

**TOWN PLAN AND ZONING COMMISSION  
TOWN OF FAIRFIELD  
MINUTES OF MEETING – DECEMBER 8, 2020**

The Town Plan and Zoning Commission held a meeting at 6:30 p.m., on Tuesday, December 8, 2020, via teleconference, Fairfield, CT

Members Present: Matt Wagner, Chairman; Mark Corcoran, Vice Chairman; Lenny Braman, Meg Francis, Secretary; Steven Levy, Tom Noonan

Alternate Member Present: Michael DiGiacomo, Peter Elliott, Fredda Gordon

Town Department Members Present: Jim Wendt, Planning Director  
Emmeline Harrigan, Assistant Planning Director

Mr. DiGiacomo sat in place for Ms. Braun.

**Meeting Minutes** Motion was made by Mr. Corcoran, seconded by Mr. Noonan and the members present unanimously **VOTED TO APPROVE** the Meeting Minutes of November 10<sup>th</sup>, 2020.

**Organizational Meeting:**

**Election of Officers** Motion was made by Ms. Francis seconded by Mr. Braman and the members present unanimously **VOTED TO ELECT** Mr. Wagner as Chairman.

Motion was made by Mr. Noonan, seconded by Mr. Corcoran and the members present unanimously **VOTED TO ELECT** Mr. Braman as Vice Chairman.

Motion was made by Mr. Levy, seconded by Mr. Noonan and the members present unanimously **VOTED TO ELECT** Ms. Francis as Secretary.

Mr. Wagner, Mr. Braman and Ms. Francis accepted their nominations.

**Schedule of Meetings** Motion was made by Mr. Noonan, seconded by Mr. Corcoran and the members present unanimously **VOTED TO APPROVE** the **Schedule of Meetings of 2021**.

**1073 North Benson Road** Motion was made by Mr. Noonan, seconded by Mr. Corcoran and the members present unanimously **VOTED TO APPROVE** the request of Fairfield University for 100% release of a \$27,250 bond pertaining to Special Exception improvements in a AA Zone.

**386 Commerce Drive** Motion was made by Mr. Braman, seconded by Mr. Noonan and the members present unanimously **VOTED TO APPROVE** the request of Balise Motor Sales for 100% release of a \$122,805 bond pertaining to Special Exception Improvements in a DID Zone.

**1675 Post Road** Motion was made by Mr. Noonan, seconded by Mr. Levy and the members present unanimously **VOTED TO APPROVE** the request of 1675 Post Road Partners for 100% release of a \$61,550 bond pertaining to Zoning Compliance improvements in the Cent. Des. Dist.

**216 Riverside Drive** Motion was made by Mr. Levy, seconded by Mr. Noonan and the members present unanimously **VOTED TO PROVIDE A FAVORABLE RECOMMENDATION**, pursuant to Section 8-24 of the CT General Statutes, regarding the sale of Town property to the owner of 196 Riverside Drive as the additional land will make 196 Riverside a conforming lot.

**309 Barberry Road** Motion was made by Mr. Braman, seconded by Mr. Corcoran and the members unanimously **VOTED TO PROVIDE A FAVORABLE RECOMMENDATION**, pursuant to Section 8-24 of the CT General Statutes regarding Town acquisition of property as an opportunity to relocation existing uses that are housed in leased properties.

**Zoning Regulation Amendment** Motion was made by Mr. Noonan, seconded by Mr. Brannan and the members present unanimously **VOTED TO RECOMMEND TO PUBLIC HEARING** the application of Fairfield Medical, LLC to propose a new Section 12.4.29 “Inclusionary Multi-Family Residential Use with a Housing Opportunity or Workforce Housing Component”.

**4185 Black Rock Turnpike** Motion was made by Mr. Noonan, seconded by Mr. Braman and the members present unanimously **VOTED TO RECOMMEND TO PUBLIC HEARING** the Zoning Compliance application of Fairfield Medical, LLC pertaining to a 94-unit residential development pursuant to Section 8-30g of the CT General Statutes. Des. Comm. Dist.

