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**Fairhaven Zoning Board of Appeals**  
**Wednesday, September 2, 2020**

FAIRHAVEN,  
MASS.

**I. ADMINISTRATIVE BUSINESS**

The meeting was held remotely via Zoom per the Governor's orders during the pandemic that began in March 2020.

Peter DeTerra opened the meeting at 6:30p.m and read the recording and open meeting law information.

**Quorum/Attendance:**

**Present:** Peter DeTerra, Rui DaSilva, Kenneth Kendall, Francis Cox, Joe Borelli, Darryl Manchester

**Absent:** Peg Cook, Alberto Silva, and Jaime DeSousa

Town Counsel: Thomas Crotty was also present

- Acceptance of Minutes – August 11, 2020 Francis Cox made a motion to approve the minutes of August 11, 2020 and was seconded by Ken Kendall. The motion passed unanimously.

**II. PUBLIC HEARINGS:**

1. Administrative Appeal by Fairhaven Shipyard – re: 7 Union Street. Seeking reversal of zoning determination by the Town of Fairhaven Building Commissioner dated February 20, 2020. (Application attached) – **Continued** from April 7, 2020, May 5, 2020, June 2, 2020, and July 7, 2020, and August 11, 2020). **Asking for a continuance to October 6, 2020.**

Francis Cox made a motion to continue per the applicants request to October 6, 2020 and was seconded by Ken Kendall. The motion passed unanimously via roll call vote.

2. Administrative Appeal by A1 Crane – re: 86-88 Middle Street. Administrative Appeal from a letter dated April 7, 2020 from the Building Commissioner stating that the operation on the site is in violation of the Mixed Use zoning regulations. (see attached-Exhibit 3) (continued per applicant's request to September 2, 2020 Meeting, see attached.) **Asking for a continuance to November 3, 2020.**

Francis Cox made a motion to continue per the applicants request to November 3, 2020 and was seconded by Ken Kendall. The motion passed unanimously.

3. 82-84 Cottonwood Street. Petitioner: Steven Rogers. Owners: Hassett, Todd & Juliana. 198-16 Special Permit request to build an accessory building on a lot without a principal use.

Steve Rogers, Contractor petitioned the Board to withdraw the request without prejudice.

Francis Cox made a motion to accept withdrawal and was seconded by Ken Kendall. The motion passed unanimously, via roll call vote.

4. 902 Sconticut Neck Road. Applicant: Dana Pickup. Owner: Lewis, John. 198-16: Variance request for a 10.8' side setback that requires a 20' side setback in a RR District.

Francis Cox made a motion to approve and was seconded by Ken Kendall. The motion passed unanimously via roll call vote.

5. 3 Spring St. Petitioner: Jeff & Pam Kuckuk. 198-16: Variance request for 6' roof height, over the maximum height of 35' allowed in a RA District.

Pam Kuckuk petitioned the Board stating she would like to have roof top access for cleaning, roof deck, and emergency purposes. She advised the Board that it would actually be 4.5ft not the 6ft stated. Ken Kendall asked Town Counsel Tom Crotty if the Board were to grant this request if the Town could be held liable for any accidents resulting from the roof top. Mr. Crotty advised the Board NO the Town would not be.

Francis Cox made a motion to approve and was seconded by Rui DaSilva. The motion passed unanimously, via roll call vote.

6. 6 Emerson Ave. Petitioner: Michael Ristuccia. Owner: Natalie Reis 198-22(3): Variance to allow an accessory structure to build the front yard.

Mike Ristuccia explained this is a unique lot and is accessed by Baxter St. He stated he sent pictures to the Chairman to share with the Board. Mr. Ristuccia said no one will be living in the garage it will not have any plumbing or heating. The owner is just looking to add another room to have for "crafts" and a place to house her car.

Several neighbors are against this variance being approved and were on Zoom to express their concerns. Susan Spooner addressed the Board first saying it could be a potential domicile and feels it's an inappropriate place for a structure of this size being

built in a flood zone along with it being marshland. Mr. DeTerra advised this was already approved by Conservation. Mary Lorenzo questioned why if Emerson St. is a paper street why there is a street sign? Mr. Ristuccia answered and let her know the BPW put the sign there because no one knew where Emerson St was when making deliveries. Jerry Shervo also asked the Board if in the future could plumbing and heating be added and was told no by Mr. DeTerra. He also questioned the size of the structure and was advised by Mr. Ristuccia the total building would be 20ft from the ground up. Mr. Shervo stated the request said the structure would be 35ft and Mr. Ristuccia told him that was a typo. Mr. Shervo again asked what the height of the building be in feet and Mr. Ristuccia responded the total building would be 20ft in height. Susan Spooner commented that it came to her attention that Mr. Ristuccia was heard saying this project was a "slam dunk". Mr. Ristuccia denied the comment. At this time Mr. DeTerra said they needed to bring it back to the Board and vote.

Mr. DeTerra read off the names of the voting Board members:

Joe Borelli  
Francis Cox  
Rui DaSilva  
Darryl Manchester  
Kenneth Kendall

Rui DaSilva motioned to approve and the motion was seconded by Francis Cox. Mr. DeTerra then took a roll call vote.

Joe Borelli - Abstained when Mr. DeTerra questioned why and he said "I don't like it". Francis Cox – Yes, Rui DaSilva – Yes, Darryl Manchester – Yes, Kenneth Kendall – No, after all 5 eligible members voted Peter DeTerra said, "Yes. It passed."

Town Counsel Tom Crotty interjected and advised Mr. DeTerra only 5 members were eligible to vote and that the vote was 3 Yes, 1 Abstain, and 1 No. He explained that you cannot assign someone else to vote because one person abstained. If he was assigned to vote and abstained, he is still a voting member and the abstain is equivalent to a No vote.

Mr. Manchester asked if Mr. Borelli should have abstained prior to hearing the petition then someone else could have been named but because he listened he was named a voting member they would need 4 Yes to pass. Mr. Crotty said correct.

Mr. DeTerra acknowledged what Mr. Crotty explained and said "Not passed"

\* A letter was submitted to the Board from the neighbors of 6 Emerson St but was not read\*

### **III.     BILLS**

Mr. DeTerra said there were no bills to discuss

Mr. Cox made a motion to adjourn and was seconded by Ken Kendall. Roll call vote was unanimous and meeting adjourned at 6:45p.m.

Respectively submitted,

Mary Lou Krosschell  
Recording Secretary