

Fairhaven Planning Board
Minutes
Tuesday August 27, 2019 @ 6:30 pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

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FAIRHAVEN,
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1. **GENERAL BUSINESS:**

- a. Chairman John Farrell opened the meeting at 6:30 p.m. and advised the public that the meeting was being televised and recorded.
- b. Attendance: John Farrell, Wayne Hayward, Ann Richard, Jay Malaspino, Cathy Melanson and Jeff Lucas
Absent: Rene Fleurent and Geoff Haworth
- c. Minutes from August 13, 2019: Ann Richard made a motion to approve the minutes of August 13, 2019, seconded by Jeff Lucas, the motion passed unanimously.
- d. Bills:
 - I. Fairhaven Neighborhood News for \$160.00 for July 9, 2019: Jeff Lucas made a motion to pay \$160.00, seconded by Ann Richard, the motion passed unanimously
 - II. W.B. Mason for office supplies for the amount of \$108.40: Jeff Lucas made a motion to pay \$108.40, seconded by Ann Richard, this motion passed unanimously.
 - III. Staples for supplies for the amount of \$205.15: Jeff Lucas made a motion to pay \$205.15, seconded by Ann Richard, the motion passed unanimously
- e. Correspondence: None

2. **PUBLIC HEARINGS:** None.

3. **CURRENT PLANNING:**

- a. **Demolition Delay:** Joint meeting with Historical Commission to consider General Bylaw for fall Special Town Meeting on November 12, 2019

Wayne Oliveria, Chairman of the Historical Commission, was present along with four other members of the Commission including Gary Lavalette, Maria Carvalho, Marcus Ferro and Suzan Galpin. Mr. Oliveria explained that a Demolition Delay Bylaw has been on their radar for a long time. The question is what is considered to be a historical building? He also explained that the Commission has been appointed by the Board of Selectmen to mark, acquire, maintain, preserve, promote and develop places of historical value. Ann Richard asked about the length of the terms for Commission members. They serve three-year terms that are staggered.

John Farrell noted the timelines and deadlines required for the different stages of proposing a draft bylaw in order to be on the warrant for the November 12 Special Town Meeting. We need to let the Board of Selectmen know by September 6, 2019 that we will have a draft bylaw for the warrant. He read aloud the proposed purpose of creating a Demolition Delay Bylaw. One thing the Board of Selectmen are looking for is a reason why this can't wait until the regular Town Meeting in May. He noted that a nearly 300-year old house had been demolished recently and no one knew anything about it until after it was gone. We have heard that others may be coming down. What's next? As far as he is concerned this cannot wait. Others agreed. He noted there is a tight timeline to pull this a bylaw together for the warrant.

Wayne Oliveria explained that the Commission compared Fairhaven to other communities regarding how they define what should be identified as an historical building. The two key issues are how we define historic and how long should the delay be? Gary Lavalette, member of the Historical Commission, spoke about some issues that they noticed in other towns regarding timelines. He spoke about some of the pitfalls and that other towns have had. One thing he has been told by several people is that six months is not enough time to be effective.

Westport and Dartmouth had trouble at first getting the delay established because they were being too restrictive.

Mr. Lavallette emphasized the need to be reasonable when determining what is to be considered historic. He thinks there are three to four issues that need to be resolved. One rule most towns have is that any replacement has to be similar in look, feel and size. He has heard that six months is not enough time. He also floated the idea of the possibility of creating a mitigation payment. Some did not like this idea. The boards discussed timelines of historic buildings as well as the timeline regarding whether the delay should be for 6, 9 or 12 months. Wayne Oliveira feels that 9-12 months seems more reasonable. Gary Lavallette noted that Westport's delay is one year. John Farrell agreed that 12 months was a reasonable time that would allow those who want to protect the building time to come up with alternatives without being too restrictive to the owner. Wayne Oliveira agreed.

Ann Richard questioned the deadline that requires the Commission to respond to the Building Inspector within 15 days to determine if the building is "preferably preserved". She feels that seems rather quick and more time will be needed get the information, notice the public, hold a public hearing, make a decision and get back to the Building Inspector. Wayne Oliveira thought that 30 days seemed more reasonable. There was some discussion as to whether the 15 days is what is required by law. Maria Carvalho of the Historic Commission explained her experiences with very restrictive codes. Discussion regarding speaking with Building Department.