**Zoning Regulation Amendment** Motion was made by Mr. Noonan, seconded by Mr. Corcoran and the members present unanimously **VOTED TO DENY** the application of 131 Beach Road, LLC to amend Section 5.1.4 of the Zoning Regulations of the Town of Fairfield for the following reasons:

1. The proposed amendment is inconsistent with the Plan of Conservation and Development.
2. Time, experience and responsible planning for contemporary or future conditions does not reasonably indicate the need for the proposed amendment.
3. It has not been demonstrated that the proposal is warranted and would serve the

general health, welfare and safety of the Town.

4. The proposed amendment would provide a level of development that would not serve to protect property values in the community.
5. The amendment would provide a level of development that would increase undue traffic congestion.

**131 Beach Road** Motion was made by Mr. Noonan, seconded by Ms. Francis to approve the Zoning Compliance application of 131 Beach Road, LLC pertaining to the construction of a forty unit residential building pursuant to Section 8-30g of the CT General Statutes subject to the following conditions: (1) The applicant secure the requisite permission and/or approval to remove the on-street parking spots as recommended in applicant's traffic report to create safe line-of-sight and (2) that the applicant return to commission with a revised plan for the building to be no more than 3 stories total and height not to exceed forty feet with adequate parking. The following is the collective statement of the Commission: The relevant standards are known to this commission and were adequately presented by Mr. Wendt as an introduction to this application and our executive review of it.

The Commission finds that this application as presented is unsafe with respect to the line of-sight for exiting the premises and that the application improperly and irreparably impairs the integrity of Fairfield's valuable historic district. These issues are amply supported in the record and clearly outweigh the need for affordable housing at this location as proposed by this applicant. The conditions of approval should remedy these issues.

During this hearing, we received evidence with respect to the line-of-sight (LOS) that would exist for vehicles leaving the parking lot of this proposed building, and specifically as it related to on-street parking adjacent to the driveway. The evidence that we received was contradictory.

- The applicant and his attorney argued that on-street parking in vicinity of the premises rarely occurs and would not be an issue.
- Indeed, our own town engineers wrote a letter dated 10/13/2020, which is in our record, where they state that "based on observations outside of special events, Church, funeral, etc., there have been few cars parked along this stretch of roadway."
- Other evidence contradicts these conclusions:
  - The applicant's own traffic expert recognized the LOS deficiency and recommended that a certain number of on-street, public parking spots be removed in order to obtain a safe LOS per Intersection Sight Distance.

- This Commission has relied upon the Intersection Site Distance LOS calculation to ensure and promote public safety in the past and has done so consistently for these types of applications and roadways.
- This Commission has also traditionally taken parked cars into account for similar types of roads as Beach Rd. This is substantiated by the applicant’s own traffic expert who states that his recommendation to remove the six on-street parking spaces is “based on current Town standards.”
- Our police chief has opined that he opposes the removal of any on-street parking near the premises.
- Neighbors, particularly the principal of the nearby school also provided evidence about traffic congestion, the fact that the on-street parking in the area is used and valuable, and the need to ensure that the area is safe.

The Commission finds the testimony of the police chief, school principal, and neighbors to be credible that the area suffers from high congestion at peak times and for special events such that the safe LOS are needed. We also support the recommendation of the traffic expert that removal of the on-street parking spots at issue is needed to obtain a safe LOS.

The arguments for not removing on-street parking fail for several reasons. First, if the spots are not used frequently, or are only used infrequently, why would the applicant’s own traffic expert make his recommendation? Obviously, the traffic expert felt that obtaining safe LOS warranted the removal of on-street parking, regardless of the frequency of said parking. In addition, why would our police chief testify as he did, along with the neighboring principal and neighbors?

