

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2018-24

**AN ORDINANCE TO AMEND CHAPTER 450-12 OF THE
REVISED GENERAL ORDINANCES OF THE BOROUGH OF BRADLEY
BEACH, COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*, (the “Statute”) permits New Jersey municipalities to regulate the use of land within their boundaries, and establishes a framework within which local governments may exercise zoning power through adoption of zoning ordinances; and

WHEREAS, the Statute provides that lawfully existing structures and uses, which are later rendered unlawful due to changes to the zoning ordinance, may be maintained as non-conforming structures and uses; and

WHEREAS, the Borough of Bradley Beach has adopted Chapter 450, entitled the Zoning Ordinance of the Borough of Bradley Beach; and

WHEREAS, Chapter 450 Attachment 1:1, entitled Schedule of Height, Area and Yard Requirements, Note 1, is being amended to conform to the provisions of the Statute regarding nonconforming structures and uses by removing the provision that exempts lots existing on February 1, 2003 from width, depth and area requirements; and

WHEREAS, Chapter 450-12 of the Zoning Ordinance, entitled Nonconforming Lots and Structures, and Article XIII, Chapters 70 through 76, entitled Nonconforming Uses, regulate nonconforming lots, uses and structures in the Borough; and

WHEREAS, these provisions of the Code require amendment to be consistent with the provisions of the Statute; and

WHEREAS, the proposed Zoning Ordinance amendment will be referred to the Planning Board for recommendations prior to final passage; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, Monmouth County, State of New Jersey, that the Code of the Borough of Bradley Beach be amended to repeal Chapters 450-70 through 450-76 and to amend Chapter 450-12 as follows:

§ 450-4. Definitions

§ 450-4 Definitions:

NONCONFORMING LOT - A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONFORMING STRUCTURE OR BUILDING - A structure or building, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance.

NONCONFORMING USE - A use or activity which was lawful prior to the adoption, revision the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

~~PARTIAL DESTRUCTION - A building or structure that, because of fire, flood, explosion, or other calamity, required the rebuilding of less than half of the floor area.~~

SIGN, PREEXISTING NONCONFORMING - A sign lawfully erected and maintained prior to the adoption of an ordinance, that, because of amendments to that ordinance, no longer conforms with the requirements of that ordinance.

Article XIII Nonconforming Uses, Structures and Lots

Nonconforming, Uses, Structures and Lots

Section 1. Chapter 450-12 is hereby amended to read as follows:

§450-12 Nonconforming Uses, Structures and Lots

The following provisions shall apply to valid nonconforming use, structures and lots at the time of adoption of this Ordinance:

A. Any noncompliant use, structure, and/or lot, which is lawfully in existence prior to the effective date of these Land Development Ordinance revisions, shall be deemed nonconforming at the passage of this Ordinance, or any applicable amendment thereto, and may be continued as otherwise provided in this section.

B. No existing use, structure or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, unless it is changed to a conforming use or structure except as follows:

1. Any nonconforming structure or use partially destroyed ~~damaged to less than fifty percent (50%) of its existing floor area~~ by fire or other natural calamity, may be restored, reconstructed or used as before; provided, that the volume of such use or structure shall not exceed the floor area which existed up to the time of such damage; and, provided further, that such restoration shall be in accordance with the following:

(a). It shall be completed within two (2) years of such damage.

(b). Except for the previous nonconformance, it shall be in accordance with all other requirements of this Chapter.

2. Normal maintenance and repair of a structure containing a nonconforming use is permitted, provided that it does not extend the area or volume of space occupied by the nonconforming use or structure and does not increase the intensity of use. Nothing in this section shall prevent the restoring to a safe or lawful condition any part of any structure declared unsafe by the Construction Official.

3. A building containing residential nonconforming use may be altered in any way to improve interior livability. No structural alterations shall be made which would increase the number of bedrooms or dwelling units.

C. Nonconforming uses and structures are considered terminated and shall not be revived in any way except as a conforming use or structure in accordance with the following:

1. A nonconforming use or structure abandoned in accordance with this Ordinance and accompanied by an intent on the part of the owner to abandon such use as evidenced by some act or failure to act which carries with it a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment shall be considered a termination thereof. Such implication shall be ~~reputably~~ rebuttably presumed by nonuse for any period of two (2) or more years. Nonuse by successive owners shall be considered continuous nonuse.

