



# TENNANT MAGEE LAW

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VIA HAND DELIVERY

December 29, 2023

Donna S. Barr  
Zoning Officer  
Borough of Bradley Beach  
701 Main Street  
Bradley Beach, New Jersey 07720

Erica Kostyz, RMC  
Borough of Bradley Beach  
701 Main Street  
Bradley Beach, New Jersey 07720

Re: *Appeal of Zoning Permit*  
Appellants: Jay and Grace Truppo, 611 4<sup>th</sup> Avenue  
Zoning Permit Ownes: Patrick R. Clancy, Jr., and Carol Parks  
Zoning Permit Location: 613 4<sup>th</sup> Avenue  
Firm File No. 1197.0001

Dear Ms. Barr and Ms. Kostyz:

Please be advised that this law firm has been retained to represent the above-referenced appellants ("Appellants") relating to a certain zoning permit that was issued to the above-referenced zoning permit owners of 613 4<sup>th</sup> Avenue ("Zoning Permit Property"). At the outset, please be advised that this appeal is being filed prior to securing a copy of the zoning permit ("Zoning Permit") as the Appellants recently discovered evidence that the scope of the zoning permit violates the Borough of Bradley Beach Code, *i.e.*, a second-floor upper porch is improperly being installed on the side yard portion of the Zoning Permit Property. Given the date the zoning permit was issued is unknown and the time of the discovery of the violation is now, this appeal of the Zoning Permit to the Land Use Board is filed on behalf of the Appellants pursuant to the Borough Code and *Harz v. Borough of Spring Lake*, 234 N.J. 317 (2018).

In support of the appeal, the Appellants rely upon the enclosed photographs of the Zoning Permit Property and Section 450-13 of the Borough Code. Specifically, Section 450-13 permits upper porches to be installed in the front yard only and above the footprint of the lower porch, and, therefore, prohibits upper porches from installation in any side yard. The plain language thus does

not authorize what the pictures of the Zoning Permit Property establish. That is, a significant upper porch now appears to be under construction in the side yard of the house at the Zoning Permit Property in violation of the Borough Code. Moreover, it is evident that the upper porch violates one of the core purposes, *inter alia*, of the Borough Code in that side yard upper porches constitute a significant invasion of privacy and in fact is here in that the Appellants' master bedroom directly faces the upper porch under construction.

In addition, the record establishes that the Zoning Permit was not issued on the basis of a debatable interpretation of the Borough Code. There is simply no reasonable or any basis for the decision to authorize a side yard upper porch under the Borough Code. And the Zoning Permit Property owners and their contractors had access to and are deemed to have been aware of the Borough Code regulations and did not and are not acting in good faith.

Finally, the Appellants shall rely upon future testimony and expressly reserve the right to supplement the record in support of their appeal.

Thank you for your attention to this matter. Kindly confirm the date of the appellate hearing at your earliest convenience.

Regards,

/s/ Tennant D. Magee, Sr.

TENNANT D. MAGEE, SR.

Enc.

cc: Kristie Dickert, Land Use Board Secretary (three copies *via* hand delivery)  
Erica Kostyz, RMC (*via* hand delivery)  
Clients (*via* email)



