

**Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK  
RCUD 2023 SEP 6 AM 11:00**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Kenneth Kendall opened the August 1, 2023 meeting at 6:04 PM. He introduced the board members and read the protocol for Zoning Board of Appeals meetings and Open Public Meeting Law.

Kenneth Kendall 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, Town Hall:** Kenneth Kendall, Ruy daSilva, Patrick Carr, Daryl Manchester, Nicholas Sylvia, and Andrew Romano

**Zoom:** None

**Absent:** Peter DeTerra and Peg Cook

**Building Commissioner:** Randy Bassett

**Recording Secretary:** Stephanie Fidalgo

**2. Acceptance of the June 6, 2023, and July 11, 2023, meeting minutes**

Ruy daSilva made a motion to accept the minutes of June 6, 2023, and July 11, 2023, and was seconded by Patrick Carr. The motion passed unanimously via roll call vote with Kenneth Kendall, Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr in favor and Nicholas Sylvia abstaining. (5-0)

Before the Public Hearings could be opened, Town Administrator Angie Lopes-Ellison requested to address the board. Prior to this meeting, she was made aware of members of the board engaging in chain deliberation and that there had been possible conflicts of interest and ethics violations as well. She reminded the board that as a regulatory body, they must abide by Open Meeting Law and not deliberate outside of meetings. She outlined methods of chain deliberation and explained how advocating for a specific outcome due to one's personal, professional, or financial interests constituted a conflict of interest and that board members could be held personally liable for exerting such influence.

Ms. Ellison reminded the board how earlier in the year, Town Counsel had a meeting outlining how board members must conduct themselves ethically and all members should have signed off on either attending in person or watching the recording. Part of that meeting was discussing how board members could be personally liable for breaking Open Meeting Law or for acting in their own vested interest in rendering decisions on what comes before the board. She recommended that any board members who had questions speak directly to her for further details.

There were no questions from the board on the issue.

## II. PUBLIC HEARINGS:

1. **REF#: ZBA-023-007: 148 Dogwood Street, Map 43A, Lots 153-155.** Applicant and owner: Nancy Santoro. Applicant seeks (1) a Special Permit to construct a 30 ft. x 25 ft. attached garage with a living space above, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations and (2) a 5 ft. Variance for the garage to be located 15 ft. from the side property line vs. the 20 ft. minimum requirement, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — *Continued from March 7, 2023*

Mr. Kendall relayed the applicant's request to have the hearing continued to the September 5, 2023, meeting.

Ms. Liann Hodson of 143 Dogwood Street requested to speak before the vote could be taken. She had concerns about how the hearing had been conducted and continued thus far, particularly that Ms. Santoro had yet to produce the full plans requested by the board during the June meeting, which caused the hearing to be continued several times.

Both Ms. Fidalgo and Mr. Bassett, as the town employees who assist the board, assured that they would investigate a way to encourage Ms. Santoro to submit the requested plans and would see about indicating requests for continuances on the agenda if the request was known ahead of the meeting.

Patrick Carr made a motion to continue the hearing for 148 Dogwood Street to the September 5, 2023, meeting and was seconded by Patrick Carr. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr in favor and Nicholas Sylvia abstaining (4-0).

2. **REF#: ZBA-023-022: 12 Baker Ave, Map 2, Lots 213-214.** Applicant: Dana Pickup. Owner: Kathryn Pettis. Applicant seeks 1) a Variance to build a 15 ft. x 28 ft. deck 5.3 ft. from the side setback as compared to the minimum 10 ft. side setback and 8.3 ft. from the rear setback as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule; 2) a Variance for the lot coverage after building the deck to be 59%

as compared to the maximum 50% allowed in the Single Residence District, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule.

Applicant, Dana Pickup, had requested a continuance in order to rework the plans as requested by the board at the July 11, 2023, meeting.

Andrew Romano made a motion to continue the hearing for 12 Baker Ave to the September 5, 2023, meeting and was seconded by Patrick Carr. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr, and Nicholas Sylvia in favor (5-0).

3. **REF#: ZBA-023-024: 251 Sconticut Neck Road, Map 10, Lot 166.** Applicant and owner: Robert Faria. Applicant seeks a Variance to build a 16 ft. x 20 ft. shed on the front of the property, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (3). — *Continued from July 11, 2023*

Mr. Kendall called for the applicant or a representative to speak on the petition, but no one was present.

Ms. Fidalgo noted that she had called the applicant earlier in the day and had left a message reminding him about this meeting.

Ruy daSilva made a motion to continue the hearing for 251 Sconticut Neck Road to the end of this meeting and was seconded by Nicholas Sylvia. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr, and Nicholas Sylvia in favor (5-0).

