

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes -DRAFT

I. ADMINISTRATIVE BUSINESS

1. Quorum/Attendance

Kenneth Kendall opened the November 7, 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.

Kenneth Kendall introduced the board members and outlined the procedures for the meeting as well as the procedures regarding the filing of decisions.

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

Zoom: None

Absent: None

Building Commissioner: Randy Bassett

Recording Secretary: Stephanie Fidalgo

2. Acceptance of the October 3, 2023, meeting minutes

Ruy daSilva made a motion to accept the minutes of the September 5, 2023, meeting, and was seconded by Patrick Carr. The motion passed unanimously via voice vote. (7-0)

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

II. CORRESPONDENCE:

1. Owner/Applicant, Brian Dupras, of 14 Harbor View Ave. requests an extension of the previously granted Variance (granted May 3, 2022) in accordance with MGL, Chapter 40A, Section 10. The owner has requested the Board to consider granting a six (6) month extension.

Mr. Brian Dupras spoke to the board, explaining that he required a second extension of his previously granted Variance due to issues dealing with the different architects he had hired for the project.

There was no public comment or questions from the board.

Ruy daSilva made a motion to approve a six (6) month extension of the previously granted Variance (granted May 3, 2022) in accordance with MGL, Chapter 40A, Section 10, and was seconded by Andrew Romano.

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

III. PUBLIC HEARINGS:

1. **REF#: ZBA-023-007: 148 Dogwood Street, Map 43A, Lots 153-155.** Applicant and owner: Nancy Santoro. Applicant seeks (1) a Special Permit to construct a 30 ft. x 25 ft. attached garage with a living space above, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations and (2) a 5 ft. Variance for the garage to be located 15 ft. from the side property line vs. the 20 ft. minimum requirement, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — *Continued from March 7, 2023 Readvertised with updated information for May 2, 2023 – Requested to be continued to the January meeting.*

Ms. Santoro had requested a continuance to the January meeting, both in writing to Ms. Fidalgo and verbally to Mr. Bassett.

Mr. Romano inquired as to the next actions after granting this continuance and Mr. Bassett stated that if Ms. Santoro could not supply the plans the board requested by the January meeting, she should be asked to withdraw and reapply.

Andrew Romano made a motion to continue the hearing for 148 Dogwood Street to the January 2, 2024, meeting, and was seconded by Ruy daSilva.

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

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. — *Continued from September 5, 2023 – Requested to be continued to the December meeting.*

Mr. Slowik had requested in writing a continuance to the December 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 December 5, 2023, meeting, and was seconded by Nicholas Sylvia.

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

3. **REF#: ZBA-023-033: 23 Summer Street, Map 10, Lot 166.** Applicant and owner: Robert Leidhold. Applicant seeks a Variance for the conversion of the rear building into an Accessory Dwelling Unit on a 12,539 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. — *Continued from October 3, 2023*

Mr. Robert Leidhold spoke to the board, showing photos of the renovations he had made to the rear building.

Ms. Collette Santos of 32 Summer Street spoke against the petition, due to her concerns with the current use of the main building. In response, both Mr. Kendall and Mr. Bassett explained that the petition before the Board was focused solely on the rear building and the lot size. Ms. Santos reaffirmed her opposition to the petition, noting that the property was only half of the lot size requirement.

Mr. Patrick Maclellan of 101 Washington Street spoke against the petition. He wished to forward a list of neighbors who were not in favor of the application. Mr. Bassett countered that the petition from the neighbors was not relevant to the lot size Variance as it referred to a denial of a zoning change. Mr. Maclellan also brought up the Special Permit guidelines, but Mr. Kendall again explained that the hearing tonight was solely for the lot size Variance. When Mr. Maclellan asked about setback Variance, Mr. Carr explained that setbacks were not under consideration due to the lot's existing non-conformance.

As Mr. Maclellan continued to question the board about the property, Mr. Carr raised a Point of Order to refocus questions on the petition before the board. Mr. Bassett outlined the process Mr. Maclellan could follow if he wished to request research on the property via a Zoning Determination Request, and then again emphasized that the petition before the board was for the lot size Variance.

