

APPLICANT: Dennis Sullivan & Kathleen Sullivan  
APPLICANT'S ATTORNEY: Pro Se  
APPLICATION NO.:  
BLOCK(S) 20, LOT(S) 15

**RESOLUTION OF THE  
ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF FAIR HAVEN**

**APPROVAL OF BULK VARIANCE RELIEF**

WHEREAS, Dennis Sullivan and Kathleen Sullivan, hereinafter referred to as the "Applicant", filed an application with the Zoning Board of Adjustment of the Borough of Fair Haven (hereinafter referred to as the "Board") seeking the following:

variance relief to permit expansion of the existing single-family dwelling at the premises.

WHEREAS, the application pertains to the premises designated as Block 20, Lot 15 on the Tax Map of the Borough of Fair Haven, which said premises are commonly known as 47 Lake Avenue, Fair Haven, New Jersey (hereinafter referred to as the "Premises");

WHEREAS, all notice requirements were satisfied by the Applicant, and the Board had jurisdiction to hear, consider and determine the application at issue;

WHEREAS, the Board held public hearings with regard to the referenced application on February 7, 2008 and March 6, 2008; and

WHEREAS, the Board, having given due consideration to the exhibits moved into evidence and the testimony presented at said hearings, does hereby make the following findings of fact:

1. The premises are located in the R-5 zone; the existing single-family dwelling at

the site is a permitted use in said zone.

2. The applicant submitted the following exhibits into evidence: Survey prepared by Charles V. Bell, Jr., PLS, dated 11/13/07, last revised 11/19/07 (A-1); Plans prepared by James J. Monteforte, AIA, consisting of 3 sheets, last revised 9/24/07 (A-2); Photoboard with 5 photographs (3 photographs of the subject house, plus 2 of neighboring dwellings) (A-3); Letter from James J. Monteforte, AIA dated 2/20/08, setting forth lot coverage calculations (A-4); and Zoning Requirements schedule dated 2/20/08, prepared by James J. Monteforte, AIA (A-5). Mr. Scott Magnuson, an interested party, submitted the following exhibits into evidence: Photograph of the applicants' air conditioning unit (OSM-1); Photograph of the rear yard of the premises showing the flood light (OSM-2); Photograph showing the trees along the common property line between the premises and Mr. Magnuson's property (OSM-3); and Mr. Magnuson's calculation of habitable floor area for the site (OSM-4).

3. Mr. Dennis Sullivan and Mrs. Kathleen Sullivan, the applicants, testified in support of the application. They indicated that they purchased the property in question in 2004. The site contains a single-family residence of modest size (1,473 square feet of habitable floor area). The applicants stated that they wish to expand the dwelling to provide additional living space for their family. The expansion includes a two-story addition to the rear of the structure, as well as a covered front porch to the front of same. The applicants noted that the property is a corner lot, with frontage on both Lake Avenue and Glen Place. The dwelling is currently deficient in terms of the front yard setback off the Glen Place frontage, insofar as same exists at 7.6 feet whereas 25 feet is required. The proposed rear addition will extend this existing deviation approximately 15 feet further to the rear. In addition, the proposal will create habitable floor area of 2,376 square feet

whereas 2,200 square feet is the maximum permitted in this zone. A number of other deviations, not being altered or exacerbated as a result of this application, also exist at the premises; these include: deficient lot frontage, with 50 feet existing along the Lake Avenue frontage whereas 70 feet is required (the frontage along Glen Place is 150 feet); side yard setback deficiency of 4.1 feet from the southern property sideline and total of 11.9 feet from both sidelines, whereas 5 feet and 12.5 feet total are required; and garage setbacks of 2.9 feet and 4 feet, whereas 5 feet is required for each side.

