



FAIRHAVEN PLANNING BOARD

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Fairhaven Planning Board
Minutes - Tuesday May 25, 2021 - 7:15pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

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1. **Welcome & Media Notification:** John Farrell opened the Planning Board Meeting at 6:30p.m. He read the regulations from Governor Baker's state mandated pandemic that began in March 2020.
2. **Quorum/Attendance:** Present: Chairman, John Farrell; Vice Chairman, Wayne Hayward, Clerk, Cathy Melanson, Geoff Haworth, David Braga, Jessica Fidalgo, Rene Fleurent, and Jeffrey Lucas.
3. **Minutes:** Cathy Melanson made a motion to approve the minutes from May 11, 2021 and was seconded by Rene Fleurent. The motion passed unanimously via roll call vote, with Ms. Fidalgo abstaining as she was not in attendance.
4. **Planning Board Bills:** Ready Refresh - \$5.39. Mr. Farrell made a motion to approve and pay the bill to Ready Refresh for water in the Planning Department in the amount of \$5.39 and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote.
5. **Public Hearings:**
 - a) SP 2021-02 - Crow Island Hearing. Public Hearing on proposal to create a destination for events such as weddings, corporate outings, parties and other special events.

Mr. Farrell opened the public hearing and introduce the board members.

Mr. Foley stated this was rezoned last year at town meeting. He gave a review of the project and advised the applicant still needs to go to Conservation and speak with the Fire Department and Building Department. He said the current owner wants to live there as well as use it as a short-term rental. He said there is a small chapel there and they are hoping to get a seasonal liquor license eventually. He said people will be able to put up special tents there for events. Al Santos is the owner and gave Mr. Foley a tour of the island last week. He said they eventually may ask for a pier extension for leisurely boats to visit. Hours of operation would be all day until 11p.m., with events until 12:00am; alcohol to cease an hour before they close. He said they will have to get an entertainment license through the Selectman. He routed to different departments and some comments came back from Fire regarding the tents that have to be inspected by fire and permitted through the building department. He said they may need to get a propane permit if they need for cooking through the fire department. Fire and police asked for emergency plan as well. Mr. Foley stated the Building Department was concerned about accessibility issues and he will determine their occupancy load depending on parking needs that need to be verified. Currently plan for parking is in New Bedford. Key concerns are noise being carried over the water and disturbance. Mr. Foley said the plans are still evolving.

Attorney John Markey was present on behalf of the applicant. Mr. Markey stated the owner, Mr. Santos is the founder of the Black Whale, and still owns the building but sold the business itself. He stated that Mr. Santos understands how to work with communities and is a very successful businessman. He said they are looking at three different aspects for the island. He said first there is an existing residence, at times he may stay at the island as well as STR's as an Airbnb. Attorney Markey said the second aspect happening there, is to design an open air patio. Mr. Markey stated he does have a relationship with a tent provider if people want to use a tent for special events but the decision would be based upon the needs of the customer. Mr. Markey stated the primary is commercial use as an event facility. He said there are no weddings scheduled this summer, no special requests being made tonight. If he does have future event plan later this summer, he will have to get a one day liquor license from Town Hall. He said the third aspect, where the deck is, shaped like a chapel, but inside small inside space that he may be looking for the ability for seasonal liquor license to stop for a drink and sandwich, with food truck that might be present. ("Dock & Dine").

Addressing some of the concerns, Mr. Markey stated that the intention is to base a band under the eaves of the building so the sound is muffled and a fence surrounding the area so that the sound would be redirected. Mr. Markey also said the intention is to use a parking area in New Bedford that Mr. Santos owns and then boat transport the guests. He said they have every intention of hiring a police detail on the island if they exceed 150 or more people for any event. He said they are flexible with that number and are happy to discuss those concerns with the Fire, Police, and Harbormaster and have a plan in place.

Attorney Markey will address any concerns and then will ask for a continuance to a later meeting to bring back a finalized plan.

