

## **FAIR HAVEN ZONING BOARD OF ADJUSTMENT**

### **Regular Meeting Minutes - December 3<sup>rd</sup>, 2020 – Virtual Meeting via Zoom Platform due to the COVID-19/Coronavirus Pandemic.**

The meeting was called to order at 7:18pm by Mr. Lehder, Chair, with a reading of the Open Public Meetings Act Statement (below), followed by the pledge to the flag.

#### **1. ROLL CALL**

Present: Mr. Neczesny, Ms. Quigley, Mr. Ryan, Mr. Ludman, Dr. Laufer, Mr. Kinsella, Mrs. Neff, and Mr. Lehder

Absent: Mr. Ridgeway

Also, Present: Mr. Irene, Board Attorney; Ms. Elena Gable, Board Planner; Mr. James Kennedy PE, PP, Board Engineer.

Mr. Irene, Board Attorney, noted for the record that in addition to the initial Open Public Meetings Act notice issued at the beginning of the year, the Board also issued a supplemental revised Open Public Meetings Act notice that was sent to two newspapers (The Asbury Park Press and Star Ledger) for publication, posted on the Borough website, posted on the front and rear entrances of Borough Hall and sent to the Borough Clerk advising that the Zoning Board meetings would now be broadcast virtually due to the Covid-19 pandemic. This information is on the Borough website with instructions on how to gain access to the meeting. Mr. Irene confirmed with the Board Secretary that there were no members of the public that contacted the Borough with any issues connecting to the meeting.

Mr. Lehder noted for the record that all materials for applications were collected electronically prior to the hearing in preparation for their Zoom presentations. The materials have been posted on the Borough website for any interested parties to view. The applicants were also provided instructional Zoom training sessions by Borough staff, if requested.

Mr. Ridgeway joined the Board at 7:25PM.

#### **2. OLD BUSINESS**

**Bruiser Woods, LLC / Kick Dance Studio – 611 River Road, Block 25, Lot 12, B-1 Zone –** Application for second floor addition to a single-story commercial structure.

Mr. Ludman recused himself from the matter and was removed from the dais as a panelist and made an attendee on the Zoom platform.

Mr. Rick Brodsky, Esq. appeared on behalf of the applicant, Bruiser Woods, LLC. Mr. Jason Fichter, Mr. Anthony Condouris and Ms. Vanessa Berry were also brought over as panelists on the Zoom platform.

Ms. Gable and Mr. Kennedy were both sworn.

Mr. Brodsky announced himself on behalf of the applicant, Bruiser Woods, LLC. He stated that when the hearing concluded last month his client revised her plans based on the feedback from the Board. The major adjustment was pushing the second story addition back from the front

property line and the existing first floor. They believe the new plan incorporates the requests and suggestions from the Board as well as maintains the functionality of the building for the applicant's Use. The proposed second story addition will be set back about nine feet from the first floor and they added a cantilever in the rear of the building which will provide a covered entry for dance students.

Mr. Condouris was sworn and began his testimony.

**Exhibit A-6** – Floor plans and elevations prepared by Mr. Anthony Condouris, Architect dated 01-22-2020 with revisions through 11-17-2020 consisting of 2 sheets.

**Exhibit A-7** – 3D rendering of subject property created by Mr. Anthony Condouris, Architect dated 11-17-2020.

Mr. Condouris stated that the most significant change or revision was pushing the second story back from the first floor by nine feet. Nine feet was chosen, as it would only eliminate one parking space in the parking lot. A balcony was added to the front of the building on the second floor and they removed the front parapet which helped reduced the visual impacts of the building from the street. The added cantilever in the rear is nine feet and creates an area of coverage for the proposed new entrance of the building. The roof would provide an area for the utilities and a parapet is proposed to conceal the mechanicals. They are proposing to keep the existing canopy-mounted sign. The side door will remain, and it will be labeled and used as an emergency exit only. The main entrance will be in the rear of the building and that is the only area where they are proposing a reception desk; there will not be a reception area at the front of the building.

Mr. Lehder asked if the square footage stayed the same based on the proposed changes.

