

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

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

**RE:** Sullivan  
47 Lake Avenue  
Block 20 Lot 15  
*Completeness & Planning Review v1*

**DATE:** October 30, 2020

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As requested, we have reviewed the following materials in preparation of our report for this application:

- 3-sheet set of architectural drawings entitled "Proposed Additions and Alterations for Sullivan Residence, 47 Lake Avenue, Block 20, Lot 15" prepared by Anthony M. Condouris Architect Inc., dated June 4, 2020;
- 1-sheet survey, prepared by Charles V. Bell Jr., dated January 28, 2020;
- Zoning Board Resolution of approval of bulk variance relief for the subject property, adopted on April 3, 2008;
- Picture of subject property from Google Maps, Image Capture Date, September 2019;
- Zoning Board of Adjustment Application (ZB20-10) and checklist, received September 14, 2020;
- Superior Court of New Jersey, Monmouth County Law Division, Docket Number MON-L-2250-08 Opinion, decided on December 16, 2008

### **Completeness Review**

The application has been checked for compliance with the Borough of Fair Haven Land Development Application checklist. The applicant has **not** completed all required submissions. The application is deemed **incomplete**.

- Item #9- Completed Monmouth County Planning Board application- The applicant has indicated that this item is not applicable. We take not exception to the granting of this waiver for completeness purposes only as the property does not front on a county road.
- Item #10- Completed Freehold Soil Conservation District application- The applicant has indicated that they will submit upon building permit application. We take no exception to the granting of this waiver for completeness purposes only.

- Item #11- Completed Monmouth County Health Department Application- The applicant has indicated that this requirement if not applicable. We take no exception to the granting of this waiver for completeness 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.

### **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:

- Letter from Zoning Officer – The applicant has not requested a waiver for this item. The applicant shall request a waiver for completeness for this item or submit a Zoning Officer Determination Letter.
- Elevations of all sides of structures with string dimensions- The applicant has not requested a waiver for this item. The applicant shall add string dimensions to the elevations.
- Location and type of proposed attic space – The applicant shall add the location and type of proposed attic space to the plans.
- Statement of legal basis for granting variances sought – The applicant shall submit a statement of legal basis for granting variances sought.

### **Property and Project Description**

The subject property is located at Lot 15 of Block 20, known as 47 Lake Avenue. The property is a 7,500 square foot corner lot, located on the eastern corner of the intersection of Lake Avenue and Glen Place. The property a 2-story single-family dwelling, a patio, detached garage and associated driveway accessed from Glen Place. Surrounding the property are other single-family homes of similar size.

In 2008, the applicant received Zoning Board approval to construct a two-story addition to the rear of the dwelling and covered front porch facing Lake Avenue. At the time of the application, the applicant requested and received front yard setback relief from Glen Place (7.6 feet existing and proposed where 25 feet required), deficient lot frontage (50 feet existing where 70 feet required), side yard setback relief (4.1 feet proposed where 5 feet required), and garage side yard setback relief (2.9 feet and 4 feet proposed where 5 feet required). In addition, the applicant

sought habitable floor area square feet relief where 1,473 square feet was existing, 2,376 square feet was proposed, and 2,200 square feet was required.

An interested party challenged the Board's decision and the Superior Court of New Jersey upheld some of the relief granted by the Zoning Board but overturned the floor area cap variance. The relief sought in this application may raise the issue of Res Judicata.

It appears that the covered front porch and a rear 1-story addition were built post approval.

As part of this application, the applicant is proposing to construct a 390 square foot second story addition to the rear of the existing dwelling. The proposed 2<sup>nd</sup> floor addition will consist of a master bedroom suite. The applicant is proposing minor changes to the 1<sup>st</sup> floor which consists of realigning the stairs leading between the 1<sup>st</sup> and 2<sup>nd</sup> floors. The property has an existing non-conforming 7.1-foot front yard setback on Glen Place which will be exacerbated by the proposed second story addition. The property has an existing non-conforming 4.6-foot setback from neighboring Lot 14; however, the proposed second story rear addition will comply with the required side yard setback.

**Zoning**

The subject property is located within the R-5 Zone where single-family dwellings are a permitted use.

