



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

Special Permit: 2019-13 Lewis Landing 12-Unit Housing Staff Report: August 20, 2020 – New Information Printed in Bold Type

1. DESCRIPTION

- 1.1 **Applicant:** Dana Lewis, Represented by Richard Rheame, P.E. of Prime Engineering, Inc.
- 1.2 **Project Location:** The location is Huttleston Avenue (between 347 and 355), Map 31 Lots 115A and 117C. The project is directly to the west of the liquor store on the corner of Rt. 6 and Gellette Rd.
- 1.3 **Proposal:** To construct Twelve (12) residential units with twenty-four (24) bedrooms in four (4) multi-unit residential buildings with three (3) two-bedroom units each. twenty-eight (28) parking spaces and associated infrastructure, stormwater control and landscaping.
- 1.4 **Zoning:** Rezoned to Apartment/Multifamily (RC) from RA and B in 2018.
- 1.5 **Local Permits:** Conservation Commission Notice of Intent for work within the 100-foot buffer to wetlands; Building; Land Disturbance Permit (Chapter 194) from the Fairhaven Board of Public Works.
- 1.6 **Other Permits:** The proposed work area is over 1 acre and requires filing an US EPA - NPDES permit and associated SWPPP;
- 1.7 **Surrounding Land Uses:** The site is on Route 6 and abuts a Liquor Store and residential neighborhood. The East Fairhaven School is across Route 6 a little to the west.
- 1.8 **Project History:**
 - **Soil tests indicate the** site was a wetland that was mostly filled and became a roadwork staging area.
 - The site is overgrown with brush that are mostly invasive species. The site has a paved curb cut and a small paved area.
 - A stonewall separates the smaller lot 115A, which is a few feet lower, than 117C which was filled.
 - The two properties were rezoned to Apartment/Multifamily (RC) from RA and B in 2018 by a developer. **The rezone was approved with a Covenant “limiting the total number of condominium units in their project...”. The Covenant also requires “Condominium Documents, which will be reviewed by Town Counsel prior to project approval...”. The current proposal is for apartments.**
 - The smaller lot, Map 31, 115A, is 19,005 square feet and was a Single Residence District (RA).
 - The larger lot, Map 31, Lot 117C is 2.06 acres and was previously zoned as a Business District (B) since 1965. Both were rezoned to Apartment/Multifamily Districts (RC).
 - At the time of the rezone, the Police Department noted that they had a concern with any future ingress/egress to the site because of the curvature and hill on Huttleston Avenue. As one combined similarly zoned lot the Special Permit Authority can limit curb cuts.
 - As part of the rezone the “Covenantors” agreed to a condition “that they will limit their Project to a total of not more than twelve (12) condominium units having no more than twenty-four (24) bedrooms total and structures not to exceed two (2) stories.”
 - Furthermore, condition 4 of the rezone states, “These restrictions are intended to be perpetual in nature, are intended to run with the land, and will be incorporated in the Project’s Condominium Documents, which will be reviewed by Town Counsel prior to Project approval. Only the Town of Fairhaven can release these restrictions, and only upon a finding by both the Town’s Planning Board and its Board of Selectmen that such release is in the best interests of the Town.”
- 1.9 **Project Summary:** To construct twelve (12) residential units with twenty-four (24) bedrooms in four (4) multi-unit residential buildings with three (3) two-bedroom units each. Also proposed on the vacant 2.5-acre piece of land are twenty-eight (28) parking spaces and infrastructure, stormwater and landscaping.

- Two (2) one-story storage buildings (84' by 20' and 60' by 20') and one maintenance shed (24' by 24') have been removed from the plan that was submitted.
- One entry is proposed about 80' east of the existing curb cut and aligned with the four buildings. A second entry was removed.

