



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

Subdivision: DS21-02- Hermeneau Frederick Avenue
Staff Report: March 19, 2021

1. DESCRIPTION

- 1.1 Applicant:** Steven M. & Sandra J. Hermeneau
- 1.2 Project Location:** Map 29A Lots 168 and 169 (10,000 square feet between 2 lots) on a paper road listed as Frederick Avenue off of Scoticut Neck Road in Fairhaven. The property is more than half in the VE Zone (High Risk of Coastal Flooding) with the rest in the AE (1% Annual Chance of Flooding). The property is almost entirely within the 100 foot buffer to the wetlands.
- 1.3 Proposal:** To develop what is currently an unaccepted paper street to connect to an undersized lot which they feel is "grandfathered" in order to build a house.
Zoning: RR Rural Residential; 30,000 sf minimum lot size; 140' Minimum frontage; 30' front and rear setbacks; 20' side setback; 35 feet maximum height. The two lots are 50' by 100' each. The Applicants believe the property is grandfathered.
- 1.4 Local Permits:** Planning, Conservation, Building.
- 1.5 Surrounding Land Uses:** Residences, wetlands
- 1.6 Project History:** The area was rezoned to Rural Residential requiring a minimum of 30,000 sf in 1970. An identical plan was submitted for Preliminary Subdivision Review in 2014 by Mondonca. The Building Commissioner at the time issued a statement that the two lots were not buildable. His reasoning being that the lots were conveyed after the zoning change and they had no "exception" on them. The PB approved the Preliminary Subdivision but said that the buildability of the lot had to be settled before applying for a Definitive Subdivision. In June 2019, the Board of Appeals denied a variance request for 20,000 short of minimum lot size and 40' short for frontage. Later in 2019 Building Inspector Kristian White, issued a statement that said the lots were buildable. Current Building Commissioner accepts the letter declaring the lot is "grandfathered" because it is signed by the Building Commissioner and is on the Town Letterhead.

A business card for John C. Larsen of Really Rugged Research is stapled to the abstract with the title search documents but there is no signature confirming the search was approved by the researcher. The two lots in common ownership effectively merge for building purposes but they are still considered two lots for zoning purposes. Therefore, while the two 5,000 sf lots do meet 198-17.C(1) they do not appear to meet 198-17.C(2) since the 5 year grace period ran out. *See page 5 for definition of 198-17.C(1) and (2).*

- 1.7 Project Summary:**
- To develop what is currently an unaccepted paper street to connect to an undersized lot which they feel is "grandfathered" in order to build a house. Plans show a 44' X 28" dwelling on a concrete slab at elev. 10'.
 - Plans show a stone retaining wall from elevation 6.5" to 10' along the western side of the house and driveway coming within 10' of the wetlands.
 - According to the documents filed with the application the property was purchased for \$1 and the plans are virtually identical to those submitted for Preliminary Subdivision Review in 2014.
 - Town Planner recommended the Applicants secure a title search signed by a professional title attorney before the public hearing.
 - The proposal requests the following waivers:
 - Section 322-14.D. Waiver of additional subdivision submittal requirements.
 - Section 322-16.B. Street design standards Table A. Waiver of hammerhead requirement that no part may be used for a driveway to the lot or for parking of vehicles.
 - Section 322-17. Waiver of sidewalks.

- Section 322-25. Waiver of street trees.
- Section 322-26. Waiver of stormwater management.
- Section 322-27.A. Waiver of water main and hydrants.
- Section 322-J0.D. Waiver of Class I bituminous concrete paving.
- Section 322-32. Waiver of curbing and Cape Cod berm.
- Section 322-33.A. Waiver of driveway approach areas from the edge of the roadway to the edge of the right of way shall be concrete.

2. ADMINISTRATIVE SUMMARY

- 2.1 Complete Filing Stamped:** February 11, 2021
- 2.2 Advertisement:** March 4 and March 11, 2021 Fairhaven Neighborhood News
- 2.3 Routing Sent:** February 26, 2021
- 2.4 Public Hearing:** March 23, 2021

