

**TOWN OF TRURO  
Planning Board  
MEETING MINUTES  
February 5, 2020  
TRURO TOWN HALL**

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

**Members Absent:** None

**Others Present:** Town Planner-Jeffrey Ribeiro, Paul Asher-Best, John O'Reilly, John Casale, Don Poole, John McElwee, Philip Scholomiti, Chris Lucy

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

**Public Comment Period:**

Mr. Asher-Best came before the Board. He saw on the agenda for tonight that they will be discussing ADUs and that they have an ADU working group. He has an ADU which is not technically an ADU but is "screaming to be an ADU". He gave some historical information about his property located on Route 6. He has a two-bedroom home and also a two-bedroom habitable studio, which currently houses all of their stuff. He is not interested in being a landlord. In light of the 2018 vote which allows condominiums to apply for year-round status, he would like the Board to revisit their 2017 vote on Accessory Dwelling Units to allow them to become condominiums with an affordable restriction in perpetuity. He could then sell his cottage for an affordable price. Member Tosh stated that she thinks this should be an agenda item and Chair Greenbaum agreed.

Member Riemer would like to have the Board revisit their recusal policy at their next meeting and asked that the topic be added to their next agenda. In addition, he'd like to ask, through the Town Manager, for any information Town Counsel could provide, to guide them in this effort for transparency. He'd also like to know if there are any current opinions Town Counsel may have expressed since they have been Counsel for Truro. Chair Greenbaum, for clarification, would like to know if Member Riemer is asking to look at the recusal process for the Planning Board specifically, or for Boards in general. Member Riemer stated he'd like the Planning Board to have a clear policy, and certainly he'd like to see what the policy is for the Select Board and how that trickles down to other Boards.

**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.**

Member Tosh announced she would recuse herself and leave the room because of the Truro Conservation Trust having an interest in the matter. John O'Reilly introduced himself as the surveyor for the Schirmer's. He did a recap of the intent of the preliminary subdivision. The Schirmer's have been talking with the Truro Conservation Trust to negotiate the sale of what's noted as Lot 4 and Lot 5 on the plan. Their main goal is to protect the land delineated as Lots 4 and 5 and put it under the care of the Truro Conservation Trust. He has prepared the preliminary plan, taking the one parcel currently approved with one cottage, and dividing it into five lots. Lot 2 has the cottage on it, Lot 3 is a vacant parcel, Lot 4 and 5 is the Western boundary, and the Way (which provides the frontage for both lots 3

and 4). Yesterday Mr. O'Reilly got a real sense of the Board's concern with the road, and the fact that the Schirmer's are asking for all waivers for constructing the Way. He spoke with Joe Schirmer and Mr. Schirmer would like it reiterated to the Board that their main objective is to sell Lots 4 and 5 to the Trust. They have no plans of further development of the cottage on Lot 2, nor build on Lot 3. Having said that, what they are willing to do, if the Board is still concerned about the condition of Amity Lane, the Way, and the viability of the buildability of Lot 4, is they would combine Lots 2 and 3 into one lot which would remove the division line, still propose the Way along with Lots 4 and 5. If the deal with the Truro Conservation Trust falls through, they are also willing to place a restriction on the Definitive Plan that no further division would be proposed without reviewing suitable access with the Planning Board. He'd add a condition that if a building permit were ever pulled for Lot 4, that applicant would need to come before the Planning Board to address providing suitable access to Lot 4.

Member Boleyn thought that Lot 4 was unbuildable. Mr. O'Reilly stated that it has sufficient frontage and lot area. Town Planner Ribeiro stated that there are a lot of environmental constraints. It would be difficult to develop it, but the Board cannot consider those limitations because they are to look at zoning itself. The Board of Health and the Conservation Commission could variance everything and they'd have a lot which you could place a house on.

