

**BOROUGH OF FAIR HAVEN  
ORDINANCE NO. 2023-02**

**AN ORDINANCE AMENDING CHAPTER 30: “LAND USE AND DEVELOPMENT REGULATIONS” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FAIR HAVEN TO REVISE CERTAIN ZONING REGULATIONS IN AN EFFORT TO PRESERVE AND PROTECT THE EXISTING CHARACTER OF THE BOROUGH’S ESTABLISHED NEIGHBORHOODS.**

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**WHEREAS**, the State of New Jersey, by enacting the Municipal Land Use Law (N.J.S.A. 40: 55d-1, *et seq.* (the “MLUL”), permits municipalities to adopt and subsequently amend a zoning ordinance governing the nature and extent of the uses of land, buildings and structures within a municipality (see N.J.S.A. 40:55d-62); and

**WHEREAS**, section 62 of the MLUL requires that a zoning ordinance be drawn “with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land”; and

**WHEREAS**, in 2002, the Borough of Fair Haven (the “Borough”) adopted a comprehensive Ordinance regulating land use and development in the municipality, which was codified as Chapter 30 entitled “Land Use and Development Regulations” within the Borough Code (hereinafter, “Chapter 30”); and

**WHEREAS**, Chapter 30, which has been amended from time-to-time, remains the current zone plan for the Borough; and

**WHEREAS**, the Borough’s 2016 Master Plan Reexamination and Master Plan Update 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 residential development in Fair Haven prior to 2005; and

**WHEREAS**, in the Summer of 2021, the Borough Council reconstituted the Fair Haven Land Use Committee (“Committee”), which included the Mayor, members of the Borough Council, as well as members of the Planning Board and Zoning Board; and

**WHEREAS**, the Committee’s purpose was to perform an analysis of more recent infill development trends in Fair Haven to consider (i) whether existing land use ordinances were appropriate in light of recent residential development, and (ii) whether revisions to the land use ordinances were still required in order to achieve the community’s goal of ensuring the harmonious integration of modern residential structures with the existing housing stock as described in the Master Plan and its various amendments; and

**WHEREAS**, on March 7, 2022 the Committee issued a memo to the Planning Board identifying a number of problems to be addressed as soon as possible in furtherance of the community’s long term planning goals in an attempt to ensure future infill development is appropriately regulated in Fair Haven; and

**WHEREAS**, the Planning Board formed a Land Use Subcommittee (“Subcommittee”), which Subcommittee included the Mayor, additional members of the Planning Board and additional members of the Zoning Board; and

**WHEREAS**, the Subcommittee met regularly and working with legal counsel, prepared proposed revisions to the Borough Code to implement the March 7, 2022 recommendations of the Committee; and

**WHEREAS**, the Subcommittee presented those recommendations to the Planning Board and at a public meeting, the Planning Board endorsed the recommendations of the Subcommittee and directed that the recommendations be sent to Borough Council for consideration; and

**WHEREAS**, the Borough Council has reviewed the findings and recommendations of the Committee, the Subcommittee and the Planning Board and determined that it is in the best interest of the Borough to amend Borough Code Chapter §30 accordingly;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor & Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey” as follows:

SECTION 1. Section 30-2.4 entitled “Definitions” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

**CHAPTER 30: “LAND USE AND DEVELOPMENT REGULATIONS”**

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**§ 30-2.4 Definitions.**

Certain words, phrases, and terms in this chapter are defined for the purpose herein as follows:

**ATTIC**

~~That part of a building that is immediately below and wholly or partly within the roof framing not served by an approved stairway for ingress or egress. A floor of a building that is immediately below and wholly or partly within the roof framing. An attic shall not include a kitchen, bedroom or bathroom unless authorized by applicable codes. For clarification, no portion of the first floor or structure adjoining and/or potentially accessible to the second floor, will be considered an Attic and will count as Floor Area.~~

An Attic shall be counted as a Half Story, and the area of the floor not counted as Floor Area, if it satisfies either of the following conditions:

1. It has no Approved Stairway as a means of access and egress (i.e. it is accessed only by a ladder or pull down stairway); or
2. It has an Approved Stairway as a means of access and egress, and the ceiling area at a minimum height of seven (7) feet above the attic floor (measured from the attic floor to the bottom of the roof rafters) is equal to, or less than, one-third (1/3) of the area of the entirety of the next floor below.

