



# FAIRHAVEN PLANNING BOARD

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Planning Board Minutes  
Tuesday, December 13, 2022

FAIRHAVEN TOWN CLERK  
ROUD 2023 JAN 30 PM1:04

## 1. GENERAL BUSINESS:

a) **Chair's Welcome and Media Notification:** Vice Chairperson, Ms. Melanson opened the meeting at 6:39 pm and advised who was present. She also read the revised Open Meeting Law Statement per the State of Emergency issued by Governor Baker with instructions that public hearings may be conducted remotely via Zoom until March 2023.

b) **Quorum/Attendance:** Present: Cathy Melanson, Jessica Fidalgo, Kevin Grant, Jeff Lucas, and David Braga. Wayne Hayward and Rene Fleurent both were on Zoom.

**Absent:** Sharon Simmons

Town Planner, Mr. Foley was also present.

c) **Minutes:** November 22, 2022, Jeff Lucas made a motion to accept the minutes of November 22, 2022 and was seconded by Kevin Grant. The motion passed unanimously. (6-0-1)

d.) **Planning Board Bills:** FNN \$150.00 for advertisement Timothy & Hiller Remand hearing. Mr. Lucas made a motion to pay FNN \$150. Seconded by Kevin Grant. Motion passed unanimously.

e.) **Correspondence:** None.

## 2. PUBLIC HEARINGS:

a) **SP2022-09 – Mirasol's Café Special Permit:** Continued Public Hearing on a proposal to demolish the Fairhaven Car Wash Building and construct a new approximately 2,200 sf restaurant building with a drive-through and site improvements.

Mr. Foley stated this was a continued Public Hearing and revised plans were received that answered a few of the questions. They submitted additional landscaping along Route 6 and light sconces that are on building are shown on the plans. He said they have placed baffles on plan so that voice orders don't carry throughout the neighborhood.

Attorney, Robert Krauss was present in the banquet room with several other Mirasol's Café representatives. Attorney Krauss said his client has spoken to Mr. Foley to come to a resolution and added things to the plans as requested. Mr. Foley confirmed he met at the site with Mr. Taglianetti and reviewed potential improvements to mitigate some concerns.

Sam Hemingway reviewed the landscaping plan. He showed where more evergreens were placed around the parking lot to block car lights disturbing residential neighbors. He said the lighting package was revised slightly with the added sconces. The architect stated the major change on the plan was they added the lighting on the exterior of the building and under lighting under the canopy.

The team briefly spoke about condition number 22, and the dumpster enclosure.

Mr. Foley reviewed the revised language for the dumpster which allows them to reuse the existing enclosure to be relocated and maintained in a clean working manner.

Mr. Lucas shared his concerns about the long curb cut on Spring Street and wondered if they had reviewed that corner. He said most people cut through that entrance to get around Route 6.

Mr. Taglianetti said he sat out there in his car a few weeks ago on a Friday and observed the traffic flow. He said he saw approximately thirty cars in and out of the site. He said they would agree to conditions to monitor the situation and come back if there are any issues due to Mirasol's being there.

Mr. Lucas said perhaps they could put in a condition to review in a year. Mr. Grant agreed there is a huge curb that seems a little deceptive. He said it was difficult to approach Spring Street from that area.

Mr. Hayward said he didn't have issues with the traffic and there is a speed bump behind the building there that slows down the traffic. He did note that the noise ordinance is anything over 10 decibels over ambient is a nuisance, so if they are starting at 15, they should revisit that number. The team agreed they could adjust the sound to no more than 10 decibels over ambient.

Mr. Foley reviewed the possible conditions, which they did, with twenty-two conditions in all.

Mr. Grant referred to condition number five and asked that perhaps it read that if adjustments are necessary, it should be on the allowance of the owner. The board discussed the word 'necessary'.

Ms. Melanson asked for a motion.

Ms. Fidalgo made a motion to approve SP 2022-09 Mirasol's Café Special Permit with the twenty-two conditions with one amendment as discussed on #18. Mr. Braga seconded the motion and it was passed unanimously via roll call vote. (6-0). Mr. Fleurent was not included in the vote, as he could not be heard from zoom.

**b) DS 2022-01 Starboard Drive Definitive Subdivision: Continued Public Hearing on a proposed 8-lot subdivision on Starboard Drive with 9.5 acres and the five existing cottages.**

Mr. Foley stated the applicants have asked for a continuance to January 10, 2023.

Ms. Melanson opened the hearing.

Engineer, Mr. David Davignon was present for the applicant and asked for a continuance to January 10, 2023. He said he would forward a formalized letter in writing for the request.

Mr. Braga made a motion to continue DS 2022-01 Starboard Drive Definitive Subdivision to January 10, 2023, per the applicants request and was seconded by Mr. Grant. The motion passed unanimously via roll call vote. (6-0-0)

- c) **DS 2019-01: Timothy & Hiller Avenue:** Continued hearing on a Remand Review of a previously denied subdivision after Joint Motion to review a revised conceptual 15- Lot Subdivision Plan.

Mr. Foley gave a brief overview of the 15-lot subdivision as they had done a through staff report at the November 22 2022 hearing. The applicant came before the Planning Board in 2019 and after several public hearings the proposal was unanimously denied in early 2020. The case had gone to court and with COVID it had been delayed. In June 2022, the Planning Board and applicant agreed to a Joint Motion to remand to review a revised conceptual plan. He said this is the continued hearing for the public review of the revised conceptual 15-lot subdivision plan.

Ms. Melanson opened the public hearing and laid down the ground rules. She said that parties present would act with respect, no talking over each other. She then handed over the Chair of the meeting to Ms. Fidalgo as she was the last meeting's chairperson.

Ms. Fidalgo read the advertisement in for the record.

Mr. Foley reviewed only what was new tonight. He said the applicant had submitted an article on studies near a treatment plant. Mr. Foley also forwarded a study to members from Greece in 2016 regarding the impacts on health and quality of life of living near a treatment plant.

A revised plan received with the hammerhead intersection was submitted and discussed.

Engineer on the record, Dave Davignon also submitted an updated plan which he stated was reviewed by the DEP. He said he didn't receive any comments from Town Department heads as they previously discussed.

Mr. Furtado said the comments from DPW Superintendents would be forthcoming but also noted that the wastewater treatment facility is in compliance and in fact has won awards but also that sometimes the sewer plant will have odors. He said he was hoping to hear from department heads today and didn't receive them.

Mr. Foley stated that the response from the applicant on the peer review would need to be revised because it addresses an errant version of the Third Peer Review and the response to the full document will need to be peer reviewed. He noted the applicant still owes the Town \$7,893.80 for stormwater peer review.

Mr. Davignon stated they were made aware that the expansion of treatment plan is going to be. It is basically going to be in line west of Drainage Parcel B.

Mr. Braga said his concerns is the proximity to the sewage plant and wind turbines and the potential health effects raised in the article for residents living near sewer treatment and wind turbines. He said he had previously no idea about what shadow flicker was until recently, when someone from another Town posted a video and he watched it. He said he was very surprised. He was disappointed that no other department head passed along their comments except for the DPW. He was hoping to hear from the Fire Department regarding the hammerhead turnaround among other departments.

Mr. Hayward said that what is on the plan is not a proper hammerhead. He added that he has had the same concern from day one regarding the buffer along the eastern property line. The applicant is possibly moving in the right direction, but it was hard to understand what they are proposing. We need a complete buffer and he believes the proposed buffer at this point is not complete. Mr. Hayward suggested moving lot twelve in addition to removing lot 11, which would then shift the retention basin; then they could easily provide a lot more buffer on the east side of the property. He said if they are willing to reconfigure a little bit they could potentially make it work.

Ms. Fidalgo stated she also shared some of the same concerns.

Mr. Davignon stated their biggest issue is dealing with the offsite drainage. He said running the pipe system around the pond and depositing water in a specific location right now. He said the difficulty is manipulating the pond to create a buffer and bypass the system. He said the compliance requirements are 4:1 slope, and if the Planning Board could entertain a waiver from 4:1 to 3:1, utilizing the same general area, he would be able to take out possibly a 25' strip. He said there is a little buffer near the treatment plan and suggested that the Town expand the green space on their side by 25'. He said between the Town and their project they could come together for a better buffer.

Mr. Hayward stated that he believes they are not treating the existing flow on Hiller Ave and wasn't sure why they couldn't shift to a North to South approach on Hiller Avenue, versus East to West.

Mr. Davignon stated he would still need to get the pipe past the drainage pond. He said if they run it to the North that would dry out the wetlands to the South. He said they couldn't bypass without going up and around the pond.

Mr. Hayward referred to the twelve apartments going up near Gellette Road. He said they are pulling two, twenty-four-inch pipes from Route 6, underneath the stormwater detention basins. He said they could run a pipe over the basin at some elevation and not increase the volume. He said he doesn't understand the configuration. Mr. Hayward and Mr. Davignon continued to discuss the pipe and the discharge. Mr. Hayward suggested moving Lot 10 to move the whole system to the West.

Ms. Fidalgo said she was also concerned with the potential for flooding basements in that area.

Mr. Grant stated his comments were more of a general, broader extent. He absolutely believes there is some potential for this land for building. He said that this is the time for the applicant to come back with a fresh idea and the ability with a somewhat new board to look at the project with a new set of eyes, as it was remanded back to the board.

Mr. Grant said that the consensus is that the applicant has stated several times that they have not had any direction from the board. However, they are also saying they are not going to make any changes to the plans. He said this is the time when both sides can work together and assist with direction, but he is not sure that's what is indicated from the applicant. He said it was clear from the last meeting that there was going to be no big changes, only a few tweaks here and there.

Mr. Davignon said he still feels that he did not get a solid direction previously. He said he reviewed the tapes again and the discussion before the denial was not very long. He does not recall anyone ever saying give me a fifty-foot buffer zone or a one hundred foot buffer. He said as an engineer he is seeking a direct, firm direction.

Mr. Grant asked if this is the plan that he wants direction on and if they are open to discussion or is the answer going to be no, they are not willing to move anything.

Mr. Davignon stated that moving or sacrificing lots is not on the table.

Mr. Braga asked if he felt he has received more direction tonight.

Mr. Davignon said no. He said he has heard more buffer on the East and West side. He said they had done a walk through out there with Mr. Foley in the past from the stone wall, twenty-five to fifty feet and they determined a lot of big trees need to come down.

The applicant, Mr. Rodrigues was present. He stated that he felt all the concerns of the residents in attendance tonight and previously were regarding the sewer treatment plan. He said that the Town needs to take responsibility to create a buffer on their side of the property so that trees can start to grow in. He said they filled and isolated pieces of land in that area. He said he wasn't sure why the Town couldn't tweak their area. He said that the water is not going to run the way Mr. Hayward suggested, from East to West. He said that it probably would create more havoc than good. He said that the buffer should be created by the Town.

Mr. Davignon stated he need five people on the board to be in agreement. He needs five people to move forward. He said if they agreed to the slope waiver (4:1 slope, either to a 2:1 or 3:1 which is more reasonable), then he would be able to move forward.

Mr. Braga said he understands the need for assurance from the board. He said that for him he would like to hear from the public.

Mr. Lucas said he would be agreeable to waivers on the slope, he said he is not set in stone to 2:1. He said he agrees that the Town should be held to create a buffer as well. Mr. Foley said he was unsure what the Town could do on their part of that buffer. They may have their own constraints.