Second, the frequency per week of on-street parking is not directly on point with what we should be considering. Rather, the important question is what the frequency of on-street parking during busy times is. The applicant’s traffic expert looks to peak hours as these are the times of heavy congestion, which are the times when issues of safety arise, not noon on a Wednesday. The principal of the school across the street objected to the application based on traffic and congestion, particularly during drop off in the morning. Safety at this time would be paramount, and proper LOS would be needed. Special events (church, funeral, town events, etc.) also would bring increased, but known congestion to the area, consistent with the area; and our police chief testified in this respect. Again, safety at this time is paramount and proper LOS would be needed. On-street parking may be limited during work or school time, but our examination is on busy times (i.e., morning and evening peak hours), and known times of congestion.

Third, the arguments for leaving on-street parking depend on existing circumstances, without considering the impact of the application and its high density. While on-site parking is in line with past proposals, the probability of on-street parking from residents of the proposed building, near the building and the driveway at issue, is high and should be expected, given the sheer scale of the proposal, and not just residents of the proposed building, but their friends and visitors. Even if one or two cars park on street (for need, convenience, etc.), it will be near the building and obstructing the line of site, creating the hazard. People park in the closest spot – and these would be the first to be taken by visitors or residents when available.

In their letter, our engineers note the CT DOT told the Engineering Dept. that “parked vehicles” on a public street should not be considered blocked objects to be included in LOS calculations. That may be appropriate for state roads, like the Post Road where there would be no on-street parking if parked cars were considered blocked objects, but that rule (as our engineers note) should not be and is not a bright-line rule. Nor should that rule be applied in this instance, on a municipal road, given the testimony and evidence presented during the hearing. The Engineering Dept. does opine that there are cases where parked cars should be considered in LOS considerations, and the applicant’s traffic expert notes that his recommendation to remove nearby on-street parking is partly due to our custom.

A quick aside about the applicant’s traffic expert during the applicant’s rebuttal. At this stage, the applicant’s traffic expert appeared to back track on his initial recommendation and supported the use of Site Stopping Distance as the preferable calculation to LOS calculation as opposed to Intersection Sight Distance (ISD). This commission and Fairfield regularly use ISD and not Site Stopping Distance. For ISD, speed and distance are calculated to determine a distance that is needed for a driver to see oncoming traffic and make a safe decision as to whether it is safe to enter the road (taking a left or right). This distance also provides drivers on the road with enough time to see a car entering the road and safely adjusting his/her driving. This calculation makes sense for municipal roads as opposed to the Site Stopping Distance, which is the distance calculated for a driver to safely stop.

In utilizing ISD, the obligation to be safe remains on both the driver entering the roadway and the drivers on the roadway. For the Site Stopping Distance, you place the onus on avoiding a collision on the drivers on the road, providing enough space for the driver to stop in order to avoid an accident. The SSD provides for less distance than ISD, and reason dictates that it is not enough distance for the driver entering the roadway to safely ascertain if he/she can enter the roadway.

The ISD calculation is appropriate for Beach Road and for this site and application, and that the ISD must be adhered to in order to ensure public safety for this site and application. Placing the obligation on drivers on Beach Road to avoid collisions from drivers exiting the site by stopping is unsafe. Both the entering driver and driver on the road must be given the needed distance in order to make safe driving decisions. In addition, if not enough room is provided to exiting drivers, then that driver is inching into

the road, more focused on drivers on Beach Road in order to exit the site at the expense of pedestrians. If for example, you are trying to take a right out of the site and inching out with your attention to your left, you may attempt a quick exit without properly looking to your right for pedestrian, cyclists, etc., particularly during the busy times of day, especially the mornings with school drop offs. These are the times when on-street parking will be in demand and when having a proper LOS will be essential for the public's safety.

