



TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD
Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, October 24, 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 6:36 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, Jessica Fidalgo, Sharon Simmons, Jeff Lucas, Patrick Carr, Ruy daSilva, and Diane Tomassetti in the Town Hall Banquet Room.

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

Absent: Kevin Grant

c) **Minutes: October 10, 2023, drafts to be reviewed:** Mr. daSilva made a motion to accept the minutes of October 10, 2023, and was seconded by Ms. Simmons. The motion passed unanimously. (7-0)

d) **Welcome to the New Member:** Ms. Melanson welcomed Ms. Diane Tomassetti to the board, appointed via a vote of the Planning Board and Select Board to fill the vacancy on the Board since Mr. David Braga left.

e) **Correspondence:** There was no general correspondence for this meeting, though a letter regarding the 88 Fort Street Special Permit application had been received and would be read during that reading.

f) **Joint Training Session with the Zoning Board of Appeals, November 21, 2023:** Ms. Melanson reminded the board of their joint training session with the Zoning Board of Appeals for November 21, 2023, and that they should inform Mr. DiGiuseppe of their availability that day to help determine the start time. After Mr. daSilva mentioned that he would be unable to attend, Mr. DiGiuseppe noted that the training would be recorded for review.

38 **2. PUBLIC HEARINGS:**

- 39 a) **SD 23-03 Street Discontinuance – 5 Billy’s Way:** Continued from September 26, 2023, and
40 **October 10, 2023. Discontinue the section of the unaccepted street, Torrington Road, that**
41 **runs alongside the eastern edge of 5 Billy’s Way (Map 29A Lots 185 & 186), submitted by**
42 **Sharon Simmons.**

43
44 Ms. Simmons, as the applicant, recused herself at the start of the hearing. Mr. Chris Gilbert of
45 Farland Corp Engineering was to speak on her behalf during this hearing.

46
47 Mr. DiGiuseppe made his presentation to the board, showing photos of the current conditions
48 at the property. The BPW requested to maintain access to the previously approved easement
49 within the section of the road requested to be discontinued. If the discontinuance was
50 approved, the following Form A to redistribute the property would need to show all
51 easements. Mr. DiGiuseppe went over other procedures such that this discontinuance would
52 require 6 votes in favor to pass, there would be a 20-day appeal period to follow, and that the
53 applicant had supplied surveyed plans, a legal description of the property, a narrative, and
54 evidence that the unaccepted street was previously part of the property as required.

55
56 Mr. Chris Gilbert of Farland Corp Engineering spoke to the board. He noted that the area of the
57 street to be discontinued was approximately 4,000 sq. ft., and by default would be evenly split
58 between the two abutting properties – 5 and 7 Billy’s Way respectively. As shown in the
59 photos, the area was already used for parking and landscaping by the abutters.

60
61 Mr. Carr inquired if the abutters wished for an even divide of the street and if they were aware
62 that they would be unable to build permanent structures over the easement. Mr. Gilbert
63 replied that they would work out the division and would ensure that both abutters were aware
64 of the easement.

65
66 The board opened the floor to public comment. Ms. Kathleen Cabral of 12 Reservation Rd.
67 wished to know what would happen to other portions of Torrington Road, indicating for the
68 board the location of her property on the Assessor’s Map. Ms. Melanson explained that she
69 could also go through the same street discontinuance process.

70
71 Ms. Ellen Ouellette of 7 Billy’s Way outlined her concerns with how the easement would
72 restrict what could be done on the property, especially as the utility lines ran the length of
73 Torrington Road. She preferred that the Town not discontinue any paper street with utilities, as
74 she had been told it could not be done during one of her previous attempts to discontinue the
75 street. Ms. Melanson assured her that the board could discontinue a paper street with an
76 easement on it and that if Ms. Ouellette had reservations about acquiring property with a
77 utility easement, she could instead allow Ms. Simmons to have the whole 4,000 sq. ft. As Ms.
78 Ouellette did wish to take some of the property for herself, Ms. Melanson explained that the
79 exact details of the property division would be worked on when drafting the Form A plan.

80
81 Mr. Michael Livingstone, who owns property along Frederick Ave, submitted a letter with
82 suggested language for the decision for the Town to reserve the easements, as he was hoping
83 to have utilities run to his property. The letter is attached to these minutes as Addendum 1. Mr.
84 Lucas noted that the language offered was similar to past decisions and that the easement

would be part of the Form A.

Joan Joseph of 296 Sconticut Neck Rd had similar concerns about the easement and the issues that could arise if more neighbors discontinued Torrington Road. Mr. Carr explained that the Town would maintain the easement and if any digging happened, the Town would also repair the property afterward.

Mr. Lucas and Ms. Tomassetti noted that after approval of a Form A to redistribute the property, the deeds would also need to be updated at the Registry of Deeds.

