

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK
ROD 2024 MAR 7 AM 8:40**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Kenneth Kendall opened the February 6, 2024, 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, Andrew Romano, Patrick Carr, and Amy Goyer

Zoom: Nicholas Sylvia

Absent: Daryl Manchester

Building Commissioner: Randy Bassett

Recording Secretary: Stephanie Fidalgo

2. Acceptance of the December 5, 2023, meeting minutes

Andrew Romano made a motion to accept the minutes of the December 5, 2023, meeting, and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote, with Ms. Goyer abstaining as she had not been a member of the Board as of that meeting. (5-0)

3. Town Administrator Update and Training

As Ms. Ellison was not on Zoom when this item was originally brought up, Ms. Fidalgo briefly noted that the Board members were requested to sign a form stating that they had either attended or watched the recording of the Training Session the Board had with Town Counsel on November 21, 2023 and would follow the guidelines of the training.

Mr. daSilva made a motion to open the public hearings, and was seconded by Andrew Romano.

The motion passed unanimously via roll call vote. (6-0)

Mr. Kendall welcomed Ms. Goyer to the Board.

Before the first public hearing was opened, Ms. Ellison joined the meeting via Zoom to give her update to the Board. She reminded all the members to watch the training session and ensure that the Board was in compliance with Massachusetts General Law. The Board and the support staff also needed to be more diligent in notifying applicants and abutters regarding their right to appeal decisions. She outlined that the Board needed to follow the five criteria required for granting Variances. Ms. Ellison also welcomed any of the Board members to speak to her individually with their concerns. Finally, she emphasized that the Board's responsibility to uphold the Zoning Bylaws and maintain the state's regulations regarding what constituted a hardship.

Mr. daSilva noted the Planning Board was currently reviewing a number of Zoning Bylaw changes to present to Town Meeting and asked if applicants should be advised to wait until after Town Meeting to submit. Ms. Ellison did not recommend telling applicants when and how they should act and to continue to base their decisions by the code currently in place.

When Mr. daSilva had concerns about the stringency of the Variance criteria and the current Bylaws and the effect that could have on the growth of the Town, Ms. Ellison again emphasized that the Board had to abide by the Zoning Bylaws in place and adhere to State policy and law.

Ms. Goyer asked about possible repercussions for making determinations that went against the regulations, with Ms. Ellison answering that such determinations would be indefensible and a legal liability to the Town.

The Board and the Building Commissioner briefly discussed the differences between granting Variance and Special Permits. Ms. Ellison also outlined a plan for better documentation of if applications met the criteria for a Variance.

Mr. Sylvia and Ms. Ellison discussed how much discretion Board members had over interpreting the Bylaws and the Variance criteria.

Mr. Kendall had concerns regarding Open Meeting Law, but it was noted that Ms. Ellison's update was included on the agenda.

A member of the public, Jacob Galary of 8 Tanner Lane, brought up his own concerns with the stringency of the Variance criteria and the role of the Board. Ms. Ellison replied that the Board and its role were defined in MGL and Mr. Sylvia brought up the discretion the Board could apply to different, individual situations.

At that point, there were no further questions from the Board for Ms. Ellison and the meeting continued.

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

II. PUBLIC HEARINGS:

1. REF#: ZBA-023-007: 148 Dogwood Street, Map 43A, Lots 153-155. Applicant and owner: Nancy Santoro. Applicant seeks 1. A Variance from the maximum building coverage of 15% to a proposed approximate 22±% after the construction of a 24 ft. by 30 ft. semi-detached garage connected to the existing house via a breezeway and deck, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. An approximate 7 ft ± Variance for the garage to be 23.1 ft from the front setback as compared to the minimum 30 ft setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — Last Continued from November 7, 2023. Readvertised with updated information for May 2, 2023 and again for February 6, 2024. ***Applicant requests to be withdrawn without prejudice.***

Ms. Grace Barns of 141 Dogwood Street asked about the withdrawal process, with Mr. Kendall explaining that it meant that this current application would be totally withdrawn but that the applicant could reapply and restart the process at a later date.

Ruy daSilva made a motion to approve the withdrawal of the Petition for 148 Dogwood Street and was seconded by Andrew Romano.

The motion passed unanimously via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer in favor (6-0).