Mr. Condouris stated that the square footage increased by a few square feet because of the new configuration.

Mr. Kennedy asked if there was possible storage under the mid-landing for the refuse bins.

Mr. Condouris stated that the stairwell is fire rated and it would now be ideal to add a storage area under the stairs.

Mr. Kennedy was satisfied with that response.

Mr. Lehder asked what variances are triggered based on the proposed plans.

Mr. Brodsky stated that the variances are Floor Area Ratio and the parking deficiency.

Mr. Fichter was sworn and then stated the front yard and side yard setback variances are also still there but have been reduced with the push back of the second story.

Mr. Fichter began explaining the site plan revisions and provided the following exhibits.

**Exhibit A-9** – Preliminary and Final Site Plan prepared by Jason Fichter of InSite Engineering, dated 03-06-2020 with revisions through 11-17-2020, consisting of 3 sheets.

**Exhibit A-10** – Color rendering of Site Plan prepared by Jason Fichter of InSite Engineering, dated 11-12-2020 with revisions through 12-03-2020.

Mr. Fichter continued with the change of the ADA compliant parking space from 5 ft. x 11 ft. to 8 ft. x 8 ft. He stated that having an 8-foot hatched out aisle would allow for more room to make a turn in the parking lot. A light pole was added that will cast light at the far end of the parking lot and will also provide light at the end of the driveway into the street. The light pole will not cast light onto the neighboring properties across the street.

Mr. Kennedy requested the light pole be shifted about seven feet towards the building, so it lines up with one of the parking stalls.

Mr. Fichter stated he could make that adjustment.

Ms. Gable asked if the new light pole could be set to a timer after the building is no longer in use.

Mr. Fichter stated they could add a timer and set to go off 30 minutes after the last person leaves the studio.

Mr. Kennedy stated that he is satisfied with the proposed changes and site plan.

That completed the applicant's testimony.

Mr. Lehder asked if the applicant had any further comments on a Deed restriction.

Mr. Brodsky stated that the applicant is still agreeable to a Deed restriction should the Board feel it be necessary. He noted that the applicant has no intention of changing the Use of the building.

The Chairman opened the meeting to the Public for questions and comments.

Ms. Alicia Winick, 63 Lake Avenue, Fair Haven was sworn. She stated that her daughter has been a student at Kick Dance Studio for five years. Ms. Vanessa has contributed to education of the Arts to hundreds of Fair Haven children and has provided them a safe place for these children to grow and explore. Vanessa takes great pride in her business and its space, she is a pillar in the community. She believes this studio expansion will be a great addition to the downtown area of Fair Haven. Ms. Winick believes that the changes made to the plans have more than accommodated the Boards concerns. She does not want to lose such an important business in Fair Haven and she strongly requests that the Board approve the Kick Dance Studio application.

There were no further questions or comments from the Public.

The Board proceeded with deliberation.

Mr. Neczesny stated he really liked the changes to the plans as they covered all of his concerns, he had based on the original plans submitted. He likes the balcony but not the awning. But as the awning is preexisting, he doesn't feel it is necessary to change what is already there.

Mrs. Neff stated that she likes the way the awning looks with the balcony. She thinks the new plans are much more attractive than what was originally presented. The visual differences are very significant and decrease her concerns with the building being so close to the street.

Dr. Laufer is very happy with the redesign but he still has a concern with the parking. He would like to see a Deed restriction requiring a Use similar to a dance studio to prevent any future parking issues.

Ms. Quigley asked if there was a Change of Use in the future, would it trigger a review by the Borough.

Mr. Lehder stated that under the existing Ordinances, even if the Change of Use were a permitted Use; it would still trigger a review from the Zoning Office. If it is an exempt development, the Zoning Officer could approve the Change of Use. If it was not an exempt development, the Use would be required to come before a Board for the Change of Use and the site plan would be reviewed. He agrees with Dr. Laufer in that a Deed restriction could make it clear that a deviation was granted with full consideration of the specific Use and that the Zoning Board or Planning Board would have the authority to change the Use on a case by case basis.

