

TO: FAIR HAVEN PLANNING BOARD
FROM: PLANNING BOARD LAND USE SUBCOMMITTEE
DATE: JULY 6, 2022
RE: PROPOSED LAND USE ORDINANCE MODIFICATIONS

All:

As you all know from meetings earlier this year, the Mayor's Fair Haven Land Use Subcommittee issued a memo to the Board on March 7, 2022 requesting the Planning Board advance analysis and discussions regarding a series of proposed revisions to the land use ordinances in Fair Haven (See attached Exhibit A).

The Planning Board Land Use Subcommittee was formed (which subcommittee includes members of the Planning Board, the Mayor and members of the Zoning Board) and has met regularly since the spring. What follows are the recommended revisions to the Fair Haven ordinances that are intended to implement the recommendations of the Mayor's Fair Haven Land Use Subcommittee.

Please review these proposed changes in advance of our July 19, 2022 meeting. At that meeting we will discuss these proposed changes, take comments from the public and on the consent of the broader Planning Board, send the proposed ordinance modifications to the Council for further consideration, discussion and formal action.

Attic means that part of a building that is immediately below and wholly or partly within the roof framing not served by a fixed staircase for ingress or egress.

Attic, Habitable. Habitable Attic means an Attic which has a fixed staircase as a means of access and egress.

Partially Habitable Attic means a Habitable Attic which has a minimum height of seven (7) feet as measured from the attic floor to the bottom of the roof joists, and **is not more** than one-third (1/3) the area of the next floor below, which calculation shall include the area above any garage, as applicable. A Partially Habitable Attic shall count as a Half Story.

Fully Habitable Attic means a Habitable Attic which has a minimum height of seven (7) feet as measured from the attic floor to the bottom of the roof joists, and **is more** than one-third (1/3) the area of the next floor below. A Fully Habitable Attic shall count as a Story.

Basement means any space partly underground when the First Floor Elevation (FFE) is greater than 24” or in the event the building is located within a flood zone, measured from the base flood elevation. A Basement shall be counted as a Story.

Building Height means the vertical distance measured to the highest point of the building from the Average Grade.

To further establish a point of reference, the Building Height as calculated above, shall also be displayed in reference to the curb height/elevation calculated at the midpoint of the curb spanning the frontage of the lot. (In the event that no curb exists at the property frontage, then the point of comparison shall be to the crown of the road calculated at the midpoint of the portion of the roadway that spans the frontage of the lot).

Cellar / Crawl Space means any space wholly or partly underground where the First Floor Elevation (FFE) is 24” or less, or in the event the building is located within a flood zone, measured from the base flood elevation. A Cellar or Crawl Space shall not be counted as a Story or Half Story.

First Floor Elevation (“FFE”) is the measure of height from Average Grade to the surface of the floor immediately constructed on the foundation wall or the slab-on-grade.

The FFE shall be shown on all construction drawings submitted to the zoning and construction departments and to further establish a point of reference, the FFE shall also be displayed in reference to the curb height/elevation calculated at the midpoint of the curb spanning the frontage of the lot. (In the event that no curb exists at the property frontage, then the point of comparison shall be to the crown of the road calculated at the midpoint of the portion of the roadway that spans the frontage of the lot).

The First Floor Elevation of a new or substantially reconstructed building, shall not exceed twenty-four (24) inches above Average Grade.

Floor means a Story of a Building.

Floor Area Ratio means the Floor Area compared to the total land area of the lot, expressed as a percentage.

Floor Area means the sum of the gross horizontal area of all the Stories of a building as measured from (i) the exterior face of exterior building walls (and also including in the Floor Area calculation stairwell openings and vaulted ceilings), (ii) the centerline of a common wall separating two (2) buildings, or (iii) where the roof connects to the structure where there are no walls, measured to where there is a minimum height of thirty (30) inches measured from the floor to the bottom of the roof joists.

