

**TO:** Borough of Fair Haven Zoning Board of Adjustment

**FROM:** Elena Gable, PP, AICP, CFM  
Leigh Fleming, PP, AICP

**RE:** Shawn Gaiero  
8 Hendrickson Place  
Block 46 Lot 12  
*Completeness & D(4) FAR Variance v2*

**DATE:** October 7, 2020

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As requested, we have reviewed the following application materials:

- Zoning Board Application (ZB 20-05) and checklist received on June 17, 2020;
- Zoning Officer's Denial Letter, dated May 4, 2020;
- 4-sheet set of photos of subject property: 8 Hendrickson Place;
- 13-page set of photos of neighboring properties;
- 1-sheet set entitled "Plan of Survey, Borough of Fair Haven, Monmouth County, New Jersey, Block 46, Lot 12," prepared by Seneca Survey Co., Inc., dated July 11, 2016; and
- 2-sheet set of Architectural Drawings entitled "Alterations & Additions to: The Gaiero Residence, 8 Hendrickson Place, Fair Haven, New Jersey, Block 46, Lot 12," prepared by Grammer Designs, LLC, dated March 6, 2020.

### **Completeness Review**

The application has been checked for compliance with the Borough of Fair Haven Land Development Application checklist. The applicant has completed all required submissions. We recommend the application be deemed **complete**.

- Item #9- Completed Monmouth County Planning Board Application- The applicant has requested a waiver for this item. We take no exception to the granting of the waiver for completeness purposes only as the property does not front on a County Road.
- Item #10- Completed Freehold Soil Conservation District (FSCD) Application- The applicant has requested a waiver for this item. We take no exception to the granting of the waiver for completeness purposes only, as it appears this requirement may not applicable because this project involves a disturbance of less than 5,000 square feet of soil. The applicant shall provide testimony to clarify.
- Item #11- Completed Monmouth County Health Department Application- The applicant has requested a waiver for this item. We take no exception to the granting of the waiver

for completeness purposes only, as the Monmouth County Health Department application only relates to public recreational bathing places, body art establishments, food establishments, pet shops, septic system construction and alterations, tobacco retail establishments, food and beverage vending machines and construction/alteration of private wells.

- Item #18- A Digital Copy of the Plan in .dwg format (ACAD 2007 or later) and .pdf format (Adobe) - The applicant has not requested a waiver for this item, but included a note "will submit" on the application. We take no exception to the granting of the waiver for completeness purposes only. Should the Board act favorably upon the application, it shall be submitted as a condition of approval.

### **Application Guidelines**

In addition to the above Items from the Application Checklist, the applicant has not submitted the following required items from the Application Guidelines:

- Key Map showing all properties within 200 feet - The applicant has requested a waiver for this item. We take no exception to the granting of the waiver for completeness purposes only.

### **Property and Project Description**

The subject property is Lot 12 in Block 46, located at 8 Hendrickson Place. The property is a rectangular-shaped lot with frontage/access on Hendrickson Place. The site is currently developed with a one and a half story single-family dwelling with an attached wood deck, an asphalt driveway, and a 10' x 20' concrete pad in the rear yard. The surrounding properties are other single-family dwellings, most of which are two-story frame or masonry construction.

The applicant is proposing to renovate the existing one and a half story cape cod house into a two-story colonial style house. The applicant is proposing to renovate the second floor to make it a full second story, and to add a rear two-story addition to replace the existing deck.

The ground floor is proposed to consist of the existing porch, dining room, living room, master bedroom, bathroom, and mudroom. The mudroom and the majority of the renovated kitchen are located in the rear addition. The kitchen will contain sliding doors to access the rear yard. The rear addition on the ground level is also proposed to contain a mudroom and closet. There is a small 2.5' x 9' proposed deck to access the mudroom.

The second floor is proposed to contain four (4) bedrooms, including a new master bedroom. Each bedroom is proposed to contain a walk-in closet. Two bathrooms and a laundry room are also proposed.

