

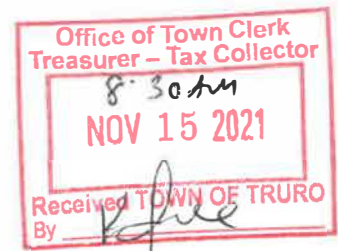


TOWN OF TRURO

PLANNING BOARD

Meeting Minutes

October 21, 2020 – 6:00 pm
REMOTE PLANNING BOARD MEETING



Members Present (Quorum): Anne Greenbaum (Chair); Karen Tosh (Vice Chair); Jack Riemer (Clerk); Steve Sollog; Paul Kiernan; R. Bruce Boleyn

Members Absent: Peter Herridge

Other Participants: Barbara Carboni – Interim Town Planner and Counsel; Liz Sturdy – Truro Office Assistant; William J. Marsh – Applicant; Trevor Pontbriand – Architect at Aline Architecture and for William J. Marsh; Joseph M. Schirmer – Applicant; John O'Reilly – Owner of J.M. O'Reilly and Associates and civil engineer for Joseph M. Schirmer; Daniel F. Roche, Jr. – Applicant; Patrick Coffey – Owner of Pratt Construction and builder for Daniel F. Roche, Jr.; Fred Gaechter – President of the Truro Conservation Trust; Ben Zehnder – Attorney and representative for Samantha Perry; Don Poole – Land surveyor from Outermost Land Survey and representative for Samantha Perry

Remote meeting convened at 6:02 pm, Wednesday, October 21, 2020, by Chair Greenbaum who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Interim Town Planner Carboni also provided information as to how the public may call into the meeting or provide written comment.

Public Comment Period

Public comment, for things not on the agenda, and there were none. Truro Office Assistant Sturdy announced that Caller #5 was on the call and identified himself as Joe Schirmer who was only interested in 2020-001/PB (on tonight's agenda) and not in public comment. Chair Greenbaum asked Cheryl (Perry) Costa if she wanted to provide public comment or interested in an agenda item. Ms. Costa stated that she was on the agenda.

Public Hearing – Continued

2020-003/SPR – William J. Marsh for property located at 30 Longnook Road, Truro, MA (Atlas Map 43, Parcel 121, Registry of Deeds title reference: Book 32127, Page 302). Applicant seeks a residential Site Plan Review under Section 70 of the Truro Zoning Bylaw for the purpose of demolition and reconstruction of a pre-existing single-family residence that slightly enlarged footprint in the Seashore District. Chair Greenbaum noted that this was a continued hearing that was opened at the Planning Board's last meeting. Interim Town Planner Carboni cited her staff memorandum and provided the conditions set by the ZBA when they considered special permit. The special permit has not been approved but the Planning Board wanted an update from the applicant on National Heritage and Endangered Species Program (NHESP) concerns and Interim Town Planner Carboni noted that the applicant had provided correspondence late this afternoon which addresses those concerns. Additionally, the applicant did add a couple of items requested by the ZBA showing the limited work on

the site plan. Chair Greenbaum asked Mr. Marsh and Mr. Pontbriand if they had anything else to add or say. Mr. Pontbriand stated that he had submitted everything requested by the Board and he was ready to answer any additional questions. Chair Greenbaum asked the Members if they were satisfied with the materials which they had received or had any additional questions. Member Kiernan commented that the application was complete.

Vice Chair Tosh made a motion to approve the application.

Member Riemer seconded the motion.

So voted, 6-0-1, motion carries.

Mr. Marsh and Mr. Pontbriand thanked the Planning Board and left the meeting.

Vice Chair Tosh announced that she would recuse herself in the matter of **2020-001/PB** as she is a Trustee of the Truro Conservation Trust so she would not comment or vote on the application.

