

## **Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

### Meeting Minutes

#### **I. ADMINISTRATIVE BUSINESS**

##### **1. Quorum/Attendance**

Kenneth Kendall opened the December 5, 2023, meeting at 6:00 PM. He introduced the board members and read the protocol for Zoning Board of Appeals meetings and Open Public Meeting Law.

For this meeting, the Zoning Board of Appeals convened in-person, as well as by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date; some attendees participated by phone and video conference and used chat on Zoom.

**Quorum/Attendance, Town Hall:** Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Patrick Carr, and Andrew Romano

**Zoom:** Nicholas Sylvia

**Absent:** None

**Building Commissioner:** Randy Bassett

**Recording Secretary:** Stephanie Fidalgo

##### **2. Acceptance of the November 7, 2023 and November 21, 2023, meeting minutes**

Ruy daSilva made a motion to accept the minutes of the November 7, 2023, meeting, and was seconded by Andrew Romano.

Mr. Carr arrived at 6:03 PM and was able to participate in this vote.

The motion passed unanimously via roll call vote. (7-0)

Andrew Romano made a motion to accept the minutes of the November 21, 2023, joint training meeting and was seconded by Daryl Manchester.

The motion passed via roll call vote, with Kenneth Kendall, Ruy daSilva, and Nicholas Sylvia abstaining. (4-0)

##### **3. Rearrangement of the Board / Election of Officers**

Andrew Romano made a motion to postpone the Rearrangement of the Board / Election of Officers to the end of the meeting and was seconded by Daryl Manchester.

The motion passed via roll call vote, with Nicholas Sylvia considered to have abstained due to technical issues on Zoom. (6-0)

#### 4. Proposed 2024 Meeting Schedule

Ms. Fidalgo presented a proposed 2024 meeting schedule to the Board, drafted by her, and approved by the Building Commissioner. Due to 2024 being an election year, the Board could not meet on the first Tuesday in March or November as those were election days. Similarly, the first Tuesday in September was also being considered for state primary elections. As a result, Ms. Fidalgo suggested a schedule that moved the meetings in those three months to the first Wednesday instead.

Andrew Romano made a motion to accept the proposed 2024 meeting schedule and was seconded by Ruy daSilva.

The motion passed via roll call vote, with Nicholas Sylvia considered to have abstained due to technical issues on Zoom. (6-0)

Note: The public hearing notices were read by the recording secretary, Stephanie Fidalgo.

## II. PUBLIC HEARINGS:

1. **REF#: ZBA-023-029: 3 Birchfield Street, Map 24, Lot 280.** Applicant: Brian Slowik Owner: Slowik Family Trust. Applicant seeks a Special Permit for storage of a mobile home and for occasional occupation longer than forty-eight (48) hours consecutively, pursuant to Fairhaven Zoning Bylaw 198-16 Use Regulation Schedule, footnote 8. In accordance with Fairhaven Zoning Bylaw 198-8 Special Permit, A. this permit shall be subject to additional conditions, safeguards and limitations on time, space, and use as the board may reasonably require. — *Continued from November 7, 2023 – Requested to be continued to the February meeting.*

Mr. Slowik had requested in writing a continuance to the February meeting as more time was required to resolve the litigation involving this property.

Patrick Carr made a motion to continue the hearing for 3 Birchfield Street to the February 6, 2024, meeting, and was seconded by Nicholas Sylvia.

The motion passed unanimously via roll call vote with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (7-0).

2. **REF#: ZBA-023-041: 77 Adams Street, Map 25, Lot 30D.** Applicant: Ahmet F. Dirican. Owner: Congregation of the Sacred Hearts. Applicant seeks a Special Permit to convert the existing building into a convalescent home, pursuant to Fairhaven Zoning Bylaw 198-15 Use

Regulations, C. (1). — *Continued from November 7, 2023. Readvertised with revised information.*

Dr. Ahmet Dirican and Ms. Jessica Lopes handed out documents to the board explaining the change of the application to be for a convalescent home with a definition of the term and an outline of the types of services they planned to provide. After the prior meeting, they had met with the Building Commissioner and found that convalescent home better fit the definition of their planned conversion of 77 Adams Street.

Mr. daSilva asked about the length of the term to stay at the convalescent home, with the applicants answering that both short-term and long-term options would be offered. Mr. daSilva also inquired about who would be prescribing medicine to the residents and state regulations and oversight for this type of facility. Dr. Dirican answered that medicine would be prescribed by the residents' general practitioners. As for state regulations and oversight, Dr. Dirican replied that it would not be the same as nursing home requirements as the care offered was not the same.

