

Board of Appeals

Minutes

October 2, 2024

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes

I. ADMINISTRATIVE BUSINESS

1. Quorum/Attendance

Patrick Carr, Chair, opened the October 2, 2024, meeting at 6:02 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: Patrick Carr, Ruy daSilva, Peg Cook, Amy Goyer, Kristen Russell, Katharine MacPhail, and Derek Furtado.

Absent: Daryl Manchester

Recording Secretary: Stephanie Fidalgo, present in Town Hall.

Building Commissioner: Richard Forand, present in Town Hall.

Patrick Carr named Kristen Russell as the associate member to vote in place of Daryl Manchester for this meeting.

2. Acceptance of the September 5, 2024, meeting minutes

Ruy daSilva made a motion to accept the minutes of the September 5, 2024, meeting and was seconded by Amy Goyer. The motion passed unanimously via a vote of all members. (7-0)

III. PUBLIC HEARINGS:

Amy Goyer made a motion to take Item 2 of the Public Hearings, REF# ZBA-24-016 160 Sconticut Neck Road, out of order and was seconded by Ruy daSilva. The motion passed unanimously via a vote of all members. (7-0)

- 2. REF#: ZBA-024-016: 160 Sconticut Neck Road, Map 28A, Lot 220. Applicant: Irina Naryshkova Owner: Irina Naryshkova and Jeffrey Hoefler. Applicant seeks a finding from the Board under MGL 40A, § 6, to allow an increase of area of a nonconforming use and demolish the existing**

919 sq. ft. single-family residence, and construct a new 1,258 sq. ft. single-family residence, and that the additions are not more substantially detrimental than the existing nonconforming use to the neighborhood.

The applicant, Ms. Irina Naryshkova, spoke to the Board via Zoom. She explained to the Board that the house had fallen into disrepair while it was vacant for the past decade. Her engineer had informed her that attempting to address all the issues with the house would be more expensive than demolishing and building a new house on the lot.

The proposed new single-family residence would be a single-story house with 2 bedrooms, a living room, kitchen, and one and a half bathrooms. While the new house would need to keep the existing side setbacks, it would be built further back from the road with the additional square footage extending into the rear yard. The new house would also continue to share a driveway with the EMS building to the west side, as it had since 1985.

There was no public comment on this petition.

Mr. Forand spoke to the Board. He confirmed the poor condition of the house. He considered the proposed plan to be an overall improvement to the property and the neighborhood. He noted that the extension into the rear yard would be within the square footage of the existing house and deck. He explained that normally, under Chapter 40A Section 6, the new house would be expected to be built in the same footprint of the existing house, but moving the new house further back from the road would create a more conforming property so he supported this change. The Board and Mr. Forand discussed the setbacks and locations for the new house.

Ms. Goyer inquired about the property being zoned as Business. Ms. Fidalgo noted that the department was trying to establish the exact year of the zoning change but could confirm that the property had been zoned as Business since at least 1981. As the house was older than the zoning change, it would be considered to be a pre-existing non-conforming lot.

Mr. Forand spoke to the Board about his feedback to the engineers and surveyors to encourage moving the new house further back from the road. When Ms. MacPhail asked about the side setbacks, Ms. Fidalgo explained that in the Business District, there was no minimum required setback when the other abutting side property was also zoned as Business. She continued that 10 ft setbacks, as was planned for the new house, would be the minimum required if the house was zoned as Single Family Residence District.

Ms. Naryshkova assured the Board that the new house would be an improvement to the neighborhood, being built up to code and following current construction best practices.

Ruy daSilva made a motion to approve a Finding from the Board under MGL 40A, § 6, to

allow an increase of area of a nonconforming use and demolish the existing 919 sq. ft. single-family residence, and construct a new 1,258 sq. ft. single-family residence, and that the additions are not more substantially detrimental than the existing nonconforming use to the neighborhood and was seconded by Amy Goyer.

The motion passed unanimously with Patrick Carr, Ruy daSilva, Peg Cook, Amy Goyer, and Kristen Russel in favor (5-0).

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. — *Continued from September 5, 2023, Last continued from September 5, 2024.*

The applicant, Mr. Brian Slowik, spoke to the Board. He explained that he lived between Massachusetts and Florida and while in Massachusetts, he often went camping in his mobile home. Given that he rented out the house at 3 Birchfield Street, he would prefer to occupy the mobile home while it was parked on the property during the weeks between his camping trips. He also mentioned the possibility of selling the house in the near future.