2020-001/PB – Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer seek a Definitive Subdivision Plan of Land for that property pursuant to G.L. c. 41, §81L and §2.5 of the Town of Truro Rules and Regulations Governing Subdivision of Land for property located at Route 6 and Amity Lane, Truro, MA, Map 46, Parcel 8, containing 6.66 acres. Chair Greenbaum noted that this was a continuation of a preliminary hearing held previously. Mr. O'Reilly stated that on August 5, 2020, the Board gave preliminary approval for the application and that final approval would be granted in this hearing. Chair Greenbaum announced that a vote for final approval would not be this evening as to give the public time to provide comment on the application in accordance with the Board's remote meeting policy. Mr. O'Reilly further added that the application consisted of a completed Form C, a copy of the Definitive Plan, the Topography Plan, a plan submitted to the Board of Health showing the potential wells and septic system for the lots being requested and to be created, a Review checklist, a deed, a property ownership record, a Certified Abutters List including a list of certified mailed letters to the abutters. As part of the Board's preliminary approval, Mr. O'Reilly stated that eleven trees were identified for removal to improve access and those trees were removed and confirmed by the Fire Chief via letter and email. Amity Lane currently services three properties 1, 5, and 7 Amity Lane. The applicants seek a waiver from all construction of the way being created on Amity Lane including drainage, but the applicants will retain ownership of the way to provide easement to the Truro Conservation Trust for access to Lots #4 and #5. Lot #3 has about 73,000 square feet with more than 150' of frontage as required under the bylaw. Lot #4 has an area of approximately 184,000 square feet with a small piece of wetland. Lot #5 is an unbuildable lot and was identified on the plan. Mr. O'Reilly stated that the Board of Health has reviewed and approved the subdivision regarding their role. Mr. O'Reilly added that the Conservation Commission and Select Board have reviewed the CR that will go to the Trust. Mr. O'Reilly concluded his presentation and Chair Greenbaum thanked him for being so thorough. Chair Greenbaum then asked Mr. Gaechter for comment. Mr. Gaechter stated once the subdivision is approved that regarding Lots #4 and #5 will be conveyed by deed to the Truro Conservation Trust and in the deed, there will be a restriction to permanently restrict any development or sale of the property in perpetuity. Mr. Gaechter commented that there will be never any development, construction, and it can never be sold by the Truro Conservation Trust so it will remain open space in perpetuity. Mr. Gaechter added that there will be a conservation restriction overseen by the Compact of Cape Cod Conservation Trust to ensure the conditions of the deed are enforced. Chair Greenbaum thanked Mr. Gaechter for his concise summation and asked the Board if any items on the checklist not included. Member Kiernan asked Mr. Gaechter if there are any guarantees that Lot #4 will not be built upon. Mr. Gaechter stated that there will be no sale, yet he can't provide any written guarantee. Member Kiernan asked Interim Town

Planner Carboni for her opinion who stated that she will determine an answer before the next meeting. Vice Chair Tosh, speaking as a Trustee of the Truro Conservation Trust, opined that the solution is to get the Schirmer family and the Truro Conservation Trust to enter an enforceable pledge agreement and she is willing to work with both parties. Interim Town Planner Carboni stated that is the path to pursue and Mr. Gaechter said that he is happy to enter this enforceable pledge agreement. Member Kiernan cited that there are no restrictions regarding to the road and Chair Greenbaum stated that is about a waiver and that will be discussed later. Member Kiernan also noted that there is not a proposed name for the road. Chair Greenbaum summarized that there is a subdivision waiver for the move of two lots to the Truro Conservation Trust and there would be language if there was any development of Lot #4 that the way would have to be built to code and Amity Lane would have to be improved. Mr. O'Reilly confirmed to Chair Greenbaum that those were the conditions to which the Schirmer family agreed. Interim Town Planner Carboni provided her synopsis that included that there was not intent to develop Lot #4 yet there is language in the Board's preliminary approval that suggests otherwise. Interim Town Planner Carboni further opined that additional information regarding to road surface should be provided to the Board. Chair Greenbaum suggested that if there is additional information required for roadways that the Board is not okay with the concept. Member Sollog commented that he agreed with Member Kiernan to have roads conform and that the enforceable pledge agreement is the way to go. Member Sollog is not dissatisfied with the plan. Member Riemer pointed out that the September 8, 2020 Definitive Plan application letter indicated that the applicants are seeking to not construct a road and that Lot #3 would be retained by the Schirmer family. Member Riemer added that this could be a problem later, yet he appreciated the applicants' efforts. Member Boleyn stated that he had no comment. Chair Greenbaum thanked the Members for their attention to safety and making sure that the Planning Board does not do something that sets up future problems. Chair Greenbaum added that the concern is that if there is building on Lot #4 and if there is a need to move Amity Lane and create a "Paper Way" is it doable? Chair Greenbaum rephrased the question by asking if the Board is satisfied with the document Interim Town Planner Carboni, Vice Chair Tosh, and Mr. Gaechter create to ensure that there will never be a building on Lot #4 would the Board be concerned about the "Paper Way"? Member Kiernan noted that for Lot #3 that the plans stated that it will have frontage along the unnamed way and Amity Way. Member Kiernan cautioned that the bylaw requires lot frontage is measured continuously along one street. Member Kiernan asked Mr. O'Reilly where the Lot #3 get its frontage and Mr. O'Reilly answered that it gets its frontage from Amity Lane and the unnamed way. Chair Greenbaum noted the frontage issue and asked Members for their input and concerns. Member Riemer expressed concern over the potential subdivision of Lot #3 that would require frontage from the "Paper Way" and Chair Greenbaum thanked him for his input. Member Boleyn stated that he had nothing to add at this time. Chair Greenbaum then asked the applicants if they wished to speak to concerns about frontage or subdivision. Mr. O'Reilly replied and reaffirmed that Lot #3 does indeed get its frontage from Amity Lane and the way. Mr. O'Reilly added that the Amity frontage is 137.09' and the frontage on the way is 292.58' so it meets the definition. Mr. O'Reilly further stated that regarding future subdivision of Lot #3, a preliminary plan did show Lot #3 as four lots being created and currently it is two lots. Mr. O'Reilly commented that in the Definitive Plan that condition #2, required by the Planning Board, stated that *"any further subdivision of land depicted on this plan, or division of such land, pursuant to G.L. C41, S 81P, shall require a modification of this Subdivision Plan"* and this condition addresses any concerns as to the subdivision of Lot #3. Chair Greenbaum thanked Mr. O'Reilly and asked Interim Town Planner Carboni for her input. Interim Town Planner Carboni said that she was satisfied with the subdivision condition and that the applicants would have to return to the Board to request any other changes. Member Riemer added that a "Paper Way" doesn't include what the road profile or grade it would be or would it require a ZBA waiver, so he is concerned about pushing this issue for a later decision. Chair Greenbaum said she was comfortable with the subdivision conditions of Lot #3 and that she

