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Fairhaven Zoning Board of Appeals
Wednesday, June 2, 2021
Minutes of Meeting

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 6:00p.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 Alberto Silva.

Absent: Darryl Manchester.

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

Acceptance of Minutes – Francis Cox made a motion to approve the minutes of May 4, 2021 and was seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva 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, April 6, 2021 and May 4, 2021.

Building Commissioner Chris Carmichael informed the Board that Administration received a letter from Attorney Adam J. Brodsky on behalf of the Petitioner requesting the matter be continued to August 3, 2021. Francis Cox made a motion for *continuance to August 3, 2021* and was seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva 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 Board that he has been working closely with the Petitioner and the neighbors to come to a resolution. He added that A-1 has volunteered to make several mediations, and after they have been done, Commissioner

will go back and check that they are in compliance and will return for a vote and approval. The Commissioner asked for a one (1) month continuance.

Francis Cox made a motion for *continuance to July 6, 2021* seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva and Peter DeTerra.

3. REF#: ZBA-2021-023: 57 Nakata Avenue, Owner: Gallagher, Doris. 198-18: Special Permit to allow a travel trailer on property from May 1st to October 31, yearly (based on SP allowed in past on grandfathered lot due to Hurricane Bob, see previous ZBA Approval).

Joann Gallagher was present at the meeting and stated she has been renewing the special permit since Hurricane Bob happened in 1991. She said that her husband passed away in 2007 and she still owns a small travel trailer and requests the renewal.

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

4. REF#: ZBA-2021-024: 27 Silver Shell Beach Drive. Blouin, Barry and Nancy. 198-16: Special Permit for an in-law/accessory apartment in a RR District; without kitchen facilities and with ½ bath with living and sleeping facilities for caregiver and guest.

Attorney John Markey appeared on behalf of the Petitioners. He explained that petitioners have been caring for Nancy's mother, Evelyn Mullen, now 92 years of age, and has lived in the primary residence for more than 40 years. Approximately 10 years ago at age 82, she became so needy that the Blouins moved to the space above the garage. The space had been constructed originally in 1986, with further improvements in 2005-2008. The request is for an in-law apartment, acknowledging that it is detached, and has been lived in consistently by Nancy caring for her mother in the last decade. Attorney Markey explained to the Board that there may be some opposition by neighbors due to an old property line issue dispute with ensuing litigation. He added that in a town like Fairhaven, a couple who are caregivers for a period of 10 years, living in a very small primary residence, this request would be easily granted. He explained that the garage with extra building space was built and in the 90's Ms. Blouin's brother moved into the space above the garage to help care for the Dad and Mom (Dad having passed away and since that time). He stressed that this is not a full-fledged apartment with a full-fledged kitchen, i.e., not an entirely separate residence, but an adjunct to the primary residence. He also stated that his clients are not desirous of having the space become a profit-generating apartment, and the petitioners are willing to include the following conditions: 1) that a kitchen will not be installed, and 2) the apartment will not become a rental unit, but a space for a guest.

Motion to approve was made by Francis Cox with the following conditions: 1) Kitchen will not be installed to make it a separate residence; and 2) The apartment will not become a rental unit, but simply a place for a guest to be accommodated.

Chris Augenti, 8 Chambers Street, an abutter spoke against the request stating the dwelling has a failing septic system, which is pumped-out frequently. He said that the problem has been

brought to the attention of the Board, the Building Inspector and the Board of Health. He added that a foul odor is a frequent fact and pointed out that the tie-in to the septic system was done illegally; he suggested that a FEMA approved septic system would be a solution.

Joyce Lopes, 29 Shell Beach Drive, an abutter shared her concerns about the septic system and stated that there is a working kitchen in that garage on the 1st floor and it takes up half of the space for cars. She further stated that she has been invited to the house on previous occasions and has eaten there, and it contains a large dining room table up above; there is half a bath, 2 bedrooms. She stressed that it's not a no-kitchen situation and this being an in-law apartment that is not connected to the primary house.

Judith Sullivan, 46 Hoover Street, spoke in favor of the request. She told the Board that by Nancy taking care of her mother and safe and happy at home, since her mother has serious health conditions and Nancy is an experience caregiver.

