



TOWN OF FAIRHAVEN, MASSACHUSETTS

PLANNING BOARD

Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, March 12, 2024 at 6:30 pm

Held both at Town Hall & Remotely via Zoom

FAIRHAVEN TOWN CLERK
RCUD 2024 MAR 27 PM 1:25

1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Madame Chair, Ms. Cathy Melanson, opened the meeting at 6:30 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, Jeff Lucas, Patrick Carr, Sharon Simmons, Kevin Grant, and Diane Tomassetti in the Town Hall Banquet Room. Jessica Fidalgo on Zoom.

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

Absent: None

- c) **Minutes: February 27, 2024, drafts to be reviewed:**

Mr. Grant made a motion to accept the minutes of February 27, 2024, and was seconded by Ms. Tomassetti. The motion passed via roll call vote, with Ms. Fidalgo considered to have abstained due to technical issues. (7-0)

- d) **Correspondence:**

There was no correspondence for this meeting

2. UPCOMING REVIEWS:

The Board and Mr. DiGiuseppe briefly discussed the items that would be on the agenda for the next meeting.

- a) **SP 23-09 240B LLC - Bridge Street Special Permit:** Build a 5,850 sq. ft. commercial style building on Bridge Street (Map 30A, Lots 87 & 87A), submitted by Carricorp Industries, LTD, *continued from November 28, 2023 to March 26, 2024*
- b) **Zoning Bylaw Change Public Hearing:** Recommendation for Town Meeting, *public hearing on March 26, 2024*

3. OTHER BUSINESS:

Ms. Melanson requested to take the proposed bylaw changes out of order and start with the proposed Stormwater Bylaw Changes as the consultant and representatives of the BPW were currently on Zoom.

Ms. Simmons made a motion to take the Proposed Stormwater Bylaw Changes out of sequence and was seconded by Mr. Grant. The motion passed via roll call vote, with Ms. Fidalgo considered to have abstained due to technical issues. (7-0)

a) Proposed Stormwater Bylaw Changes

i. Proposed Changes to Chapters 194, 198-31.1, and 322-26

Mr. DiGiuseppe gave an overview of the proposed changes to the Stormwater Bylaws. The plan was to consolidate the three existing Stormwater Bylaws – Chapters 194, 198-31.1, and 322-26 – into a single Bylaw and accompanying set of Regulations to streamline the permitting process by ensuring that all projects were held to the same standards and would meet the requirements of the MS4 (Municipal Separate Storm Sewer System) permit.

He shared a flowchart with the Board that showed how elements from the current Chapter 194 were moved into the revised version of Chapter 194 and the accompanying regulations. Moving some of the content into regulations would allow for more expedient updates as state and local requirements changed. There would also be the creation of a Stormwater Authority, consisting of the BPW Superintendent, the Conversation Agent, and the Director of Planning and Economic Development, who would work together to determine which board had purview over the projects. Additionally, the threshold for stormwater permits would be lowered with a land disturbance administrative review required for 5,000 – 20,000 sq. ft. of disturbance and a land disturbance permit required for 20,000 sq. ft. or more of disturbance.

Phil Paradis with BETA Group was invited to speak to the Board via Zoom. BETA Group has been working with the BPW since 2016 and acted as a consultant during this revision process. They had assisted eight to ten communities in Massachusetts with stormwater bylaw revisions, updates, and templates, and understood how different boards and commissions within a Town would have different priorities. They assist municipalities in creating a unified structure of paired stormwater bylaws and regulations, with the bylaws outlining the purviews and enforcement with regulations covering guidelines and performance standards subject to more frequent changes. During this process, they carefully studied Fairhaven's existing Stormwater Bylaws to ensure that all the existing standards were incorporated into the new bylaws and regulations.

During the discussion, Mr. Paradis suggested a change to the new 194-3.1, Applicability section to add that the bylaw would also apply to "the waters of the Commonwealth." Lowering the threshold for land disturbance administrative reviews was in part to ensure that residential redevelopment would also be subject to review and allow for improved stormwater management to control runoff and pollutants in those areas as well. The more formal process

for land disturbance permits would be in line with the current stormwater review and reporting process.