2. ADMINISTRATIVE SUMMARY

- 2.1 Complete Filing Received: September 21, 2019.
- 2.2 Advertisements: The project was originally advertised in the Thursday October 17, 2019 and Thursday October 24, 2019 editions of the Fairhaven Neighborhood News. The project was re-advertised in the Thursday August 6, 2020 and August 13, 2020 editions of the Fairhaven Neighborhood News.
- 2.3 Extensions: On October 15, 2020 the Agent requested a continuation to the November 5, 2020 Public Hearing; On March 9, 2020 the Agent requested a continuation to the March 24, 2020 public hearing; On March 9, 2020 the Agent granted an additional two months to action on the petition. On March 10, 2020, the Governor declared a State of Emergency tolling all permits until 90 days after the end of the State of Emergency. The State of Emergency is still in effect.
- 2.4 Routing Sent: January 3, 2020
- 2.5 Public Hearing: The Lewis Landing Special Permit public hearing was opened on January 28, 2020 and continued to February 25, 2020. The public hearing was heard on that date and was continued again to March 25 but that meeting was cancelled due to the State of Emergency. The continued Public Hearing was re-advertised and noticed to resume on August 25, 2020.

3. Environment

3.1 Environment

- **Vegetation:**
 - Overall, the site consists of invasive brush and contains a lot of wild rose and phragmites. There is one specimen Linden Tree that has been identified to be retained.
 - All of the proposed rain garden plants are native.
 - Most of the landscaping plants are native.
- **Wetlands:** Soil tests indicate the site was a wetland that was mostly filled.
- The southern border and southwest corner are still wetlands.
- **Two of the proposed four-unit buildings are within the 100-foot buffer of the wetlands.**
- Stormwater is piped under the road to a low spot to an old manhole and then piped in another line to an open swale that runs several blocks down along Brook Drive.
- **Habitat:** The site is not in an NHESP Priority Habitat
- **Lighting:**
- **Landscaping:**
- **Open Space:**
- **Energy/Sustainability:**
- **Storm water:**
 - The fourth and most recent Peer Review by GCG was submitted on May 11, 2020 based on the February 14, 2020 plans. The Agent has subsequently revised the plans on June 26, 2020 and July 8, 2020. Staff has asked the Agent to prepare a response to the GCG Comments of May 11.
 - The Agent submitted four letters dated June 1, 2020, June 20, 2020; June 24, 2020 and July 23, 2020.
 - June 1, 2020: Agent notes that Peer Review wants them to cut the trees in the proposed infiltration area on Lot 115A. The Peer Reviewer said they could not accurately calculate the amount of water being detained and that the trees detritus would impact the effectiveness of the detention and maintenance. The Agent requests that they be

allowed to retain the existing trees within the proposed infiltration area. He says the area has four times the capacity then required. They also request keeping landscaping along the pocket wetlands which the Peer Review says will block maintenance.

