

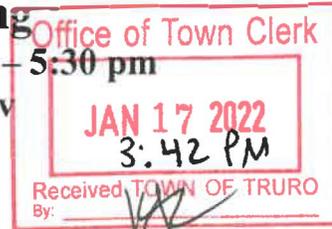


Truro Zoning Board of Appeals Agenda

Remote Meeting

Monday, January 23, 2023

www.truro-ma.gov



Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at [1-877-309-2073](tel:1-877-309-2073) and entering the access code [486-903-149#](tel:486-903-149#) when prompted. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing Liz Sturdy, Planning Department Administrator, at esturdy@truro-ma.gov.

Meeting link: <https://meet.goto.com/486903149>

Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Minutes

- ◆ November 21, 2022

Public Hearings – 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 a 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 9); 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. **[Original material in 9/26/2022 and 10/24/2022 packets]**

2022-018/ZBA – Robert Christopher Anderson and Loic Rossignon, for property located at 8 Stick Bridge Road (Atlas Map 54, Parcel 89, Registry of Deeds Book 31230 and Page 33). Applicants seek: (1) Special Permit under §30.3.1.A.2 of the Truro Zoning Bylaw to exceed by-right Total Gross Floor Area in the Seashore District; and (2) Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for an addition to an existing dwelling, removal of second dwelling, and construction of garage/studio on non-conforming lot (frontage) in the Seashore District. **[Original material in 11/21/2022 and 12/19/2022 packets]**

2022-019/ZBA – Katherine S. Cook and Christine Van Genderen, for property located at 38 Cliff Road (Atlas Map 32, Parcel 19, Registry of Deeds Book 33307 and Page 344). Applicants seek a special permit under G.L. c. 40A, s. 6 and s. 30.7 of the Zoning Bylaw for alterations to a nonconforming structure (frontage; setback) to reflect construction not authorized by special permit granted in Case 2020-007/ZBA, including enclosure of screened porch to create living room and addition of second floor living space in place of deck, located in Seashore District. **[Original material in 12/19/2022 packet]** {New Material in this packet}

2022-020/ZBA – Jennifer Cabral (Nearen & Cubberly Nominee Trust), for property located at 491 Shore Road (Atlas Map 7, Parcel 4, Registry of Deeds Book 8309 and Page 131). Applicant seeks a special permit under G.L. c. 40A, s. 6 and s. 30.7 of the Zoning Bylaw for construction of a small workshop replacing existing garage structure on nonconforming lot in the Beach Point Limited Business District. **[Original material in 12/19/2022 packet]**

Update on Housing Ad Hoc Committee (Heidi Townsend)

Next Meeting

- ◆ Monday, February 27, 2023 at 5:30 p.m.

Adjourn



STAFF MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: January 20, 2023

Re: Meeting January 23, 2023

2022-017/ZBA - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road, seeking a variance under G.L. c. 40A, s. 10 and s. 40.3.B.2 and 30.9.C of the Zoning Bylaw for a reduction in number of parking spaces from 12 to 9; and a special permit under G.L. c. 40A s. 6 and s. 30.7 and s. 30.8 of the Zoning Bylaw for relocation of two nonconforming structures on lot in Beach Point.

Update: At this Board's last meeting, the Board granted the Applicant's request to continue these hearings to January 23, 2023 to allow time for the Applicant to file for Site Plan Review with the Planning Board. The Applicant has submitted an application to the Planning Board, which will open public hearing on February 8, 2022. The Applicant has requested further continuance of this hearing until the ZBA's next meeting on February 27, 2023.

2022-018/ZBA – Robert Christopher Anderson and Loic Rossignon for property located at 8 Stick Bridge Road. Applicants seek 1) a special permit under G.L. c. 40A, s. 6 and s. 30.7 of the Zoning Bylaw; and 2) a special permit to exceed Gross Floor Area in the Seashore District under Bylaw section 30.3.1.A.2, to allow demolition of an existing addition to an historic dwelling and construction of new addition; demolition of existing cottage and construction of a garage/studio on a nonconforming lot (frontage).

Update: The Planning Board granted Site Plan approval following the close of hearing on December 7, 2022. Certain conditions were imposed (including obtaining the necessary zoning relief from this Board), but none affecting the siting of structures and other features. The Applicants have submitted supplemental materials (also reviewed by the Planning Board prior to its vote); these include a stamped site plan with a zoning table and additional height calculations as requested.

The following additional information is noted:

Zoning Table: The required Lot Area is inaccurately stated as 33,750 square feet; it is 3 acres. The property is compliant at 3.66 acres.

The Maximum Gross Floor Area as of right is 3,732; the figure given of 4,732 is the Maximum Gross Floor Area that could be permitted by special permit from the ZBA.