For the avoidance of doubt, any space that is capable of being directly accessed from the Story immediately adjacent to it (whether as designed or with future modifications such as

a new door opening, the addition of new flooring, etc.) will be considered part of Floor Area of that Story; in residential buildings, Floor Area shall exclude gross horizontal area of Stories where there is a height of less than thirty (30) inches measured from the floor to the bottom of the roof joists and Garages, Partially Habitable Attics, and Cellars shall also be excluded from the calculation of Floor Area.

Grade, Alteration of; Alteration of Existing Grade. Existing Grade shall not be increased or altered more than twelve (12) inches over any portion or portions of any property spanning collectively in total an area of 500 square feet or more, nor shall the existing grade of any portion of any property, even if less than 500 square feet, be increased or altered more than three (3) feet.

Grade, Average; Average Grade. Average Grade means the average resulting from the measurement of the Existing Grade at each corner of the building envelope of a lot.

Grade, Existing; Existing Grade. Existing Grade means the existing undisturbed elevation of land, ground and topography preexisting or existing on a lot, parcel or tract of land at the time of the last approved development of the site.

Setback, Front Yard, Prevailing; Prevailing Front Yard Setback. Prevailing Front Yard Setback means the minimum required front yard setback for a residential property, which shall be established as the GREATER of the following:

(a) the minimum required front yard setback otherwise set forth in the zoning schedule for residential uses in the particular zone in which the subject property is located; or

(b) the average front yard setback calculated from the front yard setbacks of all principal structures existing on all properties which properties are (i) located within 200 feet of either side of the subject property, and are also (ii) located on the same side of the street as the subject property, and also (iii) have a front yard facing the same street as the front yard of the subject property; provided, however, that any property that would otherwise be included in the above calculation but which property has a front yard setback that exceeds the remaining average by more than 50% shall be excluded from and not considered in making the above calculation. Further, if the subject property is a corner lot, the average front yard setback shall be calculated to both frontages of that lot separately.

Story means that portion of a building between a floor and ceiling. This notwithstanding, Cellars, Partially Habitable Attics, and Half Stories shall not be considered Stories. Basements and Fully Habitable Attics shall each be considered a Story.

Story, Half. Half Story means that portion of a building under a gable, hip, or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than two (2) feet above the floor of such half-story. A Partially Habitable Attic shall be considered a Half Story.

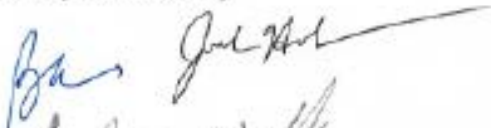
Exhibit A

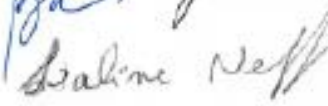
MEMORANDUM

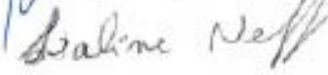
TO: Fair Haven Planning Board ("Planning Board")


CC: Fair Haven Council ("Council")
Fair Haven Zoning Board of Adjustment ("Zoning Board")


FROM: Fair Haven Land Use Committee ("Committee")

Josh Halpern, Mayor 

Betsy Koch, Councilwoman 

Laline Neff, Councilwoman 

Peter Neczesny, Vice-Chair, Zoning Board of Adjustment 

Todd Lehder, Chair, Zoning Board of Adjustment & Planning Board 

DATE: March 7, 2022

RE: Committee conclusions and request for advancement of discussions by the Planning Board and implementation of ordinance revisions to land use ordinances by the Council

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As a "fully developed" community, Fair Haven has struggled for decades to balance the adoption of new trends in residential development with the desire of its residents to preserve the character of its established neighborhoods.

