

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

BRISTOL, ss.

25 MISC 000064 (LER)

FAIRHAVEN SCHOOL COMMITTEE,

Plaintiff,

v.

PATRICK CARR, RUY DaSILVA, PEG COOK, DARYL MANCHESTER, AMY GOYER, KRISTEN RUSSELL, KATHERINE MacPHAIL, DEREK FURTADO, and BOB HANNAN as Members of the FAIRHAVEN ZONING BOARD OF APPEALS, KAREN A. VILANDRY, MAUREEN HAGAN, MOLLY SCHAEFFER, STEVEN SCHAEFFER, DANIEL JONES, AMANDA JONES, CLAIRE MILLETTE, DIANE G. TOMASSETTI, and IAN COMERFORD,

Defendants.

**MEMORANDUM OF DECISION ALLOWING
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS
& MOTION FOR DEFAULT JUDGMENT**

Plaintiff Fairhaven School Committee commenced this G.L. c. 40A, § 17 appeal through a Complaint filed on February 10, 2025, seeking to annul the January 22, 2025 decision of the Fairhaven Zoning Board of Appeals ("ZBA").^{1, 2} The ZBA's decision revoked a commercial

¹ On June 4, 2025, plaintiff filed its Amended Complaint. The Amended Complaint made no changes to the facts alleged or relief sought, instead merely correcting a misspelling of one party's name and adding an omitted necessary party.

² Plaintiff's original Complaint and Amended Complaint also sought relief in the form of declaratory judgment pursuant to G.L. c. 231A as to the enforceability of the ZBA's decision and the applicability of the provisions protecting educational land uses in G.L. c. 40A, § 3, often referred to as the "Dover Amendment." Plaintiff

building permit granted to plaintiff to build a storage facility accessory building at the Fairhaven High School, located at 12 Huttleston Avenue, Fairhaven (Bristol County), Massachusetts.

Before the court are (1) Plaintiff's Motion for Judgment on the Pleadings against the ZBA ("Motion for Judgment on the Pleadings") and (2) Plaintiff's Motion for Default Judgment against the private abutter defendants, Karen A. Vilandry, Maureen Hagan, Molly Schaeffer, Steven Schaeffer, Daniel Jones, Amanda Jones, Claire Millette, Diane G. Tomasetti, and Ian Comerford ("Motion for Default Judgment"), both filed on August 29, 2025. The Motion for Judgment on the Pleadings seeks to annul the ZBA decision, which granted the zoning enforcement appeal filed by the private party defendants and thereby revoked the commercial building permit issued to plaintiff. Counsel for the ZBA appeared in this case but declined to actively defend, leaving any defense of the ZBA decision to the proponents of the enforcement petition.³ The Motion for Default Judgment concerns the private party defendants ("Abutters"), who did not appear in this case to defend the ZBA's decision and were defaulted pursuant to Mass. R. Civ. P. 55(a) on August 8, 2025. Having failed to defend, plaintiff now moves for default judgment against the Abutters pursuant to Mass. R. Civ. P. 55(b), asserting they lacked standing to challenge the permit granted to plaintiff in the ZBA proceeding below.

Oral argument on both motions was held on October 30, 2025. After argument, the court allowed plaintiff leave to further supplement its motions. On November 26, 2025, plaintiff filed

voluntarily dismissed this count in its Memorandum of Law in Support of its Motion for Judgment on the Pleadings, p. 4 n.1.

³ On September 4, 2025, the ZBA filed a limited opposition to plaintiff's Motion for Judgment on the Pleadings only as to plaintiff's request for fees or costs against the ZBA. Counsel for the ZBA confirmed that it "is not taking an active role in this litigation and defers to the Defendant abutters on any defense of the Board's decision at issue in this appeal by the Plaintiff." Limited Opposition of Defendant Members of the Fairhaven Zoning Board of Appeals to Plaintiff's Motion for Judgment on the Pleadings, ¶ 1. In response, plaintiff filed a Notice of Withdrawal of Request for Attorneys' Fees and Costs on September 18, 2025.

its Supplemental Memorandum of Law in Support of its Motions for Judgment on the Pleadings and Default Judgment. Thereafter, the court took the pending motions under advisement. Now, for the reasons discussed below, the court ALLOWS both motions.

BACKGROUND AND FACTS

Upon a review of the pleadings and the documents relied on therein, the following facts are undisputed and relevant to the Motion for Judgment on the Pleadings and the Motion for Default Judgment.

