

*Memo from the Bradley Beach Land Use Board
From the desk of Kristie Dickert, Board Secretary
(732) 776-2999 Ext. 1017
kdickert@bradleybeachnj.gov*

Date: May 20, 2022

To: Erica Kostyz, Municipal Clerk (via e-mail)
Kimberly Humphrey, Business Administrator (via e-mail)
Gregory Cannon, Esq. – Borough Attorney (via e-mail)
Donna Barr, Zoning Officer (via e-mail)
Mark G. Kitrick, Esq. – Land Use Board Attorney (via e-mail)
Christine Bell, PP, AICP – Land Use Board Planner (via e-mail)
Gerald Freda, PE – Land Use Board Engineer (via e-mail)

Re: Land Use Board Resolution #2022-08
Ordinance No. 2022-04
Section 26 Consistency Determination

Attached please find a copy of the adopted and memorialized Resolution approved by the Land Use Board regarding Ordinance No. 2022-04, a copy of correspondence from Christine L. Bell, PP, AICP addressed to the Land Use Board dated May 11, 2022, as well as a copy of said Ordinance No. 2022-04. The membership agrees that Ordinance 2022-04 is consistent with the Borough's Master Plan; however, they have made some recommendations for the Council's consideration as indicated in said Resolution #2022-08.

If you require additional information please do not hesitate to contact this office.

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

RESOLUTION # 2022-08

**RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF
BRADLEY BEACH, COUNTY OF MONMOUTH, STATE OF NEW
JERSEY MEMORIALIZING ADOPTION AND AMENDING
CHAPTER 450, OF THE BOROUGH CODE ENTITLED “ZONING”
TO PERMIT THE ZONING OFFICER TO REQUIRE THE
SUBMISSION OF AS-BUILT SURVEYS FOR CERTAIN
COMPLIANCE INSPECTIONS AS CONSISTENT WITH THE
BOROUGH OF BRADLEY BEACH MASTER PLAN**

WHEREAS, pursuant to N.J.S.A. 40:55D-28, adoption of a Master Plan is mandatory for any New Jersey community that manages land development through zoning codes and is adopted by the Land Use Board through a public hearing process. All Master Plans in the State of New Jersey must be reviewed every ten (10) years; and

WHEREAS, the New Jersey Municipal Land Use Law requires that all municipal Master Plans contain a statement of objectives, principals, assumptions, policies and standards upon which the comprehensive plan is to be based. This requirement recognizes the necessity of having clearly defined municipal goals and objectives; and

WHEREAS, the Borough of Bradley Beach Land Use Board has the statutory power to prepare a Master Plan pursuant to N.J.S.A. 40:55D-28 subject to the obligation to provide for a general re-examination of its master plan and development ordinance and is required to prepare and adopt by resolution a report on the findings of such re-examination pursuant to N.J.S.A. 40:55D-89; and

WHEREAS, in 2018, the Master Plan Re-Examination Report was adopted by the Borough of Bradley Beach; and

WHEREAS, The Borough of Bradley Beach introduced an Ordinance amending Chapter 450, entitled “Zoning” Requiring the Submission of As-Built Surveys for Certain Compliance Inspections, on May 10, 2022; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26, the Land Use Board reviews development regulations, revisions, or amendments prior to the final adoption by the governing body; and

WHEREAS, on May 11, 2022, the Land Use Board Planner, Christine Bell, prepared a report addressing the proposed amendment. In that report, Ms. Bell determined that amending Chapter 450: “Zoning” to permit the Borough’s Zoning Officer to require the submission of As-Built Surveys for Certain Compliance Inspections, is consistent with the Borough’s Master Plan; and

WHEREAS, at the public hearing conducted by the Land Use Board on May 19, 2022, members of the public were heard and discussions among board members occurred regarding Ordinance No. 2022-04, for the purpose of planning and zoning as well as advancing the planning objectives of the Bradley Beach Master Plan; and

WHEREAS, the Borough Planner, provided testimony at the May 19, 2022, Land Use Board meeting regarding Ordinance No. 2022-04, entitled “Zoning”, advising it is consistent with the Bradley Beach Master Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Borough of Bradley Beach, on the 19th day of May 2022, adopts the recommendation for “Zoning” to require Submission of As-Built Surveys for certain Compliance Inspections, as consistent with the Bradley Beach Master Plan pursuant to N.J.S.A. 40:55D-26.

The Land Use Board further recommends that the Borough Council consider amending the proposed Ordinance to also include the following:

- 1. Require the submission of an As-Built Survey for all construction projects.**
- 2. Require the submission of a Foundation Location Survey for all construction projects involving the construction/reconstruction of any and all foundations.**

MOTION TO ADOPT & MEMORIALIZE:

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

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 unanimously adopted by the Land Use Board at a meeting held on the 19th day of May 2022.



