



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

November 20, 2023 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Art Hultin; Nancy Medoff; Dave Crocker (Alt.); Joe McKinnon (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Emily Beebe – Health and Conservation Agent; Christopher J. Snow (Attorney and Applicant); William Rogers (Representative for Christopher J. Snow – Applicant); Gary Locke (Project Engineer for Christopher J. Snow – Applicant); Paul Shea (Environmental Consultant and Representative for Christopher J. Snow – Applicant); Sally McSween (Condominium Association Representative); Ben Zehnder (Attorney for Abutters – Marie Belding and Pat Callinan); Marie Belding (Abutter to 538 Shore Road-Ebb Tide); Pat Callinan (Abutter to 538 Shore Road-Ebb Tide); Ronald Slowek (Representative for Highland Builders and J. Michael Roffi - Applicant); Elizabeth Gracia (Truro Resident); Paul Silvernail (Truro Resident)

Remote meeting convened at 5:30 pm, Monday, November 20, 2023, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Chair Lucy then announced that the review and vote on the ZBA minutes would occur at the end of the meeting.

Public Hearing (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that included in the Members' packets were comments from the Abutters.

Attorney Snow provided background information and an update on the proposed project regarding the amended Variance. Attorney Snow noted that the Planning Board, Board of Health, and the Conservation Commission had approved the project.

Town Planner/Land Use Counsel Carboni confirmed with Attorney Snow that the date of the revised plans were submitted on October 23, 2023, and were included in this evening's packet for the Members.

Attorney Snow then addressed the need for a requested amended Variance and provided additional background information. Attorney Snow noted that this request was driven to protect the property due to the soil conditions and topography of the land. Attorney Snow said there were no dangers identified in the parking lot area and that the right of way to the beach cannot be obstructed. Attorney Snow added that all of the parking required by the Zoning Bylaw can be accommodated without incident or danger to public safety. Attorney Snow concluded that if the variance was not granted that it could result in adversely impact the erosion of the shoreline. Attorney Snow implored the Members to grant the requested variance in order to meet the Conservation Commission's order of conditions and to prevent a loss of this property as well as the abutting properties along Beach Point.

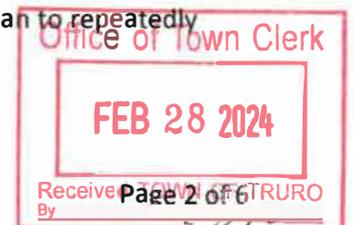
Members commented and discussed with the Applicant's representatives and Health and Conservation Agent Beebe the following highlighted topics: the proposed project appears to have substantially increased the size of each condominium instead of living with what existed, the project would increase the nonconformity of the property, the issue of reducing the number of parking spaces from 12 to 8, what is deeded with each unit in terms of parking, the previously denied request for a seawall and the lack of a retaining wall around the property to preserve the sand and stop the erosion, what is the trigger that results in the sand being replaced, the need to reconstruct the coastal dune to protect this property and the neighborhood, the previous proposal of a seawall on a coastal dune was unpopular and would not be permitted by regulation, and the granting of the variance would reduce financial hardship of all parties.

Chair Lucy recognized the following members of the public who commented on this topic: Ms. Belding, Ms. Callinan, Ms. Gracia, Mr. Silvernail, and Ms. McSween.

Chair Lucy recognized Attorney Zehnder who noted that the presentation by Attorney Snow suggested that this variance was necessary to provide environmental protection of the property. The additional square footage of the living area and reducing the number of parking spots were not necessary for the environmental protection of the property. Attorney Snow responded that the variance was necessary.

Attorney Snow provided background information and an update on the proposed project regarding the Special Permit. Attorney Snow noted that granting this Special Permit would result in a project that would be more environmentally sensitive, conform to environmental requirements, and the project would promote the health, safety, and welfare of the inhabitants residing on the waterfront property. Attorney Snow reminded the Members that the Planning Board, Board of Health, and the Conservation Commission had approved the project. Attorney Snow said that Police Chief Jamie Calise and Fire Chief Tim Collins supported the project.

Members commented and discussed with the Applicant's representatives, Town Planner/Land Use Counsel Carboni, and Health and Conservation Agent Beebe the following highlighted topics: the project's detriment to the neighborhood specifically in regard to pile driving and the associated vibration impact, the demolition of existing structures, the project is not considered new construction, cross-bracing under Building 1 does not allow parking under the building, and the plan to repeatedly rebuild the dune in the same way as the dune still erodes.



Attorney Zehnder commented that this case was about the Applicant increasing the nonconforming nature of the structures to add second floors to two of the three buildings and almost doubling the size of those buildings. Attorney Zehnder noted that it was not necessary to add these second floors and it intensified the scale and massing of Beach Point which was more detrimental to the neighborhood. Attorney Zehnder also asked that the Applicant provide data regarding the impact of using helios screws instead of pile driving and the impact of vibrations on the soil. In a previous case, Attorney Zehnder noted that the Planning Board did not provide a comparison report with such requested information. Attorney Snow said that the information was provided in the previous case and that there is no provision in the Zoning bylaw in regard to the theory of intensification.