The 2016 Master Plan Reexamination and Master Plan Update ("2016 Master Plan") tracks the history of the struggle to maintain the character of Fair Haven's residential neighborhoods back to the 2005 Reexamination Report, which report reflected new development in Fair Haven prior to 2005. It notes, "(i)n 2005, infill development within existing neighborhoods was resulting in tear-downs and expansion of existing buildings such that the existing character of the neighborhoods was being impacted in a manner considered detrimental at that time" and "new and expanded homes within residential neighborhoods continue to represent a change in the character of such neighborhoods." The 2016 Master Plan noted that past efforts to reduce dramatic changes in building volume have been largely ineffective and notes, "due to unintended loopholes and the complexity of determining compliance with the ordinance ...there continue to be struggles to ensure infill development is regulated appropriately."

The Committee was formed by the Council for the purpose of performing a current analysis of more recent infill development trends in Fair Haven to consider (i) whether existing land use ordinances are appropriate in light of recent residential development, and (ii) whether revisions to the land use ordinances are still required in order to achieve the harmonious integration of modern residential structures with the existing housing stock.

With those goals in mind, the Committee directed the Zoning Board to hold a public meeting to solicit community feedback, which meeting was conducted in the fall of 2021. Subsequently, the Committee met with stakeholders, including professionals within the zoning and construction departments, to better understand the problems with the implementation of the existing ordinances and to evaluate the concerns that have been raised by the residents of Fair Haven for many years. The Committee deliberated its findings and has concluded that the land use ordinances should be revised to address a number of problems that have been confirmed by the Committee's analysis.

While the Committee's analysis of the land use ordinances is ongoing, this memo summarizes a number of issues that the Committee believes should be addressed as soon as possible in furtherance of the community's long term planning goals. To that end, the Committee directs that the Planning Board explore these problems further with the community, with the hope that the Planning Board, working in conjunction with the Council, can advance the process of revising the land use ordinances to ensure future infill development is appropriately regulated in Fair Haven.

1. Ordinance 30-7.8 h should be repealed.

This ordinance permits the construction of a porch or stairs not greater than 100 s.f. in the front yard without regard to setback standards. The Committee has concluded that in practice, this ordinance permits new and renovated structures to be sited closer to the street than is appropriate. As such, this ordinance is currently being used to locate otherwise conforming structures where they are more likely to appear oversized and inconsistent with the character of established development. See 2 below.

2. An ordinance requiring the implementation of a "prevailing front yard setback" within all residential zones should be adopted.

The Committee is cognizant of, and in agreement with, the recommendation in the 2016 Master Plan, which provides as follows:

To further facilitate appropriate residential infill development, the Borough should revise the front yard setback regulations. The current regulation of minimum setback does not permit new development to respond to an existing pattern of development where the front yard setback of neighboring lots are undersized. As a result, a new home with a conforming setback can be out of character with the neighborhood. The Borough should examine whether front yard setback regulations should be amended to better reflect neighborhood character, including such characteristics as building height and/or building size.

The Committee has concluded that maintenance of a prevailing front yard setback is critical to integration of new development with existing development. It finds that mere adherence to zone wide front yard setback requirement is insufficient, especially within neighborhoods where development patterns are materially at variance with the applicable front yard setback restrictions. The new ordinance should require that the greater of the (i) applicable front yard setback, or (ii) prevailing front yard setback, should apply. In developing the new ordinance, a methodology for proper establishment

of a “prevailing front yard setback” within a neighborhood should be developed, while balancing the resulting financial burdens on new development.

3. An ordinance establishing a maximum first floor elevation (“FFE”) should be adopted.

The Committee has concluded that development trends are causing new homes to be raised substantially above the existing grade, and substantially higher than existing neighboring homes, which causes the new homes to unreasonably impose on neighboring structures. The result is new homes which appear oversized and inconsistent with the established development patterns. Compounding the problem, the surrounding grade is often increased in conjunction with such development, with steeper slopes than required to create positive drainage. These dramatically changed grades create new conflicts at property boundaries, potential drainage problems for neighbors and compound site layout problems related to driveways and detached garages. In developing the new ordinance, the Committee seeks an evaluation of exactly how FFE should be calculated with a goal of establishing a maximum FFE that would be no greater than needed to build a home to modern construction standards while ensuring positive drainage away from the new structure. The Committee recognizes that establishing maximum FFE will likely complicate the ability to build modern (tall) basements on some lots with high water tables, but notes the availability of variances from the Zoning Board where individual circumstances warrant deviations from the new FFE limitation.