So, let's re-orient back to the on-street parking. In the past, the commission has conditioned approvals on an applicant securing the removal of on-street parking. In these instances, the applicant's traffic expert makes this recommendation (which has occurred here), and the applicant agrees to the condition. The applicant signaled readiness to acquiesce to this condition of approval until public comment. The applicant is now indicating that the removal of on-street parking was a recommendation, but not needed nor can it be instituted by this commission. The applicant also indicated that this commission does not have the authority to condition its approval on securing the removal of on-street parking, as advised by its traffic expert.

We disagree with the applicant. Among other things, this commission is tasked with adjudicating whether this 8-30g application presents a public safety hazard. We find that the LOS is unsafe based on the on-street parking near the premises, and the record amply substantiates this finding. As part of our 8-30g obligations, we are obliged to find and order remediations in order to cure safety hazards if we are able. Hence, the proposed condition for the applicant to have the on-street parking removed, thereby removing this safety hazard. In reviewing the Cross Street, LLC decision, which cites to CMB Capital and Kaufman, we believe that this commission is obligated to seek remediation to safety hazards in an 8-30g application even if that means that the applicant must meet these conditions by receiving approval from another body. In Cross-Street, that applicant had to receive approval from the Traffic Authority to remove public parking spaces. In CMB Capital, that applicant had to receive approval from the applicable body regarding sewers. In Kaufman, that applicant had to receive approval to make necessary road improvements.

This case law indicates that the commission has an obligation to condition its approval on a condition needed to remediate a safety hazard, even if that requires the applicant to obtain something from another body. While we do not support the idea of losing this on-street parking based on the police chief, school principal, and neighbors' testimony, we find that the LOS is a substantial public safety hazard and removing the on-street parking as outlined by the applicant's traffic expert will remove that hazard. Therefore, we must condition approval of this 8-30g application based on the applicant securing the removal of the on-street parking as indicated by its traffic expert.

Now, on to the second condition of approval. In reviewing the evidence and case law, we find that preserving Fairfield's Historic District is a 'substantial public interest that this Commission may legally consider'. We find that this application with five stories impairs the historic district due to its height, which at five stories would be one of the

tallest buildings in Fairfield. The condition to reduce the size of the building to three stories and forty feet represents a reasonable change to the application to avoid unreasonable, irreparable and unnecessary harm to Fairfield's valued historic district. Fairfield's historic district is not an afterthought or minute aspect to our community. Fairfield values its historic district and dedicates considerable time and resources in protecting it.

The applicant admits that this building will be visible in the historic district. This visibility would vitiate the integrity of the historic district. There are nearby trees on adjacent properties that provide some screening, but those trees would not completely screen the proposed building, nor would some trees provide year-round screening. The trees are also not the applicant's responsibility, so if they fell or were cut down, there would be no mechanism to force a replacement, ignoring the fact that the replacement would need to be full grown to provide the same level of screening.

During the public comment portion, there was testimony from experts and laypeople that this building would irreparably impair the historic district, and we accept that testimony. Specifically, we had two experts testify that the building would irreparably impair the historic district: Dr. Reyman-Lock and the chair of our Historic District Commission, who is also an architect. State Senator Hwang also provided his opinion that historic considerations are a valid concern to be considered for an 8-30g application and that the building would irreparably impair the historic society. Sen. Hwang opposed construction of this proposed development as too large, and on the basis it would, as proposed, irreparably harm the historic resources of our town – he said it should be smaller. It does not take an expert to reasonably state that a 5-floor building adjacent to the historic district impairs the historic district. If constructed as proposed, this would be among the tallest residential buildings in town, second only to the TOD development adjacent to the Fairfield Metro Station. This 5-story building would remain there for the foreseeable future, along with its continual impairment of the Historic District.

