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Fairhaven Zoning Board of Appeals

Tuesday, May 4, 2021

Minutes of Meeting

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 6:00p.m and read the recording and open meeting law information.

Quorum/Attendance:

Present: Peter DeTerra, Chairman, Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, and Darryl Manchester.

Absent: Jaime DeSousa, Alberto Silva and Joe Borelli.

Building Commissioner and Zoning Enforcement Officer Chris Carmichael was also present.

Acceptance of Minutes – Francis Cox made a motion to approve the minutes of April 6, 2021 and was seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

Discussion on availability for June Meeting to be held on Wednesday, June 2, 2021:

Chairman DeTerra explained that the meeting room is not available on the first Tuesday of June due to a scheduling conflict, therefore, he suggested the same be moved to Wednesday, June 2, 2021 at 6:00 PM.

Peg Cook commented that she needs to check her calendar, but would try her best to be in attendance on that day.

Kenneth Kendall made a motion to approve the next monthly meeting to be held on Wednesday, June 2, 2021, which was seconded by Francis Cox. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester, and Peter DeTerra.

II. PUBLIC HEARINGS:

1. Administrative Appeal by Fairhaven Shipyard – re: 7 Union Street. REF#: ZBA-AA 01: 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, July 7, 2020, August 11, 2020, September 2, 2020, December 1, 2020, January 5, February 2, 2021, March 2, 2021, and April 6, 2021.

Building Commissioner Chris Carmichael informed the Chairman that applicant requested a continuance to next month. Francis Cox made a motion for **continuance to June 2, 2021** and was seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

2. Administrative Appeal by A1 Crane – re: 86-88 Middle Street. REF#: ZBA-AA-02: 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. Continued per applicant's request to September 2, 2020, November 3, 2020, December 1, 2020, January 5, 2021, February 2, 2021, March 2, 2021 and April 6, 2021.

Building Commissioner Chris Carmichael informed the Chairman that applicant requested a continuance to next month.

Francis Cox made a motion for **continuance to June 2, 2021** seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

3. REF#: ZBA-2021-08: 78 Akin Street, Owner: Arruda, Peter. 198-18: Variance request for a 1,765 short of 15,000 square feet required in a RA District for a buildable lot.

Peter Arruda was present at the meeting and stated his desire to build a three-bedroom ranch. He added that he is trying to assist family members that are looking for a house, therefore the idea to build on the property.

William J. Alphonse, Jr., of 4 Alphonse Drive, an abutter, questioned the size of lot and requested to be apprised of the setbacks on the lot. After perusal of the presented plan, Chairman DeTerra advised that the petitioner is in compliance on the setbacks and only short 1,765 short of the 15,000 sq. feet required in a RA District.

Commissioner Carmichael informed that setbacks requirements are 20 ft on the front, 10 ft side and 30 feet rear.

Mark Faunce, of 68 Akin Street, an abutter, inquired as to the elevation as he is concerned with water runoff and flooding out his property.

Commissioner Carmichael informed that there is no diverting of water from one property to another, therefore drainage will be required and since there is conservation land behind it, an Order of Conditions.

Chairman DeTerra inquired if the matter has been to Conservation and was informed in the negative.

Kathryn McNeil, of 23 Stone Street, an abutter, questioned if there is a tie into sewer and Chairman DeTerra confirmed that a sewer plan was included in the materials. Commissioner Carmichael said that he does not foresee any problems.

Motion to approve the variance was made by Francis Cox and was seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

4. REF#: ZBA-2021-14: Map 41, Lot 49 Silver Shell Beach Drive. Lopes, Joyce, Administrative appeal by Joyce Lopes for letter dated February 5, 2021 by the town of Fairhaven's Building Commissioner for storage of a camper or utility trailer. 109-16: Special Permit request to park a motorhome on Map 41, Lot 49, a vacant piece of land on Silver Shell Beach Drive.

Linda Adelberg, of 2 Pavilion Way, an abutter, submitted the following written email message to the Board, which was read by Francis Cox, Vice Chairman, as follows:

"I object to the camper/motor home to park on public way/Silver Shell Beach Drive. Both myself and my neighbor have significant waterfront estates that are valued well over 1 million. I am contemplating selling mine and fear the resale value will be affected. No one will want to spend that money to look at a camper blocking their water/beach view and this could lose me a perspective buyer or significantly reduce what one would be willing to pay. The entire neighbor benefits to a strong comp sale of my property as it increases the value of theirs. It is in the best interest of the area to vote NO on this request... in my opinion."