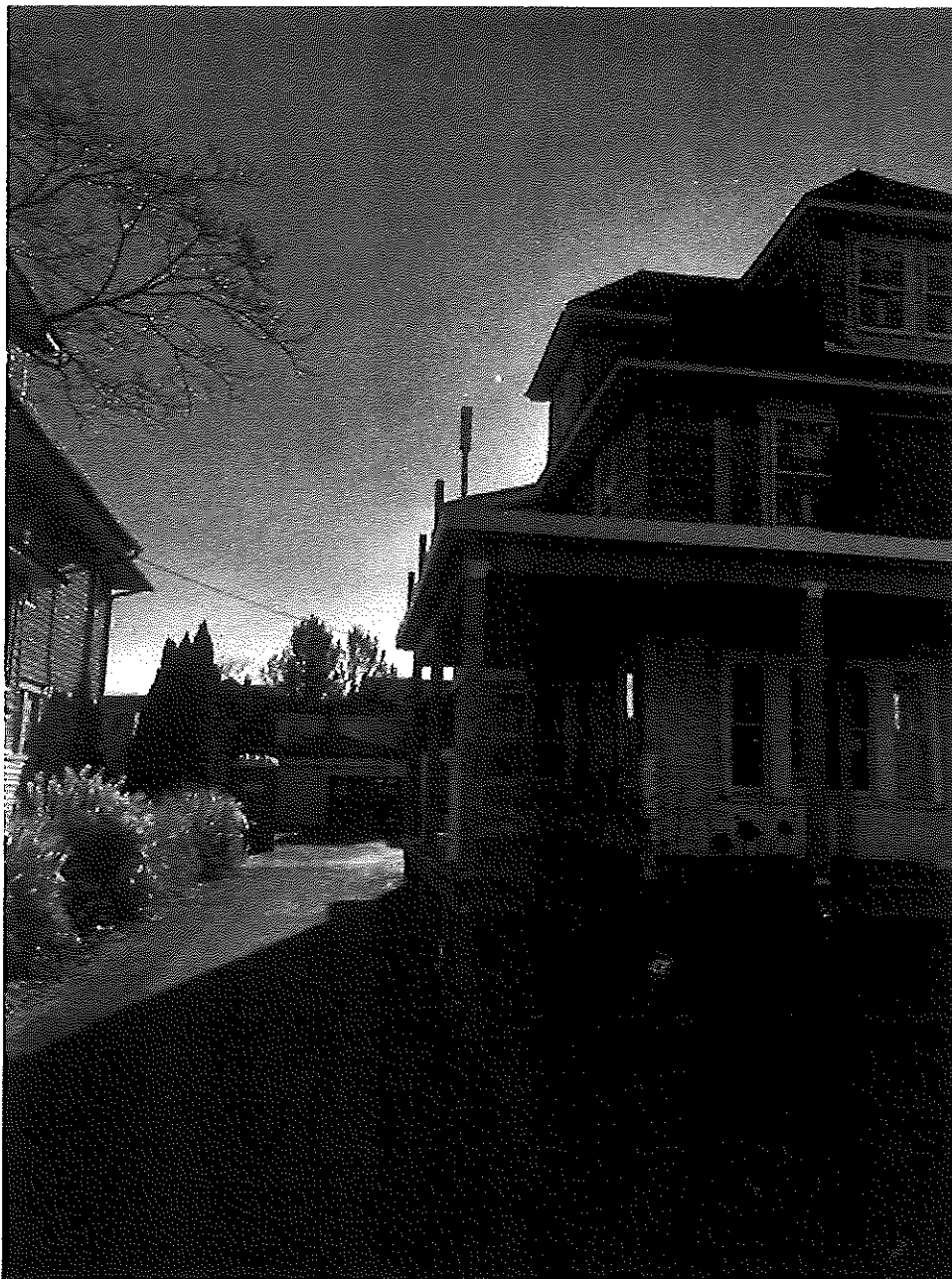
Tennant Magee <tdmagee@tennantmageelaw.com>

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## Zoning Permit Photos of 613 4th Ave BB

1 message

Wed, Dec 27, 2023 at 3:14 PM





[REDACTED]

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**§ 450-13. Permitted yard encroachments. [Amended 1-27-2009 by Ord. No. 2009-2; 10-25-2011 by Ord. No. 2011-19; 5-23-2017 by Ord. No. 2017-15; 5-24-2016 by Ord. No. 2016-18; 5-14-2019 by Ord. No. 2019-6; 6-11-2019 by Ord. No. 2019-14; 3-9-2021 by Ord. No. 2021-05]**

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 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 § 450-26D. 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 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 § 450-26D. 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 feet from the second or third story wall to which it is attached. Each single-family dwelling may have no more than two balconies. Each balcony cannot exceed 80 square feet. Each duplex dwelling may have one balcony per unit, not to exceed two 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 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

feet of any side yard property line, nor closer than 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 inches 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-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 feet of any side yard property line, nor closer than five 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 inches 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-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 feet of any side yard property line, nor closer than five 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-foot setback is maintained. No entry platform associated with a multifamily 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 four feet 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-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 storage shed per building lot that cannot exceed a maximum area of 100 square feet. A storage shed must have a pitched roof of at least three inches rise per 12 inches run.
  - (3) **Setbacks.** Any storage shed shall be erected no closer than three 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 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, O-P, GBW and B-O-R Zones only subject to the following restrictions:
    - (a) May be used only from October 15 to May 1 (in each calendar year).

- (b) The panels must be clear of such material for an individual to see through.
  - (c) The view must be maintained between a height of two feet from grade and seven feet high.
  - (d) Can project no more than four feet into a required front setback area and are no larger than 48 square feet in total area, provided the principal structure complies with the required front yard setback.
  - (e) Must maintain ADA compliance.
  - (f) 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.)
  - (g) Violations and penalties provide for the maximum penalty that is included in Chapter 1, Article II, Penalties, of the Borough Code.
- (4) Fire escapes. Fire escapes are permitted in multifamily dwellings only, subject to the following restrictions:
- (a) Fire escapes are not permitted in the front yard.
  - (b) Fire escapes shall be no closer than three feet to the property line.
  - (c) 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.