



RECEIVED
TOWN CLERK

2021 NOV 24 P 1:40

FAIRHAVEN
MASS.

Fairhaven Zoning Board of Appeals
Tuesday, September 7, 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.

Quorum/Attendance:

Chairman Peter DeTerra introduced the members of the Board:

Peg Cook, full member of the Board; Francis Cox, full member of the Board; Ruy DaSilva, associate member of the Board; Kenneth Kendall, full member of the Board; Darryl Manchester, full member of the Board; Alberto Silva, associate member of the Board.

Absent: Jaime DeSousa.

Chairman DeTerra read the procedures of recording and open meeting law information.

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

Acceptance of Minutes – Kenneth Kendall made a motion to approve the minutes of August 3, 2021 and was seconded by Ruy DaSilva. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, 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, 2021, February 2, 2021, March 2, 2021, April 6, 2021, May 4, 2021, June 2, 2021, July 6, 2021 and August 3, 2021.

Francis Cox made a motion for ***continuance to October 5, 2021*** seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, 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, April 6, 2021, May 4, 2021, June 2, 2021 and July 6, 2021.

Previous request had been made and approved for ***continuance to October 5, 2021***.

3. REF# ZBA-2022-009: 123 Weeden Road. Applicant and Owner: Aguiar, Kyle J. Requesting approval of a proposed 1,200 sq. foot addition to extend kitchen and living room. The applicant also seeks a finding from the board that the existing non-conforming structure may be extended to include the side addition, front addition and rear setbacks; as well as the height to the maximum of 35' and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood, pursuant to MGL 40, Section 6.

Previously continued to October 5, 2021.

4. REF#: ZBA-2022-008: 33 Point Street. Applicant and Owner: Wade & Wanda Cabana. The applicant seeks a finding from the Board under 198.9 that the proposed increase in height current, 14.1 to a maximum of 35' shall not substantially be more detrimental to the neighborhood in a RA District.

Bill Charron, from Charron Associates appeared on behalf of the Applicant. He explained that this is a raise and rebuild and as shown in the materials provided, the existing house is very close to the property line. The new house will have a 10.5' setback as well as 10.5' feet on both sides, with a front setback of 21.2' and a 30' rear setback. The lot coverage for the new home will be 29% for the overall proposal coverage and building coverage will be 22.7%. In addition, it will be built on stilts and will come in just in just under 35' in terms of the height. It meets the requirements.

The owners were present and explained they've owned the property for 18 years and now reside in Bellingham, Massachusetts, but want to be full-time residents of Fairhaven.

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

5. REF#: ZBA-2022-011: 27 Green Street. Applicant and Owner: Autumn Anna Luckey. 198-9: The applicant seeks a finding from the Board that the proposed 562 square foot addition to the existing structure and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood in a RA District.

Applicant also seeks a Special Permit for an in-law apartment in the RA District, pursuant to 198-16.

Applicant came before the Board and she hopes to relocate her mother who live presently in Colorado. The addition is for the purpose to provide a home for her elderly mother to live close to all of her family. She is approaching an age where she will be needing help and, along with her sister, and grandchildren around will improve her mother's quality of life. Applicant explained that the addition will be a one-story, as lower to the ground as possible, so it will be easy for her mother as to ingress and egress.

Eric Berg, 31 Green Street, an abutter was present and approved the project.

Chris Carmichael, the Building Commissioner brought a point of order reminding the need for two (2) votes on this matter; one for the finding and one for the Special Permit.

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

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

6. REF#: ZBA-2022-012: 20 Brae Road. Applicant and Owner: Christopher Perron. The applicant, whose property is located in a RA District seeks a Special Permit for a Home Occupation Tree business per 198-23.

The applicant explained to the Board that he is looking to park his single commercial vehicle and trailer on his property. He stated that he starts his truck at approximately 8:15 in the morning and is gone 11-12 hours a day. He stated that he is respectful to the community and would like to park a vehicle; he is not doing business in the property; he does store firewood, but not running a firewood business, only for personal use. He added that established this business 3 months ago.

Chairman DeTerra asked the applicant if he has read 198-23, the ordinance which describes Home Occupation, and applicant answered in the affirmative. Mr. DeTerra asked Vice-chairman Cox to read the definition aloud into the record. Mr. Cox advised the Board that four (4) letters in opposition were received, copies of which were furnished to all members of the Board before the meeting. He offered to read them into the record, but that would take about an hour. Chairman DeTerra inquired if they were all opposed and Mr. Cox answered in the affirmative. He also informed the Board that a petition signed by ten (10) neighbors was also received, all in opposition.

