

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes - Draft

I. ADMINISTRATIVE BUSINESS

1. Quorum/Attendance

Patrick Carr (chair) opened the July 1, 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.

Quorum/Attendance, Town Hall: Patrick Carr, Ruy daSilva, Peg Cook, Robert Hannan, Derek Furtado, Daryl Manchester, Kristen Russel and Kenneth Kendal

On Zoom: N/A

Recording Secretary: Suzanne Vieira, present

Building Commissioner: Richard Forand was present.

2. Meeting minutes: Board to approve the June 3rd and July 1st, 2025 minutes.

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 The conversation ended with discussions about proper documentation and legal procedures for handling withdrawn variance applications, including the need for proper training materials and updates from the applicant's attorney.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

- Town Chair to formally request a joint meeting between the ZBA and Select Board to discuss procedures for associate members becoming full-time members.
- Town Chair to draft and submit agenda items for the joint meeting with the Select Board, focusing on recent appointment issues and future procedures.

- Town Chair to contact Suzanne to be added to the next Select Board meeting agenda or the following one.
- Bob Hannan to follow up with the Building Commissioner regarding questions about 17 Shore Drive application details before the next meeting.

Quick recap

The Zoning Board of Appeals meeting covered various property-related applications, including variance requests for pool installations and special permits for home businesses. The board discussed concerns about the process for appointing new members and transitioning associate members to full-time positions, agreeing to request a joint meeting with the Select Board to address these issues. Throughout the meeting, the board emphasized their commitment to fairness and justice while balancing strict adherence to rules with practical development needs.

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Summary

Zoning Board of Appeals Updates

The Zoning Board of Appeals meeting opened with announcements, including the resignation of associate member Katherine McPhail and the appointment of Kenneth Kendall as a new associate member. The board approved the minutes from the June 3rd executive session with a minor correction to a name spelling. A continuance was granted for the hearing on 17 Shore Drive, allowing it to be moved to the August 5th meeting. The board then began discussing the application for 2 Oxford Street, represented by James W. Marsh Esq. and David Devigna Leone, who presented a new plan for the property.

Pool Variance Application Discussion

The meeting discussed a variance application for a pool installation on a property with 100 feet of frontage. Dave explained that the proposed pool location between the house and paper street, which is not a public road, would be screened by existing vegetation and a row of green shrubs. Jim Marsh presented the variance application, noting that the proposed site is within the front setback and fits well within the yard area, being one of the flattest and largest open areas on the property. The board discussed the distinction between a variance and special permit, with Kristen inquiring about the reason for choosing a variance over a special permit.

Front Yard Pool Variance Discussion

The board discussed a variance request for an in-ground pool in the front yard setback of a property with 199 linear feet of frontage along Oxford Street. Kristen suggested considering the water frontage as the side yard, but the board clarified that under zoning, the street line is the frontage. The board questioned the hardship requirement for the variance, as the property has excess frontage that is not being used as actual frontage. After discussing the property's layout and history, the board decided to close the public hearing and vote on the variance approval, with Robert Hannan expressing doubt about the hardship requirement.

Pool Variance Decision Discussion

The board discussed whether a proposed pool location required a variance, with the Building Commissioner ruling that it was a side yard rather than front yard based on the property's definition and setbacks. While the board agreed this made the variance unnecessary, they expressed concern about potential appeals to this decision and the long-term legal implications of granting a variance. The discussion also touched on lot coverage, which would increase from 29.7% to 35.3% with the pool, though this remained under the district's 50% limit.

Pool Permit Zoning Debate

The meeting discussed a request for an in-ground pool permit, focusing on soil and topography issues that make the current location the only feasible option. The board debated whether to grant the permit, considering the economic hardship of relocating and the specific zoning requirements for swimming pools. They also discussed the potential for future legal challenges to the permit, with the attorney noting that while the building inspector has the authority to issue the permit, it could still be appealed.

Zoning Variance and Permit Approvals

The board approved a variance for a property at 2 Oxford Street, finding it met all necessary criteria after discussion of unique circumstances including soil conditions and lot shape.

A continuance was granted for a seasonal camper permit application at 0 Point Street until August 5th, pending conservation committee review and potential building commissioner assessment. The board also approved a special permit for an in-home office for construction business at 140 Sycamore Street, and

unanimously allowed the withdrawal of a variance application at 23 Summer Street that was pending court review.

ZBA Membership Process Clarification

The ZBA chair discussed the process for associate members to become full-time voting members, highlighting concerns about communication and transparency regarding recent appointments. They proposed a meeting with the select board and ZBA to clarify this process, noting that key information about resignations and appointments was not properly communicated, particularly regarding Amy Goyer's resignation and Geoffrey Sullivan's appointment as a full-time member.

Formalizing Associate to Full-Time Transitions

The board discussed concerns about the process for transitioning associate members to full-time positions, with several members expressing frustration that someone with no experience was appointed as a full-time member instead of qualified associate members. Kristen Russell and Derek Furtado emphasized the need for a formal procedure for associate members to become full-time members, while Kenneth shared his experience of being demoted from full-time to associate status without notification. The board agreed to consider making a formal request to the select board regarding the establishment of clear procedures for associate member advancement, though they acknowledged this might not be well-received.

Board of Appeals Role Discussion

The Zoning Board of Appeals discussed their role in granting relief from building inspectors and emphasized their commitment to fairness and justice. They expressed frustration with recent challenges and highlighted the importance of balancing strict adherence to rules with practical development needs. The discussion also touched on the process for selecting new board members, with Mr. Manchester suggesting a system for notifying the chairman of resignations to allow associate members to apply for full-time positions.

Zoning Board Member Transition Concerns

The Zoning Board of Appeals discussed concerns about the process for transitioning associate members to full-time positions, particularly regarding a recent decision to appoint a new member without giving current associate members the opportunity to apply. The board agreed to request a joint meeting with the Select Board to address these procedures and potentially rescind the recent appointment decision, with the board proposing to add this topic to the next Select Board agenda. The discussion also touched on the need for proper notification of associate member resignations and the importance of following established protocols for such transitions.