Ms. Fidalgo said she felt it was fair that the board give them the waiver that they are suggesting if the board is wants a bigger buffer. She said that negotiations mean working together.

Mr. Roderiques said they were willing to sit down with DPW and create a landscape buffer. He is willing to plant more trees if that's the request of the neighbors.

Ms. Melanson said they need to stay on topic and deal with the issues as of right now. She said she would like to hear from the public.

Mr. Hayward said it would be hard to create an adequate buffer to the wind turbines.

Ms. Fidalgo opened it up to the public for comment. She asked for new comments to come forward first and added that each person would be given time to speak but asked them to keep it under two minutes if possible.

Karen Isherwood, of 3 Teal Circle came up to speak and asked for more than two minutes to speak. She asked about the 25' tree protection zone. She did not think it would be near enough. If they cut a trees roots that is neat the 25' line it will kill the tree. She encouraged a site visit from new members to the area. She said she was of the opinion that new trees and new plantings wouldn't create an adequate buffer

She asked the board to consider the existing area and what is there currently. There are two wind turbines and a sewer treatment plant that will be expanded soon. She said that the Fairhaven Bylaws of the wetland regulations doesn't grant grandfather rights. She asked the board to review the wetland buffer regulation.

Michael Thomas, of Teal Circle stated that the applicant said they are not getting any direction, however, he said it is tough to give direction when they don't want to receive any. He said the applicants have insisted they are not going to lower the lots, as he says it, they don't want to receive any direction.

Ann Espindola, of 13 John Street asked that the health studies that were discussed tonight be made to the public. She asked which department heads were asked to review the plans.

Mr. Foley stated the plans were routed to the various branches of the DPW and the Board of Health. He noted this is not the standard Definitive Subdivision Review process. When this was reviewed as a Definitive Subdivision the previous Board of Health agent denied the project after the Planning Board had already done so. She was then fired by the Board of Health who then rescinded her denial. The Board of Health then said the project would be connected to the sewer so they had no concern. They did not seem to be aware of the requirement of the regulations for them to assess the suitability of the site.

Mr. Davignon stated they met with DPW, public works and with the Superintendent of highway, water and sewer. He said the Board of Health was not invited.

Mr. Foley said he did not believe this has been discussed with the new Board of Health, however he did forward it to the agent, Mr. Flaherty.

Mr. Braga said that at their last meeting Attorney Mathieu said he did meet with the Board of Health and now they are saying they did not. He said he was now confused and wondered if they met with the Board of Health or not.

Mr. Rodrigues stated he dropped the plans off himself at the Fire Department and to the Board of Health. He said he left the plans with the administrative assistant who said Mr. Flaherty was out on an inspection. He said he thought that the Fire and Police Departments were supposed to be at the DPW meeting. He said he dropped off the plans personally.

Ms. Espinola stated she had emailed Mr. Flaherty in the Board of Health on December 12, 2022, to ask if he had received the plans. She received an email in return that stated he had not received the plans, but once they did would review them then.

Mr. Rodrigues stated he dropped them off the previous week to the administrative assistant. He said he later talked to the agent who said he would have a letter typed up as he didn't see any issues with the project and would write that up.

Ms. Fidalgo asked Mr. Foley to follow up with the health agent.

Resident, Ms. Powers from Little Bay Road spoke. She said she was confused by the discussion of routed plans. She said at the last meeting, the applicant stated that all the boards had approved the plans, now at this meeting, there is something different being said. She said she has been in attendance at all meetings since the beginning and never heard that all department heads approved the plans. Ms. Powers encouraged board members to contact the health agent themselves to find out what has or has not been approved. She said the wind turbines themselves are a very controversial project and always have been. She told the board members they have a duty to protect the residents.

Resident, Mr. Lavalette said he was disappointed to hear that the Board agreed to have this project remanded back to the Planning Board. He said they should've left in court because as he sees it they are just spinning their wheels again. He said it is a very, very complicated project that they are trying to shoehorn as many houses as possible they can in this difficult area. He said that there are quite a few constraints on this property and the little fixes they are suggesting are not going to work.

Via zoom, Leah Isherwood, of 3 Teal Circle asked to speak off of Mrs. Espindola's comments. She said in response from the Board of Health, they should look into it. She said they have to take into account the many complaints of residents to the BOH regarding the wind turbines. She said that they have been denied the request to meet with the BOH.

Mr. Grant spoke of the remand. He said if discussed thoroughly it is a good policy if there is the chance to revisit something out of the court of law, whether that means it's a late night for them or not.

He said the 50' buffer zone is not the only sticking point on this project.

Mr. Foley said that the Board of Health Agent said he thought the Board of Health would like to see Conservation and Planning review this before them. Mr. Foley said he would reroute the plans to the Board of Health with a reminder of their role as outlined in the subdivision rules and regulations.

Ms. Fidalgo said for her it's not about hearing from the BOH. She said she doesn't know if they could put in enough buffers for her to be happy. She said she would like to see lots taken away and if they weren't willing to do that, it would be a no for her.

Mr. Grant said it was crucial to hear from Town's Department Heads. They are our local expertise in their respective areas.

Mr. Rodrigues said we didn't ask that they comment to them directly. He said he just dropped off the plans.

Mr. Hayward does not think the Planning Board should defer their decision to another board. In regard to the Board of Health, he does not see a lot coming from that direction. He reviewed a timeline with the project. He said that Attorney Mathieu sent a letter on March 4, 2022 addressing the 50' no cut restriction and stated that request was not acceptable.

Mr. Hayward stated that the direction has been there but there has been reluctance from the applicant. He said there is a large financial bill associated with this property and needs to be replenished. He said he believes the direction has been pretty clear. He said his first focus and continuous focus has been to provide a buffer. He said he doesn't think they can wait for the Board of Health to make a finding.

Mr. Braga said he is not ready to vote and wants to hear from Department Heads.

Attorney Mathieu stated that he does not have a problem with the department heads that have not commented; but he has a problem with the Board of Health. He says they are done with the board of Health. He said the plans were routed to the past Board of Health members who stated they had no problem from the beginning. He said the Board of Health is not required to send anything in writing or other to the Planning Board. He said per the law, if they do nothing, they approve the project. He said it was after the fact that the health agent then sent a letter, a written decision to deny the project. He said surely the new board can comment, but that comment period is done. He said they rerouted the new plans to a few boards, and they are commenting on the few changes they made to the plans.

Mr. Lavalette asked what happens from here, if they are willing to come to an agreement would they have to refile.

Mr. Foley said it was not as clear. He said if the board and applicant came to an agreement they would have to refile. Attorney Mathieu said they would not have to refile. Mr. Foley said he understood they would have to refile with an actual plan. Ms. Fidalgo asked the Town's attorney, Ms. White to clarify.

Ms. White, via zoom, confirmed the applicant would not have to put in a full filing from scratch, however, they would have to ultimately file a formal engineered plan that would have to be signed prior to approval. She said it would not be a filing from scratch throwing away all the history of the project.

Mr. Foley stated they are reviewing a conceptual plan currently and with a new filing they would reroute to get comments. Ms. White said there is nothing preventing the board from rerouting the plans to get comments from other boards, including the Board of Health.

Ms. Melanson said that she can see that nobody is happy here. She said she agrees with Ms. Fidalgo and would like to see some lots taken out. She also agrees with Mr. Braga to hear from department heads. She said she and Ms. Fidalgo would like to see it smaller in scale and she is not sure the applicant sees it that way.

Mr. Grant said the question before them now is if the applicant is willing to make any significant concessions or if 5 members of the Board are happy with where we are at. Otherwise, we are just spinning our wheels. Likewise the applicant should tell the board if it is worthwhile to continue knowing there are members of the board who wouldn't approve with that many plots outlined.

