

**RESOLUTION OF THE LAND USE BOARD  
OF THE BOROUGH OF BRADLEY BEACH**

**RESOLUTION NO. 2022-09**

**WHEREAS**, EMAM Lab, LLC (hereinafter referred to as the “Applicants”) are the owners of property known as Block 71, Lot 30 as shown on the Borough of Bradley Beach Municipal Tax Map, more commonly known as 110 Main Street, Bradley Beach, New Jersey; and

**WHEREAS**, the Applicants appeared before the Borough of Bradley Beach Land Use Board (hereinafter referred to as the “Board”) for use variance, bulk variance, and minor site plan approval; and

1. The property is the cinema located at 110 Main Street (Lot 30, Block 71) with a total area of 8,860.8 square feet. The existing lot contains a two-story cinema building. The applicant is proposing renovation to the interior and exterior of the structure. The interior renovations include new concession, bathrooms, auditoriums, and seating. The exterior renovations include windows at the front of the building, new metal landings and steps on the north side of the cinema building, new fence along north side property line, and a small roof extension for the new stairs and existing platform.

After securing feedback from the Board and the public at the April 21<sup>st</sup> meeting, the Applicant has made the following changes:

- a. Has added an additional exit on the north side of the building from the last submission.
- b. Has changed the landing and step on the north side of the building to landing and ramp.
- c. Has changed from two (2) recycling containers and two (2) refuse containers to three (3) recycling containers and three (3) refuse containers.
- d. Has removed the gate from the fence at the southeast corner of the property.
- e. Has added a 38’’ wide gate to the fence to the northwest corner of the property.

- f. Has added a fence and gate to the east side of the landing for the north facing door farthest to the east.
2. The property is located in the GB General Business and a cinema (movie theater) is not a permitted use in this zone. The proposed improvements require a minor site plan approval from the Board. Also, the Applicant requires approval from the Board for variances on number of signs, and others as described in this report.
3. In accordance with Section 450-10.A.(38), any use of land or building or any activity not specifically permitted in a zone is prohibited. The existing cinema (movie theater) is not listed as a permitted use in the GB-General Business Zone. This existing use represents an existing non-conforming use.
4. The Applicant is proposing improvements to the exterior and interior of the building. The Zoning Officer determined that the improvements are an expansion of a non-conforming use, and a use variance is required. The Applicant is appealing this determination. If the Board upholds the Zoning Officer's determination, the Applicant is requesting a use variance from the Board. The Board agreed with the Zoning Determination at the April 21<sup>st</sup> meeting and that finding was not contested by the Applicant.
5. The Applicant bifurcated the application and requested a D(2) use variance for the expansion of a non-conforming use is required. To obtain a D(2) use variance, the Applicant must show that the proposal meets three separate criteria.
  - a. Special Reasons. Proving the positive criteria for D(2) variances is set at a lower bar than for a new non-conforming use. Proof should still be proffered that demonstrates the furtherance of goal of zoning.

- b. Intent of the Zone Plan (negative criterion #1). The Applicant must prove that the proposed expansion does not substantially impair the intent of the zoning ordinance or master plan.
  - c. Detriment to the Public Good (negative criterion #2). The Applicant must prove that the expansion of the proposed use would not have a substantial detriment on nearby properties
- 6. At the April 21, 2020 hearing, the use variance was granted, since the Board determined all of the criteria for the D(2) use variance had been satisfied.
- 7. The property complies with the lot area, lot width, and lot depth of the GB Zoned District.
- 8. The building complies with front, side, and rear building setbacks, building height and number of stories.
- 9. The maximum building coverage permitted per the GB Zoned District is 90% of the lot area. The existing building coverage is 85.1%, which complies.
- 10. The maximum impervious coverage permitted per the GB Zoned District is 100% of the lot are. The existing impervious coverage is 94.5%, which complies.
- 11. In accordance with Section 450-29.D.(1)(j), the minimum off-street parking requirement is in Ordinance Section 450-38 entitled schedule of required off-street parking spaces. This section does not have parking for cinema, which serves alcohol. The site currently does not have off-street parking, which represents an existing non-conformity.
- 12. In accordance with Section 450-47.E., (Awning), No awning shall be erected or maintained on any building where said awning shall extend over the public sidewalk unless said awning shall be erected and maintained so that the lowest portion thereof shall be at least eight feet, six

inches above the sidewalk. The Applicant shall confirm and provide testimony that the awning is 8 feet, 6 inches above the sidewalk.

13. In accordance with Section 450-50.A.(1), there shall be no more than two signs permitted per business establishment, or if more than one business occupies a structure, no more than on façade and two identification signs per storefront shall be permitted.

The Applicant is proposing four (4) signs. A variance is required.

14. In accordance with Section 450-50.A.(2), the size of a projection sign shall not exceed 12 square feet, and the lowest portion of the sign shall not hang lower than 8 ½ feet above the sidewalk level, and the sign shall not project more than 5 feet from the surface plan of the largest face of the wall of the building to which it is attached.