The applicant did not present any testimony that the 5-story building would not impair the historic district –we repeat: the applicant did not rebut the evidence that the building would impair the historic resources of the town. The applicant knew or should have known that preservation of the historic district would be the predominant issue for this application and their failure to present evidence spoke volumes, potentially even conceding the issue. In addition, the applicant did not explicitly agree that preserving the historic district was a valid interest for 8-30g analysis, but the applicant did not contest the notion. Instead, the applicant simply noted that the premises at issue are not in the historic district, but the relevant maps demonstrate that it is adjacent to the district and therefore will impact it due to its unreasonable height.

With respect to the historic district issue, the applicant attempted to (1) discredit the experts who testified during public comment that the building would impair the historic district, and (2) argue that Fairfield will not sufficiently demonstrate to a court that it has made serious inroads to advancing its affordable housing stock. The applicant's attempt to discredit the experts lacks any merit and we find that the experts (as well as the lay

people) testified credibly that the proposed building in the application would impair the historic district.

With respect to the applicant's second point, Fairfield (and this Commission in particular) has amply demonstrated a serious commitment to affordable housing and increasing its affordable housing units. In support of its point to the contrary, the applicant cited to a Superior Court case finding that Fairfield did not demonstrate its commitment to affordable housing to affirm the denial of an 8-30g application. First, that decision was in 2017. Second, it is unclear what the record was in front of the court in rendering that decision. This commission has always respected and advanced affordable housing applications unless the applications presented valid safety concerns.

We heard from Director of Affordable Housing Committee, Mark Barnhart, who in response to some questions from the Chairman, said: M. Wagner: ... in your professional opinion, do you believe that the Town of Fairfield has taken substantial steps to meet the need for affordable housing in the community?

M. Barnhart: Yeah, one of the things that I found even at the time at which I came to work for the Town, I was impressed with the record that was before me: the Town of Fairfield did a lot of different creative things to create affordable housing opportunities here. Anywhere from doing land swaps to facilitate the development of affordable housing, to acting as a developer in self-financing the development of affordable housing units. And since that time ... as evidenced by some of the work done more recently in terms of creating the Housing Trust Fund, the Inclusionary Zoning Regulations, the Inclusionary Zoning Fee, and the like, I think [the Town] has made substantial strides in not only providing opportunities to facilitate development but actually creating those units along the way.

M. Wagner: ... whether in your opinion we have made the kind of progress necessary in order to mitigate some of the impact of a development like this. I don't think we are hearing any pushback on the type of use: affordable housing, multifamily apartment, parking, all of that. But ultimately the question that we need to address is whether we've advanced enough ... in addressing the need for affordable housing such that ... we can lawfully take into account the impact of this development on the environmental resource in the nature of the Historic District and the history that would be impacted by the development.

M. Barnhart: I will say that based that on the actions of the Town and this Commission have made to date, barring no other approvals or new developments, we are actually on a pathway to not just meet but surpass the threshold requirements for a moratorium under the statute. So as indicated there are a substantial number of units in development currently that far and away exceed the requirements of at least the initial moratorium threshold that I mentioned earlier.



During public comment, we received evidence identifying Fairfield's commitment to affordable housing by virtue of recently approved and constructed 8-30g developments, among other things. While we do not yet qualify for a moratorium, when all of the units that we have approved are constructed, we will qualify. In addition, Fairfield would be much farther along in 8-30g's perspective if the law did not arbitrarily and unreasonably preclude Fairfield's affordable housing units constructed before 1990 from its analysis. If those units (constructed before the state mandate) were considered, we would be having a different conversation.

Other evidence of Fairfield's commitment to affordable housing is its Housing Authority and our creation of an Affordable Housing Trust Fund in 2015. Under regulations we adopted in 2015, all permit fees for new construction require an additional surcharge to raise funds for the Affordable Housing Trust Fund which in turn are administered by the Affordable Housing Committee. Fairfield has raised over \$800,000 and is now in the process of purchasing land for affordable housing. Fairfield's Housing Authority has been active in our community and recently purchased and has been approved for affordable housing buildings on High Street. This commission has required the developer at the Metro Station to set aside 12% of constructed units for Affordable Housing instead of 10% per our regulations with the promise that this commission would review our current regulations to potentially match the 12% in our regulations. All Fairfield residents who speak during public hearings for 8-30g applications acknowledge the need and benefits of affordable housing. We are comfortable with Fairfield's record, both current and past, demonstrating a serious commitment to affordable housing.