Mr. daSilva continued, asking about the number of residents with Ms. Lopes answering that there would be 30 beds for long-term stays and 6 beds for short stays and emergency situations. Mr. Romano inquired about traffic generation and Ms. Lopes replied that there would be two staff members working from 7 AM and 9 PM, with the residents having access to on-call urgent care staff via a lifeline system overnight.

Mr. Sylvia requested information on similar models for this type of facility, and Dr. Dirican offered Tripp Towers, Melville Towers, and Olympia Towers of New Bedford as examples of the type of facility they would like to run. Mr. Sylvia asked about contracts for residents, with Ms. Lopes replying that it would depend on the length of care required and if they fit the criteria for residents.

After Mr. daSilva asked if residents were free to come and go, Dr. Dirican said that they were but that many of the potential residents described themselves as homebound. Mr. daSilva had further concerns about the lack of overnight staff, with Ms. Lopes explaining that the doors would be locked at night for safety reasons. Dr. Dirican also mentioned that the charge to stay at the facility would be much lower than a full nursing home.

Mr. Bassett and Mr. Manchester both inquired about the guidelines and criteria for residents and who would determine if someone was qualified to stay at the convalescent home, with Ms. Lopes and Dr. Dirican answering that they would have a screening process in place. Ms. Lopes also explained that there would be a contract signed between the facility and the residents at the time of entrance.

The Board asked about licensing for the facility with Mr. Bassett stating that he would work

with the applicants as they went through the process. When Mr. Sylvia inquired about which state licensing board would regulate the facility, the applicants were unsure but promised that they would follow all regulations and guidelines.

The board opened the floor for public comment. Ms. Renee Bradshaw of 6 Almy Street had concerns about the lack of details.

Mr. Michael Tomko of 8 Almy Street had questions about the exact ownership of the building and management of the facility.

Drawing off those questions, Mr. Carr asked about the goal of the Board in this hearing given the request for a use change, with Mr. Kendall confirming that the Board sought to label and define the facility. Dr. Dirican explained that the definition for Convalescent Home came from the Town's Zoning Bylaws and that the facility would not operate significantly differently than it did as a home for elderly priests. Mr. Carr replied that the Board would still require details and a fuller plan as to how it would operate.

Mr. Sylvia followed up by stating that such facilities would need to be licensed by the Department of Public Health and suggested that the applicants ensure that they would be able to conform to the guidelines and requirements of the Health Care Facility Licensure and Certification before moving forward.

Mr. Carr and Mr. Romano both requested that the applicants provide further information to the Board. Dr. Dirican and Ms. Lopes covered their business plan, emphasizing that without a definition for the facility, they could not move forward to obtain other permits, licenses, or certifications.

Mr. Kendall outlined two options for the applicants – they could either request a vote and if denied be unable to reapply for two years or they could request a continuance to a future meeting to allow for more time to prepare more information for the Board. Mr. Carr explained that the Board would also require further time to do their own research. Mr. Sylvia suggested that the applicants speak to owners of an existing convalescent home to learn more about the process.

Ms. Lopes then requested a continuance to the February meeting and Mr. Romano requested that any additional information be submitted to the Building Commissioner and the Board of Appeals' secretary to be forwarded to the Board ahead of that meeting.

Ruy daSilva made a motion to continue the hearing for 77 Adams Street to the February 6, 2024, meeting and was seconded by Andrew Romano.

Before the vote could be taken, Dr. Dirican was once again instructed to speak with the Building Commissioner to provide further information on the application.

The motion passed unanimously via roll call vote with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (7-0).

- 3. REF#: ZBA-023-047: 83 Hedge Street, Map 16, Lot 38E.** Applicant: Alicia Pimental. Owner: Eugene Pimental, Trustee of the Eugene P Pimental Revocable Trust. Applicant seeks a Special Permit to authorize housing chickens on the property in an RA district, not to exceed 12 chickens and not to include any roosters, pursuant to Fairhaven Zoning Bylaw 198-16, Use Regulation Schedule.

Ms. Alicia Pimental spoke to the board, explaining that she was requesting a special permit for the chickens already housed on her property, having been unaware of the special permit requirement.

Mr. Jarod Ferreira of 9 Jarvis Ave spoke against the petition, citing his concerns with the chickens attracting rodents and the possibility of his dogs eating a poisoned rodent. After finding dead rodents, he informed the Health Office of the issue and they cited Ms. Pimental's chicken coop as a possible factor. Ms. Pimental replied that she did have a rodent trap and allowed her cat to hunt rodents. Additionally, she had worked to keep the food in a safe location to deter the rodents. The board informed Mr. Ferreira that if he had further concerns about rodent issues, he would need to report to the Board of Health.

