

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes

I. ADMINISTRATIVE BUSINESS

1. Quorum/Attendance

Kenneth Kendall opened the October 3, 2023, meeting at 6:00 PM. He introduced the board members and read the protocol for Zoning Board of Appeals meetings and Open Public Meeting Law.

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.

Kenneth Kendall introduced the board members and outlined the procedures for the meeting as well as the procedures regarding the filing of decisions.

Quorum/Attendance, Town Hall: Kenneth Kendall, Peg Cook, Ruy daSilva, Patrick Carr, and Andrew Romano

Zoom: None

Absent: Peter DeTerra, Daryl Manchester, and Nicholas Sylvia

Building Commissioner: Randy Bassett

Recording Secretary: Stephanie Fidalgo

2. Acceptance of the September 5, 2023, meeting minutes

Kenneth Kendall made a motion to accept the minutes of the September 5, 2023, meeting, and was seconded by Andrew Romano. The motion passed unanimously via voice vote. (5-0)

Note: The public hearing notices were read by the recording secretary, Stephanie Fidalgo.

II. PUBLIC HEARINGS:

- 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*

Ms. Fidalgo had contacted Ms. Santoro after the September meeting and the applicant had requested a continuance to the November meeting.

Ruy daSilva made a motion to continue the hearing for 148 Dogwood Street to the November 7, 2023, meeting, and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

Before moving on, Mr. Carr raised an issue with this application having been continued since March, with Mr. Basset promising that the department was working on it.

2. **REF#: ZBA-023-033: 23 Summer Street, Map 10, Lot 166.** Applicant and owner: Robert Leidhold. Applicant seeks a Variance for the conversion of the rear building into an Accessory Dwelling Unit on a 12,539 sq. ft. lot as compared to the minimum 22,500 sq. ft. lot size requirement, pursuant to Fairhaven Zoning Bylaw 198-32.1 Accessory Dwelling Units, A.

Neither the applicant nor his representative was present at Town Hall or on Zoom.

Ruy daSilva made a motion to continue the hearing for 23 Summer Street to the end of the meeting and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

The board explained to a member of the public that no questions on this hearing could be asked unless the applicant was present, and the hearing was opened.

3. **REF#: ZBA-023-034: 8 Grandview Avenue, Map 29C, Lot 410.** Applicant: Hammer To Nails. Owner: Jean Murray. Applicant seeks a 12 ft. Variance to replace the existing back door and carport with an 8 ft. by 15.3 ft. mudroom 8 ft. from the side property line as compared to the minimum 20 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Neither the applicant nor their representative was present at Town Hall or on Zoom.

Ruy daSilva made a motion to continue the hearing for 8 Grandview Avenue to the end of the meeting and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

4. **REF#: ZBA-023-035: 24 Hathaway Street, Map 28B, Lot 16.** Applicant: Dana Pickup. Owner: Karen Diggins. Applicant seeks 1. A 2.4 ft. Variance to replace the existing deck with a 14 ft. x 14 ft. sunroom 7.6 ft. from the east side property line as compared to the minimum 10 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 2. A 2.7 ft. Variance for the stairs coming off the sunroom to be 7.3 ft. from the west side property line as compared to the minimum 10 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Dana Pickup spoke to the board via Zoom. He explained that this property previously had a covered 14 ft. by 14 ft. deck attached to the house which had to be removed due to rot. The owner wished to replace the deck with a sunroom in the same footprint, with a landing and stairs on the western side.

There was no public comment on this application.

Mr. Romano asked about the position of the stairs off the sunroom and if they had considered placing the stairs more toward the back of the room to avoid requiring a variance. Mr. Pickup explained that the location of the stairs was a design choice, and the placement was to keep the stairs close to the driveway of the home for access.

