

**KENNEY, GROSS, KOVATS & PARTON**

ATTORNEYS AT LAW  
The Courts Of Red Bank  
130 Maple Avenue/Building 8  
Red Bank, New Jersey 07701

MALACHI J. KENNEY (1944-2011)  
MICHAEL J. GROSS  
DOUGLAS J. KOVATS  
CHRISTOPHER B. PARTON  
DANIEL R. ROBERTS  
MEMBER OF N.J. & P.A. BAR  
GABRIELLE A. PETTINEO

(732) 530-7500

TELEFAX: (732) 530-1739

mjgross@kenneygross.com  
dkovats@kenneygross.com  
cbparton@kenneygross.com

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**Via Email:** [acinquegrana@fhboro.net](mailto:acinquegrana@fhboro.net)

Allyson M. Cinquegrana  
Fair Haven Borough Clerk/Assistant Administrator  
748 River Rd.  
Fair Haven, NJ 07704

Re: Ordinance 2019-07 – Amend Chapter 30-2.4: Definitions  
Ordinance 2019-08 – Amend Chapter 30-5.3: Permitted and Prohibited Uses

Dear Ms. Cinquegrana:

At its July 16th, 2019 meeting, the Fair Haven Planning Board, in accordance with *N.J.S.A. 40:55D-26*, undertook a review of the above-referenced Ordinances proposed to eliminate ambiguity in the current code applicable to “restaurants”.

Please accept this writing as the Board’s report to Mayor and Council pursuant to the statutory formulation referenced hereinabove.

**Conclusion:**

In accordance with its responsibilities under *N.J.S.A. 40:55D-26*, the Planning Board has concluded that the amendments if adopted are consistent with the Borough’s Development Regulations and Master Plan. However, as discussed hereinafter, the Planning Board strongly urges that the adoption of the same not occur until a comprehensive analysis of all issues related to standards for limiting and/or restricting “Fast Food Restaurants” has been completed.

**Discussion:**

In accordance with the Municipal Law Use Law, the Planning Board’s role in reviewing the ordinances is fairly straight forward. Prior to the formal adoption of the Development Regulations, the Planning Board shall transmit to the governing body a report identifying any provisions in the proposed regulation which are inconsistent with the Master Plan and offer recommendations concerning these inconsistencies and the other matters as the Board deems appropriate.

To that end, the primary function of the Planning Board is to identify any inconsistencies presented in the proposed ordinances for the Master Plan. In this instance, establishing definitions for restaurants within the Borough of Fair Haven and identifying certain restaurants as permitted and others as prohibited is clearly consistent with the Master Plan. Such ordinance provisions have been a part of the Development Regulations within the Borough of Fair Haven for a significant period of time. To suggest that such ordinances are inconsistent with the Master Plan would be sophistry. However, it is the Planning Board's understanding that there were two principal reasons for reviewing the Development Regulations as they relate to restaurant uses. First, was the elimination of possible ambiguity in the current code; second, was to look into standards for limiting or restricting "fast food" restaurants.

As to the first task, the present ordinances attempt to address the ambiguity. However, we are advised by the Borough's Planning Consultant, Heyer, Gruel & Associates, that the second issue continues to be reviewed by the Borough, and it is anticipated that once the review is concluded additional ordinance changes may be proposed.

The Board strongly recommends that revisions to the ordinance not occur until the second issue concerning standards for limiting or restricting "fast food" restaurants has been completed. At present, the Board is aware of the Board of Adjustments' conclusions concerning its interpretation of the present ordinance formulation and believes that that determination will sufficiently guide the Planning Board as well as the Zoning Board of Adjustment in future applications. It is the Board's understanding that the ongoing review of this matter will take into consideration the parameters concerning restaurant size, parking standards, historic district, and site plan standards. The Board is concerned that the present ordinance revisions may have the unintended consequence of impacting upon uses which the Planning Board believes would fit within the Borough of Fair Haven and not adequately address the centralized issues of increased volume and intensity of the use, that classic "fast food" restaurants present, which do not fit within the Borough of Fair Haven.

#### Substantive Analysis of the Revised Definitions of Restaurants

Ordinance 2019-07 (Definitions) seeks to revise the current language of the Ordinance by eliminating the Restaurant, Category 3 definition, revise the definition of restaurant drive-in, and provide two new definitions, specifically:

A). Restaurant Drive-thru / Restaurant Walk-up.

In their present form, each of the definitions may have the unintended consequences of being overly broad and prohibiting certain aspects of restaurant service, which the Planning Board does not find particularly detrimental, nor result in a negative impact upon the Fair Haven Master Plan. The Board, as a result of current hearings before it, is keenly aware that the methods of purchasing and receipt of food products are not static. The use of "apps" for purchasing by the consumer, can result in a transaction in which the ordering as well as payment can occur off premises and thereafter, the consumer merely arrives at the facility and may have the option of receiving the food product by a runner from the establishment. To that end, the Board considered that, if an existing restaurant within the Borough of Fair Haven decided to use an app or allow patrons within designated parking spaces at its present facility to receive delivery of food from restaurant directly to their car, this, in and of itself, would not necessarily be out of character with the Borough of Fair Haven; however, it may not be prohibited. Further analysis for each of these definitions leads the Planning Board to conclude that the more focused analysis requires the prohibition of delivery, wherein there is a window or accessory structure to directly deliver/serve the vehicle or walkup

patron. In the case of the drive-thru, the creation of travel lanes, increased impervious surface and increased intensity of use should be discouraged.

B). Restaurant Drive-in (Prohibited Use).

Once again to avoid aspects of discouraging additional service to patrons, the Planning Board would suggest that the definition be revisited, perhaps along the following lines:

*Restaurant, Drive-in means establishment whereby design of its physical facilities, service or packaging, encourages or permits patrons to receive a service or obtain a product for consumption in their vehicles while on premise and thereafter consumed by the customer while parking on premise.*

By amending the definition in this fashion, the Board believes that the salient features which are generally not keeping with the Borough of Fair Haven's character are addressed, i.e. receiving the consumable and consuming the the same while on premises. Once again, eliminating increased parking area, impervious surface, resulting in traffic circulation issues and negatively impacting upon the ingress and egress on to the Borough's thoroughfares.

In light of the concerns expressed, the Planning Board believes that the better approach to the addressing this issue is to await the results of the study presently undertaken by Mayor and Council to look into standards for limiting restrictions for Fast Food Restaurants, and thereafter, present definitions which preclude establishments which are not in keeping with the character of the Borough of Fair Haven, but yet encourage increased service opportunities for the residents of the Borough of Fair Haven from establishments which are in keeping with the character of the Borough of Fair Haven.

On behalf of the Planning Board, I remain

Very truly yours,

KENNEY, GROSS, KOVATS & PARTON



Douglas J. Kovats on behalf of  
the Planning Board  
DJK:jh

Cc: Judith Fuller, Fair Haven Planning Board Secretary  
Planning Board Members  
Borough Attorney