BOROUGH OF BRADLEY BEACH, COUNTY OF MONMOUTH

ORDINANCE 2026-17

AN ORDINANCE AMENDING ARTICLE IV: "GENERAL REGULATIONS APPLICABLE TO ALL ZONES" OF CHAPTER 450: "ZONING" OF THE BOROUGH'S REVISED GENERAL ORDINANCES TO CLARIFY REGULATIONS PERTAINING TO UNDERSIZED LOTS AND PRE-EXISTING NONCONFORMITIES.

Mayor Gubitosi offered the following Ordinance and moved its introduction:

WHEREAS, the Borough of Bradley Beach (the "Borough") is a largely built-out residential community containing many lots and structures that were lawfully created prior to the adoption of current zoning standards and are undersized or otherwise nonconforming as to bulk requirements; and

WHEREAS, the Borough recognizes that strict application of bulk standards may require owners of such lots to seek variance relief for routine improvements and renovations; and

WHEREAS, the Borough finds that property owners should be permitted to renovate and improve existing residential structures without the necessity of variance relief, provided that such improvements do not create new or expand existing nonconformities; and

WHEREAS, the amendment prohibits any increase in footprint, floor area, or volume and maintains compliance with all other applicable bulk standards; and

WHEREAS, the Borough finds that the amendment promotes the general welfare, preserves neighborhood character, encourages appropriate reinvestment, and reduces unnecessary variance applications while remaining consistent with the purposes of zoning;

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 450-12: "Nonconforming Uses, Structures, and Lots" of Article IV: "General Regulations Applicable to All Zones" of Chapter 450 entitled "Zoning" of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

CHAPTER 450: ZONING

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ARTICLE IV: GENERAL REGULATIONS APPLICABLE TO ALL ZONES

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§ 450-12 Nonconforming Uses, Structures, and Lots.

The following provisions shall apply to valid nonconforming uses structures and lots at the time of adoption of this section:

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 section, 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 by fire or other natural calamity may be restored, reconstructed or used as before; provided, that neither the volume such use or structure nor the floor area shall exceed that which existed prior to such damage; and, provided further, that such restoration shall be in accordance with the following:

(a) It shall be completed within two 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 a 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 section 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 rebuttably presumed by nonuse for any period of two 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 an intention to abandon as well as an external act (or omission to act) by which such intention is carried into effect.

(a) 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 years.

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 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 footprint, but need not comply with minimum lot width, depth and area requirements where the existing condition is nonconforming.

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 Land Use Board Administrative Officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the Land Use Board.

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.

(3) No nonconforming use may be expanded.

(4) 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.

(5) No building shall be constructed upon a conforming lot which lot contains a nonconforming building or use.

(6) Neither the volume or the floor area shall be greater than existed prior to the damage.

~~G. Undersized lot permitted improvements. In any residential zone, any existing lot on which a dwelling is located and: 1) which lot does not meet the minimum lot size, width, or depth, or 2) on which lot there is a structure which violates any bulk requirements, may make improvements (renovations to an existing structure or new construction) to said lot or structures thereon without any appeal for variance relief, provided that the proposed improvements do not create new or expand existing nonconformities or variances and provided that the neither the footprint, floor area, nor volume of the structure is greater than is existing or existed. This exception shall not be construed to apply to any lot on which there is any nonconforming use. Improvements under this section require the following:~~

~~(1) The permitted building coverage is not exceeded;~~

~~(2) The permitted lot coverage is not exceeded;~~

~~(3) 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; and~~

~~(4) 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.~~

G. Undersized lot permitted improvements. In any residential zone, any existing lot on which a dwelling is located that: (1) the lot does not meet the minimum lot size, width, or depth, or (2) the dwelling does not meet one or more bulk requirements, may make improvements (renovations to an existing structure or new construction) to said lot or structures thereon without any appeal for variance relief, provided that the proposed improvements do not create new or expand existing nonconformities or variances. This exception shall not apply to any lot on which there is any nonconforming use. Improvements under this section require the following:

(1) The permitted building coverage is not exceeded;

(2) The permitted lot coverage is not exceeded;

(3) The accessory building and/or addition does not result in a violation of any other requirements of this chapter, including, but not limited to, height, setback and parking; and

(4) The property owner has filed a zoning permit application with the Building Department which the Zoning Officer has reviewed and determined meets the requirements in this chapter.

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 of Bradley Beach, 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 Muniucipal 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 immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of 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

Alan Gubitosi
Mayor

Introduced: March 3, 2026

Date of Hearing and Adoption: April 7, 2026