



TOWN OF FAIRHAVEN
BOARD OF APPEALS
Town Hall, Fairhaven, Mass. 02719

November 1, 2011

The Fairhaven Board of Appeals met on November 1, 2011 at 6:00 PM at the Fairhaven Town Hall. Members present were: Mr. Rene Fleurent, Jr., Mr. Kenneth Kendall, Mr. Fran Cox, Mr. Peter DeTerra, Mr. Daryl Manchester and Ms. Peg Cook. The following petition was considered:

Petitioner: Francisca Zuccherro 19 Fishermans Road Plat 43A, Lot 252 Certificate #11673
198-18 Short 11' of the required 30' front setback, short 10' on the east side and 2' on the west side of the required 20' side setback and 3% over the maximum allowed building coverage of 15% all within a RR District.

The petition was read. There were 51 abutters notified. Mr. Fleurent, Jr. stated he is an abutter. The petitioner was represented by Sheldon Hill who stated the existing dwelling is in poor structural condition. They would like to remove the dwelling and replace it within the same footprint but with a ten foot rear addition. The lot is small and a variance is required.

In Favor: Mr. Hill

Opposed/Questions: none

Motion to grant the Variance was made by Mr. Cox; seconded by Mr. Fleurent, Jr.

Board members voting to grant the Variance: Mr. Manchester, Ms. Cook, Ms. Cox, Mr. Fleurent, Jr. and Mr. Kendall.

The Board voted 5-0 to grant the Variance of eleven feet (11') of the required thirty feet (30') front setback, ten feet (10') on the east side and two feet (2') on the west side of the required twenty feet (20') side setback and three percent (3%) over the maximum allowed building coverage of fifteen percent (15%) in a RR District as required in Section 198-18 of the By-Law for the following reasons:

- 1.0 The lot is small and the variance is required for construction in the same footprint. Not granting the Variance would create a hardship.
- 2.0 Granting this relief will not derogate from the intent and purpose of the By-Law.
- 3.0 Granting this relief will not adversely affect the zoning district in which it is located.

Peter DeTerra,
Chairman



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Petitioner: Sharon Bates, Trustee of The Ruth Street Realty Trust 4 Ruth Street Plat 43, Lots 140,141,142 Book 6846, Page 56
Special Permit A Special Permit is required for expansion of a non-conforming lot.

The petition was read and there were 42 abutters notified. The petitioner was represented by Steven Kelleher, Steven Kelleher Architects, Inc. of Fairhaven, Ken Ferreira, P.E. of Ferreira Engineering, Inc. of New Bedford and Attorney Koldys of New Bedford. Mr. Kelleher and Mr. Ferreira presented plans and visuals of the proposal which is to remove the existing 26'x22' dwelling and replace with a FEMA, building code, wetland and Title 5 compliant 90'x 19' three-story, three-bedroom dwelling on stilts. A written statement in support of the special permit is part of this record. Photos of area dwellings were presented for review and are part of this record. Mr. Ferreira stated the proposal meets all the required dimensional setbacks and height restrictions. The only need is for expansion of a non-conforming lot. This has been a long standing neighborhood contentious proposal with a Department of Environmental Protection (DEP) Wetland appeal in 2009 resulting in an all-parties agreement with the DEP in June 2010. The plan being presented was approved by the local Conservation Commission and the DEP Wetlands Division and has no changes. In the interim, the flood plain requirements changed and the proposed dwelling is now compliant with the requirements. Attorney Koldys stated the proposal will be compliant with: all dimensional requirements, intensity of use as compared to other neighborhood structures with a proposed square footage of 2,900 as compared to area homes of 2,600 square feet, height and current building codes. More taxes will be generated through the construction. The hardship is due to lot size.

Opposed/Questions:

Attorney John Markey, New Bedford, represents a number of abutters present at the hearing. They have not had an opportunity to see the plans until now and request time to reflect.

Jane Brayton, 20 Nelson Avenue, asked if the plot plan shows a lot in contention in land court. Mr. Ferreira stated the plot plan shows only the lot owned by the petitioner.

Mr. Rossi, 36 Nelson Avenue, asked the dimension of the existing bedrooms vs. the proposed. Mr. Ferreira stated it is compliant with Title 5.