Member Riemer asked how Lot 4 was delineated on the Plan. Mr. O'Reilly got up and outlined Lot 4 for the Board. Member Riemer asked if you could construct a dwelling within 150 feet of the top of the coastal bank. Mr. O'Reilly stated that with Conservation Commission approval, you could. Chair Greenbaum noted that it looked as though Mr. O'Reilly set up the design of the lot to be buildable even though the intent is never to build on it. Mr. O'Reilly explained that the reason for that was during the negotiations with the Conservation Trust, there is a value associated with Lot 4 and whether there is room for a sewer system. Member Riemer asked that in terms of Title 5 area, that can only include upland? Mr. O'Reilly confirmed that it is generally the upland that is calculated. Mr. Riemer asked how much of Lot 4 was considered upland. Mr. O'Reilly answered, 127 thousand square feet. Town Planner Ribeiro stated that Title 5 requirements do not come under the Planning Board's jurisdiction. It's good background information but it does not directly apply to any of the requirements for the review.

Member Herridge stated that Lot 2 and Lot 3 would be combined and asked if the lot lines would be altered. Mr. O'Reilly stated they would just be combined.

Member Kiernan's concerns revolve around safety. As he understands, Amity Lane ends at a turn-around which serves as frontage for the last lot. Mr. O'Reilly stated he was correct. Member Kiernan continued by stating that there was a second lot for which Amity Lane serves as frontage. At the top, there is a section of land that seems to connect Amity Lane with a large piece of property where there are three grandfathered homes. Mr. O'Reilly couldn't confirm the number of homes but stated there were homes there. Member Kiernan asked about a thin sliver of land which runs along Amity Lane. He wished to know if that provided frontage for the big lot in the back. The answer was yes. Member Kiernan asked when Amity Lane was created. He continued by stating that it appears Amity Lane is a paper road that never had any construction. In the future, they could be looking at 4 or maybe 5, 3600 square foot houses with four or five bedrooms in each house, being serviced by what appears to be a line in the sand. He believes the Schirmer family is still responsible for the road. He would hate to see the Planning Board give up their last chance to put some semblance of a road in so that emergency vehicles will be able to access these lots in the future. The Schirmer's are asking to connect a new road to Amity Lane, which was never built. It appears to meet no standards. There is frontage along Amity Lane for three houses in the back, and there is a lot that if they combine together (on the preliminary plan) they could come back in the future and ANR them apart and he wants to be sure that whatever the Planning Board does here remains safe. He's not talking about pavement, he's talking about being able to get safety equipment in there, under adverse conditions. If he's correct, the existing eight-foot wide sand road does not even stay within the legal width of Amity Lane. Member Kiernan also believes

