

**Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK  
RECD 2025 JUL 8 AM 10:15**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Patrick Carr (chair) opened the June 3<sup>rd</sup>, 2025, meeting at 6:00 PM. The board members introduced themselves and he 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. Patrick Carr opened the meeting to the public and then closed the meeting for the executive session and not to return.

Patrick Carr welcomes Geoff Sullivan as a new member to the ZBA and explains that Kathrine MacPhail has resigned from the ZBA.

**Quorum/Attendance, Town Hall:** Patrick Carr, Ruy daSilva, Peg Cook, Robert Hanna, Derek Furtado, Daryl Manchester, Kristen Russel and Geoff Sullivan

**On Zoom:** N/A

**Recording Secretary:** Suzanne Vieira, absent.

**Building Commissioner:** Richard Forand was present.

**2. Meeting minutes:** Board approves the May 6<sup>th</sup> minutes unanimously.

**Patrick Carr explains that Richard Forand is here in attendance. He also explains that there is no public hearing but there is an executive session.**

Patrick Carr asks for a motion to adjourn the public hearing and to go into executive session. Ruy DaSilva makes a motion to go into executive session and not return. Kristin Russell seconds the motion.

**Patrick explains the executive session:** Meeting with Town Counsel in Executive Session pursuant to M.G.L. c.30A, § 21(a)(3) and Suffolk Construction v. DCAM, 449 Mass. 444 (2007) to discuss Diggle, et al. v. Leidhold, et al., Superior Court C.A. No. 2373cv00795, and pursuant to G.L. c. 30A, § 21(a)(7) "[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements," specifically the Public Records Law, G.L. c. 4, s. 7(26) (discuss privileged communications from Town Counsel re litigation).

**II. EXECUTIVE SESSION:**

**Meeting with Town Counsel in Executive Session pursuant to M.G.L. c.30A, § 21(a)(3) and Suffolk Construction v. DCAM, 449 Mass. 444 (2007) to discuss Diggle, et al. v. Leidhold, et al., Superior Court C.A. No. 2373cv00795, and pursuant to G.L. c.30A, § 21(a)(7) “[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements,” specifically the Public Records Law, G.L. c. 4, s. 7(26) (discuss privileged communications from Town Counsel re litigation).**

**Quick recap**

The meeting focused on several variance-related matters, including a case that was remanded back to the town council by the Superior Court and another involving an accessory dwelling unit construction project. The members discussed potential withdrawals of variance applications and the possibility of reapplying under new ADU laws that have become more lenient at the state level. The conversation ended with discussions about proper documentation and legal procedures for handling withdrawn variance applications, including the need for proper training materials and updates from the applicant's attorney.

**Next steps**

- Michael Terry to update the board before the next meeting on whether the applicant plans to withdraw or proceed with the variance application.
- Michael Terry to provide agenda language for the upcoming meeting regarding the remanded variance matter.
- Building Commissioner to review new plans from the applicant (if submitted) to determine if the proposed ADU meets current bylaws and can be allowed by right.
- Michael Terry to file a stipulation of dismissal with the court if the applicant chooses to withdraw the variance application.
- Board members to review the previous hearing video and documents if the variance matter proceeds.
- Add the remanded variance matter to the agenda for the July 2nd meeting.
- Board Secretary to obtain and distribute the variance training video to all board members.

## **Summary**

### **Variance Remand Court Order**

The meeting discussed a variance matter that was remanded back to the town council by the Superior Court. Michael explained that the applicant's original plan was to withdraw the application, but now the court has ordered further findings and reconsideration of the decision. The council needs to add this matter to their next agenda, and Michael will provide language for the agenda and update them on whether the applicant wants to withdraw or proceed with the variance.

### **ADU Variance Legal Strategy**

Michael discussed a legal case involving a variance for an accessory dwelling unit (ADU) construction project. He explained that the original variance decision did not meet the high standards required by statute and would likely be overturned by the court. Michael suggested that the applicant might withdraw the variance request and instead pursue a special permit under the new ADU laws, which have been made more lenient at the state level.

### **Board Composition and Hearing Review**

Michael informed Town that a matter would be returning for review and suggested adding it to the agenda. The town expressed concern about the board's composition changes since the initial hearing and asked if this could be an issue. Michael advised that the current board members would vote on the matter, and suggested seeking clarity from the court about reopening the hearing. Town agreed this would be helpful and mentioned they could review the prior hearing record to familiarize themselves with the case.

### **ADU Application Process Update**

The discussion focused on an ADU (Accessory Dwelling Unit) application, where the building commissioner clarified that under the new ADU laws, the applicant would be allowed to proceed by right if his proposal meets the square footage and setback requirements. Michael suggested the applicant might withdraw his current variance request and reapply under the new laws, which the building commissioner confirmed would be the appropriate next step. The building commissioner explained that the applicant needs to submit new plans and schedule a meeting to withdraw his previous application without prejudice.

### **Variance Withdrawal Legal Discussion**

The discussion focused on a legal case involving a variance application that was granted to a property owner, but now the applicant wants to withdraw the application. Michael explained that if the application is withdrawn, the court case would be dismissed and no further legal action would be needed. Town inquired about potential legal fees, and Michael clarified that the town would not be liable for any fees associated with the withdrawn case. The conversation also touched on the fact that

the building in question already exists, and under new ADU laws, it is now allowed by right, meaning the applicant could potentially proceed with a new application if needed.

**Variance Application Withdrawal Discussion**

The meeting focused on a pending variance application that may be withdrawn. Michael reported he had contacted the applicant's attorney and would provide an update before the next meeting on July 2nd. The group discussed the need for proper documentation and legal wording if the variance is withdrawn and refiled. Town mentioned he would obtain and distribute a training video about variance rules created by Heather.

**The meeting adjourned.**