



Fairhaven Planning & Economic Development
40 Center Street, Fairhaven, Massachusetts 02719

Proposed Zoning Bylaw Changes

To: Fairhaven Planning Board

From: Paul DiGiuseppe, Director of Planning and Economic Development

Date: February 29, 2024

I. Purpose: This memo combines all previous staff memos of proposed bylaw updates that were presented to the Planning Board.

II. Key Dates

March 25, 2024: Town Meeting Warrant closes

March 26 and April 9, 2024: Planning Board recommendation to Town Meeting

May 4, 2024: Spring Annual Town Meeting

III. Per § 65-7, the Planning Board will be responsible for the initiation of new zoning bylaws or amendments in accordance with MGL c. 40A, § 5, and will hold public hearings for this purpose in accordance with MGL c. 40A, § 11

IV. Proposed Changes

198-15.C.(2) (Use Regulations): Where any proposed use, or expansion of a use otherwise permitted [Y] or authorized [A] in an Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], Mixed Use [MU] or Industrial [I] District results in a requirement of a total of five or more parking spaces for the previously existing and new demand combined pursuant to the provisions of § 198-27 of this chapter, such use shall be deemed authorized by special permit granted by the Planning Board pursuant to the provisions of § 198-29 of this chapter upon review by the Planning Board of the site development plan

198-16 Use Regulation Schedule

Use Regulation Schedule									
	District								
Activity or Use	RR & RA	RB	RC	P	B	I	AG	MU ¹⁴	WRP ¹⁶
Health care including medical, dental offices and clinics	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>A</u>	<u>N</u>	<u>Y</u>	<u>N</u>
Shipping Containers	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
Storage Units	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>A</u>	<u>A</u>	<u>N</u>	<u>N</u>	<u>N</u>
Body art establishment	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>YA</u> ¹⁹	<u>YA</u> ¹⁹	<u>N</u>	<u>NY</u>	<u>N</u>
Artist studio/gallery	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>AY</u>	<u>A</u>
Private dock or pier ¹¹	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>
Semidetached dwelling	<u>N</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>NY</u>	<u>N</u>
Accessory apartment/inlaw apartment (note: primary house remains as owner-occupied)	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>AY</u>	<u>Y</u>	<u>Y</u>
Accessory apartment to a business	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>AY</u>	<u>AY</u>	<u>N</u>	<u>Y</u>	<u>Y</u>

¹⁹ A body art establishment shall not be located within 1,000 feet of an exterior property line of a school or church as determined by the Building Inspector. (Reserved)

198-19 Fences

198-19.B No boundary fence, ~~or wall or hedge~~ shall exceed six feet in height, and no boundary fence, wall, hedge, or other landscape feature which obstructs vision shall exceed 42 inches in height within any required front yard area or within 20 feet of the street, whichever is the lesser requirement.

198-27 Parking Area Designation and Location

198-27.C(1): No off-street parking area for five or more cars shall be located within the required front, side or rear yard setback areas, except for properties within the Business, Mixed Use, Industrial, or Apartment/Multi-Family zoning districts. If no side or rear yard setback is required the minimum parking setback shall be six feet from the property line, except in the case(s) where there is a joint access or a shared parking area.

198-29 Special Permit for certain intensive nonresidential and multifamily site developments:

198-29.A(5) ~~And in the Mixed Use (MU) District a~~ Any addition of gross floor area, or any reduction in the number of available parking spaces on the site within the Mixed Use (MU) District shall be subject to a special permit under this section if the proposed parking does not meet the numerical minimum required by § **198-27B**

198-29.B. Submittal. Application for a special permit shall require the filling of one copy of a special permit application and ~~10~~ 2 prints of the site plan drawn to an adequate scale. A digital copy of the application materials is also required.

198-29.6 Solar photovoltaic energy facilities (SPEF)

198-29.6.F: Application for special permit review. Submittal application for special permit review shall require the filling of one copy of a site plan review application and ~~10~~ 2 prints of the site plan drawn to an adequate scale to convey all required information as well as a digital copy of application materials. Such plan(s) shall contain the following for an application to be considered complete.

198-29.G(8) Clear cutting of trees and natural vegetation, ~~within five years,~~ shall be prohibited for the construction, operation and maintenance of the solar photovoltaic facility.