After it was determined that the petitioner, Joyce Lopes, was not present, motion was made by Kenneth Kendall to continue the matter until the end of the meeting. Francis Cox seconded the motion and it passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

5. REF#: ZBA-2021-014: 81 Middle Street. Owner: Jennifer Cleaves. 198-16: Special Permit request for 6 chickens in a RA District for site under 5 acres.

Petitioner stated that she has had chickens for twenty years and had no idea that a permit was needed. Back in 2003 she ended up having a rooster, in error, and was contacted by the Town and got rid of the rooster, with no problems since then. In 2007 her facilities were checked. This year she bought a few chicks at Tractor Supply and was informed that she needed to provide name and address for Town notification. Shortly thereafter she got notification that a special permit was needed.

Rui DaSilva abstained from this vote, as petitioner is an abutter of his.

Motion to approve the Special Permit for six (6) chickens with the following special condition: That no rooster(s) are kept within the premises. Motion was made by Francis Cox and was seconded by Peter DeTerra. The motion passed via roll call vote by Peg Cook, Francis Cox, Kenneth Kendall, Darryl Manchester and Peter DeTerra. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

6. REF#: ZBA-2021-16: 12 Hedge Street. Owner: Andrew Gaudreau. 198-18: Variance request of 7' short of side setback to build a deck, in a RA District that requires 10'.

Petitioner stated that he needs a variance to build a deck in his house.

After Chairman DeTerra inquired from Commissioner Carmichael as to his opinion, Mr. Carmichael said that the Board can determine the matter, as all the plot plans were delivered to the members of the Board.

Kenneth Kendall made a motion to approve the Variance, seconded by Francis Cox. Motion and it passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

7. REF#: ZBA-2021-17: 80 Adams Street. Owner: Paul Hinman. 198-18: Variance to extend the legal non-conforming use to add a 12x16 foot porch to right side of house with a variance request of 14.60' short on front setback, whereas should be 20' in a RA District.

Petitioner was present and explained that he moved into the home in 2020 and wishes to add a porch now determined final measurements to be 16x9 feet on the side of the house, therefore facing Route 6.

Francis Cox made a motion to approve the Variance, seconded by Kenneth Kendall. Motion and it passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

8. REF#: ZBA-2021-18: 69 Jerusalem Road. Owner: Patrick Souza. 198-18: Variance request 9' short rear setback for a proposed 14x24 addition, whereas rear setback is 30' in a RR District.

Petitioner came before the Board and explained that he wishes to put an addition where the deck was.

Cheryl Souza, of 69 Jerusalem Road, co-owner, explained that the family just wants to make more living space.

Francis Cox made a motion to approve the Variance, seconded by Rui DaSilva, which was unanimously passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

9. REF#: ZBA-2021-19: 37 Balsam Street. Owner: Thomas Kirk. 198-18: Variance request, short 15' on front setback to extend non-conforming front porch, that requires a 30' setback in a RR District.

Matthew Brodeur, Brodeur Contracting, the petitioner and contractor, 156 Balsam Street, was present. He explained that there was a previous setback issue on that front porch allowing a 9' addition to that. That porch currently sits at 6', a bit unusable Mr. Kirk for chairs and tables, which is way we are trying to extend it out to 10' from the house, adding an additional 4 feet to the front porch. When it is finished it will be a 10x15.6 foot. It is extending off the living room and kitchen and entertain.

Francis Cox made a motion to approve the Variance, and seconded by Rui DaSilva, which was passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Darryl Manchester and Peter DeTerra. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

10. REF#: ZBA-2021-20: 108 Sycamore Street. Owner: 108 Sycamore Realty Trust
198-18: (1) Variance request for 16,100 sq. ft. short of required 22,500 sq. ft. in a RB District;
198-18: (2) Variance request for 7,256' short of contiguous upland, where 13,500 is required;
198-18: (3) Variance request short 4.25' front setback, whereas 20' in a RB District is required;
198-18: (4) Variance request short 4.30' rear setback, whereas required is 30' in RB District.

The plan is to demolish existing building and to construct a 1,618 two-family dwelling to conform with the previous approved variance granted in 2005. Number of families to use the building is two (2). Request previous approved 2005 variance to re-establish per M.G.L. Ch. 48, Section 10.

