

## **FAIR HAVEN ZONING BOARD OF ADJUSTMENT**

### **Regular Meeting Minutes March 05, 2020**

The meeting was called to order at 7:15pm by Mr. Lehder, Chair, with a reading of the Open Public Meetings Act Statement (below), followed by the pledge to the flag.

#### **1. ROLL CALL**

Present: Mrs. Quigley, Mr. Ridgeway, Mr. Ryan, Mr. Ludman, Dr. Laufer, Mr. Kinsella, Mr. Lehder

Absent: Mr. Neczesny and Mrs. Neff (Mrs. Neff joined the dais at 10:35pm)

Also, Present: Mr. Irene, Board Attorney; Ms. Gable, Board Planner

#### **2. ADMINISTRATIVE ITEMS**

**Cady – 137 Grange Avenue, Block 22, Lot 53, R-30 Zone** – Application for in-ground pool, patio and driveway modifications. Variances needed for lot coverage and front yard driveway coverage. Request to carry to the April 2, 2020 meeting without the necessity to re-notice. No one attended the meeting in connection to the Cady application.

MOTION by Laufer, second Lehder to carry the Cady matter to the April 2<sup>nd</sup>, meeting with no need for further notice and subject to an extension of time.

In Favor: Lehder, Laufer, Quigley, Ridgeway, Ryan, Ludman, and Kinsella

Opposed: None

There were no comments or questions from the public regarding the Cady application.

**DelTin – 4 Hendrickson Place, Block 46 Lot 14, R-10 Zone** – Application for side yard setback variance. Mr. Irene stated that the newspaper notice was not published in time for tonight's meeting therefore the applicant has asked to carry to the April 2, 2020 meeting without having to re-notice. Mr. Irene stated that if the Board were to approve carrying to the April 2, 2020 meeting the applicants would be required to perfect their notice.

MOTION by Lehder, second Quigley to carry the application to the April 2<sup>nd</sup>, 2020 meeting with no need for further notice of the 200-foot list but the Board requires the applicants to renotice via publication in the newspaper.

In Favor: Lehder, Quigley, Ridgeway, Ryan, Ludman, Laufer, and Kinsella

Opposed: None

There were no comments or questions from the public regarding the DelTin application.

#### **3. OLD BUSINESS**

**Gilbertson – 96 Batten Road, Block 27, Lot(s) 25&27, R-10A Zone** – Application for residential addition.

Mr. Irene stated that prior hearing dates with testimony for this application were September 5, 2019, November 14, 2019, and March 5, 2020, and it was confirmed that new Board Member

Mr. Kinsella has listened to the recordings of the meetings that predated his appointment to the Board and has signed a certification that is in the Board's file.

Mr. Aikins announced himself on behalf of the applicants, Mr. and Mrs. Gilbertson. Mr. Aikins stated that the applicants would like to review some revisions to their proposed addition plans and Mr. Daley, the applicant's architect, would provide testimony to these changes.

Mr. Irene swore in the Board Planner, Ms. Elena Gable and Mr. James T. Daley, 273 First Street, Keyport, NJ, licensed architect in New Jersey.

Mr. Aikins asked Mr. Daley to please explain the changes that were made to the applicant's proposed plans.

**Exhibit A-12** – Revised addition and renovation architectural plans dated 01-09-2020 revised 02-21-2020, prepared by James T. Daley, consisting of 3 sheets.

Mr. Daley stated that one of the changes made to the plans was a revision to the proposed second story addition. They plan to demolish the existing rear first floor, which is an existing nonconformity, and move it over out of the setback. The new first floor will then conform to the side yard setback. Mr. Daley stated that he met with the applicant's neighbor, Mrs. Mitola, to address her concerns. He brought Mrs. Mitola's concerns to the Gilbertson's and they tried to come up with a compromise for all parties. Exhibit A-12 is the revised plans to mitigate some of Mrs. Mitola's apprehensions. The revised plans include moving the chimney to the opposite side of the house, away from the Mitolas, even though the chimney is currently in compliance. They also decided to remove the proposed rear balcony from the second story master bedroom in an effort to ease the Mitola's concerns of privacy in their backyard. Instead, the new proposal is a Juliet balcony, which is just a railing with two French doors and no balcony to walk out onto.

Mr. Lehder wanted to make clear that the original proposed balcony was conforming.

Mr. Daley stated that was correct. The removal of the balcony was out of respect for the Mitola's privacy concerns. Also, by moving the rear of the structure over and out of the side yard setback, it reduces the total square footage of the building coverage and floor area ratio.

Mr. Aikins asked Mr. Daley to review for the Board the changes that will occur on the interior of the structure because of the changes they are making to the exterior.

Mr. Daley stated that the family room, mudroom, second story bedroom were all reduced in size. The foundation must now be rebuilt, and on the second floor they had to flip the closet in the bathroom to fit with the new proposed changes.

Mr. Lehder asked Mr. Aikins to please outline what variances are still required after these changes to the applicant's plans.

Mr. Aikins stated there is a combined side yard setback that exists now at 18.6 feet and by moving the addition; the combined side yard setback is increased to 19.1 feet where 25 feet is required. The maximum habitable floor area in the R-10A zone is 3,220 square feet, the proposed addition will make the front structure 2,726 square feet but adding the 908 square feet of the cottage, there will be a total of 3,634 square feet.

Ms. Gable agreed with Mr. Aikins review of the variances needed.

