



TOWN OF FAIRHAVEN, MASSACHUSETTS

PLANNING BOARD

Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, January 23, 2024 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 6:32 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, Jeff Lucas, Patrick Carr, Sharon Simmons, Kevin Grant, 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 for this meeting.

Absent: None

- c) **Minutes: January 9, 2024, drafts to be reviewed:**

Mr. daSilva made a motion to accept the minutes of January 9, 2024, and was seconded by Ms. Fidalgo. The motion passed unanimously. (8-0)

- d) **Correspondence:** There was no general correspondence for this meeting. Mr. DiGiuseppe noted that a piece of correspondence was received concerning that meeting's public hearing.

2. RECEIPT OF PLANS:

- a) **FA 24-02 5 Billy's Way:** Form A Proposal to combine one 2,036 sq. ft. parcel created from a discontinued section of Torrington Road with 5 Billy's Way (Map 29, Lots 185 & 186) and a second 2,036 sq. ft. parcel created from the same discontinued section of Torrington Road with 7 Billy's Way (Map 29, Lots 189 & 190), submitted by Sharon Simmons.

This Form A Proposal would divide a previously discontinued section of Torrington Road (see: SD 23-03 Unacc ST Disc - Torrington 5 Billys Way) in half and then combine a 2,036 sq. ft. parcel with 5 Billy's Way along the eastern side of the property and a second 2,036 sq. ft. parcel with 7 Billy's Way along the western side of the property.

Mr. Lucas raised a Point of Order that Ms. Simmons should recuse herself from any discussion as the applicant. Ms. Simmons left the room accordingly.

There was no discussion nor vote on this matter. Ms. Melanson stated that the endorsement of the plans would occur after the close of the meeting. Ms. Simmons then returned to the room before the Board moved to the next item.

- b) **FA 24-03 197 New Boston Road: Form A Proposal to transfer a 275,911 sq. ft. parcel from 197 New Boston Road (Map 34, Lots 39 & 40) to 235 New Boston Road (Map 34, Lot 40A), submitted by Richard Costa.**

The Form A Proposal would grant a 275,911 sq. ft. parcel from Map 34, Lots 39 & 40 to Map 34, Lot 40A. The parcel ran along the northern edge of the property from the back of Lot 40A to the eastern edge of Lots 39 & 40 and included a 10 ft. wide access easement for the existing shell road for the benefit of the Costa Farm.

Engineer John Romanelli of Zenith Land Surveyors, LLC spoke on behalf of the applicant. He explained that Mr. Costa wished to deed this non-buildable parcel of land to his daughter and son-in-law, Tracy and Aaron Lague, who own 235 New Boston Road. Mr. and Mrs. Lague used that area of the existing Costa Farm as a cornfield and Mr. Costa wanted the land to be officially deeded to them.

Mr. Lucas asked if the land was separate from the existing solar farm, and Mr. Romanelli noted that there was a fence to divide it. As noted on the plan, the existing shell road would still be usable by the Farm. Mr. Carr was very supportive of Mr. Costa's use of a solar farm to offset his company's carbon footprint.

Mr. Carr made a motion to approve the endorsement of FA 24-03 197 New Boston Road and was seconded by Mr. Grant. The motion passed unanimously. (8-0)

3. PUBLIC HEARINGS:

- a) **SP 24-01 50 Rodman Street ADU Special Permit: Convert a planned second level of the existing garage at 50 Rodman Street (Map 25, Lot 211) into an Accessory Dwelling Unit, submitted by Matthew and Chelsea Varao.**

Mr. DiGiuseppe introduced the project to the Board, with the planned Accessory Dwelling Unit to be added to a new second level to the existing garage at 50 Rodman Street. The unit would be 20.3 ft. by 20.2 ft. for 410 sq. ft. Two special permits would be required per Fairhaven Zoning Bylaws 198-16 Use Regulation Schedule and 198-32.1 Accessory dwelling units. The property had also previously been granted two Variances by the ZBA on November 7, 2023, one for the proposed height of the garage after building the second level to be 10 in. over the maximum 20 ft. and one to allow an Accessory Dwelling Unit on a 6,867 sq. ft. as compared to the minimum 22,500 sq. ft. lot size requirement of § 198-32.1. (See ZBA-023-045 50 Rodman Street.) Mr. DiGiuseppe also showed photos and plans to the Board.

Mr. Matthew Varao spoke to the Board, outlining his plan for the Accessory Dwelling Unit to be used as a small guest unit for when his mother-in-law visited.

Mr. Carr inquired about the plans for accommodating parking, with Mr. Varao confirming that his driveway could accommodate an additional car. Mr. daSilva asked about utilities with Mr. Varao answering that new sewer and water lines would be run to the unit to allow for a small kitchen and bath inside the unit. To Ms. Tomassetti's follow-up question, Mr. Varao assumed that the sewer and water lines would connect to the main house. Mr. Lucas noted that prior ADU applications had notes from the BPW for the sewer and water lines to be separated.

Mr. Lucas continued with his concerns regarding the size of the lot, how close the garage was to the property line, and any possible impacts on the neighborhood. Mr. Varao noted that the unit was planned with only clerestory windows facing the rear abutting property to increase privacy. He had also spoken with his neighbors prior to submitting the application and had their support.

There was a discussion between Mr. Lucas and Ms. Melanson over the long-range impact of approving this Special Permit. Mr. Carr raised a Point of Order to refocus the discussion on the current plans and allow for public comment.

Ms. Melanson opened the floor to public comment, but no one wished to speak at that time.

Mr. Carr again requested to keep discussions focused on the current plans. Ms. Tomassetti supported the use of clerestory windows and while Mr. daSilva noted that no abutters had spoken against this project, Ms. Fidalgo followed up that given the lot size and setbacks, considerations should be made for the abutting neighbors. Ms. Melanson noted that small lot sizes were a common concern to consider. Mr. Grant agreed with Mr. Lucas that long-term impacts for projects were important to take into consideration. Mr. Lucas reiterated his concerns with the lot size and how the creation of an Accessory Dwelling Unit could affect the neighborhood.

Mr. Bill Whitehead of 53 Adams Street spoke to the Board via Zoom, introducing himself as the rear abutter to 50 Rodman Street. He confirmed that he and his wife had seen and discussed the plans with Mr. Varao and supported the project.

Mr. daSilva made a motion to approve SP 24-01 50 Rodman Street ADU Special Permit and was seconded by Ms. Tomassetti. The motion passed with Cathy Melanson, Jessica Fidalgo, Patrick Carr, Sharon Simmons, Kevin Grant, Ruy daSilva, and Diane Tomassetti in favor and Jeff Lucas opposed. (7-1).

4. UPCOMING REVIEWS:

Ms. Melanson noted the upcoming reviews 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 February 13, 2024.*

5. OTHER BUSINESS:

a) Proposed Zoning Bylaw Changes

Mr. DiGiuseppe explained that the changes presented to the Board were proposals for inclusion on the Annual Town Meeting Warrant. The changes were a combination of addressing issues both he and Building Commissioner Randy Bassett had encountered, clarifying parts of the bylaw, as well as changes to encourage small-scale development. He had worked alongside Mr. Melanson and Mr. Bassett on this draft. The language would need to be submitted by February 27, 2024, and then finalized by April 9, 2024, in time for the Annual Town Meeting on May 4, 2024.

The proposed changes are summarized below along with any relevant discussion.

- **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.**

The Board discussed whether this use would include convalescent homes and substance abuse rehabilitation clinics. Mr. DiGiuseppe would speak with the Building Commissioner on the specific inclusion of substance abuse rehabilitation clinics.
 - **Add Shipping Containers – Y in I, and N in all other districts.**

The Board discussed usages of Shipping Containers beyond the storing and transportation of goods and whether they should be allowed outside the Industrial District. Mr. Lucas suggested defining the explicit use. He also brought up his concerns with including uses beyond manufacturing within the Industrial zone.

Mr. DiGiuseppe also wished to ensure that businesses on the working waterfront could explicitly make use of shipping containers. Ms. Melanson agreed with drafting a specific definition for “shipping containers.” Ms. Fidalgo wished to know the difference between Storage Units, with Mr. DiGiuseppe explaining that Storage Units referred to long-term storage buildings.

Mr. Carr brought up the use of shipping containers as “portable sheds” as well as the use of those containers for storage for various businesses.

- **Add Storage Units – A in B and I, N in all other districts.**

This use was suggested to create a clear definition for storage units and differentiate this use from warehouses.

- **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.**

This would allow for Body Art Establishments to be allowed by right in Business, Industrial, and Mixed Use districts, stemming from conversations Mr. DiGiuseppe had with potential Body Art business owners. Mr. Lucas continued to have concerns about allowing Body Art Establishments in the Industrial District, though he and Mr. DiGiuseppe did agree with how Fairhaven and other municipalities placed Sexually Oriented Businesses and Cannabis Facilities only in the Industrial zone. Recording Secretary Fidalgo did note for the sake of comparison that the city of New Bedford allowed Body Art Establishments in their Industrial zones via special permit.

Mr. Carr was concerned with restricting the uses in the Industrial Zone, given the current established businesses and Mr. DiGiuseppe outlined the range of businesses currently allowed by right in that zone to illustrate the point. The Board also discussed the need to update the zoning maps. Mr. Grant agreed with removing the prohibition on the placement of Body Art Establishments and Mr. DiGiuseppe noted that such prohibitions were not mandated by MGL.

- **Change artist studio/gallery – Y in MU**

- **Change semidetached dwelling – Y in MU**

This would be to encourage further residential usage in the Mixed Use district.

- **Change Accessory apartment/in-law apartment – Y in RR & RA, RB, and RC**

Given that the state was currently reviewing legislation to allow Accessory Dwelling Units by right, Mr. DiGiuseppe considered also allowing them by right as a low-impact way of encouraging affordable housing, which Ms. Tomassetti and Ms. Melanson agreed with. Ms. Fidalgo had concerns with accounting for density and infrastructure, especially on West Island. Mr. DiGiuseppe noted that the Building Commissioner and the BPW would have input on the permitting process.