An Attic shall be counted as a Story, and the area of the floor counted as Floor Area, if it has an Approved Stairway as a means of access and egress, and the ceiling area at a minimum height of seven (7) feet above the attic floor (measured from the attic floor to the bottom of the roof rafters) is greater than 1/3 the area of the entirety of the next floor below.

**~~ATTIC, HABITABLE; HABITABLE ATTIC~~**

~~An attic which has an approved stairway as a means of access and egress and in which the ceiling area at a minimum height of seven feet above the attic floor is not more than 1/3 the area of the next floor below. The calculation of the height of the attic is as defined in the Uniform Construction Code.~~

**BASEMENT**

~~A story partly underground and having more than 1/2 of its height above the average level of the finished grade shown on an approved subdivision or site plan. However, within a floodplain, height shall be measured from existing grade. Unless defined as a Crawl Space as set forth hereinbelow, any space partly underground where the Finished Floor Elevation (FFE) is greater than thirty inches (30”). A Basement shall be counted as a Half Story.~~

## **BUILDING HEIGHT**

The vertical distance measured to the highest point of the building from the ~~original lot grade~~ Average Existing Grade, or from any ~~revised lot proposed~~ grade shown on a site plan, subdivision plan, or other plan approved by the appropriate Municipal Agency (Planning Board or the Board of Adjustment). ~~Such revised lot grade shall not include mounding, terracing, or other devices designed to allow increased building height.~~ The vertical distance shall be the average measured along the perimeter of the building, measured at a minimum of four corners of the structure.

## **CELLAR**

~~A story wholly or partly underground and having more than 1/2 of its clear height below the average level of the finished grade shown on approved subdivision or site plan. However, within a floodplain, height shall be measured from existing grade. Unless defined as a Crawl Space as set forth hereinbelow, any space partly underground where the Finished Floor Elevation (FFE) is thirty inches (30") or less. A Cellar shall not be counted as a Story or Half Story.~~

## **CRAWL SPACE**

A shallow unfinished space beneath the first floor, usually containing pipes, ducts, and other utilities, where the ceiling height (measured from the concrete or dirt floor to the bottom of the floor joists) is less than six (6) feet and the Finished Floor Elevation is thirty inches (30") or less. A Crawl Space shall not be counted as a Story or Half Story.

## **CURB LEVEL**

The officially established grade of the curb in front of the midpoint of the front lot line.

## **FINISHED FLOOR ELEVATION ("FFE")**

The measure of height from Average Existing Grade to the surface of the finished floor immediately constructed on the foundation wall or the slab-on-grade. The FFE shall be shown on all Site or Plot Plans submitted to the Borough's Zoning and/or Construction Departments and, to further establish a point of reference, the Site or Plot Plans shall include the Curb Level elevation. The FFE shall be provided for all new construction and for any renovation or addition that modifies an existing FFE and shall not exceed thirty (30") inches above Average Existing Grade.

## **FLOOR AREA**

The sum of the gross horizontal area of all Stories of a Structure 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 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 rafters. In residential buildings, Floor Area shall exclude:

1. The gross horizontal area, or portions thereof, of Stories where there is a height of less than thirty (30") inches measured from the floor to the bottom of the roof rafters.

2. Attics that qualify as a Half Story (see Attic);
3. Cellars;
4. The first floor of Garages; and
5. The gross horizontal area, or portions thereof, of an unfinished storage area that is constructed immediately above the first floor of a Garage, that is not accessible to a second Story, where the maximum height measured from the Average Existing Grade to the ridge height of the Garage is less than twenty (20') feet.

For clarification, all areas within a Structure where a second story could be constructed to create areas that would qualify as Floor Area pursuant to this definition will be counted as Floor Area regardless of how actually constructed.

### **FLOOR AREA RATIO**

~~The sum of the area of all floors of buildings or structures compared to the total area of the site.~~ The Floor Area compared to the total land area of the lot, expressed as a percentage.

### **GRADE, AVERAGE EXISTING; AVERAGE EXISTING GRADE**

The Average of Existing Grade of a lot as determined prior to any demolition or construction or change in grade based on a survey or plot plan that shows existing spot elevations and/or topography on the lot as taken from a minimum of four (4) corners of the existing principal structure and any accessory structure, or from the locations of the proposed structures, if different.

### **GRADE, EXISTING; EXISTING GRADE**

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 adoption of this chapter. Should topography of the lot vary, multiple spot elevations should be included on the survey or plot plan to more accurately reflect Existing Grade on the lot.