3. PLANNING CONCERNS

3.1 Comments from other Town Departments:

- 3.1.1 Fire Department** (Chief Correia):
- 3.1.2 Police Department** (Chief Meyers): No concerns.
- 3.1.3 Public Works Department** (Vinnie Furtado):
- 3.1.4 Highway Department** (John Charbonneau): Road is to remain private. The Town will not perform any maintenance. No plowing, no grading or filling potholes, no maintenance of drainage ditch.
- 3.1.5 Sewer:** Will need onsite inspector while coring manhole.
- 3.1.6 Water:** Cur box and meter pit need to be installed on Billy's Way side.
- 3.1.7 Conservation & Sustainability** (Whitney McClees): This property has two Orders of Conditions, one issued by the Conservation Commission under the Bylaw and one issued by DEP under the Wetlands Protection Act in response to an appeal of the Commission's decision. The applicants stated to the Conservation Commission that they would request a waiver from the Planning Board not requiring the road be paved so as to reduce the amount of impervious surface being added in a flood zone and near a wetland resource area. There is a condition in the Order saying "if the PB grants the waiver to allow the road not to be paved, the road shall be pervious". They are also required to submit a planting plan to the Commission for review and approval. The project will have to comply with Chapter 194 (Stormwater) as well.
- 3.1.8 Finance/Treasurer/Collector** (Wendy Graves):
- 3.1.9 Assessor** (Def Garcia): Staff did research. Found that property was denied a variance by the Board of Appeals in June of 2019 for 20,000 short of minimum lot size and 40' short for frontage.
- 3.1.10 Board of Health:**

3.2 Issues relative to Zoning and the Rules and Regulations of Subdivision of Land

- **§ 198-2. Purpose of Zoning:** How does the proposal adhere to the following purposes of § 198:
 - Does the design promote the health, safety, convenience and general welfare of Fairhaven?
- The property is primarily in the Velocity Flood Zone with some in the AE Zone (1% chance of flooding).
 - Does the design lessen the danger from fire, flood, panic and other natural or manmade disasters?
- The house would be on stilts but would expect to be subject to flooding.
 - Does the design improve and beautify the town?
 - Does the design prevent overcrowding of land?
- The property is 1/3 the size of the minimum lot size in the Rural District.
 - Does the design avoid undue concentration of population?
 - Does the design facilitate the adequate needs of water, water supply, drainage, sewerage, schools, parks, open space and other public requirements?
 - Does the design conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment?

- Does the design encourage the most appropriate use of land throughout the town?
- Does the design preserve and increase amenities by the promulgation of the regulations to fulfill said objectives.

▪ Chapter 322 – Subdivision of Land

Waivers Requested:

- § 322-14.D. Waiver of additional subdivision submittal requirements.
 - **The proposed road and lot are in the VE and AE Zone and include wetlands and the entire development is within the 100 feet buffer of the wetlands. The PB would be within their right to request an Environmental Impact Analysis.**
- § 322-16.B. Street design standards Table A. Waiver of hammerhead requirement that no part may be used for a driveway to the lot or for parking of vehicles.
 - **The proposed road is essentially a driveway with drainage swales.**
- § 322-17. Waiver of sidewalks.
- § 322-25. Waiver of street trees.
- § 322-26. Waiver of stormwater management.
 - **Staff recommends the Planning Board require § 322-26.B.1 – “For subdivisions of three lots or less, the applicant's engineer shall submit documentation, stamp and certify that the design meets the DEP Stormwater Management Regulations”. It is within the Planning Boards purview to request a full Stormwater Management Plan per § 322-26.B due to the sensitive nature of the property in the VE Zone and within the wetlands buffer.**
- § 322-27.A. Waiver of water main and hydrants.
- § 322-30.D. Waiver of Class I bituminous concrete paving.
- § 322-32. Waiver of curbing and Cape Cod berm.
- § 322-33.A. Waiver of driveway approach areas from the edge of the roadway to the edge of the right of way shall be cement concrete.

Section 322

- **§ 322-7** Compliance with Zoning Bylaw required.
 - **If the property is not grandfathered then it would be 20,000 sf short of minimum lot size and 40 feet short of frontage. The proposed rear deck is within the 30’ rear setback.**
- **§ 322-15 Section 7 Design Standards**
- **§ 322-15.B:** Are the streets, sidewalks, water systems, sanitary sewers, storm drain systems, public and private utilities and other infrastructure constructed in accordance with this chapter and the Board of Public Works requirements?
- **§ 322-15.C:** Does the design make:
 - Reasonable precautions against possible natural disasters;
 - **The proposal is in the Velocity Zone.**
 - Provisions for traffic safety and convenience;
 - **Frederick Avenue has adequate sight lines.**
 - Assurance of adequate sanitary conditions;
 - Consideration of amenities;
- **§ 322-15.D:** No land shall be divided for residential use if it is of such a character that it cannot be used for building purposes without danger to health.
 - **The property is primarily in the VE Zone with some in the AE Zone within 100 feet of wetlands and is 1/3 the size required since 1970.**
- **§ 322-15.F:** Does all work and materials shall conform to the latest requirements of the American Disability Act (ADA) and the Massachusetts Architectural Access Board (MAAB)?
- **§ 322-16 Streets:**