Height Calculations: The Zoning Table on the site plan indicates that the height of the existing main dwelling is **21.4 feet**, and the height of the proposed dwelling is **28.5 feet**. Sheets A2.0 and A2.1 of the newly-submitted plans indicate that the height of the addition to the main dwelling will be **27' 11 3/8"** (see South Elevation and North Elevation). Both conform to zoning requirements, but this should be clarified.

The Zoning Table indicates the height of the current cottage at 17.3 feet and the height of the proposed cottage 23.8 feet. Plan sheet A2.2. of the newly-submitted materials indicates that the height of the cottage will be 23' 0-1/2" above average grade (see West Elevation). Both are conforming but this should be clarified.

Nonconforming setback: The garage/studio will be less nonconforming (i.e., more conforming) than the existing cottage, being located 15.6 feet from the side lot line, as opposed to the current 4.5 feet.

Floor Plans and Elevations: The applicants have submitted additional and more detailed floor plans and elevations for main dwelling (A1.0 to A1.2; A2.0 - A2.1); garage/studio (A1.3; A2.0; A2.2); main dwelling plus pool/pavilion area (A2.0); and a "birdseye sketch rendering" of the several proposed structures (A3.0).

Analysis of Gross Floor Area The applicants have submitted the assessors property record cards for 25 neighboring properties and a table indicating for each a "Net Area" (unclear from where derived); Lot Acreage; Lot Area (in square feet); and "Gross Floor Area" expressed as a percentage (of what not indicated). The Zoning Bylaw does not contain any measurement by percentage for Gross Floor Area; presumably the applicants intend to demonstrate that as a percentage of total lot area, the proposed construction's gross floor area is not an outlier. Counsel may provide more explanation.

Status of cottage: At the last meeting, applicant's counsel stated that he would provide information regarding the status of the cottage, identified in the application as a second dwelling unit and represented as lawfully preexisting. It has been suggested that the cottage no longer has that status.

The following is adapted from a previous Staff Memo:

Existing Conditions and Proposed Project

The 3.66-acre parcel at 8 Stick Bridge Road in the Seashore District is nonconforming due to insufficient frontage. It is currently improved by an historic dwelling (constructed in 1781 per Assessors property card); a second dwelling (cottage; date of construction not indicated in Assessors records *and note, status in question*); and a barn-type structure constructed in 2020.¹ The submitted site plan indicates that the current Gross Floor Area of the property is 2,359

¹ By decision dated September 2, 2020, the Board granted Residential Site Plan Approval for a project entailing removal of a cottage; moving a shed; and construction of a barn-type structure, usable for storage (no plumbing), with associated gravel parking.

square feet, comprised of 1,759 square feet in the historic residence and 600 square feet in the cottage.

The proposed project entails 1) demolition of the existing cottage, to be replaced by a garage/studio with two bedrooms; and 2) demolition of an existing addition² to the historic dwelling, and construction of a new addition; and 3) construction of pool and spa with terrace and covered porch pavilion near the dwelling.

The site plan indicates that the current Gross Floor Area on the parcel is **2,359** square feet (historic dwelling: 1,759 square feet plus cottage 600 square feet). The proposed Gross Floor Area is **4,514** square feet, comprised of 3,338 square feet in the historic dwelling with addition, and 1,176 square feet in the garage/studio. This exceeds the parcel's as-of-right Gross Floor Area, necessitating a special permit under Bylaw section 30.3.1.A.2.

Review by other boards

Planning Board: The Planning Board granted Site Plan Approval on December 7, 2022. The ZBA may now act on the special permits here requested.

Historic Commission: An application was submitted to the Building Department for demolition of the cottage and of the addition to the historic structure. As is customary, the Building Department forwarded the demo application to the Historic Commission Chair and Vice Chair for review and determination of whether the Commission has jurisdiction to review the proposal for potential demolition delay under the Town's Preserving Historic Properties Bylaw. On behalf of the Commission, the Chair determined that while the main house would be considered a "significant" building subject to jurisdiction, neither the 1960s-era addition to the main house nor the cottage meet the Bylaw's criteria for significance. The Chair advised that the proposed demolition is not subject to the Commission's review, "provided that the demolition is confined to the above structures and the main house is not compromised in the course of undertaking the project." See email of Matthew Kiefer (in packet) dated August 30, 2022.

Conservation Commission: The 2020 project received approval from the Conservation Commission in an Order of Conditions issued July 2, 2021. It appears that the proposed project will require review by the Conservation Commission. The Conservation/Health Agent has submitted comments regarding the proposed project by email dated November 16, 2022.

Special Permits

Special Permit to exceed Gross Floor Area under Bylaw Section 30.3.1

This Bylaw section, Residential Building Size Regulations, limits total Gross Floor Area on lots in the Seashore District. The as-of-right Gross Floor Area permitted on a lot of three acres is 3600 square feet, plus 200 sq. ft. for each additional contiguous acre. (See Section 30.1.A.1.a). For this 3.66-acre lot, the prorated as-of-right Gross Floor area is **3,732 square feet**.