Ms. Abbott, 10 Palmer and Ms. Dean, 8 Palmer, asked about issues outside the purview of zoning.

Mr. Brayton, 20 Nelson Avenue, asked about the ledge at the site. Mr. Ferreira stated it is shown on the plan. There will be no jack hammering or blasting on the job. If ledge is encountered, the dwelling's footings will be pinned to the ledge with epoxy.

Mr. Dean, 8 Palmer, questioned wind load, hurricane winds and the structure. Mr. Kelleher stated the structure will be steel enforced framing with 5' footings pinned to the ledge and will withstand 125 mph winds. The windows will withstand 115 mph winds.

Ms. Brayton asked the process for pinning footings to ledge. Mr. Ferreira and Mr. Kelleher stated the septic system was percolated and constructed with no ledge encountered. They cannot tell if ledge is located in the proposed construction site because of the existing dwelling location.

A resident from Seabreeze Avenue noted one of the plans labels a street 'formerly Nelson Avenue' and it should be Nelson Avenue.

Christine Trethewey, 903 Sconticut Neck Road, stated the size and scope of the proposal is not fitting with the neighborhood at this particular site. There are other larger homes but they are further north. The photos presented are not representative of the immediate area.

Mr. Crete, 33 Nelson Avenue, stated 29 Nelson Avenue was allowed to rebuild and there was no forethought for impact to the neighborhood. In the summer there are people parking all over the neighborhood because there is no parking at this address due to the size of the house. This has the same situation potential.

Ms. Brayton stated the size of the structure will block everyone's view of the bay. Mr. Ferreira stated the request is for a special permit and the four standards for a variance are not part of the review.

Attorney Markey stated that his understanding of the requirements for granting a special permit is that the proposal has to be in harmony with the neighborhood. The present structure is modest in scope but the applicant is requesting a 90' x 19' x 35 high' structure. This is not in harmony with the neighborhood. If the Board does vote tonight please vote it down. If the applicant is willing to continue, it will give the neighbors a chance to meet and compromise.

Mr. Kelleher stated that when the parties met with DEP, this is the house agreed to and signed off on by all parties. It is in the agreement. Attorney Markey stated there was agreement on the flood plain issue only, not the design.

Attorney Koldys stated the proposal is in compliance with zoning and there have been property enhancements.



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4 Ruth Street

2.

Questions from the Board:

Mr. Kendall questioned if the height of the chimney or the deck overhangs are part of dimensional restrictions. They are not.
Mr. Cox questioned if the petitioner is willing to continue the hearing. Mr. Kelleher stated they have done so in the past with no resolution.

Motion to grant the Special Permit was made by Mr. Fleurent, Jr.; seconded by Ms. Cook.

Members voting to grant the Special Permit: Mr. Fleurent, Jr. and Ms. Cook.

Members voting not to grant the Special Permit: Mr. Manchester, Mr. Cox and Mr. Kendall.

The Board voted 3-2 not to grant the Special Permit required for expansion of a non-conforming lot as required by the By-Law for the following reasons:

- 1.0 The proposed extension of the non-conforming lot is substantially more detrimental than the existing non-conforming use to the neighborhood.
Not granting the Special Permit does not create a hardship.
- 2.0 Granting this relief will derogate from the intent and purpose of the By-Law.
- 3.0 Granting this relief will adversely affect the zoning district in which it is located.

Peter DeTerra,
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Petitioner: Antonio F. & Valentina L. DaCunha 8 Windward Way Plat 29, Lot 2C Book 7806, Page 277
198-18 Short 10' of the required 20' side setback in a RR District.

The petition was read. There were 13 abutters notified. The petitioners were represented by Mr. Jeff Tollman, Sitec Engineering, Dartmouth, MA who stated that plans for the house alterations have changed and the stated dimensional setbacks have changed. A new hearing is required with the correct plan and dimensional variance requests.

Motion to allow the petition to be withdrawn without prejudice was made by Mr. Fleurent, Jr.; seconded by Mr. Cox. Vote was unanimous

Motion to not charge the fee for the new hearing was made by Mr. Cox; seconded by Mr. Kendall. Vote was unanimous.

Peter DeTerra,
Chairman