screens are permitted in the GB, OP, GBW and BOR Zones only subject to the following restrictions:
 - (i) May be used only from October 15 to May 1 (in each calendar year).
 - (ii) The panels must be clear of such material for an individual to see through.
 - (iii) The view must be maintained between a height of two feet from grade and seven feet high.
 - (iv) Can project no more than four (4) feet into a required front setback area and are no larger than forty eight (48) square feet in total area, provided the principal structure complies with the required front yard setback;
 - (v) Must maintain ADA compliance.
 - (vi) Must be anchored to the ground in such a way as not to damage the Borough's sidewalk/pavers or create a tripping hazard when removed. (Any and all damages to sidewalk/pavers will be repaired at the owner's expense.)
 - (vii) Violations and penalties provide for the maximum penalty that is included in Chapter 1, Article II, General Penalty, of the Borough Code.
- (4) *FIRE ESCAPES.* Fire escapes are permitted in multi-family dwellings only, subject to the following restrictions:

- (i) Fire escapes are not permitted in the front yard
- (ii) Fire escapes shall be no closer than three (3) feet to the property line
- (iii) Existing fire escapes may be replaced in their location as long as they do not encroach on neighboring property and are equal to, or smaller than, the original size.

SECTION 3. Subpart (2) of subsection E. entitled “Supplementary Regulations” of Section 26 entitled “R-1 Residential Single-Family Zone” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby replaced with the following:

E. Supplementary Regulations.

* * *

- (2) The living space of single-family dwellings on lots 4,000 square feet or greater and at least 40 feet of frontage may be up to 2 1/2 stories or thirty-five (35) feet in height, and the living space of single-family dwellings on lots that are either less than 4,000 square feet or less than 40 feet of frontage shall not exceed 2 stories and thirty (30) feet in height.

SECTION 4. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

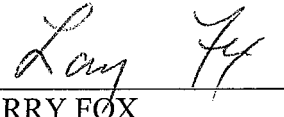
SECTION 5. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bradley Beach, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 6. After introduction, the Borough Clerk submitted a copy of the within Ordinance to the Planning Board of the Borough of Bradley Beach for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board made and transmitted to the Borough’s Mayor & Council, within 35 days after referral, a report affirming this Ordinance’s consistency with the master plan, together with several recommendations on other matters the Board deemed appropriate.

SECTION 7. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Monmouth County Planning Board pursuant to N.J.S.A. 40:55D-16.

SO ORDAINED as aforesaid.


ERICA KOSTYZ
Municipal Clerk


LARRY FOX
Mayor

Introduced: February 9, 2021

Date of Hearing and Adoption: March 9, 2021

