

FAIR HAVEN ZONING BOARD OF ADJUSTMENT

Regular Meeting Minutes May 2, 2019

The meeting was called to order at 7:17 by Mr. Lehder, Chair, with a reading of the Open Public Meetings Act Statement (attached), followed by the pledge to the flag.

1. ROLL CALL

Present: Mr. Neczesny, Mr. Schiavetti, Mrs. Quigley, Mr. Ryan, Mrs. Ylagan, Mr. Ridgeway, Mr. Ludman, Mr. Lehder

Absent: None

Also Present: Mr. Irene, Board Attorney, Ms. Gable, Board Planner

Mr. Lehder stated this was the 2nd hearing of the appeals of the application for Dunkin Donuts. The Board heard Mr. Bruno's testimony and was in the process of Mr. Gasiorowski's cross examination. Ron Gasiorowski announced his appearance on behalf of Mr. Reger. Michael Convery announced his appearance on behalf of Mrs. O'Reilly and Adam Garcia announced his appearance on behalf of the Applicant. Mr. Gasiorowski asked the Board to allow Mr. Convery to make a comment prior to his continuing.

Mr. Convery stated that at the previous meeting he completed Mr. Simpson's testimony but it was rushed. After seeing the transcript he would like to put him back on for some additional time in lieu of a rebuttal. He wants to mark additional material – prior ordinances from 1972, 1973 and 1996 code books. Mr. Garcia objected to reopening. Mr. Convery stated he did not have the opportunity to cross Mr. Poruchynsky. Further discussion continued regarding the need for reviewing prior ordinances. It was noted that Mr. Poruchynski referred to reviewing historical data but the prior ordinances were not cited. Mr. Lehder suggested continuing with Mr. Gasiorowski's cross, then the Board will discuss further. Mr. Convery cited Cox on principles of interpretation.

Nicholas Graviano, previously sworn. In response to Mr. Gasiorowski's questions he stated he had not read the transcript of the last meeting. He acknowledged they were discussing the definition of drive-in. He has not reviewed other material. He does not agree that categories 1, 2, and 3 aren't relevant – he believes the client fits category 2. In no way does the proposal meet the definition of drive-in. If it were a drive in it would not be permitted. He did not read the traffic report. Mr. Garcia objected to the mention of the traffic report. Mr. Graviano continued answering questions. He did not make an attempt to determine the percentage of people carrying out their orders; no part of the definition requires a quantitative analysis. He spoke with the applicant regarding Dunkin's operation. Mr. Gasiorowski had no further questions.

Mr. Convery wanted to re-cross. Mr. Garcia objected. He asked Mr. Graviano if he ever examined exceptions. He stated there is a common thread running through categories 2 & 3 involving vehicles. He asked if Mr. Graviano reviewed the Master Plan and he stated he read

the 2016 plan. He reviewed the current ordinances, the older ones weren't relevant. He reviewed other permits – Tavolo, the Creamery and the Chinese restaurant. He is not a traffic engineer. Mr. Convery had no further questions.

Mr. Lehder asked Mr. Convery to describe his request. Mr. Convery said he wants to mark the older ordinances into evidence because he believes they are relevant. He is asking for extra time to discuss matters he didn't get to discuss last month. Mr. Convery's letter to Mr. Irene dated 5/2/19 was marked. Mr. Lehder asked if his actions at the last meeting caused him to accelerate presentation of Mr. Simpson's testimony or is he trying to introduce something new. Mr. Garcia stated he didn't see the relevance of prior ordinances. He also objected to re-opening Mr. Simpson's testimony.

Mr. Lehder polled the Board.

Mr. Ridgeway did not think the ordinances were necessary. The presentation was concise and he heard enough. Mrs. Ylagan thought the old ordinances were not relevant but will listen to additional testimony. Mr. Ryan - also no on prior ordinances but ok with hearing testimony. Mr. Schiavetti said the only context of the old ordinances is that the governing body chose to repeal; no to hearing testimony. Mr. Neczesny - no to ordinances and no to additional testimony. Mrs. Quigley would agree to mark the ordinances but agrees they are not relevant; no to additional testimony. Mr. Ludman said this is a matter of legislative interpretation but he is not inclined to allow the ordinance but would allow Mr. Simpson to testify.

Mr. Irene stated they could mark the ordinances as identification, not Board use for interpretation. Mr. Lehder defers to the record; he is inclined to say yes to both. Mrs. Quigley expressed concern of implications if it goes to court.

MOTION Schiavetti, second Neczesny, to mark into record for ID only

In Favor: Neczesny, Ridgeway, Ryan, Schiavetti, Ylagan

Opposed: Quigley

Abstained: Lehder

The following were marked: **Ex. A-3** – ordinance B95, 1972 **A-4** – B99, 1973 **A-5** – code book section 15-3.9, **A-6** – Convery letter to Irene

Michael Simpson, previously sworn. – He presented **Ex. A-7** a sheet with portions of definitions with color coding of exceptions or prohibitions. He stated they all involve vehicles. He stated the majority of users come by cars. The 2016 Master Plan re-examination refers to concerns about traffic. Presenting **Ex. A-8** page 23 of Ex. A-1 he stated that coffee donut shops produce more traffic than any restaurant or fast food. Mr. Poruchynsky's denial letter was reviewed. The meaning of exempt development and the need for a site plan was clarified. When asked how the denial letter applied to incorrect interpretation Mr. Simpson referred to the intensity of use. Mr. Graviano stated that Dunkin meets the 3 prongs. Mr. Convery closed.