Mr. George Diggie of 21 Summer Street spoke against the petition. As the direct rear abutter, he noted that the rear building was less than a foot from his property line and that the lot was 45% under the size requirement. He presented photos to the board of the building taken from his yard and stated that debris from the building often fell into his yard. Mr. daSilva suggested that if the rear building was renovated, it would improve the lot.

As discussion continued about the rear building and the parking on the property, Mr. Kendall

requested to focus questions on the lot size. Mr. Diggle again brought up the lot being undersized.

Ms. Despina Longinidis of 101 Washington Street spoke against the petition. She requested further clarification on the wording and process. Mr. Kendall explained that the Zoning Board of Appeals was focused purely on the lot size Variance and that any special permit for an Accessory Dwelling Unit would have to go before the Planning Board. As Ms. Longinidis continued to question the board for clarification, Mr. Bassett outlined the requirements for an Accessory Dwelling Unit set into the bylaws.

Mr. Kendall raised a Point of Order after Ms. Longinidis raised questions about the Zoning Determination Request process, again redirecting the conversation to be focused on the lot size. Ms. Longinidis reaffirmed her opposition.

Ms. Joann Tom of 25 Summer Street spoke against the petition. She listed her concerns with the rear building and the lot size alike.

Mr. Brian Rose of 15 Summer Street spoke against the petition. He noted his concerns with possible structural issues with the rear building and if it could be converted into an Accessory Dwelling Unit.

Mr. Sylvia inquired if any of the renovations had increased the square footage of the dwelling, to which Mr. Leidhold answered that they had not.

Mr. Carr commented that while the Zoning Board of Appeals was focused solely on the lot size Variance, the concerns brought forth during the hearing were legitimate and should be directed to either the Building Commissioner or the Planning Board.

Patrick Carr made a motion to approve a Variance for the conversion of the rear building into an Accessory Dwelling Unit on a 12,539 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 with Kenneth Kendall, Ruy daSilva, Daryl Manchester, Nicholas Sylvia, Patrick Carr, and Andrew Romano in favor and Peg Cook against. (6-1).

4. **REF#: ZBA-023-034: 8 Grandview Avenue, Map 29C, Lot 410.** Applicant: Hammer To Nails. Owner: Jean Murray. Applicant seeks a 12 ft. Variance to replace the existing back door and carport with an 8 ft. by 15.3 ft. mudroom 8 ft. from the side property line as compared to the minimum 20 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — *Continued from October 3, 2023*

Ms. Jean Murray spoke to the board, explaining that she had demolished an old garage on the property and planned to build a mudroom addition to the main building in part of that footprint.

There was no public comment.

Mr. Romano asked about how Variances applied when there was a change of structure and Mr. Bassett confirmed that the Variance was needed due to the new change of structure.

Andrew Romano made a motion to approve a Variance a 12 ft. Variance to replace the existing back door and carport with an 8 ft. by 15.3 ft. mudroom 8 ft. from the side property line as compared to the minimum 20 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Ruy daSilva.

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

5. **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 an assisted living facility, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations, C. (1).

Dr. Ahmet Dirican spoke to the board, explaining that he wanted the facility to be for supportive living. However, as that is not a defined use in the Fairhaven Zoning Bylaws, the application instead referred to an assisted living facility. Mr. Manchester raised his concerns with the advertisement and noticing of the petition if the "assisted living" definition did not apply.

Dr. Dirican outlined his concept of having trained staff on-site to offer support to residents. He also covered his experiences working in home health care and as a nursing home physician in the greater New Bedford area over the past 23 years. He would like for this facility to offer additional independence and support to residents.

Mr. Michael Tomko of 8 Almy Street brought up his concerns with the concept.