There was no public comment on this petition.

Mr. Forand explained that storage of the camper was allowed by right on the property, but anything beyond 48 hours would require a Special Permit. He expressed his concerns with issuing Special Permits for extended occupancy, mirroring the comments made by Health Agent David Flaherty in his August 28, 2023 letter to the Board. If the Board wished to grant the Special Permit, he recommended that the Board place conditions and limitations on the permit. He had additional concerns regarding how waste discharge would be handled. The Board and the Commissioner discussed also the use of seasonable campers on West Island.

Ms. Russell asked as to where the mobile home would be located on the property and Mr. Slowik confirmed that it would be to the rear of the property in the driveway. He also assured the Board that he would not discharge waste on the property and would instead utilize discharge facilities at either the campgrounds he visited or at the BPW on Arsene Street.

Ms. Goyer raised her concerns with both this specific petition as well as special permits for the extended occupancy of mobile homes in general. Ms. Russell also raised concerns with the point in Agent Flaherty's note that the police had previously been involved with this property. Mr. Carr acknowledged both Ms. Goyer and Ms. Russell's concerns, including that the Board could be opening themselves up to additional requests for special permits for extended

occupancy of mobile homes.

Mr. Slowik explained that he was seeking a Special Permit as he had previously stayed in his mobile home for extended periods of time while it was parked on the property. He would also be amenable to allowing for the permit to be revoked if there were any complaints lodged. The Board also discussed the length of time Mr. Slowik would wish to stay and how the Special Permit could be enforced.

Mr. Slowik detailed the previous police involvement at the property as part of a dispute between him and his previous tenants at the property.

Ms. Goyer once again voiced her concerns about the Permit, and then brought up the forthcoming legislation on accessory dwelling units. Mr. Forand explained that the legislation relating to accessory dwelling units would have no bearing on regulations related to mobile homes.

Mr. Carr inquired if there could be a condition on this Special Permit that it could be revoked if there were any complaints filed about the mobile home, and Mr. Forand confirmed that it could be written into the permit. The Board and Mr. Forand discussed other conditions such as not allowing any waste discharge at the property. Ms. Cook inquired about Mr. Slowik's plans on selling the property and to have the Special Permit be revoked if Mr. Slowik sold the property.

In discussing the conditions of the permit, Ms. Goyer requested a definite time limit and stipulations on waste discharge be written into the decision. Ms. Russell inquired if all Special Permits for extended occupancy of mobile homes would require similar conditions and Mr. Carr answered that each permit would be handled individually.

Ruy daSilva made a motion to approve 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 and 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 and was seconded by Ms. Russell.

The Board and Ms. Fidalgo discussed the outlined conditions to include in the special permit, which were as follows – The Special Permit was only for Mr. Slowik and the permit would be revoked if he sold the property; the maximum time allowed was two weeks; there was to be no discharge of waste on the property; if the property was rented out, the lease agreement must reference the special permit; if there were any complaints made or violations found, the permit would be revoked.

Ms. Russell supported granting the Special Permit with the above conditions to allow the Building Commissioner to enforce those terms and to rectify Mr. Slowik having occupied his mobile home for extended periods of time without a permit previously. Mr. Carr reiterated that he would want to handle any Special Permits for extended occupancy of a mobile home on an individual basis and take steps to draft appropriate conditions for each one.

The motion passed with Patrick Carr, Ruy daSilva, Peg Cook, and Kristen Russell in favor and Amy Goyer against. (4-1).

- 3. REF#: ZBA-024-017: 166 Ebony Street, Map 11, Lot 155. Applicant: Jaqueline Alfonso. Owner: Antonio and Jaqueline Alfonso.** Applicant seeks an Administrative Appeal of the Building Commissioner's Letter, dated August 15, 2024, regarding the use of a camper as a dwelling. ***Applicant requests to be withdrawn without prejudice.***

Ms. Fidalgo explained that the Applicant had to file her appeal within 7 days of receiving the Building Commissioners letter. In the intervening time since filing the appeal, the camper had been removed from the property with no intention of returning it and thus the violation cited in the Building Commissioner's letter had been rectified. Ms. Fidalgo continued, noting that since the petition had been advertised and abutters were sent notices, the petition could only be withdrawn via a vote from the Board.