Mr. Kinsella agrees with the other Board members. He commends the applicant and her team for working with the Board and making the proposed changes. He likes the new plan and the addition of some green space in the parking lot area. He thinks the Deed restriction would address some of the Board member concerns with regard to parking but he also thinks if a new business were to take over the space in the future, a high volume business would not open in this location based on the limited parking.

Ms. Quigley has concerns with adding a Deed restriction to a small business owner. She believes it is up to the Town to enforce any Change of Use. She is not in favor of the Deed restriction but does like the new plan as presented with the changes.

Mr. Ridgeway believes the changes were well thought out and done well. He commends the applicant and her professionals. He agrees with Ms. Quigley and does not think a Deed restriction is necessary. He is also okay with the front awning and sign.

Mr. Ryan stated that he agrees with the other Board Members and appreciates all of the changes that were made to the proposed plans. He believes this business is going to add a positive space in Fair Haven for many years to come.

Mr. Lehder stated that an approval should have the following conditions. If the awning needs to be rebuilt during construction, it is required to be rebuilt within the property boundary. Include the 8x8 handicap parking stall, the new location of the light pole in the rear as specified by Mr. Kennedy, the light pole is required to be set to a timer and should be turned off daily after the building is no longer in use. Another condition is that there will be no outside handle on the side emergency exit door.

MOTION by Ms. Quigley, second Mr. Neczesny to approve the Bruiser Woods, LLC application as presented with the conditions set forth during the hearing and without the Deed restriction. The approval includes a condition that the relief was granted based upon the dance studio's Use and the parking variance was generated by this Use or a similar Use.

In Favor: Neczesny, Quigley, Ridgeway, Ryan, Laufer, and Kinsella

Opposed: Mr. Lehder

Mr. Ludman rejoined the Board and Mr. Kennedy left the meeting at 8:50 pm.

### **3. NEW BUSINESS**

**Gaiero – 8 Hendrickson Place, Block 46, Lot 12, R-10 Zone** – Application for a renovation of the existing half story cape cod into a two-story colonial style house.

Mr. and Mrs. Gaiero were brought over as panelists as well as their professional architect Mr. Ron Grammer.

Mr. Irene stated that the notice material was review and approved at the last meeting. The matter was carried to tonight's meeting without the necessity of re-notice.

Ms. Gable, Professional Planner, was sworn.

Mr. Gaiero of 8 Hendrickson Place, Fair Haven was sworn.

Mrs. Lara Robby of 8 Hendrickson Place, Fair Haven was sworn.

Mr. Ron Grammer, 241 Maple Avenue, Red Bank was sworn.

Mr. Gaiero began his testimony by stating that he and his family moved into Fair Haven about four years ago. The one and half story cape was enough room when they first moved in but now that his children are growing, they are requested to build upon the existing footprint of the home and turn it into a two-story colonial style home. They are proposing to bump out the back of the structure where there is currently a deck; it would give them four bedrooms upstairs. Currently there is a master bedroom on the first floor that is being used as an office and homeschooling studio. The two bedrooms upstairs are being used as bedrooms for the family of four. They are requesting to convert the one and half story cape into two full stories but keep the existing footprint. They would also like to expand the kitchen and add a mudroom.

Mr. Grammer began on behalf of the applicant stating that the existing lot is undersized at 7,400 square feet where 10,000 is required for the Zone. The frontage is existing at 50 feet wide where 75 feet is required. The depth of the lot is 146 feet where 100 feet is required. The front yard setback is required at 30 feet and is existing at 21.5 feet. The rear yard setback is 30 feet; there is no issue with this setback with what's proposed. The side yard setback is required to be 10 feet and currently the house is 5 feet off the property line. The addition at the rear would align with the existing house and therefor would not conform. Maximum Floor Area Ratio is permitted up to 0.28, currently at 0.22 and they are proposing a FAR of 0.38 with the second-floor addition. The property does and will comply with building coverage; 35% is required and they are currently at 16.5%. They are proposing 22.4% of coverage. The main concerns would be front yard setback, side yard setback and the Floor Area Ratio.