²The age of this addition is not indicated in application, but Historic Commission correspondence suggests the 1960s for its construction as well as construction of the cottage.

This as-of-right Gross Floor Area may be exceeded by special permit under Bylaw s. 30.3.1.A.2. The Applicant proposes a Gross Floor Area of **4,514 square feet**, exceeding the **3,732** square feet allowed as-of-right by **782 square feet**. Section 30.1.A.2 does not provide a standard or criteria for the Board to apply in considering a request to exceed Gross Floor Area, but Section 30.8 of the Bylaw does provide a standard applicable to all special permits:

“Special permits may be approved only after a finding by the Board of Appeals or Planning Board (as applicable, see use table) that the proposed use is in the opinion of the Board in harmony with the general public good and intent of this bylaw. The approval shall be subject to any other applicable provision of this bylaw and the Board may impose conditions, safeguards, and limitations on time and use, which in the Board’s opinion are necessary to comply with the intent and purpose of this bylaw.” 3

Zoning Bylaw Section 30.8. It is recommended that the Board apply the above standard to the applicant’s request to exceed the maximum permitted Gross Floor Area.

Special Permit standard under G.L.c.40As.6 and s.30.7(alteration or extension of nonconforming structure/lot)

The lot is nonconforming as to frontage. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the existing nonconformity and requires a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357(2008). In this case, the proposal is to alter and expand the existing dwelling, and add structures (sheds) with covered walkway at the front of the property.

The Board may grant a special permit under G.L.c.40A,s.6 if it finds that the proposed alternation and reconstruction “shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood.” Likewise, the Board may grant a special permit under Section 30.7.A if it finds that:

“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.”

In this case, the proposed garage/studio is larger than the existing cottage, and the proposed addition to the historic dwelling is larger than the existing addition. The pool area adds a porch pavilion topped by a sundeck; a raised patio, and a bridge connecting to the new house addition. These improvements considerably expand the existing structures and layout. However, the question is whether these alterations/extensions will be “*substantially more detrimental to the neighborhood*” than the existing nonconformities of the lot and structures, (as well as whether they can exist “in harmony with the general purpose and intent” of the Bylaw).

2022-019/ZBA- Katherine S. Cook and Christine Van Genderen, for property located at 38 Cliff Road. Applicants seek a special permit under G.L. c. 40A s. 6 and section 30.7 of the Bylaw to extend a nonconforming structure, including enclosure of screened porch to create living room and addition of second floor living space in place of deck, located in Seashore District. The relief is requested to reflect construction not authorized by a prior special permit granted in Case 2020-007/ZBA

Update: On January 11, 2023, the Planning Board closed public hearing and granted Residential Site Plan Approval reflecting the unpermitted construction.

Applicants' counsel has submitted additional materials to the Board: emails dated January 2022 from the Building Department to the builder, stating that certain construction completed was unauthorized and required revisits to the ZBA and Planning Board (also reflecting a telephone conversation to that effect); and an "Existing 2nd Floor Plan" with an initialed notation of the Building Commissioner "Amended 2nd Floor Permit 2-28-22." The Building Commissioner has advised that this approval of the amended 2nd floor plan simply reflected the fact that the work had been completed, not that the work had been authorized, or that it conformed to the ZBA and Planning Board decisions. The Building Commissioner further advised that no certificate of occupancy has issued, nor will one issue until Planning Board and ZBA approvals are obtained.

The following is recycled from last month's Staff Memo.

Project History. The property is nonconforming as to area (.64 acres in the Seashore District, where 3 acres required). By decision dated January 25, 2021, the ZBA granted a special permit under G.L. c. 40A, s. 6 and section 30.7 of the Zoning Bylaw to expand a nonconforming structure located on the property.

Prior to the renovations, the dwelling was nonconforming as to front setback (16.5 feet where 50 required) and contained a total of 1,389 square feet, plus a covered deck of 76 square feet. The project as approved allowed for the construction of a screened porch of 296 square feet on the north side of the house, and the construction of an additional 213 square feet of living space on the east side of the house.

As approved, the total Gross Floor Area of the dwelling was to be 1,767 square feet (1,253 square feet on the first floor; 515 square feet on the second), plus a porch/deck of 373 square feet. See Plan of Land (Outermost) dated October 23, 2020 and stamped plans dated October 26 2020 revised January 8 2021 (A1.1-A2.5).

As is standard, the Board's decision included a condition that "[c]onstruction shall conform to the plans referenced in this decision." The project also required Site Plan Review by the Planning Board; approval was granted by decision of that Board dated January 6, 2022. The Planning Board's decision likewise required that construction conform to the approved plans.