Mr. Lehder asked if the proposed work would exacerbate any preexisting nonconformity.

Mr. Aikins stated that the ridge of the house is being increased on the North side, which would exacerbate vertically the preexisting side yard setback nonconformity.

Mrs. Quigley stated that she is concerned about whether these lots are being seen as having merged for the purposes of these variances. She does not see how the front house can say that it sits on a 15,000 square foot lot.

Mr. Aikins stated that the property has always been one lot and that is what the Title Search revealed.

Mrs. Quigley said that it is not one lot because there is a separate lot number associated with the property and there is a structure on the rear lot.

Mr. Aikins stated that the second lot number is just for the Assessors purposes but as a matter of law, it is one lot.

Mrs. Quigley disagrees.

Mr. Irene asked if the applicant stipulated at the last meeting, they would file a deed of consolidation.

Mr. Aikins stated that yes; the applicant would file a deed of consolidation.

Mr. Irene said that if the Board sees fit to approve the application as proposed they could make the deed of consolidation a condition of approval.

Mr. Aikins stated again that the Title Search unequivocally stated that the property is in fact one lot. There is nothing in the Title that indicates it is anything other than one lot.

Mrs. Quigley asked if the Board did grant the variances would the applicants agree to decommission the rear structure.

Mr. Aikins stated no, the rear structure would continue as an accessory structure.

Mrs. Quigley said ok, and requested the applicant still file a deed of consolidation.

Mr. Aikins stated yes, a deed of consolidation and a deed of restriction as to the use of the rear structure would be filed.

Mrs. Quigley asked what the restriction and use would be.

Mr. Aikins stated for family members only.

Mr. Ludman stated there was an open question as to whether the rear structure could be used as a rental given the prior use.

Mr. Aikins stated the applicant has agreed to do away with the rear structure as a rental space.

Mr. Irene said that as of the last hearing the stipulation would be a deed restriction on the rear structure, and it would be used only as an accessory structure to the principal dwelling.

Mr. Aikins said that was correct.

Mr. Irene stated that with the deed restriction, the rear structure could not be rented. The issue with the kitchen was a concern but the applicant was hesitant in removing the kitchen.

Mr. Lehder asked Mr. Aikins to confirm the applicant would file a deed of consolidation to confirm that this property is only one lot and a deed restriction to the rear structure to make it clear the rear structure would not be a permitted second dwelling on this single lot.

Mr. Aikins confirmed.

Mr. Lehder continued with the inside of the rear structure stating that it has already been lived in as a separate dwelling historically and has been built that way with the kitchen installation.

Mr. Lehder continued stating that to ask the applicant to remove the already installed kitchen would create an impediment on the applicant. He also stated that the applicant does not have

the option to treat the property with the rear structure on it as a separate lot. The deed of consolidation is being done so there is no confusion as to the property being one lot.

Mrs. Quigley stated that her concerns with a house on one lot and a vacant lot next to the house is that the vacant lot goes into common legal ownership of the house. Once it goes into common legal ownership, as a matter of law, the lots merge so if the owner goes to sell the vacant lot, they would have to receive subdivision approval. That is her understanding of the doctrine of merger. She goes on to state that there are clearly two separate areas on the subject property. She believes that the neighbor's concern is that the front part of the property is quite undersized if you take off the expansive back part of the lot. In other words, the applicant is getting the credit of a 15,000-foot square lot when the front structure only sits on about 6,800 square feet for purposes of the visual effect of the addition on the front house. That is also an issue for her at this point. She asked Mr. Daley if he could address this concern.

Mr. Irene asked what the proposed size of the addition was.

Mr. Daley stated there is an additional 475 square feet being added to the house and in total will be under the requirement for the zone. He also stated that the other homes on the street are larger than the Gilbertson's house even after the addition and all the lots have 50 feet of frontage, so it is in keeping with the neighborhood.

Mrs. Quigley stated that her main problem is just visually she has a hard time seeing the subject property as one lot.

Mr. Aikins asked to review the math stating that the applicants proposing 2,726 square feet for the principal structure, existing is 2,215 square feet, so the addition is 511 square feet, not 475.

Mr. Lehder stated that the proposed deed would be a consolidation deed, which would confirm there is a single lot as a matter of law. The other proposal is to restrict the use of the rear "cottage" to an accessory structure, but the applicant would not be required to remove anything from the inside of the rear structure.

Mr. Aikins confirmed yes, the applicant would comply and record a deed of consolidation and a deed restriction.

Mrs. Quigley was satisfied with the recording the deed restrictions.

Mr. Lehder asked if any other Board members had any further concerns. And also mentioned that the applicant's abandonment of any claim to a pre-existing nonconforming two-family use at the site takes any D variance off the table, and the deed restriction will confirm the use of the site for single-family residential purposes only.

Kevin Asadi, Esq. of Red Bank appeared on behalf of the Mitola family. Mr. Asadi asked if he could present his argument on the notion that a deed restriction would not remove this application from requiring a D variance. He continued by stating this application is an expansion of a nonconforming use and the proposition that putting in a deed restriction would prohibit the property from being rented out would somehow remove the D variance is not true. The Fair Haven Ordinance states that a dwelling is a structure designed for residential occupancy. Putting a deed restriction on the property does nothing to alter the design of the building, which is clearly a residential occupancy. If there is a deed restriction as being suggested the applicant could violate the restriction and if the town tried to enforce it, it would be deemed void. He cited Tirpak vs. Point Pleasant Beach. The argument is if the Board grants a variance but not a D variance and

adds a deed restriction on the record, it doesn't remove the D variance. This is because the structure is still a dwelling defined by the ordinance and you cannot have more than one dwelling on one lot. He believes if the property owner tried to void the deed restriction at a later time, they would be successful. He believes the applicant should request D variance relief from the Board for the expansion of the nonconforming use of the rear structure.