Ms. Shannon St. Pierre of 74 Adams Street asked about the planned facility's relationship with the Congregation of the Sacred Hearts, with Dr. Dirican explaining that it would be a lease-to-own agreement. Ms. St. Pierre also inquired about the residents and if any were currently his patients. Dr. Dirican expected they would be mostly disabled, elderly, or homebound people, some would be his patients, and he estimated 25 to 30 people would reside in the facility.

As the conversation continued regarding the exact nature of the planned facility, Dr. Dirican's

assistant, Ms. Jessica Lopes, requested to speak. She explained that it would not be the same as an assisted living facility and instead, the staff would be Personal Care Assistants who could provide one-on-one support. Ms. St. Pierre asked for more information about staff and food services and Dr. Dirican outlined having a dining hall and only a few staff members on hand. Ms. St. Pierre inquired if this would be for-profit or non-profit and Dr. Dirican cited that his organization, PATH Inc., was non-profit.

The board discussed if the definition of assisted living fits this application. Mr. Carr pointed out that if Dr. Dirican's staff would not be offering medical assistance, then elderly housing would be a better definition under Fairhaven's Zoning Bylaws. Dr. Dirican mentioned that he would like to create something similar to Tripp Towers, an elderly-designated apartment building run by the New Bedford Housing Authority.

As there were still additional questions as to the nature of the facility, Mr. Kendall suggested that Dr. Dirican have another meeting with the Building Commissioner to gather more specific information. Mr. Manchester explained to the applicant that should the Board deny the application due to not fitting the correct definition, then there would be a two-year period before Dr. Dirican could reapply. Mr. daSilva also requested further clarification on the application.

Before leaving the podium, Mrs. St. Pierre requested that parking and car usage be taken into consideration and stated that she was not in favor of the petition.

Kenneth Kendall made a motion to continue the hearing for 77 Adams Street to the December meeting.

Before the vote could be taken, another abutter – who did not state her name or address for the record – asked to speak to the board. She requested that the application could be noticed again if it significantly changed. When Mr. Romano asked if that was an option, Ms. Fidalgo explained that applications in the past that had undergone significant revision had been re-noticed.

As the conversation continued, Mr. Carr raised a Point of Order to return to the motion on the floor.

Kenneth Kendall made a motion to continue the hearing for 77 Adams Street to the December 5, 2023 meeting and was seconded by Patrick Carr.

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

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

6. **REF#: ZBA-023-043: 4 David Drown Blvd, Map 28, Lot 22E.** Applicant: Robert Ferreira. Owner: Ajar Holdings LLC. Applicant seeks a Variance from the maximum building coverage of 25% to a proposed 27.7% after constructing an addition to the existing building, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Matt Pollack presented the petition on behalf of the applicant. He explained that the planned expansion to the existing commercial building would exceed the maximum building coverage of 25% by just 2.7%. However, there would be no increase in the impervious lot coverage so they would be under the overall 70% maximum lot coverage allowed.

There was no public comment or questions from the board.

Andrew Romano made a motion to approve a Variance from the maximum building coverage of 25% to a proposed 27.7% after constructing an addition to the existing building, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and was seconded by Ruy daSilva.

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

7. **REF#: ZBA-023-044: 11 Lawton Street, Map 6, Lots 52-53.** Applicants and Owners: Brenda L & Nuno J Ferreira. Applicants seek a 3.4 ft. Variance to build a 10 ft. by 21.09 ft. master bath addition 6.6 ft. from the side property line as compared to the minimum 10 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Ms. Brenda Ferreira spoke to the board and explained that the addition would be for a master bathroom which would include a closet and space for laundry.

Mr. Romano had a question about the rear driveway on the submitted site plan, which Mr. daSilva answered.

There was no public comment.

Ruy daSilva made a motion to approve a 3.4 ft. Variance to build a 10 ft. by 21.09 ft. master bath addition 6.6 ft. from the side property line as compared to the minimum 10 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Patrick Carr.

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

8. **REF#: ZBA-023-045: 50 Rodman Street, Map 25, Lot 211.** Applicant and Owner: Matthew Varao. Applicant seeks 1. A 10 in. Variance for a second story addition to an existing 20.2 ft. by 20.3 ft. garage to be 20 ft. 10 in. tall, as compared to the maximum 20 ft. height allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (2), and 2. a Variance for the proposed second story addition to be an Accessory Dwelling Unit on a 6,867 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.

