

**TOWN OF TRURO**  
**Planning Board**  
**MEETING MINUTES**  
**January 8, 2020**  
**TRURO TOWN HALL**

**Members Present:** Chair Anne Greenbaum, Karen Tosh, Steve Sollog, Jack Riemer, Bruce Boleyn, Peter Herridge

**Members Absent:** Paul Kiernan

**Others Present:** Town Planner-Jeffrey Ribiero, Joseph Trovato, Atty. Lester J. Murphy Jr., Robert Reedy

Chair Greenbaum called the meeting to order at 5:00 pm.

**Public Comment Period:**

Seeing as there were no public comments, Chair Greenbaum read something which she said she'd be reading at all meetings going forward. It is from the Select Board Policy on Professional Conduct. She'd like to remind all of them of what they can, and should, expect in terms of discussion and comments during Planning Board meetings.

*Respect and civility from all employees, volunteers, those representing the Town, and those in attendance at any Town function shall be maintained at all times, including, and especially, during public meetings. Public meetings are to be free from disrespect, creating a public embarrassment, and/or personal attacks on any person, whether present or absent from the proceedings. Town officials and employees, as well as the public shall be free to express their ideas, as is their right, without the threat of harassment and/or intimidation. All persons as mentioned shall not be verbally or physically accosted for any reason at any time. While disagreements about issues are acceptable, becoming disagreeable is not.*

Chair Greenbaum thinks this is a good way to operate.

**Public Hearing**

**2019-009/PB - Accessory Dwelling Unit. Joseph J. Trovato seeks approval of an application for an Accessory Dwelling Unit located within an existing structure pursuant to Section 40.2 of the Truro Zoning Bylaw. The property is located at 15 Highland Avenue, Map 22 and Parcel 38.**

Joseph Trovato and Atty. Lester J. Murphy Jr. both approached the Board. Chair Greenbaum opened the public hearing. Atty. Murphy explained that this is an application filed on behalf of Mr. Trovato for approval of an ADU under Section 40.2 of the Zoning Bylaws regarding the property located at 15 Highland Avenue. The parcel of land the structure is on contains approximately 10,000 square feet with one principal structure. The structure presently contains two dwelling units, each of which has one bedroom and has been in a two dwelling unit configuration for a substantial period of time. Mr. Trovato has owned the property since 1982, and when he bought it, it had two dwelling units. He now has the property under agreement for sale. Town investigations discovered that although it's been there for a long time, the second dwelling unit had never been properly permitted or authorized.

Member Sollog stated that he believes the Town needs ADUs, he's only saddened that the size of the property is so small, and he'll defer to the Health Department to declare the septic system as safe. He asked if it had ever been Mr. Trovato's residence, or if it had always been rented. Mr. Trovato stated it's been his residence since 1982, and the other unit has always been rented year-round. Member Riemer

went through their checklist and he found he had some questions. He took an opportunity to drive by the property and wasn't sure he could visualize two off-street parking spaces in addition to parking otherwise required for the property. Atty. Murphy held up the plan and pointed out that the garage has two parking spaces. The parking area then proceeds towards the deck, and then there is another area. There is certainly enough area for four cars. Member Riemer stated it was not delineated on a plan as such, and he'd like to ask the other members of the Board to weigh in as to whether they can see it as clearly as Atty. Murphy has pointed it out.

Member Riemer continued with concern number two. They are required to provide the Board with a site plan or a site and sewerage plan. Within those plans, there needs to be included the setbacks from the road and property lines. He did not see that on the plans and he thinks it's important to have. He sees no reference to height, the number of stories, or square footage. Based upon the scale of the plans, Atty. Murphy calculated the ADU at about 800 square feet, and 875 square feet for the main dwelling unit. The problem that appeared is that the Assessing Department has the entire structure at 1400 square feet. He cannot explain that discrepancy. As far as setbacks, the building is about 25 feet from the road, and about 20-25 feet from each sideline. As far as height, it is an existing one-story dwelling of approximately 24 feet. Member Riemer added that the building plans, including the ADU, are supposed to show a front, side, and rear elevation, and he does not see that in his packet. Atty. Murphy stated that no alterations are going to be made. They are trying to legitimize the existing structure with the existing two units in it. Member Riemer thinks the snapshot look of it is important because ownership is changing. Going forward, if there are ever any questions as to what they looked at in the past, having a picture would give them the knowledge of what was there at a certain point in time. Atty. Murphy stated they could submit photos of the four sides of the building if the Board feels that is something they'd like to have as part of the record.