Mr. Hayward stated he appreciated the details for the vision, and has no concerns about the vision. He stated he would like to encourage board members to look at the long term conditions of the special permit and what could be a 'trigger' of the Special Permit that would require a review in the future from the Planning Board.

Mr. Hayward stated he would recommend a trigger in case of a major change in parking and if there are increased permanent fixed seating. He said any future growth of the facility should be a concern and trigger from the Planning Board to return for discussion.

Ms. Fidalgo had no concerns. Mr. Braga had no concerns.

Mr. Haworth stated he felt it was a well thought out plan but one of his concerns was to contain the noise on the island and not migrate back to the community. He did say he had a few concerns with the safety however he knew the chiefs would have a plan for any emergencies.

Ms. Melanson stated she thought it was a great idea and would like to see it come to fruition.

Mr. Farrell asked Attorney Markey if there was going to be a concern for trash in the area so it doesn't end up in the water.

Mr. Fleurent stated he appreciated all the hard work that is going into it, his concern was what is happening to preserve or protect the land in that area and how they are dealing with human waste.

Attorney Markey said the answer ultimately is working with the DPW to have sewer in that area with a significant upgrade to tie into the sewer. He said an easement has been approved on the land side of things for the utility. He said this summer will have to be tight tanks and pumped out accordingly, but longer timetable will be sewer. Mr. Markey said he will have a plan on all of the concerns and present with their final plans.

Mr. Lucas stated he has been asked about what permits they are currently working under out on the island.

Mr. Markey stated the only work they are doing right now is under the Conservation Commission. He said there are no new structures out there as of yet, as there is no building permits.

Mr. Lucas had a few concerns about the boating in that area, and how many boats safely could be handled on the island. He asked if and when a seasonal liquor license is acquired there may be issues and he just wants it highlighted as a concern.

Mr. Farrell noted that there is definitely skin in the game with a liquor license and liability.

Mr. Lucas suggested bringing in the Harbormaster to comment. Referring to the noise, Mr. Lucas said he was also concerned about boats staying at the marinas in the area and not just the noise back to the shore.

Mr. Farrell asked if anyone from the public wanted to comment, there were no comments.

Mr. Hayward stated that no abutters were notified about this special permit. , Mr. Fleurent asked how we notify abutters. Mr. Foley said that it's 300' and there was no one within that distance.

Mr. Markey asked for a continuance for an appropriate date to be on the next agenda. Mr. Foley recommended June 22, 2021, and supplement information back on June 15, 2021.

Mr. Farrell made a motion to continue this public hearing for SP 2021-02 Crow Island to June 22, 2021 and was seconded by Ms. Melanson. The motion passed unanimously with one abstaining, Mr. Fleurent. 7-0-1.

b) SP2021-01 Bijou Theater Building Apartments: Cont'd Public Hearing on proposal to renovate residential apartments and commercial mixed-use in theater building.

Mr. Foley advised that the applicant has asked for a continuance.

Mr. Farrell made a motion to continue SP 2021-01 Bijou Theater Building Apartments to June 8, 2021 and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote. (8-0)

c) DS 2021-02- Hermeneau Frederick Ave: Cont'd Public Hearing on 1 lot Def. Subdivision

Mr. Foley advised this was the third public hearing. He stated that Mr. Braga and Mr. Lucas both filed a Mullins. Mr. Fleurent is not eligible to vote.

Mr. Foley gave the new information for this meeting with a revised set plan showing the bituminous apron 25' from street sign, 40' from Sconticut Neck Road. They are presenting a new planting plan with 20 in arbor vitae on the edge of Frederick Avenue right of way (10 each side, 5' apart). Mr. Foley stated he did receive some pictures from a neighbor that showed flooding in the area, but he wasn't able to load the file as it was too big. The applicant posted them to the chat and Mr. Foley then shared several of them on the Zoom. Mr. Foley also presented a new map from the Buzzards Bay Estuary Program showing that this property would be inundated during a Category 1 Hurricane.