- **June 20, 2020:** Agent requests that the Board not require any more Peer Review.
- **June 23, 2020:** Agent reports that a video assessment of the existing drain lines and manhole was conducted that shows the “Route 6 drainage system has been abandoned and is clogged with soil. It is clear that MassDOT extended the drainage system westerly as shown on revised plan...It is proposed to re-habilitate that manhole and to install a bolt down manhole cover...” They believe these two actions will result in less overland flow than currently occurs.
- **July 23, 2020:** A one-page summary of changes since February.
- **Four (4) waivers from Section 198.31.1 were requested. The original Peer Review identified additional Waivers that were required. If the Planning Board approves of the pocket wetland as a Best Management Practice then some of those additional waivers are not required.**
- The majority of paved areas are generally at least 25 feet away from the edge of the wetlands.
- GCG Third Peer Review dated **May 11, 2020** summarized the four waiver requests as follows (**Note: Applicant offers that once the project is approved an easement will be granted to MassDOT and the Town to preserve the right of the existing drainpipes**).
 1. (Section 198-31.1 (c)(2)(g)[6]. “The applicant has proposed a reasonable maintenance access with a 4:1 slope on one side of the sediment forebay, where annual maintenance is required. Although, the design does not meet the 15 feet width access path as required by MSH, which is under MDEP jurisdiction. Since the pocket wetland requires sediment clean once every ten years and will be maintained by a private contractor. GCG recommends waiver be considered. **Waiver requested.**
 2. (Section 198-31.1 (c)(2)(n)[6]. “The existing RCPs are located at the bottom of constructed pocket wetland, which requires sediment clean out once every 10 years. GCG recommends the 2 feet minimum pipe cover waiver be considered. However, GCG recommends applicant to install a foot of rip-rap stone over the two pipes for protections during sediment clean out.
 3. (Section 198-31.1 (A)(1)(a)[2]. “This is a Town of Fairhaven requirement and as proposed the post-development 10-year storm event would increase the runoff volume from pre-development condition’s 0.269 a.f. to 0.411 a.f. It would require approximately additional 6,000 square feet of infiltration area to control the runoff volume(**Note: the area of development has been reduced so the area would be reduced. Staff has requested GCG to estimate the revised area**). The latest calculations shown an increase of runoff volume of 0.148-acre feet (6,447 cubic feet) during the 10-year storm event. This is a local requirement; MSH does not control the post-development runoff volume. If a waiver is not considered, this would require an additional infiltration basin be designed at the downstream of pocket wetland outfall.” **Waiver Requested. GCG recommends to properly sizing the infiltration area based on MSH requirements without the required ESHGW separation. Infiltration volume calculations at the downstream of pocket wetland should be included in the HydroCAD report.**
 4. (Section 198-31.1 (A) (1) (a) [2]. “To allow an increase in the volume of runoff since the soils are not suitable for infiltration. See comment #3 above. See comment #3 above”.

4. Transportation

- **Access:** Proposal now has only one driveway. However, it is onto a busy section of Route 6 carrying 11,000 cars a day.
 - The existing driveway is proposed to be relocated to the west about 80’ from existing curb cut.

- **A second entry was removed.**
- The abutting liquor store has a 60' wide curb cut on Route 6 and 160' wide cut on Gellette Road.
- **Sight Lines:** The sightline from the proposed driveway is just over 300 feet but is located at a **dangerous location. The driveway is proposed between two intersections that experience a higher crash rate than other sections of the road. Exiting the property to the left is an intersection, a curve and a hill. Police noted during the Rezone that this was an area of concern.**
- **Safety/Accidents:** From 2015-2017 there appear to have been about six (6) accidents at the New Boston Road/Route 6 Intersection. There appear to have been four (4) accidents at the Gellette/Route 6 intersection with two of those including injuries.
- **Trip Generation:** (Existing – Zero)
 - Twelve residential units can be expected to create approximately 120 vehicle trips a day.
 - **Proposed:** According to the Applicant traffic estimates
 - The peak hour trips during the morning peak weekday hour (7 a.m. to 9 a.m.) is projected to be 11 with 2 vehicles entering and 9 vehicles exiting.
 - The peak hour trip ends during the adjacent street's afternoon peak weekday hour (4 p.m. to 6 p.m.) is projected to be 12 with 8 vehicles entering and 4 vehicles exiting.
- **Vehicular Volume of Road:** Route 6 at this location carries approximately 11,000 – 12,000 cars a day (SRPEDD Rt. 6 Study). East bound the Speed Limit is 35 MPH and west bound it is 40 MPH.
- **Nearby Intersections (LOS):** The LOS for the nearby Intersections is C.
 - **Parking:** Proposal is for 28 parking spaces including two accessible spots.
- **Vehicular Circulation:**
- **Mass Transit:** This area is not currently serviced by mass transit.

5. Economic Impact

- The impacts to municipal services such as schools and fire should be minimal. **The tiny two-bedroom apartments will not be desirable for families with multiple children.**
- The twelve (12) two-bedroom units are proposed to be rental.

6. Scenic Values

Architecture: The design of the buildings appears to be modular or very base.