Project as constructed. The project as constructed deviates from the plans as approved by the ZBA and Planning Board. The screened porch was constructed as an enclosed living room. An unapproved dormer and additional living space was added on the second floor. The total as-built Gross Floor Area totals 2,697 square feet, as opposed to the 1,767 square feet approved. (The as-built Gross Floor Area does not exceed Bylaw limits). The first floor contains 1,527 square feet (1,253 approved); the second floor contains 1,170 square feet (515 approved). The basement and first floor layouts were evidently not constructed in conformity with the plans, since the current application to the Planning Board for amendment of the Site Plan Approval is "to change approved screened porch to living room, revise basement plan, revise interior first floor layout, remove second floor deck, and add second floor living space." See also as built plans dated May 2, 2022 (A1.0-A2.4).

Special Permit standard under G.L.c.40As.6 and s.30.7 (alteration or extension of nonconforming structure/lot)

The lot is nonconforming as to area, and both the preexisting and the expanded dwelling are nonconforming with respect to the setback from Cliff Road. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the existing nonconformity and requires a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357(2008). In this case, the after-the fact "proposal" is to alter and expand the preexisting nonconforming dwelling.

The Board may grant a special permit under G.L.c.40A,s.6 if it finds that the proposed alternation and reconstruction "shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood." Likewise, the Board may grant a special permit under Section 30.7.A if it finds that:

"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."

2022-20/ZBA - Jennifer Cabral (Nearen & Cubberly Nominee Trust) for property located at 491 Shore Road. Applicant seeks a special permit under G.L. c. 40A s. 6 and s. 30.7 of the Zoning Bylaw for construction of workshop replacing existing garage structure on nonconforming lot in Beach Point Limited Business District.

Update: On December 19, 2022 (day of last ZBA meeting), an attorney representing abutting property owners raised the issue of whether the nonconforming use (garage use) had been abandoned. If that were the case, the rights of the current and any subsequent owners would be affected. Whether the use has been abandoned would be a question of fact for the ZBA

As of January 20, 2023, no additional materials have been submitted on behalf of the Applicant.

The following is recycled from last month's Staff Memo:

Existing Conditions and Proposed Project

The lot at 491 Shore Road is nonconforming as to area (19,883 square feet where 33,750 required). A 20' 3" x 26' 3" garage is currently located on the property, at a nonconforming 14.85 feet from Shore Road (25 feet required). The peak elevation of the existing garage roof is 24.24 feet above elevations ranging from 9.73 to 10.45 around the structure. See Ex.0-2. The existing garage use is nonconforming, in that it is an accessory use without a principal use on the property.

The applicants propose to replace the garage with a workshop topped by a storage loft, in the same location. A half bath is proposed on the first floor.³ See A.4. The 20 ft x 26 ft structure will be elevated 3' 9" above ground, with stairs and a landing added for access. The peak elevation above ground is proposed at 31.09 feet. See A.1 (north and south elevations). The proposed workshop use is likewise nonconforming, as it would be an accessory use without a principal use on the property.

The applicants were granted an Order of Conditions for the project by the Conservation Commission dated August 22, 2022 (included in the meeting packet by staff).

Alterations/Extensions of Nonconforming Structures and Uses

The lot is nonconforming as to area; the existing garage is nonconforming as to the setback from Shore Road; and the garage use is nonconforming, as no principal use is located on the property. Expansion of the *nonconforming structure* and change in the *nonconforming use* should be addressed separately.

1. Extension of Nonconforming Structure

The new structure will have an expanded footprint due to the landing and stairs.

G.L. c. 40A s. 6 provides in part:

"Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . .that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or⁴] use to the neighborhood."

Section 30.7 of the Bylaw likewise provides that:

"Lawful, pre-existing, nonconforming uses and structures may, when a variance would otherwise be required, be altered or extended with a special permit if the Board of Appeals finds that 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."

³ The garage is not currently served by water or septic. See Order of Conditions at p. 10-A.

⁴ Although the phrase "structure or" is not in the text of G.L. c. 40A, s. 6, court cases have interpreted the statute to include this language for consistency.

It is recommended that the Board consider and make findings as to:

- A. whether the proposed extension (larger dimensions of workshop) is not substantially more detrimental than the existing structure to the neighborhood (necessary findings under G.L. c. 40A s. 6 and Bylaw s.30.7); and
- B. whether such extension will exist in harmony with the general purpose and intent of the Bylaw (necessary finding under Bylaw s. 30.7)

2. Alteration of Nonconforming Use

The nonconforming garage use is proposed to be changed to a different nonconforming use, a workshop.⁵ As stated above in the text of G.L. c. 40A, s. 6 and Bylaw s. 30.7, alteration of a nonconforming use is permitted:

- A. where the Board finds that altered use is “not substantially more detrimental” to the neighborhood than the existing nonconforming use (40A s. 6 and s. 30.7); and
- B. where the Board finds that such use “will existing in harmony with the general purpose and intent of the Bylaw.” (s. 30.7)

It is recommended that the Board consider and make the findings on A and B above.