Mr. Ewing was present for the applicant. He stated they have a 40' paved area now, originally it was 20' and has shown a detail of that plan. He said they added the street trees to the plan as well. He said it would give a little barrier to the houses present. He said they have been approved by the Conservation Commission as of the night before.

Mr. Haworth stated the biggest change was the proposed driveway to Sconticut Neck Road and they will be a big help. He said he is all set with the plans.

Mr. Hayward said he hadn't seen the documents from DEP or specifically road detail plan. He asked Mr. Ewing about the cross section of pea stone. Mr. Ewing said that's what they came up with by working with Conservation Commission.

Mr. Hayward had concerns about the pea gravel not working well long term. He said he would like to see a condition for lot 29A (referred to 29A-168,169), that this property owner is responsible for the road or as the applicant calls it a 'glorified driveway'. Mr. Farrell stated he did agree.

Mr. Fleurent had no further comments. No further comments by Ms. Fidalgo or Mr. Braga.

Mr. Lucas stated he wasn't convinced that it was a grandfathered lot.

Ms. Melanson had no further comments.

Abutters, Valerie and James Irving were on the call for comments. Mr. Irving stated that she wanted a full environmental impact study done as his concern was the storm water drainage.

Mr. Irving stated a preliminary plan was brought before the board in the past and it was said the lot was not grandfathered. He said a lot of neighbors had concerns about the stormwater drainage. He said he wished that the project would be denied.

Mr. Tom Irving, a civil engineer was also on the call, speaking for Mr. James Irving. He said he reviewed the revised plans and the proposed roadway grade was above the existing grade of the neighboring properties and that concerned him. He said the concern was the water draining in the road and would like to see catch basins in the swale.

Mr. Ewing stated that the road layout was put together a few years ago with the previous Town Planner who suggested check dams and how to control stormwater drainage at that time. He said that Conservation and DEP stated they would like grass swales and drainage swales and that's why they did what they did. He said any runoff should be taken care. He said nothing would get on the adjoining properties.

Mr. Irving thought that they would be on the same grade as the abutting properties. Mr. Ewing stated he didn't feel that and reviewed the profile plan with him.

Mr. J.P. Lachat of 6 Treasure Bay was on the call as well. He said he sent a few images to Mr. Foley earlier today. He said he had images of the flooding in the area.

Mr. Alain Lachat of 2 Billy's Way was present. He said there is a lot of water in his basement when it rains and he doesn't need any more water. He said it was really bad in the last day or so and the Town of Fairhaven went down and vacuumed it up. Mr. Lachat stated he had concerns with continued drainage.

Mr. Farrell stated that the context tonight is about the Hermeneau's property and them maintaining their property and perhaps Mr. Lachat needs to look at his own property to maintain it properly.

Mr. J.P. Lachat stated that his dad was just trying to say that the matter might get worse.

Mr. Alain Lachat stated that two years ago it was for sale and he didn't buy it because it wasn't grandfathered and all of a sudden it's grandfathered.

Mr. Farrell thanked the public for their comments and brought it back to the Planning Board members.

Mr. Hayward stated he wasn't clear about the stormwater calculations, as he didn't see any paperwork reflecting that.

Mr. Ewing said that anything less than a four house subdivision the calculations are not required. He said they have check dams in that area and the swales are at 4%. He said they are not creating more runoff than Mother Nature provides. He said there shouldn't be a lot of sheet flow on this road.

Mr. Lucas stated he was concerned about the velocity zone it's in and that there is no benefit to the Town. There were no additional comments from the board members.

Mr. Hayward stated there was no draft decision available to them at this point. Mr. Foley stated that he had the standard conditions and then the ten waivers as requested. Mr. Foley reviewed the definitive subdivision for conditions of approval.

Mr. Hayward wanted a condition regarding the road and stormwater being maintained by this specific property. He said that condition #5 should state that maintenance of Frederick Avenue shall solely be the responsibility of the owner of this specific lot Map 29a, lots 168 and 169. Mr. Hayward said that he felt once the Title examiner signed the abstract that legally there is nothing we could do about the grandfathering and the waivers are something we issue all the time.