Kristie Dickert, Secretary

LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)
PETER R. AVAKIAN, P.E., P.L.S., P.P.
MEHRYAR SHAFAI, P.E., P.P.
GREGORY S. BLASH, P.E., P.P.
LOUIS J. LOBOSCO, P.E., P.P.
GERALD J. FRED A., P.E., P.P.
RICHARD PICATAGI, L.L.A., P.P.
JENNIFER C. BEAHM, P.P., AICP
CHRISTINE L. BELL, P.P., AICP
SAMUEL J. AVAKIAN, P.E.

May 11, 2022

Bradley Beach Land Use Board
701 Main Street
Bradley Beach, NJ 07720

Re: Ordinance 2022-04
Section 26 Consistency Determination

Dear Board Members:

Pursuant to NJAC 40:55D-26, The Borough of Bradley Beach Ordinance 2022-04, An Ordinance of Bradley Beach, County of Monmouth, and State of New Jersey, amending Chapter 450: Zoning of the Borough's Revised General Ordinances to permit the Borough's Zoning Offer to require the submission of As-Built Surveys for certain compliance inspections, is consistent with the Borough's Master Plan.

In particular, the 2018 Master Plan Reexamination report recommended the Borough regularly review the regulations within the land development ordinance against its planning goals and objectives, clarifying, amending, and updating when appropriate. This ordinance is a direct result of Borough's Mayor and Council engaging in a comprehensive review of the Revised General Ordinances, as recommended.

Should you have any questions or require any clarification regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, Inc.



Christine L. Bell, PP, AICP
Board Planner

cc: Jerry Freda, P.E., Board Engineer
Mark Kittrick, Esq., Board Attorney

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2022-04

AN ORDINANCE AMENDING CHAPTER 450: “ZONING” OF THE BOROUGH’S REVISED GENERAL ORDINANCES TO PERMIT THE BOROUGH’S ZONING OFFICER TO REQUIRE THE SUBMISSION OF AS-BUILT SURVEYS FOR CERTAIN COMPLIANCE INSPECTIONS.

Mayor Fox offered the following Ordinance and moved its introduction:

WHEREAS, the Borough of Bradley Beach, County of Monmouth, and State of New Jersey (the “Borough”) is responsible for the enforcement of its land development and zoning regulations, respectively contained within Chapters 270 and 450 of the Borough Code; and

WHEREAS, the ability of the Borough’s Zoning Officer to review, inspect, and enforce compliance with the Borough’s land development and zoning regulations would be enhanced by authorizing the Zoning Officer to require the submission of as-built surveys when required in connection with certain compliance inspections; and

WHEREAS, the Borough finds that amending its Borough Code to provide such authority would assist its Zoning Officer in administration and enforcement of the Borough Code;

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 450-79 entitled “Administration, Enforcement, Zoning Permits, Violations” of Article XVI entitled “Violations and Penalties” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

CHAPTER 450: ZONING.

* * *

ARTICLE XVI: VIOLATIONS AND PENALTIES.

* * *

§ 450-79 Administration, Enforcement, Zoning Permits, Violations.

A. *Administration.* These rules, regulations and standards shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Borough. Any action taken by the Borough under the terms of this chapter or Chapter 270, Land Development, shall give primary consideration to the above mentioned matters and to the welfare of the entire community of Bradley Beach.

B. *Enforcement.* It shall be the duty of the Borough's Zoning Officer and Department of Construction, Code Enforcement, Zoning and Department of Community Development to administer and enforce the provisions of this chapter and Chapter 270 of this Code. No structure or building improvement shall be erected until a zoning permit is obtained by the Zoning Officer and no structure or lot shall be used in violation of this chapter or Chapter 270 of this Code. It shall be the duty of the Zoning Officer to keep a record of all zoning permit applications and all zoning permits which are either issued or denied, with notations of any conditions involved, which data shall form a part of the Borough's public records. It shall be the duty of the Zoning Officer to inspect the structures and land in the Borough, and when required in his or her discretion, the Zoning Officer may require the submission of an as-built survey by the owner, at the owner's expense, to confirm compliance with the provision(s) of this chapter and/or Chapter 270 of this Code. The Zoning Officer shall order the owner, in writing, to remedy any condition found to exist in violation of any provision(s) of this chapter and/or Chapter 270 of this Code, and order the owner in writing to remedy any condition found to exist in violation of any provision(s) of this chapter and/or Chapter 270 of this Code.

C. *Zoning Permits.*

1. *When required.* A zoning permit shall be issued prior to:

- a. The commencement or change of use of a property, building or structure;
- b. The commercial occupancy of any building or structure; or
- c. The construction, erection, reconstruction, alteration, conversion, or installation of any building or structure.