In Member Riemer's research at the Barnstable County Registry of Deeds, he saw a restriction on the property (placed by the Board of Health) that the structure is restricted to two bedrooms. Also included in the restriction, that bedroom restriction was supposed to be attached to the deed. Atty. Murphy stated that you can't physically attach something to a deed. It is there to appear as a matter of record so that when anyone searches the title they will see that the property is subject to that restriction. Member Riemer is concerned that the restriction may be lost. Atty. Murphy said that's why everything is recorded at the registry of deeds. Member Riemer has suggested that when approving, the Board may wish to condition the approval to include reference to the restriction. Town Planner Ribeiro discouraged the Board from moving into a realm which is under the jurisdiction of the Board of Health. It could be, perhaps, a finding that references the restriction exists, but advises it should not be any kind of condition. He has touched base with the Board of Health that the septic system passed.

Member Riemer stated that this structure is on a pre-existing, non-conforming lot. Does the Zoning Board of Appeals need to look at this as the use is being increased? Town Planner Ribeiro does not think so. This came through the Building Enforcement Officer. He can check with him. Member Riemer believes this should go through legal counsel. Member Tosh does not see this as a legal issue. The building has been there since at least 1982, and the apartment has been in the structure for just as long. She thinks the ADU bylaw contemplates the setbacks, the height, the stories, etc. In anticipation of a new structure. She does not feel they need to send him back to the ZBA. Atty. Murphy pointed out that there is nothing in the bylaw that differentiates how the Planning Board looks at this application vs. an application with an 80,000 square foot lot. Member Riemer countered that the ADU bylaw does state that in the event of any pre-existing, non-conformance of the application, it needs to be considered. Chair Greenbaum stated that the reality is this structure has been a 2-unit structure for 25-30 years and there is no use change. Her opinion is that this does not need to go to the ZBA.

Member Riemer would like to see the parking spaces on the plan, and he'd also like to see something documenting the square footage of each of the two units. Atty. Murphy stated that they have the plan,

and if someone came around with a new layout, that would be indicative of a change. Given the fact that the building is very close to the setbacks, any change to the exterior of that building is going to trigger the requirement to go to the ZBA. Chair Greenbaum asked Mr. Trovato if he could get someone to measure the interior of each room. Mr. Trovato can provide the measurements. Chair Greenbaum stated that could be a condition.

Member Riemer had another question on the septic system. It is noted that municipal water is available, and he wanted to know if Mr. Trovato has ever been contacted by the Provincetown Water Department saying he could hook-up to the water if he liked. Mr. Trovato stated that when he went to the Board of Health for his septic system, he would have needed approval from neighbors for Provincetown Water, and he would have to have cut across their yard for a pipe, so the Board did not make him tie into the system.

**Member Herridge made a motion in the matter of 2019-009/PB-Joseph J. Trovato to approve, with conditions, a permit for an Accessory Dwelling Unit pursuant to Section 40.2 of the Truro Zoning Bylaw with respect to property located at 15 Highland Avenue in accordance with the plans submitted with this application, subject to the following conditions:**

- 1. Once an ADU has been added to a dwelling, structure, or lot, the ADU shall not be enlarged beyond the square footage specified in the permit granted pursuant to Section 40.2 of the Truro Zoning Bylaw without first obtaining a subsequent permit from the Planning Board, and in no case shall an ADU be permitted to exceed the square footage allowed by Section 40.2 of the Truro Zoning Bylaw.**
- 2. The principle dwelling and the ADU, and lot on which they are located, shall remain in common ownership and shall not be severed in ownership, including that the lot, buildings, or unit thereon shall not be placed in a condominium form of ownership.**
- 3. Either the ADU or the principle dwelling on a lot with an ADU must be leased for a term of at least twelve months. Rental of said unit for a period of less than twelve months, including but not limited to, seasonal rental, rental through vacation rental services, and websites is prohibited. Proof of year-round rental shall be provided annually to the Building Commissioner by the owner in the form of a lease and a signed affidavit from both the owner and the renter stating that the unit is being rented accordingly and is used as a primary residence.**
- 4. The ADU shall be inspected annually, or as frequently as deemed necessary by the Health and Building Departments for compliance with public safety and public health codes. The owner of the property shall be responsible for scheduling such inspection and shall pay any applicable inspection fees.**
- 5. The applicant shall submit a revised floor plan showing interior dimensions**
- 6. Parking for no less than four cars shall be maintained in the existing garage and the area shown as driveway on the approved plan.**

**Member Boleyn seconded.**

Town Planner Ribeiro realized there was no offer to hear public comment at the beginning of the hearing. Chair Greenbaum asked the audience. Hearing no comments, she then closed the public hearing.

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

**Public Hearing - Continued**

**2019-006/PB Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer seek approval of a Preliminary Subdivision Plan of Land, pursuant to G.L. c. 41, Section 81S and Section 2.4 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at Route 6 and Amity Lane, Truro, MA, Map 46, Parcel 8.**

Robert Reedy with J.M. O'Reilly & Associates appeared before the Board on behalf of John O'Reilly, who had another meeting in Brewster to attend. Mr. Reedy is representing the Schirmer family. The property at 1 Amity Lane is part of a larger subdivision that was subdivided by the Schirmer's previously. Mr. Reedy continued by describing the history of the property. The Schirmer's are looking to create a four-lot subdivision. Lot 3 would be a buildable, single-family, dwelling lot. Lots 4 and 5 sit in the wetland area and they'd like to give those lots to the Truro Conservation Trust. J.M. O'Reilly & Associates has gone out and delineated where the wetlands are, and the coastal bank. He continued to describe the subdivision. In terms of zoning regulations, the buildable lots do meet frontage requirements, the Way meets the layout requirements, and the waivers they will be asking for at the time of the definitive plan, are related to the construction of the Way. They are hoping to not have to build the road and to get waivers from all requirements related for that. The reasoning behind that is they hope the road wouldn't be used for anything other than access to the Conservation Trust lands in the back (lots 4 and 5). The intent would be for access to lot 3 would be a driveway off of the portion of Amity Lane that they abut. Amity Lane is currently served by an 8-10-foot-wide gravel road. It serves the property at Lot 2, in addition to two other properties further down the road from where the subdivision is now.

Member Riemer stated that a 2017 subdivision approval was referenced. Mr. Reedy corrected himself to say that it was a 2017 ANR plan. Member Riemer stated that served, in a pan handle fashion, three dwellings on the same lot that were pre-existing. Going forward, it will be important to know how many dwellings Amity Lane serves. There are currently three dwellings on one lot, but in order to pursue a Rural Roads Alternative, the limit is four dwellings. Member Riemer referenced all the other buildings/dwellings which will potentially be served by Amity Lane. He believes, going forward, it would support an upgrade to Amity Lane. He also pointed out a 20 foot drop right when you turn onto Amity Lane, along with the fact that there is no drainage that he can see. He also asked, for the record, who owned the fee in the road. Mr. Reedy stated that the Schirmer's do.

Moving forward, Member Riemer stated that he looked at the submission requirements for a preliminary plan and stated that they shall include a proposed system with drainage, and he did not see that. Mr. Reedy said that it would be something they would request a waiver from. Member Riemer asked if there was any report from the Board of Health. Town Planner Ribeiro said that the Board of Health chose not to provide comments at this time, though they may at the time of a definitive plan. Public Safety officials also received the plan and did not provide comments. The DPW Director found that it would have no impact on public infrastructure. Town Planner Ribeiro did say that this intensification of use of Amity Lane is a legitimate concern for the Planning Board. Mr. Reedy stated they were looking for waivers for the new Way and asked for the possibility of relief on all of the standards of the road construction where they are adding one lot to a small, rural road that is not very developed at the moment. Chair Greenbaum said it appeared there were some questions about how many dwellings currently exist. Are there indeed three dwellings that Amity Lane is currently serving, or are there more than three?

Member Tosh let the Chair know that she was abstaining from any conversation on this matter because she is a Trustee of the Truro Conservation Trust. She felt that since it was preliminary, she did not have to leave the room. Chair Greenbaum thanked her.

Town Planner Ribeiro noted that they are creating Lot 4, which does have frontage and sufficient lot area, so there is a stated intention for it to be a conservation parcel, but it would be buildable should any deal fall through. Mr. Reedy asked if there were any flexibility as to what they could condition the property as, for value purposes (maintain it as buildable and condition it needs to be sold to the Trust)? Mr. Reedy said that the land loses value, for purposes of any sale. From a perspective of protecting their own value of the property, if the Schirmer's turn the property into an unbuildable lot then they hurt the value. It's not in the best interest for them. Chair Greenbaum said that there were a couple of related issues.

- How many dwellings is the road currently serving?
- How many dwellings might the road serve, given that it's now going to have three buildable lots in the subdivision plus the other two that are already there?
- Is there a way to condition, if indeed there are only four dwellings, so that there doesn't have to be significant upgrade to Amity Lane?

Town Planner Ribeiro stated that if the intent is to create a plan that produces buildable lots, regardless of intention, that would have to be the stance of the Board. He doesn't know if, as part of the valuation, it would factor into the effect of the cost of constructing the way. His advice to the Board would be to consider this as creating two single family residences on Amity Lane, which has three, because ultimately that's what could happen. Chair Greenbaum confirmed that they would be looking at a road serving five dwellings, and then the question would be, could there be any relief from that.

Member Riemer asked, that in looking at Lot 3, where is the frontage that would serve the requirement under a Zoning Bylaw for 150 feet on a road.? Mr. Reedy proposed that the Way would serve as the frontage. Member Riemer does not believe that would be adequate for a building permit. Also, he pointed out that they are proposing a paper Way that's 40 feet wide, that would connect with an 8-10 foot -wide gravel/sand road. Mr. Reedy said that the Way would not service anything other than Conservation Trust land.

Mr. Reedy asked, if instead of asking for a 40 -foot private way, would it be preferable that lots 3 and 4 were addressed as "pan-handle lots", both having 30 feet of required frontage on Amity Lane and doing away with the paper way? Member Riemer stated you needed 150 feet on the street or way. Mr. Reedy then asked, if the way were removed, would that change anything?

Member Sollog stated that the actual number of dwellings needs to be clarified. He also confirmed that what Mr. Reedy is asking for is, what would be possible for them to get buildable lots in the subdivision without having to completely reconstruct Amity Lane. Member Sollog is not personally interested in paving Truro. He thinks the Board would be interested in the road being provided as a useable surface that is somewhat improved. He doesn't know if the Board is allowed to waive the design requirements for a Type B road. Chair Greenbaum asked how many dwellings could be served with a Type B road.

Member Sollog stated it was 5-10 lots. Chair Greenbaum stated that it's critical that it refers to lots and not dwellings. She would like to get the number of lots as well. Member Sollog added that a Type A road requires a 14 -foot actual roadway, while a Type B requires 18 feet. Member Sollog would like to see if they could get a handle on where the Board's feelings lie, as far as road improvement. What does the Board feel would suffice? There is an existing road that's gravel, and 8-10 feet wide, and the requirement for Type B is 18. He asked Member Riemer his opinion on the existing roadway. His opinion is that it's not suitable. From Member Sollog's point of view he thinks the Board would like to see some improvement to the road. Mr. Reedy asked if something the size of a Type A road be reasonable? Member Sollog stated that would be a significant improvement to what is there now. It would not meet the requirements of a Type B road. Member Riemer noted that Amity Lane is not defined, in terms of the property line. He does not see a solid line he sees a dotted line. Mr. Reedy stated it's shows as a dashed line and ends in a cul-de-sac. Member Riemer says it's listed as a 40 -foot right-of-way, but the right-of-way is delineated by a dotted line on the Marsh Lane side rather than a