Patrick Carr made a motion to approve both 1. A 2.4 ft. Variance to replace the existing deck with a 14 ft. x 14 ft. sunroom 7.6 ft. from the east side property line as compared to the minimum 10 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 2. A 2.7 ft. Variance for the stairs coming off the sunroom to be 7.3 ft. from the west side property line as compared to the minimum 10 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and was seconded by Ruy daSilva.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

5. **REF#: ZBA-023-036: 54 Adams Street, Map 10, Lot 31.** Applicant and owner: Claudio Costa. Applicant seeks 1. A Variance to create an 8,200 sq. ft. lot with 80 ft. of frontage from a non-conforming lot, as compared to the minimum 15,000 sq. ft. and 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A Variance to create a 3,400 sq. ft. lot with 40 ft. of frontage from a non-conforming lot with a pre-existing two-family house as compared to the minimum 22,500 sq. ft. and 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Note: There was a scribe's error on the meeting agenda for this hearing. The correct lot number is 31, not 28 as was on the agenda.

The applicant's attorney, Chris Saunders of 700 Pleasant Street, New Bedford, spoke to the board. He presented the plan for dividing the lots drafted by Farland Corporation. The lot had a very unusual shape, with frontage along both Adams Street and Judd Street. The proposed 3,400 sq. ft. lot for the existing dwelling would be approximately the same size as the north abutting lot (Map 10, Lot 39) and the south abutting lot, 52 Adams Street (Map 10, Lot 41).

If subdivided, Mr. Costa would then plan to build a single-family house on the 8,200 sq. ft. lot created along Judd Street. This lot would be similarly sized to the west abutting lot, 153 Pleasant Street (Map 10, Lot 30A).

Mr. Costa was seeking this subdivision of the lot due to a family hardship. Currently, he was living with his parents to act as his mother's caretaker. He sought to have them move into the first floor of 54 Adams Street while he would move into the new house built on Judd Street to remain close to care for both his mother and father.

In the application narrative, Mr. Saunders listed the lot size of several other properties in the neighborhood ranging from 3,400 sq. ft. to 10,400 sq. ft. to demonstrate that these new lots would not be a deterrent to the neighborhood and would in fact be characteristic to the neighborhood.

Mr. Costa spoke to the board, explaining that he purchased the house in 2014 and his mother was diagnosed with a brain tumor the next year and had a stroke the year after. She had also been hospitalized due to falls and thus needed to live in a single-floor residence. He would move into the newly built house on the Judd Street lot to be close by to offer care.

When Mr. Kendall called for public comment, Ms. Nancy Foster of 55 Adams Street spoke to the board via Zoom. She had lived in that neighborhood since 1994 and was concerned about housing density and parking availability as Adams Street is relatively busy. Judd Street is only a small, unpaved road and offers little in the way of parking. Thus, neighborhood residents often have a hard time finding parking.

Mr. Steven Souza of 57 Adams Street spoke in favor, supporting Mr. Costa's need for a home close to his mother. He did acknowledge the parking issues Ms. Foster brought up but was still in favor of the application.

Mr. Paul Jellison of 135 Pleasant Street spoke in favor. He cited Mr. Costa's care for his property and his neighbors, having worked together with Mr. Jellison to cover work that affected both of their properties. He did ask if the plan could include off-street parking.

Ms. Nancy Perry of 149 Pleasant Street spoke in favor; however, she did wish to see the issues with the drainage on the proposed Judd Street addressed. Mr. Basset answered that any drainage issues would be addressed during construction if the lot division was approved.

Mr. Saunders explained to the board that the parking of the existing structure would not change but that any new structure built on the proposed Judd Street lot would have off-street parking.