4. The applicants stated that it would be difficult to satisfy the required 25 foot front yard setback off of the Glen Place frontage, insofar as the lot is only 50 feet deep, and meeting this frontage along with the required setback from the southern property line would yield a structure that is very narrow. In addition, they pointed out that the existing structure is a Dutch Colonial dwelling, and that the stairs are centered within the house and essentially “cut the house in half”. As a result of these circumstances, the applicants testified that it was difficult from an architectural standpoint to plan the expansion around the features of the existing structure. The applicants stated that after reviewing several plan variations, this was the best plan proposed by the architect, and that alternative plans led to an even greater floor area deviation. The applicants testified that they also chose this plan, which extended the existing front yard setback deficiency along Glen Place further to the rear, so as to allow the rear addition to be located as far as possible from the neighboring property owner on Lot 14. The applicants asserted that the lot can well accommodate the proposed 176 square feet of excess habitable floor area, insofar as they are well under lot coverage requirements, with 43.5% proposed lot coverage whereas 50% coverage is otherwise permitted in this zone.

5. Mr. Scott Magnuson, the neighboring property owner residing at 51 Lake

Avenue (Lot 14), appeared and objected to the application. Mr. Magnuson questioned whether the attic space would be usable as habitable floor area. In response to same, the applicants indicated that there would be no habitable space in the attic, that no stairs are being provided to the attic, that access to same would be gained only by way of a “push up” door, and that the height of the attic would also preclude use of the attic as habitable space. Mr. Magnuson also raised an issue with regard to the flood light located at the rear of the applicants’ property, and also stated that the trees running along the common property line are approximately 21 feet high. Mr. Magnuson further indicated that he calculates the habitable floor area for the proposed expanded dwelling at 2,479.4 square feet. It was noted, however, that the applicants submitted a letter from their architect, James J. Monteforte, AIA, confirming that the habitable floor area for the dwelling was 2,376 square feet (exhibit A-4). When Mr. Magnuson was questioned as to his qualifications regarding the calculations that he performed, he first stated that he was an engineer, but he then qualified this by indicating that he is not a licensed professional engineer of the State of New Jersey; he added that he has a background in electrical engineering.

6. Mr. Michael Sena, residing at 39 Lake Avenue, across the street from the premises in question, indicated that he has no objection to the application. Mr. Sena stated that he will have a direct view of the proposed addition, that he believes that it is attractive and well designed, and he stated that in his opinion, the excess habitable floor area is a miniscule deviation. Mrs. Beatrice Sena also appeared and stated that she has lived across the street from the premises, at the corner of Glen Place and Lake Avenue, for more than 16 years. She indicated that she is in favor of the application, and believes that the proposed addition would be a beautiful enhancement of the property. Ms. Elaine

Jurskis, residing at 15 Glen Place, stated that she lives across the street from the site, and that she is completely in favor of the application.

7. At the outset, the Board notes that Mrs. Sullivan, one of the applicants, was appointed as a member of the Zoning Board in January of 2008. As a result, at the time that the hearing in this matter commenced before the Board on February 7, 2008, Mrs. Sullivan had been a member of the Board for one month (i.e., one meeting). At the commencement of the proceedings, the issue of "conflict of interest" was raised by the Board itself. Counsel for the Board advised the Board that it was his opinion that, pursuant to current case law, a Board Member is not prohibited from presenting an application (or appearing as an objector/interested party) before the Board with regard to a matter pertaining to or affecting the Board Member's property (the Board Member, however, would be prohibited from appearing as an expert witness or in a representative capacity with regard to such a matter). Counsel advised the Board that it would nevertheless be preferable for the Board Member-Applicant to be represented by counsel, thereby providing some degree of a "buffer" between the Board Member-Applicant and the Board itself, but counsel advised that in his opinion the Board Member-Applicant could not be required to obtain counsel. Counsel inquired as to whether Mr. and Mrs. Sullivan would be inclined to retain an attorney to present the application, but they indicated that they did not wish to do so. Counsel for the Board then indicated that it would be appropriate to inquire of the Board Members themselves as to whether they could consider the application impartially, and if any Board Member could not do so or otherwise felt that he/she should step down, then any such Board Member(s) at issue should recuse themselves. No Board Members indicated that they were unable to be impartial with regard to the application. Again, it is noted that Mrs. Sullivan had just been

