

## **Applicants' Explanations for Appeal of Zoning Officer's decisions:**

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**202 Fourth Avenue, Block 53, Lot 12, Borough of Bradley Beach**

### ***1. Denial of Proposed Covered Porch/unscreened entrance porch in Rear***

The Zoning Officer opined that an "unscreened entrance porch attached to the rear of the residence in not permitted." In making this interpretation, he cites Ordinance Section 450-13(E). Section 450-13 addresses "Permitted yard **encroachments**" [**Emphasis Added**], and the section of the Ordinance that the Zoning Officer cites states,

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

E. An open and uncovered and unroofed deck or patio not more than three feet above ground level **may extend** into a required side or rear yard to within five feet of a side or rear property line. This restriction shall not apply to such patios if constructed at ground level. [**Emphasis Added**]. *Zoning Ordinance Section 450-13(E)*.

The Applicants' plans provide for a "Proposed Covered Porch" that will **NOT** be erected within any required yard area, and thus does not encroach into a Permitted yard area. This porch is set back 35.5' from the rear property line and more than 15.0' to the side lot line, and both setbacks fully conform with the Ordinance requirements related to rear yard and side yard setbacks for the property in the R-1 Zone. Therefore, it is the Applicants' appeal that the Zoning Officer misinterprets that the Ordinance does not allow what is proposed in these plans. The Ordinance section cited only places limitations on those features when they encroach into the required minimum yard area that is to remain open from any structures other than ground level patios, driveways, or landscaping. There are no Ordinance sections that limit the design of a rear covered porch when there is total setback compliance. As such, there is no variance requirement for the proposed covered porch at the rear of this proposed single-family dwelling, and the Applicants request the Board of Adjustment to overrule the Zoning Officer's decision in the instance.

**2. Denial on the basis of Non-conforming Lot Width (45' existing and proposed/50' required according to the decision of the Zoning Officer).**

The Bradley Beach Zoning Ordinance recognizes that there are hundreds of lots in the Borough that do not meet the minimum lot width requirements. These are lots that have been in existence many years prior to the Zoning Ordinance and the subsequent Amendments to the Zoning Ordinance, and the Ordinance allows for their continuance as evidenced in several sections of the Ordinance.

Section 450-12 has several provisions which recognize the right to construct, add to, or rebuild a single-family dwelling in a residential zone without the need for variance when all provision but for the Lot size are conforming. While most of the provisions of Section 450-12 address pre-existing nonconforming uses and structures, there are several provisions that the Zoning Officer should have used to approve rather than deny the Zoning Permit, without referral of these Applicants to the Bradley Beach Zoning Board of Adjustment for variance relief. This is because this proposal provides for conforming uses in the R-1 Zone, as well as conforming structures and conformance with setbacks, coverage and all other aspects of the Zoning Ordinance, whereas the existing structures do not presently conform with side and rear yard setbacks as discussed above. For purposes of this appeal, Section 450-12(F)(1), (2) and (7) may be the most applicable for why the Zoning Officers decision should be overruled. It states,

**F.**

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 nonconformance.**

**(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 the existing use(s) on the lot are conforming to the permitted use(s) stipulated in this chapter for the lot in question; the permitted building coverage is not exceeded; 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; 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; the property owner files for an informal hearing to the Bradley Beach Planning Board accompanied by a check in the amount of \$125 made payable to the Borough of Bradley Beach. Zoning Ordinance Section 450-12(F)(1), (2) & (7)-Emphasis Added.**

Also pertinent is 450-12(A), which states:

(A) Any noncompliant . . . lot, which is lawfully in existence prior to the effective date of these Land Development Ordinance revisions,<sup>[1]</sup> shall be deemed nonconforming at the passage of this section, or any applicable amendment thereto, **and may be continued as otherwise provided in this section.** *Zoning Ordinance Section 450-12(A)-Emphasis Added.*

Pursuant to the Ordinance, there is also recognition that a lot that was in existence prior to the Ordinance change which does not meet the minimum lot size is permitted to contain a modified side yard setback of 10% and 20% of the lot width. (See Note #3 in Section 450 Attachment 1, which states “<sup>3</sup> The minimum side yards for lots not meeting the minimum lot width requirement that exist shall be 10% and 20% of the lot width”). This provision has not been modified in the Ordinances Amendment and/or what is codified in the Borough Codes.

