



FAIRHAVEN PLANNING BOARD

Town Hall • 40 Center Street • Fairhaven, MA 02719
Telephone (508) 979-4023 ext. 9

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PLANNING BOARD MINUTES Fairhaven Town Hall - Banquet Room TUESDAY MAY 24, 2022

FAIRHAVEN,
MASS.

1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Mr. Hayward opened the meeting at 6:30 pm and advised that the meeting was being held remotely as well as with participants in the Banquet Room at Fairhaven Town Hall.
- b) **Quorum/Attendance: Present:** Chair Wayne Hayward, Vice Chair Cathy Melanson, Jessica Fidalgo, Rene Fleurent, David Braga, Jeffrey Lucas and Kevin Grant were present in the Banquet Room. Sharon Simmons was present via Zoom.

Planning Director, Mr. Foley was also in attendance.

- c) **Minutes:** May 10, 2022 draft to be reviewed: Jeff Lucas made a motion to accept the minutes of May 10, 2022 and was seconded by Ms. Melanson. On the question, Mr. Braga and Ms. Fidalgo made two amendments to the minutes. With the amendments, the motion passed unanimously via roll call vote.
- d) **Planning Board Bills:** \$98 Monaghan Printing - Planning Board Note Pads - Jeff Lucas made a motion to pay Monaghan Printing \$98.00 and was seconded by Mr. Fleurent. The motion passed unanimously via roll call vote.

Crystal Rock - \$20.87. Mr. Lucas made a motion to pay Crystal Rock \$20.87 and was seconded by Mr. Grant. The motion passed unanimously via roll call vote.

- e) Correspondence: None.

2. PUBLIC HEARINGS:

- a) Public Hearings:
 - i. **SP 2022-05 – Winslow Court Pier:** Public Hearing review for proposed 123' long pier, ramp and floats at 2-8 Winslow Court in the Apartment/Multifamily District.

Patrick Rezendes from Foth Engineering was present via zoom representing the applicant.

Mr. Hayward opened the Special Permit hearing and read the advertisement.

Mr. Foley reviewed the staff report and slide show. He identified where the location is on the plans. This is in the Apartment/Multi Family (RC) District. He reviewed 198-32.2.C., of the zoning by-laws for docks and piers. He said the end of the proposed pier would be in an area

that the property owner has paid to be included in the state enhanced remedy (SER) dredging project, inside the hurricane barrier. He said the bylaw stated you couldn't have a pier longer than one hundred fifty feet and it couldn't exceed more than six feet in width and the end of the pier had to be a minimum depth of 2.5'. No more than two boats were allowed. The project has been reviewed by the Conservation Commission and has received an Order of Conditions. They will need a Building Permit as well as go through the Army Corps of Engineers.

Mr. Foley did advise that he routed the plans through the various Town Departments and stated no issues were raised with the exception that the Building Commissioner had some concerns. He read from Mr. Carmichael's notes that the dock needs a lateral pedestrian access per local zoning as well as Chapter 91, which he believes is accounted for. There is also a question on the two houses that are on pre-existing non-conforming lots, as one home is on recorded land and the other on registered land. The dock seems to be going to the middle of both properties versus one side or the other.

Mr. Rezendes gave a brief explanation of the proposed gang-way style pier. He said they have already received an Order of Conditions from the Conservation Commission. The project has been seen by Harbormaster, Timothy Cox. When asked if Mr. Cox signed something, Mr. Rezendes said no, that he was just present at the site when Conservation did their site visit. They are aware they need to go to Building and the Army Corps of Engineers. When asked about shellfish mitigation in the area, he said that shellfish mitigation was done through Conservation and they have a condition to take care of it if it gets disturbed.

Mr. Hayward opened up a discussion to the board.

Member, Rene Fleurent asked about the height of the pier from the ground. Mr. Rezendes stated it was approximately five feet five inches off the ground. Mr. Fleurent referred to an old zoning bylaw that piers can't prevent pedestrians from walking the area. Mr. Rezendes stated that was a Chapter 91 requirement and that's why they have a stairway shown on the plans. Mr. Fleurent stated he was fine with the explanations.

Member, Kevin Grant asked why the pier was going to straddle the property lines of both properties versus being on one side or the other.

Mr. Rezendes stated there was concern on the condition of a seawall in that area that was recently repaired. He said the driver was the seawall and they didn't want the discharge to drain on the yard, as it would have an impact in that area. Mr. Grant asked if the lots were owned by separate parties, then how they would resolve the issue of being on the property line. Mr. Rezendes stated the owner intends to combine the two lots into one.

Member David Braga asked what "proposed concrete wash out" area referred to on the plans. Mr. Rezendes explained that was a standard condition from Conservation, as they would be using a concrete wash out area needs to be shown on the plans so that no concrete trickles into the wetland area.