2. 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. — Last continued from December 5, 2023, ***Applicant requests to be continued to the March 6, 2024 meeting.***

Ms. Fidalgo noted the continuing litigation regarding this property as the reason for the continuation request.

Andrew Romano made a motion to continue the hearing for 3 Birchfield Street to the March 6, 2024, meeting and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer in favor (6-0).

3. 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). — *Last continued from December 5, 2023. Readvertised with revised information for the December 5, 2023 Meeting.*

Dr. Ahmet Dirican and Ms. Jessica Lopes presented their application to the board. The applicants had forwarded an email conversation they had with Mr. Walter Mackie from the State Health Inspection Unit as part of the Department of Public Health to the Board prior to the meeting. Ms. Lopes noted that “Convalescent Home” specifically was not on the list of facility types outlined by Mr. Mackie and Dr. Dirican had not found a comparable example of another convalescent home in the state. Thus, the applicants were still unsure as to whether they would need to be licensed and supervised by the Department of Public Health.

The public was invited to speak. Ms. Sharon St. Pierre of 74 Adams spoke against the petition. She considered the application to add a living space for 35 people to not be in line with the character of the neighborhood. Dr. Dirican rebutted that building previously homed up to forty priests and the residents would not be expected to drive. Ms. St. Pierre had additional concerns with the situation given statements made at previous meetings regarding how the convalescent home would only be staffed during the day.

Mr. Romano asked about the source and contents of the information packet the applicants had provided to Board, with Ms. Lopes confirming that she and Dr. Dirican had created it. Mr. Romano asked about discrepancies between the packet and information presented by the applicants at previous meetings. He and Mr. Kendall pointed out mentions of “patients” and of 24-hour staffing and security specifically. The applicants replied that some of the information in the packet was from prior business plans and did not reflect their current plans which did not require 24-hour staffing.

The applicants asked if the Board had done their own research into convalescent homes and noted that they were presenting an application under that term as it was the best fit under the Definitions of the Fairhaven Zoning Bylaws. Ms. Goyer asked if the applicants had considered defining their application as one of the facility types listed by DPH, but the applicants stated that the facility types listed would all require 24-hour monitored care. They did not plan to provide 24-hour care as they expected residents to have a level of independence such as following their own medicine schedules. Thus, they continued to have difficulty finding a definition for the exact type of facility they wished to operate.

Ms. Goyer had further questions about exactly how the facility would operate and why it did not match any of the state’s defined facility types or give defined timelines for length of stay.

The applicants repeated that they had chosen Convalescent Home based on the Definitions available in the Fairhaven Zoning Bylaws.

Mr. Romano requested further clarification on the exact nature of the facility, citing a passage in the information packet specifically referring to staff handling and scheduling medication for patients, which contradicted previous statements made by the applicants in the meeting. Dr. Dirican apologized for the contradicting information, and again cited Tripp Towers in New Bedford as an example of the type and level of support he would want this facility to provide to residents.

Mr. Sylvia suggested using the charter for Tripp Towers as a template if Dr. Dirican wished to have similar operations. Dr. Dirican explained that there were fundamental differences between their application and Tripp Towers, as Tripp Towers was operated by the New Bedford Housing Authority and made up of single bedroom apartments. Mr. Sylvia, while sympathetic to the issues with definitions that the applicants were having, was concerned that the applicants were still unsure if they would need a license from the State given the type of facility they wished to run and the type of care that would likely need to be provided. He suggested that the applicants seek legal counsel to redevelop their business plan to better fit state and local guidelines.

Dr. Dirican replied that he did not state that the facility would not require a license, more that he was unsure of the situation given his research into the regulations. He then outlined the benefits that his facility could provide in terms of support and affordable housing. He gave an example of a patient of his with alcoholic dementia living off social security who was currently seeking housing as the type of person who needed an affordable space to live while receiving support only as necessary.

Mr. Carr had questions regarding the criteria for reviewing this special permit and for evaluating how the application fit within the defined uses. As part of the discussion, Ms. Goyer brought up that she had found the state statute regarding the Department of Public Health's oversight on convalescent homes (MGL Chapter 111, Section 71) and wished to have the applicant's proposal reviewed under that law and the DPH guidelines.