198-32.1 Accessory dwelling units

Purpose. For the purpose of promoting the development of affordable rental housing, dwelling conversions may be allowed ~~by special permit of the Planning Board pursuant to §198-16~~ subject to the standards and conditions listed below:

~~198-32.1.A: Dwelling conversions shall not be allowed unless the lot meets the minimum lot size in § **198-18** or 22,500 square feet, whichever is greater.~~

~~198-32.1.B: Units created through dwelling conversions shall not be less than 1,000 be no larger in floor area than one half the floor area of the principal dwelling or 900 square feet, whichever is smaller, not including areas of the basement, attic or garage~~

~~198-32.1.C: The applicant shall illustrate to the Planning Board that the requirements of the State Building Code are met.~~

~~198-32.1.D: Site requirements:~~

- ~~(1) No expansion to the existing structure~~
- ~~(2) No portion of the basement, attic or garage may be used for dwelling purposes.~~

198-32.2 Docks and Piers

- B. Applicability. Any application to construct a dock and/or pier shall comply with this section. ~~The Zoning Board of Appeals shall be the special permit granting authority (SPGA) in the Rural Residence Districts (RR), Single Residence Districts (RA), General Residence (RB) and Agricultural (AG) Districts. The Planning Board shall be the SPGA in the Apartment/Multi Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU) and Industrial Districts (I). [Amended 5-6-2006 ATM by Art. 9]~~
- D. ~~Waiver of compliance. The SPGA having jurisdiction may, in special and appropriate cases, grant a waiver to the above requirements when in their judgment such action is in the public interest and not inconsistent with the purpose and intent of the zoning bylaw.~~

198-33 Definitions and word use

ARTISAN FOOD AND BEVERAGE

Small scale production or preparation of food and beverages made on site with limited to no automation, and may include direct sales to or consumption by consumers. Examples include uses such as small-batch bakeries, microbreweries (15,000 barrels per year or less), brewpubs, artisan distilleries (10,000 barrels per year or less) as regulated by the Commonwealth, small batch candy shops and local cheese makers. Uses should allow outdoor seating or patio as an accessory use depending on the zoning district.

ARTISAN MANUFACTURING

Application, teaching, making, or fabrication of crafts or products by an artist, artisan, or craftsperson either by hand or with minimal automation and may include direct sales to consumers. Includes uses that employ activities and processes such as small-scale fabrication, welding, and coating that are typically not permitted in non-industrial zoning districts.

COWORKING SPACE

A shared workspace where members can rent desks or other workspaces and facilities, and interact and collaborate with each other as part of a community. Rules for membership and participation in the coworking space are explicit, transparent and are available to the public. Coworking spaces may host classes or networking events for current and prospective members. Fabrication tools are limited to those which do not generate noise or pollutants in excess of what is customary within a typical office environment.

MAKER SPACE

A coworking space that gives members access to fabrication tools similar to those found in machine shops or other industrial sites

SMALL SCALE INDOOR RECREATION

Establishment that provides amusement, entertainment or physical fitness that occur indoors for a fee or admission charge. May require membership and/or cater to walk in customers. May also include food

or beverage service. Such uses are not limited to: arcades, art/dance/exercise studio; bowling alleys; drama/voice/instrument instructional studio; health club/fitness center; ice and roller skating; rock climbing; indoor hockey, lacrosse or soccer; laser tag; martial arts studio; indoor swimming pool; tennis, handball, badminton, pickleball, racquetball; golf simulation.

SHIPPING CONTAINER

“Shipping container” means a unit originally used for the transport, shipping, or hauling of materials or goods by land, sea, or air; capable of being moved or mounted by rail, truck, or boat. This definition includes steel sea or oceangoing containers marked with the American Bureau of Shipping’s emblem or meeting the International Standard Organization’s standards which can be detached from a trailer, chassis or frame, and which were formerly used for transporting sea or oceangoing cargo. This definition includes the terms “portable moving/storage unit/container/pod” and “cargo/oceangoing/transport container. In addition, this definition applies to any structure designed to imitate the look of a shipping container.”

Chapter 65: Planning Board

65-1 Board established.

There shall be a Planning Board of eight members under the provisions of MGL c. 41, § 81A, with all of the powers and duties provided therein. Two members shall be elected at each annual town election for a term of ~~four~~ 3 years.

65-3 Powers and duties.

The duties of such Board shall be such as are stated in MGL c. 41, §§ 81A to 81J, and further to consider and advise upon municipal improvements, either at the request of other officials of the town or upon its own initiative. The Board shall meet at regular intervals. It may also hold public meetings. It shall at all times have access to all public documents or information in the possession of any town official or department. It shall examine the plans for the exterior of any public building, monument or similar feature and for the development and treatment of the grounds about the same before the adoption thereof, and may make such recommendations thereon as it may deem needful. It may make investigations and studies relative to new street and park developments. It may provide for public lectures and other educational work in connection with its recommendations. Said Board may incur expenses necessary to the carrying on of its work within the amount of its annual appropriation. The Planning Board is a special permit granting authority pursuant to MGL c. 40A§9

306-1 Fee schedule of Planning Board Charges.