**Exhibit A-1** – Two-sheet set of Floor Plans and elevations entitled, *Alterations and Additions for the Gaiero Residents, 8 Hendrickson Place*, prepared by Ron Grammer dated March 6<sup>th</sup>, 2020 with a revision date of March 19<sup>th</sup>, 2020.

Mr. Grammer stated that the existing first floor is 1,068 square feet; the second story is 594 square feet for a total of 1,662 existing square feet. They are proposing to add an additional 390 square feet for the kitchen and the mudroom on the first floor. They are also proposing 758 square feet to the second floor for a total of 1148 square feet. 2,810 square feet is the total proposed after alterations and a Floor Area Ratio from 0.22 to 0.38.

Mr. Ryan asked if there was an exacerbation of an existing nonconformity in the front of the house with what's proposed.

Mr. Grammer stated that currently the house is 21.5 feet from the front property line, and they are proposing to push back the second story to 26.31 feet from the front property line so it will not comply but it is set back farther than the first story.

Mr. Lehder asked if there was a functional advantage to having the kitchen at its proposed location verses flipping the addition and moving it to the other side so that the new structure could conform to the side yard setback.

Mr. Gaiero stated that all adjacent lots to his have nonconforming lot sizes at 50 feet wide, which makes it hard to meet the side yard setback. He also stated that moving the kitchen would remove the master bedroom's bathroom and the proposed mudroom. There is a home two lots down from his, 4 Hendrickson Place, which is on a similar size lot that was granted variance relief for similar improvements. If they were to build down the center of the lot and away from the one side yard setback it would create a roofline issue and throw the symmetry off and not look aesthetically pleasing.

Dr. Laufer asked what was in the lot to the right of the subject property.

Mr. Gaiero stated that it is an empty 50-foot wide lot that is owned by the neighbor two lots down on the right.

Mr. Neczesny asked if there were any photos showing the empty lot next door.

**Exhibit A-2** – Four sheets of photos of the subject property taken by the property owner.

Mrs. Neff presented a Google Earth image of the subject property and the empty lot next door as well. She understands why the applicant would want the kitchen on this side of the house as it is the sunny side and there is an empty lot next door allowing for extra light into the space.

**Exhibit B-1** – Google Earth image of subject property and empty lot next door.

Mr. Lehder asked for the existing ridge height and the proposed ridge height with alterations. He also asked for the length of the existing West side of the house and the proposed length.

Mr. Grammer stated that the current ridge height is 21.5 feet and the proposed is 31.5 feet. The existing length of the West side of the house is 35.5 feet and it is proposed at 50.5 feet, adding an additional 15 feet.

Mr. Ryan asked if the applicant looked at other possibilities for the front façade of the house and slopping the roof in the other direction.

Mr. Grammer stated that yes, they did look at different alternatives for the slope of the roof and they tried to work with the existing roofline that has multiple. It also would have made the ridge height too high.

Mr. Gaiero began explaining the proposed alterations to the second floor beginning with a new master bedroom. They opted to not propose a full bath in the master to decrease the side yard setback. They are adding closets in each bedroom, a new guest room and a shared bathroom for the other bathrooms. They are also proposing a laundry room on the second floor. The master bedroom is proposed at 14x16, the other bedrooms are proposed at 10x11, 12x14, and 12x11 all with walk-in closets.

Dr. Laufer asked if the additions would match the existing siding on the outside.

Mr. Gaiero stated that they would be residing the entire house so it will all match.

Ms. Gable asked if the applicant was proposing any changes to the cellar based on the proposed improvements.

Mr. Gaiero stated there are no proposed changes to the cellar.

Ms. Gable asked if they are proposing any landscaping or tree removal.

Mr. Gaiero stated they are not proposing any tree removal but will look to add some shrubs to the left side of the house.

Ms. Gable asked if there were any intention to move the utility connections underground.

Mr. Gaiero stated no to the underground utility connections.

Ms. Gable asked what the concrete pad in the backyard is used for.