Directing the Board to the regulations, Mr. Paradis noted the use of the NOAA (National Oceanic and Atmospheric Administration) Rainfall Atlas to take larger storms into account for planning and development. As for the new standards set forth, new development projects would need to meet the minimum requirements for an MS4 Permit including the removal of 90% of the average annual load of Total Suspended Solids (TSS) and 60% of the average annual load of Total Phosphorus (TP). Redevelopment projects would also be subject to the minimum requirements for an MS4 Permit and would only require the removal of 80% of the average annual load of Total Suspended Solids (TSS) and 50% of the average annual load of Total Phosphorus (TP). This would ensure that runoff from roofs would be treated to remove the required amount of Total Phosphorus.

He went into further detail regarding the use of the NOAA Rainfall Atlas, noting that calculations would be based on the Atlas 14 upper confidence multiplied by 0.9. This would raise the calculations for larger storm events. The regulations also required soil testing be conducted per the Massachusetts Stormwater Handbook guidelines for infiltration systems receiving runoff of 2,000 sq. ft. or more of impervious areas to ensure property treatment and reduce the chance of flooding.

Mr. Paradis also pointed out Section 11, Performance and Design Standards, item A) 31) (c), requiring that bottom floor elevation be a minimum of 2 feet above the Seasonal High Groundwater Elevation, to help the need for dewatering and sub-pumps. He also recommended the removal of an older regulation regarding a specific area given for the total area of disturbance for erosion control design, item A) 32) (a).

Once Mr. Paradis finished his presentation, Ms. Melanson requested comments from Highway Superintendent Joshua Crabb or BPW Superintendent Vinnie Furtado, but Mr. Crabb did not have any additional comments and Mr. Furtado had connection issues on Zoom at the time. She then welcomed questions from the Board.

Mr. Lucas wished to know if the requirements had been made stricter than the existing bylaws. Mr. Paradis answered that the regulations would be in line with newer standards, for example, regarding the rainfall data calculations, and that the requirements for soil testing would increase the efficiency and accuracy of infiltration systems.

Mr. Lucas followed up to ask about the changes to how roof runoff was treated, with Mr. Paradis explaining that previous standards judged the concentration of pollutants in water mainly by the amount of Total Suspended Solids. These new regulations would also be looking at Total phosphorus, under which roof runoff would be considered polluted. By requiring a reduction in Total Phosphorus, it would allow for greater protection of the local waterways and

vegetation. In terms of treatment methods, Mr. Paradis listed dry wells, bioretention basins, rain gardens, and run overs along grass.

Mr. Carr inquired about the changing nature of the Stormwater Authority, with Mr. Paradis explaining that Mr. Furtado did not wish to be considered the sole Stormwater Authority. Mr. Furtado then spoke up that he was connected to Zoom and afterward, Mr. Carr reiterated his question regarding the purview of the Boards and the nature of the Stormwater Authority. Mr. Furtado explained that the BPW would still be responsible for stormwater testing, reporting, and education. However, the current Bylaw referred to the BPW as the authority to issue erosion control permits via public hearing, which they currently did not offer. The proposed changes would better define the purview of the different Boards and have the Stormwater Authority under the helm of the BPW Superintendent, the Conversation Agent, and the Director of Planning and Economic Development to help guide the project to the correct Boards and Commissions.

Mr. Carr continued, inquiring further about specific processes and peer reviews, with Mr. Furtado reiterating that the review of the projects would be a joint effort between the Boards with the Stormwater Authority guiding the applicants through the process. Regarding the expertise and education required, Mr. Paradis outlined that streamlining the process for applicants and peer reviewers alike would ensure that projects would meet the standards required by all Boards by creating a singular Town-wide standard. Mr. DiGiuseppe followed up, explaining that while the Board could ask questions of a peer reviewer, drastically alternating a plan without first receiving their feedback may be a legal liability.