that the lot at the end of Amity Lane was created in the 60s, and the only part of the subdivision shown was the little circle part at the end of the road. The Board never approved, in the 60s, a lane that went out to the highway. What was done, within the deed to the property, was stated that the Schirmer's would create a 40-foot wide Way that would go out to Route 6. In 1990, when the next subdivision plan came in, the Schirmer's came to the Board, and the Board gave approval for the Lane as it exists today (with one side not having a curve to it and the other side being curved, to meet the Bylaw). The turnaround is there specifically for safety. He would like to know if the Schirmer's will bring this up to some sort of minimal standards, because then it would be possible to create another road off of Amity Lane. Without Amity Lane being, in some way, passable, putting another road off of it doesn't seem wise. Mr. O'Reilly stated that the lot they're trying to subdivide was created in 1990. He agrees in regard to the condition of Amity Lane in the sense that if the Trust wasn't involved and they were trying to develop Lot 4, they would expect they'd have to bring Amity Lane up to some sort of standard. In talking with Joe Schirmer, their interest is to sell a portion of their property to the Trust. They are trying to develop the Way in order to facilitate that sale. That is one of the reasons why they are comfortable eliminating the interior line so there is only one lot along Amity, and adding the condition that if there is any future subdivision of the parcel or Lot 4 seeks to obtain a building permit, the applicant at that time would come back to the Planning Board to address the condition of Amity and create the turn-around for the Way. Member Kiernan states that even with combining Lots 2 and 3 that's eligible, right now, for a large dwelling on an unsafe road. Town Planner Ribeiro explained that any development on Lots 2 and 3 would be allowed, to the extent it's allowed on the entire parcel now. He stated that there are conditions proposed which will make it not possible to build a new dwelling unit on these lots without returning to the Planning Board and making improvements to the road. He thinks it's up to the Board, if they are comfortable with those conditions, or they could be more prescriptive in what they want to see. He added that he thought there were some questions about the Rural Roads Alternative. He stated that with Lots 2 and 3 combined there would be four buildable lots and therefore would qualify for the Rural Roads Alternative. Chair Greenbaum stated that the Rural Roads Alternative talks about dwellings served, not dwellings having frontage. She asked Mr. O'Reilly if he knew if the dwellings that have frontage from that back lot actually get onto a road. It was confirmed that their access is not from Amity Lane. Town Planner Ribeiro said that one of the changes proposed (combining Lots 2 and 3) is important because that removes a building lot (when they had five building lots, they would not qualify for the Rural Roads Alternative). Member Kiernan read the Rural Roads Alternative definition and went over items which could be waived. Mr. O'Reilly stated that he's not sure the project will move forward if the road needs to be brought up to some sort of standard. Member Kiernan asked how cheaply Mr. O'Reilly could bring Amity Lane up to any standard. He does not know how to answer that. Mr. Schirmer had, at one point, stated that if the Board wanted something substantial done, he might have an issue with the neighbors located to the South who do not want Amity Lane to be improved. Member Kiernan had another issue he wished to address. The new road that they are looking to create which will provide frontage for Lot 3 and 4 does not meet the Bylaw. Where the two roads meet there is a twenty-foot radius on one side, and no radius on the other side. In order for that to be a buildable road there would have to be a twenty-foot radius unless they were willing to, post creation, go to the ZBA and seek relief from that. Chair Greenbaum wished to pose something to the Board. She asked, if they were able to come up with something where any building on the combo lot (2/3) or lot 4 (including expanding the cabin) would have to come back to the Planning Board, and if there were some sort of turn around, how would they feel about the proposal? Mr. O'Reilly thinks the big obstacle for the Schirmer's is the condition of Amity Lane and what the Board may require them to do, today. With regards to the Way, and the 25-foot buffer, he would need to take a look at that and if they got to a definitive process, address that specific comment.

Member Sollog would be in favor of it and wished to know what the view of the land looks like for the last lot on Amity Lane. Town Planner Ribeiro pulled that up on the screen and noted that one thing to keep in mind is that if the Board is talking about requiring some improvements, those would have to be within the layout of the road and right now that drive doesn't follow the road. A turn around and access would have to be in another area (not in the current path). Chair Greenbaum asked if a turn-around happened at the proposed intersection of Amity Lane and Way, would that work for the Board.

Member Kiernan said no, because the bylaw states that the turn around that shall be provided has to be at the end of the road. He then noted that it does provide, within the bylaw, that when you have a narrow road (that would be within the Rural Roads Alternative) that there be turn outs. Chair Greenbaum asked if Member Kiernan if he meant instead of, or in addition to, the turn-around at the end of the road. Member Kiernan clarified that he meant in addition to. Mr. O'Reilly asked if the Board could give him some insight as to whether they will require Amity Lane to be brought up to Rural Roads standards, including the turn-around, and not have it be conditioned on when/if the Conservation Trust falls through and when/if Lot 2/3 is developed. Member Sollog stated that if the Board was deadlocked, the answer becomes no because the opinion of the Board is even right now. From his perspective, it would be likely that the Board would come to a 3 to 3 decision. Mr. O'Reilly is not pushing for a decision. He envisions himself going back to the Schirmer's and he would like to say, "The majority of the Board has given us the opinion that Amity Lane needs to be brought up to Rural Roads standards and we must have a turn-around at the end of the road." If that's where the majority of the Board is going, then he needs to hear that so he can go back to the Schirmer's. Member Kiernan stated that that's what one vote would like to see before creating a new road. Member Sollog said that the Chair can ask for a consensus and find out it sits with the Board. Member Herridge stated that he would agree with Member Kiernan's opinion. Member Boleyn is in favor of upgrading Amity Lane and adding the turnaround at the end of the road. Member Riemer would like to save as many trees as possible (due to global warming) and to work something out to everyone's advantage, but he just doesn't feel like they have that at this point.