appointed to the Board one month earlier. Counsel for the Board also outlined his understanding of the case law that applied in circumstances such as that here at issue. Mr. Magnuson, the objector referenced above, also raised the issue of “conflict of interest” during the proceedings. Counsel for the Board briefly responded, reiterating the analysis that had been placed on the record on this issue. Mr. Magnuson was nevertheless invited to provide to counsel for the Board any authority that Mr. Magnuson wished to have counsel review on the issue of conflicts of interest under circumstances such as those here at issue, and counsel for the Board indicated that he would review same in advance of the continued hearing in this matter on March 6, 2008.

8. At the time of the continued hearing on March 6, 2008, counsel for the Board advised that he received no materials from Mr. Magnuson, and he inquired as to whether Mr. Magnuson had submitted anything on this issue; Mr. Magnuson responded that he had not done so. Counsel for the Board again outlined his understanding of applicable case law on this issue, and again summarized his opinion that a Board Member is not prohibited from presenting an application pertaining to his or her property to the Board (although a Board Member would be prohibited from appearing as an expert witness or otherwise appearing in a representative capacity), and although it is preferable to have a Board Member-Applicant be represented by counsel, the Board cannot force a Board Member to retain an attorney. Counsel for the Board again indicated that it would be appropriate to inquire as to whether any Board Members felt that they could not be impartial in the consideration of this application. As was done at the commencement of the first hearing, the Board Members were again asked whether they could be impartial in the consideration of this application, and they were advised that if they could not be impartial, or if they otherwise felt that they should step down, that they should recuse

themselves. None of the Board Members indicated that they could not be impartial in the consideration of this application.

9. The Board finds that the applicants propose to expand their existing single-family dwelling at the site to provide additional living space for their family. The Board finds that the house at the property is quite modest in size, consisting of only 1,473 square feet of habitable floor area. The Board finds that a number of deviations exist at the site; these include: deficient front yard setback (off the Glen Place frontage), with 7.6 feet existing whereas 25 feet is required; deficient lot frontage, with 50 feet existing along the Lake Avenue frontage whereas 70 feet is required (the frontage along Glen Place is 150 feet); side yard setback deficiency of 4.1 feet from the southern property line and total of 11.9 feet from both sidelines, whereas 5 feet and 12.5 feet total are required; and garage setbacks of 2.9 feet and 4 feet, whereas 5 feet is required for each side. Except for the extension of the Glen Place front yard setback referenced below, the Board finds that these existing conditions are not being altered or exacerbated as a result of this application. The Board finds that the proposed expansion of the house includes a two-story addition to the rear of the structure, as well as a covered front porch to the front of same. The Board finds that the proposal requires variance relief for the extension further to the rear of the existing deficient front yard setback from the Glen Place frontage, along with variance relief for excess habitable floor area of 2,376 square feet whereas 2,200 square feet is the maximum permitted in this zone.

10. The Board finds that the applicant has demonstrated both the C(1) ("hardship") criteria and the C(2) ("flexible C") criteria to support granting the relief here at issue; this is so for the following reasons. First, the Board notes that the property is a corner lot, having two "fronts". The dwelling is oriented to face the Lake Avenue frontage, and meets the