Mr. Carr made a motion to approve SD 23-03 Street Discontinuance – 5 Billy's Way and was seconded by Ms. Fidalgo. The motion passed unanimously. (6-0)

b) SP 23-08 88 Fort Street Special Permit: Build a private residential pier at 88 Fort Street (Map 5, Lots 4 & 5), submitted by the Terje Tonnessen Revocable Trust – 2015.

Mr. DiGiuseppe gave an overview of the proposal, noting that the split zoning of 88 Fort Street as partially within the Mixed-Use district put this special permit under the Planning Board's purview. He presented photos of the current conditions. He noted that two special permits were required – one under Section 198-16 for approval of a Private dock or pier in the Mixed-Use Zoning District and another under Section 198-32.2 Docks and Piers, stating that the Planning Board shall be the Special Permit Granting Authority in the Mixed-Use District.

Previously, on February 7, 2023, the Zoning Board of Appeals granted two Variances for the distance of the pier from the property line and from the street to be 11.8 ft. The Conservation Commission had also previously approved a Notice of Intent on July 17, 2023.

David Davignon of Schneider, Davignon & Leone, Inc. represented the applicant. Mr. Davignon outlined the history of the project and the property, having previously worked on repairing the sea wall on the property. He covered all the permitting and variance requirements for the project and the steps taken to fulfill them with each of the different permitting agencies. The latest permit obtained was from the Army Corps of Engineers which he submitted to the board. He reviewed the applicable bylaws and guidelines and how the project abides by each of them.

When Mr. Davignon mentioned shellfish, Harbormaster and Shellfish Warden Tim Cox explained that the shellfish on the property would not be relocated due to being contaminated and instead, the applicant would pay a mitigation fee. Mr. Davignon then returned to the review of the bylaws and guidelines, including the allowance of public travel, the size and design requirements, and setback requirements.

Mr. Lucas inquired as to the exact size of the dock, with Mr. Davignon explaining that the fixed pier was 104 ft. with the gangplank and float being counted in the total length of 149 ft.

Mr. DiGiuseppe read correspondence received from Mr. Mark Reese of 86 Fort Street. This correspondence is attached to these minutes as Addendum 2. Ms. Melanson allowed Mr. Davignon to address Mr. Reese's concerns, which he did point by point for the Board.

Mr. Cox was again invited to speak to the Board, and he forwarded concerns from abutters that

the Mixed-Use zoning would allow for the dock to be used for commercial purposes. He requested a condition be added to the decision to prohibit commercial use. He also suggested that a gate be put on the dock for safety purposes. Mr. Cox confirmed that he would enforce any violations of the commercial use restrictions. Ms. Fidalgo asked for clarification on the setback requirements, which Mr. Davignon explained was part of the over-arching guidelines for such structures. Ms. Tomassetti suggested also clearly delineating the dock as private.

Mr. Carr commented on Mr. Reese's letter and then asked for further details on the float. Mr. Lucas brought up his concern with Mr. Carr and Mr. daSilva having voted on the Variances as Zoning Board of Appeals members and then voting again on this project as Planning Board members, and Ms. Melanson assured him that the Town Administrator allowed it. Ms. Fidalgo requested that any motions on the special permit include the condition suggested by Mr. Cox.

The board opened the floor to public comment. Ms. Deborah Sistare of 8 Main Street asked for clarification on several details in the Waterways Application notice she had received regarding this project such as the number of units mentioned and the zoning history, which Mr. Davignon provided.

Town Administrator Angie Lopes Ellison requested to speak to the board. She clarified that Town Counsel had confirmed that Mr. Carr and Mr. daSilva could serve on both the Planning Board and the Zoning Board of Appeals. She also guided the Board to follow the recommendations put forth by Town staff such as Mr. Cox and Mr. DiGiuseppe when it came to defining and interpreting the bylaws.

On that point, Mr. DiGiuseppe outlined how Section 198-9 granted the Zoning Board of Appeals the power to authorize dimensional modifications and Variances. Reviews by the Conservation Commission and Harbormaster also helped to ensure that the project would follow the bylaws.

Ms. Susan Borges of 7 Main Street presented her concerns with the project to the Board, particularly with how the dock would affect the mooring on her property, the general character of the neighborhood, and the safety issues with the sharp street corner along the waterfront. Mr. Cox explained that if the proposed dock would impact her mooring, the mooring's location could be readjusted. Mr. DiGiuseppe noted that the dock should not disrupt the view and Mr. Davignon explained how the dock would be designed with maintaining the view in mind.

The son of the applicant, Mr. Troy Tonnessen, assured the Board that his father's dock would not have a substantial impact on the neighborhood.

The board and Mr. DiGiuseppe discussed how to make the required motions for approval.