Mr. Davignon asked specifically which lots are being requested to be removed from the plans.

Ms. Fidalgo stated lots 12, 10, and 13 as the project would be greener in the center area. She feels it would be less congested.

Ms. Melanson asked if they were willing to discuss with their client the need to continue at this time.

Attorney Mathieu said no, it is not feasible that they are going to remove any more lots.

Ms. Melanson, stating she was not the Chair for this hearing, asked for a five minute recess so the Applicant could discuss.

Upon returning after the ten minute recess, Mr. Davignon did ask for a continuance until January 10, 2023. He asked that he wants all the comment letters from the department heads to get forwarded to him by December 31<sup>st</sup> and then he will submit the plan one week in advance to the meeting instead of two weeks as the norm.

Mr. Braga made a motion to continue DS2019-01, Hillier & Timothy Avenue to January 10, 2023, per the applicant's request and was seconded by Mr. Lucas. On the question, Mr. Hayward said he didn't know how realistic it would be to get the department head's comments back to the board by January 1, 2023, as the Holiday is upcoming and the Town is closed and/or has half days.

Mr. Davignon stated that DPW has reviewed the plans it seems the only issue is the Board of Health and they meet in early January. He said they don't want to be held to a long-term schedule. He said they want to know before they spend the time and money for a plan to be reconsidered. He said this will give them a little leeway for the resubmitted plans.

The board voted on the motion to continue via roll call vote. The motion passed with one in opposition, Mr. Hayward. (5-1-0).

### **3. OTHER REVIEWS:**



a) **PS 2022-03 – 481 Scoticut Neck Road**: A preliminary subdivision of 481 SNR

Mr. Foley reviewed stated preliminary plans for Scoticut Neck Road came in, showing a 100' buffer to the wetlands that seemed to be inconsistent with plans that were reviewed by the Conservation Commission on the neighboring property a few years ago. He said they would need to get a confirmed wetland line by Conservation Commission first, prior to coming to the Planning Board.

b) **Chapter 91 Receipt of Plan: 5 Sippican Street**, Concrete seawall and stone revetment.

c) **Chapter 91 Receipt of Plan– 7 Sippican Street**: Remove a concrete seawall and replace with riprap.

d) **Chapter 91 Receipt of Plan– 6 Winsegansett Avenue**: Concrete seawall and stone revetment.

Mr. Foley stated that three plans for Chapter 91 had been received and before he signs them, he asks the board to review. David Davignon is engineer on the record.

Mr. Davignon reviewed the plans stating that 5 Sippican and 7 Sippican, were two houses with massive seawalls and it is a complex project. He said luckily all the neighbors get along in the area, which makes it easier for the repairs to take place. He explained the process and the properties as the project will be done together among the properties.

Ms. Melanson made a motion to allow Mr. Foley to sign the Chapter 91 order and was seconded by Ms. Fidalgo. On the question, Mr. Hayward asked what was going to occur with the Winsegansett Avenue property. Mr. Davignon stated they were proposing to cut out a section of the vertical wall to repair and reshape. He said the walls are in good shape.

The motion passed unanimously. (6-0-0).

#### **4. CURRENT PLANNING:**

Mr. Foley reviewed the process with the 40R working group project. They have their fourth 40R working group meeting on Wednesday and all are invited. They will probably need one more meeting in January as they try to develop a consensus on the district boundaries, density and design. He also did a site tour with the consultant for the Municipal Vulnerability Preparedness (MVP) and several members of the DPW and former executive secretary, Jeff Osuch, and the Town Assessor. He said they spent four to six hours with the reviewing and discussed Town-owned critical infrastructure in the velocity zone. He said it was a productive meeting.

Mr. Braga made a motion to adjourn at 9:45 p.m. and was seconded by Kevin Grant. The motion passed unanimously via roll call vote. (6-0-0).