2. *Submission requirements.* Every application for a zoning permit shall be accompanied by three (3) copies of a current survey/site plan and three (3) sets of construction plans. All submissions shall be also be simultaneously submitted in electronic format, to scale where appropriate, by the applicant. Surveys must show the existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations and easements, all drawn to scale. All surveys must be prepared by a land surveyor. Survey information may be transposed to a site plan if the date of the survey and by whom and for whom it was prepared is noted on the site plan. Vegetation, general flood plain determinations or general location of existing utilities, buildings or structures may be shown by an architect, planner, engineer, land surveyor, or certified landscape architect. All plans must display the actual shape and dimensions of the lot to be built upon, the exact location, size and height of all existing and proposed structures and substructures (drawn to scale), the number of dwelling units the structure is designed to accommodate, the number and location of off-street parking spaces and off-street loading areas and such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of the Zoning and Land Development Ordinances of the Borough.

3. A zoning permit shall be granted or denied, in writing, within ten (10) business days from the date of a complete application submission, unless additional time is agreed upon. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on an actual survey of the lot by a land surveyor licensed in the State of New Jersey. No zoning permit shall be issued for any structure until prior site plan, subdivision and variance approvals as may be necessary, have been granted by the appropriate Board in accordance with the provisions of the Zoning and/or Land Development Ordinances of the Borough and until all review and inspection fees and all local taxes and assessments on the property have been paid.
 4. The fee for an application for a zoning permit shall be \$45, which fee shall be paid at the time of application.
 5. The fee for a zoning determination shall be \$100 per property, which fee shall be paid at the time of application.
 6. Temporary zoning permits may be issued by the Zoning Officer for the location of temporary trailers permitted by this Code for a period not to exceed one year; however, the permit may be renewed for like periods until completion of construction. Such permits may be revoked or reissue refused in the event that the trailer is no longer used for the purposes for which the permit was issued or the use discontinued, subject to the penalties for violation of this Ordinance.
- D. *Violations.* In case any building or structure is erected, constructed, reconstructed, altered, moved or converted; or any building, structure or land is used in violation of, or contrary to, the provisions of the Zoning and/or Land Development Ordinances, the Borough may institute an action to enjoin or take any other appropriate action to remedy such unauthorized activity – including remediation or removal. Nothing in this Code shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction according to law.

E. *Penalties.*

1. Fines.

- a. Any person, firm or corporation that shall violate any provisions of this Ordinance shall, upon conviction thereof by any court authorized by law to hear and determine the matter, be fined such sum not exceeding \$2,000.00 as such court in its discretion may impose; or if the party so convicted be a natural person, such person may be sentenced to community service not exceeding ninety (90) days, as such court in its discretion may impose; or, if the party so convicted be a natural person, such person may be imprisoned for such term not exceeding ninety (90) days, as such court in its discretion may impose; or such natural person may be both imprisoned and fined not exceeding the maximum limits set forth herein, as such court in its discretion may impose. Each day that such violation exists shall constitute a separate offense.

- b. Any person or entity who assists in the commission of any such violation shall each be guilty of a separate violation, and upon conviction thereof shall each be liable for the same fines or imprisonment, or both, as specified in subsection 450-79(E)(1)(a) hereinabove. These persons or entities may include but are not limited to the owner(s) of any building or structure, lot or land, or part thereof, and/or the tenant or occupant of any building or structure, lot or land, or part thereof, and any architect, builder, developer, contractor, agent, person or corporation engaged in connection therewith where anything in violation of the Zoning and/or Land Development Ordinances of the Borough shall be placed or shall exist or be suffered, allowed or permitted to exist.

2. Selling Land Before Subdivision Approval.

- a. If, before final subdivision approval has been granted, any person as owner or agent, transfers or sells or agrees to transfer or sell any land which forms a part of a subdivision for which municipal approval is required in accordance with the provisions of the Zoning and/or Land Development Ordinances of the Borough, except pursuant to an agreement expressly conditioned on final subdivision approval, such person shall be subject to a penalty not to exceed \$1,000.00, and each lot disposition so made may be deemed a separate violation.
- b. In addition to the foregoing, the Borough may institute and maintain a civil action:
 - i. For injunctive relief; and
 - ii. To set aside and invalidate any conveyance made pursuant to such a contract or sale if a certificate of compliance has not been issued in accordance with N.J.S.A. 40:55D-56.
- c. In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the subdivider or his or her assigns or successors, to secure the return of any deposit made or purchase price paid, and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale conveyance of said land, or within six (6) years if unrecorded.

F. *Additional Remedies.* In addition to the remedy or remedies hereinbefore provided, any person, persons, company or corporation violating Borough Ordinances or any provision or section thereof, may be proceeded against by the Borough of Bradley Beach or by the Zoning Officer of the Borough of Bradley Beach or any designee of the Borough of Bradley Beach or Zoning Officer or by the owner of any property in the Borough of Bradley Beach by appropriate action or by proceeding in equity or otherwise to prevent and enjoin any threatened violation or any existing violation or continuing violation of the Borough Ordinances or any provision or section thereof.

SECTION 2. 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 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, 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 4. After introduction, the Borough Clerk is hereby directed to submit 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 is directed to make and transmit to the Borough's Mayor & Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 5. This Ordinance shall take effect upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final 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: May 10, 2022

Date of Hearing and Adoption: