



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

MEETING MINUTES

Tuesday, September 12, 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 6:34 PM and advised who was present. She also read the revised Open Meeting Law Statement, covering the extension of remote meetings and public access by Governor Healy until March 31, 2025. Additionally, she covered the Zoom accessibility options to provide automatically generated captions for this meeting.

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

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

Absent: None.

As noted in other minutes, both Vice Chair Jessica Fidalgo and Recording Secretary Stephanie Fidalgo will each be referred to by their full names for clarity as both were active participants during this meeting.

- c) **Minutes: August 22, 2023, drafts to be reviewed:** Jessica Fidalgo made a motion to accept the minutes of August 22, 2023, and was seconded by Mr. Grant. The motion passed unanimously.
- d) **Planning Board Vacancy:** Ms. Melanson announced that Mr. David Braga had moved out of Fairhaven and was no longer eligible to serve on the Planning Board. Thus, the Select Board was gathering applications for a new member to fill his term until 2025. The appointment will be done at a joint meeting between the Planning Board and the Select Board.
- e) **Correspondence:** Mr. DiGiuseppe relayed to the board that he would be carrying on Mr. Foley's plan to introduce a 40R overlay district to the Town. He was working with the consultants on creating a bylaw and identifying sites along routes 6 and 240. He would like to create a new working group of both previous members of the 40R Working Group and no more than three Planning Board members to evaluate and provide feedback on the draft bylaws, design standards, and maps. He would like to start this process early due to the timeline involving the

state and spring Town Meeting. Once worked out the next steps with the consultants, he would reach out to the Planning Board to choose who would join the new working group.

The next piece of correspondence came from Ms. Melanson. The full text is attached to these minutes as Addendum 1 – “Meeting Points.” The document covered a new set of protocols for Planning Board meetings, requiring all discussions, comments, and requests to be directed through the chair and recognized by the chair in order to speak. No derogatory remarks would be tolerated and all conversations were to remain on topic. Staff reports would be given first, followed by applicant presentations, and then all board members would have 2 minutes in turn to ask questions or make comments, with the applicant answering each in turn.

Public comments must also remain relevant to agenda items and all members of the public need to clearly state their name and address for the record. For those on Zoom, they must raise their hand before being recognized. The public would also have 2 minutes to speak. After the public had a chance to speak, the board would have additional time for questions.

Any piece of correspondence – letter, email, or text – read into the record would be required to be attached to the minutes in full. Comments from the public on individual Planning Board members would need to be sent to and reviewed by the Chair.

2. PUBLIC HEARINGS:

- a) **SP 23-05 Starbucks 27-29 Alden Road Special Permit: Continued from August 22, 2023.**
Continued Public Hearing on the proposal to create a new 2,458 sq. ft. restaurant building with a drive-through on the site of the former Dunkin’ Donuts at 27 Alden Road (Map 26, Lot 13G) and the current Tropical Smoothie Café at 29 Alden Road (Map 26, Lot 13H), submitted by Michael W. Panagakos.

At the request of the chair, Stephanie Fidalgo read out the staff report. The majority of the basic information had been covered in the previous meeting, she quickly summarized the basic points of the project – The applicant wished to demolish the existing buildings at 27 and 29 Alden Road and rework the lots into a 34,944 sq. ft. single lot with a 2,458 sq. ft. Starbucks restaurant. The lot would also feature a drive-thru and 21 parking spaces.

A table covering all the changes noted on the 8/31/23 set of plans is included below for reference:

<ul style="list-style-type: none">• Sheet 1: Zoning Data/Parking Requirement Table• Sheet 3: Drive-thru travel aisle from RTE 6 has been widened from 10’ to 12’• Sheet 3: Drive-thru lane along north side of building has been widened from 12’ to 14’	<ul style="list-style-type: none">• Sheet 3: Vertical concrete curb (VCC) changed to a granite sloped curb.• Sheet 4: Grading changes to accommodate wider lanes• Sheet 4: Catch basin CB-1 location changed
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<ul style="list-style-type: none"> • Sheet 3: Entrance access from Alden Road has been widened from 24' to 30' • Sheet 3: Concrete rumble strip added between drive-thru lanes and RTE 6 access lane • Sheet 3: Parking spaces reduced from 23 spaces to 21 spaces • Sheet 3: Landscape island near Alden Road entrance has been removed, no parking zone put in place of landscape island • Sheet 3: Drive-thru lane circulation sign added • Sheet 3: "Starbucks" directional arrows have been added • Sheet 3: Pre menu board added • Sheet 3: Bollards added • Sheet 3: Pylon sign data label added • Sheet 3: Stockade fence along north and easterly property lines added 	<ul style="list-style-type: none"> • due to the wider lane • Sheet 5: Added electric line to Pre-Menu board • Sheet 5: Replaced 1500-gallon Grease Trap with smaller Grease Trap - A Schier GB-75 Grease Interceptor according to detail sheet. • Sheet 6: Added landscaping shrubs/grasses along Alden Road - maiden grass and hydrangeas. • Sheet 7: Added bollard to legend • Sheet 8: Added Sloped Granite Curb & Scored Concrete/Rumble Strip detail • Sheet 9: Replaced Grease Trap detail, moved other details as necessary
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After listing out the changes, Stephanie Fidalgo then brought up the plan images to point out those same changes for the board. She also included an applicant-submitted spec sheet for the planned 25' pylon sign featuring a 6' diameter Starbucks logo and a smaller cabinet reading "Drive-Thru."

Coming to the Special Permit criteria, she noted how the widening of the entrances and circulation lanes along with the changes made to the parking lot such as reducing the spaces and replacing the vertical curbs with sloped ones would help to better accommodate both traffic and emergency vehicles. While there hadn't been new comments from the BPW, the applicant had assured that they would spend time during the construction phase addressing any possible issues with the sewer lines. For landscaping, she covered the new plantings between the mature street trees and pointed out the reduction in green space due to reworking the lanes but pointed out the compromise of better separation from the residences behind the building with the addition of a new stockade fence.

For Comments from Town Departments, as requested in the previous meeting, both the Police and Fire Chiefs reviewed the updated plans. After reviewing the 8/31/23 Plan Revision with the widened lanes and entrances, new curb cuts, and reworked parking layout, Fire Chief Todd Correia stated, "We are confident this will solve our needs." When asked about fighting a hypothetical fire at this location, he stated that the exact strategy would depend on the weather, conditions, and type of fire. Police Chief Michael Myers also agreed with and supported Chief Correia's evaluation of the revised plans.

Once the staff report had concluded, Christian Farland, principal engineer and president of

Farland Corp, was invited to speak to the board. He outlined how the engineers had addressed the issues brought up by the Planning Board at the August 22, 2023, meeting as well as met with the Fire and Police Chiefs to better accommodate the public safety concerns with the older plan. As stated earlier, they would be inspecting the sewer lines and seeking to correct any issues during construction.

Questions were opened to the board, starting with Mr. Lucas. He asked if additional street trees had been considered, with Mr. Farland pointing out the new trees on the landscaping plans and noting that they decided to go with native shrubs and grasses along the Alden Road due to the width and grade of the buffer strip and so as not to interfere with the new street lamps. Mr. Lucas also had issues with the height of the pylon sign being 25' tall as opposed to the maximum 16' allowed and whether the sign would be within the clear view triangle required by the bylaws. He noted that other signs along Alden Road conformed to the height requirement, with Taco Bell as the one major exception. Mr. Farland answered that if there were concerns with the sign's location, it could be moved further back from the road to be outside of the clear view triangle. At Mr. Lucas' request, Stephanie Fidalgo brought up the rumble strip detail on the screen, noting it was on page 8, and mentioning that the pylon sign spec sheet had been submitted separately.

Mr. Grant expressed his appreciation for the engineers having listened to the comments of both the board and Public Safety to rework the plan to accommodate their requests. He did have some concerns regarding the changes to the landscaping but wanted to hear comments from the rest of the board first.

Ms. Simmons had no major comments but also thanked the engineers for listening to the board and public safety's feedback.

Jessica Fidalgo also had concerns with the height of the sign and if the Planning Board could offer a waiver given the language of § 198-26 Sign Regulations, K. which states in part, "Variances shall not be granted for any sign." She also had further concerns with sign location relative to the clear view triangle as well as the additional restrictions on sign locations for corner lots. Finally, she asked for information on the stormwater.

Mr. Farland first covered the stormwater system, noting how the current site has no recharge system and how they were required to reduce the post-development stormwater runoff. He pointed out the new underground recharge system and how the water from the building and parking lot would be directed towards it via the different internal catch basins as well as the trench drains that would keep water from flowing off-site. During larger storms, any overflow would then go into the Town's system.