### **GRADE, FINISHED; FINISHED GRADE**

The completed surface of lawns, walks and roads brought to grade(s) as shown on official plans or designs relating thereto or as existing if no plans or designs have been approved. This is to be provided on a Final-As-Built Survey following the new development of a property, installation of a pool or other major site development involving any changes in grade.

### **HABITABLE FLOOR AREA**

~~The sum of the gross horizontal area of all the stories and half stories of a building as measured from the exterior face of exterior building walls, or from the center line of wall separating two buildings. In residential buildings, garages, attics, and cellars shall not be calculated as "habitable floor area." For a new dwelling, 50% of the area of an attached garage shall be calculated as "habitable floor area."~~

### **HABITABLE FLOOR AREA RATIO**

~~The habitable floor area compared to the total area of the lot on which it is sited.~~

## **HABITABLE ROOM**

~~Any room within a building used for the purpose of sleeping, eating, preparation of food, offices, selling of merchandise, public gatherings, or assembly lobbies. All habitable rooms within a dwelling unit shall have natural light, ventilation, and heat. Within a dwelling, garages, porches, cellars, and utility rooms are not considered to be "habitable rooms."~~

## **SETBACK, FRONT YARD, PREVAILING; PREVAILING FRONT YARD SETBACK**

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. for New Construction only, the average front yard setback calculated from the front property line 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**

That portion of a building between a floor and ceiling, excluding ~~cellars.~~ Cellars and Crawl Spaces. Attics shall be either a Half Story or a Story depending on how constructed (see Attic).

## **STORY, HALF; HALF STORY**

That portion of a building under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than ~~two feet thirty inches (30")~~ above the floor of such half-story. A ~~basement~~ Basement shall also be included as a half-story. Attics shall be either a Half Story or a Story depending on how constructed (see Attic).

SECTION 3. Subsection 30-7.7 entitled “Yard Areas, Building Orientation and Fenestration” of Section 30-7 entitled “General Zoning Regulations” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

**30-7 GENERAL ZONING REGULATIONS.**

\* \* \*

**§ 30-7.7 Yard Areas, Building Orientation and Fenestration.**

- a. No yard or other open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other buildings, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
- b. All yards facing on a public street shall be considered front yards and shall conform to the minimum front yard requirements for the zone in which located except:
  1. Lots with frontage on more than one street which are not corner lots may have a front and rear yard designated by the owner subject to:
    - (a) If the lot contains a principal structure, the front will be considered the direction the principal structure faces.
    - (b) If the lot does not contain a principal structure and only one street frontage conforms to lot frontage requirements, the yard abutting the conforming street frontage will be considered the front yard.
  2. The designated rear yard of a lot with frontage on more than one street shall be considered a rear yard for the purposes of this section, except for the area within the depth of the required minimum front yard determined as follows:
    - (a) Not less than the lesser of the setback of existing principal structures on any adjacent lots (but not less than 50% of the minimum front yard required by the zone district).
    - (b) No more than the minimum front yard required by the zone district.
  3. Any lot not meeting the definition of a corner lot that in any event has two sides adjacent to the same street right-of-way shall meet the following requirements:
    - (a) Any yard adjacent to a street right-of-way is required to maintain the minimum front yard setback for the zone in which the property is located.
    - (b) For yards not adjacent to the street right-of-way, a minimum of a rear yard setback must be maintained for one yard and a minimum of one side yard setback must be maintained for any other yard.
- c. In the case of a corner lot, the yard most nearly opposite the front yard shall be considered a rear yard and the minimum rear yard requirement of the zone shall be maintained. A proposed principal building must be oriented to face, which means it must have its most prominent facade and principal entrance face, the front of the lot. The front of the lot for the purpose of designating a rear yard and orienting the principal building, shall be:

1. The direction an existing principal building faces, or, if there is no existing principal building;
  2. The lesser lot frontage or, if both frontages are the same;
  3. Designated by the applicant.
- d. Each exterior face of a single-family dwelling shall include windows. The fenestrated portion of any elevation of a principal single-family dwelling shall not be less than 4% of the area of the building face.
- e. Every part of a required yard shall be open and unobstructed from its lowest level to the sky, except for the ordinary projections allowed by the State Uniform Construction Code including, but not limited to, sills, belt courses, chimneys, flues, buttresses, ornamental features, and eaves, provided, however, that none of the aforesaid projections shall project into the minimum required yards more than 24 inches, unless otherwise permitted by this chapter.
- f. For New Construction only in residential zones, the minimum required front yard setback shall be established as the Prevailing Front Yard Setback, which is the greater of either:
1. 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
  2. for New Construction only, the average front yard setback calculated from the front yard setbacks of all principal structures existing on all properties that 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.