required front yard setback from Lake Avenue. One side of the dwelling “fronts” on the Glen Place frontage, and is currently setback only 7.6 feet whereas a 25 foot front yard setback is otherwise required. The applicant proposes to extend this line of the house, parallel to the street, approximately 15 feet further to the rear as more particularly depicted on the plans. Not only does the issue of two “frontages” impact the project, but also the existing lot depth of 50 feet on the Lake Avenue side limits the manner in which the house can be expanded. The Board notes that the lot is long and narrow, having only 50 feet of depth along Lake Avenue, whereas frontage of 70 feet is required, but nevertheless having 150 feet along the Glen Place frontage. The Board agrees with the point made by the applicants that it would be very difficult to conform to the front yard setback from Glen Place, along with the required setback from the southern property line, without creating a very narrow structure. The Board also finds that the proposed excess habitable floor area of 176 square feet is a *de minimis* deviation, and the Board accepts the testimony of the applicants that, because the dwelling is a Dutch Colonial, with a center stairway the essentially divides the structure “in half”, it was difficult to design the proposed expansion around the existing features of the house, and the Board further accepts the testimony that, of several plans proposed by the applicants’ architect, this plan generated the smallest habitable floor area deviation. The Board finds that all of these factors clearly demonstrate “hardship” sufficient to support granting this application.

11. Further, and equally as important, the Board finds that the applicants have placed the proposed rear addition at the location on the site furthest from the neighboring property owner to the south (Mr. Magnuson on adjacent lot 14). Although part of the applicants’ house is currently set back only 4.6 feet from the common property line with lot 14, the proposed two-story rear addition to the structure is located to the northern side



of this property, in line with the Glen Place frontage of the dwelling, and set back approximately 15 feet from the common property line with lot 14 (and well beyond the part of the house now set back only 4.6 feet from that property line). The Board therefore finds that, although the proposed addition will extend the deficient front yard setback along the Glen Place frontage further to the rear, this is preferable to providing a greater setback from Glen Place for the addition, which would in turn decrease the setback of the addition from neighboring lot 14. The Board finds that the proposed location of the addition serves to provide for more light, air and open space between this lot and lot 14 than would otherwise result if the addition were moved further to the south; the Board finds that this advances the purposes of zoning, and that the benefits of same substantially outweigh any detriment that might otherwise result (indeed, for the reasons set forth below, the Board finds that no significant detriment will result from granting this application).

12. The Board finds that no significant adverse impact will result to surrounding property owners as a result of the approval of this application, and the Board further finds that this application can be granted without causing substantial detriment to the public good and without causing substantial impairment of the intent and purpose of the zone plan and zoning ordinance. This is so for the following reasons. As noted above, the Board finds that the proposed excess habitable floor area of 176 square feet is a *de minimis* deviation. The Board finds that same results in large measure due to the design difficulties encountered by the applicants as referenced above, as they seek to increase the size of this rather small house. The Board further finds that such a minor deviation will have no negative impact upon surrounding property owners, and that from a visual standpoint, it is doubtful that one viewing the dwelling from the street would perceive that

there was a slight deviation in habitable floor area. In addition, the Board notes that the site can well accommodate this slight deviation, in that total proposed lot coverage is well within the maximum coverage permitted by ordinance. Further, regarding the extension of the front yard setback deficiency along Glen Place, the Board notes that the side of the dwelling is presently setback only 7.6 feet from this northern property frontage, and that the proposal is to extend the line of the house approximately 15 feet to the rear (as more particularly set forth on the plans submitted into evidence). In addition to this being related to an existing condition at the site, the Board notes as referenced above, that this location for the addition serves to move same away from the nearest neighboring dwelling, which is located on lot 14 to the south. Again, because of the narrow depth of the lot and the layout of the existing house thereon, the applicant is limited in possible locations for the addition, but the Board finds that the proposed location is the preferred location at the site. The Board further notes that the lot frontage along Glen Place is more than twice that required by ordinance (150 feet existing, whereas 70 feet is required), and that this expansive frontage serves to mitigate any adverse impact that might otherwise result from the limited extension of this front yard setback deficiency, allowing for significant open area at both the front and particularly the rear of the dwelling. In this regard, the Board also cites the proposed rear yard setback of 63.67 feet, which is more than twice the required rear yard setback of 30 feet. The Board finds that the limited extension of the Glen Place setback deficiency here at issue will create no significant adverse impact, and that it certainly will have no negative impact upon neighboring lot 14 to the south.