Additional findings (!) under the Powers Test

There is a body of caselaw that requires, where one nonconforming use is being changed (or has changed) to another nonconforming use, the application of the *Powers* test, named for the case *Powers v. Building Inspector of Barnstable*, 363 Mass. 648 (1973) in which the Court considered changes to certain nonconforming uses (manufacturing, wholesaling, and retail sale of candles) on two parcels. The short version of this interesting body of case law is this: if an altered nonconforming use does not satisfy the *Powers* test, the property must conform to current zoning. In this case, that would mean the workshop use would not be permitted. The three *Powers* factors are:

1. Does the new nonconforming use reflect the nature and purpose of the preexisting nonconforming use?
2. Is there a difference in the quality, character, or degree of use between the new nonconforming use and the original nonconforming use?
3. Is the new nonconforming use different in kind in its effect on the neighborhood than the original nonconforming use?

See *O’Brien v. McCloud*, 2022 WL 14459661 (Land Court, October 25, 2022); *Derby Refining Co. v. City of Chelsea*, 407 Mass. 703 (1990); *Powers v. Building Inspector of Barnstable*, 363

⁵ It should be noted that there is nothing inherently nonconforming about the workshop. This use (like the garage use) would be a *conforming* accessory use if there were a principal use on the property, such as single-family residential. An accessory use is not allowed on a lot absent a principal use.

Mass. 648 (1973). If the answers to the above questions are 1 -“yes” 2 - “no” and 3 - “yes,” respectively, then the new nonconforming use is *lawfully* nonconforming (i.e., permitted).

In staff’s view, the above findings can be made and the *Powers* test met in this case. These are of course factual findings for the Board.



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

November 21, 2022 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

Members Present (Quorum): Art Hultin (Chair); Darrell Shedd; Heidi Townsend; Curtis Hartman (Alt.), Nancy Medoff (Alt.)

Members Absent: Chris Lucy (Vice Chair)

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Select Board Liaison John Dundas; Ben Zehnder (Attorney for Marie Belding and Pat Callinan – Abutters to 538 Shore Road); Marie Belding (Abutter to 538 Shore Road); Pat Callinan (Abutter to 538 Shore Road); Ben Zehnder (Attorney for Loic Rossignon – Applicant); Alison Alessi (A3 Architects and Architect for Loic Rossignon – Applicant); David Lyttle (Ryder & Wilcox, Land Surveyor for Loic Rossignon – Applicant)

Remote meeting convened at 5:30 pm, Monday, November 21, 2022, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Chair Hultin introduced the Members.

Public Comment Period

Chair Hultin invited the public to offer public comments, and none were made.

Chair Hultin recognized Member Shedd who inquired whether the habitable studio on the Dennis property on South Pamet Road had been moved by October 15th, 2022. Chair Hultin confirmed that there had been a deadline established but asked Town Planner/Land Use Counsel Carboni to provide an update. Town Planner/Land Use Counsel Carboni opined that this should not be discussed as it was not on the agenda but that there was an extension granted by the Building Commissioner. Town Planner/Land Use Counsel Carboni stated that she would be happy to report back to the Members and Member Shedd noted that he was satisfied.

Chair Hultin recognized Member Townsend who reported that she serves on an ad hoc committee to discuss housing issues and concerns. Member Townsend requested time for her to be added to the next ZBA meeting's agenda so she can provide a report to the Members regarding the housing issues. There were no objections.

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 a 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 9); Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of

the Truro Zoning Bylaw for the relocation of three nonconforming structures on a lot in the Beach Point Limited Business District.

Chair Hultin announced that the ZBA had received a request from the Applicant to continue this matter to December 19th, 2022. Chair Hultin recognized Town Planner/Land Use Counsel Carboni who opined that the request was reasonable and understandable.

Chair Hultin made a motion to continue this matter to December 19th, 2022.

Member Shedd seconded the motion.

ROLL CALL VOTE:

Member Shedd – Aye

Chair Hultin – Aye

Member Hartman – Aye

Member Townsend – Aye

Member Medoff – Aye

So voted, 5-0, motion carries.

Public Hearing (New)

2022-018/ZBA - Robert Christopher Anderson and Loic Rossignon, for property located at 8 Stick Bridge Road (Atlas Map 54, Parcel 89, Registry of Deeds Book 31230 and Page 33). Applicants seek: (1) Special Permit under §30.3.1.A.2 of the Truro Zoning Bylaw to exceed byright Total Gross Floor Area in the Seashore District; and (2) Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for an addition to an existing dwelling, removal of second dwelling, and construction of garage/studio on non-conforming lot (frontage) in the Seashore District.

Chair Hultin recognized Attorney Zehnder who introduced the Applicant's representatives who will assist with the Applicant's presentation. Attorney Zehnder noted that the project had received approval from the Conservation Commission. The project has been presented informally to the Historic Review Board through the Building Commissioner and no further action is required. The Planning Board reviewed the Applicant's checklist on November 16th, 2022, and requested additional information.