Mr. Hayward asked if they would be opposed to a condition to file a Form A within the next six months.

Mr. Rezendes stated he would bring it back to his client.

Mr. Grant asked if there was a Plan B, and the concern of the condition of the seawall; if the lot merger doesn't go through for one reason or other, would they consider placing the pier on one lot versus the other.

Mr. Rezendes stated that wasn't out of the question. He said it could be shifted to the southern direction of said lot.

Mr. Hayward re-read the Building Commissioner's concern, specifically regarding the lots and that one is registered land and one is not. He asked if they have looked into merging the two lots.

Mr. Rezendes said he wasn't sure and they would look into that.

Member Lucas questioned the language as written in the narrative regarding the two vessels that would be tied up to the pier. He wanted to make sure it was clear that they couldn't have six boats up to 30' in length. He said it should be clear that it would be up to two vessels with none being more than 30' in length. Mr. Hayward said they could add a condition to make sure that was clear.

Mr. Hayward opened it up for any public comment. There was none.

In the banquet room, resident, Janet Peters of 164 Main Street also had a question about how many boats could tie up to the pier. She didn't want to see more boats, say four 15' long boats docked because they were less than the 60' (2 X 30').

Mr. Hayward noted conditions could be added to the special permit. He said it would not be a marina, and that is a whole different type of classification.

Ms. Peters asked how the pier was anchored. Mr. Rezendes said it would be on four timber piles; two on each end.

Ms. Peters was concerned that in a storm they may float away and hit their seawall that is near this property.

Mr. Hayward stated the maximum would be two boats of 30' and asked Mr. Rezendes if that is the intent. Mr. Rezendes agreed.

No further public comment.

Mr. Hayward asked if any of the Board members thought the Planning Board should continue so the land question could be cleared. Mr. Braga stated yes he did; as well as Mr. Lucas.

Next meeting is June 14th.

Cathy Melanson made a motion to continue SP2022-05 Winslow Street Pier to June 14th and was seconded by Member Kevin Grant. The motion to continue at the applicants request passed unanimously via roll call vote.

- ii. **Street Discontinuance – Portion of Alfred Street**: Public Hearing review for proposed Street Discontinuance for a portion of Alfred Street closest to Roy Street between Map 26 Lots 96, 110 and 121.

Mr. Hayward opened up the public hearing for a street discontinuance portion of Alfred Street and read the advertisement.

Engineers Chris Gilbert and Aaron Taylor from Farland Corporation were present.

Mr. Foley reviewed where the portion of Alfred Street is (behind What a Find). He identified where the property is and the Applicants are proposing a no cut easement on the north half of the discontinuance. There are three parcels that would be affected by the discontinuance of the street. There are currently quite a bit of invasive species in the area which should be removed. It appears no part of the street has ever been used for vehicle travel.

Mr. Taylor stated that on the Easterly side of Roy Street that all three adjacent lots have agreed to discontinuances and the zoning district is residential.

Member Braga asked if it was clear that Map 26, Lot 121 didn't access this paper street to get to their property. Per google earth plan, Mr. Taylor stated there was no access.

Mr. Fleurent asked if Alfred Street will continue all the way down to Bridge Street.

Mr. Foley explained it was just a paper street and the northern end of the paper street has a drainage swale. It is highly unlikely that it would ever be buildable.

Mr. Hayward opened it up for public comment.

Resident, Donald Hamel, of abutting Lot 122 (6 Roy Street) stated he abuts this property. He said he spoke to Mr. Farland, however he never agreed to nor did he sign anything stating he was giving up his right to the discontinuance of the street. He said they spoke only. He said he was concerned if the street was discontinued and Mr. Farland sold it in the future if someone else could build on it.

Mr. Hayward said that every district has certain setbacks that have to be protected and if something were to come to them in the future, they would have to abide by any setbacks. Mr. Hamel said he wanted to know what his options were and if he were actually entitled to the property.

Mr. Hayward explained that generally speaking a discontinued street is split between the properties that border on it. He couldn't tell him how to proceed but he should talk to Mr. Farland about his options. He said that would be a civil matter.

Mr. Taylor stated the Board should be looking at two sets of plans; he said the discontinuance as well as the proposed draft ANR that would be submitted following the discontinuance.

Mr. Hayward reiterated that tonight they were just looking at the discontinuance. The Planning Board in the future could put conditions on a Special Permit or discuss the no cutting easement. But tonight was just about the street discontinuance.

Mr. Hamel stated he would like to leave everything as it is.

Mr. Lucas said he would feel better if they continued the matter to allow the civil matter between Farland and Mr. Hamel to have that conversation. Mr. Hamel said he agreed with that assessment. Mr. Hayward asked how the applicant felt about continuing. Mr. Taylor said he'd be fine with that suggestion.