Chair Lucy recognized Ms. Callinan who commented on this topic.

Chair Lucy stated that he would entertain a motion to close the public comment on this hearing and announced that the five Members voting on this matter would be Chair Lucy, Vice Chair Shedd, Member Hultin, Member Medoff, and Member Crocker.

Vice Chair Shedd made a motion to close the public comment in this hearing and move into deliberations.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Following the vote, the Members deliberated on the matter with input from Town Planner/Land Use Counsel Member Carboni.

Member Hultin made a motion that in the matter of 2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232), the Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8), and approve the Variance to include the following findings in accordance with M.G.L. Chapter 40A, Section 10, [1] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, [2] a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and [3] that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Member Medoff seconded the motion.

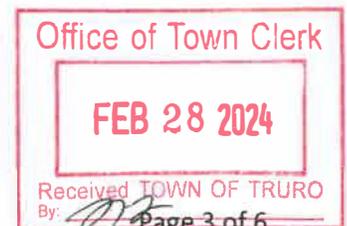
Chair Lucy and the Members reviewed the findings of this matter as required in M.G.L. Ch. 40A §10

ROLL CALL VOTE:

Vice Chair Shedd – Nay

Member Hultin – Aye

Member Crocker - Aye





Member Medoff - Aye
Chair Lucy - Aye
So voted, 4-1-0, motion carries.

Member Hultin made a motion that in the matter of 2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums that seeks a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District and that a Special Permit be granted with the included findings that the proposed alteration or extension will not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood and the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw.

Member Crocker seconded the motion.

Chair Lucy and the Members further discussed factors which may have been detrimental to the neighborhood and factors as to why they may oppose the Special Permit such as an increase in the gross floor area of Building 1 (from 883 square feet to 1,681 square feet) and Building 2 (from 578 square feet to 1,040 square feet) and a decrease in the gross floor area in Building 3 (from 2,016 square feet to 1,917 square feet).

NOTE: No full vote was taken on this motion.

After this discussion referenced above, Chair Lucy, after a legal opinion from Town Planner/Land Use Counsel Carboni, asked Attorney Snow if he would like to return at another date after hearing the comments from the Members. Attorney Snow said that he was dismayed by the comments of the Members and that his clients have spent \$300,000 in permit fees over the last five years. Attorney Snow asked the Members for compassion as this will create an additional financial hardship for his clients and some will likely declare bankruptcy. Attorney Snow said that he was able to come to the next meeting on December 18, 2023 and report back if the clients were willing to change anything to the proposed project. Attorney Zehnder asked to comment on the comments made by Attorney Snow and Chair Lucy ruled that the public comment portion of the hearing was closed.

Member Hultin made a motion to continue the matter of 2022-017/ZBA (SP) to December 18, 2023.
Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Public Hearing (New)

2023-010/ZBA - J. Michael Roffi for property located at 5 Highland Avenue (Atlas Map 22, Parcel 33). Applicant seeks a Special Permit and/or Variance for construction of an addition to a dwelling on a nonconforming lot in the residential district.

Chair Lucy recognized Mr. Slowek who provided background information and the proposed project. There were no objections stated by the Members to the proposed project.

Chair Lucy asked if any members of the public wanted to comment on the project and there were none.

Vice Chair Shedd made a motion that in the matter of 2023-010/ZBA that a Special Permit be granted with the included findings that the proposed alteration or extension will not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood and the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member McKinnon - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Minutes

Chair Lucy led the review of the minutes of September 25, 2023, for corrections and there were none.

Vice Chair Shedd made a motion to approve the minutes of September 25, 2023 as written.

Member Hultin seconded the motion.

ROLL CALL VOTE

Vice Chair Shedd – Aye

Member Hultin – Aye

Member McKinnon – Aye

Chair Lucy – Aye

So voted, 4-0-0, motion carries.

Chair Lucy led the review of the minutes of October 23, 2023, for corrections and there were none.

Vice Chair Shedd made a motion to approve the minutes of October 23, 2023 as written.

Member Medoff seconded the motion.

ROLL CALL VOTE

Vice Chair Shedd – Aye

Member Medoff – Aye

Member Hultin – Aye

Member Crocker – Aye

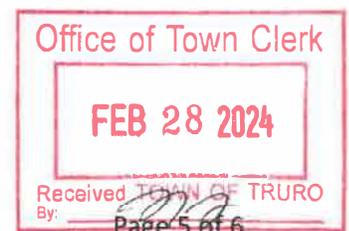
Chair Lucy – Aye

So voted, 5-0-0, motion carries.

Chair Lucy reviewed the agenda with the Members and Town Planner/Land Use Counsel Carboni for the next meeting on December 18, 2023 at 5:30 pm.

Member Hultin made a motion to adjourn at 8:30 pm.

Member Medoff seconded the motion.



ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker – Aye

Member Medoff – Aye

Member McKinnon - Aye

Chair Lucy - Aye

So voted, 6-0-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