Mr. Carr inquired as to how many chickens Ms. Pimental wished to keep. She replied that she currently had six chickens. Ms. Fidalgo noted to the Board that 12 chickens was how many residents were allowed with a special permit. Ms. Pimental presented photos of her chicken coop to the Board, explaining that the chickens remained solely in the coop. At the prompting of Mr. Carr, Mr. Ferreira explained the recent resurgence in rodent issues on his property.

Ms. Beatrice Kirklewski of 65 Hedge Street spoke against the petition. She related her own issues with chickens attracting rodents and the rodent repairs required after purchasing her home.

Patrick Carr made a motion to approve a Special Permit to authorize housing chickens on the property in an RA district, not to exceed 12 chickens and not to include any roosters, pursuant to Fairhaven Zoning Bylaw 198-16, Use Regulation Schedule and was seconded by Andrew Romano.

The motion passed unanimously via roll call vote with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (7-0).

The Board and Ms. Fidalgo explained the next steps in the permitting process to Ms. Pimental.

4. **REF#: ZBA-023-048: 9 Sebec Street, Map 28A, Lots 87-88.** Applicant: Derek Camara. Owner: Derek & Stacy Camara. Applicant seeks an approximate 4 ft. 4 in.  $\pm$  Variance for the addition of a new covered front porch to be 15 ft. 8 in. from the front property line as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Derek Camara spoke to the Board. He would like to renovate his house to replace the existing cement stairs with a covered front porch.

There was no public comment.

Mr. Romano asked if Mr. Camara had received an email from Ms. Fidalgo with information on the requirements to be granted a Variance. Ms. Fidalgo confirmed having sent an email to Mr. Camara's on-file email the week prior.

Mr. daSilva asked about the existing stairs, with Mr. Camara confirming that it was a set of hollow cement stairs, and he did not plan for the new porch to greatly exceed their length. He noted that the house was built relatively recently and explained his issues with the topography of the lot and the location of the house on the lot relative to the front property line.

Mr. Carr asked for Mr. Camara's reasons for the renovations. Mr. Camara agreed that he was looking to refurbish the porch to be more functional and enjoyable.

Mr. Manchester asked if this property already had a Variance granted for the front granite stairs, but given that it was built before Mr. Bassett was hired and he had not visited the property, he did not have that answer readily available. But Mr. Camara explained that the new porch would not extend out further.

Patrick Carr made a motion to approve an approximate 4 ft. 4 in.  $\pm$  Variance for the addition of a new covered front porch to be 15 ft. 8 in. from the front property line as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Ruy daSilva.

There was a question about which members would vote on the petition, with Mr. Kendall noting that he allowed all members to vote.

The motion passed with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, and Patrick Carr in favor and Andrew Romano against. (6-1).

5. **REF#: ZBA-023-049: 20 Mulberry Street, Map 11, Lot 83.** Applicant and Owner: Cathleen Travassos. Applicant seeks 1. A Variance for the lot coverage of an existing non-conforming lot to be 61% after building a rear deck as compared to the maximum 50% allowed, pursuant to

Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule. 2. A Variance for the building coverage of an existing non-conforming lot to be 42% after building a rear deck as compared to the maximum 30% allowed, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule.

Ms. Cathleen Travassos spoke to the Board via Zoom. She sought to add a deck to the house as part of larger renovations, with the deck planned to connect to the dining room and replace the currently damaged stairs.

Mr. Romano asked if the applicant had sought to find a way to reduce her lot or building coverage, but Ms. Travassos explained that it was not possible given the small size of the property.

There was no public comment.

Patrick Carr made a motion to approve both 1. A Variance for the lot coverage of an existing non-conforming lot to be 61% after building a rear deck as compared to the maximum 50% allowed, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule and 2. A Variance for the building coverage of an existing non-conforming lot to be 42% after building a rear deck as compared to the maximum 30% allowed, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (7-0).

6. **REF#: ZBA-023-050: 36 Francis Street, Map 12, Lot 135.** Applicant and Owner: Jessica Whiteley. Applicant seeks a Variance for the conversion of the detached garage into an Accessory Dwelling Unit on an 8,504 sq. ft. lot as compared to the minimum 22,500 sq. ft. lot size requirement, pursuant to Fairhaven Zoning Bylaw 198-32.1 Accessory Dwelling Units, A.

Ms. Jessica Whiteley spoke to the board. She explained her plans to take the existing 25 ft. by 25 ft. detached garage and convert it into an accessory dwelling unit for her parents. She covered how the garage was in compliance with current zoning bylaws for an accessory structure.