Paul Foley provided a presentation regarding criteria in which the Commission would consider to determine if a building is Historic. The purpose would be to add a Demolition Delay Bylaw to help protect Fairhaven's Historic character by preserving and protecting significant buildings and neighborhoods that exemplify the history of the town, encourage owners of historic buildings to seek alternatives that will preserve, rehabilitate or restore such buildings, create incentives to make it easier for homeowners to do so and alert residents to impending demolitions of significant buildings. The Massachusetts Historic Commission (MHC) recommends that the Demolition Delay bylaw should be passed as a General Bylaw, not a Zoning Bylaw.

The MHC recommends that the Demolition Delay bylaw is for at least a (12) twelve-month delay period even though most demolition delay bylaws in Massachusetts are for six months. Generally, there are three ways to begin the process of demolition delay review under a bylaw: by age, category or a list. With "Age" the properties meet a certain age criterion that is subject to review. It could be a specific date (1900, 1920, 1940...); a rolling date (More than 75, 100 years); or either with a caveat that certain buildings after that date could be included based on finding that they are historically significant. The "Category" method means they are already on a list or eligible to be on the Register of Historic Places. The "List" method would be that historic properties are already on a list maintained and updated by the Historical Commission a/o the Planning Board.

The MHC Defines "Significant Building" as any building, in whole or in part, which has been determined by the Historic Commission to be significant based on any of the following criteria: The Building is listed on, or is within an area listed on, the National (and/or State) Register of Historic Places; or the Building has been found eligible for the National (and/or State) Register of Historic Places; or the Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or the Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings. He went on to describe the MHC definition of "Demolition" and "preferably preserved". He noted that Dartmouth had expanded upon the MHC definition of demolition.

Mr. Foley added that he thought that if the Town goes with creating a list then those property owners should derive some benefit from that listing. The Town could potentially make all buildings on the list eligible for alternatives and exemptions to certain aspects of the Building Code so that re-using them is not as expensive. The

Town could potentially make all buildings on the list eligible for zoning relief. For example, if someone is willing to save a building that is determined to be "Preferably Preserved" then, if they choose to protect and restore the structure, they should be allowed to create new structures or units on the property that otherwise would not be allowed. The Town could create an annual award for the best preservation by individuals or groups who own private property. He then explained the process and the timeline.

John Farrell said he agrees with the notion that we use an age criterion to trigger demolition delay based on those building built before World War II. Wayne Hayward said that for Town Meeting we need to narrow this down and keep it simple. He noted that when the Historical Commission was created they were authorized to create their own policies and procedures. He said that has not been done yet but could be.

Ann Richard noted that the creation of a Demolition Delay Bylaw is in the Master Plan. She also noted that the Town was able to adopt the Stretch Code. Paul Foley noted that the Stretch Code can create an impediment to saving historic houses because they did not realize the impact and expense of bringing old houses up to code. One of the incentives he is suggesting is that any house on the list or determined to be "preferably preserved" should automatically be allowed to use the alternatives and exceptions in the Building Code which would make restoring and reusing them less expensive.

Wayne Oliveira noted that the Commission gets a lot of complaints about the look of the Route 6 corridor. It would be nice if we could make the development out there fit in better with the historic charm of the rest of the Town. Paul Foley noted that they are planning to do a redevelopment study for that area and he hopes one of the results will be new codes that make the area denser and pedestrian friendly and look better. Jeff Lucas noted that one of the issues with Route 6 is simply enforcing existing regulations. Marcus Ferro noted that he worked on a project in New Bedford that was a historic rehabilitation project of a private house and they were able to apply and get Community Preservation Committee (CPC) funds. Others agreed that could be done. Next step is to inform the Board of Selectmen that the town boards are going to propose a Demolition Delay General Bylaw. They need to hold a public hearing unless they defer to the two boards.

b. Benoit Square rezoning:

Paul Foley displayed the map that Wayne Hayward had put together with SRPEDD showing the Main Street Study area near Benoit Square that is being proposed to be re-zoned to a mixed-use district to encourage new investment in the area so that having a business on the ground floor and apartments above is not a pre-existing non-conforming situation. Right now they are zoned residential which means that the existing situation is not conforming and makes investment less appealing. He feels it should be the same mixed-use zoning as the Main Street Mixed-Use. The key thing we need to look at are the setbacks in both districts, which were built largely upon the same principles. Eventually we should look at both dimensional regulations and possible changes to the Use Table that could be considered to be added to the Mixed-Use District. Currently he does not see why it would be any different between Main Street downtown and Benoit Square.

