



TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD

Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, October 10, 2023, at 6:30 pm

Held both at Town Hall & Remotely via Zoom

1. GENERAL BUSINESS:

a) **Chair's Welcome and Media Notification:** Madame Chair, Ms. Cathy Melanson, opened the meeting at 6:33 PM and advised who was present. The media notification was written on the agenda for the meeting and thus was not read aloud.

b) **Quorum/Attendance: Present:** Cathy Melanson, Sharon Simmons, Jeff Lucas, Kevin Grant, Patrick Carr, and Ruy daSilva in the Town Hall Banquet Room.

Paul DiGiuseppe, Director of Planning & Economic Development, and Recording Secretary Stephanie Fidalgo were also present.

Absent: Jessica Fidalgo

Ms. Simmons noted that there would not be enough eligible voting members to hold the public hearing on SD 23-03 Street Discontinuance – 5 Billy's Way, as she would be recused from the hearing as the applicant.

c) **Minutes: September 26, 2023, drafts to be reviewed: Mr. daSilva made a motion to accept the minutes of September 26, 2023, and was seconded by Mr. Carr. The motion passed unanimously. (6-0)**

d) **Correspondence:** There was no correspondence for this meeting.

e) **Discussion with the Town Administrator:** Ms. Angie Lopes Ellison was invited to speak to the Board to answer questions and address any concerns the Board had after the meeting of September 26, 2023. She had discussed the Board's protocols with Ms. Melanson and how best to keep the meetings moving forward and focusing discussions on the matter at hand. As the Planning Board is an elected board, she could offer advice collectively if requested by the Board. She also mentioned the planned joint training in November with both the Planning Board and the Zoning Board of Appeals. Overall, she wants to work with both boards to create an equitable and fair process for granting variances and special permits.

Ms. Melanson agreed with the need for the training and noted that the Board would be voting

38 on hiring a bylaw consultant. She and Mr. DiGiuseppe would be seeking a way to fund the
39 consultant, looking for grant opportunities in particular.

40

41 When Ms. Ellison welcomed questions from the Board, Mr. Lucas raised his concerns about the
42 requested time limits on board members and the rotation between members when questioning
43 applicants. He preferred having a focused discussion on specific topics, using stormwater as a
44 specific example, and only moving on after the topic was resolved.

45

46 Ms. Simmons requested further clarification on the process, with Ms. Melanson explaining that
47 the time limit was not strictly applied to applicants. She considered the procedure to be
48 equitable as it allowed all the members an equal opportunity to speak.

49

50 Mr. Grant outlined his issue that any major changes to procedure, particularly those around
51 time limits, needed to be voted on and approved by a 2/3rds majority of the members present,
52 as outlined in Robert's Rules.

53

54 Ms. Ellison had reviewed Ms. Melanson's suggested changes to protocol and had agreed with
55 her on finding a way to help meetings maintain order and focus that was within the chair's
56 purview of setting the pace of the meeting. She suggested that the Planning Board could follow
57 the example of the Select Board and draft and vote on a set of protocols to be regularly
58 reviewed after each election.

59

60 Mr. Lucas agreed with Mr. Grant's point that the change of the rules regarding the time limit
61 should have been voted on. Ms. Ellison answered that the protocols brought forth at the
62 September 12, 2023 meeting were designed to help effectively manage meetings and move
63 topics along, which was separate from the rules around the time limits set for debates in
64 Robert's Rules. Mr. Lucas still preferred that any changes to the protocol requested by a board
65 member be voted on. Ms. Simmons inquired as to why there was no call for a vote at the
66 September 12th meeting, with Mr. Lucas noting that the protocol changes were given to the
67 Board unannounced and there had been an attempt to address the lack of a vote at the
68 September 26th meeting.