Chair Greenbaum asked if there are ways they haven't thought about that might help address the safety concerns, in getting some sort of turn around. Mr. O'Reilly's reaction would be to review this with the Schirmer's, and to walk the road again with the Fire Chief to see what he would need, whether that be a hammer-head turn at the Way or having a requirement of having to go all the way to the bottom. Based on that conversation with the Chief, and if the Schirmer's want to continue, he'd come back with a proposal which would show the type of improvements that would be done to Amity Lane. Town Planner Ribeiro confirmed that they had time extensions through the 19<sup>th</sup>. Mr. O'Reilly would like to hear from the two other Planning Board members on their opinions about improvements to Amity Lane. Member Riemer wished to point out the General Bylaws; 1-9-13, Public Safety Clearing Guidelines, as they may be applicable to the discussion.

**Member Sollog made a motion to continue the hearing 2019-006/PB Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer to date certain February 19<sup>th</sup>, 2020.**

**Member Kiernan seconded.**

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

**\*Member Tosh returns to the room and rejoins the Board.**

#### **Public Hearing**

**2019-010/PB - Richard and Cynthia Perry seek approval of an application for an Accessory Dwelling Unit Permit pursuant to Section 40.2 of the Truro Zoning Bylaw. The property is located at 15 Perry Road, Truro, MA, Map 45, Parcel 132.**

John Casale, a builder representing the Perry's, approached the Board. He has Health and Conservation approval. Town Planner Ribeiro stated there were questions about the square footage. They have the 1,000 square foot limit and the original proposal was over that. Chair Greenbaum said that many on the Board redid the calculations and they are still coming up with over 1,000 square feet. Town Planner Ribeiro pulled up the measurements and based upon the definition of Gross Floor Area (excluding the garage and other non-living space), and measuring from the interior walls, he gets an interior space of 25' x 35'4" which comes to 883.3 square feet, along with a 9 x 11 foot bathroom which is another 99 square feet and that brings the total to 982 square feet. Member Kiernan thinks the problem lies in the bylaw. He's been to the site, and it seems reasonably fine within the bylaw. He does have a problem with a parking space being designated within the garage. Chair Greenbaum wished to be sure they were okay with the measurements before discussing the parking space. Town Planner Ribeiro is confident with the calculations that they are under the 1,000 square foot limit. He suggested including, in the decision, that the applicant provide a plan with interior dimensions to the Building Commissioner so that he can verify that it's under 1,000 square feet.

Member Kiernan continued, stating he's somewhat uncomfortable with saying that there is a parking space inside, but being familiar with the property he knows there is more than enough room for another parking space outside.

**Member Sollog moved in the matter of 2019-010/PB-Richard and Cynthia Perry 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 Perry Road, in accordance with the plans submitted in 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 principal dwelling and ADU and lot in which they are located shall remain in common ownership, and shall not be severed in ownership, including that the lot, buildings, or units thereon shall not be placed in a condominium form of ownership.
3. Either the ADU, or the principal 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 renting and renting through vacation rental services and websites) is prohibited. Proof of year-round rental shall be provided annually to the Building Commissioner in the form of a lease, and a signed affidavit from both the owner and renter stating 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 inspections and shall pay any applicable inspection fees.
5. Prior to issuance of a building permit, the applicant shall provide a floor plan showing all interior dimensions and wall thicknesses to the Building Commissioner so as to verify the ADU has a gross floor-area as defined under the bylaw as less than 1,000 square feet.

Member Boleyn added that a house number should be affixed to the house.

**Member Herridge seconded.**

**So voted; 7-0-0, motion carries.**

Chair Greenbaum closed the public hearing.

**Board Action/Review**

**2020-001/SPR - Ethan Poulin seeks Waiver of Commercial Site Plan Review pursuant to Section 70.9 of the Truro Zoning Bylaw for the installation of a garden shed at the existing commercial property located at 5 Highland Road, North Truro, MA, Map 36, Parcel 201.**

Town Planner Ribeiro stated that Mr. Poulin was unable to attend the meeting tonight and has asked to postpone the matter to the next meeting.

**Member Herridge made a motion to continue case 2020-001/SPR to the regularly scheduled meeting of February 19, 2020.**

**Member Kiernan seconded.**

Member Riemer asked if there was a site plan on record? Town Planner Ribeiro stated that the Board had what was provided by the applicant. He can follow up with Mr. Poulin if the Board wishes to have something more detailed. Member Riemer would appreciate him doing so. Member Boleyn states that the application is incomplete as it is not properly executed with signatures. Town Planner Ribeiro shall follow up with that as well. Member Riemer noticed that the application was not dated, or time stamped and wanted to know why not. Town Planner Ribeiro said that for some reason Member Riemer did not get the correct application and will be sure he gets a dated/stamped one. Member Boleyn noticed that the disposal declaration does not list the address of the disposal area. Town Planner Ribeiro and Member Tosh noted that it's listed on the express building permit.

**So voted; 7-0-0, motion carries.**

**2020-002/PB - Marilyn and Richard Haviland, Trustees of the Marilyn Haviland Revocable Living Trust seek approval of 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 the Subdivision of Land with respect to property at 5 Kestral Lane, Truro, MA, Map 39, Parcel 241.**

Don Poole with Outermost Land Survey approached the Board. He represents the Haviland's/Shearwater Homeowner's Association. This is a plan where the owners of lot 94 Kestral Lane have agreed to convey their ownership of the fee, of Kestral Lane, to the Association. This has been done other times in the past twenty years. He explained that in purchasing this lot, it includes the fee to the center line in the road. The area, in frontage, is for the body of the lot but the fee in the road remains separate to lot 94. The Association is desirous of owning all the fees in the roads and has negotiated with the owners to buy those individual fees. This creates the lot 112, fee interest in Kestral Lane, for lot 94. Chair Greenbaum summarized, stating this creates a lot, that's the fee in the road, to transfer it to the homeowner's association.

Member Riemer asked what the original square footage of this lot was. Mr. Poole stated the square footage of the lot is 35,302 square feet, that does not include the fee and the Way because it's a right of way and buildable upland does not include fees and right of ways. Member Kiernan asked that this newly created lot was never a part of Lot 94? Mr. Poole said that Lot 94 owns the fee to the center line of Kestral Lane. The area for Lot 94 does not include that fee interest in Kestral Lane for buildable upland. Member Kiernan confirmed that the 35,302 square feet never included the 3,268 square feet. Mr. Pool said that was correct. To make it easier to understand, Town Planner Ribeiro explained that they are creating a lot out of the portion of the road that this person owns so that they can then transfer that portion to the Association.

**Member Sollog made a motion to endorse the Approval Not Required Plan for Marilyn and Richard Haviland-2020-02/PB.**

**Member Boleyn seconded.**

**So voted; 7-0-0, motion carries.**

**2020-003/PB - Keith E. Kodat and Ellen E. Conklin seek approval of 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 the Subdivision of Land with respect to property at 3 and 5 Souzas Way, Map 46, Parcels 97 and 105.**

John McElwee from Coastal Engineering approached the Board. He has prepared a plan where they are rearranging the lot line between two lots. Each of the lots has a dwelling. Member Kiernan asked if both lots were in common ownership. Mr. McElwee stated that Keith Kodat is the owner listed for 3 Souzas Way and Ellen Conklin is the owner listed for 5 Souzas Way. He believes they are married, and both have signed the application.