Attorney Zehnder then presented the project and the justification for the approval of the project. Attorney Zehnder concluded that he and the Applicant's representatives were ready to answer any questions from the Members.

Chair Hultin reminded the Members that the ZBA would not render a decision on this project until after the Planning Board had made its decision. Chair Hultin asked Members for comments and questions. Members and the Applicant's representatives discussed the plan regarding the primary dwelling and the second dwelling, the applicability of the Local Comprehensive Plan and existing Bylaws when considering this matter as this is a large structure in the National Seashore, whether the "cottage" was a legal dwelling previously, the accessory of an additional building (the garage/studio), the pool and structures (if any) surrounding the pool, any structures which are excluded in the square footage of the project, and the question of the sideline setback. Chair Hultin noted that many questions must still be answered by the Applicant before the ZBA would approve this plan as presented.

Attorney Zehnder replied that the Applicant will respond to the questions posed by the Members and provide the necessary documentation requested. Attorney Zehnder noted that a schematic of the pool

structure area and elevations. Chair Hultin added that these documents should also be provided to the Planning Board and Attorney Zehnder concurred.

Chair Hultin made Attorney Zehnder aware of a memorandum from Town Planner/Land Use Counsel Carboni that was in this evening's packet as there were discrepancies in figures which required attention. Attorney Zehnder replied that he had not seen the memorandum and Town Planner/Land Use Counsel Carboni stated that she would be happy to review the memorandum with Attorney Zehnder.

There were no additional comments or questions from the Members of the public.

Chair Hultin made a motion to continue this matter to December 19, 2022.

Member Hartman seconded the motion.

ROLL CALL VOTE:

Member Shedd – Aye

Chair Hultin – Aye

Member Hartman - Aye

Member Townsend – Aye

Member Medoff – Aye

So voted, 5-0, motion carries.

Minutes

Chair Hultin led the review of the minutes for September 26th, 2022, for edits and comments. No edits were made. Chair Hultin abstained as he was not present at that meeting.

Member Shedd made a motion to approve the meeting minutes from September 26, 2022, as submitted.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Member Shedd – Aye

Chair Hultin - Abstained

Member Hartman – Aye

Member Townsend – Aye

Member Medoff – Aye

So voted, 4-0-1, motion carries.

Chair Hultin recognized Member Townsend who asked about the next step to replace former Member Virginia Frazier and fill the vacancy on the ZBA. Town Planner/Land Use Counsel Carboni stated that any interested Applicants for both the Full Member and Alternate Member positions (if a current Alternate Member was appointed to the Full Member vacancy) have a deadline of December 1st, 2022, to apply. The positions were also publicly posted. Chair Hultin encouraged anyone interested to apply.

Chair Hultin made a motion to adjourn at 6:14 pm.

Member Townsend seconded the motion.

ROLL CALL VOTE:

Member Shedd – Aye

Chair Hultin – Aye

Member Hartman – Aye

Member Townsend – Aye
Member Medoff – Aye
So voted, 5-0, motion carries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers". The signature is written in a cursive style with a large, sweeping initial "A".

Alexander O. Powers
Board/Committee/Commission Support Staff

Elizabeth Sturdy

From: office snowandsnowlaw.com <office@snowandsnowlaw.com>
Sent: Wednesday, January 18, 2023 9:05 AM
To: Elizabeth Sturdy
Cc: Barbara Carboni; 'Billy Rogers'; smcswee1@twcny.rr.com; office snowandsnowlaw.com; 'Benjamin Zehnder'
Subject: ZBA 2022-017 - 538 Shore Road - Ebb Tide

Elizabeth:

As we are scheduled to appear before the Truro Planning Board on February 8, 2023 for site plan review, we are writing to request that the January 23rd ZBA hearing on the above case be continued to the February 27, 2023 scheduled meeting of the zoning board.

Thank you.

Chris Snow

Christopher J. Snow, Esq.
Law Offices of Snow and Snow
90 Harry Kemp Way
Post Office Box 291
Provincetown, MA 02657
(508) 487-1160
Fax (508) 487-2694
office@snowandsnowlaw.com
snowandsnowlaw.com

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Benjamin E. Zehnder LLC

62 Route 6A, Suite B
Orleans, Massachusetts 02653

Benjamin E. Zehnder, Esq.
bzehnder@zehnderllc.com
Tel: (508) 255-7766

January 5, 2023

Town Clerk Kaci Fullerton
Truro Town Hall
24 Town Hall Road
P.O. Box 2012
Truro, MA 02666

Via hand delivery

Re: 38 Cliff Road (Assessor's Parcel ID 32-19)
2022-019/ ZBA
2022-012/SPR

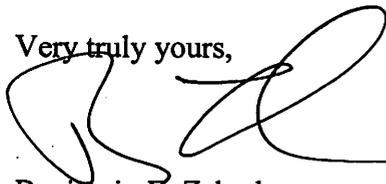
Dear Ms. Fullerton:

Please find enclosed for filing with each of the above-referenced matters 10 copies of the following supplemental materials as gleaned from the Truro Building office files:

1. Building Permit 21-191;
2. Email of L. Geiges dated January 19, 2022;
3. Email of R. Stevens dated January 24, 2022;
4. Email of R. Stevens dated January 26, 2022; and
5. Second Floor Plan with R. Stevens note.