69

70 Ms. Ellison offered two options to the board – they could collectively decide to vote on a new
71 set of protocols or they could continue to use those set forth by Ms. Melanson. All the members
72 agreed by a show of hands that they would prefer to have a set of meeting protocols. Mr. Carr
73 and Mr. Lucas discussed ways of addressing the time limit, such as requesting additional time
74 from the board or the chair. Ms. Melanson explained that she would allow the board to
75 continue asking questions for as long as needed and that the rotation method gave all the
76 members a chance to bring up their questions.

77

78 Ms. Ellison summarized the discussion, noting time limits as an aspect of the new protocols that
79 the Board members had differing views on. She advised the Board that they could request

80 guidance from herself and Mr. DiGiuseppe. Mr. Grant returned to his issue that changes needed
81 to be voted on as unilateral decisions set a bad precedent. Ms. Melanson asserted that she had
82 not broken any of Robert's Rules and would run tonight's meeting by the protocols. Ms. Ellison
83 again suggested that the board make a motion and vote on requesting guidance.

84
85 **Mr. Grant made a motion that the Town Administrator request of the Town Planner to draft a**
86 **series of protocols in order to provide some structure to the Planning Board meetings and was**
87 **seconded by Mr. Carr.**

88
89 Ms. Ellison suggested that all of the members individually email Mr. DiGiuseppe with their
90 concerns and then she would collaborate with him to draft a formalized set of protocols.

91
92 **The motion passed unanimously. (6-0)**

- 93
94 **f) Street Acceptance: Request to review the petition to accept Alves Way at Special Town**
95 **Meeting:** Ms. Melanson noted that all of the other departments such as the Highway
96 Superintendent and GCG had signed off on approval of Alves Way. The Planning Board vote was
97 to recommend acceptance to the Select Board ahead of the Special Town Meeting.

98
99 **Mr. Carr made a motion to approve the acceptance of Alves Way and was seconded by Mr.**
100 **daSilva. The motion passed unanimously. (6-0)**

- 101
102 **g) Bylaw Consultant:** As mentioned earlier in the meeting, this vote would approve hiring a bylaw
103 consultant to review the Town's bylaws and resolve any contradictions therein or with
104 Massachusetts General Law.

105
106 **Mr. daSilva made a motion to approve the hiring of a bylaw consultant and was seconded by**
107 **Mr. Grant. The motion passed unanimously. (6-0)**

108
109 **2. RECEIPT OF PLANS:**

- 110 **a) FA 23-06 270 Sconticut Neck Road: Form A proposal to combine 270 Sconticut Road - Map 26**
111 **Lots 101-106, Thompson Ave – Map 26, Lots 96 and 97, and Parcel A – an approved**
112 **discontinued section of Torrington Road – into a single lot, submitted by Jean and Alexander**
113 **Easterday.**

114
115 Mr. DiGiuseppe covered the history of the property, with the Board having approved the
116 discontinuance of this section of Torrington Road at the June 20, 2023 meeting and that the
117 Form A to combine all the lots into a single property was the next step in the process. The Form
118 A met all of the requirements in terms of lot size and frontage.

119
120 Ms. Jean Easterday offered to answer any questions from the Board. Ms. Melanson noted that
121 many questions regarding the property had been answered at the prior meeting. Mr. Lucas

122 brought up the correspondence sent to the Board from Conservation Agent Bruce Webb and
123 asked for clarification. Mr. DiGiuseppe outlined the concerns of the Conversation Agent and
124 the Conservation Commission regarding the trail that cut through the property and their larger
125 concerns regarding private trails that divided up the marsh as well as the need for public and
126 permitted trails to allow for access. Ms. Easterday explained that she was already seeking
127 approval from the Conservation Commission, which was in line with the previous discussion at
128 the June 20th meeting. Ms. Melanson stated that the Form A approval by the Planning Board
129 was separate from the trail and any future work on the property would need to be approved by
130 the Conservation Commission.