Ms. Whiteley explained that her hardship came from meeting the minimum 22,500 sq. ft. lot size requirement for an accessory dwelling unit and that this hardship was specific to her lot and would be a hardship for anyone seeking to convert the garage given the inherent size of the lot. She hoped that the conversion would be able to be ADA compliant and would be in line with broader planning objectives of providing for aging populations and promoting compassionate land use. The conversion would also not create any major changes in the

neighborhood. When her parents last visited, they had issues with entering her main house and so sought this conversion as a way for them to live comfortably with her.

Mr. Romano and Mr. Sylvia both commended Ms. Whiteley for her detailed presentation.

Ms. Cathy Melanson of 110 Adams Street spoke in favor of the petition, noting the care Ms. Whiteley had for her property and that the conversion would suit the neighborhood.

Andrew Romano made a motion to approve a Variance for the conversion of the detached garage into an Accessory Dwelling Unit on an 8,504 sq. ft. lot as compared to the minimum 22,500 sq. ft. lot size requirement, pursuant to Fairhaven Zoning Bylaw 198-32.1 Accessory Dwelling Units, A and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (7-0).

- 7. REF#: ZBA-023-051: 58 Ocean Avenue, Map 29C, Lots 249-250.** Applicant: Jacob T. Galary. Owner: Daniel Gibbs Jr. Applicant seeks an Administrative Appeal of the Building Commissioner's November 17, 2023, determination that the lot is considered to be unbuildable, pursuant to Fairhaven Zoning Bylaw 198-21 Nonconforming Uses, A.

Mr. Romano recused himself from this hearing as he had a working relationship with Mr. Galary.

Mr. Jacob Galary explained the history of the property, noting that there had previously been a house on the property and a Variance had been approved for building a new 36 ft by 20 ft house. However, the Board had not approved a later revision of that plan and construction was halted. As such, the lot was currently considered to be abandoned, though it did have water and sewer hook-ups and the property taxes still considered it to be occupied. Mr. Galary had planned to build on the lot, but he would need the Administrative Appeal before seeking a Variance.

Mr. Kendall asked about the ownership history of the property, with Mr. Galary answering that it was currently owned by Mr. Daniel Gibbs and he was under an agreement to purchase. Ms. Fidalgo noted that the previous owner – James Gilbert - was cited in the Board's packet. The lot had been vacant since approximately 2010.

Mr. Carr sought to verify if the Board approved the Administrative Appeal and considered the lot to buildable, would the new house conform to the previously approved Variance. Mr. Galary confirmed that it would fit the same previously approved 36 ft by 20 ft footprint. Mr. daSilva asked about the property taxes and Mr. Galary confirmed that it was the same rate as if there was a house on the property for tax purposes.



Mr. Bassett explained that if the Administrative Appeal was approved, Mr. Galary would still have to come before the Board again for approval of Variances for the future house as the lot was still non-conforming for the rural residential district. Ms. Fidalgo explained that the lot was part of a neighborhood of currently undersized lots along Sconticut Neck Road, with their lot lines having been drawn in 1917 and none of which conformed to the current rural residential district zoning requirements.

There was no public comment.

Ruy daSilva made a motion to approve an Administrative Appeal of the Building Commissioner's November 17, 2023, determination that the lot is considered to be unbuildable, pursuant to Fairhaven Zoning Bylaw 198-21 Nonconforming Uses, A and was seconded by Patrick Carr.

The motion passed unanimously with Kenneth Kendall, Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, and Patrick Carr in favor (6-0).

#### **Rearrangement of the Board / Election of Officers**

The Board opened nominations for chair, noting that only Full Members could be nominated. Ruy daSilva and Patrick Carr both nominated Kenneth Kendall for chair.

Kenneth Kendall was unanimously elected chair with Ruy daSilva, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (6-0).

The Board opened nominations for vice chair. Kenneth Kendall nominated Ruy daSilva.

Ruy daSilva was unanimously elected vice chair with Kenneth Kendall, Peg Cook, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor (6-0).

Afterward, Ms. Fidalgo then explained that Mr. Romano had been appointed as a Full Member at the November 20, 2023, Select Board meeting and that the Select Board was still in the process of appointing new associate members.

Andrew Romano made a motion to adjourn and was seconded by Ruy daSilva. All were in favor. The meeting adjourned at 7:36 PM.

Respectfully Submitted,  
Stephanie A. Fidalgo  
Recording Secretary  
Board of Appeals

*Approved, February 6, 2024*