2. The change of a nonconforming use or structure to a more or entirely conforming use for any period of time shall be considered an abandonment of the previous nonconforming use, and a reversion to the previous nonconforming use shall not be permitted.

3. *Abandonment of Nonconforming Use.* A nonconforming use shall be deemed to be abandoned where there is (1) an intention to abandon as well as (2) an external act (or omission to act) by which such intention is carried into effect.

It shall be prima facie evidence that a nonconforming use shall be deemed to be abandoned when there occurs a cessation of such use on the part of a tenant or owner for a continuous period of at least two (2) years.

A nonconforming structure or use which has fifty percent (50 %) or more of its nonconforming area or value destroyed by fire or natural calamity shall be considered an abandonment thereof.

D. A nonconforming structure may not be enlarged, extended, increased in height, width or depth, moved or relocated, modified in such a way so as to increase habitable or useable space, number of dwelling units or number of bedrooms; unless such structure is changed to a structure conforming to the requirements of this

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Chapter except that an existing one to four family dwelling may be rebuilt, enlarged, extended or added to provided:

1. The enlargement, extension or addition conforms to all zone requirements.

2. Any existing one to four family dwelling located in a residential zone destroyed by wind, fire, water incursion, exposure or other Act of God or public enemy or other natural calamity may be rebuilt on the same foundation footprint in the same layout; however, the existing lot, but, need not comply with minimum lot width, depth and area requirements where the existing condition is non-conforming.

E. The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply for, in writing, the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the responsibility of affirmatively proving the preexisting nonconforming use or structure. Application pursuant hereto may be made to the Zoning Board of Adjustment Administrative Officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the Zoning Board of Adjustment.

F. a. *Existence and Continuance.* At the date of adoption of this chapter, any lot, building or structure which has been and is still being used for a purpose which does not conform to the requirements of the particular zone where the lot, building or structure is situated and which use is lawful and properly licensed, if required, and is not prohibited by any other existing ordinance of the Borough or any statute of the State of New Jersey or the United States of America, the use may be continued, subject to other provisions contained in this section and any change of title or possession shall not affect the continuance of such existing use. The existing use may be continued as aforesaid, provided further however, that:

1. No nonconforming lot shall be further reduced in size.

2. No nonconforming building shall be enlarged, extended or increased, unless such enlargement would tend to reduce the degree of non-conformance.

3. No nonconforming use may be expanded.

4. No structural alterations or changes shall be made to any building, accessory building, garage or structure containing a nonconforming use.

5. No structural alterations shall be made in any building or structure containing a nonconforming use, to change such a building or structure to another or an additional nonconforming use.

6. No building shall be constructed upon a conforming lot which lot contains a nonconforming building or use.

7. Any existing lot on which a building or structure is located and which lot does not meet the minimum lot size, or a structure which violates any yard requirements, may have additions to the principal building and/or construction of an accessory building without an appeal for variance relief provided: (a) the existing use(s) on the lot are

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~~conforming to the permitted use(s) stipulated in this chapter for the lot in question; (b) the permitted building coverage is not exceeded; (c) the accessory building and/or addition do not violate any other requirements of this chapter such as, but not limited to, height, setback and parking; (d) the property owner has filed a zoning permit application with the Building Department which the zoning reviewer has determined meets the requirements in this chapter; (e) the property owner files for an informal hearing to the Bradley Beach Planning Board accompanied by a check in the amount of one hundred twenty-five (\$125.00) dollars made payable to the Borough of Bradley Beach.~~

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~~Any parcel of land with an area or width less than that prescribed for a lot in the zone in which the lot is located may be used as a lot for any purpose permitted in the zone, if:~~

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~~1. at the time of and since the adoption of the zoning ordinance making such lot nonconforming, the owner of the lot did not own adjoining property;~~

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~~2. all other regulations prescribed for the zone are or can be complied with.~~

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Section 2. Chapter 450-70 through 450-76 are hereby repealed in their entirety.

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BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the Courts to be invalid, such adjudication shall only apply to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, This ordinance shall take effect twenty (20) days after passage by the Mayor and Council and publication according to law.

SO ORDAINED as aforesaid.

KELLY BARRETT
Municipal Clerk

GARY ENGELSTAD
Mayor

Introduced:

Date of Hearing and Adoption:

