



FAIRHAVEN PLANNING BOARD

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PLANNING BOARD MINUTES Fairhaven Town Hall - Banquet Room TUESDAY June 14, 2022

FAIRHAVEN,
MASS.

1. GENERAL BUSINESS:

- a) Chair's Welcome and Media Notification: Chairperson, Mr. Hayward opened the meeting at 6:30 p.m. He read Governor's Baker order allowing remote participation during the pandemic.
- b) Quorum/Attendance: Present: Wayne Hayward, Rene Fleurent, Jr., David Braga, Jeffrey Lucas, Kevin Grant and Sharon Simmons

Absent: Cathy Melanson

Mr. Foley, Town Planner was also in attendance.
- c) Minutes: May 24, 2022 draft to be reviewed: Mr. Lucas made a motion to accept the minutes of May 24, 2022 as written and was seconded by Mr. Fleurent. The motion passed unanimously.
- d) Planning Board Bills: Fairhaven Neighborhood News (FNN) - \$80.00 for advertising of Wind Facilities Text Amendment. Mr. Lucas made a motion to pay \$80.00 to the FNN and was seconded by Mr. Grant. The motion passed unanimously via roll call vote.

\$160 – FNN – advertising Winslow Court and Alfred St Discontinuance. Mr. Lucas made a motion to pay \$160 to Fairhaven Neighborhood News and was seconded by Mr. Grant. The motion passed unanimously.

Monaghan Printing - \$170 for Planning Board paper on Letterhead. Mr. Lucas made a motion to pay Monaghan Printing and was seconded by Mr. Grant. The motion passed unanimously.

\$10.28 Crystal Rock for Department water – Mr. Lucas made a motion to pay \$10.28 to Crystal Rock for water and was seconded by Mr. Grant. The motion passed unanimously.
- e) Correspondence: None.

2. PUBLIC HEARINGS:

- a) Public Hearings:
 - i. SP 2022-06 – Chipotle Restaurant: Public Hearing review for a proposal to construct a new approximately 2,325 sf Chipotle Restaurant Building with a Pickup Window on a pad site at 14 Plaza Way.

Mr. Hayward opened the Public Hearing.

Clerk, Ms. Fidalgo read the advertisement announcement for the Public Hearing.

Mr. Fonseca gave a brief overview of the site for Chipotle Restaurant. He showed the site plan and other documents on the screen in addition to the plans the board had in front of them. He introduced the architect on the zoom call as well. Mr. Fonseca showed where the Chipotle Restaurant would be on the site to the west of McDonald's on a pad site. He said it would be a 2,350 sq feet restaurant with a pick-up window and a sign in the northwest corner of the site. He described where the building location would be; one way pick-up only lane with counter clockwise circulation around the building.

Mr. Fonseca explained the concept behind a pick-up lane versus a drive thru-lane. Customers order through an application on their phone and drive thru the pick-up line to retrieve their order at the appointed time. He said there would be no money or order transactions that would happen at the window.

Mr. Fonseca explained the parking spots on Huttleston Avenue and the waivers they were requesting to go along with the size of the parking spots. There would be sidewalks on all three sides of the building. A landscaping plan was attached and shows they will add approximately forty-four shrubs and three new trees across the site. He also explained the stormwater catch basins on the site.

He explained the two waivers that are being requested.

Mr. Foley reviewed his staff report and gave additional information about the site with the Eversource easement. He reviewed the comments from the Town Departments when the plans were routed. The Police Department would like to dissuade pedestrians from crossing at this spot and encourage them to use the crosswalk at the intersection with Alden Road to cross Route 6. Mr. Foley noted that the issue is existing and not something that is really the Applicants responsibility. If they could help address it would be good but the Town may have to work with the State, as Route 6 is a State road, and do something to dissuade J-walkers such as a hedge down the median. The site photos actually show a pedestrian J-walking across Route 6 at the approximate location of the proposed restaurant. The Sewer and Water Departments both need more details. Why are they proposing to connect water across Route 6 rather than the existing main on the site? The Building Commissioner noted that some of the spaces are only 8 feet wide and that 8' parking spaces are too narrow.

From a Planning point, Mr. Foley shared his concerns about the project at this site as well and indicated some more plans and sketches that would be helpful such as the neighboring buildings (McDonald's and Sullivan Tire) on a plan and a couple of perspective sketches from Route 6 along with the proposed site plan superimposed on an aerial. His main concern is how the traffic entering the Chipotle Pickup Window Lane (from east and west) will interact with the traffic leaving McDonald's. He also noted that he received a call from Gator Development, the

neighboring Plaza owner, who are concerned that it 9 parking spaces in the southwest of the pad go over onto their property.

Mr. Hayward turned it back to the Board members.

Mr. Hayward asked about the Eversource light pole height that was on site. He also asked about a tree that was in the right of way easement and the location of the pylon sign.