Ms. Melanson inquired if these Bylaw Changes would be a part of the public hearing planned for March 26, 2024. Mr. DiGiuseppe explained that the proposed bylaw would be a part of the hearing as it required a recommendation to Town Meeting, but that the regulations would not be a formal part of the hearing, though they would be made available for public viewing.

Mr. Carr made a motion to approve the proposed Stormwater Bylaw changes to Chapters 194, 198-31.1, and 322, to go on to the Annual Town Meeting warrant and was seconded by Mr. Grant. The motion passed unanimously via roll call vote. (8-0)

b) Proposed Zoning Bylaw Changes

i. Proposed Changes to Chapters 198 and 65

Mr. DiGiuseppe presented the Zoning Bylaw changes to the Board, noting that there had been no changes from the February 27, 2024, meeting but still offering a full review of the changes for the Board. The following list summarizes all the proposed changes, along with any discussion about specific items.

ii. Chapter 198

- **198-15.C.(2) (Use Regulations): Add Mixed Use [MU] to the list of relevant zoning districts.**
- **198-16 Use Regulation Schedule:**
 - **Add Health care including medical, dental offices, and clinics – Y in B and MU, A in I, and N in all other districts.**
Ms. Fidalgo asked if this new provision conflicted with 198-23 Home Occupations, which allows physicians and dentists to have home offices. Mr. DiGiuseppe explained that this addition to the Use Regulation Schedule would not be considered home occupations, but rather for medical offices and clinics.
 - **Add Shipping Containers – Y in I, and N in all other districts.**
Mr. Lucas had questions about what would be allowed under this use, with Mr. DiGiuseppe answering that the definition added would restrict the use purely to shipping and temporary storage. Mr. Carr and Mr. Lucas discussed the use of shipping containers as temporary workspaces and as the Board discussed the point further, Mr. DiGiuseppe noted that the definition would restrict how they could be used.
 - **Add Storage Units – A in B and I, N in all other districts.**
 - **Change Body Art Establishment – Y in B, I, and MU and remove Footnote 19, prohibiting Body Art Establishments within 1,000 feet of a school or church.**
 - **Change Artist Studio/Gallery – Y in MU**
 - **Change Semidetached Dwelling – Y in MU**
Mr. Lucas brought up how there was no definition currently for Semidetached Dwelling.
 - **Change Accessory apartment/in-law apartment – Y in RR & RA, RB, RC, and AG**
Mr. Lucas asked if the note of “primary house remains as owner-occupied” was meant to be in the table, with Mr. DiGiuseppe answering that it was meant to be inserted as a comment to himself before removing the language. He also did not agree with making this use by right.

Mr. DiGiuseppe then offered to explain the rationale behind the change. He showed a collection of graphs regarding the Town's population having remained roughly stable since the 1970s, and how the population has aged overall in the last 20 years. He then outlined several use cases for accessory apartments such as for adult children or aging parents. There were also concerns about renters and homeowners being cost-burdened and that the town only added an average of 10 to 12 new single-family units per year. Accessory apartments would be a gentle way to increase housing affordability and stock.

Mr. Grant inquired if these provisions would allow for multi-bedroom apartments. Mr. DiGiuseppe answered that the Building Commissioner would be the one to review and assess such apartments.

Mr. Lucas had reservations about accessory dwelling units as separate, distinct buildings being converted, particularly with how the utilities would be arranged and how the use would be defined. Ms. Tomassetti explained that the state regulations included specifics on accessory dwelling units and Ms. Melanson noted that separate utilities were required in the Town bylaws.

Mr. Lucas asked about the possible removal of lot size requirements, but Mr. DiGiuseppe explained that the strikethrough shown in 198-32.1 was incorrect and fixed it to instead reflect that the minimum lot requirements would need to be met. Mr. Lucas continued to have concerns about a reduction in quality of life and property values.

Ms. Simmons inquired if this would only be for converting existing accessory buildings into units, which Mr. DiGiuseppe confirmed.