**Zoning**

The property is located in the R-10 zone where single-family dwellings are a permitted use.

| <b>Bulk Standards for the R-10 Zone</b> |                 |                                |                                |                      |
|---|-----------------|--------------------------------|--------------------------------|----------------------|
|   | <b>Required</b> | <b>Existing</b>                | <b>Proposed</b>                | <b>Variance</b>      |
| <b>Lot Requirements</b>                 |                 |                                |                                |                      |
| Minimum Lot Area                        | 10,000 sq. ft.  | 7,405.2 sq. ft.                | 7,405.2 sq. ft.                | ENC                  |
| Minimum Lot Width                       | 75 feet         | 50 feet                        | 50 feet                        | ENC                  |
| Minimum Lot Frontage                    | 75 feet         | 50 feet                        | 50 feet                        | ENC                  |
| Minimum Lot Depth                       | 100 feet        | 147.46 feet                    | 147.46 feet                    | -                    |
| <b>Principal Structure</b>              |                 |                                |                                |                      |
|   | <b>Required</b> | <b>Existing</b>                | <b>Proposed</b>                | <b>Variance</b>      |
| Minimum Front Yard Setback              | 30 feet         | 21.5 feet to front of dwelling | 21.5 feet to front of dwelling | ENC                  |
| Minimum Side Yard Setback- One          | 10 feet         | 5 feet                         | 5 feet                         | ENC/ <b>Variance</b> |
| Minimum Side Yard Setback- Both         | 24 feet         | 16.16 feet                     | 16.16 feet                     | ENC/ <b>Variance</b> |
| Minimum Rear Setback                    | 30 feet         | 88.29 feet                     | 73.31 feet                     | -                    |
| Maximum Building Height                 | 32 feet         | 21.5 feet                      | 31.5 feet                      | -                    |
| Maximum Stories                         | 2.5             | 1.5                            | 2.5                            | -                    |
| Maximum Building Coverage               | 35%             | 16.5%                          | 22.4%                          | -                    |
| Maximum Habitable Floor Area Ratio      | 0.28            | 0.22                           | 0.38                           | <b>Variance</b>      |
| Maximum Habitable Floor Area Sq. Ft.    | 3,220 sq. ft.   | 1,662 sq. ft.                  | 2,810 sq. ft.                  | -                    |
| Maximum Lot Coverage                    | 45%             | 32.4%                          | 36.7%                          | -                    |
| <b>Accessory Structure</b>              |                 |                                |                                |                      |
| Minimum Rear Yard Setback               | 10 feet         | 6.67 feet                      | 6.67 feet                      | (ENC)                |
| Minimum Side Yard Setback               | 8 feet          | 5.5 feet                       | 5.5 feet                       | (ENC)                |

## **VariANCES**

A review of the application indicates that the property has the following existing nonconforming conditions:

- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Lot Area- The minimum required lot area is 10,000 square feet where 7,405.2 square feet is existing. This existing nonconforming condition is proposed to remain unchanged.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Lot Frontage & Width- The minimum required lot frontage & width is 75 feet, where 50 feet is existing. This existing nonconforming condition is proposed to remain unchanged.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Front Yard Setback – The minimum required front yard setback in the R-10 Zone is 30 feet, where 21.5 feet is existing. This existing nonconforming condition is proposed to remain unchanged exacerbating a preexisting nonconforming condition.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Accessory Structure Side Yard Setback- Where the minimum required side yard setback for accessory structures is 8 feet, where 5.5 feet is existing and not proposed to change.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Accessory Structure Rear Yard Setback- The minimum required rear yard setback for accessory structures is 10 feet, where 6.67 feet is existing and not proposed to change.

The application requires the following variances:

- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Maximum Habitable Floor Area Ratio- Where the maximum habitable floor area ratio is 0.28, where 0.22 is existing and 0.38 is proposed.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum One Side Yard Setback- The minimum required side yard setback in the R-10 Zone is 10 feet, where 5 feet is existing. This existing nonconforming condition will be exacerbated based upon the proposed improvements.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Both Side Yard Setback- The minimum required combined side yard setback in the R-10 Zone is 25

feet, where 16.16 feet is existing. This existing nonconforming condition will be exacerbated based upon the proposed improvements.

### **Planning Comments**

1. The applicant is seeking a d(4) Floor Area Ratio variance to permit an increase in the permitted habitable floor area ratio. In order to grant a 'd' variance, the applicant must satisfy both the positive and negative criteria.

For a d(4) Floor Area Ratio variance, the applicant has a lesser burden of proof than a d(1) use variance. The applicant must demonstrate that the property can accommodate the problems associated with the proposed permitted use with a larger floor area than permitted by the ordinance. The applicant must also demonstrate that there will be no substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board may consider imposing conditions to ensure that the deviations from the FAR requirement does not cause substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

2. The applicant shall provide testimony addressing the positive and negative criteria for each variance being sought. It is the Applicant's responsibility to bear the burden of proof. In order to satisfy the positive and negative criteria for each c variance enumerated above, the applicant should provide testimony that satisfies either the c(1) hardship criterion or c(2) flexible criterion as set forth in the MLUL.