131

132 **Mr. daSilva made a motion to approve FA 23-06 270 Sconticut Neck Road and was seconded**
133 **by Mr. Carr. The motion passed unanimously. (6-0)**

134

135 Ms. Melanson let Ms. Easterday know that the form would be signed and ready for pick up the
136 next day.

137

138 **3. PUBLIC HEARINGS:**

139 a) **SD 23-03 Street Discontinuance – 5 Billy’s Way: Continued from September 26, 2023.**
140 **Discontinue the section of the unaccepted street, Torrington Road, that runs alongside the**
141 **eastern edge of 5 Billy’s Way (Map 29A Lots 185 & 186), submitted by Sharon Simmons.**

142

143 **Mr. Grant made a motion to continue SD 23-03 Street Discontinuance – 5 Billy’s Way to**
144 **October 24, 2023, and was seconded by Mr. daSilva. The motion passed unanimously. (6-0)**

145

146 b) **SP 23-07 350 Main Street Special Permit: Continued from September 26, 2023. Renovate the**
147 **existing theater at 350 Main Street (Map 19, Lots 257 & 259) into a commercial space,**
148 **submitted by Julio Barbosa.**

149

150 Andrew Beechinor, attorney for Mr. Barbosa, presented the application to the Board. As a
151 provision of the previously granted special permit, SP2021-01 Bijou Apartments, from July 13,
152 2021, Mr. Barbosa had to come back to the Planning Board when changing the use of the
153 existing theater space. Since granting the previous permit, Mr. Barbosa has complied with all of
154 the conditions as he renovated the property and had new residential and commercial tenants
155 move in. B.Balanced Fitness would be seeking to lease the renovated theater space and had
156 submitted a letter to the board in support of the application. The renovation would focus on
157 removing the last remaining rows of theater seats and installing a new floor, as the previous
158 theater floor was pitched.

159

160 Mr. DiGiuseppe confirmed that the property was zoned mixed-use and the proposed use was
161 allowable. He showed several photos of the property to the Board, including the parking lot
162 and the enclosed dumpster.

163

164 Mr. Lucas asked if the parking lot was also under consideration, as he would like to see an
165 amended site plan that reflected the location of the dumpster. Ms. Melanson noted that the

166 parking lot was not under consideration for this permit and then invited Building Commissioner
167 Randy Bassett to speak to the Board. Mr. Bassett had worked alongside Mr. Barbosa to relocate
168 the dumpster to a better location within the parking lot. Mr. Lucas still wanted to see an
169 amended site plan if possible. Attorney Beechinor assured that an amended site plan for 350
170 Main Street could be submitted.

171
172 Mr. Grant asked for verification for the purpose of this special permit, with Ms. Melanson
173 confirming that it was for the use change of the theater.

174
175 The Board opened the hearing to public comment. Mr. John Medieros of 538 Dana Farms asked
176 if the new plan would have 20 parking spaces, in line with the previous special permit. Given
177 the planned changes to Benoit Square, he would like to ensure that those parking spaces would
178 be available to the tenants. Attorney Beechinor assured that the lot complied with the previous
179 plan. There was discussion on whether the new dumpster location changed the number of
180 spaces, but Ms. Melanson reminded Mr. Medieros that the focus of the hearing was on the
181 change of use for the theater space.

182
183 Ms. Fidalgo had forwarded questions to the Planner to be read in her absence and Ms.
184 Melanson read them aloud. These questions are attached to these minutes as Addendum 1.
185 She suggested adding additional signs for timed parking and directing off-street parking
186 towards the Oxford Residences. She also suggested adding lightning to the rear parking lot to
187 address safety concerns. Attorney Beechinor noted that those concerns did not specifically
188 apply to the theater's use change and were not a part of the previous permit. Mr. Carr
189 suggested that those concerns should be addressed by the Building Commissioner and Mr.
190 Bassett promised to work with Mr. Barbosa during the permitting process to do so.

191
192 **Mr. Carr made a motion to approve the SP 23-07 350 Main Street Special Permit and was**
193 **seconded by Mr. Grant. The motion passed unanimously. (6-0)**

194
195 **c) SP 23-06 54 Main Street Special Permit: Continued from September 26, 2023. Renovate the**
196 **existing building at 54 Main Street (Map 9, Lot 78) to include 12 single bedroom apartments,**
197 **submitted by Julio Barbosa.**

198
199 Andrew Beechinor, attorney for Mr. Barbosa, presented the application to the Board. He went
200 over the current state of 54 Main Street as a mixed-use property with 3 smaller retail spaces
201 and a larger two-story commercial space that was formerly occupied by the American Legion,
202 Post 166. The floor plans included the existing conditions as an event venue, which could
203 accommodate a large number of people in the different bars and halls. Mr. Barbosa sought to
204 renovate the space to contain 12 single bedroom apartments with 7 on the first floor and 5 on
205 the second floor. They would require the Planning Board's approval for the special permit to
206 change the use.

207
208 Mr. DiGiuseppe noted that two special permit criteria applied to this application – One being
209 for a multifamily use in the mixed-use district and a renovation to a new use that would require
210 new parking spaces.

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Ms. Simmons requested that Mr. Barbosa and Attorney Beechinor go over the floor plans with the Board. Attorney Beechinor covered each of the floor plans, which outlined the existing conditions as well as the plans for the apartment renovations. Afterward, both Mr. daSilva and Mr. Carr voiced their support for the project.

Mr. Lucas pointed out a fire extinguisher that was not listed inside the middle of the top set of apartments on Page A12, unlike the others on that floor. He also mentioned the concerns with the existing fire escape that had been brought forth by Mr. and Ms. Luey of 31 Middle Street. Mr. Bassett noted that while the fire escape would need to be replaced, the actual location could not change.

The Board opened the hearing to public comment. Ms. Beth Luey of 31 Middle Street spoke to the board, outlining her concerns with safety as the building's location and proximity to her property did not allow for an easy means of egress in the case of a fire, with only narrow walkways available. Additionally, having both rear entrances face her property was a safety and privacy issue, especially given how there had been a previous break-in at 54 Main Street. When the hall was in operation, they had more general privacy issues with people smoking and talking behind the building.

Mr. Michael Luey of 31 Middle Street also spoke to the Board. He reiterated his wife's concerns, particularly focused on the age and condition of the fire escape as well as its lack of repairs and safety inspections. He also included his concerns about parking for the new tenants.

Ms. Marcia Fernandes of 36 Main Street spoke to the board. She wished to speak on behalf of her neighbors who were unable to attend. Particularly, those of 35 Main Street, which is a 9-unit apartment building, who all regularly struggled to find parking in the neighborhood. Other businesses and restaurants in the neighborhood also contributed to the congestion. She also had questions about trash removal and handicapped-accessible parking at 54 Main Street. While she did agree that more housing in Town was needed, she felt that 12 units was too many. Once finished speaking, she submitted a letter from Mr. Dave Downey of 35 Main Street that brought up similar concerns, which Ms. Melanson read for the record. The letter is attached to these minutes as Addendum 2.

Ms. Melanson read the questions forwarded by Ms. Fidalgo. She had similar concerns regarding the fire escape and suggested moving it to the north side of the building to exit into the rear parking lot of 56 Main Street. She also brought up the possibility of leasing spots from neighboring parking lots if possible and adding signage for timed parking from 9 AM to 5 PM in front of the businesses. She also wanted further information about the trash pickup and the dumpster and if lighting would be added to that alleyway and behind the building.

253 Mr. Bassett again assured that he would work with Mr. Barbosa to address the issues with
254 bringing the fire escape up to code. It was also noted that there is already a timed 2-hour
255 parking sign in front of 54 Main Street. Attorney Beechinor answered that they were in contact
256 with local businesses regarding renting parking spaces in their lots, but a deal had yet to be
257 finalized.