7. Local Impact on Abutters

Abutters expressed concerns at the first two public hearings that the site has a flooding problem that the owner needs to deal with, that this section of route 6 is dangerous; and that the rezone was based on condominiums not rentals where there is no pride of place.

8. Comments From Other Town Departments

- Fire Department (Deputy Chief Todd Correia):
 - The fire department has no concerns about the scope of the proposed residential facility.
 - FD notes the developer needs the correct water main size need to supply the sprinkler system.
- Police Department (Lt. Sobral):
 - The police note that Route 6 has heavy traffic at this location.
 - There is some concern with the sightline distance to the left when exiting the property.
 - The Posted Speed Limit is 35 MPH due to the school, hill and curve but the Police note that most vehicles drive in excess of 35 MPH.
- Public Works Department (Vinnie Furtado):
 - Highway Department (John Charbonneau):
 - The existing drain manhole at the Southwest corner of the property needs to be rebuilt (attached photo).

- The property that abuts the site at the Southwest corner of the site has ponding of water now. The discharge at the proposed maintenance shed will only make the problem worse (attached photo).
- Sewer:
 - Manholes FL=? Bench or invert elevation?
 - Install cleanout for each unit.
 - Lateral to unit 4? Need cleanout or preferably a manhole on main.
 - All cleanouts need 12" frame and cover marked sewer.
 - If disturbing sidewalk will need State Permits.
- Water:
 - 8" Ductile Iron Water Main needed for this Multi-Unit Residential Development.
 - Separate water shut off needed for each unit.
- BPW:
 - Preconstruction Meeting with Utility Contractor
 - Fees: Sewer, Water, Driveway, Trench Permit, Inspection Services and As-built plans
- Finance/Treasurer/Collector, Wendy Graves:
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- Assessor (Def Garcia): Property is assessed at \$400,000.
- Conservation Agent (Whitney McClees):
 - Project has been before the Conservation Commission since October 15, 2019.
 - Revised plans dated June 25, 2020 were submitted in response to peer review comments on May 11, 2020 (4th Review) regarding stormwater.
 - **They are no longer requesting any waivers from the MassDEP Stormwater standards.**
 - **The Conservation Commission is satisfied with the plans in terms of compliance with the Wetlands Protection Act and the Fairhaven Wetlands Bylaw.**
 - **The applicant has requested continuances since July 6 to allow time for Planning Board review in the event that any further changes were needed before ConCom approval.**

9. ZONING AND SPECIAL PERMIT CRITERIA AND PLANNING CONCERNS

- **Zoning Criteria: § 198-2. Purpose of Zoning: How does the proposal adhere to the following purposes of § 198:**
 - ***A. Does design promote the health, safety, convenience and general welfare?***
- The proposal creates a new curb cut and generates new traffic between two curb cuts that are
 - ***B. Does design lessen the danger from fire, flood, panic and other... disasters?***
- The existing site has distinct flooding problems. **The revised plan increases the flow of stormwater off of the site but at a slower rate.**
 - ***C. Does design improve and beautify the town?***
- The design shows bare utilitarian buildings that do not beautify the Town. The removal of invasive species and addition of street trees is an improvement.
 - ***D. Does design prevent overcrowding of land?***
- The design proposes to fit the maximum number of units allowed by Town Meeting. The two-story units are less than 900 sf each with little storage and no amenities.
 - ***E. Does design avoid undue concentration of population?***
- The plan is crowded.
 - ***F. Does design facilitate the adequate needs of water, water supply, drainage, sewerage, schools, parks, open space and other public requirements?***

- The site has existing drainage problems that will not be entirely solved by the proposed stormwater system. The site is across Route 6 from the East Fairhaven School. However, the apartments are so small they are not conducive to children.
 - ***G. 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?***
- The bare buildings originally billed to the Town as condominiums have become rentals that will not improve the value of the neighborhood.
 - ***H. Does the design encourage the most appropriate use of land throughout the town?***
- TBD.
 - ***I. Does the design preserve and increase amenities ...***
- There is no room for additional amenities on the site when fitting 12 units on the available land.