Thank you as always for your assistance. I remain –

Very truly yours,



Benjamin E. Zehnder

Enc.
cc via email only w/ attachments:

client
Barbara Carboni
Brian Carlstrom
Lauren McKean
Elizabeth Sturdy

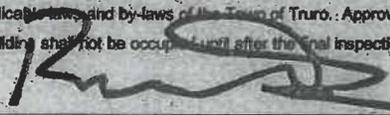


Town of Truro Building Permit

24 Town Hall Rd, Truro MA 02666
P: 508-349-7004 x131 F: 508-349-9508

Building Permit #	21-191	Map:	32 Parcel	19
Street Location:	38 CLIFF RD.			
Owner:	COOK			
Type of Work:	REBUILD / ADD.	HIC:	154231	
Builder:	CAPE TIP CONST.	CSL:	095333	
Date of Issue:	6-1-21			

This card shall be posted in a conspicuous place and shall not be covered or removed until all work associated with this permit is completed. Work shall be in compliance with 780 CMR and all applicable laws and by-laws of the Town of Truro. Approved plans shall be available on the job site. Where a Certificate of Occupancy is required, the building shall not be occupied until after the final inspection and after the Certificate of Occupancy has been issued.

BUILDING OFFICIAL: 

REQUIRED INSPECTIONS

** Permit Amended on 2/28/2022 2nd Floor Plan **

Footing - Rebar		Electrical Service		Final Gas	
Inspector	Date	Inspector	Date	Inspector	Date
_____		_____		_____	
Foundation - Rebar		Rough Wiring		Smoke/Fire Alarm	
_____		_____		_____	
Inspector	Date	Inspector	Date	Inspector	Date
Final Foundation		Final Wiring		Oil Furnace	
_____		_____		_____	
Inspector	Date	Inspector	Date	Inspector	Date
Cert. Foundation Plan		Low Voltage Rough		Sprinkler System	
_____		_____		_____	
Inspector	Date	Inspector	Date	Pressure	Date
Wind Connections		Low Voltage Final		Alarm	Date
_____		_____		_____	
Inspector	Date	Inspector	Date	Energy	Date
Frame		Underground Plumbing		Duct Test	Date
_____		_____		_____	
Inspector	Date	Inspector	Date	Blower Door	Date
Insulation		Rough Plumbing		Final Building	Date
_____		_____		_____	
Inspector	Date	Inspector	Date	Inspector	Date
Air Barrier		Final Plumbing		Cert. Of Occupancy	
_____		_____		_____	
Inspector	Date	Inspector	Date	Inspector	Date
Chimney/Woodstove		Rough Gas		Special Conditions:	
_____		_____		EBA 2020-007	
Inspector	Date	Inspector	Date	PB/SPR 2020-005	
_____		_____		HERS RATING TO BE 55	
_____		_____		OR LESS	

*EBA 2020-007
PB/SPR 2020-005
HERS RATING TO BE 55
OR LESS*

Rich Stevens

From: Laura Geiges
Sent: Wednesday, January 19, 2022 2:31 PM
To: Rich Stevens
Subject: 38 Cliff Road - Need Plan for Upper Story
Attachments: K685b1p9.JPG; K685b1p10.JPG

Hi Rich:

This is a reminder about the to-be-finished upper story of 38 Cliff Road (32-19) – the right hand wing section that was not on the approved plan.

Thank you,

Laura

Rich Stevens

From: Rich Stevens
Sent: Monday, January 24, 2022 1:45 PM
To: Kaye McFadden
Cc: Lynne Budnick; Laura Geiges
Subject: 38 CLIFF ROAD

Good Afternoon Kaye,

I am following up on some concerns brought up by our field assessor regarding this project.

The area on the 2nd floor seems to exceed or differ from the plans that were submitted for permitting. Also, on an in person site visit by myself today, I noted a 2nd full dormer on the rear, east elevation which is not shown on the plans on file.

As this project was approved by both the ZBA and Planning Board according to the plans that they reviewed I have some obvious concerns.

Please get in touch in order that we can discuss.