As for the sign, he again promised that it could be relocated further back to prevent any visual obstructions for drivers. Signs also had to be at least 14 feet back from the property, which

should keep them out of the clear view triangle, but they would evaluate. If the sign could not be 25' tall, then they would most likely relocate it to match the older Dunkin' Donuts sign location for better visibility.

Mr. daSilva noted that the issues he brought up at the last meeting had been addressed, particularly widening the entrance from Route 6.

Mr. Carr had further questions on the stormwater system drains and if the whole system was being reworked to be brought up to MS4 standards, which Mr. Farland assured that it was. Mr. Carr also inquired about the change to a smaller grease trap and Mr. Farland replied that the change came from Starbucks, and it would be further evaluated by the plumbing inspector during the permitting process. Mr. Carr inquired about the change in surfaces, with Mr. Farland explained that while there would be more impervious surfaces compared to the previous plan, there was still more green space as compared to the existing conditions. As for the trees, Mr. Farland pointed out that the mature street trees along Alden Road were preserved with the addition of bushes and grasses being a compromise to planting new trees along that buffer strip.

Mr. DiGiuseppe brought up the possibility of planting utility-friendly trees, though Mr. Farland and Ms. Melanson preferred the layout plan with the bushes.

Mr. Grant had concerns if the Planning Board could issue a variance or waiver for the sign. If the sign needed to move, he would like to see a plan that indicated the new sign location. When it was her turn to speak, Ms. Simmons agreed with Mr. Grant's concerns.

The board deferred to Mr. DiGiuseppe on the sign, but his read on the bylaw was that the intent was clear that no waivers or variances could be granted regarding the sign bylaw.

Jessica Fidalgo asked who would grant the sign permit, with Ms. Melanson noting that the Building Commission would issue it. Mr. Carr outlined the possibility of the applicant seeking a variance from the Zoning Board of Appeals. Ms. Melanson suggested deferring to the Building Commissioner on the sign and the permit and that the sign alone should not prevent the Planning Board from approving the plans.

Mr. Lucas stated that he felt that the Planning Board should not approve a plan that included a sign that was against the Town's bylaws. Ms. Melanson insisted that the Building Commissioner would deny the permit for the 25' sign and that the applicant and the engineer could then address the issue directly with the Building Commissioner.

Mr. Grant continued to have his concerns about approving the plan that included a sign in violation of the bylaws. Mr. Farland offered a compromise of denying the waiver for the sign height and the applicant would make the necessary changes ahead of applying for the sign

permit. Mr. Grant still had concerns about approving the plans even without the waiver as the sign listed on the plans would still be in violation of the bylaws. Ms. Simmons asked for clarification if denying the waiver for the sign would be approving a plan with no sign at all, which Ms. Melanson said would be the case. Ms. Fidalgo was also hesitant to approve plans that still included the sign at the northwest corner and did not reflect the requested changes to the sign to be in better compliance with the bylaws.

Mr. Farland explained that the sign information was part of the architectural plans, which were separate from the site plan set that the board was voting on.

Mr. Carr asserted that the sign's height and location would fall under the Building Commissioner's purview, or the Zoning Board of Appeals' purview should the applicant choose to appeal the maximum 16' foot height requirement. Mr. Lucas countered that other site plans and projects included both sign details and locations and that he did not want to leave this issue unresolved and force the applicant to go to the ZBA. Mr. Carr reiterated his point that either the Building Commissioner or the ZBA would have the eventual purview over the sign.

Ms. Melanson invited Mr. Panagakos to speak to the board to address their concerns about the sign's location and height. He noted that Starbucks had wanted to put the sign on the southwest corner of the lot, where the previous Dunkin' Donuts sign was placed, for visibility. He would still like for the sign to remain on the northwest corner as indicated on the plans though. However, regarding the height, he stated that they would instead use a 16' tall sign and would not pursue a possible variance from the ZBA.

Ms. Melanson then outlined adding a condition in the decision that the sign would have to be no more than 16' tall and not within the clear view triangle. Mr. Panagakos promised that he would get new sign plans from Starbucks that would fit the zoning requirements.

A short discussion followed on exactly what information on the sign was included with the site plan, with the board noting that the location with the height was specifically marked, but no sign specs were included on the detail sheet. Mr. Panagakos noted that not all site plans include a pylon or monument sign if the business doesn't feel they are necessary and that the original plan for this application did not indicate the height of the sign.