Mr. daSilva voiced his support for accessory dwelling units and his hopes that the normal permitting process would ensure they were carried out properly. Ms. Fidalgo also supported allowing accessory dwelling units by right but had concerns regarding still requiring the minimum lot size if many existing lots in Town did not meet those lot sizes. Mr. DiGiuseppe shared her concerns about the number of nonconforming lots and explained that reviewing and possibly updating the minimum lot sizes would be part of the planned larger overhaul of the bylaws.

Mr. Carr outlined his concerns with the recent population downturn (approximately 16,000 to 14,700) and read from the October press release from the Healey-Discroll Administration regarding the unveiling of the Affordable Homes Act. One aspect of the Act would allow accessory dwelling units in single-family zoning districts by right throughout the state. Local municipalities could have reasonable requirements but, in the current language, could not require owner occupancy. At the time of this meeting, the Act was still moving through the legislature. When Mr. Carr suggested voting on the proposal, Ms. Melanson explained that the Board would vote on the total package of bylaw change proposals once the discussion was concluded.

Ms. Melanson also noted that the current Fairhaven Master Plan did include provisions to support the creation of more accessory dwelling units.

- **Change Accessory apartment to a business – Y in B and I**
- **Change Private dock or pier – Y in all Districts.**

- **198-19 Fences – Remove hedges from the six-foot height restriction.**

Building Commissioner Randy Bassett had recommended removing the six-foot height restrictions on hedges. Ms. Simmons had questions about the wording and wanted to see the same standards for fences and walls applied to hedges. The Board discussed the exact nature of the change and how it applied to property borders. After the discussion, Mr. DiGiuseppe made a note to review the language with Mr. Bassett.

- **198-27.C(1) Parking Area Designation and Location – Allow parking 5 or more cars in the setback areas in the Business, Mixed Use, Industrial, or Apartment/Multifamily zoning districts.**

Mr. DiGiuseppe explained that this change would be to allow for more parking within smaller business and mixed-use lots. Mr. Lucas had concerns that this provision did not require first proving that a hardship existed and could reduce compliance with the landscaping requirements in other sections. Mr. DiGiuseppe explained that the change was to promote redevelopment and find ways to accommodate parking on-site when possible and that such changes could help with future redevelopment in the 40R overlay district. Mr. Lucas continued to have concerns about the change.

Mr. Grant inquired about how this change would interact with the landscaping requirements and Mr. DiGiuseppe answered that it currently would not, as it applied to the property line setback.

Mr. daSilva asked about if this provision would only be for businesses, Mr. DiGiuseppe noted that it also applied to mixed-use and apartment/multifamily lots.

Ms. Fidalgo inquired about the setbacks, with Mr. DiGiuseppe explaining that if no setback was required, then 6 feet from the property would be used.

- **198-29 Special Permit for certain intensive nonresidential and multifamily site developments – Clarify language of 29. A, reduce the number of required print copies from 10 to 2, and add a digital copy requirement to 198-29 B.**
- **198-29.6 Solar photovoltaic energy facilities (SPEF) – Reduce the number of required print copies from 10 to 2 and add a digital copy requirement to 198-29.6.F and remove language to allow for clear-cutting of trees within five years to instead make clear-cutting of trees prohibited in 198-29.G(8)**

Mr. DiGiuseppe and Ms. Melanson explained that this would prohibit clear-cutting to install solar photovoltaic energy facilities. It would still allow for solar facilities to be built on abandoned or redeveloped lots which did not require clear cutting of trees.

- **198-32.1 Accessory dwelling units** – Remove the minimum lot size requirement of 22,500 square feet from 198-32.1.A, and change the floor area requirements of 198-32.1.B to comply with MGL c. 40A§1A, remove the restriction on having units in basements, attics, and garages, and remove 198-32.1.C. Remove the reference to allowed “by special permit of the Planning Board” and replace with “pursuant to §198-16.”