understands the concerns about the "Paper Way". Chair Greenbaum noted that Lots #4 and #5 are being donated to the Truro Conservation Trust and that her concern is very low, yet she also felt that if there was no "Paper Way" that there would be no donation to the Truro Conservation Trust. Chair Greenbaum asked Mr. Schirmer for his input. Mr. Schirmer stated that the "Paper Way" is constructed to increase the value of Lot #4 and serves as a more favorable tax deduction for the Schirmer family in the transfer of the land to the Truro Conservation Trust. Mr. Schirmer further stated that without "Paper Way" the value of the land would be financially diminished but with the approval of a "Paper Way" it would make the lot a buildable lot and thus increase its value. Mr. Schirmer reiterated that the family will not build on the land and will transfer the land to the Truro Conservation Trust to preserve the open land in perpetuity. Chair Greenbaum thanked him for his honesty and the family's generosity of this gift. Chair Greenbaum asked the Board for any other questions or concerns. Member Kiernan thanked the Schirmer family for their donation and his concern is the unintended consequences on Lot #3. Member Kiernan cited a court case from Truro, Landreth v. Truro Zoning Board of Appeals, so he recommended that this issues regarding Lot #3 be resolved today. Chair Greenbaum didn't want to address new issues at the next meeting so Interim Town Planner Carboni told the Board that she would be happy to discuss the concerns later in a meeting with Mr. O'Reilly. Mr. O'Reilly agreed to meet with Interim Town Planner Carboni prior to next week's meeting. Mr. O'Reilly asked the Board if it was going to require a road profile to show that it can be built before the next meeting as the closing transfer to the Truro Conservation Trust is set for mid-December 2020. Member Riemer commented that the road profile may need to include a retaining wall to support the turnaround. Chair Greenbaum said that if the Board was going to require the construction of a way that is not intended to be built at this time the Schirmer family assumed all the risk. Member Riemer observed that it seems along with the conservation of the rural environment it seems predictable that the Board will see the next stage subdivision of Lot #3 as part of the master plan. Chair Greenbaum stated that if that came before the Board there would be nothing to prevent the Board from requiring the roadway plans before delivering a decision. Member Kiernan cited bylaw that required 40' width and a turnaround and noted that Amity Lane had an 80' circle but not a turnaround. Member Kiernan asked Interim Town Planner Carboni if there must be a turnaround and she replied that in the interest in gaining the benefit of Lots #4 and #5 the Planning Board may approve the subdivision of Lot #3 with appropriate conditions. Member Riemer is still very uncomfortable with approving a plan with a "Paper Way". Mr. O'Reilly asked if the consensus of the full Board was for him to submit a road plan and profile since he doesn't want to create the situation for another continuance of the application at the next meeting. Member Kiernan, Member Boleyn, Member Riemer stated that they want the submission of the road plan and profile for a way that won't be constructed. Mr. Zehnder stated that in his thirty years of practicing law that it is inconceivable that the Planning Board require a road plan and profile at significant expense for the Schirmer family for a road that will not be constructed during a generous land donation to the Truro Conservation Trust. Chair Greenbaum thanked Mr. Zehnder for his input. Chair Greenbaum asked Mr. O'Reilly to come back with a good explanation of how he can have frontage without using the way. Mr. O'Reilly stated that he can't without using a portion of the rounding of the way. Chair Greenbaum commented that she felt very uncomfortable making the applicant provide a road plan and profile as there is a fail-safe in the conditions. Mr. Schirmer commented that it would be incumbent for the Board to consider that a road plan and profile would be appropriate at the time when the Lot #3 is subdivided. Member Kiernan and Member Riemer stated that they still want the road plan and profile. Mr. Schirmer said that they would not provide a road plan and profile but will provide a statement later. Mr. Schirmer also stated that this process has been going on a year and that the Planning Board needs to render a decision.