Mr. Fonseca highlighted the easement limits on the plans. He said there are no plans from Eversource to expand or occupy more space in the easement that exists today. He showed that the proposed trees are in the right of way but not under the transmission lines.

Mr. Fleurent shared his concern regarding pedestrians that try to cut through to Huttleston Avenue (Route 6) to get to the plaza and asked what they could do to help make that area safe for pedestrians.

Mr. Fonseca reviewed the landscaping plan for that area. He said there is a heavily planted area along Huttleston Avenue.

Mr. Hayward stated he would also share his concerns for the safety of pedestrians in that area. He suggested that the plantings along Route 6 should be similar to what is in front of the McDonalds. He also noted that the pedestrian crossing at the corner does not lead to a sidewalk along Alden.

Mr. Braga noted there is no walkway path from this site to Route 6; whereas in front of McDonald's there is actually a stairway that cuts through to Route 6.

Mr. Grant said he reviews projects in light of the Master Plan for the Town and reads that more green space is needed in Town. He said there is also a lot of vacant properties in town and wondered if there was availability in one of those vacant properties. He said he feels this site seems more problematic for Chipotle and asked if other sites were scouted.

Representative from Chipotle, Dan Radman, was in attendance via zoom. He stated the real estate team did their due diligence to scout other properties. He explained the model Chipotle and the pick-up lane (that began prior to Covid) and how it is important to have a vehicle pick-up lane at the building. He agrees it's a tight site and they are working with national grid but they like the visibility on Route 6, it's just parking now and a new site is attractive to them.

Mr. Hayward noted the Master Plan is a working document and guidance for the Town of Fairhaven only. He said they are keeping up with the area and putting a new eatery in this area he understands why they chose this area.

Mr. Braga agreed this was a tight site but the site has been vacant for as long as he remembers.

Ms. Simmons agreed the pedestrian part is definitely a concern. She said unless a 'hedge fence' would go across the whole area, people are going to cross at that site.

Mr. Lucas said the site circulation is poor and the drive-through is 10' wide. He said he doesn't believe the site will work. He asked what the required parking would be.

Mr. Fonseca stated fifty-eight seats, so twenty-four parking spots would be required. He said they are providing twenty-three.

Mr. Lucas asked about the snow removal plan for that area.

Michael Cavounis, who owns the Plaza was also on the Zoom platform. Mr. Cavounis stated he and his partner bought the plaza in 2017 and has an interest in working with the Town as well as the Planning Board. He said they have worked hand-in-hand with Chipotle and although a tight site they think they have made it work. He said he could appreciate the concern around the pedestrians, as he too has that concern. He said they are willing to make the site safe with a layout of shrubs that will grow and mature. As far as the snow removal, Mr. Cavounis stated that is a discussion on their radar to discuss.

Ms. Fidalgo asked if they were aware of the plans by McDonalds to add a second ordering lane and relocate their trash enclosure to the property line with this proposal. All of Chipotle's pickup customers will be driving right by McDonald's trash enclosure. She asked if they considered only having one entrance and then have the pickup customers to enter from within the site and thus avoid driving past the trash. They had not considered that.

Mr. Lucas asked if there was any other design with softer colors available. Mr. Radman said they do other colors and styles, but not by choice; as it is determined by corporate.

Mr. Hayward opened it up for public comment. Mr. Hayward advised of upcoming dates available to come back to the meeting.

Mr. Fonseca reviewed a few other ideas around the turnaround spot to the plan that might be a possibility.

Ms. Fidalgo made a motion to continue to June 28, 2022 and was seconded by Mr. Braga. The motion passed unanimously.

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

Mr. Foley gave his staff report. He noted this was a continued public hearing from the last meeting. The concern was that the proposal is on a property line. Even though both properties are owned by the same person now they could sell and then we would have a dock right on a property line not abiding the setbacks. Of the two properties one is registered land and one is not. In response the revised proposal has moved the dock 30 feet to the south. Mr. Foley spoke to the Harbormaster who has no concern. He said it's basically the same proposal but moved away from the property line.

Mr. Hayward asked if they identified that on the plans. Mr. Foley said the revised plans show the dock has been moved approximately 30 feet to the south. Mr. Rezendes, from Foth Engineering said the dimensions are on the existing plans.

Mr. Foley noted they have to go back to Conservation but we have a condition that says if anything changes substantially through that process then they would have to come back to Planning.

Mr. Hayward opened up for public comment, there was none.

Mr. Foley reviewed the standard conditions for the project. He said there were six conditions in all. Mr. Fleurent asked about an old bylaw that was in existence regarding pedestrians walking around the gangway. Mr. Foley noted that the fishing and fowling law is accommodated with two sets of stairways from the beach to the top of the bank on either side of the proposed dock.

Ms. Fidalgo made a motion to approve SP 2022-05 Winslow Court Pier with the six conditions as outlined by Mr. Foley and was seconded by Mr. Grant. The motion passed unanimously.