- **§ 322-16.A(3):** Does the design provide for the proper projection of the streets, or for access to adjoining property which is not subdivided or developed?
 - **Waiver requested. This is not the projection of a street so much as a driveway. A neighbor with a similar lot across Frederick Avenue has asked if they can build based on the new road.**
- **§ 322-16.A(4):** Are streets entering opposite sides of another street? Is so are the laid out either directly opposite each other or with a minimum offset of 150 feet between their center lines?
- **§ 322-16.A(5):** Streets entering the same side of another street shall be laid out with a minimum offset of 150 feet between their center lines.
- **§ 322-16.A(9):** On any street where the grade exceeds 5% on the approach of the intersection, a leveling area, with a maximum slope of 3%, shall be provided for a distance of not less than 50 feet measured from the nearest gutter line of the intersecting street.
 - **The proposed gravel road is shown as a 4% slope.**
- **§ 322-17:** Sidewalks; school bus waiting areas. **Waiver requested.**
- **§ 322-18:** Adequate access from public way:
 - A. Does the street system have adequate vehicular, pedestrian, and/or bicycle access from a Town, county or state public way or private way?
 - B. Is the public way adequate to provide for emergency services and carry the traffic that is expected?
 - C. Is the existing surrounding municipal infrastructure (e.g., street width and construction, sanitary sewer, public water, storm sewer, etc.) sufficient and/or capable of handling the additional volumes (e.g., traffic, sewage, stormwater, etc.) anticipated to be generated by the project?
- **§ 322-19:** Emergency Routes out of subdivision to be provided.
 - In any area not protected by the U.S. Army Corps of Engineers hurricane barriers, each lot shall be serviced with streets providing a route out of the subdivision, no part of which route lies below the thirteen-foot elevation above mean sea level (M.S. L.).
- **§ 322-20:** Easements
- **§ 322-21:** Open space.
- **§ 322-23:** Guardrails.
- **§ 322-24:** Protection of natural features.
- **§ 322-25:** Landscaping; street trees and tree belts. Tree Belts and Street Shade Trees. **Waiver requested**
- **§ 322-26:** Stormwater management. **Waiver requested**
 - **§ 322-26.B(1)** For subdivisions of three lots or less, the applicant's engineer shall submit documentation, stamp and certify that the design meets the DEP Stormwater Management Regulations. **Waiver requested**
 - **§ 322-26.E.** The applicant shall submit an erosion and sediment control plan.
 - **§ 322-26.F.** Conveyance of stormwater.
- **§ 322-27:** Utilities. **Waiver requested**
- **§ 322-28:** Lots limited to one dwelling.
- **§ 322-29:** Further subdivision.
- **Part 8: Required Improvements for Approved Subdivision**
- **§ 322-32** Curbing. **Waiver requested**
- **§ 322-33** Driveway approach areas and aprons. **Waiver requested**
- **§ 322-34** Side slopes.
- **§ 322-35** Street names and signs.

3.3 Environment

- **Vegetation:** The site is currently covered in bramble with two mature trees in the location where the house is proposed.
- **Habitat:** The site is not in an NHESP Priority Habitat.
- **Lighting:** No lighting plan has been submitted.

- **Landscaping:** No landscaping is shown.
- **Open Space:** No open space is proposed.
- **Bicycle/Pedestrian/Trails:** Scoticut Neck Road is wide enough for biking at this stretch.
- **Waste Management:** Presumably trash cans would be brought to Scoticut Neck Road.
- **Water/Wastewater/Stormwater:**
 - **Water Source:** Town water
 - **Nitrogen Loading:**
 - The site is in the Buzzards Bay Watershed.
 - The house would be connected to the Wastewater Treatment Facility.
 - **Storm water:** Applicant has requested a waiver from meeting stormwater standards.

3.4 Local Impact/Abutters

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4. CORRESPONDENCE

4.1 Public: No correspondence yet

5. Section 198-17

- 198-17.C(1) Single-lot exemption for single-family and two-family use. Any increase in area, frontage, width, yard or depth requirements of a zoning ordinance or bylaw shall not apply to a lot for single- and two-family residential use which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then-existing requirements and has less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage.
- 198-17.C(2): Common lot exemption for single- and two-family use. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or bylaw shall not apply for a period of five years from its effective date to a lot for single- and two-family residential use, provided that the plan for such a lot was recorded or endorsed and such lot was held in common ownership with adjoining land and conformed to the existing zoning requirements as of January 1, 1976, and contained at least 7,500 square feet of area and 75 feet of frontage, and provided that said five-year period does not commence prior to January 1, 1976, and provided that the provisions of this sentence shall not apply to more than three adjoining lots held in common ownership.