



TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD
Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, February 27, 2024 at 6:30 pm
Held both at Town Hall & Remotely via Zoom

1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Madame Chair, Ms. Cathy Melanson, opened the meeting at 6:32 PM and advised who was present. The media notification was written on the agenda for the meeting and thus was not read aloud.

- b) **Quorum/Attendance: Present:** Cathy Melanson, Jessica Fidalgo, Jeff Lucas, Patrick Carr, and Sharon Simmons in the Town Hall Banquet Room. Kevin Grant and Diane Tomassetti on Zoom.

Paul DiGiuseppe, Director of Planning & Economic Development and Recording Secretary Stephanie Fidalgo were also present for this meeting.

Absent: Ruy daSilva

- c) **Minutes: January 23, 2024, drafts to be reviewed:**

Ms. Fidalgo made a motion to accept the minutes of January 23, 2024, and was seconded by Ms. Tomassetti. The motion passed unanimously via roll call vote. (7-0)

- d) **Correspondence:**

For general correspondence, Ms. Fidalgo had forwarded information regarding the annual Citizen Planner Training Collaborative conference to Ms. Melanson and Mr. DiGiuseppe. The conference will be held on March 16, 2024, at Holy Cross College in Worcester, and would feature panel blocks on different planning topics. Members of the Planning Board could be reimbursed for the \$95.00 registration fee out of the Board's budget.

1. Open Meeting Law Complaint filed by Wayne Hayward, dated February 2, 2024

(Secretary's Note: There was a scribe's error on the date for this letter on the agenda. The corrected date is reflected in these minutes.)

Mr. Wayne Hayward's Open Meeting Law Complaint was made in response to the January 9, 2024, meeting, specifically the "Planning Board Decisions" agenda item and the accompanying discussion regarding how Planning Board members were to handle concerns with applicants that became focused on a specific applicant complaint.

Ms. Melanson read her response letter to the Board, which contained counterpoints to a

few details of the complaint before outlining the steps the Board would take in the future to prevent such issues from reoccurring. This would include increased specificity of agenda items and a prohibition on Members submitting documents during the meeting that had not been previously vetted by the Chair.

Ms. Fidalgo requested details on what should be discussed or submitted under "Correspondence," with Ms. Melanson replying that Board members could submit items to be discussed under that agenda heading. However, if there was sufficient notice, it was preferable to have such items specifically listed on the agenda.

Ms. Melanson also confirmed to Ms. Simmons that going forward, no unvetted documents would be allowed and that all documents would need to be submitted to the Planning Department for review by her and Mr. DiGiuseppe.

Mr. Lucas asked who wrote the response letter, with Ms. Melanson answering that she wrote it with assistance from the Town Administrator.

Mr. Carr made a motion to approve submitting the response letter and was seconded by Ms. Fidalgo. The motion passed via roll call vote, with Mr. Lucas abstaining. (6-0)

2. Open Meeting Law Complaint filed by Jeffery Lucas, dated February 5, 2024

Mr. Jeffery Lucas' Open Meeting Law Complaint was also made in response to the January 9, 2024, meeting, specifically the "Planning Board Decisions" agenda item and the accompanying discussion regarding how Planning Board members were to handle concerns with applicants that became focused on a specific applicant complaint.

Ms. Melanson read her response letter to the Board, outlining the same steps noted above that the Board would take in the future to prevent such issues from reoccurring.

Mr. Carr made a motion to approve submitting the response letter and was seconded by Ms. Fidalgo. The motion passed via roll call vote (6-0), with Mr. Lucas having to abstain.

e) Letter of Support for the CDBG Hedge St. Phase 4 Application

Mr. DiGiuseppe had drafted a letter of support for the Planning Board to submit as part of the Town's CDBG Grant application to complete Phase 4 of the Hedge Street repairs project. This final phase would cover from roughly 70 Hedge Street to Adams Street and would consist of a replacement of the sidewalk, water line, sewer line, and the repaving of the road.

Mr. DiGiuseppe had collected similar letters from other Boards and Committees and had received approval from the Select Board to move forward with the application at their February 26, 2024, meeting.

