



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

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 October 24, 2023 when the special permit application was closed with deliberation and decision and voted on.

PETITIONER/OWNER: Terje Tonnessen Revocable Trust
88 Fort Street
Fairhaven, MA 02719

ENGINEERS: Schneider, Davignon & Leone, Inc.
81A County Road, Unit G
PO Box 480
Mattapoisett, MA 02739

LOCATION: 88 Fort Street
Map 5 Lots 4 and 5
Fairhaven, MA 02719
Book: 11487 Page: 45

PETITION: Request for Special Permit approval to construct a 4 feet by 104 feet private residential pier with gangway and floats in the Mixed Use Zoning District. The request requires two special permits:

1. Section 198-16: Private dock or pier in Mixed Use Zoning District
2. Section 198-32.2: Docks and Piers. The Planning Board shall be the Special Permit Granting Authority in the Mixed Use 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 "Pier Construction Plan for Property Located at 88 Fort Street, Fairhaven, MA Prepared for Terje Tonnessen Revocable Trust-2015", dated May 9, 2023, prepared by Schneider, Davignon & Leone, Inc. Plan consisting of the following sheets:
- Special Permit Application Package stamped September 11, 2023.

OTHER EXHIBITS:

- Minutes of the Fairhaven Planning Board Meetings on the following dates: October 24, 2023.
- Staff Report dated October 18, 2023.
- Zoning Board of Appeals Decision stamped February 17, 2023
- Order of Conditions (MassDEP File No. 023-1417 and Fairhaven File # CON 023-355) from the Conservation Commission on July 26, 2023
- General Permit from the US Army Corps of Engineers on October 17, 2023.
- Fairhaven TV recording of the Planning Board public hearings October 24, 2023.
- Public comments

FINDINGS OF FACT:

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

1. The overall site owned by Terje Tonnessen Revocable Trust-2015 and includes two residential units.
2. The proposal is to construct a private residential pier on the Fairhaven/New Bedford Harbor for recreational boating, fishing and swimming.
3. The applicant received an Order of Condition (MassDEP File No. 023-1417 and Fairhaven File # CON 023-355) from the Conservation Commission on July 26, 2023.
4. The applicant received a General Permit from the US Army Corps of Engineers on October 17, 2023.
5. The Zoning Board of Appeals granted a variance to construct the pier 11.8 feet from the southerly sideline of Church Street vs. the 25 foot minimum requirement for this property. The Board also approved a variance reducing the street setback from 20 feet to 11.8 feet.
6. The Shellfish Warden stated existing shellfish must remain in place due to contamination and cannot be removed or replaced.
7. Several members of the public, including abutters to the property, raised a concern about the loss of the view of the harbor, impacts to natural resources and that the pier could be used for commercial uses. Regarding impacts to natural resources, the Conservation Commission has previously approved the Order of Conditions. Regarding the issue of the pier being used for commercial uses, the Planning Board stated they would add a condition requiring the use be

limited to residential use only. Regarding the view issue, the pier is proposed to be below the existing seawall which will not obstruct the view of the harbor.

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.

Section 198-32.2.C. Requirements:

- 1. The design demonstrates that the placement of a dock and/or pier will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
- 2. The proposed pier was designed and stamped by a registered engineer.
- 3. The proposed length of the pier is less than the maximum 150 foot length of any dock and/or pier including floats inside of the U.S. Army Corps of Engineers hurricane barrier shall be the minimum length necessary to have a minimum of 2 1/2 feet of water at mean low water (MLW) at the end of the dock and/or pier.
- 4. The proposed pier, stairs or ramp is less than the maximum six feet in width, measured outside the support structure (piling, posts or railing).
- 5. The proposal received a variance from the Zoning Board of Appeals reducing the side property setback for any dock and/or pier, and associated floats, from 25 feet to 11.8 feet as measured along the shoreline.
- 6. The proposal provides lateral pedestrian passage in the intertidal zone or along the shore for fishing and fowling purposes.
- 7. The proposed floating dock does not exceed 300 square feet.
- 8. Two boats or vessels not over 30 feet in overall length shall be the maximum number permitted on any dock and/or pier.
- 9. The proposal will be higher than 2.5 feet at Mean Low Water or sufficient navigable water for the proposed vessel at the end of the dock, pier and/or float system.

10. The applicant will coordinate with the Shellfish Warden regarding the removal, replanting or replacement of shellfish on site. See Finding of Fact #6.
11. The Conservation Commission issued an Order of Conditions for the proposed pier.
12. A building permit shall be required for the construction of a dock and/or pier.
13. All necessary federal and state permits shall be obtained prior to issuance of a building permit.

ACTIONS: *Motion to approve Special Permit SP 2023-08 made by Mr. Carr, and second by Ms. Tomassetti to approve the proposed pier under Zoning Bylaw Section 198-16 Private dock or pier in Mixed Use Zoning District. Petition GRANTED to approve the Special Permit by 7 members in favor; 0 opposed; 1 not present.*

<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>			
<i>Diane Tomassetti</i>	<i>X</i>			

Motion to approve Special Permit SP 2023-08 made by Mr. Carr, and second by Mr. daSilva to approve the proposed pier under Zoning Bylaw Section 198-32.2: Docks and Piers. The Planning Board shall be the Special Permit Granting Authority in the Mixed Use District. Petition GRANTED to approve the Special Permit with the following conditions by 7 members in favor; 0 opposed, 1 not present.

<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>			
<i>Diane Tomassetti</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 "Pier Construction Plan for Property Located at 88 Fort Street, Fairhaven, MA Prepared for Terje Tonnessen Revocable Trust-2015", dated May 9, 2023, prepared by Schneider, Davignon & Leone, Inc."
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.
9. The pier shall only be used for residential recreational use. Commercial use of the pier is prohibited.

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