



June 22, 2018

Ms. Patricia Carcone
Planning Board Secretary
Hoboken Planning Board
94 Washington Street, Second Floor
Hoboken, NJ 07030-4585

Re: **Ordinance B-40**: An Ordinance To Amend And Supplement Chapter 196 Of The Hoboken City Code Entitled "Zoning" At §196-6 "Definitions" And §196-24 Feather Flags"

Dear Ms. Carcone,

The above referenced matter was referred to our office for review and comment in advance of the Hoboken Planning Board's July 10, 2018 Public Hearing. Our review included the following:

- Jun 8, 2018 Correspondence from the City Clerk to the Hoboken Planning Board appropriately referring this matter for review and comment.
- **City of Hoboken Resolution #CD2**, which referred this matter to the Hoboken Planning Board for a *Master Plan Compliance Review*.
- **Ordinance B-40**, which was introduced by the Hoboken Governing Body on June 6, 2018.
- Hoboken's *2004 Master Plan*
- Hoboken's *2010 Master Plan Re-Examination Report*
- Hoboken's *2018 Master Plan Re-Examination Report*
- Hoboken's *2018 Land Use Element*
- *City of Hoboken Zoning Ordinance; Chapter XXIV*
- *2015 & 2016 Hoboken Zoning Board of Adjustment {ZBA} Annual Reports*

Issues

1. Is the proposed Ordinance Amendment B-40 *substantially consistent* with the Hoboken Master Plan pursuant to 40:55D-26(a) of the ***Municipal Land Use Law***?
2. Are there any inconsistencies that should be reported? If so, are there any recommendations for those inconsistencies that the Board should consider?



Short Answers

1. Yes and No. In our opinion, inclusion of *Definitions* in the proposed Ordinance Amendment B-40 is consistent with the Plan but the changes to the *Yard Regulations* do appear substantially inconsistent with the **2018 Master Plan Re-Examination Report & 2018 Land Use Element**. Specifically, the proposal to exempt the projection of single rear egress stairs from the lot coverage would conflict with the Master Plan recommendations for maximum lot coverage, rearyard regulations and preservation of the “donut hole”.
2. Yes. Given the recent adoption of the **2018 Re-Examination Report & Land Use Element**, the Board should consider recommending that the issue of projections into the rearyard and exemptions from lot coverage be comprehensively addressed in the new Zoning Ordinance as recommended in the **Land Use Element** to avoid conflicting language in the Code and create a more “user-friendly zoning code”.

Proposed Ordinance Amendment

The proposed Amendment to this Section of the Ordinance proposes the following changes to Chapter 196:

1. **§196-6 “Definitions”;**
 - a. The following definition for a *Fire Escape* is added: *A structure or device that provides for a means of egress and access for rescue in the event of a fire or other emergency. The minimum size requirements must comply with the Rehabilitation Subcode (N.J.A.C. 5:23-6 et. Seq.) and the attached Formal Technical Opinion No.: 3 (“FTO-3). Under no circumstances shall a fire escape be used as outdoor living space.*
 - b. The following definition for a *Fire Stair* is added: *An open staircase affixed to the exterior of a building, and servicing all floors, for the purpose of providing secondary egress in lieu of interior stairs required for the same purpose.* {NOTE: Our copy of the Ordinance included the following handwritten sentence: Under no circumstances shall a fire stair be used as outdoor living space.}



- c. The following definition for a *Rear Egress Stair* is added: *A single staircase that connects the lowest habitable floor to the yard consisting of a three foot by three foot landing and stairs that do not exceed three feet in width. See also "fire stair".* {NOTE: Our copy of the Ordinance included the following handwritten sentence: Under no circumstances shall a fire stair be used as outdoor living space.}
2. **§196-24 "Yard Regulations"; {Proposed language is highlighted}**
 - a. §196-24(D)(1) (a) is amended to permit the projection of architectural features into required yards without counting as lot coverage as follows:
 - i. (a) Open fire escapes or fire stairs (where permitted by BOCA, IBC, UCC or other relevant building codes or ordinances): four feet six inches into required side yard; and a single rear egress staircase that connects the lowest habitable floor to the yard.
 - ii. However, a fire escape or fire stair of any kind that exceeds the minimum size requirements set forth in FTO-3 or the IBC and/or UCC as applicable, and a rear egress stair that exceeds three feet in width shall not be exempt and shall count as lot coverage.
 - b. NOTE: This section of the Code is under *Article VIII. Supplemental Lot, Height and Yard Regulations*. The intent of this article is to supplement those regulations in Article III and other sections of this chapter and are to be applied in conjunction with such other regulations.

Context for Review by the Hoboken Planning Board

In accordance with N.J.S. 40:55D-62a, a zoning ordinance may only be adopted *after* the planning board has adopted the land use and housing plan elements of a master plan. This is required because; the ordinance must be consistent with that plan. In order to meet the requirement of consistency, any proposed *zoning ordinance* or amendment thereto must be referred by the governing body to the planning board. The statute requires that every zoning ordinance must "*either be*



substantially consistent with the land use plan element and the housing plan element of the master plan, or designed to effectuate such plan element."