Wayne Hayward spoke about the area and parcels that will be re-zoned and that the abutters need to be notified that we will hold a public hearing as well will be needed. This would be a zoning bylaw change rather than a general bylaw for the Demolition Delay. John Farrell asked how do we articulate to the Selectmen that this cannot wait. Wayne Hayward responded that he feels we should have done this a long time ago. He feels we should keep it simple at this point. Make it the same language as the Main Street Mixed-Use District. This should be simple. If we wait on this, then it pushes everything else we may want to look at down the road.

Wayne handed out a proposed Motion that reads: To amend the Zoning Map as follows: North Fairhaven Benoit Square/Main Street area. Rezone the following described lots from Single Residence District (RA), General

Residence District (RB), Business District (B) to the Mixed Use District (MU) and comprised of the following Assessor's Map-Lots: (list of lots included in map).

Ann Richard feels that once the Oxford School is redone that should help bring more investment to the area. Wayne Hayward said we should not expect results overnight but it will make the property owners sleep better at night because their property will not be non-conforming anymore.

Wayne Hayward made a Motion to hold a public hearing on October 22, 2019 to re-zone the Benoit Square District into a Mixed-Use District. The Motion was seconded by Ann Richard and passed unanimously. Paul Foley was asked to draft a memo to let the Board of Selectmen and Town Administrator know that the Board plans to present the proposed rezoning of the district to the Special Town Meeting in November.

- c. Receipt of Plans: Paul Foley noted that it is not on the Agenda but we did receive an application today for a Special Permit (SP-08) for the Haskell Solar Farm plan to create a 10 +/- acre solar farm in two sections on a 49-acre farm located at 46 Charity Stevens Lane. He explained that he felt it was premature since we are still waiting for the Board of Selectmen to decide whether or not to exercise their right of first refusal but it was complete and stamped in.
- d. Review of Plans: ANR - 732 Sconticut Neck Road: Plan received to divide one 10.84-acre parcel into four lots through the Form A - Approval Not Required (ANR) Process:

Paul Foley explained that he went over the plans and this type of application only requires the Board to determine if the proposed lots have the required frontage on an adequate road. The four lots each have the required 140' of frontage. However, there is an issue on the property due to back taxes and possibly unpermitted apartments. He had consulted with Tom Crotty about whether the Board could not endorse the plan based on back taxes. Tom Crotty said they should endorse the plan even though Town finance Director Wendy Graves said there was a bylaw and long standing policy not to approve any subdivision if there were outstanding taxes.

Wayne Hayward said that this is not controlled by the subdivision control law and we really have no say in the matter unless there is not enough frontage and/or the road is not adequate. Wayne Hayward made a motion to approve the ANR, seconded by Jeff Lucas, this motion passed with five members in favor and Ann Richard in Opposition. The Board members signed the Mylar and copies of the plans.

- e. Signing of Plans:
DS19-02 Barboza Single Lot Division Sub-division that was approved July 23, 2019. At this time the Board members signed the Mylar and copies of the plans.

4. LONG RANGE PLANNING:

- a. Town Planner update:
 - a. Paul Foley updated the Board regarding the Dog Park Study in which he and the Conservation Agent visited 13 locations and agreed on the score for each based on the scoring sheet and criteria that was supplied to them by the Dog Park Study Committee and derived from the Stanton Grant Foundation.
 - b. He also discussed that he had been on a site visit with the Health Agent and Vinnie Furtado to the Dartmouth Recycling Center as part of their research into a new site for Fairhaven.
 - c. He met with Attorney Dan Klasnick representing Verizon and they will be submitting their re-application for a Special Permit which will probably be scheduled for either September 24 or October 8, 2019.
 - d. He noted that he will be attending a one-day Historic Preservation Conference in Plymouth on September 20, 2019 that Ann Richard informed him about. He noted that she may go as well.

John Farrell made a Motion to allow Ann Richard to go to the conference as well and have it paid for by the Planning Board, the Motion was seconded and passed unanimously.

- e. He noted that a potential recreational Marijuana store had been to the Board of Selectmen recently and were proposing a store on the corner of Alden and Bridge Streets across from the Pasta House at the Panagakos property. Some Board members expressed concern with the potential traffic at that location. It will be reviewed by the Planning Board for a Special Permit.

Ann Richard made a motion to adjourn the meeting at 8:55 pm, Seconded by Cathy Melanson, this motion passed unanimously.