Mr. Gaiero stated the previous owners had a garage on top of the pad, but it fell into disrepair and removed the garage but left the pad.

Mr. Ludman stated that he is struggling with the proposed Floor Area Ratio. He thinks the 0.38 is a lot over the cap even based on the R-7.5 Zone. He asked if there were other options to reduce the ratio.

Mr. Grammer stated they would have to reduce the area of the proposed second story. But he is not sure they could get the number of bedrooms that the applicant wants if they reduce the second story anymore, the rooms are already relatively small in size.

Dr. Laufer stated that what is proposed with this application is not too different from the rest of the neighborhood. Most lots in this location are the same size as the subject property and have been built similar to what's proposed with this application. He doesn't think the finished product would be out of character with the neighborhood.

Mr. Neczesny stated that there seems to only be one or two lots on this street that are actually R-10 size lots. Most lots are undersized for this Zone.

Mr. Ludman agrees that what's proposed is in character with the rest of the neighborhood but does not think the Board has gone this far above the Floor Area Ratio before.

Mr. Neczesny agrees with Mr. Ludman and thinks the Floor Area Ratio could possibly be reduced.

Mr. Grammer stated that the house currently has a FAR of 0.22, if they were to change the proposed ratio from 0.38 to 0.35, it would reduce the addition by about 250 square feet or 1,100 square feet to around 900 square feet.

Mr. Gaiero stated that as it stands the house does not conform in any way to the character of the other homes in the neighborhood. He believes that taking on this project and completing what they are proposing will add value to the neighborhood and bring his home in line with his neighbors. He does not see any negative impact to his neighbors especially since there is an empty lot next door. He is trying to work with what exists and not demolish the house so they can keep some of the charm of the house. They are just trying to make a modern home to fit his family's needs. There are three existing nonconformities on the lot, and he does not believe they are exasperating them too much.

The applicant stated he was done with his testimony.

The Chairman opened the meeting to the Public for questions and comments.

Mary Williams, 12 Hendrickson Place, Fair Haven was sworn – she has lived in her home for 54 years. Her and her husband purchased the empty lot next door, between her home and the subject property, from the Borough about 40 years ago. She intends to stay in her home for the rest of her life and has no intention of selling or building on the empty lot. She stated that the Gaiero's are a wonderful family and a great addition to the neighborhood and Fair Haven. She is in favor of their application and likes what they are proposing for their addition. The current subject property house does not fit into the neighborhood. She herself has added two additions to her current home and went through the variance process as well. The proposed additions would be an asset to the neighborhood and would fit in with the rest of the houses on the street. Mr. Lehder asked Ms. Williams if the empty lot is in the same name or trust as the original lot she owns.

Ms. Williams stated that the empty lot is in her name, she pays two separate tax bills and she believes it is considered a separate lot.

Ms. Quigley asked Ms. Williams if she had any negative feelings for what's being proposed by the applicant. More specifically with how close the proposed addition is to her empty lot.

Ms. Williams stated that she has no problems at all with what is proposed.

Alfred John Schiavetti III, 853 River Road, Fair Haven was sworn – stated that with applications that have vacant land adjacent to it, like the Gaiero’s, the Board normally asks if there is a possibility to purchase any of that land to avoid any of the requested variances.

Mr. Lehder stated that there is content in the MLUL stating what Mr. Schiavetti just commented on regarding vacant land.

Mr. Irene asked the applicant if they explored purchasing the vacant land next to them.

Mr. Gaiero stated that he proposed that question to the Borough employees to understand the process but has not asked his neighbor.

Mr. Irene stated the question the Board may want to consider would be; could the variances be eliminated with the acquisition of the land next door if it was available for purchase.

Mr. Ridgeway is struggling with the proposed Floor Area Ratio as well as the five-foot side yard setback.

Mrs. Neff stated this is a unique situation with the empty lot next door but she’s not sure if they are asking too much of the applicant by asking them to try and purchase land next door. She wants to know if this is a reasonable request.