Paul Matos, of Allen & Major Associates, Inc., represented the owner 108 Sycamore Realty Trust. We are here seeking to get a variance on the property, again. As mentioned before, this property did receive a variance back in 2005, where a variance was granted for reduction of lot area, reduction in front setback, reduction of rear yard setback in the residence district RB zone. Under

Mass. General Law, Chapter 48, Section 10, the permit granting authority may reestablish a variance after notice and a new hearing, pursuant to the provisions of that section. The applicant is proposing to demolish the existing 3,000 sq. foot building and construct a new 2-family residential dwelling approximately 1,600 sq. feet in size. The new lot is going to be more conforming than what it exists today. Under current zoning, the minimum front setback, today is only .4 feet from the street line, .3 from the side yard line and 5 feet from the rear line. Under proposed conditions, will be 15.7 feet from the front, 10 ½ to the side and 25.7 feet to the rear, all in accordance with the approved 2005 variance. The building coverage will also be made with conformance with zoning. Under zoning we are required to have a 50% lot coverage. Under existing conditions, we are at 53%. The new proposed development will be at 44.8% and maximum building coverage, the zoning by-law is required to be 30%. Under existing is 49.1 and the proposed modification will be 27.1%.

Chairman DeTerra noted that in 2005 four variances were requested. What was approved in 2005?

Mr. Matos replied that the variance was approved to allow the reduction in lot area, to allow to reduce the required frontage, which we do not need. The frontage setback was approved and the rear setback was approved.

Chairman DeTerra reiterated the request for four variances, to which Mr. Matos confirmed it being the number of variances approved before.

Commissioner Carmichael responded having no inquiries on the matter after being asked by Chairman DeTerra.

John Downing, 104 Sycamore Street, demonstrated his opposition to the request. He informed the Board that back when the variance was granted, it was supposed to be a small one-family house. We are afraid that the house is still too big for the lot and it will cause more traffic issues than it's currently there. There are too many variances here. This lot is way too small to be building on. I know that Conservation approved it, but it's too close to the wetlands over there.

Richard Kendall, 99 Sycamore Street, I am against this strenuously. There's been a lot of dredging over there, which reduces the wall at the bottom of Magnolia Avenue, which will make this property shorter. Every variance they are requesting is way ridiculous, especially for a two-family house. We have gone to many boards and just appealed to the DEP and I find there is problems, modifications, etc. Again, my vote is firmly against it.

Steven Pinhancos, 7 St. Mary Street, I am in favor of any update to that location. The garage is falling apart.

Rui DaSilva made a motion to approve **(1)** Variance, seconded by Francis Cox. The motion passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, and Darryl Manchester. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

Rui DaSilva made a motion to approve **(2)** Variance, seconded by Francis Cox. The motion passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, and Darryl Manchester. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

Rui DaSilva made a motion to approve **(3)** Variance, seconded by Francis Cox. The motion passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, and Darryl Manchester. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

Rui DaSilva made a motion to approve **(4)** Variance, seconded by Francis Cox. The motion passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, and Darryl Manchester. Kenneth Kendall voted against. The matter was approved on a 4 to 1 vote.

11. REF#: ZBA-2021-22: 32 Green Street. Owner: Leslie Perkins. 198-18: Variance short 6.5' for side setback for a proposed garage and addition, that 10' is required in a RA District.

Petitioner was present and explained to the Board that she desires to add a small bathroom and a two-car garage off that bathroom. We are off on Reynolds Avenue, which until recently was a small dirt road, and now it's tarred, but we are short on that side.

Francis Cox made a motion to approve this Variance, seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra.

Francis Cox made a motion to open up the hearing again for Silver Shell Beach Drive, seconded by Kenneth Kendall. The motion passed unanimously via roll Call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darrell Manchester and Peter DeTerra.

4. REF#: ZBA 2021-14: Map 41, Lot 49 Silver Shell Beach Drive. Lopes, Joyce, Administrative appeal by Joyce Lopes for letter dated February 5, 2021 by the Town of Fairhaven's Building Commissioner for storage of a camper or utility trailer. 109-16: Special Permit request to park a motorhome on Map 41, Lot 49, a vacant piece of land on Silver Shell Beach Drive.

Applicant Joyce Lopes, 49 Silver Shell Beach Drive, was present and was asked by Chairman DeTerra to speak first about the Administration Appeal. Mrs. Lopes received a violation letter from the Building Inspector that the camper she owns was parked on the street encroaching on it. She had a previous town meeting which indicated that she could park on the street, as it wasn't within town's decision to make; it was the Police Department. She further stated that she spoke with two officers and was assured that as long as it was registered, she could park on any public street, which she's been doing until she got a permit to park on her land.

