



# FAIRHAVEN PLANNING BOARD

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Fairhaven Planning Board  
*Minutes*  
Tuesday, March 23, 2021– 6:30pm  
Town Hall, 40 Center Street,  
Fairhaven MA 02719

RECEIVED  
TOWN CLERK  
2021 APR 23 A 11:16  
FAIRHAVEN,  
MASS.

1. **GENERAL BUSINESS:**

- a) **Chair's Welcome and Media Notification:** Chairman, John Farrell opened the meeting at 6:38p.m. and read the media notification per Governor Baker's mandate.
- b) **Quorum/Attendance: Present:** John Farrell, Wayne Hayward, Cathy Melanson, Jessica Fidalgo, Jay Malaspino and Geoff Haworth  
**Absent:** Jeffrey Lucas and Rene Fleurent
- c) **Minutes:** March 9 and March 11, 2021 drafts to be reviewed: Cathy Melanson made a motion to accept the minutes of March 9, 2021 and was seconded by Jessica Fidalgo. The motion passed unanimously via roll call vote with Wayne Hayward abstaining as well as Geoff Haworth.  
March 11, 2021 Minutes: Mr. Foley explained these are the draft minutes from a short section of the joint meeting with the Select Board. John Farrell made a motion to approve the March 11, 2021 minutes and was seconded by Jessica Fidalgo. The motion passed unanimously with Cathy Melanson, Jessica Fidalgo and John Farrell in favor.
- d) **Planning Board Bills:** None.
- e) **Bask Vote to move to Phase 4 of Traffic Mitigation Plan:** Mr. Foley explained that Bask was approved last summer and one of the key conditions dealt with concerns around traffic and the opening was conditioned on a four phase approach. He said that he has been meeting with Captain Botelho and Deputy Nichols weekly and there has been no traffic issues whatsoever. Mr. Foley stated that phase four needs to be approved by a majority vote from the Planning Board. Phase 4 is full opening and to adhere to the plan submitted for traffic and parking. Mr. Hayward asked what the hours of operation were in phase four. Mr. Foley stated in phase three the hours went from closing at 7 pm to 9 pm. So allowing Bask to go to phase four would be a vote to allow them to be completely opened.

Cathy Melanson made a motion to allow Bask to move to Phase Four and was seconded by Jessica Fidalgo. The motion passed unanimously via roll call vote.

**Planning Board Elections overview:** Mr. Foley stated this was brought up where there were four seats opening at the Election. He reviewed Chapter 65-1, explaining that four seats will be open on the April 2021 ballot. Two seats for four years in 2025 and 2 seat for 3 years to 2024. Mr. Hayward clarified there are two seats for four years, one two-year and one three-year position.

Mr. Foley read what the powers and duties of Planning Board members were. Mr. Foley stated Wayne Hayward will be doing a write-in campaign with Cathy Melanson, David Braga and Jessica Fidalgo were on the ballot.

Mr. Rheume was present for the Lewis Landing Project on Huttleston. He said they may have to wait until after the election to get a new Board and hopefully take a vote at that time. He suggested they may withdraw without prejudice to refile for a complete re-hearing.

Cathy Melanson made a motion to take SP2019-13 Lewis Landing out of order and was seconded by Mr. Haworth. The motion passed unanimously.

2. **PUBLIC HEARINGS:**

a) Public Hearings:

- i. **SP 2019-13 – Lewis Landing/Huttleston Multi-Unit Rentals:** Continued Public Hearing on proposal to create 12 two-bedroom rentals in 4 buildings on Huttleston Avenue (M 31 L 117C).

Mr. Farrell opened the hearing for SP2019-13-Lewis Landing. Mr. Rheume stated he understood that there was not enough sitting Planning Board members to move forward tonight on this vote. He said with the election coming up in two weeks that may change the makeup of the board, he is going to withdraw without prejudice and then refile to come back before the Planning Board. Mr. Rheume asked the board to waive the filing fees, as it is no fault of their own that they have to withdraw to move forward.

Mr. Hayward asked about the engineer account.