solid line. Mr. Reedy said the only part that's a solid line is the part that intersects with their property. Mr. Riemer continued. In terms of the valuation of the property to be sold to the Conservation Trust, he sees the coastal bank is on there and asked if there was a 100- foot setback. Mr. Reedy stated it was 150 feet and asked if the Planning Board got a version of the plan which showed the location of wells and septic locations for certain lots. He held it up and pointed out the 150 foot coastal bank setback, the location of the septic and reserve system for Lot 4, a proposed well location for Lot 3, along with the proposed septic and reserve area, and for Lot 2 he pointed out the existing well location and a proposal to move their leech field. Member Riemer asked if that also showed the land for Lot 4 being unbuildable? Mr. Reedy said it could be buildable depending on where the house would be sited. He added that he calculated the amount of upland and it's approximately 60,000 square feet, which means up to a 6-bedroom house could be built there (on Lot 4).

Town Planner Ribeiro read through the Rural Road Alternative and noted that it refers to not more than four dwellings. Member Sollog stated that it appeared the proposal would not fall under the Rural Road Alternative, because there would be more than four dwellings. He also pointed out that the Rural Road Alternative used the word "dwellings" and may have meant "lots". He thinks they should research if that is correct (that it should say dwellings instead of lots). Member Riemer said if they were to create two more buildable lots, out of Lot 2, that would give them five lots serviced by Amity Lane, which would exclude the project from the Rural Road Alternative. Town Planner Ribeiro stated that the intended result is to have four built lots on Amity Lane, and one conservation parcel. It does not necessarily need to be buildable, but for a discount sale and tax purposes (if that is the reason), it would be more valuable.

Town Planner Ribeiro suggested determining a date for a site visit and continuing the hearing to the meeting on the 22<sup>nd</sup>. Chair Greenbaum said the site visit could be on Tuesday, the 21<sup>st</sup>, at 2:00pm.

Town Planner Ribeiro asked Mr. Reedy, instead of doing continual time extensions, would he be willing to do an extension through the first meeting for February. Mr. Reedy agreed.

**Member Boleyn made a motion in the matter of 2019-006/PB-Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer to continue the hearing to February 22<sup>nd</sup>.**

**Member Herridge seconded.**

**So voted; 5-0-1 (Member Tosh abstained), motion carries.**

**2019-008/PB Nathan A. Nickerson III seeks approval of a Definitive Subdivision Plan of Land, pursuant to G.L. c. 41, Section 81S and Section 2.4 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 4-H Bay View Road and 3 Laura's Way, Truro, MA, Map 39, Parcels 77 and 325. *Request to Withdraw.***

Town Planner Ribeiro explained that town regulations require that the applicant send certified mailings to abutters. That did not happen in a timely fashion so they are withdrawing and will reapply.

**Member Herridge made a motion in the matter of 2019-009/PB-Nathan A. Nickerson III for approval of a Definitive Subdivision Plan of Land, to grant the applicant's request to withdraw the application without prejudice.**

**Member Sollog seconded.**

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

#### **Board Action/Review**

**Review of the Cloverleaf Truro Rental Housing Comprehensive Permit application under MGL Ch. 40B to formulate comments for submittal to the Zoning Board of Appeals.**