Mr. Irene stated that the law does not favor nonconforming uses, and wants the nonconformity to be made to conform as soon as possible, and that the elimination of such a nonconforming use can be viewed as a benefit to the zone scheme. He added that the deed restriction would confirm this situation.

Mr. Asadi stated that if the kitchen in the rear structure were removed, it would still be considered a dwelling and not an accessory structure. He believes that is how our ordinance reads.

Dr. Laufer asked Mr. Asadi what he would like to accomplish at tonight's hearing.

Mr. Asadi stated that his client is the next-door neighbor where the setbacks are seriously nonconforming. They believe that the new addition will eliminate the sky from the Mitola's viewpoint and so the Mitola's object to the addition.

Mrs. Quigley asked if the Mitola's are just objecting to the addition to the front house.

Mr. Asadi stated that the Mitola's are objecting to the entire application. His argument is that without a fundamental redesign of the rear structure that it would remain a dwelling not an accessory structure.

Mr. Lehder asked if the removal of the kitchen would be enough to satisfy his client.

Mr. Asadi stated no it would not. With his original argument regarding Tirpak vs. Point Pleasant Beach, you can restrict a use, but you cannot restrict a person or people. So, to say that a family member can live in the structure but not a tenant is voidable.

Mr. Irene stated that his interpretation of Tirpak vs. Point Pleasant Beach was that the applicant went before a Board for a use variance for a two-family structure. They wanted approval to take a single-family dwelling, which was permitted, and turn it into a two-family dwelling that was not permitted. The Board asked who would live there and the owners stated they would live on one side of the dwelling and they would rent out the other side. The Board granted a D (1) use variance to permit a two-family dwelling where only a single-family dwelling was permitted as long as the property owner lived on one side.

Mr. Asadi stated that was correct.

Mr. Irene then stated, in reference to Tirpak vs. Point Pleasant Beach, the Court decided the Board's decision was not permissible. The Court stated a determination was made that a non-permitted two-family dwelling was acceptable and once the Board made that determination the Board could not properly restrict which people live within the two units of the dwelling.

Mr. Asadi agreed.

Mr. Irene believes that Tirpak vs. Point Pleasant Beach is entirely different than the Gilbertson's application. Here, there may be a preexisting nonconforming second dwelling at the site, and the applicant is stating they will abandon the preexisting nonconformity. The Gilbertson's are also going to put a deed restriction to confirm that the property will only be used for single-family residential purposes.

Mr. Asadi questioned how the Gilbertson's are abandoning the use if there is no modification to the structure so that it is no longer a dwelling.

Mr. Lehder wanted to make it clear that the deed restriction to the second structure was not just specific to the current owner, being the applicant, but to any owner of the property. Current and or future, it can never be rented to a second family.

Mr. Aikin's wanted to make it clear that yes, the deed restriction is forever and for any owner of the property.

Mr. Lehder asked Mr. Asadi if it was enough to remove the kitchen or that the only resolution would be to remove the structure in its entirety.

Mr. Asadi stated currently the structure has all of the elements of a dwelling and it would still be a dwelling under the ordinance as it sits today. All the applicant would have to do is request a variance for the conforming use.

Mr. Irene stated the applicant is not asking for relief for a nonconforming use.

Mr. Lehder asked Mr. Asadi if he had anything further.

Mr. Asadi stated that he had nothing further with regard to the D variance argument.

Mr. Aikins went on with a review of the subject property's existing conditions and what was proposed.

Mr. Daley asked the Board to refer to exhibit A-12. He went on to state that the existing house has a one-story family room at the rear of the structure. They are proposing to add the addition over the existing family room. They are relocating/removing some of the structure to comply with the side yard setback. The front part of the structure is preexisting from the 1980s and they are proposing to raise the roofline, leaving the same footprint. The mudroom is proposed on top of the existing deck and is the only addition on the first floor at roughly 70 square feet.

Mr. Lehder asked if the second-floor proposal was to change the rooflines, reconfigure the structure of the existing home and build a new structure that does not currently exist over what will be the relocated family room.

Mr. Daley stated that was correct.

Mr. Lehder asked if everything to the left of the roof update and everything proposed in the back of the structure all conformed with regard to setbacks.

Mr. Daley stated that was correct and the proposed roof is well under the height limit. One section at 30.5 and in the back the height will be at 29 feet, where the limit is 32 feet.

Mrs. Quigley asked if the main purpose of the upstairs addition was to add onto the master suite.

Mr. Daley stated that was correct and to also bring the laundry room upstairs from the basement.

Mr. Lehder asked Mr. Aikins if the Board was being asked to grant relief for the elevation of the roofline of the main structure into the setback, the combined side yard setback of 25 feet, and total square footage for the floor area ratio because the lot size is around 15,000 square feet.

Mr. Aikins confirmed yes and stated he had no further testimony.