Mr. Foley stated they had enough money in the engineer account for the last peer review.

Mr. Rheume stated he would like not to pay the filing fee and they would just pay the advertising and abutters notification.

Wayne Hayward made a motion to allow the applicant to withdraw the application at this time without prejudice and be able to have a resubmittal without a filing fee. The motion was seconded by Cathy Melanson. On the question, Mr. Hayward stated under subdivision we have surety's, but not under special permits. He stated that the condominium documents need to be reviewed as well as the easement concern.

Mr. Rheume stated that Town Counsel has been given the condominium documents, they have discussed and agreed upon them. He said as far as the easement goes that will be submitted with the new filing.

The motion passed unanimously via roll call vote to withdraw and for the waiver of the filing fee on the resubmittal.

- ii. **DS 2021-02 – Hermeneau Frederick Ave:** Public Hearing on 1-lot Definitive Subdivision to develop what is currently an unaccepted paper street to connect to an undersized lot, which the Applicant feels is "grandfathered", in order to build a house.

Mr. Farrell opened the public hearing.

Mr. Foley reviewed the application. He said the project was located on Map 29A lots 168 and 169 (10,000 sq feet between two lots) on a paper road listed as Frederick Avenue off of SNR in Fairhaven. He gave a brief project history on the land. In 2019 the previous owners were denied a variance request for 20,000 short of minimum lot size and 40' short for frontage. In June 2019, Mr. White determined that the lots were grandfathered and therefore potentially buildable if the road is approved through a Definitive Subdivision. The Current Building Commissioner accepts the June 2019 letter from the previous Building Commissioner declaring the lot is 'grandfathered.' Mr. Foley noted the property is in a velocity zone with some wetlands and entirely within the 100 foot buffer. He explained the proposal requests a number of waivers that Mr. Foley reviewed. Mr. Foley reviewed the comments from the Town Departments.

Mr. Foley reviewed the waivers in detail to the Board. The proposal requests the following waivers:

- Section 322-14.D. Waiver of additional subdivision submittal requirements.
- Mr. Foley said the proposed road and lot are in the VE and AE Zone and include wetlands and the entire development is within the 100 feet buffer of the wetlands. The PB would be within their right to request an Environmental Impact Analysis.
  - Section 322-16.B. Street design standards Table A. Waiver of hammerhead requirement that no part may be used for a driveway to the lot or for parking of vehicles.
  - Section 322-17. Waiver of sidewalks.
  - Section 322-25. Waiver of street trees.
  - Section 322-26. Waiver of stormwater management.
- Mr. Foley said that staff recommends the Planning Board at least require §322-26.B.1 which calls "For subdivisions of three lots or less, the applicant's engineer shall submit documentation, stamp and certify that the design meets the DEP Stormwater Management Regulations". It is within the Planning Boards purview to request a full Stormwater Management Plan per § 322-26.B due to the sensitive nature of the property in the VE Zone and within the wetlands buffer.
  - Section 322-27.A. Waiver of water main and hydrants.
  - Section 322-J0.D. Waiver of Class I bituminous concrete paving.
  - Section 322-32. Waiver of curbing and Cape Cod berm.
  - Section 322-33.A. Waiver of driveway approach areas from the edge of the roadway to the edge of the right of way shall be concrete.
- Mr. Foley noted that § 322-19: Emergency Routes out of subdivision to be provided says that "In any area not protected by the U.S. Army Corps of Engineers hurricane barriers, each lot shall be serviced with streets providing a route out of the subdivision, no part of which route lies below the thirteen-foot elevation above mean sea level (M.S. L.). In this case half of the entire road is below elevation 13' and ends at elevation 8' with fill to elevation 6' at the edge of wetlands.

He also reviewed the site plan which shows a proposed 44 x 28 dwelling on a concrete slab at elevation 10'. He assumes the house would be on stilts.

Engineer, Alan Ewing was present to represent the applicant. Sandra and Steven Hermeneau are the owners of the property of this map and lot and were also present. Dick Dailey, Attorney from West Bridgewater was the Hermeneau's attorney.