1. On April 1, 2024, plaintiff obtained a residential building permit to construct a storage facility accessory building at the Fairhaven High School. Am. Compl. ¶ 31.
2. On May 16, 2024, the Town of Fairhaven's building commissioner issued a zoning determination finding that the storage facility did not comply with the size, height, and setback requirements set forth in the Town of Fairhaven Zoning Code ("Zoning Code"). Am. Compl. ¶ 33; Ex. B.
3. On June 18, 2024, in response to a letter from plaintiff's counsel, the building commissioner issued a formal zoning determination that the storage facility is exempt from zoning requirements because it is a structure used for educational purposes on land owned or leased by the commonwealth or any of its agencies and that requiring Plaintiff to comply with size, height, and setback requirements would not be a "reasonable regulation" within the meaning of the Dover Amendment, G.L. c. 40A § 3. Am. Compl. ¶ 35; Ex. D.
4. On September 11, 2024, the building commissioner revoked the residential building permit and requested that Plaintiff apply for a commercial building permit. Am. Compl. ¶ 36.
5. Plaintiff applied for the commercial building permit on September 20, 2024. Am. Compl. ¶ 37.
6. On October 3, 2024, after the building commissioner had revoked the residential building permit, the Abutters filed a request that the building commissioner revoke the residential building permit and enforce the Zoning Code. Am. Compl. ¶ 38; Ex. E.
7. On October 15, 2024, the building commissioner issued a commercial building permit to plaintiff. Am. Compl. ¶ 39; Ex. F.

8. That same date, October 15, 2024, the building commissioner issued a written memorandum in response to the Abutters' request, stating that the residential building permit was already revoked and that the building commissioner declined to take further zoning action at this time. The written memorandum notified the Abutters that a commercial building permit had been issued to plaintiff, though it also noted that "there is no requirement in state or local law or regulations to provide notice of building permits to abutters." Am. Compl. ¶ 40; Ex. G.
9. On October 19, 2024, the Abutters filed an appeal with the ZBA of the building commissioner's decision declining to take enforcement action. Am. Compl. ¶ 41.
10. A public hearing on the Abutters' appeal was held before the ZBA on January 7, 2025. At the hearing, the ZBA members voted to grant the Abutters' appeal and revoke the commercial building permit previously issued to plaintiff. Am. Compl. ¶ 45; Ex. I.
11. The ZBA issued a written decision memorializing the same, which was filed with the Fairhaven Town Clerk on January 22, 2025. Am. Compl. Ex. I.

DISCUSSION

Motion for Judgment on the Pleadings

1. Standard of Review

"Judgment on the pleadings under rule 12(c) lies only when the text of the pleadings produces no dispute over material facts." *Tanner v. Bd. of Appeals of Belmont*, 27 Mass. App. Ct. 1181, 1182 (1989), citing *Clarke v. Metro. Dist. Comm'n*, 11 Mass. App. Ct. 955 (1981). "[W]here a party ... fails to timely and properly deny the factual allegations of a complaint, those allegations are deemed admitted."⁴ *Fialkowski v. Baltromitis*, 103 Mass. App. Ct. 281, 287 (2023). As in a motion to dismiss pursuant to Mass. R. Civ. 12(b)(6), the court accepts as true well-pleaded factual allegations and reasonable inferences drawn therefrom, *Marram v. Kobrick*

⁴ Though defendants were not required to file an answer by G.L. c. 40A § 17, the court may nonetheless consider a motion for judgment on the pleadings where defendants have been given adequate opportunity to oppose the facts alleged in the complaint and the motion. See *Fialkowski*, 103 Mass. App. Ct. at 286. Here, where the ZBA confirmed it would not defend against plaintiff's appeal and filed only a limited opposition to Plaintiff's Motion for Judgment on the Pleadings, and the Abutters did not appear in this case despite being duly served, it is appropriate to dispose of this matter through a motion pursuant to Mass. R. Civ. P. 12(c).

Offshore Fund, Ltd., 442 Mass. 43, 45 (2004), but does "not accept legal conclusions cast in the form of factual allegations." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 633 (2008), quoting *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000); *see Jarosz v. Palmer*, 436 Mass. 526, 529-30 (2002). The court then proceeds to determine whether "the undisputed facts establish, as a legal matter, that that party is entitled to a judgment." *Morris v. Tewksbury Junction Condo. Ass'n*, 14 LCR 537, 538 (2006) (Case No. 05 MISC 310613) (Piper, J.), *aff'd* 71 Mass. App. Ct. 1103, 2008 WL 108771 (2008) (Rule 1:28 Decision), citing *Wing Mem'l Hosp. v. Dep't of Pub. Health*, 10 Mass. App. Ct. 593, 596 (1980) (where the parties completed their pleadings and no dispute of fact remained, the trial court appropriately disposed of the case by deciding the questions of law raised by the pleadings).⁵

With plaintiff's Amended Complaint unopposed and no disputes of material fact in the record, plaintiff's Rule 12(c) motion seeks to annul the ZBA's decision revoking the commercial building permit on the grounds that: (1) the Abutters lacked standing to challenge the building commissioner's issuance of the commercial building permit and denial of their enforcement request before the ZBA, and (2) plaintiff was not properly notified in accordance with legal requirements of the Abutters' appeal to the ZBA, the public hearing held by the ZBA, or the filing of the ZBA's decision with the Town Clerk.