**Member Tosh made a motion to endorse the Approval Not Required Plan for Keith Kodat and Ellen Conklin-2020-003/PB.**

**Member Herridge seconded.**

**So voted; 7-0-0, motion carries.**

**2020-004/PB - Donna M. Turley seeks approval of 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 the Subdivision of Land with respect to property at 7 Turnbuckle Way, Map 43, Parcel 105.**

Philip Scholomiti from Ryder & Wilcox approached the Board. He explained that the property is situated at the end of Turnbuckle Way, zoned residential, and the plan is for conveyancing purposes. The plan divides an existing lot into two lots; 2A and 2B. Member Kiernan asked if all the construction taking place is happening on the abutting lot that's going to get this new piece of property. Mr. Scholomiti stated yes.

**Member Tosh made a motion to approve Plan of Land as prepared for Donna M. Turley, dated 1.22.2020, Approval Not Required.**

**Member Herridge seconded.**

**So voted; 7-0-0, motion carries.**

#### **Discussion of potential amendments to the Zoning Bylaw for the 2020 Annual Town Meeting.**

Chair Greenbaum explained that Town Planner Ribeiro put together all the conversations had at work sessions and the draft bylaws. She would like to talk about timing. Town Planner Ribeiro stated that the ADU Subcommittee is going to be meeting tomorrow. The timeline he thinks makes the most sense, that allows them to have the hearing before the Warrant closes, would be to meet next Wednesday during which they could vote to send the Zoning Bylaws to the Select Board. They could then "pre-notice" the hearing and send to the Banner the following day, and also the Cape Cod Times in order to give them the 14 days. The hearing would be posted in the Banner on the 20<sup>th</sup> and 27<sup>th</sup>. The Board could then hold their hearing on the 4<sup>th</sup> and finalize their report to the Select Board for the March 10<sup>th</sup> meeting, where they intend to close the Warrant.

The other item they've been working on is the General Bylaw amendment. It does not have to have a hearing. If they can work on that and have it ready to go at their next regular meeting scheduled for the 19<sup>th</sup> that would be preferable. He could get it to the Select Board on the 25<sup>th</sup> for consideration on the Warrant. Chair Greenbaum would like them to review the non-ADU items.

Food Truck- Member Kiernan had some questions about the use table. He noted it's permitted in every area in Town. The current location of food trucks, and ones currently proposed, would be on Beach Point, North Truro, the possibility of Truro Center (with the Ag Fair), North Truro Center with Chequessett. If it's allowed in the residential zone, anyone can apply for something in their front yard and leave it open all summer. He'd like to mention that at Truro Vineyards, where there has successfully been one food truck, that's a pre-existing, non-conforming use within the residential zone. By limiting it to pre-existing, non-conforming commercial uses within the residential zone they don't have everyone applying. He asked if there should be different types of permits? For example; the Church wants to run a festival, so they get a permit for a week. Perhaps they can place a number to the table, stating that food trucks would be allowed in the residential zone ONLY in pre-existing, non-conforming commercial uses. Member Herridge stated that the Select Board will be licensing these and presumably could curtail an abuse of that kind. Discussion was had regarding using this language. A suggestion was made to make it a special permit. Chair Greenbaum stated that the Board had talked themselves out of doing special permits is that it would require the applicant to come to them (the Planning Board), as well as to the Select Board. She said it seems like the Board likes the condition, so the question is wording. She asked the Town Planner to bring both options to the work session.

Off-street parking- Chair Greenbaum stated that this is an attempt to deal with some conflicting or aggregating parking requirements, especially for establishments with more than one purpose; a deli which also sells groceries. This adds the Zoning Board of Appeals, by Special Permit, as a way for a person to get a waiver if they don't need to do a Site Plan Review.