Ms. Gable asked the applicant to clarify the questions in her Planner's report. Starting with the rear yard setback to the main house, she asked that Mr. Daley update his plans to include the appropriate rear yard setback to 194 feet. On the revised plans, dated 02-21-2020, the site plan is missing; she asked Mr. Daley to please add. On the elevation drawings she noted that there is a partial cellar under the addition and asked if that was correct or if it was going to be a full cellar. Mr. Daley stated that it will be a full cellar and he will revise his plans accordingly to all of the revision requests from Ms. Gable.

Ms. Gable's last question was how large the proposed blue stone patio would be, and will it have any covering, it appears to be cut off on the second page of the plans.

Mr. Daley stated the patio is on the site plan that will be added back into the final revised plans and there is no covering.

Ms. Gable had no further questions or comments.

Mr. Lehder opened the meeting to public questions and comments.

Mr. Asadi returned on behalf of the Mitolas. He asked Mr. Daley regarding the Northern elevation of the plans, how much higher the roofline was proposed at its highest point.

Mr. Daley stated it was proposed to be approximately 4 feet higher at the highest point.

Mr. Asadi asked if an additional floor was being added.

Mr. Daley stated no and that it was only a 4-foot attic.

Mr. Asadi asked what was the point of raising the height of the roofline if it was unusable.

Mr. Daley said it would add storage and aesthetics.

Mr. Asadi asked if there was a lot of traffic on Battin Road and how many people would be driving down the road.

Mr. Daley stated that everyone who lives on Battin Road would see the house and also River Rats is located down the road and those members would be see the house when headed to the river.

Mr. Asadi asked if the subject property had a basement the applicant could use for storage.

Mr. Daley stated no, it is a finished basement.

Mr. Asadi stated his argument or relevance to his line of questions was that when it comes to storage, where does the request for more end. In moving on he asked Mr. Daley, in regard to the other properties in the neighborhood, if there were larger homes on the street than what the Gilbertson's are proposing.

Mr. Daley stated that was correct.

Mr. Asadi asked which houses on Battin Road had a bigger house on a 50-foot wide lot.

Mr. Daley stated that the Mitola house was bigger than what the Gilbertson's are proposing and other homes on the road as well.

Mr. Asadi stated he had no further questions.

**Theresa Mitola, 100 Battin Road, Fair Haven** was sworn in, then Mr. Asadi asked to mark a few exhibits.

**Exhibit TM-10** – Packet of historic information of the subject property, 96 Battin Road, researched and prepared by Theresa Mitola.

**Exhibit TM-11** – Two photos of the rear cottage on the subject property taken by Theresa Mitola in early 2020.

**Exhibit TM-12** – Two photos of the subject property's front house taken by Theresa Mitola, also in early 2020.

Mr. Aikins stated that he had not seen any of these exhibits prior to tonight's meeting.

Mrs. Mitola then began her testimony, describing exhibit TM-10 as a timeline of the subject property. According to the Monmouth County tax assessor, in 1912, 96 Battin Road's rear structure was the first property built on the lot. The second structure, which she states is the front structure, was built in 1918, source from the Asbury Park Press. The 1922 sampler map,

which was previously submitted, defines the structures on the lot. The front structure is a two-story dwelling and the second structure in the rear is a one-story dwelling. She believes this is a condition and use that has been in place for a long period of time. In 1982 there was a fire in the front house, which was destroyed and rendered inhabitable, source from Asbury Park Press dated September 3, 1982. There was a variance granted to rebuild 96 Battin Road differently than the original structure. This demonstrates that what was built there, didn't conform to the existing footprint of the prior house. According to the tax map in 1982, she states that it seems when the structure burned down; the rear cottage was the sole structure on the lot. Making the rear structure the primary structure until 1985 when the front structure was rebuilt and habitable. In 2003, the Gilbertson's purchased the property, the real estate listing from 2003 states that there were two single family structures on one lot. In 2005, there was a variance sought for the existing deck, but the variance didn't define what type of variance was requested or granted. Also attached to the exhibit is a clipping from the Asbury Park Press, which indicates that the Gilbertson's sought a D variance for their deck and not a C variance. In May 2019, the Gilbertson's were denied by the Fair Haven Zoning Official for multiple bulk conditions and a preexisting nonconforming use. She goes on to say that Mrs. Gilbertson had previously testified they moved into the cottage towards the end of 2019 and are currently using the space as a dwelling. Ms. Mitola objects to the Gilbertsons using the cottage as a dwelling while the front house is being renovated.

Mr. Asadi asked to mark one more exhibit.

**Exhibit TM-13** – Photo of 92 Battin Road taken by Theresa Mitola in November 2019.

Mr. Asadi asked Mrs. Mitola where 92 Battin Road was in relation to the subject property.

Mrs. Mitola stated it was on the opposite side of the road from her property.

Mr. Asadi asked when the house was built.

Mrs. Mitola said she believed it was built around 2003 and is around 2,200 square feet with a 50-foot frontage.

Mr. Asadi asked if the owners had to get variance relief for the house.

Mrs. Mitola said yes, they did, multiple times.

Mr. Asadi wanted to discuss exhibits TM-11 and TM-12. He asked Mrs. Mitola to explain the cottage photos, TM-11.

Mrs. Mitola goes on to say that the photos were taken from her back yard. She wanted to show how close the cottage is to her backyard, so close that she can see into the windows while sitting in her back yard. The structure is about 2 feet from the property line.

Mr. Lehder asked Mrs. Mitola what year she purchased her home and if the cottage was on the subject property when she purchased her home.