Analysis of Consistency Between the Proposed Ordinance Amendment & the Hoboken Master Plan(s)

A review of the *2018 Re-Examination Report, 2018 Land Use Element, and 2010 Re-Examination Report* provides evidence of general and specific inconsistency between the proposed Ordinance Amendment and the Master Plan(s). The general inconsistency is identified in the Plan's language about protecting the *donut hole*. This language is found in each of the Plans referenced below and reflects the municipality's desire to preserve, to the greatest extent possible, the rearyard spaces. Exemption from the lot coverage calculation for architectural projections into the rearyard would be contrary to that desire. Specific inconsistencies are identified in the 2018 Land Use Recommendations.

2018 Master Plan Re-Examination Report

- ✚ Preserve the interior "donut hole" in residential blocks. For new development, infill, and building additions on residential blocks, require that building setbacks, lot coverage and rear yard requirements are met so that the interior open space within a residential block (the "donut hole") is preserved.

2018 Land Use Element

- ✚ The *Land Use Element* includes references to the existing *Bulk Standards* for the Residential Districts. These standards do not include references to Fire Escapes, Fire Stairs, or Rear Egress Stairs.
- ✚ The *Land Use Element* does, however, offer the following relevant *Recommendations*:
 - Ensure that new and infill development within the City's central residential neighborhoods is built to a scale that matches Hoboken's pattern of historic brownstone development.
 - Preserve the interior "donut hole" in residential blocks.
 - Adopt a new, user-friendly Zoning Code;



- The Code is in need of a substantial overhaul to simplify the zoning map; adjust the boundaries of existing zones; create new zoning districts; incorporate adopted Redevelopment Plans; and address inconsistencies.
- Further, the Zoning Board of Adjustment, in its most recent Annual Reports for 2017 & 2017, recommended a number of changes to protect rear-yard open space; establish lighting, landscape and streetscape standards; and incorporate improvements routinely requested that are not in the Zoning Ordinance.

✚ *Section 6.2 - Proposed Land Use And Zoning Districts* provides recommendations for the Zoning Map and the Zoning Districts. For the residential districts, the recommendations for the Maximum Coverage are consistent with the previous Plans. As part of the *Additional Considerations* portion, the recommendation to preserve the “donut hole” via rearyard regulations is repeated.

City of Hoboken 2010 Master Plan Re-Examination Report

Development Regulations: Zoning And Redevelopment:

- Adopt a Unified Land Development Ordinance combining the zoning ordinance, the subdivision ordinance and various development regulations now contained in various chapters of the City Code.
- Utilize the Zoning Board of Adjustment’s Annual Report of variances in preparing zoning amendments; create a priority zoning amendment list based on the “D” variance requests for issues arising from court cases or those which are generally deemed acceptable (e.g. commercial use of cellar for restaurant kitchens, mixed-use in all zones)

Review of the 2015 & 2016 Hoboken ZBA Annual Reports

Based upon our review of both Annual Reports, none of the recommendations for consideration by the City Council refers to *Yard Regulations*.



Conclusion

We offer the following conclusions & recommendations:

1. While the inclusion of definitions would appear consistent with the Master Plan's recommendation to make the Code more user-friendly, the exclusion of the architectural features from the lot coverage is contrary to the Plan.
2. We also note that the proposed Amendment is not supported by the *Annual Reports* prepared by the Zoning Board. As mentioned previously, consistency with the Master Plan may also be informed by the Zoning Board's Annual Reports.
3. The primary concern is that the exemption from the lot coverage for the proposed projections into the rear yard are inconsistent with the Plan's recommendations for the preservation of the "donut hole" and proposed recommendations for the District Standards.
4. Since the *2018 Re-Examination Report* specifically recommends the adoption of a new Zoning Code, we submit that this issue should properly be addressed during that planning process in order to maintain consistency with the overall zoning code; i.e., to avoid the perpetuation of inconsistent and conflicting language/sections of the Code referenced in the *2018 Re-Examination Report*. Minor individual amendments to the Code should be avoided until the recommended overhaul is completed.
 - a. **COMMENT:** For example, §196-28.1 (A)(3) of the Code, provides that egress stairs within the rear or side yard shall be considered accessory to the principal building so long as they are no more than three feet in width.
 - b. **COMMENT:** §196-6, however, includes as part of the definition for **Accessory Use, Structure or Building** the following: *...other than in the case of a planned development or a wireless telecommunications antenna a defined and regulated in this chapter, if an accessory structure or building is attached to the principal building, it shall be considered as part thereof.*



105 Grove Street, Suite 1
Montclair, NJ 07042
www.Nishuanegroup.com
973.954.2677

- c. **COMMENT:** This is an example of the current Code's complexity; i.e., it is not user-friendly because one must cross-reference sections of the Code.

Respectfully submitted,

George Wheatle Williams, PP/AICP