

**Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting Minutes**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Kenneth Kendall opened the April 2, 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, Peg Cook, Andrew Romano, Amy Goyer, Kristen Russell

**Arrived During the Meeting:** Patrick Carr

**Absent:** Daryl Manchester

**Interim Building Commissioner:** Joel Reed

**Recording Secretary:** Stephanie Fidalgo

**2. Acceptance of the March 6, 2024, meeting minutes**

Amy Goyer made a motion to accept the minutes of the March 6, 2024, meeting and was seconded by Andrew Romano.

The motion passed unanimously. (6-0)

**3. Letter of Support for a Community Planning Grant Application for Zoning Bylaw Updates**

Ms. Fidalgo explained to the Board that the Planning Department was preparing to apply for a Community Planning Grant to cover the cost of having a consultant update the Zoning Bylaws. The Director, Paul DiGiuseppe, requested that the Board submit a letter of support which Ms. Fidalgo had drafted and forwarded to the Board.

Patrick Carr arrived at the meeting at 6:04 PM.

Andrew Romano made a motion to support the application and allow the Chair to sign the letter 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 May 7, 2024 meeting.***

Ms. Fidalgo noted the continuing litigation regarding this property as the reason for the continuation request.

Ruy daSilva made a motion to continue the hearing for 3 Birchfield Street to the May 7, 2024, meeting and was seconded by Amy Goyer.

The motion passed unanimously with Ruy daSilva, Peg Cook, Andrew Romano, 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 applicants were revising their plan to create a more conforming one. However, the plan had not yet been finalized in time to present at this meeting so they had requested a continuance to the next meeting.

Andrew Romano made a motion to continue the hearing for 11 Fishermans Road to the May 7, 2024, meeting and was seconded by Kristen Russel.

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

3. **REF#: ZBA-024-008: 26 Rivet Street, Map 31A, Lots 51 & 52. Applicant and Owner: Ryan Haworth.** Applicant seeks a 4 ft. Variance to build a 576 sq. ft. garage with a height of 24 ft. as

compared to the maximum 20 ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (2).

Mr. Ryan Haworth spoke to the board. He explained that the garage was originally built in Westport and had been offered to him by one of the customers of his roof-washing business on the condition that he disassemble and rebuild it himself. The Variance request was due to the inclusion of a 4 ft. cupola on the base 20 ft. garage.

Mr. Chris Fowler of 365 Huttleston Road spoke in favor of the petition, seeing it as a nice addition to the neighborhood.

Ms. Sarah Dupont of 21 Rivet Street spoke in favor of the petition, noting that other properties in the neighborhood had received garage variances with no issue.

Mr. Peter Szala of 18 Mangham Way spoke in favor of the petition, noting that there were garages in the neighborhood as tall as two stories.

Ms. Goyer inquired if cupolas counted for the total height of the building and Interim Building Commissioner, Joel Reed, explained that building height should be measured from the average finished grade to the highest point of the roof and additional structures could be exempted under certain circumstances. He confirmed with Mr. Haworth that the height of the garage without the cupola or foundation included was 20 ft.

Mr. Romano inquired about the procedure given that the previous Building Commissioner, Randy Bassett, had recommended the petition come before the Board while the acting Interim Building Commissioner believed that the petition did not require the Board's approval. Mr. Reed explained that given the circumstances, he would include a height restriction to 20 ft. in the building permit, as measured from average finished grade to roof peak. Mr. Haworth and Mr. Reed then discussed the options for the foundation.

Mr. Carr inquired about the grade of the building, with Mr. Haworth explaining that the drawings shown to the Board were from the original installation in Westport and did not reflect his property.

The Board discussed the possible options for this petition, noting that if the foundation raised the height over 20 ft., the garage would be out of compliance. Ms. Goyer explained the criteria necessary to approve a Variance to Mr. Haworth, outlining the need for a unique circumstance to property, a substantial hardship, and no degradation of the bylaw, and this petition did not meet those criteria. Mr. Kendall recommended ensuring that the garage would meet the 20 ft. height requirement, even if it meant not installing the cupola.

Mr. Haworth then agreed to the Board's recommendation to have the petition withdrawn

without prejudice and planned to speak with the interim Building Commissioner on his permit.

Andrew Romano made a motion to withdraw the application for 26 Rivet Street without prejudice and was seconded by Amy Goyer.

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

4. **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 outlined the history of the lot and building, with the 7,400 sq. ft. lot having been drawn in 1938 and the existing house built in the 1950's. The lot was a pre-existing non-conforming lot as it had later been rezoned as rural residential and did not meet the frontage and lot size requirements for the zone. The submitted site plan showed a comparison between the existing conditions and proposed new construction. The project would require approval from this Board as well as the Board of Health and the Conservation Commission. Mr. Rogers noted that the Board of Health had approved the septic system plans at their March 13, 2024, meeting and the Conservation Commission had already held meetings to discuss the property and would continue the hearing at the April 22, 2024 meeting.

He explained that the building coverage for the new property would be in compliance and the recommendations of the Conservation Commission would significantly reduce the lot coverage from the current 34% by approximately half. He then explained that the Variances for the south side setback and the rear setback were due to the required deck and stairs to provide egress to the raised house.