Sandra Robinson, 404 Nasketucket Way, an abutter, spoke in favor of the request. She informed the Board that she is acquainted with Nancy and her desire is to care for her mother, adding that she keeps the property in beautiful shape, as she has been on it many times.

Leslie Donovan, 24 Silver Shell Beach Drive, an abutter, who favors the request. She told the Board that she is acquainted with Nancy for 40 years and knows what a fabulous daughter she is to her mother who is in failing health and abutter agrees with Nancy taking her of her mother.

Beth Ann Monaghan, 23 Silver Shell Beach Drive, an abutter, favors the request. Ms. Monaghan stated that she has known the Mullin's since they moved in and has had no problems with Nancy's living conditions, whether septic issues or otherwise. She further stated that the property is being taken care of properly, and even assists in the care of neighbor's properties.

Mr. Kendall asked Commissioner Carmichael if he has inquired as to past permits. Mr. Carmichael informed that previous Commissioner Christian White wrote a violation letter two (2) years ago. He stated that the original construction for the accessory garage was permitted, however for the renovations to the inside, was not—done illegally. Commissioner Carmichael read the state definition of a dwelling unit, as to assist in clearing any questions: "A single unit providing complete and independent living facilities for one or more people, including permitted provisions for living, sleeping, eating, cooking and sanitation." Mr. Carmichael also informed the Board that he toured the locus about 10 days ago, and it did not have a complete kitchen and a complete bathroom, therefore not meeting the definition of a dwelling unit, and there are two (2) people living there, and against the Town's By-laws, and confirmed septic issues and concerns.

Attorney Markey asked for clarification inquiring if a full bath and kitchen were installed, the dwelling would be more in compliance?

The Commission answered in the affirmative as to the definition of a "dwelling unit", but still not in compliance for the Town's By-laws as to two (2) primary structures on the same lot, and therefore not meeting the definition of a full dwelling unit.

Mr. Kendall inquired as to the distance of the garage from the primary house, and Mr. Carmichael informed him of a distance of 20 feet.

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

5. REF#: ZBA-2021-025: 21 Gull Island Road. Owner: Pink, Robert. 198-22(a): Variance for a building 260 square feet over the allotted 700 square feet for a detached 24x40 detached unoccupied utility building for boat storage.

Petitioner Robert Pink was present and explained to the Board that he is a lifelong salt water fisherman and would like to place an "out building" on the property store in order to store a boat during inclement weather, for wintertime storage, etc. Petitioner added the space would be an unconditioned space, storage only with electricity for power tools, rod and tackle storage, garden equipment. He stated that it would not be a habitable space.

Mr. William Korrelis, spoke on behalf of his 86-year-old parents, Arthur and Nora Korrelis, 11 Gull Island Road. Mr. Korrelis stated that he feels that at times something is overlooked in the decision-making process is the character of the applicant. He added that he unequivocally attests as to Mr. Pink's good character and his parents have no objection to the petition being granted.

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

6. REF#: ZBA-2021-26: 11 Grape Street. Owner: Downing, Morton. 198-16: Special Permit request for an in-law/accessory apartment in a RA District above the garage.

Petitioner stated that his wife has suffered from COPD for the last 13 years and needs medication several times a day. The couple's daughter and her family is helping take care of the mother. Petitioner wishes to move into the upstairs living area over the garage where the Downing's can live for the time they have left.

Francis Cox made a motion to approve the Special Permit, and seconded by Alberto Silva. Motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva and Peter DeTerra.

7. REF#: ZBA-2021-017: 82 Narragansett Boulevard. Owner: Chase, Joshua and Kathi. 198-16: Special Permit request for 24 chickens in a B District.

Petitioner was present and explained that he would like to have 24 chickens.

Petitioner Chase was present and explained that he is not desirous of actually 24 chickens, but maybe 10 to 15, but if we got more, we'd be covered under the 24 permitted. Chairman DeTerra suggested 12 chickens and no rooster. Mr. Chase countered with 20 hens and no rooster.

While Chairman DeTerra was asking for questions from the Board, Mr. Kendall suggested 6 chickens is the usual amount allowed.

Mr. Chase explained that it is not his intent to have that many, but on the occurrence that some may not resist, and not intending on keeping that many, he feels that it's better to have a permit for more than requested, and settled on 12.