Mr. Hayward motioned to approve the subdivision with the fourteen conditions as listed and include the lot numbers 29a, lot 168 and 169 with the ten waivers as requested and was seconded by Mr. Farrell. The motion passed with one oppose and 6 in favor. 6-1-1.

d) GB 2021 Short Term Rentals: Continued Public Hearing on a General Bylaw Amendment to regulate Short-Term Rentals (STR)

Mr. Foley reviewed the STR bylaw. He said they added a cap of 64 active units until December 31, 2022, going up to 120 STR's after that. They reviewed with Attorney Crotty. Mr. Foley stated they did add that the building commissioner will share the location information with the police and fire departments of the list of short term rental owners.

Mr. Farrell made a motion that they recommend to Town Meeting the STR bylaw as presented and with the changes indicated by Mr. Foley and was seconded by Geoff Haworth. On the question, Mr. Lucas asked about a duplicate on H, 2(E) regarding certified mail and return receipt requested. Mr. Hayward stated it was correct in how it's written as one is certified mail and one receipt requested. Mr. Foley thought it may be a typo.

Mr. Hayward asked Mr. Foley if this was Attorney Crotty's final revision, which Mr. Foley stated it was. With the motion to recommend to Town Meeting with the change indicated on the repeat certified information, the motion passed unanimously with one oppose. (7-1, Mr. Fleurent in opposition).

e) TE 2021- Definitions and Use Tables: Continued Public Hearing on proposed Text Amendments to make changes to 198-33, Definitions and word use.

Mr. Foley stated that he discussed this with Mr. Carmichael and Attorney Crotty. He said there was some wording that was still being reviewed. Attorney Crotty was fine with the wording and definitions. Mr. Foley stated the additions that Mr. Carmichael requested would be okay kept in. Mr. Foley recommended keeping the additions but not removing what was first discussed.

Mr. Farrell said he was not comfortable sending this forward as he wanted to make sure that Attorney Crotty finalized it.

Mr. Farrell made a motion to continue this piece to June 8, 2021 and was seconded by Ms. Fidalgo. The motion passed unanimously via roll call vote. (8-0).

B OTHER REVIEWS:

a) 34-40 Hathaway Road. Form A (ANR) to redraw lot lines between five parcels on Hathaway.

Mr. Foley reviewed the 34-40 Hathaway ANR, stating that the frontage will stay the same, the lot lines cross three of the driveways and houses. He said one of the lots is being proposed to be sold so they are trying to figure it out. He said the lots are pre-existing non-conforming lots. The ANR will just reconfigure the lot lines but they will still be undersized and short on frontage. They predate zoning and the road is adequate.

Mr. Fleurent asked if there were any comments from the five property owners. Mr. Foley stated he does have a signature from all five property owners.

Mr. Romanelli, surveyor was present. He said the homeowners were in favor of moving it forward.

No further comments from the board members.

John Farrell made the motion to approve 34-40 Hathway Road for an ANR and was seconded by Rene Fleurent. The motion passed unanimously via roll call vote (8-0).

b) Oxford School - Form A (ANR) for Oxford School Residences

Mr. Foley reviewed the ANR, Form A to separate the lot where the North Fairhaven Improvement Association Building sits.

Mr. Farrell made a motion to take Oxford School ANR to June 8, 2021 and was seconded by Cathy Melanson. On the question, Mr. Fleurent asked for a clarification on if the applicant could return to the next meeting. Mr. Farrell stated this was an in-house problem and they could continue it under that. The motion passed unanimously via roll call vote. (8-0).

c) Chapter 194: Stormwater Management: Cont'd discussion on amendments proposed by Board of Public Works.