Mr. Rogers then explained why the project should be allowed the relief, noting that the lot was drawn in the 1930's and while the project could conform to the proportional requirements, the setback requirements did not match the small size of the lot or the characteristics of the neighborhood. As for the topographical conditions, the lot was within the Elevation 20 Flood Zone, with a base elevation of 4 to 5 feet. Under the State Building Code, the new house would need to be raised to 22 ft. and with the two stories would be just

over the 35 ft. height requirement at 38 ft. 9 in. Mr. Rogers also argued that there would be no detriment to the public good, with the house centered in the lot to reduce any negative impact on the neighbors. Not granting the Variances would create a hardship as any significant improvement to the house would trigger the 50% Rule in the Massachusetts Residential Code Requirements in Floodplains, requiring the property to be brought into compliance with the current regulations.

Ms. Kelly Moura of 25 Nakata Ave asked about the location of the septic system and bring up her concerns with the existing patio as related to the frontage. Mr. Rogers showed the septic system location in the front of the house and emphasized the environmental benefits of raising the house up. Regarding the patio, he explained that the house's frontage was measured from the street and that any updates or changes to the existing patio were the purview of the Conservation Commission.

Ms. Katie Medeiros of 27 Nakata Ave spoke against the petition. She explained that the patio construction had caused damage and flooding on her property and had concerns about the larger size of the new house.

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, which centered around the flooding in the area and how the reconstruction of the house would change the landscape of the neighborhood.

Ms. Grace Halabi, one of the owners of 29 Nakata Ave spoke in favor of the petition. She addressed the concerns with the patio and the plans to rectify them. She also noted that raising the house and other planned drainage improvements would help to mitigate run-off to other properties from storms and waves.

Mr. Michael Moura of 15 Nakata Ave spoke against the petition, not agreeing with requested Variances and suggesting a smaller house to better comply with bylaws and match the neighborhood. He had additional concerns about the new septic system.

Mr. Rogers explained to the board that even if the proposed new house stayed within the existing footprint, Variances would still be required given the current zoning. While the new house would be larger, the increase in size was mainly towards the water with the sides remaining mostly the same. He also covered the plans to minimize the impact of the septic system and to add new stormwater and roof run-off mitigation efforts, especially along the property lines.

Ms. Goyer outlined her concerns with the project, such as having two-stories which raised the house above the height restriction. Mr. Rogers explained that the plans were compliant with current code, other than the needs for specific relief from the setbacks and that raising up the

house would protect it from future storms. When Ms. Goyer again brought up her concerns with the two-story design, Mr. Rogers assured that plans could change to comply with the 35 ft. if necessary. For the side setbacks, he explained that it would be impractical to strictly adhere to the 20 ft side setbacks, given the need to construct a raised house. Ms. Goyer still had reservations on if this project was facing a significant hardship.

Mr. Kendall asked Mr. Reed if the applicant could instead seek a Special Permit instead of the requested Variances, with Mr. Reed replying that it would depend on any newly presented plans. Mr. Rogers assured the Board that if they had issues with the height, the plans could be changed to meet the height restriction.

Mr. Romano asked about the conditions of the current house, with Mr. Rogers explaining that the house was currently boarded up and had been damaged by storms and that there was the possibility of it being washed away in a major storm. Mr. Romano noted that the necessity of rebuilding a flood zone compliant house could be considered a non-personal hardship.

Ms. Russel inquired if any proposal to rebuild the house would require the raised piles, with Mr. Rogers confirming that it would. He covered the attempts to reduce the overall height of the house but confirmed that the plans could be altered to meet the 35 ft. height requirements if the Board required.

Ms. Goyer inquired about the difference between the current side setbacks and the proposed plan with Mr. Rogers answering that there was no major change to the north side setback and that the change to the south side setback was due to the inclusion of a deck and stairs to reach the elevated house. She then asked the Interim Building Commissioner if the deck had to be counted to the setback, and he confirmed that it would due to the need to provide egress.

Mr. Rogers provided several screenshots from MassMapper of the current neighborhood to the Board to illustrate the character of the neighborhood and how many properties did not currently meet the setback requirements.

Mr. Carr asked Mr. Reed about the possibility of obtaining a Special Permit for this project, and Mr. Reed recommended that the applicant either withdraw without prejudice or request a continuance so that he could review the project along with any relevant case law and possibly make new recommendations.

Mr. Carr then inquired about the general area of impervious surfaces currently on the property, with Mr. Rogers answering that the current lot coverage was 34% and that the proposed project would cut that percentage roughly in half. Mr. Carr and Mr. Kendall then both outlined the benefits of the projects and suggested further review by the Interim Building Commissioner.

Mr. Scott Snow requested to speak to the board, noting that another house in the neighborhood had a height variance approved.

Mr. Rogers requested a continuance to the May meeting, noting the meeting with the Conservation Commission on April 22, 2024 and promised to bring a revised plan to the Board. Ms. Goyer recommended reviewing the applicable case law before presenting any new plans or petitions to the Board.

Andrew Romano made a motion to continue the hearing for 29 Nakata Ave to the May 7, 2024, meeting and was seconded by Amy Goyer.

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

Ruy daSilva made a motion to adjourn and was seconded by Andrew Romano. All were in favor.

The meeting adjourned at 7:09 PM.

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

*Approved, May 7, 2024*

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