Finally, three stories was selected to mirror other affordable housing development applications that this commission has approved in residential areas, to mirror existing regulations and to ensure the preservation of the historical district. Lowering the height will also reduce some density, which in turn will also reduce traffic congestion in this area, post construction, which will be safer for the residents and the community, while at the same time mitigating the impact to the town's historic resources. During rebuttal, the applicant's attorney stated in a conclusory fashion that 3 stories would not be financially feasible, and that 4 would be possible if there were less affordable units. The applicant provided no evidence to support this statement, or why three stories would not be financially feasible when three story affordable housing projects exist regularly in Fairfield. The only argument we heard was the applicant's attorney who said reduction in the scale of the building would not be feasible. No business plan was presented. We find it very hard to believe that reduction in scale to three stories or 40 feet is not possible. That is simply not credible, given the number of market rate units that would be in an apartment building of that size, especially considering the applicant will not have to abide by our other regulations concerning lot area coverage, setbacks and the like.

Further supporting the analysis is that all the 8-30g developments all over Fairfield average just over 46 units/acre in density. This is supported by the data concerning all the 8-30g developments presented by Mr. Barnhart, from the Affordable Housing Committee. The Beach Road proposal here at issue is proposed to be 40 units on .65 acres and 61.5 units/acre. Somehow, all the other developers have made it work at a

lower density. At thirty units, it would be right at the average of 46 units/acre. We see no reason in the record why thirty units (46 units/acre) in three stories at 40 feet would not be financially feasible for this developer.

In addition, there was no evidence presented as to whether a four-story building would impair the historic district. Based on the evidence at hand, we believe that four stories would be at the tops of the neighboring trees and still visible in the historic district either because it is taller than the trees, or that the trees would not screen all year – certainly four stories would be higher than the other buildings in the area.

Fairfield values affordable housing and is committed to increasing its stock. This Commission has demonstrated its commitment to affordable housing in words and conduct. Fairfield residents regularly appear in front of this Commission to voice support for affordable housing projects. Residents who oppose affordable housing projects always and credibly voice support for affordable housing and base their objections within the statutory criteria for reviewing and denying affordable housing projects.

The proposed motion to approve with the stated conditions responsibly advocates for affordable housing at this location. The stated conditions simply mitigate against an unsafe hazard, and the unreasonable, irreparable and avoidable impairment to Fairfield's valued historic district and resources.

For motion: Wagner, Corcoran, Francis, Braman, DiGiacomo, Noonan  
Against motion: Levy

**Zoning Regulation Amendment** Motion was made by Mr. Levy, seconded by Mr. Corcoran and the members present unanimously **VOTED TO TABLE** the application of the Affordable Housing Committee to amend 6.0 of the Zoning Regulations (Accessory Apartments).

**428 Old Stratfield Road** Motion was made by Mr. Levy, seconded by Mr. Noonan and the members present unanimously **VOTED TO APPROVE** the Zoning Compliance application of Fidelity St. John's Lodge #3 to establish a charitable institution use in an existing building. Neigh. Des. Dist.

## **PUBLIC HEARING**

**3135 Easton Turnpike** Special Exception application of Sacred Heart University pertaining to the construction of a hockey arena. Des. Research/R3 Zone

Atty. Bill Fitzpatrick presented this application to the Commission.

This application will be continued to be heard at a future date.

This meeting adjourned at 10:00 p.m.

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Meg Francis  
Secretary

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James R. Wendt, AICP  
Acting Clerk