Attorney Dailey stated he represented them since the purchase and he referenced an error that the lot was purchased for a dollar. It was purchased by his clients for \$110,000 and then was transferred into a trust for \$1.00. He just wanted to clear up that. He stated that the Hermeneau's received confirmation from the Building Commissioner that the lot was in fact a buildable lot. Attorney Dailey stated he had done a title search and the

title is legitimately in their name, the name of the trust. He said it has been a lengthy process and they had purchased it to build their retirement home.

Engineer, Allen Ewing, was present representing Steven and Sandra Hermeneau. He stated they would like to construct a 16' gravel road to the building lot. He said they did go through Conservation Commission and it was approved with stormwater drainage on plans submitted with forty-nine special conditions. He said they certainly scrutinized the property. Mr. Ewing stated that an abutter did appeal that decision, so a Department of Environmental Protection onsite was done and DEP did their own order of conditions on the property. Mr. Ewing stated that they will install check dams, so that the water will flow left to right and into the check dam. He said currently the water is just a sheet flow. He said he felt they have done a fairly decent job on drainage for this one house lot.

Mr. Farrell brought it back to the board for questions. Mr. Farrell asked how close the lot is to a fire hydrant. Mr. Ewing stated there was a hydrant on the corner of Billy's Way and Torrington Avenue, approximately 100' from the dwelling.

Mr. Farrell stated he will open to the public once the board had the opportunity to ask questions or express concerns. Ms. Fidalgo had no questions at this time.

Mr. Hayward stated he was hung up on the legality of the lot. He said that it had been reviewed a few years ago with the previous Town Planner as well as the previous Building Inspector and they had stated it wasn't buildable. He said this is a sensitive area and very tight construction in that area. He said he understood the previous building commissioner, Kristian White had made a determination, but he would like to see a legal way to move forward. He said there has to be some document legally that allows them to move forward. Mr. Hayward stated he was concerned about other lots in the area that they would want to build with the same exemption and undermine the zoning. He said if challenged in court, the Planning Board needs to see the legalities of the lot that determines that it is in fact a buildable lot.

Attorney Dailey stated that he had not researched the common lot exemption in Fairhaven, however his client did their due diligence to assure herself and got letter from the Building Commissioner, on Town letterhead identifying that it was a grandfathered lot. He said to deny at this point that it is a buildable lot subjects the Town to issues. He said Mr. John Larsen was the title examiner who worked on this property.

Mr. Farrell asked what the date of the letter was from Mr. White and when the lot was purchased. Attorney Dailey stated the date of the letter was October 20, 2019 and the lot was purchased on December 20, 2019.

Mr. Hayward stated this was not about politics or wetlands; but about the legal determination on how this property complies with the common lot exemption. Mr. Hayward said the applicant needs to make her/his case legally for them to proceed under the common lot exemption.

Mr. Haworth asked if the Planning Board is looking under Massachusetts General Laws or the Town of Fairhaven's zoning bylaw to make that determination.

Current, Building Commissioner, Chris Carmichael was also in attendance. Mr. Carmichael stated that MGL, 40a Section 6, referred to the single lot exemption. He said he read Mr. White's decision that it is a buildable lot and agrees with that. He stated the lots were existing prior to the zoning ordinance.

Board member, Geoff Haworth asked if MGL 40a, Section 6 was something that is reviewed by the Building Commissioner and not done by the Planning Board. He asked if the decision of the Planning Board tonight wasn't to decide if the lot is indeed grandfathered, to which the answer was, "Yes."

Cathy Melanson stated she had no comments at this time. Mr. Malaspino stated he too had no comments at this time as he was just looking at the waivers requested. Mr. Carmichael stated that since the previous Building Commissioner reviewed this lot to be buildable the Town could be extremely liable at this point, and he would err caution to the board.

Mr. Farrell opened the public hearing up for public comment.

Resident and abutter, Alain Lachat stated he agreed with Mr. Hayward one hundred percent. He said he has lived there over thirty years and he wouldn't allow a house on the lot. He said he was concerned about the wildlife that lives there, the deer and beautiful birds, etc. He says he doesn't understand how they are going to be able to build a house on that lot. He thought it was established that it was not buildable.