When Mr. Carr had further questions regarding the precedence of local bylaws versus state laws, Mr. Sylvia explained that the state law should be the first standard to follow and agreed that a further information on the proposed facility's operations and regulations were required before the Board could fully evaluate the petition. Dr. Dirican referenced the correspondence he received from Mr. Walter Mackie from the State Health Inspection Unit which did not provide clear information.

Mr. Carr encouraged the applicants to further refine the proposal. Dr. Dirican reiterated the

basics of the proposal and Mr. Carr emphasized the importance of ensuring that the facility would be safe for both residents and neighbors and compliant with both local and state laws.

Mr. Kendall asked the applicant if they would prefer a vote or continuation. Dr. Dirican agreed to allow a vote on the petition.

Andrew Romano made a motion to approve a Special Permit to convert the existing building into an assisted living facility, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations, C. (1), and was seconded by Amy Goyer.

Mr. Sylvia suggested a continuation, but Mr. Kendall answered that the applicant had already agreed to have the Board vote on the petition.

The motion failed to pass via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer against (0-6).

4. REF#: ZBA-024-001: 200 Washington Street, Map 26, Lot 28. Applicant and Owner: Matthew Paulson. Applicant seeks a Special Permit for a Home Occupation business to operate a Landscaping business, pursuant to Fairhaven Zoning Bylaw 198-23 Home Occupations B. (4) Building trades.

Matthew Paulson spoke to the board. He was seeking this special permit to have a small home office for his landscaping business and allow mail related to his business be sent to his house, noting that most of the work would take place outside of the home. There were questions regarding the storage of his trucks and trailers on the property.

Following up on that point, Ms. Goyer asked if she could go over the special permit requirements with the applicant. In their conversation, Mr. Paulson confirmed that the home office would be a small area of the house, that his daughters would occasionally work with him, that his trucks and trailers were stored outside and parked in the rear of the building, and that no additional traffic or noise would be generated.

When Mr. Kendall opened the floor to the public, Mr. Peter Cunningham, owner of 4 Plaza Way, spoke against the petition. He cited concerns with Mr. Paulson parking vehicles and equipment on his property.

Mr. Romano asked who would enforce the parking restrictions on the special permit, with Mr. Bassett answering that he would do so as the zoning enforcement officer. Mr. Cunningham then expanded on the issues with unwanted vehicles parking on his property, citing previous issues with Mr. Paulson.

Ms. Goyer asked for further information on Mr. Paulson's vehicles and the parking situation,

and he replied that he had requested anyone who worked for him to park only on his lot. He did confirm that there had been a previous issue with parking on Mr. Cunningham's property, but that he had moved the vehicles after being requested to do so. Ms. Cook asked about the number of vehicles Mr. Paulson owned and he cited one commercial truck and four trailers.

Jacob Galary, owner of 163 Huttleston Avenue, spoke in favor of the petition.

Mr. Bassett recommended that the Board set a condition on the special permit on the number of vehicles on the property. Mr. Carr then asked Mr. Paulson to repeat the list of vehicles with a commercial dump truck, an equipment trailer, a flat trailer, dump trailer, and enclosed trailer. All the vehicles were parked outside, and no mechanical work was done on the property and Mr. Paulson promised that vehicles would remain on the property unless out on a job.

There was a discussion by the Board regarding how to set the conditions on the number of vehicles allowed by this special permit.

Andrew Romano made a motion to approve a Special Permit for a Home Occupation business to operate a Landscaping business, pursuant to Fairhaven Zoning Bylaw 198-23 Home Occupations B. (4) Building trades, with the condition to limit the vehicles allowed to one (1) commercial vehicle and four (4) trailers, and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer in favor (6-0).

5. REF#: ZBA-024-002: 162 Main Street, Map 12, Lot 8. Applicant and Owner: Ray Charles Realty Trust. Applicant seeks a Special Permit to construct a private 4 ft. by 127 ft. pile-supported timber pier with a gangway and float, pursuant to Fairhaven Zoning Bylaw 198-32.2 Dock and Piers.

David Davignon of Schneider, Davignon, & Leone, Inc. presented on behalf of the applicant. He outlined the proposal to build the pier off the west side of the property into the waters of the Acushnet River. In addition to the 4 ft. by 127 ft. pier, there would be a 3.33 ft. by 20 ft. aluminum gangway leading to the 10 ft. by 20 ft. float. The pier would start on the back of the property and extend out into the water over the existing sea wall.