The applicant explained that he had spoken previously with over twenty (20) neighbors, who are in favor, however none appeared before the Board to speak in favor. He added he sold his work to six (6) of his neighbors and feels there is quite a bit of support.

Margot D. Fitzgerald, 13 Brae Road, an abutter, appeared before the Board and provided photos. She stated that she has lived in that same address since July 1953, when the road was gravel and very few houses. The town ultimately accepted the road and then paved it. She stated that all the neighbors worked had to get the mail and newspapers delivered to the homes, while growth took place, it remained a quiet and friendly place. In recent months a tree business has slowly established itself at 20 Brae Road and now monstrous machinery rumbles up and down numerous times per day, noisy equipment is used on the property itself disturbing the quiet. Mrs. Fitzgerald added that she has no animosity against the owner of the business, and she admires people who venture into a business of their own, however this tree business was established illegally and if allowed to remain, it will lower the value of homes and set a precedent for more business to follow. It does not belong in a residential neighborhood.

Zoning Enforcement Officer, Chris Carmichael explained that he performed an inspection due to a complaint received and saw that Mr. Perron had established a business illegally in a residential neighborhood, and sent him a "cease and desist", and that is what spurred his Special Permit request. We received numerous phone calls, letters against the request and they were relayed to the Board.

Applicant strongly disagreed as to the amount of noise in the property, alleged that he has video surveillance for the duration of a couple of months, and alleged he does not make noise,

Applicant strongly disagreed as to the amount of noise in the property, alleged that he has video surveillance for the duration of a couple of months, and alleged he does not make noise, or run any of his equipment on the property, only starts his truck, leaves and goes about his day at the time previously stated. Also, that if business grows, will be forced to move; is a new business owner and wasn't aware that he needed to apply for a permit, extended an apology for any disturbance. He repeated that was just looking to park his single vehicle on his property, and that he is looking for rental property with mixed zoning, but very difficult, especially being a new business owner.

Chairman DeTerra explained what a Home Occupation means, it's for a business certificate for an office out of the home with a 1 sq. ft. sign, all Board can give, regulations are set by Planning Board.

Board member Mr. Silva, asked Zoning Enforcement Officer Carmichael what he observed when he inspected the property. Mr. Carmichael stated that during the day, there are no trucks, but early in the morning and late in the evening he observed a couple of commercial vehicles, a trailer. Mr. Carmichael added a couple of employees cars parked during the day on the property. Chairman DeTerra then described a photo that had been submitted showing a bunch of trucks and machines, backhoes, pickup trucks.

Robert Aubin, 36 Hacker Street, an abutter, spoke to the Board alleging that there is another home business with four (4) commercial vehicles conducting business in the neighborhood.

Francis Cox made a motion to approve the Special Permit, which was seconded by Kenneth Kendall. Via roll call unanimous vote by Ruy DaSilva, Kenneth Kendall, Peg Cook, Darryl Manchester, Francis Cox, Alberto Silva, the matter was denied.

7. REF#: ZBA-2022-013: 35 Cottage Street. Applicant: Kenneth Burr; Owner: Shaka Zulu LLC. The applicant seeks a finding from the Board for a proposed 24'x25'.6" addition connecting the two existing non-conforming structures located in a RA District and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood, pursuant to MGL 40, Section 6.

Applicant also seeks a side setback Variance from requirement of 20' to 10'.5". Continued from August 3, 2021.

Ken Burr, the applicant explained to the Board that he has a family of 5 people, is a lifelong resident of Fairhaven, owned the house since 2009, both he and his wife can now work remotely, and looking to extend the house, master bedroom, extension to the kitchen, moving the garage forward and putting a family room on the back. Applicant's wife also spoke to the Board explaining they are looking to have more room for the family.

Motion was made to approve the finding by Kenneth Kendall and seconded by Francis Cox. The motion passed unanimously via roll call vote by Peg Cook, Peg Cook, Francis Cox, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

Motion was made to grant the Variance by Francis Cox and seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

Chairman DeTerra announced that next Zoning Board of Appeals meeting will take place on October 5, 2021 at 6:00 PM.

Kenneth Kendall made a motion to adjourn and was seconded by Francis Cox. Roll call vote was unanimous by Peg Cook, Francis Cox, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, Alberto Silva and Peter DeTerra and meeting adjourned at 6:35p.m.

Respectively submitted,

Maria J. Carvalho

Maria J. Carvalho

Recording Secretary