Ruy daSilva made a motion to approve both 1. A Variance to create an 8,200 sq. ft. lot with 80 ft. of frontage from a non-conforming lot, as compared to the minimum 15,000 sq. ft. and 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and 2. A Variance to create a 3,400 sq. ft. lot with 40 ft. of frontage from a non-conforming lot with a pre-existing two-family house as compared to the minimum 22,500 sq. ft. and 100 ft. of frontage, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of Use Regulations, B. and Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

6. **REF#: ZBA-023-037: 8 Sunset Beach Road, Map 29, Lot 2B.** Applicant and owner: James T. Wing. Applicant seeks a Variance to have the 27,728 sq. ft. lot, which is under the minimum 30,000 sq. ft. lot size requirement, to be considered to be buildable, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. James Wing spoke to the board. He wished to sell the lot as both he and his wife were disabled and maintaining the property was becoming difficult for him. He had originally kept the lot to give to his children, but the money from the sale would be far more beneficial. He noted that the lot was larger than several other lots in the neighborhood. The main issue with the lot previously was having it connected to Town sewer, but it is now staked out for a sewer line.

When Mr. Kendall called for public comment, Mr. Laurance Silver of 5 Sunset Beach Road asked to speak to the board. He was not against the petition, but he had concerns as he had not seen any plans for a proposed house. He did confirm that Mr. Wing maintained the property well, but he had questions about the white pipe on the lot.

Mr. Basset explained to the board that the septic tank for 10 Sunset Beach Road was in the middle of 8 Sunset Beach Road as they were once a single lot and the house and tank were built before the lot was subdivided. Covering the history of the property, in the fall of 2005, the Planning Board had approved dividing the lot, leaving 8 Sunset Road noted as not being a buildable lot due to being under the minimum lot size requirements for the rural residential zone. A few years later, in 2008, the Zoning Board of Appeals had approved considering the lot to be buildable, conditioned upon it being connected to Town sewer, and had extended that Variance in 2009. However, the Variance had expired as the plans to run a sewer line to that neighborhood proved to be too expensive.

Mr. Wing showed Mr. Silver and the Board the location of the septic tank on the map.

Mr. Silver suggested adding a condition to the Variance that any structure built on the property at 8 Sunset Beach Road comply with all other zoning bylaws.

The Board explained to Mr. Silver that this Variance purely pertained to the lot being considered to be buildable. In the future, any house proposed to be constructed at 8 Sunset Beach Road would be evaluated by the Building Commissioner for compliance with the bylaws and then brought before the Zoning Board of Appeals if necessary. As such, they would not be putting any additional conditions on the decision, should they choose to approve the petition.

Mr. Wing added that the Sunset Beach subdivision had particular rules regarding any house built in the neighborhood and those would help to reinforce compliance with the Town's bylaws.

Mr. Silver continued to request a condition that any house built on the lot have to meet all the setback requirements, but the Board again insisted that the Variance pertained only to the lot size.

Mr. Basset asked when Town sewer would be brought in, and Mr. Wing answered that the lot was flagged and the BPW was preparing to dig.

Andrew Romano made a motion to approve a Variance to have the 27,728 sq. ft. lot, which is under the minimum 30,000 sq. ft. lot size requirement, to be considered to be buildable, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and was seconded by Ruy daSilva.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

7. **REF#: ZBA-023-038: 19 Atlas Street, Map 6, Lot 47.** Applicant and owner: Scott & Kristen Henriques. Applicant seeks 1. A 22 ft. Variance to construct a 1,088 sq. ft. addition to the house 8 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 2. A 1.7 ft. Variance for the proposed front deck to be 18.3 ft. from the front property line as compared to the minimum 20 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Scott Henriques spoke to the Board, explaining that this was an addition to his childhood home. Previously, the applicants had been granted a Variance for this addition (ZBA-022-017,

approved May 3, 2022) but due to difficulties with finding a contractor, the Variance had expired.

The Board double-checked that no changes had been made from the prior approved plan and verified the requested Variances.

When Mr. Kendall called for public comment, Stephanie Rodrigues of 3 Lawton Street, the rear abutting property, had a few questions. She was for the addition so long as it did not extend into her property and that issues with the grade and drainage at 19 Atlas Street that caused flooding on her property were addressed.

Mr. Henriques answered that the addition would be slightly closer to the property line than the existing house (8 feet compared to the existing 11.5 feet). Mr. Basset assured that the drainage issues could be addressed during the construction process.

