

Board of Appeals

Minutes

May 7, 2024

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes

I. ADMINISTRATIVE BUSINESS

1. Quorum/Attendance

Kenneth Kendall opened the May 7, 2024, 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.

Quorum/Attendance, Town Hall: Kenneth Kendall, Ruy daSilva, Daryl Manchester, Peg Cook, Pat Carr, and Amy Goyer

Arrived During the Meeting: Kristen Russell

Absent: None

Interim Building Commissioner: Joel Reed

Recording Secretary: Stephanie Fidalgo

2. Acceptance of the April 2, 2024, meeting minutes

Amy Goyer made a motion to accept the minutes of the April 2, 2024, meeting and was seconded by Ruy daSilva.

The motion passed unanimously. (6-0)

3. Building Commissioner's Proposed Procedure Changes for Approved Petitions

Ms. Fidalgo explained to the Board that Interim Building Commissioner, Joel Reed, had proposed a procedural change to have the Chair of the Board sign off on any site plans that accompanied an approved petition. Having an indication of the approved plans would assist with continuity and clarity of the overall project as well as provide a reference for enforcement.

Kristen Russell arrived at the meeting at 6:04 PM.

Before there was a motion on this item, Mr. daSilva informed the Board that while he had previously considered resigning, he had since decided to remain on the Board.

Ruy daSilva made a motion to approve the proposed procedural change and was seconded by Amy Goyer.

The motion passed unanimously. (7-0)

II. PUBLIC HEARINGS:

1. **REF#: ZBA-023-029: 3 Birchfield Street, Map 24, Lot 280. Applicant: Brian Slowik Owner: Slowik Family Trust.** Applicant seeks a Special Permit for storage of a mobile home and for occasional occupation longer than forty-eight (48) hours consecutively, pursuant to Fairhaven Zoning Bylaw 198-16 Use Regulation Schedule, footnote 8. In accordance with Fairhaven Zoning Bylaw 198-8 Special Permit, A. this permit shall be subject to additional conditions, safeguards and limitations on time, space, and use as the board may reasonably require. — Last continued from December 5, 2023, ***Applicant requests to be continued to the July 2, 2024 meeting.***

Ms. Fidalgo noted the continuing litigation regarding this property as the reason for the continuation request. As the final court date was set for mid-June, Mr. Slowik had requested a continuation to the July 2, 2024 meeting.

Ruy daSilva made a motion to continue the hearing for 3 Birchfield Street to the July 2, 2024, meeting and was seconded by Amy Goyer.

The motion passed unanimously with Ruy daSilva, Peg Cook, Daryl Manchester, Patrick Carr, Amy Goyer, and Kristen Russel in favor (6-0).

2. **REF#: ZBA-024-005: 11 Fishermans Road, Map 43A, Lots 186, 187, and 188. Applicant: Lev Bronstein. Owners: Lev Bronstein and David A. Hirsh.** Applicant seeks a finding from the Board under MGL 40A, § 6, to allow an increase of area of a nonconforming use by replacing the existing single-family residence and shed with a new 2,188 sq. ft. two-story single-family residence with the addition of an 810 sq. ft. semi-detached garage, and that the addition is not more substantially detrimental than the existing nonconforming use to the neighborhood.

Ms. Fidalgo explained to the Board that based on the comments of the March 6, 2024 meeting, the owners had met with Interim Building Commissioner, Joel Reed, to draft a more conforming plan. This plan would change the originally proposed layout to one that would meet the setbacks and building coverage requirements of the zoning district. The new plan would be allowed relief of 30 ft. front setback requirement as Fairhaven Zoning Bylaw § 198-18 Intensity of Use Schedule Footnote 1 had an allowance for new construction to only meet the average front setback of the existing neighborhood. This was determined to be 25 ft. and the applicant was allowed to use that setback for the revised plans. Mr. Reed would continue

working with the applicant to ensure that the new house was built to the current code requirements.

As the project no longer required relief from the Board, the applicant had requested that the petition be withdrawn without prejudice.

Ruy daSilva made a motion to withdraw the petition for 11 Fishermans Road without prejudice and was seconded by Amy Goyer.