⁵ While Rule 12(c) states that presentation of matters outside the pleadings generally requires the court to convert a motion for judgment on the pleadings to one for summary judgment, conversion is not required if the matters outside the pleadings relied upon are matters of public record or documents relied upon in the complaint. *See Town of Winchendon by and through Bd. of Selectman v. Brandywine Farms Inc.*, 26 LCR 253, 254 (2018) (Case No. 17 MISC 000332) (Foster, J.), 2018 WL 2297177 at *2 ("The court may, however, take into account matters of public record and documents integral to, referred to, or explicitly relied on in the complaint, whether or not attached, without converting the motion to a motion for summary judgment.") and cases cited; *accord Bos. Med. Ctr. Corp. v. Sec'y of Exec. Off. of Health and Hum. Servs.*, 463 Mass. 447, 450 (2012); *see also Jarosz*, 436 Mass. at 530 (2002) ("[W]e see no reason that a judge may not also consider on a rule 12(c) motion those facts of which judicial notice can be taken.").

2. Standing

"Aggrieved person status is no less a jurisdictional condition to maintaining an appeal to a board of appeal under G.L. c. 40A, § 8, than it is to maintaining judicial review under § 17."

Chongris v. Bd. of Appeals of Andover, 17 Mass. App. Ct. 999, 1000 (1984), citing *Turner v. Bd. of Appeals of Milton*, 305 Mass. 189, 192-93 (1940). "[U]nder G.L. c. 40A, §§ 8 and 13, only a 'person aggrieved' by an order or decision of an administrative official may appeal to the zoning board of appeals." *Butts v. Zoning Bd. of Appeals of Falmouth*, 18 Mass. App. Ct. 249, 253 (1984); see *Green v. Bd. of Appeals of Provincetown*, 404 Mass. 571, 573 (1989) (the word "aggrieved" is interpreted consistently throughout Chapter 40A). "[S]tanding at the zoning board of appeals level is limited solely to an analysis of whether the party has a specific and substantial interest, such that they are a 'person aggrieved' for the purposes of both G.L. c. 40A, § 8 and § 17...." *Cottone v. Cedar Lake, LLC*, 67 Mass. App. Ct. 464, 468 (2006), quoting *Newton v. Dep't of Pub. Util.*, 339 Mass. 535, 544 (1959); *81 Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline*, 461 Mass. 692, 700 (2012), quoting *Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 721 (1996) ("A 'person aggrieved' is one who 'suffers some infringement of his legal rights.'"); *Denneny v. Zoning Bd. of Appeals of Seekonk*, 59 Mass. App. Ct. 208, 212 (2003), citations omitted (the legal right or interest asserted "must be personal to the plaintiff, not merely reflective of the concerns of the community"). If a party lacks standing to pursue relief before the ZBA, the ZBA lacks jurisdiction to issue a decision granting that relief. See G.L. c. 40A, § 14 ("A board of appeals shall have the following powers: (1) To hear and decide appeals in accordance with section eight...") and § 8 ("An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved..."); *Turner*, 305 Mass. at 193 (where party seeking relief before the board of appeal was not an aggrieved person, the board did not have authority to hear the appeal); *Cottone*, 67

Mass. App. Ct. at 459 (where named defendant was the "aggrieved person" before the zoning board of appeals, the trial court had jurisdiction to hear plaintiff's appeal pursuant to G.L. c. 40A, § 17 because defendant "had the requisite standing before the board").

According to the undisputed facts set forth in plaintiff's Amended Complaint, the Abutters did not have standing as "persons aggrieved" before the ZBA because their alleged harms are only aesthetic and general in nature. Plaintiff's pleadings identify the aesthetic harms asserted by the Abutters as "the storage facility is an 'eye sore' and Huttleston Avenue is a 'drag strip.'" Am. Compl. ¶ 49. The Abutters' only other claimed harm is the alleged violation of the Zoning Code itself. The Abutters' Formal Appeals Letter⁶ to the building commissioner states that the proposed project violates certain size, height, and setback requirements of the Zoning Code as a basis for their enforcement request and questions whether the structure would be protected under the Dover Amendment, G.L. c. 40A, § 3.⁷ Compl. Ex. G. The Letter does not identify any individualized harms the Abutters might suffer from the construction of the storage facility at the high school, nor does it explain how they are collectively or individually aggrieved by the alleged dimensional zoning violations. Similarly, the decision issued by the ZBA finds only that the proposed project would violate height and size restrictions set forth in the Zoning Code and that granting a "variance" would not comport with neighborhood character.⁸ Compl.