Francis Cox made a motion to approve the Special Permit for 12 chickens and no rooster, which was seconded by Rui DaSilva. Via Roll call vote Peg Cook, Francis Cox, Rui DaSilva, and Peter DeTerra voted in the affirmative. Kenneth Kendall and Alberto Silva voted against. Motion is denied.

Commissioner Carmichael presented a Point of Order stating the locus is on a business district, not a residential district and that the Board needs to understand that it is not allowed in a business district per the By-laws.

The Petitioner asked to be heard. He stated that he got a letter from the Board of Health that his property is in a RA District, but Mr. Carmichael said locus is in a B District. He added that when he purchased the house in 2009 he was told it was in a RA District, and didn't become a B District until a gas station was put beyond his back yard. Mr. Chase asked if the Board could entertain an idea that someone made a mistake in the lot numbers, or land numbers when the gas station was installed and in 2017 was a change.

Mr. Carmichael informed the Board that he would have to check as to the date of the change, confer the Zoning Maps, as that would have to be done at Town Meeting. He invited the Petitioner to contact me directly.

8. REF#: ZBA-2021-28: 7 Delano Street. Owner: Leblanc, Karen, previously known as Karen Anderson. 198-16: Special Permit request for 5 chickens, not to exceed 6 chickens in a RA District.

Petitioner came before the Board and explained that she wishes to have 6 hens, living on a dead-end street, and none of her neighbors are very close. She stated that she has a stressful job as a minister and one of her joys and stress relief is to come home and let the hens out to run around and have fresh eggs. Also informed the Board that chickens keep down on ticks, both her son and husband have had lime disease, so that has been a concern, and doing everything possible to abate any rat problems. She added that if any neighbor has a problem, she would be happy to address it, as well as any questions the Board has.

Kenneth Kendall inquired why her landlord has not present to speak on the matter. Petitioner was instructed that property owner should express his permission to the request in writing. It was determined that no correspondence was received in Administration.

Motion to continue the matter to next meeting was made by Rui DaSilva, seconded by Francis Cox. unanimously passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva and Peter DeTerra.

Petitioner was instructed to have her landlord send a notarized letter to the Board.

9. REF#: ZBA-2021-029: 21 Winsor Street. Owner: Belanger, Jay. 198-23: Special Permit request for a home occupation business for a landscaping business.

The Petitioner appeared before the Board and explained his request for the Special Permit. He said he has a 5x8 trailer and two vehicles which he parks off-street. He added that he will get no deliveries or stores plants on the property and will abide by the 1x1 business sign regulation.

Commissioner Carmichael imposed the condition that all vehicles must be parked off-street.

Francis Cox made a motion to approve the Special Permit, which was seconded by Rui DaSilva, which was passed via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva and Peter DeTerra.

10. REF#: ZBA-2021-030: 17 Huttleston Avenue. Charron, Paul. 198-16: Special Permit for an in-law/accessory apartment in a RA District. Sycamore Realty Trust

Petitioner explained to the Board that he is desirous to get approval for an already existing dwelling unit that has been in place for at least 35 years, and judging by the age of the improvements, in both kitchens, it has been possibly 50 years. The house was purchased by the current owner in 1988, as it currently sits with 2 kitchens and two bathrooms. The house was purchased by his wife and her parents for the accessory unit aspect. He added that at that time the lender in the appraisal process, did not research for permits and as he is getting ready to possibly sell the house, he wishes to get that approved so the sale can go through with the use of the in-law. He further stated that the property currently meets all of the current requirements for an accessory dwelling unit having only one electric meter and heating system and there is interior access between the 2 units.

After the Board inquired if Commissioner Carmichael had any comments, he answered in the negative.

Kenneth Kendall made a motion to approve the Special Permit, and seconded by Francis Cox. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Rui DaSilva, Alberto Silva and Peter DeTerra.

Building Commissioner Chris Carmichael made a Point of Order that as of June 15, these public hearings may have to be required to be conducted live, and waiting for future Governor's Orders.

Kenneth Kendall made a motion to adjourn and was seconded by Francis Cox. Roll call vote was unanimous by Peg Cook, Francis Cox, Rui DaSilva, Kenneth Kendall, Alberto Silva and Peter DeTerra and meeting adjourned at 6:47p.m.

Respectively submitted,

Maria J. Carvalho

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Recording Secretary