Special Permit Criteria: §198-29(1): How does the proposal show *Harmony* with the general purpose and intent of the Special Permit chapter, and are the standards of Section 198-29(1) met by the use as designed:

- **§198-29(1)(a): Does design assure safety with respect to *internal circulation* and *egress of traffic*.**
 - The site ingress/egress is not optimal.
 - **§198-29(1)(b): Does design provide adequate access for *fire and service equipment*.**
 - The Fire Department will be contacted on the revised plan.
 - **§198-29(1)(c): Does design provide adequate *utility services* and *drainage facilities* ...**
 - The site was a wetlands that were filled. There was once a larger pond across the road that was filled in over the years. The low side of this site accumulates stormwater before draining to a long drainage swale.
 - **§198-29(1)(d): Does *Landscape design* conform to § 198-27C of this chapter.**
 - .
 - **§198-27C(1): No *off-street parking* area for five or more cars shall be located *within* the required front, side or rear yard *setback*. If no setback is required minimum parking setback shall be 6'.**
 - There is no parking in the setback.
 - **§198-27C(2): Required parking areas paved, unless exempted by Special Permit.**
 - The parking is proposed to be paved.
 - **§ 198-27C (3): Backing onto a public way?**
 - There is no proposed backing into a public way.
- §198-27C (4): Perimeter landscaping requirements. Parking for 5 or more cars include the following:**
- **§ 198-27C (4) (a): A landscaped buffer strip shall be provided adjacent to any public road...**
 - A vegetated buffer strip is proposed with Red Maples and an Inkberry Holly hedge.
 - **§ 198-27C (b): A landscaped buffer strip shall be provided adjacent to any adjoining uses...**
 - There is not a landscaped buffer between the units and the abutting liquor store. A 6' stockade fence is proposed along the liquor store parking.
 - **§ 198-27C (c): Plantings shall include the incorporation of evergreen and deciduous plantings ...**
 - Blue Spruce evergreen and inkberry evergreens are included among the mostly deciduous plantings.

10. OTHER PLANNING CONCERNS

- **Traffic:**
 - **Sightline and Curb cut:** Sightline distance to the left when exiting the property is not optimal. Although listed as 400 feet it appears to be less than 300 feet and cars generally drive faster than the posted 35 MPH. **The extended curb cut of the Liquor Store next to the narrow entrance to Gillette**

Road creates backups on Route 6. The proposed curb cut adds another potential ingress before this just after cars come around a curve on a hill.

- Stormwater and Drainage:
 - Soil surveys indicate the site is located on approximately 5' of fill over a onetime wetland with poor soil and a high water table. Infiltration is difficult.
 - Without waivers the Peer Review indicates they would need additional area for infiltration area to control the stormwater runoff.
 - The smaller lot opposite New Boston Road that was zoned Residential is several feet lower than the other. **Revised plans leave this lot as a drainage parcel.**
- Wetlands:
 - Soil surveys indicate the site to have once been mostly wetlands that were largely filled.
 - The southern border and southwest corner are still wetlands. Stormwater is piped under the road to a low spot to an old poorly functioning manhole and then piped in another line to an open swale that runs several blocks down along Brook Drive.
- Flooding:
 - BPW has noted that the SW corner of the property has a ponding issue. The proposal calls for fill on the smaller parcel (115A) which appears to handle some of the existing stormwater flow. This parcel is proposed to be filled for the second entry and a maintenance building.
- Natural Features:
 - The plans show designing around an existing Linden Tree.
 - **Revised plans show the old stonewall that separates 115A from 117C will be retained.**
- Zoning Bylaws:
 - The site was limited to no more than 12-units and 24-bedrooms **in Condominiums** when it was rezoned in 2018.

11. CORRESPONDENCE

- 11.1 Public: Letter from Mrs. Mayer wrote a letter opposed to the project and submitted several historic maps.**