After summarizing the new condition once again, Ms. Melanson entertained a motion for approval.

Mr. Carr made a motion to approve SP 23-05 Starbucks 27-29 Alden Road Special Permit with conditions and was seconded by Mr. daSilva.

Before the vote, Mr. Lucas asked if the applicant approved of Condition #6 to have the restaurant operate until only 10 PM. Mr. Panagakos suggested extending the hours until 11 PM at the latest.

Mr. Lucas made a motion to change Condition #6 from 10 PM to 11 PM and was seconded by Mr. Grant.

When Mr. Carr brought up that there could not be a motion made while one was on the floor, Ms. Melanson stated that they would include that change with the other approved conditions.

The motion to approve the special permit with the edited conditions passed unanimously.

Mr. DiGiuseppe double-checked that the approval included the other requested waiver from Chapter 198-27.C.(4)(b) regarding the size of the buffer strips between adjoining properties and uses, which Ms. Melanson confirmed.

3. UPCOMING REVIEWS:

Ms. Melanson briefly noted the upcoming reviews planned for the September 26, 2023 meeting.

- a) **Street Discontinuance**: Section of Torrington Road on the east side of 5 Billy's Way. PH September 26.
- b) **Special Permit**: 350 Main Street, renovation to turn the theater into a commercial space. PH September 26.
- c) **Special Permit**: 54 Main Street, renovation to add 12 apartments. PH September 26.

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

Mr. daSilva asked if physical packets could be made available for board members and Stephanie Fidalgo offered to have them available for pick up in the Planning Department.

Mr. Grant asked how having only seven board members would affect voting. Ms. Melanson replied that there should not be any major changes and that the new member should be appointed by the October 16, 2023 Select Board meeting. Ms. Simmons had concerns about the margin of the votes and Mr. Lucas pointed out that Special Permits still required six votes for approval. In the case of the recusal by any board member, the vote would then need to be unanimous from the other six members. Mr. Grant suggested letting any special permit applicants know about the margin of votes until the new member was appointed. Mr. Carr and Mr. Lucas went over the number of votes required for different motions, with Mr. Lucas outlining that for general business, a majority vote so long as there was a quorum present was sufficient but other actions would require six votes.

Ms. Melanson promised that she would verify the proposed timeline with the Town Administrator ahead of the next meeting. Mr. Lucas did bring up the possibility of applicants needing to refile in the case of there not being enough eligible members to vote on their applications, but that issue would be addressed only if it came up during this interim period.

5. NEXT MEETING: Tuesday, September 26, 2023.

Ms. Fidalgo made a motion to adjourn and was seconded by Ms. Simmons. The motion passed unanimously via roll call vote at 7:54 PM.

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

Addendum 1

MEETING POINTS:

- We will be implementing new protocols to help meetings run more efficiently and make the best use of our time to get the work of the planning board done efficiently.
 - Behavior during meetings, all discussions, questions, comments, requests are directed thru the chair; and needs to be recognized by the chair to speak; use words like thru the chair-no back-and-forth debates.
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 - There will be no interruption, talking over, or disrespectful behavior. **Making derogatory comments towards or attacks or anything else, on an individual or departments will not be accepted; the chair will stop it immediately. We are here to debate an issue not personal stuff.**
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 - Questions or comments must be relevant to the topic being discussed; the chair will redirect if you go off topic.

FOR HEARINGS:

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- Staff Report will be presented first then Applicant will present the plans, drawing etc... UNINTERUPTED

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- The chair will first recognize each board member and allot two minutes to ask the applicant any questions and/or comments. The applicant will be able to respond to the questions and/or comments from each.
- Then the public will speak on the matter. This must be relevant to the agenda item. They will step up to the podium and state their name and address. If you are participating thru zoom you must raise your hand, wait to be recognized by the chair, state your name and address. The public will have two minutes to speak. The applicant can respond to the questions and/or concerns. New speakers first before anyone else is recognized again.
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- At the end of the initial question period, board members will have another opportunity to ask additional questions, (the 2-minute rule applies).
- The Chair will close the public hearing and seek a motion from the board. The Chair will inform the applicant of the results and what next steps, if any, will be required.
- All material / papers /emails which are read in a public meeting or hearing must be turned in and included in the minutes. This will include emails or text sent to the planning office.
- If a member or the public quotes a report, comments from an individual, then the information must be given to the chair to review for accuracy of the comment. If the person cannot remember or name that report or person, then discussion will not be allowed.