Mr. Carr made a motion to approve submitting the letter of support and was seconded by Ms. Fidalgo. The motion passed unanimously via roll call vote (7-0).

f) Cana / Elevation Retail LLC 240 Bridge Street – Phase 4 Fairhaven Opening Traffic and Parking Management Plan Approval

As part of the special permit conditions for Cana Craft Cannabis / Elevation Retail LLC (See: SP 2022-03 – Elevation Retail Marijuana), the business was required to submit an annual report and receive approval from the Board before moving to Phase 4 of their traffic and parking management plan. During the development and early weeks of opening, Mr. DiGiuseppe along with the Fire and Police Chiefs had been meeting weekly with company president, Andre Arzumanyan, to discuss the traffic and parking plans and monitor the shifts from Phases 1 to 3.

Mr. Arzumanyan spoke to the Board via Zoom and made a short presentation. He first recapped the weekly sessions, having started on November 27, 2023, which focused on monitoring traffic and security measures, followed by working towards more efficient traffic flow and efficiency. The opening and operations moved smoothly with minimal impact on local traffic and the plan to progress to Phase 4 was approved on January 24, 2024. His presentation also included data on customer turnover with an average of 5.5 to 9 customers per hour and an average transaction time of 4:41. No incidents had been reported on site since the opening on December 1, 2023.

Mr. Arzumanyan then took questions from the Board. He responded to Mr. Lucas' questions that he found this structure to be beneficial to the business, that the business had installed a no left turns sign, and that the business did service both medicinal and recreational cannabis users, with a discount offered to medical card holders. Ms. Tomassetti asked about the issues with Certificate of Occupancy submitted in the report, with the staff agreeing that digital version had a rendering issue. On the Cannabis Control Commission license, Mr. Arzumanyan noted that the certificate had been updated since the report was originally submitted to the Board and a new one had been issued since. Mr. Carr asked about the volume of customers expected and Mr. Arzumanyan anticipated a steady increase in customers as the business established itself and promised to continue to monitor and control the traffic on site.

Mr. Lucas made a motion to approve the Cana / Elevation Retail LLC 240 Bridge Street – Phase 4 Fairhaven Opening Traffic and Parking Management Plan and was seconded by Ms. Fidalgo. The motion passed unanimously via roll call vote (7-0).

2. RECEIPT OF PLANS:

- a) **FA 24-04 459 & 463 Sconticut Neck Road: Form A Proposal to create three lots from 463 Sconticut Neck Road (Map 29 Lot 22) – Parcel A, Map 29 Lot 22C, and Map 29 Lot 22D, and then combine the new Parcel A with 459 Sconticut Neck Road (Map 29 Lot 22B), and dividing the remaining land of Map 29 Lot 22 into the new lots, Map 29 Lot 22C and Map 29 Lot 22D, submitted by Leslie A. Trott.**

Bob Rogers of G.A.F. Engineering spoke on behalf of the applicant. The intent of the plan was to separate the backland of Map 29, Lot 22 from a newly proposed 33,330 sq. ft lot (Map 29, Lot 22C) containing the house and barn at 463 Sconticut Neck Road. A portion of that large backland area – Parcel A – would then be combined with 459 Sconticut Neck Road to form a 30,119 sq. ft. lot, allowing both residential lots to have a common back line and meet the minimum lot size requirements for the Rural Residential District. The residential lots would not have their frontage changed.

The owners, Dr. Leslie Trott and his brother Thomas Trott, planned to convey the backland to the Buzzard's Bay Coalition. This plan would be used as the reference for that conveyance, with the lots owned by the Trott's on Camel Street also noted on the plan.

There were no questions from the Board.

Ms. Fidalgo made a motion to approve FA 24-04 459 & 463 Sconticut Neck Road and was seconded by Mr. Grant. The motion passed unanimously via roll call vote (7-0).

3. PUBLIC HEARINGS:

- a) SP 23-09 240B LLC - Bridge Street Special Permit: Build a 5,850 sq. ft. commercial style building on Bridge Street (Map 30A, Lots 87 & 87A), submitted by Carricorp Industries, LTD, continued from November 28, 2023 to February 13, 2024. Applicant is requesting a continuance to March 26, 2024.

Mr. Lucas made a motion to continue SP 23-09 240B LLC - Bridge Street Special Permit to March 26, 2024, and was seconded by Mr. Grant. The motion passed unanimously via roll call vote (7-0).

4. OTHER BUSINESS:

- a) **Proposed Zoning Bylaw Changes**

Mr. DiGiuseppe presented the Zoning Bylaw changes to the Board, which included additional updates from the version presented at the January 23, 2024, meeting. He requested that the Board take a vote to be the body that officially submitted the Warrant Language and noted that the Board would review the changes again before Town Meeting.