Abutters, Valerie and James Irving were also present and stated nobody came to them and asked about waivers. Ms. Irving stated there was documentation that the lot was not grandfathered according to previous building commissioner, Mr. Fostin. She said there is evidence on both sides, grandfathered or not grandfathered. She said they would be in favor of a full stormwater plan. She said she thinks there should be a signed title search on hand before anything else. She said they are learning as they are going along and she believes there should be some safeguards for the neighbors in the area as far as stormwater. She stated the lot is very wet in that area and she is aware of approximately seven families who are not in favor of the build. She stated it is against public interest for that neighborhood.

James Irving stated he doesn't support many of the waivers. He said he feels this plan is crowded, and there are no other homes in that area that are built on stilts. He said the other homes are either on grade or appropriate size houses in the area. He said the proposed house does not fit what is there now and it should remain what it is, brush and wildlife. He said that developing of the property would not be favorable to the Town.

Resident and abutter, Sharon Simmons of 5 Billy's Way was present. Ms. Simmons stated she was a real estate broker for over twenty-five years. She stated she agrees with Mr. Hayward one hundred percent and questioned where the document is that proves it is a grandfathered lot.

Mr. Farrell stated he was not convinced of Mr. Hayward's argument as that is not in their purview, however this is a public meeting and the public has a right to understand what is going on.

Mr. Lachat of 6 Treasure Bay Lane stated it was a crappy situation. He agreed with everything that Mr. Hayward stated referring to the common lot exemption. He said there was a variance that was already denied at this property stating that there was not enough room and it was not in keeping with the neighborhood. Mr. Lachat read the denial from the zoning determination from June 2018, that five to zero the variance was denied. Mr. Lachat expressed his concerns as well to the wildlife in the area.

Ms. Hermeneau stated that all documents were reviewed with conjunction with Tom Crotty and the letter they received was signed by Kristian White and read, 'in conjunction with Tom Crotty', on Town of Fairhaven letterhead.

Ms. Hermeneau stated she wasn't sure why they are debating the grandfathering of the lot, as she thought they were present to discuss the road. Ms. Hermeneau stated that DEP walked the lot along with the Conservation Commission for an order of conditions. She said she was confused on why the lot grandfathering kept coming up, as they were not in front of the Planning Board for that discussion.

Mr. Farrell stated the issue is whether or not it would be legal for him to vote on this matter. Mr. Farrell suggested a five minute recess so that Attorney Dailey can confer with his client. Attorney Dailey stated that everyone needs to understand what their function is. Again, Mr. Farrell asked Attorney Dailey if he wanted a five minute recess to confer with his client.

Mr. Carmichael called a point of order through Mr. Farrell. He said he agrees with Mr. White that this is in fact a buildable lot once the road is constructed, which is the purview of the Planning Board.

Ms. Riley, a resident in the area on Treasure Bay Lane stated her concerns were about stormwater management in that area.

Mr. Hayward stated it might be helpful if Mr. Foley brought up the assessor's plan. He said this is a common lot where there are multiple lots, and 'five years' comes into play.

Mr. Carmichael stated that two adjoining lots with less than the area required in the zoning district merge.

Mr. Hayward stated that if it were just one lot the single lot exemption would come into play. Mr. Hayward stated he would need to see more information from the Town's attorney on his rationale about the approval of this lot as being grandfathered.

Mr. Foley read the letter dated October 26, 2019, "after review of the documents reviewed, and in conjunction with Town Counsel, the lot in question meets the requirements in MGL, 40a, Section 6 as a buildable lot"; signed by Kristian White. Mr. Foley stated he did reach out to Tom Crotty, who stated he didn't remember.

Attorney Dailey said he did speak with Town Crotty, who did determine that it was a grandfathered lot.