The Applicant is proposing two (2) signs, each having an area of 25 square feet. A variance is required.

The Applicant is proposing two (2) signs, each having an area of 40 square feet. A variance is required.

The existing signs project 10 feet 8 inches from the building, which represent an existing non-conformity. The proposed sign projects 10 feet, 8 inches. A variance is required.

15. In accordance with Section 450-44.a., all fences may be erected, altered or reconstructed to a height not exceeding three feet above ground level when located in any front yard, four feet in any side yard and six feet in any rear yard.

The Applicant is proposing a fence height of 5 feet and 6 feet in the north side yard. A variance is required.

The fence shall be self-closing. Landscaping/screen should be provided for the properties to the north of the site.

16. Testifying in support of the application on behalf of the Applicant was Justin Auciello, PP. Mr.

Auciello testified as an expert in the field of planning. He stated the proposal is an expansion of a nonconforming use. The Applicant is proposing a state-of-the-art movie theatre with the 3 screens, a bar, and a lounge. While a cinema has been at this location more than 100 years, a movie theatre is not a permitted use. The expansion of the use is not due to footprint, but rather the use changing by adding food and alcoholic beverages to the theatre.

Mr. Auciello stated the cinema use will not have a negative impact in the GB zone. There is no substantial impact on the zone plan or zoning ordinance. He further testifies that the general welfare is advanced by the prepared use. The use will enhance to the character of community development. It is not a stand-alone use and therefore will bring people into the area for economic development.

17. Board Planner, Christin Bell, agreed the criteria for the granting of a D(2) use variance has been met. She stated the use is beneficial to the character of the community. The cinema offers a synergistic use with surrounding commercial properties.

18. Donald Passman, AIA, testified on behalf of the applicant as an expert in architecture. He created the plans for the cinema renovation. He stated 3 screens are proposed with the larger theatre having 185 seats and 37-40 seats each in the two other theaters. All new seating will be provided. There will be new bathrooms and concessions and the exterior is being upgraded. The marquee will remain the same however, 4 sign variances will be required with one for “The Bradley” signage in script over the marquee.

In the interior there will be a concession stand along with a bar area. The bar area will have 32 seats. The proposed exterior lighting will be subject to approval by the Land Use Board

Engineer. The Applicant agreed that no theatre patrons will be allowed to exit into the alley. Additionally, the Applicant will provide privacy landscape for the neighbor at 623 2<sup>nd</sup> Avenue. At his appearance at the May 19<sup>th</sup>, 2022, Land Use Board Meeting, Mr. Passman presented site plan changes. “The Bradley” sign will be dimmable. There will be globe lights on the exterior with 100 watts maximum. The entire lighting package will be part of resolution compliance. The applicant will have the lights on the building pointed down to ensure the neighbors’ privacy.

Mr. Passman further testified that the east side fence will not have a gate. As to the north side there will be a new fence and gate for employees to access the refuse area. A fire suppression system for the entire building will be installed.

19. Luke Parker Bowles, CEO of EMAM Lab, LLC testified in support of the application. His organization operates similarly run cinemas in South Orange, NJ and Colorado. He emphasized that security will be present at the cinema. The southeast side interior exit will be activated strictly by use of a panic button.

20. Eric Diehn, another representative of EMAM Lab, LLC stated that the proposed cinema will employ 9-10 people. They will start at 9:00 am in the morning and the last show will be at 9pm, seven days a week. The alcohol served will cease one-half hour after the start of the last show. They have a first quarter, 2023 projected opening date.

21. The Board opened to the public and the following individuals appeared with comments and questions concerning the application:

a. Thomas Coan of 612 3<sup>rd</sup> Avenue stated the applicants made a tremendous proposal.

This is not a high-tech approach. He recommends screening for the A/C condensers.

b. Kristie Dunican of 623 Second Avenue questioned the noise from A/C units and inquired about refuse.

c. Michael Moss of 429 Monmouth Avenue asked about fixed seats in the theatre.

**WHEREAS**, notifications as required by the Statutes of the State of New Jersey as well as the Borough of Bradley Beach pertaining to the public hearings on this matter have been satisfactorily perfected; and

**WHEREAS**, the Board did conduct public hearings on April 21, 2022 and May 19, 2020 to evaluate and consider the application as set forth above; and

**WHEREAS**, the Board considered the testimony presented; and

**Exhibits:**

**Exhibit A-1 – Black & White Google Image of Marquis Sign “Beach Cinema” (4/21/2022)**

**Exhibit A-2 – Color Version Stucco, Brick, & Wall Sconce Specs (5/19/2022)**

**Exhibit A-3 – Marquee Sign Detailed Color Rendering (5/19/2022)**

**WHEREAS**, based upon the testimony presented, and the exhibits offered by the Applicant, the following findings of fact have been made by the Board:

1. The Board has jurisdiction to herein consider the application pursuant to N.J.S.A. 40-55D-1, et seq.
2. The Applicant has satisfied the notice requirements of the State and Municipal Ordinances, and, therefore, the Board has authority and jurisdiction to consider the application.
3. The Applicants are the owners of premises known as 110 Main Street, Bradley Beach, New Jersey and further known as Block 71, Lot 30 as shown on the Tax Map of the Borough of Bradley Beach.