⁶ While the Abutters did not need to show aggrievement when making an enforcement request to the building commissioner, G.L. c. 40A, § 7, the Letter is the only source in the record of the Abutters' claimed harms and reasons for pursuing the enforcement request and subsequent appeal.

⁷ The court notes that the building commissioner had issued a zoning determination on June 18, 2024 that applying the Fairhaven Zoning Code's dimensional regulations to the accessory storage facility would conflict with the protections of the Dover Amendment, G.L. c. 40A § 3.

⁸ Despite the references in the ZBA decision to an "Approval of Variance# ZBA-024-021," the record does not disclose that Plaintiff ever applied for a variance or that they were required to. *See Campbell v. City Council of*

Ex. I. The decision recites no basis or finding that the Abutters were persons aggrieved with standing to bring their appeal before the ZBA.

To be aggrieved, "a person must suffer 'some infringement of his legal rights.'" ¹

Murchison v. Zoning Bd. of Appeals of Sherborn, 485 Mass. 209, 213 (2020), quoting *Sweenie v. A.L. Prime Energy Consultants*, 451 Mass. 539, 543 (2008). "The aggrievement must be more than 'minimal or slightly appreciable,' and the right or interest asserted must be 'one that G. L. c. 40A is intended to protect.'" *Id.*, quoting *Kenner v. Zoning Bd. of Appeals of Chatham*, 459 Mass. 115, 120-21 (2011). "Generally speaking, concerns about the visual impact of a proposed structure on an abutting property are insufficient to confer standing." *Kenner*, 459 Mass. at 120. Moreover, a "general civic interest in the enforcement of zoning laws is not enough to confer standing." *Denneny*, 59 Mass. App. Ct. at 215 (citation modified), quoting *Harvard Square Def. Fund, Inc. v. Plan. Bd. of Cambridge*, 27 Mass. App. Ct. 491, 495-96 (1989); *accord Owens v. Bd. of Appeals of Belmont*, 11 Mass. App. Ct. 994, 995 (1981), quoting *Waltham Motor Inn, Inc. v. LaCava*, 3 Mass. App. Ct. 210, 218 (1975) (citation modified) (plaintiffs who challenged the ZBA decision "had nothing more than 'a general civic interest in the enforcement of the zoning ordinance,' and, as a result, were not 'persons aggrieved' within the meaning of G.L. c. 40A, § 17.").

The alleged harms of the Abutters, to the extent any can be discerned from the record, are not the type of interests protected by G.L. c. 40A or the Fairhaven Zoning Code and do not threaten any injury special and different to the Abutters from the rest of the community. The undisputed material facts show that the Abutters were not "persons aggrieved" and therefore did

¹ *Lynn*, 415 Mass. 772, 779 (1993) (where proposed structure was for educational use within the meaning of the Dover Amendment, "the owners cannot be compelled to seek a variance in order to have their educational use").

not have standing to appeal to the ZBA under G.L. c. 40A, § 8. As a result, the ZBA did not have jurisdiction to render its decision granting their appeal and revoking plaintiff's commercial building permit. The Abutters "had no right to file [the appeal] and the board had no authority to hear it." *Turner*, 305 Mass. at 193. On this basis, the ZBA's decision "exceeds the authority of the board" and must be annulled. G.L. c. 40A, § 17.

3. Notice

Plaintiff also asserts it is entitled to judgment on the pleadings because the ZBA's decision is procedurally defective. Plaintiff argues the ZBA "failed to provide notice to Plaintiff of the filing of the Abutters' appeal, failed to provide notice of the hearing scheduled on the Abutters' appeal, and ... also failed to provide the Plaintiff with notice of its Decision being filed with the Town Clerk." Motion for Judgment on the Pleadings, p. 7. However, plaintiff's pleadings do not contain facts sufficient for the court to enter judgment on these grounds. Paragraphs 53 and 54 of the Amended Complaint contain the only references to plaintiff not receiving notice, and read as follows:

53. The board erred in failing to provide the requisite notice to parties in interest, namely, the School Committee, once the hearing was scheduled on the Application.