4. **REF#: ZBA-023-025: 23 Milton Street, Map 20, Lot 145.** Applicant and Owner: Jaslyn Sweetman. Applicant seeks a Variance to build a 26' x 26' garage and 12' x 21' 3" breezeway attached to the existing dwelling 5.4 ft. from the front property line as compared to the minimum 20 ft. front setback and 22.5 ft. from the rear property line as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Jaslyn Sweetman spoke to the board on this petition. She outlined how the current garage is detached from the house and that replacing it with a new attached garage would also allow her to build a new bedroom on top.

Upon reviewing the plans, Mr. Bassett inquired as to the size of the existing garage. She was unsure of the exact size, citing it as a single-car garage. Ms. Fidalgo enlarged the plans on screen to give the board a better gauge of the size. Mr. Kendall noted the shift for the new garage to be closer to Milton Street and further back from the rear of the property.

Mr. Sylvia inquired about the room to be built above the garage. Ms. Sweetman confirmed that it would be a bedroom, most likely a master bedroom.

There was no public comment on this petition.

Ruy daSilva made a motion to approve a Variance to build a 26' x 26' garage and 12' x 21' 3" breezeway attached to the existing dwelling 5.4 ft. from the front property line as compared to the minimum 20 ft. front setback and 22.5 ft. from the rear property line as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and was seconded by Patrick Carr. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Pat Carr, and Nicholas Sylvia in favor (5-0).

5. **REF#: ZBA-023-026: 174 Dogwood Street, Map 43B, Lots 178, 179, and 182.** Applicant and owner: Dean Agius. Applicant seeks a 4 ft. Variance to build a 10 ft. x 29 ft. deck 26.1 ft. from the rear property line as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Dean Agius spoke to the board on this petition. He seeks to build a new deck on the back of his house.

Jay Simmons spoke in support of the project.

Mr. Romano asked if the foot of the stairs of the deck was included in the setback calculation. On the plan, no stairs were indicated. Only the main proposed body of the deck was used to calculate the setback. Mr. Bassett explained that including the stairs would change the calculation of the setback. However, considering how the height of the deck would affect how many stairs would be required, the board could not reasonably estimate the change in the setback without seeing plans that included the stairs. As such, if Mr. Agius wanted his stairs to extend toward the rear of the property, he would need to file for a new variance.

Mr. Kendall suggested that if Mr. Agius did not wish to file another Variance, he should instead add the stairs along the southern side of the deck.

Mr. Carr asked if the petition could be amended based on an estimate by the Building Commissioner, but Mr. Kendall explained that they could only approve the petition as advertised.

Considering the options, Mr. Agius stated that he would consider coming back for a new Variance with the stairs positioned towards the rear property line. Mr. Romano asked if the deck plans could be reworked to fit within the 26.1 ft. setback even with the stairs but Mr. Agius waved off the suggestion.

Ruy daSilva made a motion to approve a 4 ft. Variance to build a 10 ft. x 29 ft. deck 26.1 ft. from the rear property line as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Andrew Romano. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Pat Carr, and Nicholas Sylvia in favor (5-0).

6. **REF#: ZBA-023-027: Bridge Street, Map 36, Lot 15J.** Applicant and owner: Fairhaven Properties, LLC. Applicant seeks an Administrative Appeal of the Building Commissioner's April 4, 2023 determination that a self-storage facility is not an allowed use on the Applicant's property in the Industrial Zoning District and his determination that a self-storage facility is not considered to be a warehouse, pursuant to Fairhaven Zoning Bylaw 198-33 Definitions and word use.

Attorney Christopher Saunders of 700 Pleasant Street, New Bedford spoke to the board on behalf of Fairhaven Properties, LLC. Last year, his client and Steve Gioiosa of Civil & Environmental Consultants, Inc. met with then Building Commissioner, Andy Bobola, and then Town Planner, Paul Foley, regarding the parking lot at the corner of Bridge Street and Route 240, also referred to as the AT&T parking lot. When inquiring about building a self-storage facility on the property, his client was told that it was not an allowed use on the property in the industrial district.

In August of 2022, Mr. Saunders drafted a formal request for determination from Mr. Bobola but he left the Department before answering. An answer eventually came in April of 2023, after Mr. Bassett was hired as the new full-time building commissioner. Mr. Saunders hoped that the project could be allowed under either the definition of a warehouse or a form of retail sales and services not defined elsewhere within the Town of Fairhaven Zoning Bylaw.

Presently, there is no definition for a storage facility within the Bylaw, but Mr. Saunders argued that a self-storage facility should fall within a definition of a warehouse - *"Indoor storage of goods for distribution but not for sale on the premises."* He outlined several applicable uses of self-storage facilities and that they operate within the cited definition. If the self-storage facility could not be approved as a warehouse, Mr. Saunders then suggested that it would fall under "Retail sales or service" as the facility would be providing a service by renting out storage units.