258
259 He then directed the Board's attention to Fairhaven Zoning Bylaw 198-27 Parking, loading, and
260 landscaping requirements, B. Parking Schedule (5), which reads, "In the Mixed Use District a lot
261 on which there was an existing building before January 1, 1998, shall be required to meet the
262 minimum parking requirements of this section, or the parking available on that lot on January
263 1, 1998, whichever is less, regardless of use." Even if the bylaw meant that they did not have to
264 meet the current parking requirements, Attorney Beechinor assured the Board that they were
265 seeking a solution to provide the tenants with parking options.

266
267 A 2-yard dumpster would be added to the south of the property, in the alleyway next to the Sip
268 N' Sit Café.

269
270 Ms. Melanson read the last few comments from Ms. Fidalgo about if the apartments were
271 deadbolted, if planters could be added, and if a bike rack could be added to the property. Mr.
272 Lucas supported the inclusion of a bike rack and asked for verification that Sip N' Sit was part of
273 the property.

274
275 Mr. Grant asked for further information on their plans to lease parking spots. Attorney
276 Beechinor reiterated that they were still in the process of leasing parking spaces long-term
277 from local businesses. He noted that the American Legion Hall would have been a more intense
278 use of that property as compared to the planned apartments

279
280 Mr. Carr agreed that the apartments would be a less intense use of the property. He also
281 shared his observations of the traffic and parking in the area around 54 Main Street and found
282 it to be less congested than other sections of the road. He also voiced his support for more
283 housing in Town and renovating existing buildings to create new units. While he understood
284 the concerns about the fire escape, he hoped that the Building Commissioner and Fire
285 Department could work with the owner to address them.

286
287 Mr. Bassett assured Ms. Luey that he would work with the Fire Department and other
288 departments to ensure that the building would be brought up to code. To Mr. Luey, he
289 promised that the fire escape would be inspected and repaired during the renovation process.

290
291 **Mr. Carr made a motion to approve the 23-06 54 Main Street Special Permit and was**
292 **seconded by Mr. daSilva.**

293
294 Mr. Lucas wanted to have more concrete information about parking before approving the

295 special permit. At Ms. Melanson’s request, Attorney Beechinor confirmed that the bylaw
296 regarding pre-existing buildings having to abide by the parking available on that lot applied to
297 buildings built prior to January 1, 1998. Mr. Barbosa and Attorney Beechinor also shared some
298 photos of the property around midday on the weekday. Additionally, they noted that with the
299 apartments at 350 Main Street, only one resident required a dedicated parking spot. Ms.
300 Melanson and Mr. Carr both agreed that the planned use would be less intense than the
301 previous American Legion event hall.

302
303 Mr. Lucas and Mr. Grant ensured that the applicant was aware that he needed a unanimous
304 vote from the six board members present for approval. Ms. Melanson and Mr. Carr both spoke
305 about the positive aspects of the project and the hopes for future improvements of the parking
306 situation.

307
308 **The motion passed unanimously. (6-0)**

309
310 Ms. Melanson outlined the next steps in the process for the applicants.

311
312 **4. UPCOMING REVIEWS:**

313
314 Ms. Melanson briefly noted the upcoming review planned for the October 24, 2023, meeting.

315
316 a) **Special Permit: 88 Fort Street, building a private use pier.** Public Hearing on 10/24.

317
318 **5. OTHER BUSINESS: Any other business that may properly come before the Board, not reasonably**
319 **anticipated when posting 48 hours prior to this meeting.**

320
321 Ms. Melanson reminded the board of their joint meeting with the Select Board on October 23, 2023,
322 to select a new member to fill the seat vacated by Mr. David Braga. Select Board Member Keith Silva
323 confirmed that he would forward the resumes of the three candidates to the Planning Board ahead
324 of the meeting. Mr. Carr brought up that the Planning Board and the Select Board could tie and if so,
325 who would break the tie. Mr. Silva promised that he would check on who would break the tie.