Mr. Matthew Varao spoke to the board, explaining that he was looking to build a bonus space above the existing garage.

Mr. daSilva asked if he planned to add sewer and water service to the garage, which Mr. Varao confirmed.

Mr. Bassett explained to the board that the second-floor addition to the existing garage would house the new living space which due to the floor plan would be considered to be an Accessory Dwelling Unit. Due to both the proposed height of the addition and the inclusion of an Accessory Dwelling Unit, Mr. Varao required two Variances.

There was no public comment.

Ruy daSilva made a motion to approve both 1. A 10 in. Variance for a second story addition to an existing 20.2 ft. by 20.3 ft. garage to be 20 ft. 10 in. tall, as compared to the maximum 20 ft. height allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (2), and 2. a Variance for the proposed second story addition to be an Accessory Dwelling Unit on a 6,867 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 Nicholas Sylvia.

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

9. **REF#: ZBA-023-046: 16 Main Street, Map 7, Lot 98A.** Applicant: Jason Lanagan. Owner: Cullen North Walker Street LLC. Applicant seeks 1. A Variance to create a lot with 84.81 ft. of frontage from a non-conforming lot with a pre-existing restaurant building, as compared to the minimum 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A Variance to create a lot with 41 ft. of frontage from a non-conforming lot with a pre-existing restaurant building as compared to the minimum 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

At the start of the hearing, Mr. Manchester recused himself as he is an abutter to this property.

Mr. Jason Lanagan spoke to the board. He went over the history of the lot and how the two buildings previously housed Margaret's and Brady's Ice Box. Within the last year, The Ice Cream Cottage had moved into the smaller ice cream stand while Mey Breakfast took over the larger restaurant building. They were looking to subdivide the lot to give each building a separate lot to allow for either business to purchase their current buildings more easily. He also noted that many lots in that neighborhood were non-conforming and could prevent possible disagreements between the two businesses.

There was no public comment.

Mr. Kendall asked about the Planning Board's role, and Mr. Bassett explained that the applicant needed the Variances approved before they could seek Planning Board approval to subdivide the lot.

Mr. Romano asked about lot size and setback requirements and Mr. Bassett explained that there was no minimum lot size requirement in the mixed-use zone.

Mr. Carr wanted to confirm that the lot was currently owned by a single entity and if the businesses operating out of the buildings would have the option to purchase the subdivided lots. Mr. Lanagan confirmed that if subdivided, the businesses would have the option to purchase their lots in the future at a set price.

Mr. Romano inquired if the buildings could be purchased as commercial condos if the Board did not approve the Variances. Mr. Lanagan agreed that could be an option, but he considered the subdivision of the lot to be the cleaner solution given his experience with commercial condos. He hoped that allowing the businesses to purchase the lots would help to encourage their growth and add value to the neighborhood.

Andrew Romano made a motion to approve both 1. A Variance to create a lot with 84.81 ft. of frontage from a non-conforming lot with a pre-existing restaurant building, as compared to the minimum 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A Variance to create a lot with 41 ft. of frontage from a non-conforming lot with a pre-existing restaurant building as compared to the minimum 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Patrick Carr.

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

The board began to discuss the current vacancies on the board after the resignations of Mr. Alberto Silva and Mr. Peter DeTerra. While there was a vote to enter executive session, the session could not be entered as it had not be placed upon the agenda.

During that period, the board and Mr. Bassett discussed how the current vacancies on the board would be filled. The Select Board would select which of the three remaining Associate Members would be promoted to a Full Member. The Select Board would also seek applications for new members to fill both the Associate Member seat vacated by Mr. Silva and the one that would be vacated by the promoted member.

Andrew Romano made a motion to adjourn at 7:19 PM and was seconded by Ruy daSilva; all were in favor.

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

Approved – December 5, 2023