~~§ 306-1 Fee schedule of Planning Board charges.~~

~~All fees due at time of application unless so noted. All expenses for advertising and notice to abutters by certified mail, return receipt, shall be borne by the applicant.~~

~~A. Form A, Approval of a plan not requiring approval.~~

~~(1) One hundred dollars for adjusting existing lot lines without creating new lots.~~

~~(2) One hundred fifty dollars plus \$50 per lot, for the creation of new lots, plus a \$40 per lot geographic information system (GIS) mapping fee.~~

B. Form B, Preliminary Subdivision Plan.

(1) Five hundred dollars.

C. Form C, Definitive Subdivision Plan.

(1) Five hundred dollars plus \$100 per lot (if a preliminary plan was filed), an engineering fee of \$2,500 and a GIS mapping fee of \$40 per lot.

(2) One thousand dollars plus \$100 per lot (if no preliminary plan was filed), an engineering fee of \$2,500 and a GIS mapping fee of \$40 per lot.

(3) Plan revision: one revision allowed with original application fee; 50% of original fee paid due for second and additional revisions at the time revision is submitted.

D. Special permit fees.

(1) Two hundred fifty dollars for plans of less than 2,500 square feet new or renovated floor space, plus an engineering fee of \$2,500.

(2) For plans of more than 2,500 square feet \$250, plus:

(a) For new floor space: \$0.10 per square foot for the first 30,000 square feet of new floor space and \$0.01 per square foot for new floor space above 30,000 square feet, plus an engineering fee of \$2,500.

(b) For renovated floor space: \$0.025 per square foot for the first 30,000 square feet and \$0.01 per square foot for floor space above 30,000 square feet, plus an engineering fee of \$2,500.

(c) For plans creating new floor space and renovating: apply the new floor space calculation first, followed by the renovation calculation up to a combined 30,000 square feet, then \$0.01 per square foot for all space above 30,000 square feet, plus an engineering fee of \$2,500.

(3) Plan revision: one revision allowed with original application fee; revision fee of \$0.01 per square foot due for second and additional revisions at the time revision is submitted.

E. Rezoning application fee: \$250.

F. Repetitive petition fee: \$250.

G. Street discontinuance fee: \$250.

H. Zoning regulation books: \$10.

I. Subdivision regulation books: \$10.

J. Zoning maps: \$5.

316 Procedural Rules

316-2.C Rezoning applications: Requests for Zoning Map amendments shall be accompanied by ~~10~~2 prints and a digital copy of a plan to scale, clearly showing the proposed amendment referenced for location on the Town Zoning Map and relevant district and property bounds, structures and natural features. The request shall also be accompanied by a written description of the proposed change, suitable for legal advertisement, plus a check made out to the Town of Fairhaven to cover the appropriate fees found in the fee schedule.

316-3.B Plans not requiring subdivision approval: The mylar, ~~six~~two prints, two copies of application Form A, a digital copy of the plan and application and required fee (See Chapter **306**, Fees.) shall be filed with the Planning Board's agent. The date of the next regular Planning Board meeting thereafter shall be the date of submission.

316-4.A.(2) Subdivision plans: This preliminary plan should be submitted to the Planning Board for approval. This means filing a digital copy of the plan and application Form B, ~~10~~2 sets of plans, the application Form B and required fee (See Chapter **306** Fees.) with the Planning Board's agent, a digital copy print of the plan with the Board of Health and a notice stating the date of submission and a copy of Form B with the Town Clerk (MGL c. 41, § 81S). The filing with the Town Clerk may be by delivery or by registered mail. The day of the next regular Planning Board meeting after filing with the Planning Board's agent will be the date of submission.

316-4.A.(5): When it is ready, the plan is submitted to the Planning Board for approval. This means filing with the Planning Board's agent the original Mylar, a digital copy of the plan and Form C, ~~10~~2 prints of each, a copy of application Form C, and required fee (See Chapter **306**, Fees.) to pay for the hearing notices and a list of all abutters taken from the latest tax lists. A copy of Form C must be filed by delivery or by registered mail with the Town Clerk. (See MGL c. 41, 81T.) One print of the plan is also to be filed with the Board of Health

316-4.A.(7): Following the hearing, the Planning Board will act on the plan. (Section ~~**322-14I**~~ of Chapter **322**, Subdivision of Land, covers this.) The security is either a covenant agreement (See Form D.) prohibiting building permits or the sale of any lots until the improvements serving that lot are complete or a bond covering the cost of improvements not yet made allowing the Town to use the bond to complete improvements if the developer should fail to do so or fail to do so quickly as agreed upon (MGL c. 41, § 81U.) After it has security and after a twenty-day appeal period following approval, the Planning Board will sign the plan. You must then give them ~~10~~ prints and a digital copy of it