Mrs. Mitola said she purchased her home in 1998 and yes, the cottage was there when she purchased her home.

Mr. Lehder asked if the cottage was occupied when she purchased her home.

Mrs. Mitola said there have been tenants intermittently living in the cottage.

Mr. Lehder asked when the cottage was renovated did the Gilbertson's make the structure taller or wider. He asked what exactly the renovations entailed.



Mrs. Mitola said they did not make the structure bigger, they added windows, expanded the kitchen, mostly interior changes.

Mr. Lehder states that the conditions Mrs. Mitola is describing are the conditions that were there when she purchased her home and that have been there for a long time.

Mrs. Mitola said yes.

Mr. Lehder asked Mrs. Mitola if she was objecting the application because of the combination of the cottage along with the proposed addition to the front structure.

Mrs. Mitola stated yes, absolutely and in fact prior to purchasing her home she spoke with the Fair Haven Zoning Officer, Mr. Reinhold, and asked what she could expect living next to this anomaly.

Mr. Aikins objects stating it would be hearsay.

Mr. Asadi asked Mrs. Mitola what she learned from her meeting with Mr. Reinhold.

Mrs. Mitola said she learned that there were two structures on one lot with one of the structures being a nonconforming use, which would be very difficult to expand without taking one of the structures down.

Mr. Lehder asked how many variances the Gilbertson's received relief for previously.

Mrs. Mitola said only one variance for the deck, which was a D variance that she did not oppose. After speaking with Mr. Reinhold, she had a sense of comfort when she purchased her home that the law protected her from any more intrusion or expansion of the subject property.

Mr. Asadi asked to speak to exhibit TM-12, the front house photos.

Mrs. Mitola said the first photo was taken from her driveway. The concern of the proposed height and bulk of the addition on her side is because her house is narrow, about 23 or 24 feet wide and all of her windows, common areas and living space are on the Gilbertson's side of the house. The extra bulk is so concerning to her in regard to her air, light and open space.

Dr. Laufer asked Mrs. Mitola if there was a driveway between her house and the subject property.

Mrs. Mitola stated yes.

Mr. Asadi asked Mrs. Mitola if the height of the proposed addition is concerning to her.

Mrs. Mitola stated that although her house is taller in height, her roof is on an angle and the proposed addition to the front of the Gilbertson's house is not to a peaked roof, it's gambrel and is bulkier. It is also attic space and not taking away from their living space, so it is not really serving a purpose, it's just bulk.

Mr. Asadi asked to discuss the second photo in exhibit TM-12.

Mrs. Mitola stated it is the subject properties existing family room, where they are proposing to add the second story addition. She took the photo while standing on her patio and you can see the sky from where she took the photo. You will no longer be able to see the sky after the addition is added.

Mr. Irene asked if the addition would conform to the setbacks.

Mrs. Mitola stated it would conform to the side yard setback but not to the combined side yard setback.

Mr. Asadi stated that Mrs. Mitola's concern is to the added bulk of the addition that will interfere with her air, light and open space.

Mrs. Mitola also stated that the addition is actually adding more of the bulk on her side, not the rear. The Gilbertson's are making the rear addition smaller but not the majority of the bulk in the front of the structure, which is a significant portion of the house, and bulk.

Mrs. Quigley asked if any of the changes to the proposed work that the Gilbertson's have made, help with any of her concerns.

Mrs. Mitola stated that the changes do help but there was also a second air conditioner installed that she does not believe any permits were received.

Mrs. Quigley asked if the gambrel roof was really the largest concern for Mrs. Mitola.

Mrs. Mitola stated yes, it's the height and bulk of the gambrel roof that is her main concern. She says that she is not against the Gilbertson's improving their home. The point for her is she would like to see the improvements be as conforming as possible and still see them get an improvement and she believes that is possible.

Mr. Lehder asked what she would change about the proposed design.

Mrs. Mitola said she believes the gambrel roof could come down in height and she spoke with Mr. Daley regarding this change.

Mr. Lehder asked if she was objecting to all three variances of the proposal or just the roof.

Mr. Asadi said they were looking at the entire project as a whole and as presented tonight, Mrs. Mitola objects to the entire project. That's not to say she objects to modifications and those modifications have been communicated but have not been made.

Mr. Lehder asked if there were any other modifications she would make to the proposal.

Mrs. Mitola stated that she would try to move over the rear addition to the family room even more than what's proposed as they are rebuilding it, she would rearrange the mudroom so that it's not consuming so much space and add a back entry with a closet.

Mr. Lehder asked Mr. Aikins if his client is proposing any other alternate plans to what is proposed tonight.

Mr. Aikins stated that they would like to go with what they have already modified based on the concerns mentioned by Mrs. Mitola and they believe they have made a fair compromise already at this point. What's proposed is more expensive and less square footage than what they originally proposed but as to compromise the plans tonight are what is being proposed and what the Gilbertson's are comfortable with.

Mrs. Quigley asked Mrs. Mitola if she had any other concerns with what is proposed.

Mrs. Mitola stated that on the plans there are still two air conditioners on her side of the subject property, and she would rather not have them there.

Mr. Irene asked Mr. Aikins if the air conditioners require variance relief.

Mr. Aikins stated he believed they did require variance relief. If new units were installed, they would be energy efficient models that would provide a noise reduction feature.

Mr. Lehder stated that there was no compressor on the plans presented to the Board, so they have not been asked to provide relief for the units.

Mrs. Mitola asked, as they are already there what can be done.