Member Kiernan made a motion to continue this hearing on Wednesday, November 4, 2020, at 5 pm.
Member Boleyn seconded the motion.
So voted, 5-0-2, motion carries.

Mr. O'Reilly thanked the Board and he and Mr. Schirmer left the meeting.

2020-004/SPR – Daniel F. Roche, Jr. seeks a Residential Site Plan Review for a 2-story addition to an existing 3,018 net square foot residence in the Seashore District containing three acres for property located at 7 Coast Guard Road, Truro, MA (Atlas Map 34, Parcel 5, Registry of Deeds title reference: Book 13174, Page 177). Mr. Coffey identified himself as a representative for Mr. Roche, Jr. Mr. Coffey confirmed that the first floor will consist of a new family room, hallway, and entry door. The second-floor sum is 687.5 square feet consisting of a bedroom, bathroom, and hallway. The total square footage of the addition is 1,429.34 square feet which is under the maximum that the Board can grant and is about 5% below the maximum square footage allowed. Mr. Coffey stated that the addition won't be visible from the road and can only be seen from the air. Chair Greenbaum announced that in accordance with the Town's remote hearing policy the Board will not vote on this application tonight to give the public ample time to comment on the application. Interim Town Planner Carboni identified several deficiencies in the application to include the site plan that doesn't include the dimensions of the structures and setbacks on the property and the sewage and septic plan was inadequate. Interim Town Planner Carboni further opined that the zoning table was incomplete as it didn't specify whether the gross floor area included the house and cottage as well as the total square footage of the structures were not included. Interim Town Planner Carboni also stated that the Board may want more detail on the new parking area. Chair Greenbaum asked the Members for their input. No comments or concerns provided. Chair Greenbaum reconfirmed details of the existing structure of 3,018 net square feet with Mr. Coffey yet it doesn't include the covered porch. Chair Greenbaum asked Mr. Coffey to add detail and more information to the Site Plan and he agreed to provide it by the next Board meeting. Mr. Coffey stated that the cottage predates the zoning as it is a 1960s structure and does not have cooking facilities. Interim Town Planner Carboni asked the applicant to clarify if he was relying on the square footage from the assessor or if he did his own measurements. Mr. Coffey stated that he used his own measurements. Member Kiernan suggested that the applicant ensure that the cottage was the square footage, yet they may need a septic plan required by the ZBA. Member Kiernan also stated that the Board should ask for more specifics for the parking so it will make the approval process quicker. Chair Greenbaum also told Mr. Coffey that he will have to address National Heritage and Endangered Species Program (NHESP) requirements as well. Interim Town Planner Carboni informed Mr. Coffey as to the process for contacting the program administrator. Interim Town Planner Carboni also asked Mr. Coffey for more elevation information per floor (existing and proposed) on the application. Member Riemer thanked Interim Town Planner Carboni for her detailed review of the application. Member Riemer, Member Boleyn and Member Kiernan were in favor of existing and proposed elevations as suggested by Interim Town Planner Carboni. Vice Chair Tosh and Member Sollog were in favor of proposed elevation only. Chair Greenbaum was in favor of existing and proposed elevations. Mr. Coffey stated that it was plausible to get this information by the next meeting but didn't guarantee it. Chair Greenbaum asked Mr. Coffey to return to the next meeting in two weeks with the information requested.

Member Kiernan made a motion to continue this hearing on Wednesday, November 4, 2020, at 5 pm.
Member Boleyn seconded the motion.
So voted, 6-0-1, motion carries.