Mr. Lucas covered his concerns about being more permissible with Accessory Dwelling Units. Mr. DiGiuseppe considered this change in line with the current Master Plan and did not expect a great change in the number of units. Both Ms. Fidalgo and Recording Secretary Fidalgo suggested researching how other municipalities set limits and

guidelines on AUDs while still allowing them by right, with Salem cited as a specific example.

Mr. Lucas brought up an additional point on the potential effects of investment properties and short-term rentals on the local housing market. Ms. Melanson emphasized the need for growth for the Town and finding different ways to facilitate it. Mr. Carr concurred with Ms. Melanson's point and noted that checks and balances would still exist to maintain the character of the Town. Mr. Lucas did agree with the need for more housing but would prefer to encourage the development of apartment buildings rather than accessory dwelling units.

Ms. Simmons noted her experience with seeing deeds that include an accessory unit but would not allow for the unit to be rented as a way to maintain the character of the zoning district. Mr. Grant outlined his experience with living next to a multifamily triplex and supported Ms. Simmons' suggestion. He believed that all the suggestions brought forth would have to be considered to find a solution to the current housing issues.

- **Change Accessory apartment to a business – Y in B and I**
- **198-19 Fences – Remove hedges from the six-foot height restriction.**

Mr. Bassett had requested this change as hedges, unlike fences and walls, were not permitted and it was more difficult to hold them to the same height restrictions. Ms. Simmons and Mr. Lucas had concerns about removing the restriction and wanted to see further enforcement of obstructing hedges. Ms. Tomassetti agreed with the issues raised on obstructing hedges and would like to see further language addressing pool fences added to this section.
- **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.**

Given how often space and parking were at a premium, Mr. DiGiuseppe wanted to allow for parking for 5 or more cars within the setbacks inside the zoning districts listed above. The Board discussed whether this change would affect residential districts, but Mr. DiGiuseppe explained that it was focused on allowing long-term parking in business-related and multifamily zones only. Mr. Lucas wished to have more time to review this change in context.
- **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.**

The first suggestion was a change to the grammar of the bylaw, while the others focused on paper reduction by requesting fewer print copies and explicitly requiring a digital copy.

- **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)**

The first change was similar to the print and digital copies requirement as the previous one. The Board discussed the language change, emphasizing that it would be a complete prohibition on clear cutting for the purpose of creating a solar photovoltaic energy facility.

- **198-32.1 Accessory dwelling units – Remove the minimum lot size requirement of 22,500 square feet from 198-32.1.A, 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.**

The lot size requirement was removed to encourage the creation of Accessory Dwelling Units on lots that complied with the base zoning. As indicated above, the floor area requirements needed to be changed to comply with the MGL c. 40A§1A, which states that Accessory Dwelling Units be no larger in floor area than one-half the floor area of the principal dwelling or 900 square feet, whichever is smaller. The removal of the restrictions on basements, attics, and garages would allow for units in those areas and the removal of 198-32.1.C. was because ensuring State Building Code compliance was the purview of the Building Commissioner. Ms. Fidalgo suggested researching the health code regarding minimum unit size requirements.

- **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**

These definitions and uses were being added to better define some already allowed uses, like artisan food, beverage, and manufacturing, and as well as account for newer uses that were growing in popularity, such as coworking and maker spaces. Mr. Lucas asked if these definitions were referenced elsewhere in the bylaw and Mr. DiGiuseppe answered that the change was limited to adding the definitions.

- **Chapter 65: Planning Board**

- **65-1 Board Established: Remove four years, select either 3 or 5 years, per MGL c. 41§81A.**

The current four-year terms for Planning Board members were not in compliance with MGL c. 41§81A and would need to be changed. The Board came to a consensus of three-year terms, with Mr. Lucas suggesting a rotation of elections with one set of three seats in one year, the next set of three seats in the following year, and finally a single set of

two seats. As the current Planning Board members already had defined term ends, there would need to be an adjustment period when switching term limits.

Ms. Melanson held an informal voice vote on the preference for three or five-year terms, with the Board unanimously agreeing on a preference for three-year terms.

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

This would explicitly name the Planning Board as a special permit granting authority.

Mr. DiGiuseppe noted that further changes to the Planning Board's procedural section were being considered, however, more time was needed to research the process required for approving those changes.

- b) Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.**

Ms. Melanson requested that Board Members CC her Town email address when emailing questions about agenda items to Town Staff members. Mr. Lucas inquired if that stipulation also applied to in-person discussions between individual Board Members and the Town Staff, and Ms. Melanson replied that it did not.

Mr. Carr thanked the Town Staff for their work on the proposed bylaw changes.

6. NEXT MEETING: Tuesday, February 13, 2024.

Ms. Melanson adjourned the meeting at 8:26 PM

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

Approved, February 27, 2024