Mr. Hayward said they usually look at the full build out for the road. He said he would like to hear from Tom Crotty, as the common lot exemption is only for five years. He said a legal document that provides a legal argument on this would be satisfactory. Mr. Farrell stated he is also looking for that and would like to get a legal opinion from the Town Attorney. Mr. Carmichael stated the purpose of the meeting is to approve the road.

Steve Hermeneau stated they agreed to do the improvements to Frederick Avenue and proposed improvements would be an improvement to the area to get to their lot. He said he understand the neighbor concerns and they have been extremely patient.

Resident, Brian Messier asked about Emerson Avenue and Billy's Way and if they were paved then why wouldn't this road be paved. He said he wasn't sure why there were major issues with this road being paved.

Mr. Farrell explained that Frederick Avenue is a paper street not an accepted street in Fairhaven. The Conservation Commission specifically conditioned that this road could not be paved.

Mr. Hayward stated this was the first time the Board is seeing this application. He wasn't sure if the applicant wanted to continue and the board could get their legal opinion.

Ms. Hermeneau expressed that this has been held up for some time.

Mr. Farrell stated he thought they should be able to seek their Town Counsel for a legal opinion and as far as he is concerned they have not held up the application. Mr. Hayward suggested a simple continuance.

Mr. Ewing stated they did file this on October 15, 2020, and they have been waiting in the cue that long.

Mr. Foley stated Alan Ewing originally brought the application in October 2020. He said the title abstract had a card stapled to it but was not signed. He checked the file for the Mondonca Preliminary Subdivision review and found a letter from the Building Inspector at the time (2014), Wayne Fostin that ruled the lots were not grandfathered. The preliminary was approved but the Board said they had to confirm the lot was grandfathered first before coming back for the Definitive. He felt that since the lot had already been determined to not be grandfathered and since there was no signature on the Title Abstract that this was not grandfathered. The Hermeneau's showed up at his office on Christmas Eve and brought the one-line letter from Mr. White. He asked for signed title abstract but they repeated that they have a signed letter from the Building Commissioner.

Later, he consulted with the new Building Commissioner, Mr. Carmichael. Mr. Carmichael now has a process whereby people can apply for a review but he requires a signature from the professional who has done the title abstract. In this case a letter signed by the previous Building Commissioner is the golden ticket as far as he is concerned. Mr. Foley then stamped the project in.

Mr. Farrell said they are trying to understand the facts and he is not prepared to rubber stamp this plan. He said the community has questions and they have to work through the process. He apologized to the applicant's that they are frustrated and has empathy for them, however with the many concerns that have arisen they are asking for the applicant to ask for a continuance so the Planning Board can see legal counsel's opinion.

Attorney Dailey stated that he would be open to a short continuance. Mr. Farrell stated that he would like to put this on for the next meeting. Attorney Dailey requested a continuance to the next meeting of April 13, 2021.

Mr. Hayward said for the record they have one hundred thirty-five days to legally act on a project. Mr. Hayward made a motion to continue DS 2021-02 -- Hermeneau Frederick Avenue to April 13, 2021 at the applicant's request and to seek a legal interpretation from Tom Crotty. The motion was seconded by Cathy Melanson and passed unanimously via roll call vote.

Mr. Foley will reach out to Town Counsel, Tom Crotty.

- iii. **DS 2021-03 – Masse Beach Street:** Public Hearing on 1-lot Definitive Subdivision to develop an unaccepted paper street to create frontage to build a house.

Mr. Farrell opened the public hearing.

Mr. Foley stated this property was rezoned from Industrial to General Residence in 2017. Applicants, Jillian & Daniel Masse were present. The property is on the river and is in an AE Zone and they were looking to develop an unaccepted paper street to create legal frontage to build a house. They have an order of conditions from the Conservation Commission. They had been thinking they were going to bring the sewer from Newbury Avenue and the water through from Alpine, now they are thinking they would prefer both from Newbury. The DPW actually prefers both come from Newbury. Mr. Foley then read through the comments from other departments.