- a. Positive criteria: There are two types of c variances- c(1) hardship and c(2) flexible variances.

The c(1) hardship criteria states that a "hardship" will occur if the variance is not granted. The hardship relates to the physical or topographical features of the property and cannot relate to financial or personal hardship. Hardship relating to property can include:

- i. Narrowness, shallowness, or irregular shape
- ii. An exceptional topographic condition
- iii. Other unique conditions or features affecting the property

The c(2) flexible variance states that by granting the variance, the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement

and that the variance can be granted without substantial detriment to the public good.

- b. Negative criteria: The applicant must satisfy the two-prong test of the negative criteria; 1) the variance can be granted without substantial detriment to the public good; and 2) the variance can be granted without causing substantial detriment to the zone plan. The negative criteria focus on the potential impacts that the proposed use may have on the community.

The applicant's testimony regarding the negative criteria should address any potential impacts that the proposed use may have on the neighborhood, as well as how the proposed use is consistent with, or in potential conflict with, both the zoning ordinance and the Master Plan of the Borough.

### 3. Master Plan

The Borough adopted its last Master Plan in 1991, and subsequent Reexamination Reports, with the most recent occurring in 2016. These planning documents set forth policies to guide the development in the Borough.

The 2016 Master Plan Reexamination Report included an objective of protecting and enhancing the existing character of the Borough and residential quality of the neighborhoods. Additionally, the 1997 and 2005 plans encouraged Borough pursue land use standards that reduce the creation of new large-scale single-family dwellings and inhibit additions to expand existing homes to a scale out of character with the surrounding neighborhood.

The applicant should provide testimony regarding the visual impact of the proposed development on neighboring properties, the existing setbacks and the building area of the surrounding neighboring dwellings as a means to address the negative criteria listed above.

4. The applicant requires a d(4) variance for exceeding the maximum habitable floor area ratio. It should be noted that the proposed improvements do not warrant a variance for the maximum habitable floor area square feet.
  - a. In order to eliminate the d(4) HFAR variance, the applicant would need to reduce the habitable floor are to 2,073 square feet, where 2,810 square feet is proposed.

5. The Plot Plan shows the 21.5-foot front yard setback from the property line to the existing structure's covered porch. However, the steps leading to the building appear to encroach within the front yard. The applicant shall provide testimony pertaining to the setback of the steps and building façade within the front yard.
  - a. The applicant shall further provide testimony pertaining to §30-7.8h Accessory Building and Structures, which states, "A porch, deck, patio, or similar structure designed to adjoin or as part of the principal building shall in all cases conform to the yard requirements for the principal building except where the structure has no roof and is constructed not more than six (6) inches above grade, it shall adhere to the yard requirements for an accessory structure. A porch, without a roof or structure above it, of less than one hundred (100) square feet in total size, inclusive of steps, is permitted in the front yard without regard to setback standards, provided that the porch contains a NJ UCC compliant stairway having not more than two risers, with an intermediate tread not exceeding 12 inches in depth."
6. The applicant shall provide testimony pertaining to the type of materials proposed for the exterior of the dwelling. If available, the applicant shall bring a colorized rendering of the dwelling and samples of the materials proposed for the project to the meeting.
7. The first-floor plan notes stairs leading to the existing cellar. The applicant shall provide testimony to if there is a basement or cellar pursuant to the Borough Ordinance's definitions. Per the Borough Ordinance, basements are considered habitable floor area.
8. Does the applicant propose any landscaping or tree removal as part of the project? The applicant shall confirm that no trees will be removed as part of this application.
9. Does the applicant propose any changes proposed for utility connections? The Borough's Ordinance (§30-9a13) requires utility connections to be installed underground. We defer comment regarding utility connections to the Board Engineer.
10. Pursuant to the Zoning Officer's letter, the applicant shall provide testimony and/or documentation pertaining to the concrete pad in the rear yard and the corresponding setbacks.

**Aerial Map of Property**





**Photographs of Property taken 7/22/2020**



Photograph from Hendrickson Place



Photograph from Hendrickson Place



Neighboring property 12 Hendrickson Place



Neighboring property 6 Hendrickson Place



Property across street 5 Hendrickson Place