Jeff Lucas made a motion to continue to June 14, 2022 and was seconded by Mr. Grant. On the question, Mr. Fleurent asked why they were continuing. Mr. Hayward explained so that the neighbor could discuss with the engineers about the discontinuance.

Ms. Melanson also asked if this is what the Planning Board should be concerned about. Mr. Hayward explained that the discussion that would take place usually happens before this (civilly), however one party is saying he didn't give permission while the other party is saying he thought it was done. Where there is nothing set in stone, Mr. Hayward said they are not doing a disservice by continuing to offer the applicant and the neighbors to work out this issue.

In a roll call vote, the Motion passed unanimously.

- iii. **Zoning Amendment - Wind Energy Facilities Setbacks**: Public Hearing review for proposed *text amendment* to §198-29.5.B, the Wind Energy Facilities (WEF) Applicability section.

Mr. Hayward opened up the public hearing for the Zoning Amendment to create Setbacks for new residential structures from existing Wind Energy Facilities and to review the proposed text amendment of 198-29.5.B, the Wind Energy Facilities (WEF) Applicability section. He reviewed what the new proposed text amendment would read.

Mr. Foley reviewed the bylaw regarding the wind turbine setback. He said the existing bylaw says that you cannot place a Wind Turbine within four times the height of the turbines to a house but there is no restriction the other way. That is, someone could theoretically still build a residence within that setback of the Wind Turbine. He said this was a text amendment that Attorney Crotty helped to write to clarify that we should not allow building of a house within the setback.

Mr. Foley noted once he started looking into it near the existing wind turbines, he said the bylaw would only affect a few limited properties. He thought they should probably notify those property owners but Attorney Crotty said they didn't have to notify the neighbors that would be affected. Mr. Foley said he thought it would be a good idea to actually advertise it and notify the parcels that would be affected. He said it would affect Little Bay Road properties and a few others including G. Bourne Knowles, possibly a few on Route 6 and the properties near the facility. He said although he thinks it's a good idea, he also thinks it should be vetted a bit more.

Ms. Melanson thought it was a good idea.

Mr. Braga asked if people could get around the text amendment with a variance through the Zoning Board of Appeals.

Mr. Hayward said that through the appeal process they would have to show a hardship, in which case they may be able to get a variance. Ms. Melanson said that it could also boil down to "buyer beware".

Discussion ensued.

Mr. Hayward said this originated with Town Counsel and hopefully he should be able to answer these questions on Town Meeting floor. He said that perhaps Mr. Crotty could attend their next meeting to further clarify the boards' questions. Mr. Hayward stated this article is on the Town Warrant and the Town Meeting members would be looking at the Planning Board to either recommend it or not. He suggested they wait until they could get further clarification from Mr. Crotty.

Mr. Hayward opened it up to the public for comment. There was no comment.

Ms. Melanson made a motion to continue the Wind Energy Facilities Setbacks text amendment discussion to June 14, 2022 for clarification and answers to the board's questions from Town Counsel. The motion was seconded by Mr. Fleurent. Via roll call vote, the motion passed unanimously.

3. **CURRENT PLANNING:**

- a) Town Planner Update: 194 Bridge Street; Rt. 6/240 Redevelopment Plan and Grants; Rogers School; Benoit Square; Upcoming Schedule.

Mr. Foley reviewed the June 14, 2022 meeting. He said Chipotle will be before them for a Special Permit.

194 Bridge Street, Phase 2 Assessment: Mr. Foley stated he received a call from the consultant and they will hold a meeting next week to review results.

Rt. 6/240 - RFP, one response to the RFP came in from an architectural firm in NY with partners from the South. Mr. Foley said he was looking to enlist a lawyer with experience and who's been through the process and understands all of the prerequisite information required and get them on board. He said he needs to talk to the TA; however he would like to invite the consultants to our meeting on the 14th of June for an introduction. Mr. Hayward suggested they accommodate Mr. Foley with the consultants on the 14th of June as he has money he needs to spend before the end of fiscal year.

Mr. Foley clarified the goal is to have a 40R bylaw on the warrant for next spring 2023 Annual Town Meeting.

Mr. Foley stated he and the TA met with SRPEDD today regarding Benoit Square and some of the challenges up there.

There was no update regarding Rogers School. He said that the committee sent out questions to the respondents and those answers are posted on the Town's Website.

SRPEDD dinner tomorrow evening.

Mr. Hayward stated the tree bylaw will not be on the Town Meeting warrant. Mr. Foley said the Select Board stated they would put it on the Fall Special Town Meeting.

Mr. Hayward said he would move for indefinite postponement of the tree warden article.

4. **OTHER BUSINESS:** Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.
5. **Next Meeting:** Tuesday, June 14, 2022.

Cathy Melanson made a motion to adjourn and was seconded by Mr. Lucas. The motion passed unanimously via roll call vote. 8:22p.m.