4. The proposed improvements require Board Approval for a use variance, bulk variances, and minor site plan approval.

**NOW, THEREFORE, be it hereby resolved** by the Board that it adopts the aforesaid findings of fact, and specifically makes the following conclusions:

1. Based upon the aforesaid findings of fact, the Board concludes that the Applicant has demonstrated that the purposes of the Municipal Land Use Law and the Land Use Ordinances of the Borough of Bradley Beach, would be advanced by a deviation from the zoning ordinance requirements at issue, and further that the benefits of any such deviation would substantially outweigh any detriment resulting from approval of the application.
2. Based upon the aforesaid findings of fact, the Board further concludes that the applicant met its burden of proof to sustain a D(2) use variance and that the D(2) use variance criteria have been met, as well as, C(1) and C(2) bulk variance criteria. The granting of the approval set forth herein will not cause substantial detriment to the public good, will not substantially impair the intent and purpose of the zoning ordinance and master plan of the Borough of Bradley Beach, does promote the safety and welfare of the residents of the municipality and that the positive and negative criteria have been satisfied and accordingly the Applicant satisfied the requirements of obtaining the said Variance(s). Further the Board has determined the applicant has satisfied the requirements for the granting of a minor site plan approval.
3. The Board is further satisfied that the information and evidence submitted by the Applicant is sufficient to permit the Board to make a decision in this case, and as such, waives any additional formal requirements as contained in the Borough Ordinance.



4. The Board has concluded that the proposed application would not adversely impact the master plan of the Borough of Bradley Beach and does promote the safety and welfare of the residents of the municipality and accordingly has satisfied the requirements of obtaining the said Variance(s).

**IT IS FURTHER RESOLVED**, by the Borough of Bradley Beach Land Use Board that the use variance, bulk variance, and minor site plan approval requested are hereby ***granted*** subject to the following:

1. The Applicant shall cause notice of the decision to be published on one occasion in the official newspaper of the Borough of Bradley Beach and return proof of publication to the administrative office of the Land Use Board.
2. The Applicant shall pay any application fees and taxes, which may be due to the Board or the municipality.
3. The approval is subject to the posting of any and all required guaranties or other escrows, which may be required by the appropriate Borough officers or professionals to secure performance of this approval.
4. The approval is subject to compliance with all federal, state, and local rules, regulations, laws and/or ordinances and the procurement of any required governmental approval or permits required in connection with this application.
5. The complete lighting plan including the marquee are subject to approval by the Board Engineer.
6. Gated egress on the south side to have doorway facing southeast shall be a panic door.
7. Window located on the east wall shall become a door.
8. All emergency exits shall have emergency exit signs.

9. The A/C unit condensers shall be screened.
10. The globe lighting on the exterior of the building shall be pointed down with a maximum wattage of 100 watts.
11. Construction shall commence within two (2) years of the adoption of the Resolution or the Applicant shall appear before the Land Use Board within two (2) years of the Adoption of the Resolution and request an extension.
12. The applicant shall comply with all the provisions of the engineering review letter of Gerald J. Freda, P.E., P.P., dated April 13, 2020 and May 16, 2022, unless modified herein.

**IT IS FURTHER RESOLVED** that a copy of this Resolution certified by the secretary of the Borough of Bradley Beach Land Use Board to be true shall be forwarded to the Construction Code Officer, Borough Clerk, Board Engineer, Borough Assessor and within ten (10) days of the date hereof to the Applicants herein.


**BE IT FURTHER RESOLVED** that the notification of this Resolution shall be published in the Asbury Park Press, the Coaster, or the Coast Star within ten (10) days of its passage.

**MOTION TO ADOPT & MEMORALIZE:**

Offered By: Dennis Mayer                      Seconded By: Harvey Rosenberg  
Mayor Larry Fox N/A                              Paul Murphy N/A  
Councilman Timothy Sexsmith N/A                      Meredith DeMarco YES  
Kelly Reilly-Ierardi YES    Robert Mehnert N/A    Lauren Saracene N/A  
David Critelli N/A                              Dennis Mayer YES  
Alternates:    Harvey Rosenberg (Alt. 1) YES                      William Psiuk (Alt. 2) YES  
                    Arianna Bocco (Alt. 3) N/A                      JohnEric Advento (Alt. 4) N/A

**CERTIFICATION**

I hereby certify that I, the undersigned, am the Secretary of the Land Use Board of the Borough of Bradley Beach, and I hereby certify that the foregoing Resolution was adopted by the Land Use Board at a regular meeting held on the 16<sup>th</sup> day of June, 2022.

  
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**Kristie Dickert, Secretary**  
**Borough of Bradley Beach Land Use Board**