326
327 **6. NEXT MEETING: Tuesday, October 24, 2023.**

328
329 Mr. daSilva made a motion to adjourn and was seconded by Ms. Simmons. The motion passed
330 unanimously at 8:38 PM.

331
332 Respectfully submitted,
333 Stephanie A. Fidalgo
334 Recording Secretary,
335 Planning Board
336 *Approved – October 24, 2023*

Addendum 1 – Jessica Fidalgo Letter

From: **Jessica Fidalgo**

Date: Sun, Oct 8, 2023 at 3:49 PM

Subject: Questions/comments/concerns

Hi Paul, I am sorry this is coming in later than intended.

Alves Way:

Affirming the acceptance.

Public Hearings:

5 Billy's Way:

I am concerned over the neighbor, 7 Billy's Way not having signed the application form where it says that abutters must sign, and the assumption of 7 Billy's Way intent.

I would like to have the abutter understand their options of adopting this section of Torrington or not. This can have financial implications on taxes, and a future ANR step if accepting to take over this area. I would prefer confirmation from the abutter of this prior to moving forward.

350 Main Street:

-Is the applicant willing to look into the following options to address safety and the need for waivers that the 198-27 Require:

1. Signage; Timed parking 9a-5p to help the store fronts not be blocked by all day cars sitting. (Whether resident or employee) -this will help to have intended people use the parking lot that seems to not be used currently.

2. Signage; directing additional Public Parking behind the Oxford Residences to not overcrowd the already tight streets surrounding the building.

3. When driving by at night the parking lot is very dark, suggesting some lighting to be added for the people who will both be driving and walking through this area while the building is in use.

**I do believe under Ch316-7 I. "special permits may be issued to such conditions, SAFEGUARDS or other limitations on time or use as the Board may impose for the protection of the neighboring uses or otherwise servicing the purpose of Ch 198, Zoning." Would give the planning board the ability to use 198-8 A. (4) as reason to deny OR 198-12 requiring lighting or signage as a possibility to address safety and parking concerns.

54 Main Street:

1. Neighbors concern of the fire escape should be addressed. The letter submitted by Mr. Luey is clear they do not want their property being used in an emergency exit. Is moving this possibly to the North Side so it will go out by Map 9 Lot 74 parking lot? Possibly an easement would be needed?

-Fire Department Comment on current code and concern would be appreciated.

2. Parking- would applicant be able to address some parking issues with a contract from neighboring businesses with parking lots? Possibly for over night use? Although winter storms may need a differing plans with the businesses needing to plow parking lots.

3. Signage- Encouraging timed parking in front of businesses during the 9-5 I am sure would be appreciated as that is the current flow of cars currently on the front of Main. Residents could block those businesses at all hours.

4. Dumpster ok South side of building, will this be enclosed or blocked by fencing? Is this adequate space for whoever is intended to pick up? (Is this enough for businesses and apartments or just the apartments.)

Addendum 1 – Jessica Fidalgo Letter

5. Is there lighting near the egresses and does the dumpster area get light at night?

Just a couple notes:

Plans say A. “locking knob/ handle” for the first floor egress. Is this deadbolts? (It would deter me from an apartment to have an exterior egress from the first floor to my bedroom, but added locks may help others.

While there is no space for landscaping some planters may add additional appeal to the frontage.

To encourage bicycle transit both with the lack of private parking on plan and proximity to bike path, local facilities & businesses, consider placement of a bike rack.

-Jess

To Whom it may concern,

I am a neighbor at 35
Main St. Parking is already
such an issue. I live in
a 9 unit building, and
there is only 1 parking spot.
I often work late at night
and always have an issue
parking. This neighborhood
is highly congested between
residents and businesses
Deliveries and such. I vote
NO on adding more
parking needs in an
already tight situation.

Thank You!
Diane Downey