Commissioner Carmichael explained that the RV is parked in the middle of the road, it's a deadend road, but you can't encroach on a public way. And you also need a Special Permit from this Board in order to park an RV on your property. If she gets the second request approved, then the first request is a moot point.

Chairman DeTerra then asked Mrs. Lopes to explain the second request. She stated that she has no other place to park the RV and she is in the area seasonally—she is a "snowbird" leaving in the winter and in the summer uses the vehicle to travel and is home a limited amount of time. She specifically answered Chairman DeTerra's question if she is living in the RV by stating "just parking it."

Questioning again Commissioner Carmichael on the matter, he answered that is the purview of the Board to decide to grant the Special Permit, adding that where she's asking to park it is not on her house lot, but on the property across the street—that needs to be understood.

Mrs. Lopes further explained being unable to park in her driveway as her septic tank is below and has already broken two covers. She has been parking the vehicle across the street for many years. She explained the existence of a dispute with a neighbor currently before the Court having threatened to report it to the Town.

Nancy Blouin, 27 Silver Shell Beach Drive, a direct abutter to the applicant. Mrs. Blouin said that she submitted various materials to the Board showing how this is being done. She added that she warned Mrs. Lopes last year that she couldn't park on that lot, but on her driveway, and now the same issue. She said the motor oil and other fluids have leaked from the motor home on the road and that Mrs. Lopes' plan is to park on the beach so she can rent her home while she lives on the beach, as per photos submitted depicting cables of wire and electricity running across the road, and garbage is not picked up. This is a dangerous situation, with folks, including children in bathing suits running over those wires. There are also cars unfamiliar with the area making U-turns, rolling over said wires/cables. Applicant tried a few years ago to sneak electrical service down by the beach and got found out by her renter, which ended up being closed down. Mrs. Blouin also said that the lot next to petitioner's belongs to her and petitioner uses rocks to stabilize the motor home due to the winds. Lopes tried filling it in with 2 truckloads of dirt, per the materials submitted to this Board. There is excess traffic down, as family comes to visit and Lopes renters who have motor homes, park them in the driveway.

Eric J. Takakjian, 502 Sconticut Neck Road, an abutter, spoke against the request. He said that he has full view of motor home from his house; has witnessed everything with wires and water hoses stretched out, similar to Mrs. Blouin. It's a safety issue. Applicant living in the motor home and renting her house to other people and months after they move out and other folks move in—it's a short term rental situation.

Patricia A. Estrella, 86 Church Street, an abutter, addressed the Board explaining that she has stayed in the Lopes house multiple times and agrees that there's an issue with the septic system. She does believe there is a personal issue and asked members to peruse the town maps and see that even parking a car there, it ends up in the middle of the road, as it is not a normal road size.

Lucien Robert, 1 Pavilion Way, an abutter, spoke against the request. He offered that the camper is occupied all summer long and there are barn fires outside. He said that it is totally wrong and he has nothing to gain from this—and has no lawsuit against Lopes, but wants the camper gone, as it's been there for years.

Motion was made by Francis Cox to grant the Special Permit, which was seconded by Kenneth Kendall. The motion was denied unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, and Darryl Manchester voted against.

As to the matter of the Administration Appeal a motion was made to grant the Appeal by Francis Cox, and seconded by Kenneth Kendall. (a Yes is for the Building Inspection and a No is against)

The motion was passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Darryl Manchester and Peter DeTerra. The Board upholds the Building Inspector's Administration Appeal.

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Kenneth Kendall spoke asking the Board to write a letter to Town Council seeking counsel other than Mr. Crotty, as he believes it's a conflict of interest when this Board votes on things and approve it and counsel Crotty goes against our approval. Chairman DeTerra questioned which project Mr. DaSilva was referring to, and was informed the Sconticut Neck—Gouveia project, the matter still in Court and Permit still not issued as Mr. Crotty represents the Town and one of the parties in said lawsuit. Chairman DeTerra suggested that the Selectmen should be consulted and request to be placed on the Agenda.

Commissioner Carmichael asked to be heard and explained that there were extenuating circumstances as the abutters were appealing, and until all said appeals were vetted, the issue could not be settled. However that Permit has been issued and the petitioner's foundation has been poured. Mr. Carmichael explained that the matter went to the state only once, and not multiple times.

Francis Cox made a motion to adjourn and was seconded by Kenneth Kendall. Roll call vote was unanimous by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall and Peter DeTerra and meeting adjourned at 7:15p.m.

Respectively submitted,

Maria J. Carvalho
Recording Secretary