Engineer, Rick Charon was present for the applicant. He stated it was suggested for them to file a Form C, one lot subdivision. The lot was Map 19, lot 19 with 140' frontage, 35,000 sq. feet of area and they have access to Beach Street via Alpine and Newbury. He said their second sheet was modified a bit, it shows the roadway profile and grades. They are asking for waiver of sidewalks, waiver of Cape Cod berms. Country drainage is proposed and the street connection would be gravel for through traffic. Mr. Charon stated there is a tree one-third of the way across the roadway that will have to be removed and another tree that would be cut back.

Mr. Farrell asked the board for their comments/questions.

Mr. Hayward asked if they could they come in from the other side so to keep the trees and keep the guardrail as a dead end they would have more privacy. Mr. Hayward also stated that if they are going to make it a through-way he would like to see the roadway constructed and not see it done only half- way then just gravel.

Mr. Haworth agreed that if the road connects the ends of Alpine and Newbury it should be consistent and should be done as gravel or asphalt from Alpine to Newbury, he said it just makes sense to complete it fully.

Ms. Fidalgo had no comments. Ms. Melanson stated she would like to see the trees saved but understands. Mr. Malaspino had no comments at this time.

Scott Coelho, resident from 86 Sycamore Street had concerns for the tree that is currently hanging over his property, he said he would like to see it removed completely. Mr. Coelho stated he was in support of opening the street up as it should be opened for public access and not treated as a driveway. The public should have access to it.

Mr. Charon agreed that the tree is not worth keeping. He is definitely in agreement with connecting the two streets for public access. He said he would like to stick to 18' wide. He said the water coming down the hill would be absorbed through planting strips on the side of the road.

Mr. Haworth asked what the width of both Newbury and Alpine were. Mr. Charon stated it was 24' paved within a 40' layout. Mr. Haworth asked what the possibility was in matching the width of the two streets especially where they are connecting.

Mr. Charon said if they added to the width, it would add runoff and pavement and take away from the planting areas that absorb any runoff.

Mr. Daniel Masse asked if they change the nature of the road from gravel to pavement whether they would have to go back to the Conservation Commission to make that change. Mr. Haworth stated they may have to do an amendment to the order of conditions with the conservation agent. Daniel Masee stated their priority would be not to go back to Conservation if at all possible.

Mr. Hayward stated that one of his issues is exactly this when things are not done in order of the way it should be approved then the applicant has to go back to Conservation, because they have already been approved there, if Planning has something for them to correct. He asked if this is a private road.

Mr. Charon stated in essence it is two driveways coming into the property. Mr. Charon stated they would prefer to see it stay as gravel. Mr. Hayward noted they are developing a new connecting road between two accepted streets.

Mr. Coelho asked who owns Beach Street. Mr. Hayward stated it was not a town accepted street, it is a grassy lot, currently. Mr. Farrell said it was a paper street.

Mr. Hayward explained a paper street is usually not owned by the town. He said at one point there were subdivided lots in that area and usually, or normally the owners to one side and the other own to the middle of the street. Mr. Foley said although it is said neighbors have rights on either side the neighbors couldn't just put something in the middle of the road. You cannot block the way. Others on the right of way have a right to pass.



Mr. Hayward stated they can put a chain across it, in this case they are dealing with it as a paper street. He stated they should be requiring them to improve the way for their product. Mr. Charon stated these lots were broken up in 1905 and the developer is the one who owns the land until it is developed. More discussion on suggesting paved road vs gravel.

Discussion on how the Conservation Commission, per Mr. Haworth has tried to make sure the two boards work together and streamline the process with Conservation, advising applicants to get their ducks in a row by going to Planning and then returning to Conservation for a final Order of Conditions.

Mr. Haworth said that EPA has put in an access road to the property to the lot next to this one, unbeknownst to the Conservation Commission, to truck the PCB's out and Mr. Hayward stated they have disturbed acres of land.

Mr. Coelho stated that most of the neighbors would like to see the road an accessible public through way. Ms. Masse advised they concur and they are looking to accommodate the through way at the request of the abutters.

Mr. Farrell asked if they had to reapply with Conservation, what would be the timeline. Mr. Haworth stated they should still be good to go by May, if they had to refile.