4. Establish a new definition of “habitable floor area” that eliminates “habitable” and includes all areas within a building, including all unfinished areas within the structure.

The Committee is cognizant of, and in agreement with, the recommendation in the 2016 Master Plan, which provides as follows:

Regulation of permitted floor area should be clarified and simplified. The Borough should consider revising the regulation of floor area and floor area ratio to eliminate the “habitable” component and instead regulate gross floor area, with reasonable exceptions. Doing so will simplify development applications for both the Planning Board and Zoning Board as well as applicants, and it will enable improved enforcement. As part of this effort, the definitions of those terms as well as related or referenced terms should be evaluated and amended as necessary to clearly state those building portions (both principal and accessory) that should contribute toward the calculated floor area and floor area ratio.

The Committee has concluded that in practice, some common interpretations of habitable floor area are inconsistent with the intent of the ordinance, which interpretations undermine the ability of the regulations to control the bulk of new structures. The Committee seeks revisions to the ordinances which will simplify the calculations in order to eliminate unintended loopholes. Various methodologies should be evaluated, including adoption of the uniform construction code definitions or measuring floor area within structures to include all areas from “sill plate to sill plate.” The Committee’s goal for the new ordinance is to eliminate the loopholes permitting

portions of structures not to be counted as "habitable" (and thereby avoiding regulation) so that *all portions* of the 1st and 2nd floors of structures be counted as floor area so they may be uniformly measured for proper application the floor area caps and floor area ratio.

5. In conjunction with the implementation of the revisions to the ordinances outlined at 1-4 above, Ordinance 30-2.4 should be amended to delete "For a new dwelling, 50% of the area of an attached garage shall be calculated as "habitable floor area".

The cited ordinance creates a square footage penalty for incorporating an attached garage within new construction. The Committee has concluded that while this ordinance may have effectively reduced the mass of some newly constructed homes as intended, it has created unintended negative consequences. Those consequences include (i) development of detached garages in neighborhoods where detached garages had been uncommon, (ii) development of larger driveways substantially increasing impervious lot coverage, (iii) development of portcoeres, which increase building mass and the overall size of the residential structure, and (iv) the utilization of smaller setbacks for detached garages (vs those for principal structures) which has resulted in development closer to lot boundaries which negatively impacts air light and open space. The Committee concludes the ordinance has been detrimental to the community's goal of harmonious integration of modern residential structures with the existing housing stock. The Committee believes that changes to the ordinances outlined at 1-4 above, will be a more effective way of regulating building mass and permit the modification of Ordinance 30-2.4 as noted. While the Committee is hopeful that the unintended development trends will diminish with this change, the Committee also intends to revisit permissive lot coverage and building coverage limitations in the future, to further restrict such development trends.

6. Ordinance 14-8 ("tree ordinance") should be revised and strengthened to help preserve specimen trees and to increase penalties for removal of trees without proper permits.

The Committee has concluded that the community is alarmed by the significant loss of trees in the Borough of Fair Haven in recent years and is dissatisfied with the existing regulations with regard to removal of specimen trees. The Committee has tasked the Shade Tree Commission with a review of the existing tree ordinance and specifically seeks a new ordinance which will ensure (i) an improved process to deter removal of specimen trees, (ii) increased penalties for removal of trees without proper permits, and (iii) the integration of new efforts to redirect the fees and penalties generated by the tree ordinance directly towards efforts to plant new trees throughout the Borough.