Ruy daSilva made a motion to approve both 1. A 22 ft. Variance to construct a 1,088 sq. ft. addition to the house 8 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 2. A 1.7 ft. Variance for the proposed front deck to be 18.3 ft. from the front property line as compared to the minimum 20 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

8. **REF#: ZBA-023-039: 58 Balsam Street, Map 43C, Lot 12.** Applicant and owner: Adam Gibson. Applicant seeks a 12.6 ft. Variance to construct a 307 sq. ft. addition to the existing deck 7.4 ft. from the side property line as compared to the minimum 20 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Albert Corga of Corga Construction spoke on behalf of the applicant. He explained that the new deck construction would connect the two existing decks on the property – a larger one at the rear and a smaller one on the north side. The walkway that wrapped around the house to connect the two would be in line with the existing north side deck, but that would make it cut into the side setback.

There was no public comment on this application.

Ruy daSilva made a motion to approve a Variance to construct a 307 sq. ft. addition to the existing deck 7.4 ft. from the side property line as compared to the minimum 20 ft. side setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and was seconded by Pat Carr.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

9. **REF#: ZBA-023-040: 307 Sconticut Neck Road, Map 29, Lot 16.** Applicant and owner: Scott Souza. Applicant seeks 1. A Variance to replace the existing garage with a 40 ft. by 60 ft. 2,400 sq. ft. garage, as compared to the maximum 700 sq. ft. of floor space allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (1) and 2. A Variance for the new garage to be 29 ft. 1 in. tall, as compared to the maximum 20 ft. height allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (2)

Scott Souza spoke to the Board. He wanted to replace the existing approximately 1,725 sq. ft. garage that was deteriorating. He pointed out on the site plan the location of the existing garage and the planned location of the new garage.

Mr. Romano inquired about the building setbacks for the new garage and Mr. Basset and Ms. Fidalgo confirmed that the setbacks were in compliance at over 5 ft. from both property lines.

There was no public comment on this application.

Mr. Carr asked about the intended use of the garage and whether it would be used for housing or commercial purposes, and Mr. Souza answered that it was purely for storage. Mr. Kendall inquired about the proposed height, and Mr. Souza explained that it was to accommodate the storage of larger vehicles such as a dune buggy and a boat.

Patrick Carr made a motion to approve both 1. Variance to replace the existing garage with a 40 ft. by 60 ft. 2,400 sq. ft. garage, as compared to the maximum 700 sq. ft. of floor space allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (1) and 2. A Variance for the new garage to be 29 ft. 1 in. tall, as compared to the maximum 20 ft. height allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (2), and was seconded by Ruy daSilva.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

10. **REF#: ZBA-023-041: 77 Adams Street, Map 25, Lot 30D.** Applicant: Ahmet F. Dirican. Owner: Congregation of the Sacred Hearts. Applicant seeks a Special Permit to convert the existing building into an assisted living facility, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations, C. (1).

Neither the applicant nor his representative was present at Town Hall or on Zoom.

Patrick Carr made a motion to continue the hearing for 77 Adams Street to the November 7, 2023, meeting and was seconded by Ruy daSilva.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

Mr. Kendall made one additional call for the applicant of 23 Summer Street.

Patrick Carr made a motion to continue the hearing for 23 Summer Street to the November 7, 2023, meeting and was seconded by Andrew Romano.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

Mr. Kendall made one additional call for the applicant of 8 Grandview Avenue.

Andrew Romano made a motion to continue the hearing for 8 Grandview Avenue to the November 7, 2023, meeting and was seconded by Ruy daSilva.

The motion passed unanimously with Kenneth Kendall, Peg Cook, Patrick Carr, Ruy daSilva, and Andrew Romano in favor (5-0).

Ruy daSilva made a motion to adjourn at 6:52 PM and was seconded by Andrew Romano; all were in favor.

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

Minutes Approved on November 7, 2023