54. The Board erred in failing to provide notice to the parties in interest, namely, the School Committee, of its Decision being filed with the Town Clerk.

These, however, are legal conclusions unsupported by specific allegations of what the ZBA did or did not do and what, if any, prejudice plaintiff suffered. *See Cubberley v. Commerce Ins. Co.*, 395 Mass. 289, 292-93 (2025), quoting *Leavitt v. Brockton Hosp., Inc.*, 454 Mass. 37, 39 n.6 (2009) ("Well-pleaded facts do not include '[l]egal conclusions cast in the form of factual allegations.'"). Sufficiency of notice is in part a question of fact. *See, e.g., Allegaert v. Harbor*

View Hotel Owner LLC, 100 Mass. App. Ct. 483, 489 (2021) ("It bears mention that not all defects in notice, even defects in notice by mail, require a new hearing by the board."); *Kasper v. Bd. of Appeals of Watertown*, 3 Mass. App. Ct. 251, 257-58 (1975) (declining to find that a zoning board of appeal's decision was defective where plaintiff was not prejudiced by the defective notice).

Accordingly, the court cannot find on this record, as a matter of law, that the ZBA's decision was procedurally defective for lack of notice to plaintiff.

Motion for Default Judgment

The Abutters failed to timely appear, answer, or otherwise defend after being duly served with plaintiff's Complaint and Amended Complaint. They were accordingly defaulted pursuant to Mass. R. Civ. P. 55(a). Plaintiff's Motion for Default Judgment against the Abutters relies on the same undisputed facts underlying plaintiff's Motion for Judgment on the Pleadings against the ZBA. Because the court has found herein that the Abutters lacked standing to appeal under G.L. c. 40A, § 8, and that the ZBA's decision revoking the commercial building permit exceeded its authority and must be annulled, the court finds that plaintiff has also shown its entitlement to a default judgment against the Abutters.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Judgment on the Pleadings and Motion for Default Judgment are **ALLOWED**.

Judgment to enter accordingly.

By the Court (Reznick, J.)

/s/ Lauren E. Reznick

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson, Recorder

Dated: December 29, 2025

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

BRISTOL, ss.

25 MISC 000064 (LER)

FAIRHAVEN SCHOOL COMMITTEE,

Plaintiff,

v.

PATRICK CARR, RUY DaSILVA, PEG COOK, DARYL MANCHESTER, AMY GOYER, KRISTEN RUSSELL, KATHERINE MacPHAIL, DEREK FURTADO, and BOB HANNAN as Members of the FAIRHAVEN ZONING BOARD OF APPEALS, KAREN A. VILANDRY, MAUREEN HAGAN, MOLLY SCHAEFFER, STEVEN SCHAEFFER, DANIEL JONES, AMANDA JONES, CLAIRE MILLETTE, DIANE G. TOUASSETTI, and IAN COMERFORD,

Defendants.

JUDGMENT

Pursuant to the Memorandum of Decision Allowing Plaintiff's Motion for Judgment on the Pleadings & Motion for Default Judgment issued December 29, 2025, it is hereby

ADJUDGED that the private abutter defendants Karen A. Vilandry, Maureen Hagan, Molly Schaeffer, Steven Schaeffer, Daniel Jones, Amanda Jones, Claire Millette, Diane G. Tomasetti, and Ian Comerford did not have standing as persons aggrieved to appeal the Town of Fairhaven building commissioner's denial of their enforcement request to the Fairhaven Zoning Board of Appeals pursuant to G.L. c. 40A, § 8. It is further

ORDERED and **ADJUDGED** that the decision issued by the Fairhaven Zoning Board of Appeals and filed with the Fairhaven Town Clerk on January 22, 2025, which granted an appeal brought by the private abutter defendants and revoked the commercial building permit issued to the Fairhaven School Committee on October 15, 2024 (Permit #C-24-0738) exceeded the ZBA's authority. It is further

ORDERED, ADJUDGED, and DECLARED that the decision issued by the Fairhaven Zoning Board of Appeals and filed with the Fairhaven Town Clerk on January 22, 2025 is annulled and declared invalid and of no force and effect. It is further

ORDERED and ADJUDGED that the commercial building permit issued to the Fairhaven School Committee on October 15, 2024 (Permit #C-24-0738) shall be reinstated and any cease-and-desist order issued pursuant to the January 22, 2025 ZBA decision shall be withdrawn and have no further force and effect. It is further

ORDERED that this Judgment disposes of the entire case, and no further relief, and no costs, fees, damages, awards or other sums, are awarded to any party.

SO ORDERED.

By the Court (Reznick, J.)
/s/ Lauren E. Reznick

Attest: /s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: December 29, 2025