The list below contains the updates presented at this meeting. For the original list and discussion, please see the minutes of the January 23, 2024, meeting.

- **198-16 Use Regulation Schedule:**
 - **Change private dock or pier – Y in all Districts.**

Mr. DiGiuseppe outlined the current dock and pier permitting process, which required a special permit to be granted by either the Planning Board or Zoning Board of Appeals,

depending on the district where the dock is located. This is in addition to reviews by the Building Commissioner, Conservation Commission, Harbor Master, and state and federal agencies.

Mr. Grant brought up a previous pier special permit, SP 2022-05 Winslow Court Pier, wherein the applicant originally planned to place a pier along a lot line and then relocated the pier at the advisement of the Planning Board.

Ms. Tomassetti, while agreeing with Mr. Grant's point, did support the change to allow docks by right, so long as they met all of the requirements of the zoning bylaws and the reviews by other agencies.

Mr. Carr requested clarification on the purview for reviewing docks and permits and granting special permits, and Mr. DiGiuseppe explained that presently both the Planning Board and Zoning Board of Appeals handled special permits for private docks and pier, but with purviews over different Zoning Districts. He then further outlined that he would expect the Building Commissioner to be the one to flag any issues with bylaw compliance, such as setbacks.

Ms. Simmons elaborated further on the Winslow Court Pier approval process and the aid the Planning Board offered.

Mr. Lucas agreed that the main concern for the Planning Board would be dimensional requirements of the docks, to ensure ease and safety of use and movement. To his question about further changes to the bylaw, Mr. DiGiuseppe replied that there was a proposal to change some of the wording.

Mr. Carr suggested that the Board should wait until all members were present to discuss the details of the changes. Ms. Melanson requested a possible timeline from Mr. DiGiuseppe, who suggested that the language should be finalized within the next two meetings. He would ensure that the Board members had time to review all possible changes ahead of the March 12, 2024, meeting. A public hearing would also need to be held for the official recommendation to Town Meeting.

Ms. Melanson, Mr. DiGiuseppe, and Select Board member Keith Silva, who was in the audience, all assured the Board that Town Counsel would review the language before Town Meeting.

Returning to the discussion on the docks and pier bylaw, Ms. Tomassetti noted that all docks had to follow the Army Corps of Engineers guidelines. Mr. Grant followed up that he preferred to keep the special permit reviews to maintain checks and balances between departments and agencies. Mr. Lucas had concerns with the amount of review and the purview of docks and piers outside of the hurricane barrier and would prefer to maintain the special permit reviews.

Ms. Melanson reiterated the need to update the bylaw. Mr. Carr asked if a motion was needed to send out the proposed bylaw changes again ahead of the next meeting, but Ms. Melanson answered that it did not require a motion. She outlined a plan to focus on

the bylaw changes at the next meeting and requested for all members who could not attend to forward any comments to herself and Mr. DiGiuseppe to share with the Board.

- **Change Accessory apartment/in-law apartment – Y in AG**

The Agricultural district had been left out in the last update and was now included.

- **198-32.1 Accessory dwelling units – Remove the reference to allowed “by special permit of the Planning Board” and replace with “pursuant to §198-16.”**

As the bylaw changes would allow for Accessory Dwelling Units by right, the references to special permits would need to be removed and replaced with a reference to the Use Table.

- **198-32.2 Docks and Piers B – Remove references to the Planning Board and Zoning Board of Appeals as the Special Permit Granting Authorities and D – Remove the Waiver of Compliance subsection.**

The conditions for the Docks and Piers would remain in effect, while all references to special permits would be removed from the section.

- **198-33 Definitions and word use – Add definitions for the following uses:**

- **Shipping Container**

At the request of the Board, Mr. DiGiuseppe added a definition for Shipping Containers.

- **Chapters 306, 316, and 322: Planning Board Procedures**

These would cover changes to the Planning Board Procedures as outlined in the bylaw, which would also need to be presented and approved at Town Meeting.

- **306-1 Fee Schedule and Planning Board Charges – Removal of the section.**

Planning Board fees did not need to be included within the Town bylaws under MGL, and the proposal to remove the fee schedule would instead allow the fees to be approved by the Select Board, following the same process as many other Boards. The fees would not be removed but would instead go through a different approval process.