The motion passed unanimously with Ruy daSilva, Peg Cook, Daryl Manchester, Patrick Carr, Amy Goyer, and Kristen Russel in favor (6-0).

3. **REF#: ZBA-024-009: 29 Nakata Avenue, Map 43, Lot 119. Applicant and Owner: 29 Nakata Ave. Realty Trust.** Applicant seeks 1. A 3.75 ft. Variance for the construction of a new 26 ft. by 42 ft. single-family residence on a flood zone compliant concrete pile foundation to be 38.75 ft. in height as compared to the maximum 35 ft., pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 2. An 8 ft. Variance for the north side setback to be 12 ft. as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 3. A 7.5 ft. Variance the south side setback to be 12.5 ft. as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 4. A 20.5 ft. Variance for the rear setback to be 9.5 ft. as compared to the minimum 30 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Bob Rogers of G.A.F. Engineering spoke on behalf of the applicants. He had submitted revised site plans, dated April 18, 2024 to the Board which included revisions requested by the Conservation Commission which was also reviewing this project. No changes were made regarding the house or the requested Variances. He had also submitted a letter on April 25, 2024 which covered the history of the property with the lot having been drawn in 1938 as part of the Wilbur's Point subdivision and then later rezoned as Rural Residence in 1988. At 7,386 sq. ft., the lot was undersized for the current zoning district and it was difficult to meet both the setback and height requirements and the flood zone compliant building codes, which is why the applicants had petition for relief.

Mr. Rogers noted that the Board had previously granted similar relief for other properties in the neighborhood, specifically citing 905 Sconticut Neck Road, 16 Wilbur's Point Drive, and 40 Nelson Avenue. He then outlined how the request was reasonable given the size and shape of the lot and that the relief was needed due to the setbacks imposed by the rezoning.

Ms. Grace Halabi, one of the owners of 29 Nakata Ave spoke in favor of the petition. She outlined that the Variances were requested to be able to replace the existing cottage with a raised house that would be better suited to year-round occupation and would include a second floor to accommodate two bedrooms.

Ms. Gale Moura, owner of 25 and 27 Nakata Ave spoke against the petition. She had previously submitted a letter to the Board outlining her concerns. She did not consider the proposed project to be characteristic of the existing neighborhood and had previously had issues with both the installation of a concrete deck on the property and the owner's behavior.

Ms. Kelly Moura of 25 Nakata Ave spoke against the petition. She noted that no other properties on Nakata Ave had built raised dwellings and did not agree with comparing this project to other properties which had received Variances on Sconticut Neck.

Ms. Katie Medeiros of 27 Nakata Ave spoke against the petition. She had previously submitted a letter to the Board outlining her concerns. She did not consider the project to be characteristic of the existing neighborhood as it was oversized for the lot.

Ms. Despina Longinidis of 101 Washington Street spoke against the petition. She raised her concerns with the Board's procedures and discussions at the previous hearing and supported the abutters who had spoken against the petition.

Ms. Goyer confirmed that there were no changes to the plans or petition regarding the requested Variances, which Mr. Rogers confirmed.

Ruy daSilva made a motion to approve 1. A 3.75 ft. Variance for the construction of a new 26 ft. by 42 ft. single-family residence on a flood zone compliant concrete pile foundation to be 38.75 ft. in height as compared to the maximum 35 ft., pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 2. An 8 ft. Variance for the north side setback to be 12 ft. as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 3. A 7.5 ft. Variance the south side setback to be 12.5 ft. as compared to the minimum 20 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule, and 4. A 20.5 ft. Variance for the rear setback to be 9.5 ft. as compared to the minimum 30 ft. setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Kristen Russel.

The motion passed via roll call vote with Ruy daSilva, Daryl Manchester, Patrick Carr, and Kristen Russell in favor and Peg Cook and Amy Goyer against (4-2).

The Board confirmed the vote and the results, with Mr. Kendall explaining that he only voted in the case of a tie.

Amy Goyer made a motion to adjourn and was seconded by Ruy daSilva. All were in favor. The meeting adjourned at 7:25 PM.

Respectfully Submitted,

Board of Appeals

Minutes

May 7, 2024

Stephanie A. Fidalgo, Recording Secretary, Board of Appeals

Approved, July 2, 2024