

**Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK  
RCUD 2023 FEB 28 AM 8:07**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Peter DeTerra opened the December 6, 2022 meeting at 6:00 PM and read the protocol for Zoom meetings and Open Public Meeting Law.

Peter DeTerra advised that the meeting was being conducted in-person and remotely, consistent with Chapter 22 of the Acts of 2022. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

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.

Quorum/Attendance: Peter DeTerra, Kenneth Kendall, Peg Cook, Daryl Manchester, Ruy DaSilva, Jamie DeSousa, Patrick Carr

Absent: Alberto Silva, Nicholas Silva

Building Commissioner: Joseph Kaufman

After calling attendance, Peter DeTerra then outlined the procedures for the public hearings and all processes required upon acceptance of the applications.

**2. Acceptance of the September 27, 2022 meeting minutes**

Kenneth Kendall made a motion to accept the minutes of September 27, 2022, and was seconded by Ruy DaSilva. The motion passed unanimously via roll call vote by Peter DeTerra, Kenneth Kendall, Peg Cook, Daryl Manchester, Ruy DaSilva, Jamie DeSousa, and Patrick Carr (7-0).

**II. PUBLIC HEARINGS:**

1. REF#: ZBA-022-023: 42 Bellevue Street, Map 24, Lots 234-237 & 41. Applicant & Owner: Allen Days, Jr. Applicant seeks a variance from Fairhaven Zoning Bylaw 198-17 (D), which states not more than one single-family, semidetached, or two-family dwelling shall be erected on a lot, in order to convert a 36'x24'x10' pool house into a single-family dwelling. — *Continued from August 2, 2022*

Kenneth Kendall made a motion to continue 42 Bellevue Street Map 24, Lots 234-237 & 41 to the next meeting and was seconded by Patrick Carr; all in favor.

2. REF#: ZBA-022-030: 342 New Boston Road, Map 40, Lot 023. Applicant & Owner: Barbara Cappadona. Applicant seeks Special Permit for Home Occupation business to operate massage therapy services, pursuant to Fairhaven Zoning Bylaw 198-23. B. — *Continued from November 1, 2022*

Barbara Cappadona, owner of 342 New Boston Road, stated that she sought a Home Occupation Special Permit to continue operating her massage therapy practice, originally established in 2001 in Medway, MA, after having moved to Fairhaven on October 7, 2022. It is a small practice with approximately 7-8 clients per week.

Jamie DeSousa inquired if the Health Board would be involved in the decision. Ms. Cappadona explained that the state would approve the license and facilities after the special permit was granted. Mr. DeSousa also asked if there would be multiple clients in a waiting room, but Ms. Cappadona explained that she would not anticipate more than two clients in the house at any one time.

Kenneth Kendall made a motion to approve the Special Permit for Home Occupation business to operate massage therapy services at 342 New Boston Road, Map 40, Lot 023. The motion was seconded by Ruy DaSilva and passed via roll call vote with Kenneth Kendall, Peg Cook, Daryl Manchester, Ruy DaSilva, Jamie DeSousa, and Patrick Carr in favor (6-0).

3. REF#: ZBA-022-031: 85 Howland Road, Map 23, Lot 035. Applicant and owner: George Hills. Applicant seeks a Special Permit for a Home Occupation, pursuant to Fairhaven Zoning Bylaw 198-23. B. (4) Building trades.

George Hills, owner of 85 Howland Road, stated that he sought a Home Occupation Special Permit for his deck building in order to utilize his home as office space and have the business registered at his address. Peter DeTerra outlined the guidelines he would need to follow such as a single 1' x 1' sign, all tools and equipment stored in the garage, and no on-street parking.

Lisa Hills, the wife of property owner George Hills, was in support.

There was a question from John Medeiros if the dumpster currently on the property would be in place permanently and if Mr. Hills had any commercial vehicles. Mr. Hills answered that the dumpster was only temporarily on his property and he possessed only a single vehicle.

Kenneth Kendall made a motion to approve the Special Permit for Home Occupation business to operate a building trade at 85 Howland Road, Map 23, Lot 035. The motion was seconded by Ruy DaSilva and passed via roll call vote with Kenneth Kendall, Peg Cook, Daryl Manchester, Ruy DaSilva, Jamie DeSousa, and Patrick Carr in favor (6-0).