- **316-2 through 10 as well as 322-12 through 14 – Require all applications to include digital copies, reduce the number of required printed plans from 10 to 2, and remove the requirement for notices to be sent via certified mail with return receipt.**

These were proposed procedural changes to reduce the amount of paper used per application along with requiring digital copies to be submitted with every application. Mr. DiGiuseppe noted there were plans to move to a digital permitting system which would dovetail with these changes.

Mr. Lucas had his reservations about the removal of the certified return receipt requirement as proof of notice. He also had questions about the possibility of digital signed certified mail. While Mr. DiGiuseppe agreed that certified mail did provide

additional proof of mailing and receipt, the proposal to remove the requirement was in part due to the burden it incurred on the staff.

Ms. Fidalgo agreed with Mr. Lucas that the certified mailing requirement provided extra protection to the Town, but also was aware of the amount of the staff's time needed to complete a certified mailing and that it was not required under MGL.

Ms. Tomassetti asked about the possibility of the applicants being responsible for the certified mailings. Mr. Lucas explained that it was previously the applicant's responsibility to notice abutters and collect the receipts, but that this often resulted in delays since a project would not be allowed to be brought before the board until all receipts were collected. Eventually, the responsibility shifted to the Planning Department to facilitate the mailing, with the applicant paying the mailing fees.

Mr. Grant agreed that utilizing certified mailings would prove that the Planning Board made every attempt to notice abutters and it would provide a defense in case of appeals or concerns. Mr. DiGiuseppe outlined issues with the Post Office delivery and noted that he had not encountered a case where an appeal came from an abutter who had not been properly noticed.

The Board had further questions on whether other Boards and Committees were required to use Certified Mail, with a note that it was occasionally required for the Select Board. Ms. Fidalgo had further questions on the staff labor required was covered in the application fee and the Board did discuss if the use of electronic certified mail could be offered to the Town as a whole.

- **322-26 – Remove references to specific companies – Lebaron Grate and Scituate Rays – to instead of all catch basins, gates, manholes, and manhole covers be approved by the Board of Public Works.**

b) Proposed Stormwater Bylaw Changes

The Planning Department, Board of Public Works, and the Conservation Agent had been working together alongside consultants from BETA Group, Inc. to merge the three different stormwater regulations – 194, 198-31.1, and 322-26 – into a single unified chapter. Along with simplifying the code, the Stormwater regulations would also be updated to match the most recent code requirements and regulations. The standards were still in progress as of this meeting.

Included in the proposed changes was the creation of a Stormwater Authority, consisting of the BPW Superintendent, the Conservation Agent, and the Planning Director. The Authority would help to determine which body would review the project. Another planned change would be to have both the Planning Board and Conservation Commission use the same peer reviewer.

Mr. DiGiuseppe assured Ms. Fidalgo that the unified bylaw would continue to address issues with off-site run-off. Ms. Melanson supported the consolidation of the bylaws and the creation of a Stormwater Authority. Mr. Lucas commented on the reasons behind the differences in the existing bylaws as they had been tailored to different concerns and purviews. Mr. DiGiuseppe replied that the concerns and standards of different boards were being taken into account for this new unified bylaw and that creating a clearer and more predictable process for all parties involved was the end goal.

Ms. Melanson invited Highway Superintendent Joshua Crabb to speak via Zoom, but he then yielded the floor to BPW Superintendent Vinnie Furtado to speak via Zoom. Mr. Furtado outlined the history of the bylaw and how it had been added in 2018 in order to comply with the requirements of the 4th edition of the Massachusetts Stormwater Handbook and the EPA. It had been the BPW's goal since then to create a more unified and streamlined bylaw that would still allow the Planning Board, Conservation Commission, and BWP to maintain their current standards and purviews. Additionally, the regulations had changed since 2018 and this update would bring the new standards up to code.

Mr. DiGiuseppe did note that with the creation of a unified bylaw, the other sections would need to be repealed.

Ms. Melanson emphasized the need to move forward with this process and encouraged the Board to come prepared for discussion at the March 12, 2024 meeting.

c) Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

Mr. DiGiuseppe had informed the applicants and engineers for 240B LLC - Bridge Street Special Permit that if their application was not approved at the March 26, 2024 meeting, that they may have to withdraw and resubmit depending on the results of the April Town Election.

5. NEXT MEETING: Tuesday, March 12, 2024.

Ms. Melanson adjourned the meeting at 8:16 PM

Respectfully submitted,
Stephanie A. Fidalgo
Recording Secretary,
Planning Board

Approved, March 12, 2024