- **198-32.2 Docks and Piers B – Remove references to the Planning Board and Zoning Board of Appeals as the Special Permit Granting Authorities and D – Remove the Waiver of Compliance subsection.**

While this would remove the special permit reviews by the Planning Board and the Zoning Board of Appeals, the rest of the bylaw would remain intact and still require docks and piers to undergo permitting from the Building Department, Conservation Commission, and state and federal regulators. Ms. Tomassetti noted the strict regulations of the Army Corps of Engineers and Mr. Carr added that they oversaw the permitting of docks and piers throughout the state waterways.

- **198-33 Definitions and word use – Add definitions for the following uses:**

- **Artisan Food and Beverage**
- **Artisan Manufacturing**
- **Coworking Space**
- **Maker Space**
- **Small Scale Indoor Recreation**
- **Shipping Containers**

- **Chapter 65: Planning Board**

- **65-1 Board Established: Remove four years, and replace with three years, per MGL c. 41§81A.**

At the January 23, 2024 meeting, the Planning Board agreed to change to three-year terms to comply with MGL C 41 § 81A.

- **65-3 Powers and Duties: Explicitly state that the Planning Board is a special permit granting authority pursuant to MGL c. 40A§9**

ii. **Proposed Changes to Chapters 306, 316, and 322**

- **Chapters 306 Planning Board Procedures**

- **306-1 Fee Schedule and Planning Board Charges – Removal of the section.**

The fees would be removed from the bylaw and would instead be set by the Planning Board and Select Board.

- **316-2 through 10 as well as 322-12 through 14 – Require all applications to include digital copies, reduce the number of required printed plans from 10 to 2, and remove the requirement for notices to be sent via certified mail with return receipt.**

On the question of switching to electronic certified mail, the switch to that system as opposed to physical cards would require an additional investment. Mr. DiGiuseppe explained that certain types of applications, such as subdivisions, would still require certified mail for notification but that the provision would be dropped where not explicitly required by MGL.

In terms of making reasonable proof of mailing, all projects would still have an accompanying certified abutters list and postage reports. There was also a brief discussion of Massachusetts's Home Rule provision. While Ms. Fidalgo preferred the security of certified mail, she found that the forms of proof outlined should be sufficient. Mr. Grant agreed on that point.

When Mr. Lucas had further questions regarding electronic certified mail, Recording Secretary Fidalgo explained that she had spoken with Treasurer Lisa Rose on the possibility. A change to electronic certified mail would require a new and more expensive contract with the Town's mailing service provider, Pitney Bowes, and was currently not in consideration.

Ms. Simmons inquired about email collection, but currently, the Town only collects email addresses for businesses.

- **322-26 – Remove references to specific companies – Lebaron Grate and Scituate Rays – to instead of all catch basins, gates, manholes, and manhole covers be approved by the Board of Public Works.**

This last provision would not be included in the final package as section 322-26 was being removed from the bylaws as part of the stormwater bylaw revision.

Ms. Melanson informed the Board that these changes would be voted on as a package.

Mr. Carr made a motion to approve the proposed Zoning Bylaw changes to Chapters 65, 198, 306, 316, and 322 to go on to the Annual Town Meeting warrant and was seconded by Mr. daSilva.

Ms. Fidalgo inquired about the timeline of approval and if there should be a vote on the changes before there was a public hearing on the changes. Mr. DiGiuseppe explained that the next meeting would include a public hearing and that the vote at this meeting would allow the changes to be included on the Town Meeting Warrant.

- The motion passed via roll call vote with Ms. Fidalgo, Mr. Carr, Mr. daSilva, Ms. Tomassetti, Ms. Melanson, and Ms. Simmons in favor and Mr. Grant and Mr. Lucas against. (6-2)
- c) Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

Ms. Melanson again reminded the Board about the upcoming public hearings at the next Meeting. Mr. Carr offered an update to the Board on the success of the projects at 350 Main Street, including the renovation of the theater space.

4. **NEXT MEETING: Tuesday, March 26, 2024.**

Ms. Melanson adjourned the meeting at 8:39 PM

Respectfully submitted,
Stephanie A. Fidalgo
Recording Secretary,
Planning Board

Approved, March 26, 2024