Regards,

Richard Stevens
Building Commissioner

Rich Stevens

32/19

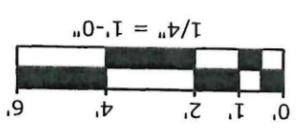
From: Rich Stevens
Sent: Wednesday, January 26, 2022 9:36 AM
To: Kaye McFadden
Cc: Lynne Budnick; Laura Geiges
Subject: 38 Cliff Road

Kaye,
Just following up on our phone conversation regarding the changes in construction at 38 Cliff Road.
You will be contacting both the Planning Board and the Zoning Board regarding these changes and whether or not either Board would like to re-visit this application.
Also, you will be providing this office with new architectural plans that reflect these changes.
Thank you in advance for your anticipated co-operation.
Regards,

Richard Stevens
Building Commissioner

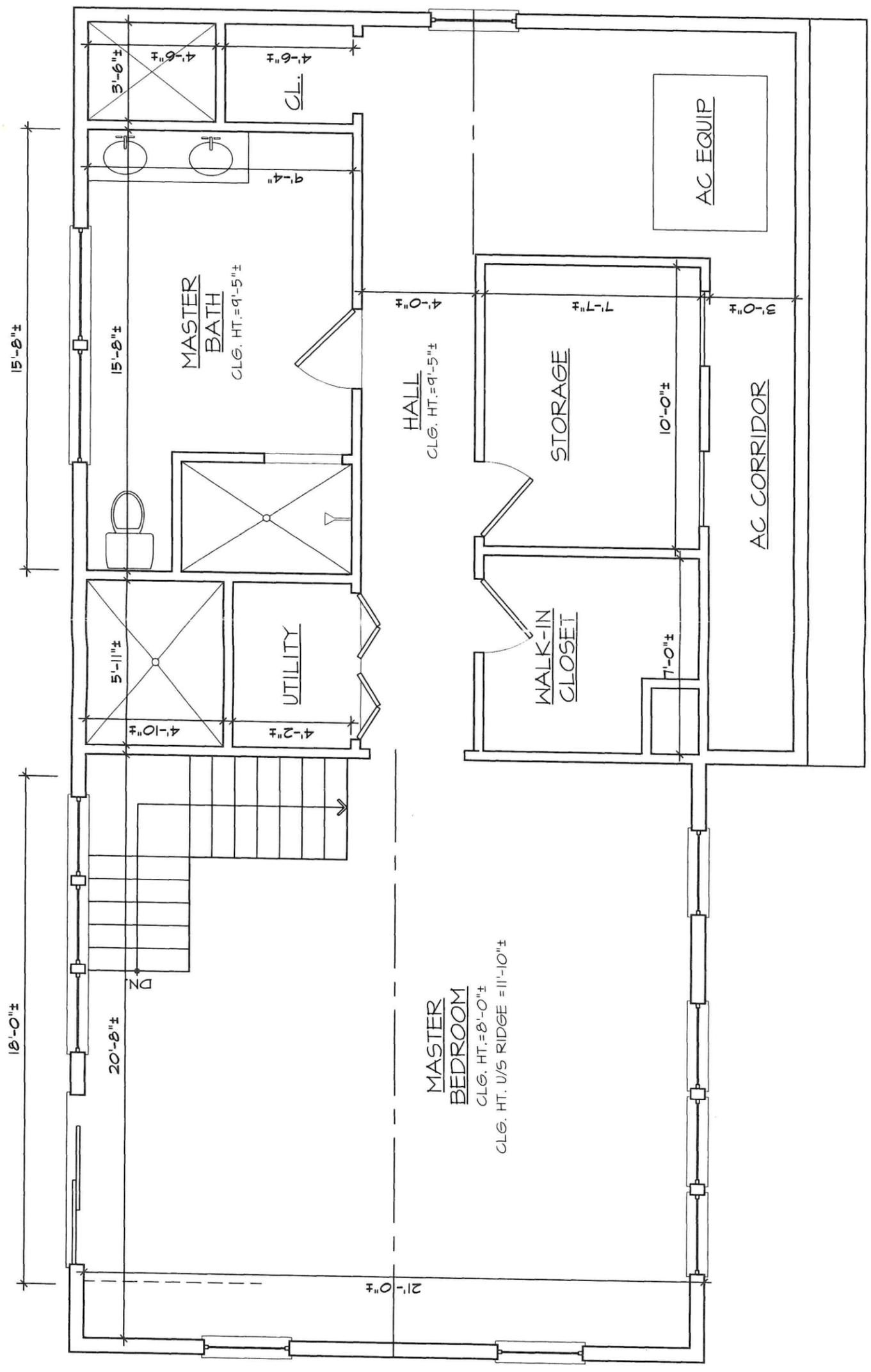
32/119 ~~13/120~~

FEBRUARY 02, 2022
RESIDENT
38 CLIFF ROAD
NORTH TRURO, MA



38 CLIFF ROAD
NORTH TRURO, MA
EXISTING CONDITIONS

X2



AMMENDED 2ND Floor
Permit 2-28-22
R65

EXISTING SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"

[Handwritten signature]