4. REF#: ZBA-022-032: 7 St. Mary Street, Map 20, Lot 217, 221, & 222. Applicant and owner: Steven Pinhancos. Applicant seeks (1) a use Variance to convert a two-family dwelling into a three-family dwelling in a RA district, pursuant to Fairhaven Zoning Bylaw 198-15 and (2) applicant seeks a finding from the Board under M.G.L 40A, § 6 to alter a pre-existing nonconforming structure, thereby increasing the nonconformity.

John Markey, an attorney with Markey & Walsh, represented the applicant and owner of the property, Steven Pinhancos, and presented the current lot diagram to the board. The house was purchased in 2007 and was designed with three separate living spaces, with the third floor having a basic kitchenette apartment that had not been updated since approximately the 1960s. In 2009, Mr. Pinhancos received a permit to expand the ground floor where he and his wife were living. In 2011, the third floor was updated with new carpet and appliances to act as a small living space for his mother when she visited from Portugal. This small apartment shares its stairs with the stairway to the second-floor apartment.

Mr. Pinhancos and his family have since moved into a new house and he currently rents this property to a single mother and child on the first floor and an elderly couple on the second floor. Given the current increases in the cost of living and the fact that work has already been done to upgrade the third-floor living space, Mr. Markey has advised seeking a variance to convert this property into a three-family dwelling.

Within the packets submitted to the board are the notes of another pre-existing three-family dwelling in the neighborhood, as well as letters of support from several neighbors – 119, 127, 133, 132, and 135 Sycamore Street, 8 St. Mary Street, and 2 Magnolia Avenue. Mr. Pinhancos did not receive any opposition in the neighborhood to his plans and Mr. Markey argued that not utilizing the apartment created a hardship when it could be offered as affordable housing in the town and allow Mr. Pinhancos to continue to offer affordable housing to his current residents. The Building Commissioner is aware of some of the history and wants to ensure consistency with the enforcement of zoning.

John Medeiros, of 86 Sycamore Street, and Chris Pinhancos, of 119 Sycamore Street, were both in support.

There was a question from the public if this variance would allow for short-term rentals, which Mr. DeTerra answered that it would not.

Building Commissioner Joseph Kaufman was against this application as it was originally a single-family dwelling and was not zoned to be a three-family dwelling. It was not made into a two-family dwelling until 2009 and this variance would increase the non-conformity.

Kenneth Kendall inquired if there were two separate means of egress to the third-floor apartment. Presently, there is one set of stairs and then a fire escape from the third-floor

window to the second floor. Without two separate means of egress, the variance cannot be approved.

Mr. Markey asked if the board would be willing to support the variance on the condition of constructing a second means of egress that met with the building inspector's approval. Jamie DeSousa stated that he saw three issues with this application – That it is non-conforming, he did not see a hardship, and that there could be further complications upon approving this variance. Mr. Kendall countered that the Town and other municipalities allow such variances so long as there are two means of egress.

Mr. Kendall also inquired if there were three electrical meters for this dwelling. Mr. Pinhancos answered that there were three meters present but that the third floor was connected to the common meter for the house.

Ruy DaSilva wished to clarify that the board would be requesting the addition of a second egress and compliance with the required building codes upon approval of the variance, so that way Mr. Pinhancos would not have to submit a second application. Joseph noted that this would require the addition of a sprinkler system under the Massachusetts building code. Under the IEBC (International Existing Building Codes), a three-family dwelling such as this would be considered a commercial property and would require an additional meter and add a sprinkler unless Mr. Pinhancos received a waiver.

Peter DeTerra made a motion to approve the use Variance to convert a two-family dwelling into a three-family dwelling and alter a pre-existing nonconforming structure at 7 St. Mary Street, Map 20, Lot 217, 221, & 222. This would be conditioned upon the addition of a second means of egress and compliance with applicable building codes. The motion was seconded by Ruy DaSilva and passed via roll call vote with Peter DeTerra, Kenneth Kendall, Peg Cook, Daryl Manchester, and Ruy DaSilva in favor (5-2).

Kenneth Kendall made a motion to adjourn at 6:25 PM and was seconded by Peter DeTerra; all were in favor.

Stephanie A. Fidalgo  
Recording Secretary  
Board of Appeals