Town Planner Ribeiro would like to keep this as a standing item. It looks like a peer review report will be back some time in February. Because of that timeframe, he expects to continue the next hearing, and not hold a substantive hearing on the 16<sup>th</sup>. Member Riemer recalls the last time they dealt with a large development (within the Seashore) was proposed it required a DEP permit for their wastewater. He would like to review some of the requirements. The Board has stated they recognize the importance of nitrates in the groundwater, and how there was a waiver requested from the Board of Health regulations. Under Special Conditions, there is a chart for Effluent Limits. He knows the developer said he couldn't afford to reduce it under the Cape Cod Commission's report that they judged the limit to be 19 mg/liter but yet the DEP enforces 10 mg/liter. Town Planner Ribeiro asked if he was reading from a discharge water permit. Member Riemer said yes. Town Planner Ribeiro stated those trigger over 10,000 gallons and this project is at 7700 gallons. Member Riemer continued, stating it points towards the issue, the importance, and the recognition of what they need to keep in mind when they are sitting on a sole source aquifer. The Cloverleaf project abuts the Seashore and also Pond Village. Member Herridge included abutters on Highland Road. Member Riemer stated the effluent is to be monitored twice a week. Underground water has no fences and he feels it's important, going forward with monitoring wells to ensure there is no contamination. Member Herridge added that the Cape Cod Commission calculated (based on the number of bedrooms) that the discharge would be 7700 gallons per day. The developer mentioned that the discharge would be 8600 gallons per day at the last Zoning Board of Appeals meeting. He feels that is getting very close to the 10,000 gallon per day limit. If you reach 10,000 gallons per day, there are lots of State regulations that cannot be waived by the ZBA. Town Planner Ribeiro reminded the Board that the State requirement doesn't apply. DEP wouldn't look at this as a discharge permit because it's under the 10,000 gallons per day. The concern is legitimate. Member Sollog would like to reiterate that these figures are all estimates. Chair Greenbaum confirmed that Member Riemer would like the information he read to the Board, along with his points, to be sent to the Zoning Board of Appeals, and Member Riemer said yes. Member Sollog added that they should qualify why they would be adding this. The size of the property differential is enormous. Whether or not the State regulations require this or not, the ZBA should be made aware. Chair Greenbaum added that part of the responsibility of the Planning Board is to continue to provide relevant information to the ZBA in their consideration of this process. Member Herridge doesn't see how anyone can do a proper study of what the water under that site is going to do, by February.

**Member Riemer made a motion to submit the Department of Environmental Protection Permit number 955-0, addressed to Wayne Klekamp of AC Mobile Home Park Inc. in regard to Truro A/C Mobile Home Park, 67 South Highland Road.**

**Member Herridge seconded.**

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

Town Planner Ribeiro said he could compose a cover letter, specifically referencing the size of the parcel, and the four pages which Member Riemer cited.

Member Herridge would like to know if the ZBA, and the peer review company, are going to take into consideration all the numbers that Kevin Kuechler has developed from years of being the Chair of the Water Resources Oversight Committee. He does not feel anyone can do an adequate job by February. Some of Mr. Kuechler's numbers will be in an Op Ed in the Banner, which Member Herridge may read into the record for the ZBA. Chair Greenbaum stated that they just heard from Town Planner Ribeiro, who said the next ZBA meeting may not happen. She thinks getting data to the ZBA sooner, rather than later, would be very helpful.

Member Sollog asked if anyone saw the balloon test which occurred two weeks ago. Town Planner Ribeiro stated that photographs were taken from different vantage points and an exhibit will be put together, and be available, in the near future.

Member Herridge has information from his literature search which he'd like Town Planner Ribeiro to give to the ZBA.

#### **Update on Past Work Sessions**

Chair Greenbaum stated their next work session would be next Wednesday, January 15<sup>th</sup> at 2:30 pm. She has almost everyone's priority list. She's aware that Town Meeting is fast approaching. She said that what they have ready for the Warrant, and what they want to get ready will be the topic of conversation at the next work session. Member Riemer stated he had a conversation with Health/Conservation agent Beebe. She relayed to him that the Board of Health is promulgating new Rules and Regulations. She questioned whether the Planning Board was working on a couple items and he doesn't believe they were on their list. Town Planner Ribeiro will get in touch with her.

#### **Update by Planning Board/Select Board ADU Ad Hoc Subcommittee on their Work Sessions.**

Chair Greenbaum said the subcommittee has been on hiatus due to the loss of Maureen Burgess. Select Board member Weinstein has stepped up to be the second Select Person on the committee. The next meeting will be tomorrow. Knowing that the warrant is opening soon, they are focused on what they can get together for that. Before that, they want to bring their recommendations to the Planning Board and Select Board. She's thinking, at the work session she'd like some feedback on their recommendations for the ADU to make it work better for everyone.

#### **Discussion for setting dates for future Board public workshops.**

They will discuss this on the 15<sup>th</sup>.

Chair Greenbaum stated there was something Member Sollog had mentioned about placing on the agenda as a placeholder. *Potential discussion of potential warrant articles* (or something similar). Town Planner Ribeiro said it was a discussion of potential zoning articles for Town Meeting.

**Member Herridge made a motion to adjourn at 7:22 pm.**

**Member Boleyn seconded.**

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



**Respectfully submitted,**

**Noelle L. Scoullar**