Mr. Foley reviewed the town meeting two motions to adopt the mandatory change, the plan shall meet the standards defined in bylaw 198-31.1A and the other was the consideration of other amendments such as added definitions and replacing review by the BPW with an administrative review to determine whether project not automatically reviewed by Planning Board or Conservation Commission should be reviewed by PB or CC.

Mr. Farrell asked why they couldn't add the lowering of the threshold of the land disturbance now in the motion. Mr. Foley stated he thinks they need to discuss what level they take it too. He would suggest an administrative review should take place to discuss it further. Mr. Farrell asked if there was a recommended number for the threshold. Not yet.

Mr. Furtado said he would defer to the Planning Board. He said they have a timetable to June 30, 2021 for the MS4.

Mr. Farrell stated there was no number to where they want to lower threshold, he is not comfortable with the ad-hoc committee and would like to see regulations in place to support the BPW. He said if there were any concerns from the Conservation they could hear about it.

Mr. Farrell asked if the motion to adopt the line in 194-9 is what they are looking for.

Mr. Furtado said that would be fine. He said changes could be made later on if need be.

Mr. Hayward said this is a complicated document. He said there is an article at Town Meeting to create a stormwater ad-hoc committee. He said 198 doesn't catch all, but Chapter 322 is where they review for their stormwater regulations.

Mr. Furtado agreed with Mr. Hayward to pass over the ad-hoc committee at this time and just agreeing with the one line in 194-9.

Mr. Farrell made a motion to recommend the article as amended by Mr. Furtado that says to adopt line in 194-9 that, "The plan shall meet the standards defined in Bylaw 198-31.1.A" and was seconded by Mr. Farrell. The motion passed unanimously via roll call vote, 8-0.

d) **Sebec Street Stub:** Question of Planning Board interest in property formerly part of Sebec Street. Mr. Foley reviewed this briefly advising this was near Hacker Street and that the North side of Sebec Street is accepted, but not the South. He said the stub went to court recently and there was a stalemate and the court asked the Planning Board to decide if there was an interest that the Town wanted the stub. He said the stub is on a resident's property with a garage and shed on it. He did some research and there was a Street Discontinuance Plan from 1969 but it was not signed by the Planning Board and he has not found evidence that it was accepted by Town Meeting. However, it did make its way to the Assessors Maps.

Mr. Hayward said there is a garage and a shed on the stub, however he said that he can't see what interest to the town it would be.

Mr. Farrell stated he would recommend it be discussed at the June 22, 2021 meeting. John Farrell made a motion to move this subject to the June 22, 2021 meeting and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote with one abstaining, 7-0-1.

C. PLANNING UPDATES:

Mr. Foley reviewed the Complete Streets Prioritization Plan that was approved by the State in time for the Town to apply for Complete Streets funding. He reviewed the four projects applied for at \$332, 636. One is creating bike lanes along Alden Road between Howland and Bridge. Another is improved crossings on Main Street by the FHA at Dana Farms and Fairhaven Village with new crosswalks, ADA ramps, flashing beacons to cross the street and a bus shelter at Fairhaven Village. Another is improving the crossing at Orchard St/SNR where the Little Bay bike loop bypass meets Sconticut Neck Road. Another is speed feedback monitors to slow people down on SNR. He was also able to apply to the Shared Streets Program for two more projects on the Prioritization Plan for \$183,689. One is improving the crossing at Alden/Howland and Alden/Glenhaven and also at the start of the Phoenix Rail Trail at Union/Main. He will be meeting on Friday with the consultants from Fuss & O'Neill to discuss the environmental overview of the Redevelopment Target Area afforded by the Site Readiness Grant they received. He also had a meeting with MHC to start the Historic Surveys project through a grant. He also has a grant deadline this Friday and next Friday. He got word from the State that we need to ask for an extension to the Harbor Master Plan but that they will want to update that plan in the next year or two.

Jeffrey Lucas made a motion to adjourn and was seconded by John Farrell. The motion passed unanimously via roll call vote.

Respectively,

Patricia A. Pacella
Recording Secretary