<b>Bulk Standards for the R-5 Zone</b>				
	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance</b>
<b>Lot Requirements (Corner Lot)</b>				
Minimum Lot Area	7,000 sq. ft.	7,500 sq. ft.	7,500 sq. ft.	-
Minimum Lot Width	70 feet	50 feet	50 feet	ENC
Minimum Lot Frontage	70 feet	50 feet	50 feet	ENC
Minimum Lot Depth	100 feet	150 feet	150 feet	-
<b>Principal Structure</b>				
Minimum Front Yard Setback (Lake Avenue)	25 feet	33.5 feet	33.5 feet	-
Minimum Front Yard Setback (Glen Place)	25 feet	7.1 feet	7.1 feet	<b>Variance</b>
Minimum Side Yard Setback- One	7 feet	4.6 feet	4.6 feet	ENC
Minimum Rear Setback	30 feet	72.4 feet	72.4 feet	-
Maximum Building Height	30 feet	29 feet	29 feet	-

Maximum Stories	2.5	2	2	-
Maximum Building Coverage	35%	24.16%	24.16%	-
Maximum Habitable Floor Area Ratio	0.4	0.258	0.31	-
Maximum Habitable Floor Area Sq. Ft.	2,220 sq. ft.	1,938 sq. ft.	2,328 sq. ft.	<b>Variance</b>
Maximum Lot Coverage	50%	33.29%	33.29%	-
<b>Accessory Structure</b>				
	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance</b>
Minimum Rear Yard Setback	10 feet	4.7 feet	4.7 feet	ENC
Minimum Side Yard Setback	5 feet	4.3	4.3	ENC
Maximum Accessory Building Height	15 feet	15	15	-

**Variations Required**

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

- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements- Minimum Lot Width and Frontage- Minimum required lot width and frontage is 70 feet where 50 feet is existing and proposed. This existing nonconforming condition is proposed to remain unchanged.
- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements-Side Yard Setback- Minimum side yard setback is 7 feet where 4.6 feet is existing and proposed.
- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements- Minimum Accessory Structure Rear Yard Setback - Minimum required rear yard setback for accessory structures is 10 feet where the shed is setback 4.7 feet and is proposed to remain unchanged.
- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements- Accessory Structure Side Yard Setback - Minimum required side yard setback for accessory structures is 5 feet where the shed is setback 4.3 feet and is proposed to remain unchanged.

The application requires the following variances:

- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements- Minimum Front Yard Setback- Minimum required front yard setback is 25 feet where 7.1 feet is existing and proposed. This existing nonconforming condition is proposed to be exacerbated by the improvements.
- Ordinance Section 30-5.1 Table C- Schedule of Area, Yard and Building Requirements- Habitable Floor Area- Maximum permitted habitable floor area is 2,200 square feet where 1,938 square feet is existing, and 2,328 square feet is proposed.

### **Planning Comments**

1. 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 improvements may have on the neighborhood, as well as how the development is consistent with, or in potential conflict with, both the zoning ordinance and the Master Plan of the Borough.

## 2. 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 the Borough to 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.

### *General Comments*

3. The applicant requires a variance for exceeding the habitable floor area by 128 square feet. It should be noted that the applicant is only proposing a habitable floor area ratio of 0.31 where 0.4 is permitted.
4. We note the applicant received approval in 2008 for a two-story addition to the rear of the existing dwelling, however, the Superior Court of New Jersey overturned the Board's decision granting the habitable floor area square foot variance.
  - a. It appears the applicant constructed a 1-story addition to the rear of the dwelling and the front covered porch.
  - b. The applicant shall provide testimony regarding the issue of Res Judicata.

- c. We note the proposed 2<sup>nd</sup> story addition results in less habitable floor area than the initial approval in 2008.
5. Pursuant to Ordinance Section §30-7.8h, a porch, deck, patio or similar structure adjoining a principal building, having no roof and constructed no more than six (6") inches above grade shall not adhere to yard requirements. The applicant shall provide testimony to the existing steps in the rear of the dwelling.
6. Pursuant to §30-7.8g Accessory Buildings and Structures, "a single-family zone district or on a lot with a single-family dwelling, an entry driveway or walkway may cross any yard but not more than 25% of the front yard area shall be used as a driveway or for off-street parking." The applicant shall provide testimony pertaining to whether the proposed driveway occupies more than 25% of the front yard area along Glen Place.
7. The architectural plans do not indicate materials. The applicant shall confirm that the proposed second story addition will match the existing residence. We recommend the applicant provide colorized renderings at the Zoning Board hearing and to provide testimony addressing the materials proposed for the dwelling's exterior.
8. The applicant shall provide testimony regarding any proposed landscaping improvements, as well as the removal of mature trees and whether tree removal permits are required.
9. While many of the accessory structures are existing, the applicant shall provide testimony regarding §30-7.8f, which requires that the ground floor area of all accessory buildings in the R-30 zone not exceed 30% of ground floor of the principal building.
10. We defer to the Board Engineer regarding comments associated with grading, utilities, and stormwater management.

**Aerial Map of Property**





**Photographs of Property taken 10/30/2020**



Front Elevation of 47 Lake Avenue



Side Elevation of 47 Lake Avenue along Glen Place



Neighboring Property on Lake Avenue



Properties Across Lake Avenue



Property Across Glen Place