Mr. Hayward suggested chip seal for the road. He said he'd prefer pavement but gravel from one side to the other is also okay. He would just like to see it consistent from one street to the next.

Mr. Haworth agrees, stated that the best case scenario would be asphalt but 22'-24' wide gravel from end to end would be okay. It should be the same as Alpine and Newbury. Mr. Charon asked if they could say they'd match the width of Alpine Avenue, he doesn't believe it is 24'. Mr. Hayward said he'd agree with gravel at this time.

Mr. Foley stated if they shifted the road to the East by Newbury, they might be able to avoid returning to Conservation. Mr. Haworth stated a gravel road would not need to go to Conservation for an amended order of conditions, if they do it end to end. But the road is also in the riverfront area.

Mr. Farrell asked if they would be satisfactory to continue to the next meeting. Mr. Charon stated they would update the engineer drawings and update the width of the road for the next meeting.

Mr. Hayward made a motion to continue to April 13, 2021 per the applicant's request and was seconded by Mr. Farrell. The motion passed unanimously via roll call vote.

Mr. Farrell asked Mr. Haworth to get the applicant the information if they have to return to Conservation for an amended order of conditions, if they do the whole street in gravel. Mr. Haworth stated he would reach out to Ms. McClees the next morning.

- iv. **DS 2021-01 – 46 Sconticut Neck Road (Alves)**: Continued Public Hearing on Definitive Subdivision Plan to demolish a house and create an 8-lot subdivision located at 46 SNR.

Mr. Farrell opened the public hearing.

Mr. Foley reviewed the project which was continued from the last meeting and advised the response to the peer review. Mr. Foley stated new pictures have been taken along with revised plans that were submitted. He noted the area between Lots 5 and 6 and Harbor Mist has some mature trees that he would like to see protected with a larger no cut buffer. The trees need to be protected from the bittersweet, an invasive vine that is killing them. He said they are looking for two waivers: to have sidewalks on one side of the street and one street light at the end of

the road. The nearest abutter is approximately 160-170' away, and the applicant is happy to keep the evergreens and screening on that one side.

Engineer, Arsen Hambardzumian said after their initial meeting they considered abutters and board concerns and comments. They then had the peer reviewer come in and they agreed to what they had requested. He was hoping for a conclusion at tonight's meeting. He stated he spoke to Mr. Foley about the Harbor Mist concern for the houses on lots five and six, and although they tried rotating the house it didn't work. Mr. Arsen stated they were able to regrade it and have it as a 10-12' buffer of no touch of the property.

He stated they are not looking to cut trees to just cut them and are conscious of the privacy created by the trees. He said there were soil concerns that were brought up, but they have done countless pits and trenches and know the soils on-site.

Mr. Farrell turned it back to the planning board for any initial comments/questions.

There was little discussion on the drainage.

Mr. Farrell asked if anyone from the public wanted to speak.

Joanne & William Smalley of 17 Harbor Mist Drive were present. Mr. Smalley asked about a 15' buffer, that had been requested at the last meeting; and he just heard perhaps 12'. Mr. Hambardzumian said they tried to rotate the house at two different angles and he said he was able to gain 2' more. Mr. Smalley said they would be happier with a 15' buffer.

Mr. Foley asked if they could turn the house another forty-five degrees and put the garage on the other side they could get a bigger buffer. Mr. Arsen said they tried but it would look odd on the lot and not gain a whole lot.

Mr. Farrell asked if they'd be opened to screening on the neighbor's side of the property. Mr. Hambardzumian said that would be fine. Mr. Hambardzumian stated he would agree to a condition of up to 15' no cut buffer of lots 5 and 6 as an additional condition. Mr. Hayward stated that Harbor Mist has more potential for screening on that side of the fence and the Smalley's should bring it up the condo association.

No additional concerns or objections.

Mr. Farrell stated he wanted to compliment Arsen on working with the abutters and being very professional and open to their concerns in trying to maximize the screened area - and appreciate what we saw with this project and hopefully replicated in the future.