Mr. Coffey thanked the Board and left the meeting.

Board Action/Review

2020-011/PB Samantha Perry, Hillside Farm, LLC seeks Form A – Application for Determination that Plan Does Not Require Approval (ANR) pursuant to Section 2.2 of the Town of Truro Rules and Regulations Governing Subdivision of Land for property located at 23 Perry Road, Truro, MA. Mr. Poole and Mr. Zehnder announced that they represented the applicant. Mr. Zehnder added that Samantha Perry and Cheryl (Perry) Costa were on the call as well. Mr. Zehnder would like to address the legal issues in Interim Town Planner Carboni's staff memorandum but first gave Mr. Poole the opportunity to describe the application. Mr. Poole stated that this proposal is for the division of Lot #13 and the family wants to divide the trust into three lots. Lot #3 (38,300 square feet), Lot #2 (3.2 acres) and Lot #1 (5.5 acres) are all serviced by existing roads. Mr. Poole asked the Board to endorse the application. Mr. Zehnder stated that the Perry family had appeared in front of the Board over the years for the division of house lots, and during the last round, the Board took the position that it believed the land exceeded 30 acres in common ownership since the Cape Cod Commission cutoff date of September 30, 1994. The Board further suggested that additional subdivision would need to be automatically referred to the Cape Cod Commission. The Perry family withdrew their application to do more research. Mr. Zehnder stated that there has not been more than 30 acres of common ownership since 1994 and he asked the Board to continue this review for the applicant to provide the Board with more information with a focus on the underlying title work that supports the previously submitted documentation. Mr. Zehnder further commented that the Perry family has farmed the lands since the 1880s and are mindful of the local and regional impact of subdivision as it relates to the environment, safety, water, sewage, and road use. Interim Town Planner Carboni thanked Mr. Zehnder for his advocacy and reminded him that the review is required to determine if more than 30 acres of common ownership existed thus triggering the referral to the Cape Cod Commission. Mr. Zehnder stated that the Board has the responsibility to make the determination for the referral to the Cape Cod Commission and he further added that there is a great expense to the family to seek a decision from the Cape Cod Commission. Interim Town Planner Carboni stated that the Board can decide or make the referral to the Cape Cod Commission. Vice Chair Tosh opined that if Mr. Zehnder can get his title report certified that there has never been over 30 acres in common ownership that she doesn't have an issue with the application. Vice Chair Tosh reiterated that the Perry family has been good stewards of the land for over one hundred years, and they likely want to build a home for their children. Vice Chair Tosh further commented that sometimes that Planning Board meetings seem to figure out how to make people's lives miserable. Mr. Zehnder did offer to certify along with an opinion as to the accuracy of the title report. Member Kiernan favored the referral to the Cape Cod Commission since it was beyond the Board's expertise as well as Member Riemer, Member Sollog, and Member Boleyn agreed. Chair Greenbaum stated that she thought Vice Chair Tosh's suggestion was reasonable and Mr. Zehnder stated that title examiners don't certify titles but provide the abstracts which attorneys certify. Mr. Zehnder further commented that he could hire another firm to objectively certify his work but that would be an additional expense. Mr. Zehnder is concerned that in his conversation with the Cape Cod Commission the representative said the Planning Board will conclude in the end that the Planning Board has jurisdiction. Vice Chair Tosh stated that she would be comfortable with Mr. Zehnder's certification. Interim Town Planner Carboni said that although she wasn't party to the conversation that Mr. Zehnder had with the Cape Cod Commission, she was surprised that the Cape Cod Commission had not told her the same thing. Mr. Zehnder. Mr. Zehnder offered to provide a set of title abstracts along with his summary to the Board. Member Kiernan asked

Interim Town Planner Carboni to provide an opinion to the 21-day limit of an ANR. Interim Town Planner Carboni stated that under Chapter 53 of the Acts of 2020 that suspends deadlines for permits (including a requested ANR endorsement) until the end of the declared state of emergency. Chair Greenbaum stated that Mr. Zehnder can provide the set of title abstracts along with his summary and Mr. Zehnder asked for a continuance for thirty days or more.

**Vice Chair Tosh made a motion to continue this hearing on Wednesday, December 2, 2020, at 5 pm.
Member Riemer seconded the motion.
So voted, 6-0-1, motion carries.**

Mr. Zehnder and Mr. Poole thanked the Board and left the meeting.

**Vice Chair Tosh made a motion to adjourn at 8:42 pm.
Member Boleyn seconded the motion.
So voted, 6-0-1, motion carries.**

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

