



**Fairhaven Planning Board**  
**40 Center Street**  
**Fairhaven, Massachusetts 02719**

I certify that 20 days have elapsed since the date of filing with the Town Clerk and no appeal and no revisions have been made since the date of filing.

Date: \_\_\_\_\_

\_\_\_\_\_  
Elisabeth Horan, Interim Town Clerk

Town Clerk/Registry of Deeds

FAIRHAVEN TOWN CLERK  
RCUD 2023 OCT 11 PM2:15

The Fairhaven Planning Board as required by Massachusetts General Laws Chapter 40A Section 9 and Town of Fairhaven Zoning By-Laws Section 198-29 requiring Special Permit Review scheduled a Public Hearing on September 26, 2023. The September 26, 2023 Public Hearing was continued to October 10, 2023 when the special permit application was closed with deliberation and decision and voted on.

**PETITIONER/OWNER:** Julio Barbosa  
10 Fieldstone Farm Drive  
Dartmouth, MA 02748

**ENGINEERS:** Zenith Land Surveyors  
1162 Rockdale Avenue  
New Bedford, MA 02740

South Coast & Associates, Inc.  
45 Slocum Road, Unit 4  
Dartmouth, MA 02747

**LOCATION:** 350 Main Street  
Map 19 Lot 257  
Fairhaven, MA 02719  
Book: 13204 Page: 278

**PETITION:** Request for Special Permit approval to renovate the former Bijou Theater into a commercial space in the Mixed Use Zoning District.

**PLANS:** The applicant submitted drawings, plans, details, sections and illustrations in support of their application for a Special Permit as detailed below:

- Plan titled “Plan for Special Permit, 350-356 Main Street in Fairhaven, Massachusetts” dated July 8, 2021, prepared by Zenith Land Surveyors. Plan consisting of the following sheet: Plan for Special Permit.
- Plan Set titled “Permit Set, Barbosa, dated May 20, 2023, prepared by South Coast & Associates, Inc. Plan consisting of the following sheets: A.1 Cover Page; A.2 1<sup>st</sup> Floor Plan; A.3 Floor Framing Plan and Section
- Special Permit Application Package stamped August 24, 2023.

**OTHER EXHIBITS:**

- Minutes of the Fairhaven Planning Board Meetings on the following dates: September 26, 2023 and October 10, 2023.
- Staff Report dated September 20, 2023.
- Fairhaven TV recording of the Planning Board public hearings September 26, 2023 and October 10, 2023.
- Public comments

**FINDINGS OF FACT:**

The Planning Board finds, based on the information submitted and testimony from the public hearing, that:

- The overall site owned by Julio Barbosa is 8,711 sf and includes one building.
- The proposal is to renovate the former Bijou Theater into a commercial space. The renovation includes straightening the floor as the former theater had a significant slope. The applicant states the proposed user of the revised site is B Balanced, which is a gym that will provide training and fitness classes.
- There is a prior special permit, SP 2021-01, that was approved for this site except for the former Bijou Theater. Condition 18 of SP 2021-01 stated “If and when a new use or user is proposed to occupy the theater space the project shall return to the Planning Board for Special Permit Review.”
- A member of the public, John Medeiros, raised a concern about parking. However, the number of parking spaces in not changing from SP 2021-01 and there is adequate parking to address the proposed use. The Planning Board also presented to the public that the parking lot was not subject to this special permit as it was already permitted with SP 2021-01.

Subject to these findings and the conditions set forth herein the Planning Board finds that the project as proposed in the Plan Set submitted as part of the application will be consistent with the general purposes and intent of the Fairhaven Zoning Bylaw and that the grant of the special permit is in the public interest and will preserve community values because, among other reasons:

**Section 198-29.D(1)**

- (a) The design assures safety with respect to internal circulation and egress of traffic and will not cause congestion, hazard or substantial change in established neighborhood character.
- (b) The design provides adequate access for fire and service equipment. The design provides adequate utility services and drainage facilities consistent with the Fairhaven Zoning Bylaws or as granted.
- (c) The intent of the performance standards of Section 198-24 (Noise, Litter and Smoke Standards) will be met.
- (d) The proposed use will not adversely affect the continued operation or development of adjacent uses; and
- (e) The proposed use will not create a nuisance or hazard.

**ACTION:** *Motion to approve Special Permit SP 2023-07 made by Mr. Carr, and second by Mr. Grant. Petition GRANTED to approve the Special Permit with the following conditions by 6 members in favor; 0 opposed.*

<i>Member</i>	<i>YES</i>	<i>NO</i>	<i>ABSTAIN</i>	<i>NOT PRESENT</i>
<i>Cathy Melanson, Chair</i>	<i>X</i>			
<i>Jessica Fidalgo, Vice Chair</i>				<i>X</i>
<i>Sharon Simmons, Clerk</i>	<i>X</i>			
<i>Patrick Carr</i>	<i>X</i>			
<i>Ruy daSilva</i>	<i>X</i>			
<i>Kevin Grant</i>	<i>X</i>			
<i>Jeffrey Lucas</i>	<i>X</i>			

**Conditions:**

1. Once endorsed by the Planning Board, the applicant shall record the Planning Board Special Permit Decision and approved plan at the Registry of Deeds and provide the Book and Page number to the Planning Board within six months of its endorsement. The Certificate of Occupancy shall not be signed by Planning unless a copy of the recorded decision has been submitted.
2. After the 20-day appeal period and if no appeal is filed, a certified copy of the Special Permit Decision from the Town Clerks Office shall be recorded by the applicant/owner at the applicant/owner's expense in the Registry of Deeds, indexed in the grantor index under the name of record owner and noted on the owner's certificate of title. The applicant/owner shall submit to the Planning Department proof of such recording.
3. Special Permit approval shall be void after two years from the date of approval unless a substantial use thereof or construction has begun.
4. All site development including grading, drainage and landscaping shall be carried out in

accordance with the approved plan set noted above titled "Plan for Special Permit, 350-356 Main Street in Fairhaven, Massachusetts" dated July 8, 2021, prepared by Zenith Land Surveyors.

5. Except as expressly allowed by this special permit, or by any other lawfully granted special permit, the applicant shall comply with all other applicable laws, including, but not limited to, the procedural, dimensional and use provisions of the zoning by-law and permits required by Building, Fire and Health regulations.
6. Prior to the start of site construction, the applicant shall submit site and utility construction plans for approval and schedule a pre-construction conference with the Building Commissioner.
7. The applicant shall be responsible to repair and/or replace, with in kind material, any damaged, broken or missing sidewalk or curbing along all street and way frontages abutting the property that occurs during construction.
8. The applicant shall have the building inspected by the Building Commissioner and apply for any and all necessary Building Permits. Building permits must be secured prior to construction.

A copy of this Decision will be filed with the Town Clerk of Fairhaven and the Fairhaven Building Commissioner. Within twenty (20) days of filing, any person aggrieved by the above Decision may appeal in accordance with Section 17 of Chapter 40A of Massachusetts General Laws.



Cathy Melanson, Chair  
Fairhaven Planning Board