Mr. Carr made a motion to approve a special permit for SP 23-08 88 Fort Street pursuant to Fairhaven Zoning Bylaw 198-16 and was seconded by Ms. Tomassetti. The motion passed unanimously. (7-0)

Mr. Carr made a motion to approve a special permit for SP 23-08 88 Fort Street pursuant to Fairhaven Zoning Bylaw 198-32.2 with the condition that the dock will be used for residents and non-commercial and was seconded by Mr. daSilva. The motion passed unanimously.(7-0)

181 **3. UPCOMING REVIEWS:**

182
183 Ms. Melanson briefly noted the upcoming review planned for the November 28, 2023, meeting.

- 184
185 a) **SP 23-09 240B LLC - Bridge Street Special Permit:** Build a 5,850 sq. ft. commercial style building
186 on Bridge Street (Map 30A, Lots 87 & 87A), submitted by Carricorp Industries, LTD. Tentatively
187 scheduled for 11/28.

188
189 Secretary's note – there was a scribe's error regarding the square footage of the building on
190 the agenda. The correct square footage is noted here in the minutes.

191
192 **4. OTHER BUSINESS: Any other business that may properly come before the Board, not reasonably**
193 **anticipated when posting 48 hours prior to this meeting.**

194
195 Mr. Carr inquired if there was a date set for discussing and voting on new protocols and Ms.
196 Melanson explained that it would be at a future Planning Board meeting, with each new protocol
197 voted on individually.

198
199 Mr. Carr also asked for an update on finding a bylaw consultant. Mr. DiGiuseppe was still
200 researching scope and funding but hoped that a grant could be applied for next year. Ms. Melanson
201 noted that Mr. DiGiuseppe was currently looking into drafting some bylaw changes ahead of the
202 next Annual Town Meeting.

203
204 **5. NEXT MEETING: Tuesday, November 28, 2023.**

205
206 Ms. Fidalgo made a motion to adjourn and was seconded by Ms. Tomassetti. The motion passed
207 unanimously at 8:17 PM.

208
209 Respectfully submitted,
210 Stephanie A. Fidalgo
211 Recording Secretary,
212 Planning Board

213
Approved – November 28, 2023

Addendum 1 – Requested Language from Mr. Michael Livingstone

If Torrington Road is to be discontinued, it should be done with language as follows:

The Town of Fairhaven reserves the right in perpetuity over the discontinued area and without charge from the owner to install, remove, repair and maintain utilities of every name and description, above and/or below ground, and that, subject to Town Department approval, private individuals and companies (Eversource, Comcast, etc.) may also install, repair, remove and maintain utility lines, including, but not limited to, water, electric, gas, telephone, cable, etc. also in perpetuity above and/or below ground within the discontinued area without charge therefore from the owner.

No permanent structure shall be built upon said discontinued area.

86 Fort Street
Fairhaven, MA 02719
mhrees@comcast.net

October 24, 2023

Fairhaven Planning Board
Fairhaven Town Hall

Via: email to Planner@Fairhaven.ma.gov

Dear Planning Board Members,

For the following reasons, I am requesting you to not issue a special permit to Terje Tonnessen Revocable Trust-2015 located at 88 Fort Street, Fairhaven to construct at 4' x 104' pier with gangway and float (the pier) on waterways adjacent to his property pursuant to Section 198-32.2-Docks and Piers of the Fairhaven Zoning By-law.

- 1) The proposed pier is not in the "public interest, in and access to, the public tidelands of the Commonwealth" (Section 198-32.2-A) in that it will negatively impact the view of the harbor for the multitude of people who stop at the intersection of Main Street and Church Street on daily basis to enjoy the unobstructed and tranquil sight of the harbor waterfront from that location.
- 2) The placement of the pier will have an adverse impact on coastal ecology (Section 198-32.2- C (1) by:
 - a. Extending the barrier already created by the existing sea wall further into the waterways will further increase the accumulation of flotsam and debris on tidal land containing eel grass and shellfish adjacent to my property at 86 Fort Street.
 - b. Requiring the relocation of shellfish beds from their existing location.
- 3) The placement of the pier will have an adverse impact on the use and enjoyment of the waterfront by adjoining property owners (Section 198-32.2- C (1) by creating a visual barrier to our currently unimpeded view of the harbor. We receive considerable enjoyment of the current view and the obstruction created by the pier will significantly denigrate our enjoyment of the waterway.
- 4) The issuance of the variance by the Fairhaven Zoning Board of Appeals to allow changing the required set back of 25 feet on the north side of the pier to 11.8 feet should be declared invalid. The location of the pier is in a mixed use (MU) zone and per Section 198-32.2-B the Planning Board is the Special Permit Granting Authority (SPGA) and as such should rule on any changes to the setback requirements.
- 5) The Planning Board should not grant a waiver to the setback requirements (Section 198-32.2-C (5) because no substantial hardship has been demonstrated and it would not be in the public's interest. See 1, above.

I will not be able to participate in your public hearing on this Special Permit Application on October 24, 2023, and request that you include my concerns as stated in this letter in your deliberations and that my letter be included in the public record of the hearing.

Sincerely,

Mark Rees