Mr. Foley said he believes everyone is eligible to vote.

Mr. Farrell asked if there was a decision ready for them to sign. Mr. Foley stated there was not a decision written as of yet but he had a list of the standard conditions. He reviewed the waivers again, sidewalks on one side rather than both, one street light lamp throughout and the new special condition that Mr. Arsen suggested for lots five and six.

Mr. Farrell asked about the standard conditions.

Mr. Foley reviewed the subdivision standard conditions of approval. Mr. Farrell asked about any special conditions not listed. Mr. Foley stated he would rewrite the #6 bullet to add, "until such time as the road is accepted by Town Meeting."

Mr. Hayward stated we do design these to get accepted by the Town. Mr. Hayward asked that the street light needs to be conditioned.

Mr. Foley continued to read the definitive subdivision conditions of approvals adding the "no cut buffer on lots five and six on the Northern Boundary".

Mr. Hayward made a motion of a sidewalk waiver to only on one side of the street and was seconded by Mr. Farrell. The motion passed unanimously via roll call vote.

Mr. Farrell made a motion to accept and approve DS 2021-01 – 46 Scoticut Neck Road (Alves) with the sixteen conditions as presented and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote.

### 3. **CURRENT PLANNING:**

- a) Possible New Bylaws for Review: Draft Short Term Rentals, 198-33 definitions, MS4 mandatory update; NFIP mandatory update.

Mr. Foley stated the public hearing for the draft short term rentals would be on April 13, 2021. They would also hear the Bijou apartments Special Permit public hearing; NFIP flood plain bylaw public hearing; and MS4 stormwater bylaw public hearing.

Mr. Farrell stated that there was some concerns at a previous meeting regarding short-term rentals and he thinks there has to be more discussion to what is being proposed from the public as well as the board members.

Mr. Foley stated he spoke to the Police Chief who stated they have received just a couple of complaints regarding short-term rentals; and not many complaints coming into the Building Department.

Mr. Farrell asked what the goal is with STR's.

Mr. Haworth stated his opinion was that his goal was to prevent people from scooping up multiple houses especially waterfront sites and instead of using them as homes creating residential businesses, mini-hotels with ever changing people; creating a loss of housing; creating nuisances in some cases. Neighborhoods would not know who their neighbor is in a residential area. He said his bigger goal would be not to see these small businesses in a residential area.

Mr. Farrell stated it is very difficult to satisfy the concern. He said breach of the peace could be held accountable by the police. He said he was under the understanding with Airbnb and the like they are mostly driven by the positive reviews and experiences. He stated he was struggling with how do we not overreach and if they really have that problem? He said he thought they were nowhere near close to being ready for town meeting on this one and he really wanted to understand the process, is it perception or is it real. He said they spoke about only allowing owner-occupied, and he feels that's too extreme.

Resident, Abby Cregan of 35 Smith Street stated she has lived in her house since 1962 and bought it in 1997 where she has raised her children. She stated she has invested in the home and feels she has more protection under a short term rental platform than any other, but she has done long term rentals as well. Mr. Farrell asked her to return at the next meeting when it would be a public hearing on the subject, which she agreed.

Mr. Hayward stated he felt they are trying to provide a way to legally exist in the town, currently they legally don't exist in the town right now. He said there are people living in hotels and businesses where homes should be. These are businesses, 60-70 that we know of in town. He said they are about allowing it and regulating the safety of these rentals, and right now they don't have that protection. Mr. Hayward said that communities in Massachusetts are creating this unregulated industry currently. He said they have struggling hotels in town currently, but short term rentals are alive in homes. Mr. Hayward stated the whole purpose of public hearings is to hear both sides.

Mr. Foley will advise the Neighborhood News to run an article so they could get public comment.

With the late hour, John Farrell made a motion to adjourn and was seconded by Cathy Melanson. The motion passed unanimously at 10:50p.m.

Mr. Farrell thanked Mr. Malaspino for his service to the Town, as did others, and welcomed back Mr. Wayne Hayward.

Respectively,

Patricia A. Pacella  
Recording Secretary