Mr. Lehder stated that was an enforcement issue and the Board was not granting a variance for them tonight as it was not part of the application. He then asked Mrs. Mitola and Mr. Asadi if they discussed all of their concerns.

Mr. Asadi stated he believed so.

Mr. Lehder stated that it looked as though the proposal for the subject property appears to be keeping with the nature of the neighborhood. He asked Mrs. Mitola if she felt the same.

Mrs. Mitola said she thought in terms of the front elevation it is a lot of volume compared to the house next door.

Mr. Lehder asked if she felt the proposal was consistent with the neighborhood.

Mrs. Mitola stated sure, aesthetically it's consistent.

Mr. Lehder asked Mr. Asadi and Mr. Aikins if they had any further comments or had any questions.

Both Mr. Asadi and Mr. Aikins stated they did not.

Mr. Lehder asked if any members of the public had any questions regarding the Gilbertson application.

**Kelly Duddy, 99 Battin Road, Fair Haven**, lives across the street from subject property. She stated that the neighborhood is changing, and everyone is making changes to their houses and believes the proposed changes will add value to the neighborhood. She likes the cottage in the back and believes it's charming. She also believes that the proposed changes will fit into the neighborhood perfectly.

**Rose Greco, 63 Riverlawn Drive, Block 27, Lot 20, Fair Haven**, her lot is off of Fair Haven Road on Fourth Creek, which is on the other side of Battin Road. She prepared a package that she would like to add as an exhibit.

**Exhibit RG-1** – Information package with five pages of photos prepared by Rose Greco

Exhibit RG-1 included a map of the watershed in Fair Haven. Mrs. Greco stated that the watershed starts in Fair Haven Fields and empties between the Fair Haven River Rats sailing club and her neighbor at 71 Riverlawn Drive. Exhibit RG-1 includes a map of Fourth Creek; the tax map, which shows the river, fourth creek, Mrs. Greco's lot in yellow, the Gilbertson's lot, and River Rats. Also included are photos taken from her property looking at Fourth Creek, River Rats and the Gilbertson's house. A depiction, prepared by Mrs. Mitola, where the purple sections represent structural coverage of the subject property and the black sections represent impermeable surfaces. Ms. Greco's concern with the Gilbertson's proposal is the potential of additional runoff into Fourth Creek and sedimentation. There is increased flooding in the area of Fourth Creek with increased storms. The proposed additions will just add to this flooding. She doesn't believe the applicant's engineers' reporting at a prior meeting was accurate in regard to runoff and sedimentation. The increased Northeast winds causes storm surges causing retention and flooding in Fourth Creek. The proposed expansion of the roofline will most definitely increase runoff and sedimentation. She states that the Borough Council is aware of these issues, as they have established ordinances in 2004 that try to mitigate these issues.

Mr. Lehder stated that the area around Fourth Creek is known to have water issues, then went on to review the proposed changes to the Gilbertson property stating that the second story addition would not increase impervious coverage and the addition work was going over an existing deck. Then he asked Ms. Greco if she felt the proposed work would increase the water issues around Fourth Creek so significantly the Board should deny the application.

Mrs. Greco stated, she thinks there should be effort to change the proposed roofline to reduce runoff. She would like to see gutters on the plans and see where the runoff will be going.

Mr. Lehder asked Mr. Aikins to explain what the applicant's engineer had proposed.

Mr. Aikins stated he believed the engineer was directing the runoff towards the back of the property due to the depth of the back yard, which seemed sufficient to handle the runoff. He went on to say that if the Borough Engineer requested drywells be installed the applicants would be open to that but recalled the applicants engineer, who is certified in floodplain management,

didn't feel drywells were necessary. The applicant would yield to the Board Engineers discretion regarding drywells.

Ms. Greco does not believe that drywells will retain enough water. In her closing arguments she asked the board to deny the proposed application on a lot that already has a lot of nonconformities. She asked the Board to abate rather than exasperate the impervious coverage to prevent any further increase in runoff into the creek.

**Andrea Edler, 49 Briarwood Road, Fair Haven,** stated she is in favor of the Gilbertson application and hopes the Board approves the proposal. With all of the changes in Fair Haven she does not think the Gilbertson's are asking for too much. In her opinion she believes the improvements would fit into the neighborhood.

**Al Schiavetti, 853 River Road, Fair Haven,** stated he is happy with most of the changes the applicant has done with their plans to accommodate the neighbor's concerns, but he would like the Board to look at the lot as if it were a 15,000 square foot flag lot and a large piece of that lot was the driveway section. Would they still consider the lot being able to accommodate at 2,700 square foot house? He was not looking for a response, just wanted the Board to consider that scenario. He questioned the use of the rear structure, the existing and proposed use. He asked if the existing use was a single-family dwelling.

Mr. Aikins said he wasn't sure he was in the position to testify for this type of questioning. He believes that they have gone to great lengths to provide testimony for the existing and proposed use of the structure, providing factual witnesses and some expert witnesses.

Mr. Irene stated that over the course of all the hearings for this application there has been some extensive testimony confirming that the applicant would abandon any claim to a nonconforming two-family use at the property.

Mr. Schiavetti asked what is the existing use of the rear structure. He believes the applicant has stated they are currently living in the structure.

Mr. Lehder stated that the applicant did say they were living in the structure and they plan on using the space in the future as accessory but have also stated they are abandoning any claim to use for a separate dwelling unit.