Mr. Lehder stated that the acquisition language is stated in the MULLU. If the applicant were to come back to the Board and state that they tried to acquire the land, but the land was not available for purchase; that would be a hardship the Board could consider to grant the relief the applicant is requesting.

Mr. Kinsella stated that like a lot of lots in town, this lot has hardships with it being undersized. He does not think what the applicant is proposing is out of character with the rest of the neighborhood. He asked about the concrete pad and what it was currently being used for, as he would like to see some of the impervious coverage removed if possible.

Mr. Gaiero stated that there is currently an 8x12 shed on the pad and they are currently in the process of getting zoning approval. The shed takes up about half of the pad and they could possibly remove some of the pad if the Board thinks it is necessary.

Mr. Lehder asked the applicant if he would like to continue with a vote from the Board or if he would like to take some time to speak with his neighbor, review his plans and come back at the next meeting and propose some changes based on the Board’s comments.

Mr. Gaiero stated that he would like to carry to the January 7<sup>th</sup>, 2021 so he can review his plans and speak to his neighbor regarding the empty lot.

MOTION by Mr. Lehder, second Mr. Neczesny, to carry the application to the January 7<sup>th</sup>, 2021 meeting without the necessity of re-notice and subject to the stipulation from Mr. Gaiero confirming an extension of time in which the Board has to act.

In Favor: Neczesny, Quigley, Ridgeway, Ryan, Ludman, Laufer and Lehder

Opposed: None

**Anderson – 81 Riverlawn Drive, Block 26, Lot 07, R-30 Zone** – Application for an addition to the existing dwelling.

Mr. Mark Aikins, Esq. was brought over as a panelist on behalf of the Anderson application. They were prepared with three witness tonight but as the Board has been listening to testimony on two other applications for four hours, they are requesting to carry to the January 7<sup>th</sup>, 2021 hearing without the necessity of re-notice.

Mr. Irene stated that the application re-noticed for tonight's meeting and he has reviewed the notice material, and all appears to be in order.

MOTION by Mr. Lehder, second Mr. Neczesny, to carry the Anderson application to the January 7<sup>th</sup>, 2021 meeting without the necessity of re-notice and subject to the stipulation from Mr. Aikins confirming an extension of time in which the Board has to act.

In Favor: Neczesny, Quigley, Ridgeway, Ryan, Ludman, Laufer and Lehder

Opposed: None

#### **4. ADMINISTRATIVE ITEMS**

MOTION by Mr. Neczesny; second Ms. Quigley, to approve the minutes from the November 12<sup>th</sup>, 2020 meeting.

In Favor: Neczesny, Quigley, Ridgeway, Ryan, Ludman, Laufer and Lehder

Opposed: None

MOTION by Mr. Neczesny, second Dr. Laufer to adopt the Resolution adopting the 2019 Annual Report of the Zoning Board of Adjustment subject to the one margin correction noted.

In Favor: Neczesny, Quigley, Ridgeway, Ryan, Ludman, Laufer and Lehder

Opposed: None

#### **5. PUBLIC COMMENT**

No questions or comments from the Public.

MOTION to adjourn unanimously by voice vote.

Meeting adjourned at 11:09 PM.

Respectfully submitted,  
Jennifer Johnson, Board Secretary

#### **Public Announcement of Compliance**

**This is a regular meeting of the Fair Haven Zoning Board of Adjustment. Adequate notice of this meeting has been given pursuant to the provisions of the Open Public Meetings Act. At the time of the Board reorganization in January of this year, the Board adopted its regular meeting schedule for the year. Notice of the schedule of the Board's regular meetings was sent to and published in the Asbury Park Press, and was also sent to the Two River Times and the Star Ledger. Tonight's meeting was listed in the Notice of the schedule of regular meetings. That Notice was also posted on the bulletin board in Borough Hall, and has remained continuously posted there as required by the Statute. In addition, a copy of the Notice is and has been available to the public and is on file in the Office of the Borough Clerk. A copy of the Notice has also been sent to such members of the public as have requested such information in accordance with the statute. Adequate notice having been given, the Board Secretary is directed to include this statement in the minutes of this meeting.**