Comments from the public

Beatrice Sena, 39 Lake Ave was sworn. She thanked the volunteers and Mr. Lehder for his leadership. Following the Board's suggestion she went to Council. She has reviewed previous Council minutes and the code book and cannot find any record of the definitions. The minutes mention missing items and she therefore questions what is the law? Mr. Lehder stated we are left with the ordinances as they are.

Chris Cole, 123 Grange, was sworn. He too went to the Council meeting. He has a child at Knollwood who rides a bike and he has concern. There are applications for 3 Dunkins in Fair Haven, Little Silver and Red Bank according to Red Bank Green and Red Bank has changed their application to no seating.

Diane Mevorach, 83 Navesink, was sworn. She said they never got to the end of the definition of drive-in. She thinks it is a category 3.

Mary Haynes, Grange Walk was sworn. She talked about children and seniors who ride bikes. Her main concern is the intensity of use. She noted that Tavolo and Chinese Kitchen have full kitchens.

Tracy Cole, 123 Grange, was sworn. She spoke of the importance of biking. The character of the business is important but safety is most important. Town should be thinking about lessening use of River Rd. Referring to Ex.A-7, Dunkin is fast food. Categories 2 & 3 are identical except for vehicular. It can be prohibited.

Rachel Stellar, Fair Haven Rd, was sworn. She asked about the ordinances under discussion and said the ordinance in 1973 prohibited fast food. Mr. Irene gave her the information she requested. Mr. Lehder said there was no hole in the ordinance that would allow the Board to assume something was missing.

Dan Clapp, 79 Navesink Ave was sworn. He stated safety was a concern and intensity should be considered.

Meghan Chrisner – Keefe, 25 Beechwood, was sworn. She asked what happens next and what would happen if the missing ordinance is found. Mr. Irene stated the Board has an obligation to act on an application according to ordinance as presented. It cannot speculate. Can the Board's decision be appealed? Yes.

Tracy Cole asked about the implications for future applications if the Board decides that Dunkin is permitted.

Ruth Blaser, River Rd, was sworn. She said there were 8 Dunkins within 5 miles of Fair Haven. Approval would change the character of the town. The Board should consider quality of life.

There were no further public comments.

The meeting was recessed at 10:20 and returned at 10:30. Roll call indicated that all Board members returned to the dais.

Mr. Garcia, in closing, cited sections of law and stated that neither application is properly before the Board, The objectors are trying to create confusion on an ordinance where there is none. Mr. Poruchynsky's testimony was consistent with the ordinance. Denying Dunkin would indicate other restaurants in town are also not permissible.

Mr. Gasiorowski stated the ordinance was clear that Dunkin is not a permitted use. Tying in category 2 with a drive in is right on point. Whether or not category, a drive in is not permitted. The key word is majority and the need is to focus on that. The definitions section of the code doesn't include categories.

Mr. Convery stated that confusion started when the applicant's attorney went for an exemption. The Dunkin app allows you to order ahead. Mr. Poruchynsky didn't have the details when he made his decision. Then referring to biking, he stated the use is not consistent with the Master Plan. Action tonight will affect where you go in the future. No proofs were provided. Monmouth County wasn't involved.

Mrs. Quigley reviewed the principles of statutory construction. The meaning of words is viewed in context. The majority is significant whether or not there are tables. She supports the appeal. Mr. Ludman stated the ordinance should be clearly delineated but rules are ambiguous. He doesn't think the restaurant should be classified as category 3 or drive in; this would pose risks to other businesses in town.

Mr. Neczesny said that using the idea of majority could eliminate most of the restaurants in town. Traffic was not the issue tonight. He doesn't agree it is a drive-in.

Mr. Schiavetti noted the definitions are not clear. It is not necessarily true that if approved lots of fast food restaurants would follow. Council can change ordinances. Not a drive in. Intensity of use doesn't show up in any definition, no use of term fast food, no reference to ITE, Mr. Poruchynsky's definition is correct.

Mr. Ryan stated he is following Mr. Schiavetti's thoughts. This is not the final say. Mr. Poruchynsky's definition was correct and he doesn't see a reason to overturn it.

Mr. Schiavetti added that Mr. Poruchynsky had the information he needed to make a determination to go to the Planning Board. More information and a site plan is needed.

Mr. Ridgeway said he agreed with most of the audience. Traffic is a big issue but he doesn't think Dunkin would be adding 200 cars/hour. Mr. Poruchynsky's determination was correct.

Mrs. Ylagan did not comment.

Mr. Lehder expressed disappointment that people come to meetings only when they are upset; in the end there is a process. He is glad people went to the Council. There is a need for discussion regarding whether ordinances meet peoples' needs.

MOTION Neczesny, second Ridgeway, to uphold the Zoning Officer's interpretation of the rules

In Favor: Neczesny, Ridgeway, Ryan, Schiavetti

Opposed: Quigley, Ylagan

Abstained: Lehder

MOTION Ryan, second Ylagan, to approve the minutes of the February meeting

In Favor: Quigley, Ridgeway, Ryan, Schiavetti, Ylagan, Ludman, Lehder

Opposed: None

MOTION Neczesny, second Ryan, to approve the minutes of the April meeting
In Favor: Neczesny, Quigley, Ridgeway, Ryan, Schiavetti, Ylagan, Lehder

MOTION to adjourn made, seconded and approved unanimously by voice vote.

Meeting adjourned at 11:25 PM.

Respectfully submitted,

Judy Fuller,
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.