Mr. Schiavetti asked what the proposed use of the rear structure will be.

Mr. Aikins stated the rear structure will be limited to use only as accessory to the principal dwelling, with a deed restriction to confirm same.

Mr. Irene sought to establish that from a legal standpoint, it will be only an accessory structure to the principal dwelling.

Mr. Aikins stated that was correct.

Mr. Schiavetti then asked if the use of the rear structure would be for a home occupation or business.

Mr. Irene asked if those were permitted uses for an accessory structure in the zone.

Mr. Schiavetti stated it was a yes or no question and he had a point to his questioning.

Mr. Irene stated that if in fact a home occupation or home business is permitted in an accessory structure to a principle dwelling in the zone, then perhaps it could be used for that.

Mr. Aikins concurred with Mr. Irene. But he also stated that he was not sure what the applicant's plans were for the use of the structure but whatever they do, they will only do what's permitted.

Mr. Schiavetti asked if the use was going to be some non-specified use of the structure.

Mr. Irene stated that the issue is that there is the possibility that there now exists a preexisting nonconforming separate dwelling unit on the property, and any claim to such nonconforming use is being abandoned and deed restricted to only be used as an accessory to the single-family dwelling.

Mr. Aikins stated that was correct.

Mr. Schiavetti stated that would be an accessory use.

Mr. Irene said it would be an accessory structure; he was not sure what the use would be.

Mr. Lehder stated the use would be in accordance with the law given that it is an accessory structure.

Mr. Schiavetti stated that there is a table in the ordinance with specific uses that are permitted and if a specific use is not on the table, it is not a permitted use. So, he asked again what the proposed accessory use of the rear structure will be.

Mr. Schiavetti asked if you do not specify it now, how do you enforce it later.

Mr. Irene said if it is permitted in the zone, as an accessory structure is, it is permitted.

Mr. Schiavetti stated that what he has been told is that the family will use the structure to sleep in.

Mr. Irene stated that the testimony is that the structure will be used as an accessory to the principal dwelling, whatever is allowed under the ordinance.

Mr. Ridgeway asked what is allowed.

Mr. Schiavetti referred to the table of permitted uses in the ordinance, Table A, section 30-5.1, under residential districts.

Mr. Irene stated that at this time the applicant has stated that no permitted use is being abandoned with the deed restriction. So, what you are left with is nothing more than a principal dwelling and a separate accessory structure to the principal dwelling.

Mr. Schiavetti reiterates that the applicant still has not specified what the use will be, a garage, storage, etc.

Mr. Irene stated the applicant has stated it will be a permitted accessory structure. It has to be accessory. He then read the accessory structure definition.

Mr. Schiavetti read section 30-5.3 of the ordinance. He then stated that anything that is not on the list of permitted uses is not permitted and that is his concern.

Mr. Lehder said the proposal is to deed restrict the use to not be used as a principal dwelling and to confirm it will only be used as an accessory structure.

Mr. Schiavetti's closing statement was that the application needs a D variance to keep the rear structure as is. He doesn't feel as though he received an answer to his question as to what the use will be for the rear structure and believes if he did get an answer, a D variance would be required for a detached single-family dwelling.

**Susan O'Brien, 875 River Road, Fair Haven**, she asked if the proposed plans have been submitted to the DEP for review.

Mr. Aikins stated that they have not been sent to DEP as of yet.

Mr. Irene stated that normally an applicant would get variance relief from the local authorities first and then go to outside agencies for approval.

Mrs. O'Brien asked this because that is the step, she took first when she did an addition on her house.

There were no further comments or questions from the public.

Mr. Lehder asked if there was any further testimony from the applicant.  
Mr. Aikins stated no.

Mr. Kinsella asked Mr. Daley if other than increasing the height of the roof, has the footprint of the actual roof changed.

Mr. Daley stated no, it has not and there is no additional impervious coverage over the roof addition, and it will have the same amount of runoff. There is the same amount of lot coverage even with the mudroom addition over the deck as Fair Haven considers a deck to be lot coverage.

The Board began deliberation.

Mrs. Quigley is still concerned about avoiding the D variance because of the two structures on one lot.

Mr. Irene states that the applicant is not requesting D variance relief, so the Board does not have to consider D variance relief. If they were concerned with the use of the structure it would be an enforcement issue.

Mrs. Quigley feels backed into a corner with regard to the rear structure, as they are not requesting a D variance.

Mr. Irene states the Board could make it a condition of approval to remove the kitchen in the rear structure, as they could not get a CO without a kitchen.

Mrs. Quigley believes it would be too impractical to ask them to remove the kitchen from the cottage.

Mr. Ludman is concerned with the use and the uncertainty of the history of the property. He believes having the deed restriction added to the use of the cottage removes the issue of use. He also believes the kitchen in the cottage is more of an enforcement issue than a Board issue.

Dr. Laufer would feel more comfortable stating what the rear structure could or could not be used for but having the deed restriction seems to be a better solution than making them take the kitchen out and removing value from the property.

Mr. Lehder asked the Board to look at the front structure and the variances that the applicant is requesting regarding the expansion of the home.

Mr. Ridgeway is concerned after hearing the testimony regarding the addition and the rear structure.

Mr. Kinsella believes there are unique challenges to the subject property. He also believes the proposed work fits into the neighborhood and the changes made to the proposal are very accommodating to the Mitola's.