Mr. Saunders also noted the existence of Simply Storage Fairhaven, LLC at 16 Lambeth Park Rd, on the other side of Route 240 from the parking lot in question. It is also in the Industrial Zoning District and is referred to as mini storage, which he argued established a precedent in Town for self-storage facilities.

Reading from Mr. Bassett's determination letter, he noted the special permits for modifications to the existing self-storage units in 1989 and 2008 along with a mention of a ZBA

use variance in the 1980's, though no records were found to support that claim. Mr. Saunder's researched the records pertaining to 16 Lambeth Park Drive at the Registry of Deeds and could not find any evidence of a Use Variance. He did find two Variances on record – one from 1986 for a setback and another from 1989 for a parking reduction. Additionally, the Accessor's Office lists the business at 16 Lambeth Park Drive as a mini warehouse.

By his judgment, Fairhaven's lack of a Zoning Bylaw specifically regarding self-storage facilities should not prohibit his client from building one in a currently dormant parking lot. He once again requested that the board determine that the self-storage facility should be considered either a warehouse or a retail service.

Mr. Bassett clarified that the information cited in the letter came from guidance from former Town Planner Paul Foley, based on what he had worked on with prior zoning determination with prior commissioners. He did confirm that as noted in the letter, he did not find records of a Use Variance but still trusted the information he received from Mr. Foley. Mr. Saunders countered that Mr. Foley was biased against this project and that his individual preferences should not have weight over the project's applicability.

Mr. Manchester outlined that if there was not a prior use variance found – only variances for setbacks and parking – then prior building commissioners, zoning boards, and planning boards must have approved the existing self-storage facility on Lambeth Park Drive under the warehouse definition. Given that the Lambeth Park Drive self-storage facility has existed since the 1980's, Mr. Manchester was surprised that the Town's Zoning Bylaws had not be amended in the intervening years to include definitions and regulations for such businesses, as other towns had done so. He supposed that the only definition that the facility could've been approved under was the warehouse definition which would create a precedent.

Mr. Sylvia requested further information on whether goods would have to be distributed from the storage facility or if they could simply be left there, as happens from time to time with such facilities. Mr. Saunders answered that in the case of an abandoned storage facility, there would be a mechanism to auction off anything that was left behind. However, he considered it to be counter-productive to store goods without ever removing them from the facility. The time when the customer would distribute the goods elsewhere would be an individual choice, with Mr. Saunders citing various timelines such as weekly, seasonally, or annually.

Mr. Romano inquired about if a traffic study had been conducted for the proposed self-storage facility, but Mr. Saunders remarked that it was far too early in the development process to have done one.

Mr. Kendall brought up his concerns with eliminating parking in the area around AT&T and the Southcoast Center for Primary & Specialty Care by converting the lot in question. Mr. Saunders countered that both of those buildings were owned by other businesses and the lot in

question was not being used as overflow parking for either facility at present. He had also worked on the Southcoast Health property back in approximately 2008 and remembered that the Bridge Street lot was not included in any variance, special permit, or Planning Board Regulations during that process. While parking would have to be discussed if the proposed self-storage facility project was presented to the Planning Board, tonight's hearing was only regarding whether such facilities were allowed at all.

At the request of Mr. Bassett, Mr. Kendall read the Planning Board Staff Report for Bridge Street Holdings Special Permit for a Parking Determination dated October 19, 2006. Noted within was that the lot in question was not required for the property at 200 Mill Road to meet its minimum number of parking spaces. This helped to allay his concerns regarding parking.

There was no public comment on this petition.

Ruy daSilva made a motion to approve an Administrative Appeal of the Building Commissioner's April 4, 2023 determination that a self-storage facility is not an allowed use on the Applicant's property in the Industrial Zoning District and his determination that a self-storage facility is not considered to be a warehouse, pursuant to Fairhaven Zoning Bylaw 198-33 Definitions and word use and was seconded by Patrick Carr. The motion passed via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr, and Nicholas Sylvia in favor and Kenneth Kendall in opposition. (5-1).

Before adjourning the meeting, Mr. Kendall made one last call for Robert Faria of 251 Sconticut Neck Road but received no response. Mr. Manchester suggested sending Mr. Faria a certified letter requesting him to appear at the September 5, 2023, meeting or else the application would be withdrawn.

Patrick Carr made a motion to continue the hearing for 251 Sconticut Neck Road to the September 5, 2023, meeting and that the applicant was to be sent a certified letter and was seconded by Andrew Romano. The motion passed unanimously via roll call vote with Daryl Manchester, Andrew Romano, Ruy daSilva, Patrick Carr, and Nicholas Sylvia in favor (5-0).

Daryl Manchester made a motion to adjourn at 7:01 PM and was seconded by Andrew Romano; all were in favor.

Respectfully Submitted,  
Stephanie A. Fidalgo  
Recording Secretary  
Board of Appeals