316-4.B(3): Upon receipt of a definitive plan, the Planning Board must set up a public hearing (§ ~~**322-14**~~ of Chapter **322**, Subdivision of Land). The Planning Board shall determine the date and advertise the notice of hearing in each of two weeks, the first at least 14 days prior to the hearing. The Planning Board will mail a copy of the advertisement, ~~certified mail~~, to the applicant and to each abutter within 300 feet (See § ~~**322-4**~~ of Chapter **322**, Part **2**, Definitions.), as taken from the most recent tax list.

316-4.B(5): Following the hearing, the Board must act on the plan then notify the applicant of your action by registered mail and file a copy of your action with the Town Clerk (§ ~~**322-14I(1)**~~ of Chapter **322**, Subdivision of Land) as well as mail a notice of the decision to parties in interest. The definitive plan is approved by default if not acted on by the Planning Board within 135 days of submission where no preliminary plan was submitted or within 90 days of submission where a preliminary plan was acted on by the Planning Board (MGL c. 41, § 81U).

316-5.B.(6)(b)[1] Street acceptances: One set of originals, ~~and 10 2~~ sets of prints, and a digital copy of the plans and documents.

316-5.B [11] [g]: All plans must be accompanied by a ~~CD-ROM or DVD~~ digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).

316-7.B.(2) Special Permit Required: ~~Ten~~ Two copies of the plans and specifications as well as a digital copy of the plan and application needed for the decision by the special permit granting authority (SPGA), if any.

316-7.E.(3): Mailed, ~~certified return receipt~~ to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way, the owners of the land within 300 feet of the property line, Planning Board of every abutting city or town. (The Assessors shall certify the names and addresses of parties in interest.)

316-8 Unaccepted street discontinuance

316-8.B.(1)(b): ~~Ten~~ Two prints of the survey of the street to be discontinued and legal description. A marked-up copy of the Assessors Map is acceptable. Please note that if a survey is not submitted and the discontinuance is approved, than a survey will be required as a condition of approval. A digital copy of all application material is also required.

316-8.D(3): ~~Mailed, certified return receipt,~~ to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet from the exterior bounds of the proposed street discontinuance. (The Assessors shall certify the names and addresses of parties in interest.)

316-9: Accepted street discontinuance

316-9.B.(1)(b): ~~Ten~~ Two prints and a digital copy of the survey of the street to be discontinued and legal description.

316-9.D(3): Mailed, ~~certified return receipt,~~ to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet radius from the exterior bounds of the proposed street discontinuance. (The Assessors shall certify the names and addresses of parties in interest.)

316-10 Repetitive Petition

316-10.B(2): The request for a repetitive petition shall include a plan of the site, a copy of the Board of Appeals decision and documentation illustrating how the request is materially different from the request denied by the Board of Appeals. A digital copy of all application materials is required.

316-10.D(3): Mailed, ~~certified return receipt,~~ to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet of the property line. (The Assessors shall certify the names and addresses of parties in interest.)

322-12 ANR Submission; contents/ action

322-12.B: The applicant shall submit to the Planning Board's agent a Mylar and/or the original reproducible plan and ~~six~~ two prints of the plans accompanied by two copies of a completed application Form A and the appropriate fee, together with any necessary evidence to show that the plan does not require approval. A digital copy of the plan and Form A application are also required.

322-12.E: The applicant shall submit a ~~CD-ROM or DVD~~ digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).

322-13 Preliminary Plan Submission; contents; approval

322-13B(1): ~~10~~ 2 prints of the plans, accompanied by two copies of a completed application Form B and the appropriate fee. A digital copy of the plan and Form B is also required.

322-13B(1): The applicant must also file a print or digital copy of the plan with the Board of Health, and must file with the Town Clerk a notice of the date of submission and a copy of the completed application Form B

322-14 Definitive Plan Submission; contents; approval procedures; guarantees

322-14.B(1)(a): The applicant shall submit ~~10~~ 2 prints of the plans, accompanied by two copies of a completed application Form C and the appropriate fee. A digital copy of the plan and Form C is also required

322-14.B.(2): The applicant must also file a print of the plan or digital copy with the Board of Health, and must file with the Town Clerk a notice of the date of submission and a copy of the completed application Form C.

322-14.K: After endorsement, the applicant shall submit a ~~CD-ROM or DVD~~ digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).