- iii. **Street Discontinuance – Portion of Alfred Street**: Continued 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 reopened the Public Hearing for the proposed Street Discontinuance of a portion of Alfred Street. Ms. Fidalgo read the advertisement in for the record.

Mr. Foley reviewed the discontinuance as continued from their previous meeting. Christian Farland was in attendance. He had a chance to speak to the abutting resident, Mr. Hamel, who is in attendance. Mr. Hamel will take over Parcel A. He said they are looking forward to locating Farland Corporation Engineering offices to Fairhaven in this building. He said the building would be used for the engineers and the operations/administrative staff with approximately 42 employees.

Mr. Hamel was in attendance in the banquet room and he said he was in agreement with what Mr. Farland stated.

Mr. Farland stated they will do a complete Form A for all the parcels.

Mr. Hayward opened it up to the Board and/or the public. There was no comment.

Mr. Fleurent made a motion to approve the Alfred Street discontinuance as presented via the plan and was seconded by Mr. Grant. The motion passed unanimously.

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

Mr. Hayward opened up the Zoning Amendment Public Hearing. Ms. Fidalgo read the advertisement in for the record.

Mr. Foley said he spoke to Attorney Crotty regarding the question of whether someone could get a variance or claim a taking. Mr. Crotty suggested the Planning Board could allow some leeway through a Special Permit. Mr. Foley explained there is a bylaw that you can't build a turbine within four times the height of the turbine to existing houses but there is not currently a bylaw that doesn't allow a house to be built within that setback. Mr. Foley explained there would be a several lots and houses along Route 6 and in the Little Bay area that the by-law would affect.

Mr. Foley and Mr. Crotty agreed that there may be other public facilities that might possibly need a setback to avoid nuisances and suggested the Board may want to discuss this more thoroughly and think about exactly what the impacts may be. He said if they go forward Mr. Crotty said we would also want to add a footnote to the use regulation schedule for the proposed setback. There is no place to put it in the schedule itself.

Mr. Hayward agreed he didn't think it was ready to proceed. He suggested the Planning Board pass it over at Town Meeting.

Mr. Grant asked what the motivation behind the zoning amendment would be in the future; if it's to avoid litigation in the future. Mr. Foley answered yes they want to avoid litigation but also insure no new development would be in those marginal areas. Mr. Fleurent referred to the bylaw once written when the wind turbines first went up.

Mr. Hayward made a motion to pass over this article at Town Meeting and was seconded by Mr. Grant. The motion passed unanimously.

Mr. Hayward brought up the Stormwater bylaw that is being presented by the BPW to Town Meeting that names the Conservation Commission as the Stormwater agent. He said that without a Conservation agent at this time, it's a bad time for the BPW to put forth the change of by-law. He said the warrant article is not written up properly and does not explain what the changes in Chapter 194 are. In the past applicants have paid to have peer reviews done by both Conservation and Planning because of the stormwater regulations, and he believes that is unfair to them. He stated this article is number 27 for the Town Meeting that is set for Saturday, June 18, 2022.

Mr. Foley gave his overview of the amendment of #194, he agreed something was lost in translation and there is no reference to what is being removed from the existing bylaw and what is new. 95% is the same as the existing but the changes are not evident. Mr. Hayward said a team approach is what is needed.

Mr. Hayward added that there are plenty of typos in the Town Warrant Meeting Book and encouraged residents to read it prior to the meeting.

3. **CURRENT PLANNING:**

a) Introduction to 40R Bylaw Consultant Team:

Mr. Foley introduced the 40R Bylaw Consultant Team. Mr. Adam Costa, esq. who was present to discuss the requirements and steps necessary to create a 40R Overlay District in the Rt. 6/240 Target area.

Mr. Costa was present via Zoom to discuss his past experience with developing Chapter 40R bylaws for Towns. He said his firm represents 25 town communities across the state as Town Counsel. Mr. Costa gave a presentation on his affiliation with housing and Chapter 40R.

Attorney Costa gave an overview of the state incentive payments that are part of 40R. He said the payments are not the reason to do a 40R but it is an extra incentive. Mr. Grant asked about the zoning incentive payments. Attorney Costa said there is a one-time payment incentive for creating the capacity and then a one-time payment for units that are actually built in the district. Mr. Foley added that the Town would also be interested in 40S which makes annual payments for new school children in the 40R District.

Mr. Hayward asked what the funding source is for the incentives. Attorney Costa said it was in the governor's budget.

There was more discussion regarding 40R Bylaw and how they will move forward.

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

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 28, 2022.

Mr. Foley stated an ANR was received today for the 732 Sconticut Neck Road property that was the subject of a Chapter 61 A recently where the Town transferred its right of first refusal to the Buzzards Bay Coalition and will be on their next agenda for an ANR Endorsement Review.

Mr. Lucas made a motion to go into executive session to discuss Hiller & Timothy Subdivision and was seconded by Mr. Grant. The motion passed unanimously via roll call vote.

Meeting was adjourned at 9:32 p.m.
Respectively,

Patricia A. Pacella
Recording Secretary