Mrs. Quigley believes that with the hardship of the 50-foot frontage, there is relative modesty of what's proposed to the front structure and because of this she can live with the proposal changes presented tonight as long as the back structure is not used as a dwelling.

Mr. Kinsella agrees with Mrs. Quigley regarding the rear structure.

Mr. Ryan believes what is proposed with regard to the front structure is fair and the applicant has been very accommodating to the neighbors. The proposal also appears to fit into the character with the rest of the neighborhood. He believes if the structure in the front were to be knocked down and rebuilt to conform to the setbacks it would not be very different from what's proposed.

Dr. Laufer believes the proposed changes are appropriate and that the applicant has been very accommodating to the neighbors. The changes are consistent with what exists in the neighborhood and he would be in favor of the changes.

Mr. Ludman stated his comments are generally in line with the rest of the Board especially Mr. Ryan's comment about knocking down the front structure, the air, light and open space would be about the same with a conforming house.

Mr. Lehder stated that the D variance was removed from the application by the applicant's abandonment of any claim to a pre-existing nonconforming two-family use and with the deed restriction to confirm same so they cannot turn the rear structure into a rental and removing the kitchen would be too much of a detriment to the applicant.

Dr. Laufer asked if the Board has the authority to deed restrict the property to only family members and do they have authority to describe what constitutes a family member.

Mr. Irene suggested that the Board stay away from 'people' and stick with the use.

Mr. Lehder stated that with a deed restriction there is no opportunity to legally rent out the structure. He also stated that there is no question it is an odd shaped lot with lots of concerns but he does not think it is fair to ask the applicant to make any further changes to their proposal as they have already changed their plans to accommodate the neighbor adding additional costs to their project by moving their entire house over 3 feet to add more room for the neighbor. He would like to see a review by the engineer due to the water issues in that area. He would like the deed restriction to state that they are not to use the cottage as a rental, only an accessory structure and they are abandoning that right of a rental.

MOTION by Lehder, second Ludman to approve the plans subject to the applicant's testimony, the deed restriction, deed consolidation, other agency approvals, compliance with the Board Planner's report and drainage.

In Favor: Lehder, Ludman, Quigley, Ridgeway, Ryan, Laufer, and Kinsella

Opposed: None

The Board took a break at 10:28pm

Returned at 10:35pm

Mrs. Neff joined the dais at 10:35pm.

Roll call was taken when the Board returned to the dais.

Present: Mrs. Quigley, Mr. Ridgeway, Mr. Ryan, Mr. Ludman, Dr. Laufer, Mr. Kinsella, Mrs. Neff and Mr. Lehder.

#### **4. NEW BUSINESS**

**Fair Haven Retail, LLC – 588 River Road, Block 32, Lot 02, B-1 Zone – Appeal for Over Easy Restaurant.**

Adam Garcia, Esq. announced himself on behalf of Fair Haven Retail, LLC and Over Easy Restaurant.

Mr. Lehder asked Mr. Garcia if he would like to commence testimony or carry to the next meeting as given the time of night, the meeting would only continue for another 30 minutes.

Mr. Garcia asked if they could be first on the agenda at the next meeting.

Mr. Lehder stated there are two other applications that have been complete longer than Fair Haven Retail, but they asked to carry tonight. The Board would give FH Retail all the time they need at the next meeting should they choose to carry.

Mr. Garcia asked to carry to the next meeting.

MOTION by Lehder, second Quigley to carry the Fair Haven Retail appeal to the April meeting without the necessity to re-notice and a stipulation of an extension of time.

In Favor: Lehder, Quigley, Ridgeway, Ryan, Ludman, Laufer, Kinsella, and Neff

Opposed: None

## 5. ADMINISTRATIVE ITEMS

MOTION by Ludman, second Ryan, to approve Resolution **Monterio-Schober – 230 Fair Haven Road, Block 42, Lot 12, R-5 Zone** – Application for residential addition and renovations. Variances needed for side yard setback, driveway, and habitable floor area.

In Favor: Ludman, Ryan, Ridgeway, Laufer, Kinsella, and Neff

Opposed: None

MOTION by Kinsella, second Ryan, to adopt the minutes of the February 2020 meeting.

In Favor: Kinsella, Ryan, Ridgeway, Ludman, Laufer, and Neff

Opposed: None

Mr. Irene stated there were no matters to discuss in Executive Session, unless any member of the Board requested to do so.

There were no comments or questions from the public.

MOTION to adjourn by Mr. Ludman and approved unanimously by voice vote.

Meeting adjourned at 10:44 PM.

Respectfully submitted,

Jennifer Johnson, Board Secretary

## Public Announcement of Compliance

This is a regular meeting of the Fair Haven Zoning Board of Adjustment. Adequate notice of this meeting has been given pursuant to the provisions of the Open Public Meetings Act. At the time of the Board reorganization in January of this year, the Board adopted its regular meeting schedule for the year. Notice of the schedule of the Board's regular meetings was sent to and published in the Asbury Park Press, and was also sent to the Two River Times and the Star Ledger. Tonight's meeting was listed in the Notice of the schedule of regular meetings. That Notice was also posted on the bulletin board in Borough Hall, and has remained continuously posted there as required by the Statute. In addition, a copy of the Notice is and has been available to the public and is on file in the Office of the Borough Clerk. A copy of the Notice has also been sent to such members of the public as have requested such information in accordance with the statute. Adequate notice having been given, the Board Secretary is directed to include this statement in the minutes of this meeting.