Mr. Davignon covered the 13 criteria for the special permit, noting that this petition met all of the criteria and had previously been approved by the Fairhaven Conservation Commission and the U.S. Army Corps of Engineers. He covered how the pier met all the dimensional requirements, including the distance from other docks, the property line access, allowing space for the public pass underneath, and minimum water depth. To lessen the environmental impact of the dock, the applicant had paid the Shellfish Warden for offset shellfish seedings as

part of the Conservation Commission application. No more than two boats, no more than 30 ft long, would make use of the dock. The Waterways Application with the DEP was still in process and the applicant would only apply for a building permit after all other permits were acquired. When Mr. Kendall opened the floor to the public, Diane Tomassetti of 148 Main Street, spoke in favor.

Amy Goyer had questions regarding the order of obtaining permits, with the Board explaining that the building permit could only be granted after obtaining this special permit.

Ruy daSilva made a motion to approve a Special Permit to construct a private 4 ft. by 127 ft. pile-supported timber pier with a gangway and float, pursuant to Fairhaven Zoning Bylaw 198-32.2 Dock and Piers, and was seconded by Andrew Romano.

The motion passed unanimously via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer in favor (6-0).

6. REF#: ZBA-024-003: 11 Delmont Street, Map 28B Lot 715 and Map 29, Lots 6C & 8. Applicant and Owner: Mark Blouin. Applicant seeks 1. An 84 sq. ft. Variance for the construction of a 784 sq. ft. garage, as compared to the maximum 700 sq. ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (1) and 2. A 2 ft. Variance for the height of the garage to be 22 ft. as compared to the maximum 20 ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (2). ***Applicant requests to be continued to the March 6, 2024 meeting.***

The applicant had requested that this petition be continued as the architectural designs were not ready in time for this meeting. Mr. Romano asked if the Applicant had been provided with information on the Variance guidelines and Mr. Bassett promised that he would be.

Andrew Romano made a motion to continue the hearing for 11 Delmont Street to the March 6, 2024, meeting and was seconded by Ruy daSilva.

The motion passed unanimously via roll call vote with Ruy daSilva, Peg Cook, Andrew Romano, Nicholas Sylvia, Patrick Carr and Amy Goyer in favor (6-0).

7. REF#: ZBA-024-004: 58 Ocean Avenue, Map 29C, Lot 249-250. Applicant: Jacob T. Galary. Owner: Daniel Gibbs Jr. Applicant seeks 1. A 6 ft. Variance for the construction of a new house to be 24 ft. from the front property line as compared to the minimum 30 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A 10 ft. Variance for both sides of the house to be 10 ft. from the side property lines as compared to the minimum 20 ft. setbacks, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 3. A Variance from the maximum building coverage of 15% to a proposed 20%, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Romano was recused from the hearing due to his business relationship with the applicant.

Jacob Galary spoke to the board, recounting the history of the property. At the December 5, 2023, meeting, the Board reviewed and approved an Administrative Appeal of the Building Commissioner's determination that the lot was considered to be unbuildable due to abandonment after knocking down the previous house. (See REF#: ZBA-023-051: 58 Ocean Avenue for further information.) The plans for the new house matched the footprint of a previously approved set of Variances for a 36 ft. by 20 ft. house on the property. This would match the existing neighborhood, which was laid out in a plan from 1917.

There was no public comment on this petition.

Patrick Carr made a motion to approve a 1. A 6 ft. Variance for the construction of a new house to be 24 ft. from the front property line as compared to the minimum 30 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A 10 ft. Variance for both sides of the house to be 10 ft. from the side property lines as compared to the minimum 20 ft. setbacks, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 3. A Variance from the maximum building coverage of 15% to a proposed 20%, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Ruy daSilva.

The motion passed with Ruy daSilva, Peg Cook, Nicholas Sylvia, Patrick Carr in favor (4-0) and Amy Goyer abstaining.

Patrick Carr made a motion to adjourn and was seconded by Andrew Romano. All were in favor.

The meeting adjourned at 7:48 PM.

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

Approved, March 6, 2024