NOW, THEREFORE, be it hereby resolved by the Board that it adopts the aforesaid findings of fact, and specifically makes the following conclusions:

1. Based upon the aforesaid findings of fact, the Board concludes that:

(a) the Applicant has established and demonstrated that the premises are of such exceptional size or shape, and/or are so uniquely affected by exceptional topographic or physical features, and/or are so uniquely affected by other extraordinary and exceptional circumstances that the strict application of the zoning regulations would result in exceptional practical difficulties or exceptional and undue hardship; and

(b) the Applicant has demonstrated that the purposes of the Municipal Land Use Law and the Land Use Ordinances of the Borough of Fair Haven, would be advanced by a deviation from the zoning ordinance requirements at issue, and further that the benefits of any such deviation would substantially outweigh any detriment resulting from a grant of the application.

2. Based upon the aforesaid findings of fact, the Board further concludes that granting the approvals set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and zoning plan.

BE IT FURTHER RESOLVED by the Board that the following bulk variance relief be and is hereby granted:

1. Variance relief to permit habitable floor area of 2,376 square feet, whereas 2,200 square feet is the maximum otherwise permitted in this zone.

2. Variance relief to permit the extension of the existing front yard setback of 7.6 feet from the Glen Place frontage further to the rear as depicted on the plans submitted into evidence, whereas a setback of 25 feet is otherwise required.

[The Board finds that the following deviations also exist at the site: lot frontage of 50 feet along the Lake Avenue frontage whereas 70 feet is required (the Glen Place frontage is 150 feet); side yard setback of 4.1 feet from the southern property line and 11.9 feet total both sides, whereas 5 feet and 12.5 feet total are otherwise required by ordinance; setbacks of the garage of 2.9 feet and 4 feet, whereas 5 feet is required for each side. The Board finds that these existing deviations are not being altered or exacerbated as a result of this application, and therefore no relief is required, nor is any relief granted with regard to same].

BE IT FURTHER RESOLVED by the Board that any relief not expressly granted by the Board herein, be and is hereby denied.

ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:

**General Conditions**

1. Subject to the development here at issue being undertaken in accordance with the testimony presented to the Board and the plans submitted to/approved by the Board.

2. Subject to the testimony of all witnesses called on behalf of the Applicant being true and accurate.

3. Subject to the Application, all attachments thereto, and all exhibits offered by the Applicant being accurate depictions of that which they purport to represent.

4. The Applicant shall furnish proof that taxes have been paid through the current quarter and through the quarter in which he receives his initial construction permits.

5. Subject to the Applicant paying in full all application fees, review fees, engineering and consulting fees, and escrows.

6. Subject to the Applicant obtaining and complying with the approval of any other reviewing agency having jurisdiction over the Property and/or the Project, including but not limited to the Board of Health, the municipal Engineer, the municipal Fire Official, and any County, State, or Federal agency; provided, however, that in the event that any other agency or authority shall require any changes in the plans herein approved, then any such changes must be submitted to this Board for review and approval. Further, if another governmental agency grants a waiver or variance of a regulation, which same affects this approval or any condition attached hereto, or otherwise requires any changes in the plans herein approved, then this matter shall be brought back before the Board for review of any such action, and the Board shall have the right to modify this approval and/or the conditions attached hereto as a result of any such action.

7. The action of the Board in approving this Application shall not relieve the Applicant from responsibility for any damage caused by the Project, nor does the Board of Adjustment or the Borough of Fair Haven accept any responsibility for the design or the installation of the Project.

**Specific Conditions**

1. Subject to there being be no habitable space in the attic, and subject further to: there being no fixed stairs providing access to the attic (access to the attic shall be gained only by way of a “push up” door or pull down stairs).

2. Subject to the spotlight on the rear of the dwelling being removed and replaced with recessed lights under the cantilevered section of the rear addition.

**ROLL CALL VOTE**

THOSE IN FAVOR:

THOSE OPPOSED:

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Fair Haven at its meeting on \_\_\_\_\_, 2008.

DATED:

\_\_\_\_\_  
, Secretary