SECTION 4. Subsection 30-7.8 entitled “Accessory Buildings and Structures” of Section 30-7 entitled “General Zoning Regulations” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

**30-7 GENERAL ZONING REGULATIONS.**

\* \* \*

**§ 30-7.8 Accessory Buildings and Structures.**

Unless otherwise specified in this chapter on the zone district schedule, accessory buildings and structures shall conform to the following regulations as to their locations on the lot:

- a. Location of Accessory Buildings.
  1. An accessory building attached to a principal building shall comply in all respects with the zoning requirements for the principal building.
  2. Detached accessory buildings shall not be located in a front yard.
  3. Detached accessory buildings shall comply with the zone district standards of the zoning Schedule of Area, Yard and Building Requirements with the following exceptions:
    - (a) A one story detached garage may be located as provided under subsection 30-7.26, Garages.
    - (b) Not more than one shed with a height of 10 feet or less and a floor area of 100 square feet or less may be located not less than five feet from any side or rear lot line.
- b. No detached accessory building, in any residential zone, shall be less than five feet from a principal building.
- c. No accessory building shall be constructed before the principal building.
- d. Accessory buildings must be located on the same lot as the principal use to which they are accessory.
- e. Where the front or side yard is on a river, a private, in-ground swimming pool (including cabanas, aprons, decks, walks, etc.) or boathouses may be built in such front or side yard provided that in the R-30 and R-20 Districts, a side yard and front yard setback of 25 feet is maintained. In all other districts, side yard and front yard setbacks of 10 feet shall be maintained, however accessory structures such as cabanas and boathouses shall maintain a setback of 50 feet or the average setback of structures on the abutting riverfront property, whichever is greater. However, in no event shall the required setback be more than 75 feet.
- f. The ground floor area of all accessory buildings may not exceed the following percentages of the ground floor of the principal building:
  1. R-40, R-30, R-20 Zones, 30%;

2. R-15, R-10A, R-10B, R-10, R-7.5, R-5 Zones, 40%;
3. B-1, B-2 Zones, 50%.

g. In a single-family zone district or on a lot with a single-family dwelling, an entry driveway or walkway may cross any yard area but not more than 25% of the front yard area shall be used as a driveway or for off-street parking.

~~h. 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 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 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.~~

~~i. h.~~ Fences and walls are regulated pursuant to subsection 30-7.25 of this chapter.

~~j. i.~~ Signs are regulated pursuant to subsection 30-7.24 of this chapter.

SECTION 5. Subsection 30-7.11 entitled “Height Limitations” of Section 30-7 entitled “General Zoning Regulations” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

**30-7 GENERAL ZONING REGULATIONS.**

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**§ 30-7.11 Height Limitations.**

- a. No structure shall extend higher than the limit provided in each zone for ~~building height~~ Building Height, which is defined as the vertical distance measured to the highest point of the structure from the Average Existing Grade.
- b. Turrets, spires, belfries, and domes shall not exceed the height of the ridge of the major roof type of the structure except that on a place of worship such structures shall be controlled by the conditional use requirements set forth for places of worship in subsection 30-6.3 of this chapter.
- c. Chimneys shall not project more than four feet above the roof.
- d. Cupolas and similar small structures built on top of a roof shall not exceed four feet deep, by four feet wide, by six feet high.
- e. The height limitations of this chapter shall apply to ventilators, skylights, HVAC equipment, stair towers and similar appurtenances usually carried above roof level except:
  1. (Reserved)
  2. (Reserved)
  3. Noncommercial television and radio antennas are regulated by subsection 30-7.20 of this chapter.
- f. Finished Floor Elevation (“FFE”) shall be measured from Average Existing Grade to the surface of the finished floor immediately constructed on the foundation wall or the slab-on-grade. The FFE for all new construction and for any renovation or addition that modifies an existing FFE and shall not exceed thirty (30”) inches above Average Existing Grade.

SECTION 6. Attachment 3 entitled “Schedule of Area, Yard, and Building Requirements” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby replaced, in its entirety, as follows:

**ATTACHMENT 3:  
“SCHEDULE OF AREA, YARD, AND BUILDING REQUIREMENTS”**

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*[New and Revised Attachment 3 – See additional Attachment]*