Furthermore, the Ordinance also recognizes the ability to rebuild a 1-4 family dwelling in a residential zone, in that

“(D) 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 footprint, **but need not comply with minimum lot width, depth and area requirements where the existing condition is nonconforming.**” *Section 450-12(D)(2)-Emphasis Added.*

This lot, containing a width of 45’ but in all other respects fully conforms to the Zoning Ordinance, has been in existence prior to the effective date of the Land Development revisions. The lot already contains a conforming use, but there are existing non-conforming structures. The existing single family dwelling has a non-conforming side yard setback of 2.84’ (4.5’ is required as discussed further below), as well as a non-conforming side and rear yard setback to the existing garage of approximately 3’ (5’ is required as discussed further below). However, the Applicants proposal complies with the requirements of Ordinance Sections 450-12(F)(1) & (2), in that (1) the Lot size (in this instance width) is not being further reduced in size (or non-conformity) and (2) the changes proposed to the nonconforming structures will reduce the degree of nonconformance. Thus, what the Applicants propose will bring the property into full conformance with all provisions of the Zoning Ordinance but for a lot width that “may be continued” following the guidance set forth in both

Ordinance Sections 450-12(A) and 450-12(F)(7). The Applicants intend to demolish the existing non-conforming structures and replace them with structures that will conform in all respects with the Ordinance but for a pre-existing, non-conforming lot width which the Zoning Ordinance allows to be maintained and continue.

In essence, to tie this proposal into what is authorized by Section 450-12(A) as well as those requirements of Section 450-12(F)(7), what the Applicants propose will (1) comply with permitted uses in the R-1 Zone (single family dwelling and garage with garage apartment); (2) building coverage will not be exceeded; (3) the proposed accessory garage with garage apartment will not violate any Ordinance provisions; (4) and all height, setback and parking requirements will be satisfied by the Applicants proposal. In addition, setbacks proposed all comply with the Ordinance, and this includes the rear covered porch/deck as discussed above. The proposal for the single family dwelling complies with the front yard setbacks to the dwelling (more than 25' proposed) and to the covered porch (more than 17' proposed); it meets the side yard setbacks for a pre-existing non-conforming lot that does not meet the lot width requirements (4.67' and 13.9'); and rear yard setback (35.5' proposed to the covered porch). It also complies with the height requirements, building coverage and lot coverage requirements. The garage and garage apartment will comply with setbacks (5' side and rear yard minimum), maximum size of garage and garage apartment being limited to the 2<sup>nd</sup> floor with interior stairs, interior stairs, etc.

### ***Conclusion***

The zoning officer neither took issue with conditions pursuant to the Zoning Ordinance, nor is he saying there is any other non-conformities with what is proposed, except for the Applicants proposing a rear covered entry porch that does not encroach into a rear or side yard area, as well as the existing 45' lot width. Being that there is no limitation on a covered rear yard porch/deck that complies with setbacks, the Zoning Officer's denial of that issue should be overturned. His reliance on Section 450-13 is misplaced, as that section provides for limitations only when there is an encroachment into a yard setback area. Sections 450-12(F) and 450-12(A) authorize the continuance of a pre-existing non-conforming lot width, as well as the ability to redevelop the property with additions as long as there is conformance with all other zoning restrictions. The applicant's proposal to demolishing non-conforming structures and erecting a single-family dwelling and garage with garage apartment in compliance will all zoning restrictions can be authorized under these circumstances without the need for any variance.

In the alternative, if the Appeal is denied and the Zoning Officer's decisions are not overruled, the Applicants are seeking a variance from each of these two (2) reasons for denying the Applicant's plans by the Zoning Officer, and requesting relief to (1) authorize the rear covered porch/deck and entry, and (2) authorize the Applicants to maintain a lot of 45' in width with the right to demolish the existing structures and replace them with conforming structures, as proposed.