Accessory Dwelling Unit-findings of the Planning Board-Currently the permit decision is not appealable. The sub-committee would like more guidance for what makes the most sense. Member Herridge stated it's improper to have a decision by a regulatory board not appealable. Member Kiernan stated it is illegal. He continued by saying they'd have to eliminate the portion that states the permit decision is not appealable. It automatically defaults to MA General Law 40A, subsection 17, which states if you have a problem with the Board's decision you take it to court. Member Tosh favors having the interim appeal to the Zoning Board of Appeals because an applicant could appeal to the ZBA without a lawyer. If the ZBA then denied the permit, under denied relief, then there would be the ability to go to court. Chris Lucy approached the Board. He stated that this went to Legal two or three times and that issue was never noticed. Reading through the General Laws of what a special permit is, it is stated that a special permit would be granted for activities that aren't generally allowed in a particular zone. This isn't a special permit. When you then go to Section 17 it speaks specifically to special permits. This is a permit granted by the Planning Board. If you look through the ADU process, the Planning Board is just collecting the plans and making sure all is in order. They are not making decisions on the style of the building, or decisions on anything else other than the packet is complete. There are only 3 ways the Planning Board can deny the plan; 1-it's incomplete, 2-if there's an impasse on something the Board would like to see on the plan, 3-it doesn't meet the bylaw. This is not a special permit. Mr. Lucy would like to see this not change, or at least get more specific information from Counsel. Town Planner Ribeiro stated that he spoke with Jonathan Silverstein (Town Counsel) about this. Counsel agreed that there is a legal route of appeal. This ADU permit isn't referenced in the Zoning Act anywhere and the courts have decided that it can still be appealed under Section 17 so alternate kinds of zoning permits (outside of special permits) can also be appealed.

Member Tosh asked Mr. Lucy if he would be interested in clarifying the ability of the applicant to appeal a denial? Mr. Lucy stated that applicants would not appeal, they would just reapply. Member Tosh referenced a particular ADU in which the applicant had to go to court to have conditions reversed. If that applicant could have gone to the Zoning Board of Appeals instead of filing a lawsuit and spending money, that's the type of circumstance she's referencing. Mr. Lucy stated that legal counsel could give them a better understanding. Town Planner Ribeiro thinks ultimately, the way to have these things not



appealable is to have them be by right. He agrees that there are a limited amount of circumstances on which the Planning Board can deny and he thinks there could be opportunities to discuss ways to ensure that these things happen, while making it by right. He also feels this will not be ready for the upcoming Town Meeting. One option could be to leave it as-is for now and continue the discussions and moving forward. Member Tosh, after listening to Mr. Lucy and Town Planner Ribeiro, agrees that leaving things as-is for now is a good option. Member Riemer stated that any applicant has the opportunity to withdraw, and then reapply, acknowledging what the issues were. That would avoid the Planning Board having to vote to deny. Member Kiernan asked if Town Planner Ribeiro could help the Board with some legal definitions. What is the difference between a Permit and a Special Permit? Town Planner will bring that to their next meeting. Member Kiernan would also like a copy of whatever letters Jonathan Silverstein has done around the review of the ADU, to see his thinking.

The next item Chair Greenbaum brought up was cutting down the amount of copies. The Board had agreed to an original, 9 copies, and a digital copy. She asked if the Board was still okay with that, and they were.

The last item to review was something Town Planner Ribeiro picked up on was on the topic of waiving Commercial Site Plan Review when the alteration or reconstruction of a building or structure won't have a significant impact. They would allow that to include a new building.

The items regarding a potential proposal to amend the Truro General Bylaws to regulate the filling of land, and the discussion of high priority goals will be discussed at their work session next Wednesday. The discussion of contacting US Department of the Interior regarding ADUs will also be pushed to the work session for next Wednesday.

Chair Greenbaum asked Town Planner Ribeiro if there were any updates on the Cloverleaf, and when the peer review could be expected? He replied that he is still tracking for the middle of February.

Update on past Work Sessions-Chair Greenbaum stated they have been working on the articles.

Update by Planning Board/Select Board ADU Ad Hoc Subcommittee on their Work Sessions-Chair Greenbaum stated that the Committee is meeting at the Library tomorrow.

Discussion of dates for future Board public workshops-Chair Greenbaum noted that the next work session is scheduled for next Wednesday, February 12<sup>th</sup> at 2:30pm.

**Member Herridge made a motion to adjourn at 7:31pm.**

**Member Kiernan seconded.**

**So voted; 7-0-0, motion carries.**



**Respectfully Submitted,  
Noelle L. Scoullar**