Amy Goyer made a motion to approve the withdrawal of the Petition for 166 Ebony Street without prejudice and was seconded by Ruy daSilva.

The motion passed unanimously with Patrick Carr, Ruy daSilva, Peg Cook, Amy Goyer, and Kristen Russel in favor (5-0).

- 4. REF#: ZBA-024-018: 62 Maitland Street, Map 22B, Lot 75A. Applicant and Owner: Gail Rebello.** Applicant seeks a 4.1 ft ± Variance to build an in-ground swimming pool 5.9 ft. from the rear property line as compared to the minimum 10 ft. setback, pursuant to Fairhaven Chapter 475 Swimming Pools, 2 Fencing; sanitation; location, C.

The applicant, Ms. Gail Rebello, spoke to the Board via Zoom, under Chris Andrade's Zoom account. She explained that the plan before the Board had been approved by the Conservation Commission and that she had no neighbors to the rear of her property as there was a paper street – Emerald Drive - behind her lot.

Mr. Forand informed the Board that he thought that the reduced setback would not be detrimental to any of the abutting property owners. He also confirmed that Emerald Drive was not built and instead contained brush and wetlands. The nearest rear abutter would be on the other side of Emerald Drive with their backyard abutting the same paper street. Mr. Forand also confirmed that the required fence would be along the lot line.

Mr. Carr asked Ms. Rebello to explain her hardship to the Board. She answered that the drainage and the gradient slope influenced the choice of plan from the Conservation Commission. Mr. Carr inquired if a conforming plan had been submitted, which Ms. Rebello confirmed that one with a 10-foot setback had been submitted but that the Conservation Commission instead approved the plan version with the 5.9 ft. setback.

Mr. Forand then pointed out the slope and the recharge system on the property and confirmed having reviewed two different plans. Ms. Rebello confirmed that the proposed new addition was also part of the plan reviewed by the Conservation Commission.

Ms. Goyer had questions if this lot matched the average size in the neighborhood and if any others would also face similar issues if attempting to build an in-ground pool, which Mr. Forand confirmed. Ms. Russell inquired about any potential development of Emerald Drive and Mr. Forand explained that he would like to see a full review of the paper street across the Town.

Ms. Goyer and Ms. Fidalgo discussed if this petition would meet the Variance requirements. Ms. MacPhail asked if the pool could be reduced in size to better meet the required setback. There was a discussion between the Board and Ms. Fidalgo regarding how this petition fell into the purview of the Zoning Board of Appeals, given that the bylaw in question was under the Board of Health as well as how a denial or withdrawal of the petition would then require further actions by the Conservation Commission such as the submission of an amendment to the original approved application.

Mr. Carr asked for further clarification on why the Conservation Commission rejected the plan with the 10-foot setback and if such a location for the pool would be detrimental to the property and the surrounding wetlands. Ms. Rebello outlined the steps taken to provide mitigation to the pool's development and the concerns regarding the slope and drainage.

Mr. Carr suggested seeking a statement from the Conservation Commission regarding the reasons behind approving the plan with the 5.9 ft. setback in order to give the Board better context as to any possible hardships with the project. Regarding the action that would be required at this meeting, Ms. Fidalgo recommended that Ms. Rebello request that the hearing be continued to the next Zoning Board of Appeals meeting to allow the Board to seek out information from the Conservation Commission. Ms. Goyer also explained that the Board could only grant Variances if specific hardships could be established.

The Board and Ms. Rebello discussed the next necessary steps. If the Conservation Commission could agree to amend the approved plan to instead utilize the version with the 10-foot setback, then the petition could be withdrawn from the Zoning Board of Appeals as they would no longer need to grant relief. Otherwise, the Conservation Commission would need to provide documentation to the Board to prove the hardships that necessitated a non-conforming setback for the pool. Ms. Fidalgo promised the applicant that she would assist with

getting any documentation from the Conservation Commission forwarded to the Board.

Ms. Rebello then requested that the hearing be continued to the next meeting.

Ms. Goyer made a motion to continue the hearing for REF#: ZBA-024-018: 62 Maitland Street to the November 6, 2024 meeting and was seconded by Ruy daSilva.

The motion passed unanimously with Patrick Carr, Ruy daSilva, Peg Cook, Amy Goyer, and Kristen Russel in favor (5-0).

Mr. Carr adjourned the meeting at 7:42 PM.

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